



Agreement on Climate Change, Trade and Sustainability

National Interest Analysis

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Frequently used acronyms and terms

Term	Explanation
ACCTS	Agreement on Climate Change, Trade and Sustainability
ASCM	Agreement on Subsidies and Countervailing Measures
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
MBIE	Ministry for Business, Innovation and Employment
MFAT	Ministry of Foreign Affairs and Trade
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development
WTO	World Trade Organisation
CPTPP	Comprehensive and Progressive Agreement for the Trans-Pacific Partnership
ASEAN	Association of Southeast Asian Nations
APEC	Asia-Pacific Economic Cooperation
UNFCCC	United Nations Framework Convention on Climate Change
G7	Group of Seven
G20	Group of Twenty

1 Executive Summary

The Agreement on Climate Change, Trade and Sustainability (ACCTS or the Agreement) is a first of its kind trade agreement that demonstrates how trade policy can deliver commercial outcomes for businesses and exporters, while also addressing climate and sustainability challenges. New Zealand's trade policy is focused on doubling the value of our exports over the coming decade. One method for achieving this is concluding trade agreements that create opportunities for New Zealand businesses, and in turn, boost the economy. As the first agreement New Zealand has concluded with Costa Rica, Iceland, and Switzerland outside of the World Trade Organisation (WTO), the ACCTS will contribute to doubling the value of exports by improving market access for New Zealand exports. The ACCTS is an 'open plurilateral agreement', meaning it is designed to expand over time through the accession of new members and the further amendment and expansion of the text into new areas of interest to New Zealand. As the Agreement grows, so too will the commercial benefits for our exporters increase, as access to markets improves.

The ACCTS was launched in 2019 between New Zealand, Costa Rica, Fiji, Iceland and Norway¹, with Switzerland joining shortly after. ACCTS negotiations commenced in 2020 and were largely virtual due to COVID 19 restrictions with a small number of in-person negotiations in 2023 and 2024. Negotiations concluded amongst New Zealand, Costa Rica, Iceland and Switzerland on 20 June 2024. The ACCTS outcomes are consistent with New Zealand's existing trade policy settings and align with New Zealand's existing trade commitments, including through the WTO.

The initial trade actions under the Agreement will contribute both to creating export opportunities through trade liberalisation and to addressing climate change and other serious environmental issues. The first trade actions that will occur due to the ACCTS are:

- **Liberalisation of trade in environmental goods through tariff elimination.** With 316 products at HS 6-digit level², the ACCTS environmental goods list is the most comprehensive agreed in any international agreement. The environmental goods list goes beyond a traditional approach focused on industrial goods to also recognise "land-based" or natural renewable goods. Tariffs will be eliminated on goods of commercial interest to New Zealand exporters such as timber and wood for construction, while also including products of interest to New Zealand consumers such as electric vehicles and bicycles and solar energy products, incentivising use and investment in related technologies.
- **Expanding international understanding of environmental services and environmentally-related services.** The ACCTS contains a list of more than 100 environmental services and environmentally-related services subsectors. This will facilitate trade in environmental and environmentally-related services through enabling market access and creating certainty for suppliers.
- **Guidelines to inform the design and implementation of voluntary eco-labelling programmes.** The ACCTS establishes a set of best-practice and principles-based guidelines that will apply to the design and implementation of voluntary, private sector eco-labels. They will help build

¹ As ACCTS founding negotiating participants, despite being unable to conclude in June, both Fiji and Norway helped shape the outcomes of the Agreement. The ACCTS partners have provided for an expedited accession process if they decide to join the ACCTS in the future.

² Harmonised Systems (HS) codes are used throughout the import and export process for the classification of goods and are administered by the World Customs Organisation.

consumer confidence in eco-labelling schemes while helping to prevent such labels from becoming inadvertent or deliberate barriers to trade.

- **A Framework to discipline and eliminate harmful fossil fuel subsidies:** The ACCTS contributes a meaningful definition on fossil fuel subsidies, clear prohibitions, and targeted exceptions to address governments' legitimate policy needs, including for energy security and disaster resilience.

2 Nature and Timing of the Proposed Treaty Action

The ACCTS is a plurilateral treaty-level agreement negotiated between New Zealand, Costa Rica, Iceland, and Switzerland.

Entry-into-force of the ACCTS is subject to the completion of the necessary domestic procedures of the signatories following signature of the Agreement. The ACCTS will enter into force 90 days after the date that three of the four participants have notified the depositary of the completion of their applicable legal procedures.

To remove duty on goods covered in the Agreement, amendments to the Working Tariff Document maintained under the Tariff Act 1988 are required. These changes will be made through an Order in Council under section 9 of the Tariff Act. All other obligations under the ACCTS are consistent with New Zealand's commitments under existing trade agreements, including the WTO, and do not require regulatory or legislative change.

The Agreement will not apply to the Cook Islands, Niue, or Tokelau.

3 Reasons for New Zealand Becoming Party to the Treaty

3.1 Delivering commercial outcomes while addressing climate and sustainability challenges.

The ACCTS is a trade agreement that demonstrates how trade policy outcomes can deliver meaningful commercial results for New Zealand businesses and exporters, while also helping to address climate change and other sustainability challenges.

The environmental goods list is the most comprehensive list of environmental goods for tariff elimination agreed in any international agreement (building on the New Zealand and United Kingdom FTA which includes 293 tariff subheadings). New Zealand's global exports of the listed environmental goods total NZ\$2.4 billion annually, of which almost NZ\$1 billion is to countries with which New Zealand does not have a free trade agreement.³ The scope of the environmental goods list is important for New Zealand exporters as it goes beyond industrial goods to recognise "land-based" goods, for example, wool and wood products, as environmental goods. The list also includes products of interest to consumers such as rechargeable batteries, electric vehicles and bicycles, LED lights, and solar energy products. The commercial benefit of the ACCTS for New Zealand exporters will increase over time as

³ This includes, for example, New Zealand global annual exports of timber and wood for construction (NZ\$1.1 billion) wool fibre and slag wool for insulation (NZ\$411 million); recycled paper (NZ\$153 million), and electric static converters (NZ\$205 million).

the Agreement grows and the text, including the list of environmental goods, is reviewed and upgraded into new areas of interest to New Zealand.

Commercial benefit for New Zealand will also be delivered through the liberalisation of environmental and environmentally-related services, where the schedules of environmental services market access commitments will improve access and deliver greater certainty for exporters of “environmental services” and “environmentally-related services”.

The establishment of a set of best practice and principles-based eco-labelling guidelines will facilitate trade in sustainable products, including by building consumer confidence in eco-labelling schemes while helping to prevent such labels becoming inadvertent or deliberate barriers to trade. The rise of “one-size-fits-all” eco-labels disadvantages some New Zealand exporters, particularly where these labels may seek to discriminate against external competitors.

The inclusion of the first enforceable international framework to reform and eliminate harmful fossil fuel subsidies illustrates how a trade agreement can drive reform to address fossil fuel subsidies which distort trade. The Organisation for Economic Cooperation and Development (OECD) and International Energy Agency report the fiscal cost of government support for the production and consumption of fossil fuels almost doubled in 2022 to reached more than US\$ 1.4 trillion globally.

3.2 New trading partners forging international connections.

The ACCTS supports New Zealand’s goal of doubling the value of exports and advances our trade priorities through the diversification of our market access opportunities - this will deliver new trade opportunities for our exporters. The Agreement is the first New Zealand has concluded directly with Costa Rica, Iceland, or Switzerland, strengthening our connections with these trading partners. As an ‘open plurilateral agreement’ the ACCTS is designed to expand over time through the accession of new members. There has already been significant interest in the ACCTS from a range of economies, such as Chile, Fiji and the United Kingdom (UK). We understand Norway still hopes to accede to the agreement in future. As more economies join, the international connections and commercial benefits for New Zealand exporters will expand.

3.3 Highlighting New Zealand’s reputation as a trade policy leader.

The ACCTS addresses issues that have not yet gained traction in trade agreements. For example, delivering on New Zealand’s efforts to advocate for fossil fuel subsidy reform internationally that date back to the launch of the Friends of Fossil Fuel Subsidy Reform in 2010, the Fossil Fuel Communiqué presented at COP21 in 2015, and most recently the WTO Joint Ministerial Statement on Fossil Fuel Subsidy Reform in 2024. In this manner, the ACCTS will provide solutions to long-standing and emergent trade policy issues, by providing a template to those countries who have already committed to fossil fuel subsidy reform and forming a potential basis for renewed WTO discussions. Similarly, the inclusion of principles-based guidelines on eco-labelling is the first-time eco-labelling has been included in a trade agreement.

