

# Chapter 8

## Non-tariff Measures in New Zealand

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# Chapter 8

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Mike Webb and Anna Strutt\*

### 1. Introduction

New Zealand's overall regulatory regime is well regarded internationally; for example, New Zealand ranks first in the World Bank's Ease of Doing Business 2018 Index (World Bank, 2018). Non-tariff measures (NTMs), regulations that may affect trade, are a subset of this regulatory regime. A major feature of New Zealand's NTM regime is its relatively stringent sanitary and phytosanitary (SPS) measures, reflecting the fact that New Zealand is a major agricultural producer and an island nation, free from many diseases and pests affecting international animal and plant product trade (Webb, Strutt, and Rae, 2017).

New Zealand has actively participated in the negotiation of free trade agreements (FTAs) containing provisions covering SPS and technical barrier to trade (TBT) issues. Bilateral agreements are in force with China, Australia, Hong Kong, Malaysia, Singapore, Thailand, and the Republic of Korea (henceforth Korea). Regional agreements in force include the Association of Southeast Asian Nations–Australia–New Zealand FTA and the P4 Agreement (with Singapore, Brunei Darussalam, and Chile). New Zealand has concluded the Trans-Pacific Partnership Agreement, Pacific Agreement on Closer Economic Relations (with Pacific Island countries), and an FTA with the Gulf Cooperation Council. New Zealand is involved in negotiations on the Regional Comprehensive Economic Partnership and the Pacific Alliance, as well as bilateral agreements with the European Union and India (New Zealand Foreign Affairs and Trade).

New Zealand is an active member of international standards setting organisations, including Codex Alimentarius (the International 'Food Code') and the World Organisation for Animal Health, as well as a party to various international conventions that are relevant to the establishment of NTMs.<sup>1</sup>

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<sup>1</sup> These include the International Plant Protection Convention, Montreal Protocol and Vienna Convention, Single Convention on Narcotic Drugs, Convention on Psychotropic Substances, Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Chemical Weapons Convention, Basel Convention (on the control of transboundary movements of hazardous wastes and their disposal), Rotterdam Convention (for certain hazardous chemicals and pesticides), and the Stockholm Convention on Persistent Organic Pollutants. See full details of New Zealand's international treaty obligations. (<https://www.treaties.mfat.govt.nz/>)

## 2. New Zealand's Legal System

Legislation passed by Parliament, known as acts, is the highest form of law.<sup>2</sup> Acts may contain detailed rules serving as NTMs; for example, the Anti-Personnel Mines Prohibition Act 1998 prohibits the use and import of anti-personnel mines. There are about 2,000 acts in force, 59 of which either contain or authorise NTMs.

In practice, however, most legislation is not passed by Parliament, but rather by other persons or bodies under powers granted or delegated by acts of Parliament.<sup>3</sup> Such legislation is generally known as delegated legislation, all of which must be based on authority conferred by an act of Parliament.

There are various forms of delegated legislation in New Zealand, including orders in council and 'notices' made by ministers. For instance, Section 29 of the Fair Trading Act 1986 empowers the making, by order in council, of regulations setting product safety standards. An example is the Product Safety Standards (Cigarette Lighters) Regulations 1998, which include performance standards and labelling requirements for cigarette lighters. In some cases, delegated legislation is made by the head of a government department and published on its website. For instance, import health standards with rules for the import of primary products are issued by the director-general under the Biosecurity Act 1993 and are available on the website of the Ministry for Primary Industries (<https://www.mpi.govt.nz/>). Most information on acts and regulations is readily available and New Zealand Customs provides guides for exporters and importers.

Some of New Zealand's international obligations under FTAs and other international treaties are reflected directly in acts. In other cases, international obligations are reflected in delegated legislation or the rules, practices, and procedures of regulatory agencies.

## 3. Data Collection and Update

NTM data were initially collected by our team from September 2014 to June 2015 and included in the NTM database publicly launched in July 2016.<sup>4</sup> For the current ERIA–UNCTAD project, we updated the data with changes made to measures from September 2014 to May 2016.