4 Advantages and Disadvantages to New Zealand of the Treaty Entering into Force and Not Entering into Force.

4.1 Environmental Goods

The Chapter covering Environmental Goods sets out the rules that New Zealand and the other ACCTS Parties will apply to listed environmental goods imports from all WTO Members, including the elimination of import duties. ACCTS Parties undertake not to impose new export duties on the listed environmental goods. The objective of this Chapter is to promote the liberalisation of trade in environmental goods as a means of contributing to the transition to a climate-resilient, and sustainable economy through increasing the uptake of, and investment in, relevant technologies and products that address environmental needs. The ACCTS Parties have agreed to immediately eliminate tariffs on an ambitious and environmentally credible list of 316 goods, which are included in Annex II to Chapter 2 (Environmental Goods) of the Agreement.

4.1.1 Advantages to New Zealand

The ACCTS environmental goods list is the most comprehensive list agreed as part of any international agreement that defines environmental goods for tariff and customs duty elimination. New Zealand gains reputational as well as commercial advantages from this achievement.

4.1.1.1 Goods market access – exports

Participants agreed a list of 316 products (at HS 6-digit level) as environmental goods. Tariffs on these products will be eliminated under the ACCTS. The list goes beyond identifying environmental industrial goods (as the most accepted environmental goods sector) to recognise natural renewable goods (for example, wool and wood products). This sets an important commercial precedent for New Zealand exporters in the long term with products such as wool, timber and wood used in construction being tagged as environmental goods. The wood and wool products on the list account for a majority of New Zealand's global environmental goods exports (about NZ\$1.5 billion of the total NZ\$2.4 billion in environmental goods exported annually by New Zealand).⁴ While the commercial value of the ACCTS will be modest to begin with, as more countries join the Agreement there is potential for greater savings on tariffs currently imposed on New Zealand exports of the goods in question. The Agreement also has provision for the environmental goods list to be reviewed and expanded.

The Goods Chapter includes a range of provisions to help facilitate trade in environmental goods. In line with many of New Zealand's other FTAs, all Parties have agreed to prohibit the introduction of new export duties, while existing duties may be maintained only for a maximum of five years. The wide range of products will also contribute to New Zealand's efforts to grow support for expanding liberalisation of trade in environmental goods in other plurilateral and multilateral fora, including regional free trade agreements.

4.1.1.2 Goods market access – imports

New Zealand will eliminate customs duties on environmental goods imports from all WTO members. Most imports already enter New Zealand duty free, either under preference through our extensive range of FTAs, or under one of the high proportion of most favoured nation (MFN) or concession free tariff lines. Imports of the goods covered by ACCTS are subject to estimated customs duties of NZ\$1.6

⁴ Source – Statistics New Zealand

million annually (at 2022-2023 trade levels). New Zealand's economy is dependent on imports to supply a range of goods and services to producers and consumers. With the removal of these duties New Zealand consumers may benefit from cheaper imported environmental products, in particular solar panels, bicycles, LED lights, and rechargeable batteries.

4.1.2 Disadvantages to New Zealand

New Zealand's commitment to eliminating customs duties on environmental goods will result in foregone revenue of an estimated NZ\$1.6 million per annum (at 2022-2023 trade levels). It may also marginally expose some parts of New Zealand's manufacturing sector to more competition and create adjustment effects for domestic producers with increased exposure to competition from imported environmental goods. However, the potential negative impacts are likely to be extremely limited, as New Zealand's economy is already largely liberalised with most goods imported into New Zealand facing no duty (90% of imports from the environmental goods list already enter New Zealand duty free). The customs duties New Zealand still retains are relatively low (mostly 5% and none more than 10%). Dutiable imports include environmental goods such as electric buses, motorhomes, campervans, crushing or grinding machines, LED lighting, and a range of manufactured items. Of note, New Zealand also applies tariff concessions⁵ on some products, further reducing the duties that are paid in practice. Where customs duties do apply, these have already been eliminated for most FTA partners – for example with Australia, ASEAN members, UK, European Union (EU), China, the Republic of Korea and CPTPP members.

The initial costs to New Zealand of the ACCTS are expected to be outweighed over time as membership of the ACCTS grows and market access improves for New Zealand exports of environmental goods.

4.2 Environmental Services

The Environmental Services Chapter focuses on the relationship between trade in services and the environment, by identifying environmental and environmentally-related services sectors⁶ and facilitating cross-border trade in these services between ACCTS parties, and with the wider WTO membership.

4.2.1 Advantages to New Zealand

New definition of environmental and environmentally related services

The current definition of Environmental Services under the WTO General Agreement on Trade in Services (GATS) is limited to a small number of services. This makes it difficult to improve the facilitation of trade in services that are needed to protect our environment or are for climate change mitigation or adaptation activities. The Environmental Services Chapter of ACCTS features a new definition for environmental and environmentally-related services, which is broad enough to include

⁵ Tariff concessions remove the customs duty that would otherwise be payable on an imported good. They are applied unilaterally by New Zealand on some goods used for social, humanitarian or industry assistance purposes.

⁶ Environmental Services – generally agreed upon services that are specific to environmental issues, for example recycling, water management services.

Environmentally Related Services – services that can benefit environmental objectives, but are not necessarily always environmentally friendly. For example, engineering/architectural services can be done in a way that supports environmental goals, but they do not always have an environmental benefit.

a wider range of services sectors, while excluding any services that may potentially harm the environment.

As part of defining environmental services, the Agreement includes a reference list of Environmental and Environmentally-Related Services (hereafter referred to as the 'List'). This List consists of a comprehensive range of services that have been identified and agreed by all ACCTS Parties as having a clear and direct link to achieving environmental goals. For example, the List includes Architectural Services, which can contribute to the designing of more efficient and less polluting buildings; or Leasing and Rental Services of electric cars to support both reduction and sharing of resources. While the existing classification used at the WTO is limited, the List in ACCTS takes a broader and more modern approach that allows for the inclusion of non-environmental services that can play a key role in responding to climate change and environment challenges.

The List in ACCTS builds on the list of environmental services developed by APEC. It represents New Zealand's analysis of the connection between trade in services and the environment. Every service on the list underwent thorough examination by ACCTS Parties. Inclusion of sectors was only agreed when there was sufficient scientific evidence to establish the link between the sector and environmental goals.

Improved facilitation of trade in services

ACCTS Parties have agreed to make commitments on market access, national treatment (non-discrimination between foreign and domestic service providers) and domestic regulation for selected services on the List as reflected in each Party's national schedule of services commitments. These commitments provide certainty and transparency for New Zealand's Environmental and Environmentally-Related Service exporters to ACCTS Parties. ACCTS Parties have made commitments in sustainable agriculture and forestry consultancy, professional engineering and architecture services – all sectors of commercial and export interest to NZ.

New Zealand's own schedule of commitments seeks to enhance our trade in services that support environmental outcomes, while allowing us to protect specific sensitivities, including under the Treaty of Waitangi.

Enhancing the flow of environmental services through ACCTS encourages the sharing of technical developments and advancements, benefiting New Zealand businesses and consumers as well as creating direct and tangible benefits for the environment and aiding in climate change adaptation and mitigation. For example, environmental and environmentally-related services are often enablers of sharing knowledge on ways of working and technical processes and methods.

4.3.2 Disadvantages to New Zealand

The core obligations in the Environmental Services Chapter are consistent with similar commitments New Zealand has made in the WTO under GATS, and there are no identified disadvantages from replicating many of our existing obligations in this Agreement. New Zealand's market access commitments in ACCTS do not go beyond those already made to FTA partners in existing agreements and are therefore all within existing New Zealand regulatory settings.

As might be expected in an agreement in which the scope of services commitments is confined to Environmental Services, the new commitments made by ACCTS Parties are more limited than the improvements that would be seen in an FTA context. This is particularly the case given the overlap between ACCTS schedules and existing WTO commitments of the original ACCTS participants. Nonetheless, not all WTO members have the same level of GATS services commitments, and there is the potential to create increased opportunities for our services exporters as further economies accede to the ACCTS.

The ACCTS will be implemented in a manner consistent with our WTO obligations, and any services commitments made in ACCTS will be offered to all WTO Members.