### 3.1. Initial Data Collection Process

To gather comprehensive information on NTMs, we initially used a five-stage process. First, we surveyed the websites of all government agencies considered likely to administer regulations that might affect trade. Second, we used official documents that included an inventory of measures (e.g., Schedules of Prohibited Imports and Exports from Customs New Zealand<sup>5</sup> and a Standards

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<sup>2</sup> Further information is available at <https://www.parliament.nz/en>. All legislation is publicly available from <https://www.legislation.govt.nz/>.

<sup>3</sup> Further information is available at <https://www.parliament.nz/en>

<sup>4</sup> Under the guidance of UNCTAD, consistent with the guidelines and classifications in UNCTAD (2013) and (2014). This project was undertaken with support from the World Bank and the NTM data collection for Trans-Pacific Partnership countries project supported by the National Graduate Institute for Policy Studies.

<sup>5</sup> Available at New Zealand Customs Service. (<https://www.customs.govt.nz/>)

New Zealand database of all standards referred to in legislation<sup>6</sup>) to identify acts and regulations. We found additional regulations by searching the gazette and legislation websites for regulations issued under the same act and examining the information available on the websites of the regulatory agencies. Third, we met with key agencies to raise awareness of the project, identify possible gaps in recorded information, and follow up on any information that may not be publicly available. We met with the ministries of foreign affairs and trade; business, innovation, and employment; and primary industries; and Standards New Zealand, which all had strong interest in and support for the project.<sup>7</sup> Fourth, we searched all references to the word's 'import' and 'export' in acts and legislative instruments available from the government legislation website (<https://www.legislation.govt.nz/>) to find any legislation and measures that might otherwise have been missed. Last, we cross-checked the database against data available from Customs New Zealand showing the regulatory agency for each tariff line where 'permits' or other authorisations might be necessary.<sup>8</sup> While the exercise did not identify any new measures, it identified extra tariff lines that had not been assigned to some measures.

### 3.2. Data Update

In updating the data, we systematically worked through all regulations to look for changes made since the data were originally collected. This was facilitated by the government legislation website, which shows the details and dates of any amendments and whether a regulation has been revoked. The following changes were identified:

- (i) The United Nations (Iran – Joint Comprehensive Plan of Action) Regulations 2016 replaced the United Nations Sanctions (Iran) Regulations 2010.
- (ii) The Customs Import Prohibition Order 2014 replaced the Customs Import Prohibition Order 2011.
- (iii) The Customs Import Prohibition (Trout) Order 2015 replaced the Customs Import Prohibition (Trout) Order 2010.
- (iv) The Customs Export Prohibition (Toothfish) Order 2015 replaced the Customs Export Prohibition (Toothfish) Order 2009.
- (v) The Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 were amended, leading to new measures applying to the poison '1080', as recorded in the database.
- (vi) The Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2016 replaced the Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2008.

We identified two major sets of changes: (i) changes to the Australia New Zealand Food Standards Code, and (ii) changes associated with the Food Act 2014.

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<sup>6</sup> Available at EPDF, Electrical Codes, Standards, Recommended Practices and Regulations. (<https://www.standards.govt.nz/>)

<sup>7</sup> Including a roundtable discussion on 26 July 2016 held with representatives from key government agencies.

<sup>8</sup> Available at New Zealand Customs Service. (<https://www.customs.govt.nz/>)

A major set of necessary revisions to the New Zealand data in the 2016 update arose from a complete overhaul of the Australia New Zealand Food Standards Code that took effect from 1 March 2016 (Food Standards Australia New Zealand) (Box). While the structure remained largely the same, a significant number of changes have been made to various components in the database.

The Food Act 2014 came into force on 1 March 2016. It will gradually replace the Food Act 1981 as the principal act governing food safety. There was a transition programme until the Food Act 2014 took full effect on 28 February 2019. We used information from the Ministry for Primary Industries to identify which regulations previously in the database have been replaced by new regulations. Six regulations under the Food Act 1981 have now been repealed: Food (Importer Listing) Standard 2008, Food (Prescribed Foods) Standard 2007, Food (Importer General Requirements) Standard 2008, New Zealand Food (Supplemented Food) Standard 2013, Food (Imported Milk and Milk Products) Standard 2009, and New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2014. Three new regulations have been included in the database: New Zealand Food (Supplemented Food) Standard 2016, Food Notice: Maximum Residue Levels for Agricultural Compounds, and Food Notice: Importing Food (New Zealand Food Safety).