4.4 Fossil Fuel Subsidy Reform

The Fossil Fuel Subsidies chapter establishes a new international framework to reform fossil fuel subsidies, building on existing WTO approaches for industrial, agricultural and fisheries subsidies. New Zealand has a long-standing principled position against subsidies, which use public money to distort trade and investment by lowering the cost of competitors' products. Fossil fuel subsidies pose environmental harm and addressing them can help reduce global emissions.

4.5.1 Advantages to New Zealand

The Fossil Fuel Subsidy chapter will address harmful subsidisation of fossil fuels and the market distortions subsidisation can create, which will help reduce global emissions.⁷ The Fossil Fuel Subsidy Chapter establishes the first international definition and framework of prohibitions, scheduling, exceptions, and transparency to address these subsidies. The framework also provides targeted exceptions designed to address governments' legitimate policy needs, including some of particular interest to New Zealand.

4.5.2 Disadvantages to New Zealand

New Zealand will not be required to reduce or eliminate our small number of existing fossil fuel subsidies by joining the ACCTS, although some of these will be subject to transparency and review. This requires New Zealand to schedule two existing fossil fuel subsidies, the fuel excise duty refund, and regional fuel tax rebate, and subject these subsidies to a policy 'status quo' standstill, meaning they cannot expand beyond current legislation.⁸ New Zealand has three additional subsidies that are either out of scope of the Chapter, or subject to exceptions for legitimate policy purposes.⁹

While space to introduce new subsidisation will narrow, there are some exceptions that allow Parties to introduce fossil fuel subsidies in the future to meet justifiable policy objectives. New Zealand can still introduce new subsidies that fit with the following exceptions:

⁷ The need for "deep, rapid and sustained reductions" in greenhouse gas emissions in line with 1.5 °C pathways was recognised by all Parties at the recent United Nations Climate Conference of Parties (COP28) in December 2023. Pathways identified to achieve this including by transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner and by phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible.

⁸ The rebate for the regional fuel tax has been removed through legislation.

⁹ These include stockholding of oil, Tax Deductions for Petroleum-Mining Development Expenditures and Non-Resident Off-shore Drilling Rig and Seismic Ship Tax Exemption.

- tax revenue foregone for the production of fossil fuels;
- subsidies below an agreed minimum threshold; and
- subsidies that are within the policy exceptions contained in the agreement.

Other exceptions also include time-bound subsidisation of electricity generation for security of energy supply; for decommissioning fossil fuel production; to enable public stockholding of fossil fuels for energy security; and for disaster resilience.

New Zealand has secured some flexibilities in the chapter that are designed to address governments' policy objectives as need. The ACCTS may reduce the range of measures the Government could pursue to incentivise gas exploration and development to meet New Zealand's immediate and long-term needs. Any such measures would need to be considered on a case-by-case basis for compliance with the ACCTS.

4.5 Eco-labelling

The Chapter covering Eco-labelling sets out best practice guidelines for voluntary eco-labelling. These are intended to support the development of high-integrity eco-labels that have transparent criteria, provide meaningful information to consumers, and deliver on their intended environmental objectives. It also establishes a National Contact Point for each of the Parties to facilitate the promotion of the voluntary guidelines and respond to enquiries.

4.4.1 Advantages to New Zealand

Assists New Zealand Consumers in making choices

Well-designed and implemented voluntary eco-labelling programmes have an important role to play in providing reliable and accurate information on the environmental credentials of goods. Within New Zealand, and on the global market, there is a range of eco-labels, each with varying levels of reliability and accuracy. This can impact on consumer ability to choose a genuinely environmentally friendly product.

The guidelines included in the Chapter promote the development and implementation of eco-label programmes that, among other criteria:

- are based on reliable, comparable, substantiated, and verifiable information;
- include information that assists in differentiating products in a meaningful way to the market; and
- are based on scientific and technical information.

The combination of these factors will support New Zealand consumers seeking to purchase an environmentally friendly product.

Assists New Zealand companies in the promotion of environmentally friendly products

The inclusion of the Eco-labelling Chapter recognises that, when designed well, eco-labels can be a powerful tool in promoting trade in more environmentally friendly products and seeks to guard against

emerging “one-size-fits-all” eco-labels developed in other countries which act as a non-tariff barrier. For New Zealand producers of environmentally friendly products and services, the uptake of the eco-label guidelines in ACCTS could assist in the promotion and sales of such products. It is also hoped that the guidelines will assist in mitigating the risk of voluntary eco-labels being developed or used in a discriminatory and trade-restrictive, manner.

4.4.2 Disadvantages to New Zealand

As voluntary guidelines, the eco-labelling provisions in the ACCTS do not present any disadvantages to New Zealand.

4.6 Legal and Institutional Issues

The ACCTS includes legal and institutional provisions covering matters such as how and when the Agreement will enter into force, how it will relate to other international agreements already in place, how Parties should resolve issues in case of a dispute, and what exceptions to the rules are allowed. In the ACCTS, these are found in the Preamble, Initial & General Provisions, Institutional Provisions, Dispute Settlement, and Final Provisions.

4.6.1 Advantages to New Zealand

The ACCTS Initial & General Provisions establish that the advantages from the Agreement are designed to reaffirm and co-exist with the Parties’ existing international agreements.

The Initial & General Provisions also contain a series of cross-cutting exceptions to ensure the Government is able to make policy and undertake measures to give effect to that policy (in the areas covered by these exceptions). The advantage of these exceptions is broad ranging, given the variety of important policy areas covered by the exception provisions, including security, taxation, and the Treaty of Waitangi. Key aspects of these exceptions are:

- a security exception that allows either Party to take any action which it considers necessary for the protection of its essential security interests;
- balance of payments for Environmental Goods and Environmental Services;
- a Treaty of Waitangi exception which maintains the New Zealand Government’s ability to take measures it deems necessary to fulfil obligations to Māori regarding matters covered under the Agreement, including in fulfilment of its obligations under the Treaty of Waitangi; and
- taxation exceptions that set out the scope of those taxation measures where the Agreement’s obligations do apply and those where they do not.

In the Institutional Provisions chapter, a framework for ongoing consultations between the Parties is established via the establishment of a Joint Commission tasked with overseeing the implementation of the Agreement. The chapter also includes provisions outlining the Parties’ intention to undertake periodic general reviews of the Agreement, to establish an overall contact point to facilitate communication on matters concerning the Agreement, and to cooperate in the exchange of information to support the effective functioning of the Agreement. This includes a commitment to engage with representatives of Indigenous Peoples where required pursuant to a Party’s domestic or

international obligations. Such institutional arrangements provide a mechanism for New Zealand to ensure the Agreement is delivering the benefits intended and remains fit-for-purpose in the future.

Under the Dispute Settlement chapter, the Government would be able to pursue a matter to formal dispute resolution should other Parties fail to act consistently with the obligations under the Agreement. This helps to ensure the advantages of the Agreement are accessible to New Zealand goods and services exporters.

The Final Provisions chapter states that New Zealand will act as “Depositary” for the Agreement. This role carries some symbolic value, placing New Zealand at the centre of a significant pillar of trade and environmental architecture globally. This would support New Zealand’s position, particularly relative to our size, as a leader in global trade liberalisation and environmental protection.

4.6.2 Disadvantages to New Zealand

The legal and Institutional Provisions in the ACCTS do not present any disadvantages to New Zealand. It should be noted though that these legal and institutional provisions are reciprocal in nature and that policy measures taken by the New Zealand Government would be subject to the same dispute settlement procedures as those available to New Zealand under the Agreement. Historically, New Zealand has been subject to only one complaint by a trading partner. This was under the GATT dispute settlement system.¹⁰ New Zealand has not been subject to any complaints under the WTO agreement or our FTAs.

5 Legal Obligations which would be imposed on New Zealand by the Treaty Action, the Position in Respect of Reservations to the Treaty, and an Outline of any Dispute Settlement Mechanisms

5.1 Initial & General Provisions

The Initial and General Provisions Chapter sets out how the ACCTS will interact with other international agreements. The Parties intend the Agreement to co-exist with existing international agreements and affirm their rights and obligations to each other under existing international agreements to which they are party. In the event of any inconsistency between the ACCTS and other agreements to which the members are party, the Parties will immediately consult with a view to finding a mutually satisfactory solution. Switzerland will represent Liechtenstein for any matters that may fall under their customs union.

Article 1.6 on Transparency sets out the Parties’ obligation to make publicly available laws that may affect the operation of the Agreement. Paragraph 2 and 3 provides that Parties must respond to requests for such information without undue delay and, to the extent possible, promote public awareness of the Agreement. Paragraph 4 confirms that nothing in the Agreement requires any Party to disclose information where that disclosure would be contrary to public interest or its domestic law, would impede law enforcement or prejudice the legitimate interests of any economic operator. Article 1.7 provides that Parties will strive to strengthen their cooperation on trade and environmental issues of mutual interest in international fora.

¹⁰ Panel Report, New Zealand – Imports of Electrical Transformers from Finland, adopted 18 July 1985, BISD 32S/55.

Article 1.9 (Restrictions to Safeguard the Balance of Payments) sets out when a Party may adopt restrictive measures when in serious balance of payments and/or external financial difficulties. Any restrictions adopted or maintained by a Party shall be notified to other Parties.

Article 1.11 (Tiriti o Waitangi/ Treaty of Waitangi) sets out that nothing in the Agreement shall preclude New Zealand from adopting measures it deems necessary to accord more favourable treatment to Māori in fulfilment of its obligations under Tiriti o Waitangi/Treaty of Waitangi. Paragraph 2 sets out that the interpretation of Tiriti o Waitangi/Treaty of Waitangi, including the nature of the rights and obligations arising under it, will not be subject to dispute settlement provisions of the ACCTS.

5.2 Environmental Goods

Environmental Goods

The Environmental Goods chapter aims to promote the liberalisation of trade in environmental goods and identifies the environmental goods covered by the Agreement. These have been identified based on evidence that they contribute to climate change adaptation and mitigation, pollution prevention and control; the sustainable use, protection or restoration of natural resources, biodiversity and ecosystems; the transition to a circular economy; the sustainable development objectives of the Parties; and other wider environmental goals (Article 2.3.1).

The list of environmental goods will be reviewed regularly, with a view to updating the list.

Conservation and Sustainable Management relevant for the Production of Environmental Goods

Article 2.4 (Conservation and Sustainable Management relevant for the Production of Environmental Goods) acknowledges the importance of the conservation and sustainable management of ecosystems relevant for the production of environmental goods. This includes promoting trade, ensuring transparency of domestic policies and measures, cooperation, and engaging in discussions on possible equivalence system recognition of sustainably produced environmental goods. On wood, Parties are obliged to give positive consideration to equivalence requests (even if other Parties' measures differ from their own, provided they fulfil the same objectives) to the extent consistent with their international obligations and domestic laws and regulations).

Article 2.4.2 confirms a general right to regulate in accordance with international obligations in order to achieve legitimate objectives in relation to all environmental goods. This includes the right to adopt or maintain due diligence systems or certification schemes to verify that the relevant commodities and products have been produced in a sustainable and legal manner.

Article 2.4.3 includes a provision specific to wood products. The article reaffirms a Party's right to adopt or maintain a measure referred to in order to achieve legitimate objectives in relation to environmental goods in the Agreement. Further, Parties may delay tariff elimination on wood products for up to 18 months following entry into force of this Agreement for that Party, and for a further 18 months if necessary to put in place domestic regulatory measures to address sustainability concerns. This delay must be notified to the other Parties.

Elimination of Import Duties

Each Party is required to eliminate import duties on the list of environmental goods and not introduce new duties (Article 2.5.1).

Import duties are defined as any duties or charges of any kind imposed on, or in connection with the importation of goods. This does not include those imposed in conformity with Article III and VIII of GATT 1994, and anti-dumping or countervailing duty applied in conformity with GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (Article 1.3(f)).

Elimination of Export Duties

Each Party is required to eliminate export duties on the list of environmental goods and not introduce new duties. An exception may be agreed upon accession to this Agreement, for up to a maximum of five years to the extent strictly necessary, and if applicable must be scheduled in the appendix to Annex II (Article 2.6.1).

Export duties are defined as any duties or charges of any kind imposed on or in connection with, the exportation of goods. This does not include those adopted or maintained on that good when destined for domestic consumption or imposed in conformity with Article VIII of GATT 1994 (Article 1.3(b)).

Temporary Special Mechanism

To encourage increased participation by WTO Members in this Agreement, the ACCTS includes flexibility mechanisms to defer the elimination of tariffs on some environmental goods (Article 2.7.1).

A Party may postpone the elimination of import duties on an environmental good at the time it accedes to this Agreement, provided that such postponement is specified in Annex II (Article 2.7.2(a)). If new items are added to the list of goods, the Joint Commission shall indicate on which new items, if any, a Party may postpone the elimination of import duties (Article 2.7.2(b)).

The temporary postponement of the elimination of import duties on an environmental good is available for a period of 12 years from the date of entry-into-force of this Agreement (Article 2.7.3).

The number of items in the list of Environmental Goods for which a Party can postpone the elimination of import duties is restricted to a maximum of 8% of items, for up to six years, dropping to 4% of items for any further years until the 12-year period expires (Article 2.7.4).

Finally, the article includes an anti-concentration clause. A Party shall not postpone the elimination of import duties on more than half of environmental goods in any single Harmonised System (HS) Chapter. Where a Party postpones the elimination of import duties to more than one environmental good, the goods selected shall not be from any one HS Chapter exclusively (Article 2.7.5).

General Exceptions

Article 2.8 incorporates the general exceptions from Article XX of GATT 1994, including the environmental measures necessary to protect human, animal or plant life or health, and measures relating to the conservation of living and non-living exhaustible natural resources.

Sub-Committee on Trade in Environmental Goods

The ACCTS establishes a Sub-Committee on Trade in Environmental Goods. The Sub-Committee may consider any matter related to the goods chapter. This includes monitoring implementation and operation, exchanging information, data and monitoring trade in environmental goods, performing the review, monitoring recognition assessments, and reporting and making recommendations to the Joint Commission (Article 2.9.3). The Sub-Committee is required to meet within 18 months of entry into force and as required thereafter (Article 2.9.4).

Review

The Sub-Committee will review the environmental goods list with a view to propose necessary amendments related to the classification of goods under the Harmonised System, based on implementation experience, and other amendments to the list in line with the objectives of this Agreement (Article 2.10.1). Proposals for new goods will need to be accompanied by justification of their environmental benefits and reference to their environmental purposes listed in Annex II (Article 2.10.2). The Sub-Committee will update the list of environmental goods based on updates to the Harmonised System no later than one year after the adoption of Recommendations concerning periodic amendments by the Customs Cooperation Council (Article 2.10.3). Upon completion of the review, the Sub-Committee may recommend that the Joint Commission modifies the list of environmental goods (Article 2.10.4).

5.3 Environmental Services

The Environmental Services Chapter seeks to promote the liberalise trade in environmental and environmentally related services and covers a range of obligations relating to the treatment of services providers. These are:

- **Market access:** under Article 3.5, Parties cannot impose the type of quantitative limitations specified in the article, including economic needs tests on another Party's services or services suppliers, or requiring a specific type of legal form (e.g., Joint Venture) through which another Party's service suppliers must supply a service.
- **National treatment:** Article 3.6 requires Parties to treat services and services suppliers of another Party in a manner no less favourable than how it treats its own like services and services suppliers.
- **Transparency:** Article 3.9 requires Parties to publish promptly any information regarding measures that may affect the operation of the Environmental Services Chapter. This article also requires Parties to publish information on international agreements related to trade in environmental and environmentally related services of which ACCTS Parties are signatory.
- **Domestic Regulation:** Article 3.10 aims to ensure that that all measures of general application affecting trade in environmental and environmentally related services where commitments have been taken are administered in a reasonable, objective, and impartial manner.
- **Payments and Transfers:** Article 3.11 contains the same provision as GATS and prevents Parties from applying restrictions on international transfers and payments for transactions related to services in which specific commitments are made, while taking into consideration various exceptions in which this obligation may not apply.
- **Movement of Natural Persons:** New Zealand's specific commitments on businesspeople travelling in regard to categories and their entry conditions are the same as New Zealand's commitments in the GATS and are as following:

Category	Definition	Conditions and Limitations
Executives and senior managers -	Natural persons who are senior employees of an organisation and who have been employed by that organisation for at least twelve months prior to their proposed transfer to New Zealand,	Entry for periods of initial stay up to a

as intra-corporate transferees	and who are responsible for the entire or substantial part of an organisation's operations in New Zealand, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business	maximum of three years
Specialist and/or senior personnel - as intra-corporate transferees	Natural persons being transferred to undertake a specific or specialist task at a senior level within the company; this may include, for example, short-term specialist development projects; or the establishment in New Zealand of a commercial presence of a service supplier with its head of operations in the territory of another Member and not having any other commercial presence in New Zealand	Entry for periods of initial stay up to a maximum of twelve months
Specialist personnel - as intra-corporate transferees (subject to labour market tests)	Natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of an organisation's operations in New Zealand. Skills are assessed in terms of the applicant's employment experience, qualifications, and suitability for the position	Entry for periods of stay up to a maximum of three years
Installers and servicers - as intra-corporate transferees	Natural persons who are installers and servicers of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment	Entry for periods not exceeding three months in any twelve-month period
Service sellers - as business visitors	Natural persons who are representatives of a service supplier of another Member, whether or not that service supplier has a commercial presence in New Zealand, and are seeking temporary entry to New Zealand for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public	Entry for a period or periods not exceeding in aggregate three months in any calendar year

The provisions of the Environmental Services Chapter do not apply to Government Procurement (Article 3.4).