As part of the update process, we identified acts authorising the making of delegated legislation that can provide new regulations. These are areas where new regulations can be added without passing or amending acts of Parliament (Table 8.1).<sup>9</sup>

**Table 8.1. Acts that Provide Scope for New Regulations in New Zealand**

<b>Act</b>	<b>Delegated Legislation</b>
Fair Trading Act 1996	Unsafe goods notices, product safety standards, and consumer information standards
United Nations Act 1946	Sanctions (which may be passed as acts)
Gas Act 1992	Notices
Resource Management Act 1991	National environmental standards
Radiocommunications Regulations 2001	Notices
Contraception, Sterilisation, and Abortion Act 1977	Standards
New Zealand Horticulture Export Authority Act 1987	Horticultural prescribed products orders and New Zealand horticulture export authority orders
Hazardous Substances and New Organisms Act 1996	Group standards, regulations, and hazardous substances notices (following the Hazardous Substances and New Organisms Amendment Act 2015)
Biosecurity Act 1993	Import health standards (we included nine new import health standards and revised measures where import health standards were updated).

Source: Authors.

<sup>9</sup> We recommend that future researchers updating New Zealand NTM data look for new regulations under these acts.

In the 2016 update, except for the United Nations (Iran – Joint Comprehensive Plan of Action) Regulations 2016 under the United Nations Sanctions (Iran) Regulations, no new regulations were passed pursuant to any of these acts. We checked the websites of key agencies to find any new types of regulations made under new powers conferred by changes to acts of Parliament. We identified an amendment to the Hazardous Substances and New Organisms Act 1996, which enabled the making of hazardous substances notices, one of which has been enacted.

We searched the government legislation website for any new acts passed containing NTMs. In a relatively mature regulatory system such as New Zealand's, we did not expect to find many (if any) instances of this. Any new regulatory issue that arises will generally either be resolved within the existing regulatory framework (e.g., a new unsafe goods notice), or involve revoking or amending existing legislation, and so will be noted through that mechanism. In this update, we identified the Radiation Safety Act 2016 but did not include new measures under it since it did not enter into force until 2017.

#### **Box 8.1. Joint Food Standards and Australia New Zealand Economic Integration**

The current joint food standards regime between Australia and New Zealand stems from the agreement between Australia and New Zealand establishing the System for the Development of Joint Food Standards signed in December 1995. The treaty aimed to harmonise food standards, reduce compliance costs, and remove regulatory barriers to trade. It created the Australia New Zealand Food Authority, which was established in July 1996 and renamed Food Standards Australia New Zealand in 2002. The joint *Australia New Zealand Food Standards Code* (<http://www.foodstandards.govt.nz/about/foodlawandtreaties/history/pages/default.aspx>) was developed over several years, guided by a ministerial council with representation from Australia and New Zealand. It was agreed in 2000 and phased in over 2 years.

The Food Standards Code is given effect through domestic Australian and New Zealand legislation, and not all provisions apply to New Zealand (for instance, New Zealand sets its own maximum residue limits). However, under the Trans-Tasman Mutual Recognition Arrangement, food and other products produced or imported into one country that meet that country's standards may be legally sold in the other country. In practice, this means that most food exported to Australia from New Zealand is not assessed for compliance with Australian food standards, and vice versa.

The joint Australia New Zealand Food Standards Code and Trans-Tasman Mutual Recognition Arrangement are part of a wider project of economic integration between Australia and New Zealand. This stems from the Closer Economic Relations Treaty of 1983, which includes the freedom for Australians and New Zealanders to live and work in the other country. A current focus is the Single Economic Market project under which New Zealand and Australia are committed to creating a seamless trans-Tasman economic environment.

(<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-australia-closer-economic-relations-cer/>).

Source: Authors.