The Environmental Services Chapter can also be reviewed, upon request from a Party or in the context of a general review of the Agreement (Article 3.15). Modifications of the List of Environmental and Environmentally Related Services can be proposed individually or jointly by ACCTS Parties.

5.4 Fossil Fuel Subsidy Reform

Scope and definitions.

Articles 4.2 (scope) and 4.3 (definitions) provide the scope and definitions of the fossil fuel subsidies chapter. Obligations are restricted to fossil fuels and fossil fuel energy products considered as fossil fuels. The fossil fuels captured in the ACCTS are listed via HS code in Annex IX of the Agreement. The fossil fuel energy products considered as fossil fuels (according to the level of CO₂ emissions when used for energy), are listed in Annex VIII of the Agreement. Using CO₂ emission levels as a measure ensures the energy products primarily generated through renewable or clean alternatives are not inadvertently captured by the Chapter obligations (for example, subsidies provided at the household level for electricity where fossil fuels and renewable energy inputs are combined for electricity generation are not in scope of the Agreement). Government procurement and the free allocation of units within a Party's emission trading scheme are also out of scope of the Agreement.

The Chapter provides the first legally binding definition of a fossil fuel subsidy. The subsidy definition uses the WTO Agreement on Subsidies and Countervailing Measures (ASCM) subsidy definition as the

basis for the definition. This ensures the Agreement remains WTO consistent and ‘familiar’ to the WTO Members and potential future members of the ACCTS. The definition deviates from the ASCM by removing the specificity requirement and by identifying how the benefit from a financial contribution must be conferred. The benefits of production subsidies to fossil fuels, production subsidies to fossil fuel energy products, and consumption subsidies to fossil fuels are defined separately. For production subsidies, the benefit must be primarily targeted to economic activities across a specified production value chain. For production subsidies to fossil fuel energy products, the subsidy must primarily target the generation or manufacture of the energy products when generated or manufactured predominantly through the combustion of fossil fuels resulting in emissions exceeding the limits annexed to the Chapter. For consumption subsidies, the cost of the fossil fuel must be reduced. Where a Party uses carbon pricing as the central element of its climate policy, the Party may elect to use a ‘standard carbon rate measurement’ (SCRM) to determine whether the reduction in cost on fossil fuel results in a fossil fuel subsidy or not.

The Standard Carbon Rate Measurement (SCRM)

Article 4.4 (SCRM Mechanism) provides detail on how the SCRM mechanism is to be used, should a Party elect to make a SCRM commitment. The SCRM is an optional mechanism that can be used by Parties to better reflect the impact of climate policy and carbon pricing on the cost of fossil fuels. A Party’s SCRM commitment is an agreement by that Party to not introduce measures that undercut its elected effective net carbon rate (as detailed in the Party’s Schedule of Commitments Appendix). The SCRM is calculated by the Party as the net total price applying to CO₂ emissions as a result of policies that increase or decrease the cost of CO₂. The Party then sets a SCRM commitment level which maintains the proportionality of these climate policies and restricts the Party’s ability to introduce measures that subsidise the cost of fossil fuels independent of introducing measures that increase the price on carbon. Measures reducing the cost of fossil fuel use only result in a “benefit” if the carbon price according to the SCRM falls below the Party’s respective commitment. Any measure that decreases the cost of fossil fuels and undercuts the Party’s SCRM commitment would result in a fossil fuel subsidy and would be subject to the Chapter obligations. The Party makes a commitment that is consistent with its climate targets.

Parties that use the SCRM undertake to increase the level of commitment in line with increases of climate policy ambition. All the carbon pricing policies, fossil fuel support measures, and the calculations that determine the net price on CO₂ and the resulting commitment are subject to transparency. While New Zealand did not elect to use the SCRM during negotiations, this mechanism is available to use in the future. Any specific SCRM commitment by New Zealand would be subject to confirmation by the ACCTS Joint Commission.

The Prohibition and scheduling of fossil fuel subsidies.

All fossil fuel subsidies that are in scope and do not fall within the exceptions for legitimate policy objectives will either be prohibited and need to be eliminated or will be scheduled and subject to a policy standstill where they cannot expand beyond existing policy settings. Article 4.5 details prohibition and scheduling commitments, while the list of prohibited subsidies is annexed to the Agreement. The Chapter includes a prohibition on all production and consumption subsidies to coal and high emission fossil fuels, as well as production subsidies to oil and gas.

The ACCTS restricts the introduction of new fossil fuel subsidies following entry into force of the Agreement, while providing some policy space for future subsidisation. A Party is still permitted to introduce new subsidies for (1) tax revenue foregone production subsidies for gas and oil, (2) subsidies below an agreed *de minimis* level of Special Drawing Rights (SDR) 1 million (currently equivalent to NZD \$2.15 million) or (3) subsidies that are within the policy exceptions contained in the Agreement.

Specific Exceptions

Article 4.6 (Specific Exceptions) provides targeted exceptions for legitimate policy space needed across the diverse range of ACCTS economies. The flexibilities include time limited support for the generation of electricity needed to ensure the security of domestic energy supply as part of the Party's transition to renewable energy; providing for public or compulsory stockholding of fossil fuels; continuous energy supply for essential public services in health, education and emergency services; temporary support for the response to and direct relief or recovery from the effects of unexpected events (natural disasters, emergencies, and crises); subsidies targeted towards low-income, remote or vulnerable communities or population groups (e.g. the elderly); and subsidies for the decommissioning of fossil fuel production in accordance with legislation.

Assistance for Capacity Building, General Cooperation, Transparency, and Review

Article 4.7 (General Cooperation) outlines the ACCTS participants have committed to working together to support others to join the ACCTS, as well as to further fossil fuel subsidy reform across other international fora. All subsidies and support measures that fall within the scope of the ACCTS will be subject to transparency requirements, ensuring international understanding of fossil fuel subsidy reform is enhanced (Article 4.9). A review of the Fossil Fuel Subsidies Chapter will be undertaken at the same time as the general review of the ACCTS and will cover the implementation of the Chapter as well as the various obligations and flexibilities agreed to ensure the Agreement remains aligned with technological, climate, and sustainable development changes in the future (Article 4.10).

5.5 Eco-labelling

Voluntary Guidelines

The Eco-labelling chapter introduces guidelines to inform the development and implementation of voluntary eco-labelling programmes and mechanisms. This includes the promotion of eco-labels which:

- provide truthful, reliable and verifiable information;
- provide information that assists in differentiating environmentally preferable goods and services in a way that is meaningful to the market;
- are based on scientific and technical information;
- are developed and implemented using fair and transparent processes;
- follow a least trade restrictive approach; and
- are aligned with relevant international standards.

Notably, the guidelines, contained in Article 5.4, are not legally binding and therefore do not impose any legal obligations on New Zealand or other ACCTS parties.

National Contact Point

Article 5.5 specifies that New Zealand and other parties are obliged to designate a National Contact Point, who will carry a range of responsibilities including the promotion of the guidelines, cooperating with stakeholders in their application of the guidelines, responding to enquiries, and reporting obligations. The Contact Points from each Party will meet on an annual basis to discuss and share actions undertaken during the year. The Chapter also outlines that the ACCTS Parties may undertake cooperation (Article 5.6) and where possible Parties will seek to complement their existing cooperation by taking into account relevant work of regional and international organisations.