#### 4. Summary of Non-tariff Measures and Main Findings

Tables 8.2–8.4 provide overview statistics in a format consistent with other data collected as part of this project. In total, we collated and coded 3,096 regulations from 59 acts, administered by 14 institutions.

**Table 8.2. Comprehensiveness of Collected Non-tariff Measure Data in New Zealand**

	Comprehensiveness	Number
1	Total number of coded regulations	530
2	Total number of coded regulations reported to the World Trade Organization ( <a href="https://i-tip.wto.org/goods/">https://i-tip.wto.org/goods/</a> )	754
3	Total number of coded NTMs	3,053
4	Total affected products (Harmonised System lines, national tariff lines)	
	(i) Total number of affected products	<a href="#">7,517</a>
	(ii) Affected products as a share of total products	100% <sup>a</sup>
5	Total number of issuing institutions	14

<sup>a</sup> Coverage is 100% because all products are subject to a goods and services (value added) tax (measure F71) and an import entry transaction fee (measure F61). Any good that infringes copyright is subject to an NTM (measure E315). Excluding these measures, all measures cover 67.7% of all tariff lines.

Source: Authors.

**Table 8.3. Non-tariff Measures, by Issuing Institution, in New Zealand**

No.	Issuing Institution	NTMs (number)	NTMs (% of total number)
1	Ministry for Primary Industries	1,681	55.07
2	Ministry for the Environment	1,172	38.40
3	Ministry of Business, Innovation and Employment	62	2.03
4	Ministry of Health	34	1.13
5	Ministry of Foreign Affairs and Trade	27	0.90
6	Ministry of Transport	25	0.81
7	Ministry of Justice	16	0.52
8	New Zealand Customs	15	0.48
9	Department of Internal Affairs	6	0.19
10	Department of Conservation	5	0.16
11	Other institutions	9	0.29
	<b>Total</b>	<b>3,053</b>	<b>100</b>

Source: Authors.

Ten main regulatory agencies are responsible for issuing and enforcing NTM-related regulations. The Biosecurity Act 1993 is the primary legal framework for biosecurity risks and gives key agencies authorities to deal with harmful organisms. Under the act, animal and plant products that may present a biosecurity risk by introducing pests and diseases cannot be imported into New Zealand until a risk analysis assessment consistent with international standards has been completed. This process is triggered by a request from the country interested in exporting the product and involves the development by the Ministry for Primary Industries of an import health standard that mitigates the risk associated with importing that product, pursuant to the act.



As the administrator of the Biosecurity Act 1993, the Ministry for Primary Industries is responsible for issuing more than 50% of all NTMs. About 200 import health standards cover a particular commodity or category of commodities; they may be generic, covering all countries, or country specific (Ministry for Primary Industries). More than a third of the measures in our database stem from the Hazardous Substances and New Organisms Act 1996, which is administered by the Ministry for the Environment to regulate pesticides, dangerous goods, household chemicals, and other dangerous substances.

Close to 100% of measures are import related. The nature of the economy and the fact that New Zealand is an island nation have led to the creation of an NTM regime that focuses heavily on relatively stringent SPS measures.

**Table 8.4. Non-tariff Measures, by Type, Imposed in New Zealand**

Code	NTMs by Type (chapter)	NTMs (total number)	NTMs (% of total)
A	Sanitary and phytosanitary measures	1,547	50.68
B	Technical barriers to trade	1,404	45.99
C	Pre-shipment inspection and other formalities	29	0.94
D	Contingent trade-protective measures	3	0.10
E	Non-automatic licensing, quotas, prohibitions, and quantity control measures other than for sanitary and phytosanitary measures or technical barrier to trade reasons	2	0.06
F	Price control measures including additional taxes and charges	5	0.16
G	Finance measures	0	0
H	Measures affecting competition	0	0
I	Trade-related investment measures	0	0
J	Distribution restrictions	3	0.10
K	Restriction on post-sales services	0	0
L	Subsidies (excluding export subsidies under P7)	0	0
M	Government procurement restrictions	0	0
N	Intellectual property	0	0
O	Rules of origin	0	0
P	Export-related measures	60	1.97
<b>Total coded NTMs</b>		<b>3,053</b>	<b>100</b>

Source: Authors.