The Chapter is not subject to dispute settlement, but each Party may request consultations with any other to understand or address specific matters from under the Chapter.

5.6 Institutional Provisions

The Institutional Provisions Chapter sets out the arrangements for institutional mechanisms established under the ACCTS to monitor and support the functioning of the Agreement. This includes an overarching Joint Commission consisting of government representatives of each Party (Article 6:1), which has various functions including to consider any matter that may affect the operation of the Agreement, to supervise any subsidiary bodies, and to oversee the general functioning and further development of the Agreement.

The Chapter also outlines the Parties' obligations to cooperate to facilitate the implementation of the Agreement and maximise the benefits arising from it, taking into account the Parties' relative needs and resources. The Parties also outline their commitment to endeavour to engage with relevant stakeholder communities, including representatives of Indigenous Peoples where required pursuant to a Party's domestic or international obligations.

The Institutional Provisions also contain general provisions outlining the Parties' intention to undertake periodic general reviews of the Agreement, to each establish an overall contact point to facilitate communication between them on matters concerning the Agreement, and to cooperate in the exchange of information to support the effective functioning of the Agreement.

5.8 Dispute Settlement

This Dispute Settlement chapter outlines the procedures that apply to the formal settlement of disputes under the Agreement. Its objective is to provide an effective, efficient and transparency process for the settlement of disputes between the Parties on their rights and obligations under the ACCTS.

Article 7.3 makes clear that the Parties will endeavour to agree on the interpretation and application of the Agreement and make every attempt to arrive at a mutually satisfactory resolution of any matter raised under this Chapter. Article 7.5 encourages the Parties to undertake alternative dispute resolution processes, reflecting a preference for early resolution rather than escalation of disputes to formal processes.

The first step in bringing a formal state-to-state dispute under the ACCTS is to request formal consultations as provided for in Article 7.6.

5.9 Final Provisions.

Article 8.1 states that all Parties must ensure all provisions in the Agreement are fully observed at all levels of government. Article 8.3 provides for the provisions for Entry into Force, stating that the Agreement will enter into force on the first day of the third month following the date on which at least three signatories to this Agreement have notified the Depositary in writing of the completion of their applicable legal procedures. Article 8.5 provides the process for amending the Agreement and Article 8.6 provides the process for WTO Members to accede. Article 8.7 details the process to withdraw from the Agreement, by providing written notice of withdrawal to the Depositary. Article 8.8 designates New Zealand as the Depositary of the ACCTS.

6 Measures which the Government could or should adopt to Implement the Treaty Action, the Intentions of the Government in Relation to such Measures, including Legislation.

For the most part, the obligations in the ACCTS are within New Zealand's existing domestic legal and policy regime. New Zealand is an open, liberalised economy and does not provide significant fossil fuel subsidies. To bring the ACCTS into force, amendments to the Working Tariff Document are required to remove some tariffs. These changes will be made by submitting a Tariff Amendment Order to the Executive Council. All other commitments in the ACCTS are consistent with those already provided for under the AANZFTA, CPTPP, EU FTA, and the UK FTA as well as existing WTO commitments.

7 Economic, Social, Cultural and Environmental Costs and Effects of the Treaty Action

There are no specific social, cultural and environmental costs from New Zealand joining this Agreement.

7.2 Summary of Impacts

The ACCTS will demonstrate how trade policy can deliver meaningful commercial value for businesses and exporters, while also addressing climate and other sustainability challenges.

7.3 Economic Effects

Economic benefits will be derived primarily from the liberalisation of environmental goods and expansion of the Agreement over time. Improving market access and increasing confidence in environmental goods and services support increases economic opportunities for New Zealand businesses and exporters. The inclusion of some primary products in the environmental goods list, including wood product and wool fibres, will provide systemic and commercial value to New Zealand by expanding the international understanding of environmental goods and increasing commercial returns as members of the ACCTS expands.

As the ACCTS membership grows over time, it is anticipated the modest cost associated with foregone tariff revenue (estimated NZ\$1.6 million per annum) will be offset by commercial gains made by New Zealand exporters.

7.4 Social and Cultural Effects

Overall, the ACCTS will have no significant social or cultural effects. The ACCTS promotes trade that supports a healthy environment, which in turn supports positive social and cultural outcomes. In working to address climate and sustainable development challenges, the ACCTS may have an effect in supporting Māori and rural communities who are disproportionately impacted by the effects of climate change.

7.5 Environmental Effects

The ACCTS is designed to have a positive effect on the environment. The enhanced liberalisation of environmental goods and services will increase trade in sustainable products and services, reducing barriers to trade in natural and renewable products and promoting environmental and environmentally related services. In providing guidelines for the development and implementation of private sector eco-labels, the ACCTS reduces the risk of labels becoming barriers to trade and builds consumer confidence in sustainable products. Fossil fuel subsidy reform can directly support international efforts to reduce greenhouse gas emissions and transition to a low carbon economy.¹¹

8 The Costs to New Zealand of Compliance with the Treaty

The costs associated with the implementation of the ACCTS are expected to be covered through existing resources, workstreams and agency baseline funding. New Zealand Customs Service and the Ministry of Business, Innovation and Employment (MBIE) estimate it will take 500 hours, approximately 0.5 FTE over six months, to draft and prepare the changes in tariffs required to bring the ACCTS into force for New Zealand.

Following ratification of the Agreement, government agencies will work with businesses, the private sector and others to best leverage the opportunities that arise from the ACCTS. There are resourcing requirements for the Joint Commission meetings and subcommittee meetings under the Environmental Goods and Environmental Services Chapters of the Agreement. Accessions to the agreement will also require staff resources; however, the amount of resource is dependent on the level of interest other economies have in joining the agreement. Ongoing implementation of the ACCTS, including attendance at sub-committee meetings and the Joint Commission, is expected to require 0.75 FTE of a policy officer at MFAT. The Joint Commission meeting will occur approximately every two years, or as requested by ACCTS Parties. The New Zealand contact point for the Eco-labelling Chapter is estimated to require 0.1 FTE of existing MFAT staff.

¹¹ In 2023, the Intergovernmental Panel on Climate Change (IPCC) estimated that the removal of fossil fuel subsidies could reduce global greenhouse gases emissions by up to 10 percent by 2030. Furthermore, the International Institute for Sustainable Development (IISD) estimates a further 3 percent reduction in greenhouse gasses could be achieved by reinvesting just a third of these fossil fuel subsidies into energy efficiency and renewable energy.

Where opportunities arise to undertake promotion of the ACCTS, or cooperative and voluntary activities under the ACCTS, additional funding would be required. This funding would be applied for through the Trade Negotiations Fund administered by MFAT and would be subject to interagency approval.

9 Consultation with Māori, the Community and Interested Parties in Respect of the Treaty

9.1 Engagement Overview

The negotiation of ACCTS was conducted by the Ministry of Foreign Affairs and Trade, in consultation with other agencies.

From the launch of negotiations in 2019, MFAT ran a consultation programme to raise public awareness of the negotiations and to seek government agency and stakeholder views. This programme used online communication channels and in person meetings and events, supported by presentations and discussions with stakeholders.

The communications programme supporting the consultations included:

- a call for submissions on the ACCTS immediately after the launch of negotiations;
- an ongoing call for submissions throughout the negotiating period;
- specific engagement with Māori;
- discussions with key stakeholders;
- ongoing presentations on the negotiations as part of the wider trade policy consultations with interested parties between February 2020 and June 2024;
- regular updates on the MFAT website, providing information about the negotiations (including following most negotiating meetings) supported by social media outreach; and
- regular updates to stakeholders on the negotiating process, in person and by email.

9.2 Engagement with Māori

MFAT has established engagement mechanisms with a number of Māori entities on trade policy development and trade negotiations. These are Ngā Toki Whakarururanga, Te Taumata, the Federation of Māori Authorities, and the National Iwi Chairs Forum. All were engaged throughout the negotiation of the ACCTS.

9.3 Summary of issues raised

Engagement with stakeholders and Treaty partners provided a valuable opportunity to hear about the interests and concerns around the ACCTS from different groups of New Zealanders. Amongst the issues raised were:

Eco-labelling: The eco-labelling chapter was a consistent area of interest for business and industry groups throughout negotiations. Business and industry groups were overall very supportive of guidelines for and the promotion of voluntary eco-labelling and supported efforts to mitigate non-tariff barriers established by labelling requirement.

Wood products: The expansion of market access for wood products was a key interest of the forestry and wood processing sector and Māori. An important objective for New Zealand in negotiation was the inclusion of natural renewable products in the environmental goods chapter, including wood products.

Environmental services: Some stakeholders raised concerns, primarily in initial consultations, with difficulties defining environmental services and the flow on effect of doing so for market access. There was some concern initially from civil society about the determination of what environmental goods and services were, and that their inclusion in a trade agreement may open sensitive industries to further competition.

9.3.2 Issues raised by Māori

Ngā Toki Whakarururanga has provided feedback on the ACCTS, including through the attached Annex 1. Ngā Toki Whakarururanga's criticisms of the Agreement included: its lack of recognition of Māori leadership, tikanga (custom/protocol) and mātauranga (knowledge); lack of specific references to the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP), amongst other international instruments; the lack of direct role for Māori in its negotiation and implementation; its position that the Treaty of Waitangi clause does not provide adequate protections for Māori; the absence of reference to "Te Tiriti o Waitangi"; the scope of environmental services commitments; and the Agreement's perceived lack of impact in alleviating climate change.

Ngā Toki Whakarururanga is one of the claimants in the Waitangi Tribunal priority inquiry into the Crown's climate change policy and legislation (WAI 3325). It has cited three international trade agreements in its claim, including ACCTS. The inquiry is in the preliminary stages, and government officials will remain engaged with Ngā Toki Whakarururanga as implementation of ACCTS progresses.

Te Taumata provided the following comment:

"Te Taumata is strongly supportive of the ACCTS as a new trade platform to develop the next generation Māori economy, by providing new opportunities to grow our renewable energy and green economy. This agreement will support Māori businesses and exporters address the urgent climate challenge we all face, and we're especially pleased to see the recognition of wood and wool as environmental goods, given the Māori economy's significant investment in those sectors. The elimination of tariffs for green technology will support our kaupapa to decarbonise the Māori economy, and the drive to reform fossil fuel subsidies aligns with our agenda to act as tupuna pono, good ancestors now to future generations."

Broader engagement with Māori stakeholders was primarily focused on ensuring that New Zealand

Governments would retain an ability to meet their obligations under the Treaty of Waitangi and that Māori exporters and businesses would be able to access opportunities and benefits offered within the ACCTS – particularly wood producers.

9.4 Addressing Concerns

Wood products: New Zealand negotiators worked to secure the inclusion of wood products in the ACCTS. The list of environmental goods in the ACCTS includes 45 wood products, including priority products for the wood processing and forestry industry. The inclusion of wood in the list of environmental goods was sensitive in the negotiation and in order to address concerns with the sustainability and legality of wood productions the chapter includes mechanisms for Parties (and future members) to delay tariff elimination on wood products while they introduce domestic regulatory measures to address sustainability concerns.

Environmental services: The scope of market access commitments for environmental services is limited to only services deemed to be beneficial to supporting environmental goals. The environmental services schedule in ACCTS is consistent with commitments made in our existing free trade agreements. New Zealand secures benefit from expanding the international understanding of environmental services but will not be required to make policy changes to implement the services outcomes.

9.4.2 Addressing concerns raised by Māori

MFAT officials engaged extensively with Ngā Toki Whakarururanga throughout the ACCTS negotiations, sharing draft texts in accordance with confidentiality agreements and information sharing protocols between MFAT and Ngā Toki Whakarururanga.

Since 2001, New Zealand negotiators have secured a Treaty of Waitangi clause in all new free trade agreements. The exception reserves the policy space for the Government to fulfil its obligations to Māori including under the Treaty.

New Zealand negotiators secured references in the preamble and institutional provisions to the interest of Indigenous Peoples (amongst others) in environmental matters and implementation of the ACCTS. At the request of Ngā Toki Whakarururanga, New Zealand negotiators also ensured that “Te Tiriti o Waitangi” is referenced alongside all mentions of “The Treaty of Waitangi” throughout the Agreement.

9.5 Inter-Departmental Consultation

The ACCTS negotiating team was led by the Ministry of Foreign Affairs and Trade (MFAT) and included officials from the Ministry for Business, Innovation and Employment and New Zealand Customs Service.

A range of Ministries were consulted throughout the negotiations on issues for which they had a policy, resource or operational interest. This included the Ministry for Business, Innovation and Employment, Ministry for Primary Industries, Ministry for the Environment, Inland Revenue Department, Ministry of

Transport, Statistics New Zealand, the Department of the Prime Minister and Cabinet, and the Treasury. Regular inter-departmental meetings were held to provide updates on the progress of negotiations.

10 Subsequent Protocols and/or Amendments to the Treaty and their likely Effects

The ACCTS includes a procedure for it to be amended in accordance with each Party's domestic procedures (Article 8.5). Given the ACCTS is intended to be a living agreement, this amendment procedure will be used to ensure that the ACCTS remains up to date and reflects emerging technologies, grows in content, and increases in membership. The ACCTS Parties have already identified non-tariff measures as a potential addition to the Agreement in time.

The Parties may agree, in writing, to amend this Agreement. Proposals for amendments will be considered by the Joint Commission and will be subject to ratification, acceptance or approval with the applicable legal procedures of each Party. An amendment would enter into force on the first day of the third month after the last Party to amend the agreement has notified the Depository of their approval to amend, or on such other date agreed by the Parties.

11 Withdrawal or Denunciation Provision in the Treaty

Any Party may withdraw from the ACCTS by providing written notice of withdrawal to the Depository (Article 8.7). The withdrawal would take effect six months after notice is provided. If a Party withdraws, the Agreement will remain in force for the remaining Parties.

12 Agency Disclosure Statement (required if the proposal has legislative or regulatory implications)

This National Interest Analysis has been prepared by MFAT, in consultation with other relevant government agencies. It identifies all the substantive legal obligations in the ACCTS, and analyses the advantages and disadvantages to New Zealand in becoming a Party to the ACCTS.

Implementation of the obligations arising under the ACCTS are not expected to impose additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

Annex 1: Ngā Toki Whakarururanga feedback on the ACCTS

The Mediation Agreement between Ngā Toki Whakarururanga and the Crown commits to ensure that Māori have genuine and meaningful influence over trade policy and negotiations at every stage. That has not occurred with this agreement, despite the disproportionate impacts of the climate crisis on Māori as evidenced by repeated climate-related disasters in recent years.

The text was kept secret throughout the negotiations and was only provided to our trade pūkenga on a confidential basis as, when and how the Crown has decided to do so. There was no consultation on several critical entries in the schedule of commitments on environmental and environmentally-related services (including foreign investment) that are intended to provide protections for Māori.

Indigenous Peoples are invisible in the ACCTS

The ACCTS is even weaker than the IPEF “clean economy” agreement in giving effect to te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples on trade and climate change. There is a single passing reference to Indigenous Peoples, which is located in the Preamble. That “emphasises” the essential role of the environment in the wellbeing of citizens and communities, “including Indigenous Peoples”, and the importance of their contribution to Sustainable Development.

Nothing in the rest of the agreement addresses the major threats to the environment that endanger the wellbeing of Indigenous Peoples; nothing provides any role for them to make that “important contribution”; and nothing recognises the leadership of Māori and other Indigenous Peoples in finding and delivering solutions to the climate crisis. Specifically in terms of Te Tiriti o Waitangi, there is nothing that recognises and gives effect to the fundamental responsibilities of rangatiratanga and kaitiakitanga or the application of tikanga Māori in the trade and climate space.

The only specific reference to Māori in the text is the inadequate 2001 Treaty of Waitangi Exception. This applies only to “more favourable treatment” to Māori and is subject to the standard, and contestible, trade agreement chapeau on arbitrary or unjustified discrimination or disguised restriction on trade in goods, services and investment.

The Crown is fully aware of the limitations of this exception and that it will not provide effective protection, for example, for Tiriti-related measures that restrict foreign investment in, and impose conditions on, a variety of environmentally-related services. Many Waitangi Tribunal claims, and active protests by affected hapū and hāpori, show how sensitive these services are and how critical it is that the Crown meets its Tiriti obligations in relation to them. It has not done so here.

This is not an agreement on climate change

The stated aim of the ACCTS is to foster the contribution of international trade to addressing climate change and other serious environmental challenges in 4 ways:

1. Liberalising trade in “environmental goods”;
2. Liberalising trade in “environmental and environmentally related services”;
3. Disciplining and eliminating “harmful fossil fuel subsidies”;
4. Providing guidelines for voluntary eco-labelling.

This agreement is not a bona fide initiative to address the climate crisis. It is essentially a vehicle for the four parties (New Zealand, Switzerland, Costa Rica and Iceland) to achieve the liberalisation of trade in environmental goods and services that they have sought in the WTO for many years.

Trade Minister Todd McClay confirmed this when he announced the ACCTS, describing it as

“opening up commercial opportunities for New Zealand businesses by focusing on trade in sustainable goods and services. Crucially for New Zealand it will see tariffs removed on key exports including 41 wood products and wool. It will also remove tariffs on hundreds of other products, including wool fibre, slag wool for insulation, recycled paper along with energy saving goods like LED lamps and rechargeable batteries. In addition, it supports New Zealand’s renewable energy sector by establishing rules to prevent harmful fossil fuel subsidies; and sets guidelines for ecolabelling.”

No credible evidence has been provided that liberalisation of these products and services through the ACCTS will advance climate mitigation or adaptation, especially when the Parties are free to liberalise those services and remove import duties unilaterally. They do not need the ACCTS to do that.

At the same time, the agreement does not address the major trade issue which could make a difference in Aotearoa New Zealand, which is greenhouse gas emissions from agriculture, or other priorities such as forestry practices that have devastated Māori communities.

The only potentially meaningful element is Chapter 4 to discipline and eliminate ‘harmful’ fossil fuel subsidies, but that chapter is full of conditions, safeguards and exceptions. These were presumably negotiated to satisfy oil-producing Norway, which then declined to join the final agreement.

The ACCTS confirms that Coalition Government policies harm the environment

We note that the list of services sectors, subsectors, or parts thereof that are defined as “environmental and environmentally related services” in Annex IV (page 131) “excludes parts of services subsectors which may significantly harm one or more environmental purposes” listed in Annex III (Environmental Purposes – Trade in Environmental Services). Certain parts of service sectors or subsectors marked with * were identified as having a greater risk of significantly harming an environmental purpose in Annex III (Environmental Purposes – Trade in Environmental Services).

This List excludes any services supplied in relation to the following activities because they are deemed to significantly harm at least one environmental purpose: Unsustainable logging; Mining (including, inter alia, mining for coal, oil and gas); and Oil, gas and coal exploration and extraction, as well as any related activities.

This confirms what many hapū, iwi, other Māori and many others have said: the policies of the current Coalition Government to promote mining, and oil and gas exploration and extraction, including the proposed Fast Track Approval Bill, will have serious adverse effects on the environment and intensify the Climate Crisis.

Annex V Environmental services commitments

The obligations in chapter 3 on environmental and environment-related services have a very broad scope. They apply to “measures affecting the supply of the service”, which means any law, regulation, by-law, decision of a regional council, or anything else, at the central and local levels (the latter being subject to reasonable steps to ensure compliance). The scope also extends to delegated authorities, which in some situations may be mana whenua or a Māori entity that has decision making authority conferred on it.

“Measures affecting” includes environmental regulations and resource consents, as well as conditions and requirements for consultation and consent. These are fundamental matters relating to the Crown’s Tiriti o Waitangi obligations and recognition of rangatiratanga, mana motuhake and

kaitiakitanga in relation to Te Taiao. The Treaty exception does not address them, not do any of the horizontal limitations.

The fractured and abstract description of services that are committed in schedules makes it very difficult to identify what issues may arise in practice. That is why carveouts or comprehensive exceptions in the text are so important. Having failed to provide those here, protection has to be provided through extensive limitations that apply horizontally across all commitments.

Ngā Toki Whakarururanga commented on an early draft of New Zealand's ACCTS schedule. We never saw more developed versions of the annex that included entries of particular relevant to Māori. The Crown appears to have rolled over old and inappropriate wording in schedules from several decades ago or imported, sometimes disputed, wording from other agreements without checking how appropriate and effective that would be in this context.

There are only two horizontal limitations in New Zealand's services schedule (page 8). The first is protection for measures "necessary" to protect "archaeological heritage of national value" (p.8). It is unclear whether "archaeological heritage of national value" would apply to a localised marae urupa or the wahi tapu of a hapū. "Necessary" is also a deeply problematic term in trade agreements and opens measures to challenge for going further than is necessary to achieve the government's objective, as adjudged by a panel of trade experts.

A second horizontal reservation is intended to provide protection for Māori in relation to digitalised services. Those services and associated data are especially sensitive as they relate to climate events and remediation. This is important in the ACCTS because the schedule liberalises the cross-border supply of many services, which would necessarily include the cross-border movement of data. The list of environmentally related services includes software, data base and data processing commitments generally (pp.13-14). It also includes financial data, which would include information on insurance and disaster relief (p.29).

The horizontal limitation preserves the policy space to introduce Tiriti-compliant measures for "trade enabled by electronic means". That wording is imported from the services schedule of the NZ EU FTA. Ngā Toki Whakarururanga has previously raised concerns that its meaning and scope are uncertain, including where the commitment applies to a foreign investor rather than a supplier from outside the country. The Crown should have used the wording of the broader carveout in the digital trade chapter of the NZ EU FTA, which applies to "matters covered by this agreement". In addition, the limitation is subject to the chapeau.

The specific sectors of greatest concern are obviously Environmental Services: sewage, waste disposal and sanitation (pp. 24-25). Commitments on non-consultancy aspects of these services apply only to services contracted by private industry, ie. not public procurement. The Crown will be constrained in relation to "measures affecting" those contracted services.

Our initial comments on the early version of the schedule drew attention to the extreme sensitivity of such services relating to te Taiao, especially sewage (right from the earliest Waitangi Tribunal claims on the Manukau Harbour, Motunui Outfall and Kaituna River), waste disposal (the current Dome Valley issues, and disposal of toxic wastes at industrial sites), and sanitation (the tikanga relating to noa). Private, and foreign, providers are actively involved in all these areas and they will subcontract other private companies. Measures that "affect" those services become subject to the ACCTS disciplines. We

do not believe that the Treaty of Waitangi Exception or the horizontal limitations provide effective protection.

Similar concerns apply to services incidental to agriculture, forestry and logging. The forestry commitment applies to “services directly linked to sustainable forest management”. The Crown will be fully aware of concerns that Māori have been effectively excluded from applying mātauranga and exercising kaitiakitanga in relation to Indigenous and plantation forests to ensure sustainability and prevent further disasters arising from unsustainable and profit-driven forestry practices. This commitment would guarantee foreign firms the right to provide those services, further marginalising Māori.

The agriculture commitment applies to consultancy services that directly contribute to sustainable farming practices, on-farm climate change mitigation or adaptation practices, organic agriculture, or natural resource management and conservation”. These are all practices in which Māori currently apply unique approaches sourced in mātauranga Māori and applied according to tikanga. While recognising this commitment is limited to consultancy services, there are similar concerns that this could further marginalise Māori practices and practitioners. The Treaty Exception and horizontal limitations would not assist.

Both forestry and agriculture are examples where the Preamble could have been given genuine effect to provide sustainable solutions relating to trade and climate change that are Māori led and underpinned by mātauranga and tikanga Māori. Instead, the schedules provide guarantees for foreign services providers who have no responsibilities to or understanding of Te Taiao and Te Ao Māori.

Lastly, the Article 3.10.4 reference to disciplines that apply to technical standards and licensing requirements that are developed pursuant to Article IV of the GATS is ambiguous, and is unclear whether or not it refers to the Joint Statement Initiative on Services Domestic Regulation. Whether it does or not, both the JSI and New Zealand’s GATS schedule contain only a very weak limitation for national treatment relating to preferential treatment to “Māori commercial or industrial undertakings” that dates back to 1994. This needs to be remedied in the future.

Conclusion

In sum, the ACCTS will not make one iota of difference to the climate emergency and does not provide effective and active protection for Māori responsibilities, duties, rights and interests and the Crown’s obligations under Te Tiriti o Waitangi.

These issues have been raised in the Statement of Claim to the Waitangi Tribunal Inquiry on Climate Change on behalf of Ngā Toki Whakarururanga. The ACCTS will form part of our arguments in that claim.