Table 8.5 sets out the most common NTMs. We calculated, using data on New Zealand import values from the world in 2016, the percentage of imports in tariff lines covered by the NTMs. We present them as a range because some NTMs have ‘partial coverage’; that is, they apply to only some products within a tariff line.<sup>10</sup>

<sup>10</sup> In calculating the ‘minimum’, we excluded the value of all imports under tariff lines with partial coverage as it is possible that all trade was in parts of the tariff line not subject to the NTM. The ‘maximum’ assumes that all trade in a tariff line with partial coverage was affected by the NTM.



**Table 8.5. Most Common Non-tariff Measures in Chapters A–C in New Zealand**  
(%)

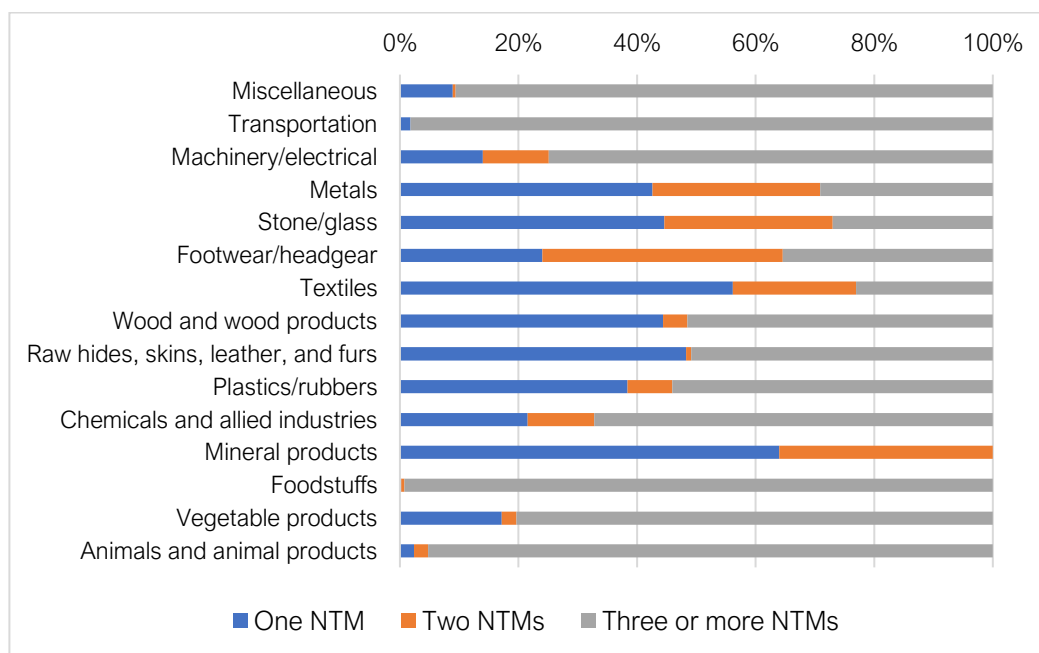
NTM	Description	Tariff Lines Affected	Imports Affected (minimum)	Imports Affected (maximum)
B310	Labelling requirements	42.7	32.7	43.1
B140	Authorisation requirements (for importers)	23.9	31.4	32.3
B700	Performance standards	18.9	32.6	44.7
A690	Other production requirements	18.5	10.5	11.6
A220	Restricted use of substances	17.1	14.0	14.9
B150	Importer registration requirements	16.9	21.8	24.1
B490	Production requirements	16.2	13.7	26.6
A590	Treatment requirements not elsewhere specified	16.0	2.2	30.5
A310	Labelling requirements	15.4	9.3	10.4
A210	Residue tolerance limits	14.9	9.3	9.3

Source: Authors.

Figure 8.1 shows how the incidence of multiple NTMs varies across sectors. We limit our analysis to UNCTAD chapters A, B, and C because, as noted in Table 8.2, all products are subject to a goods and services (value added) tax (measure F71) and import entry transaction fee (measure F61), and any good that infringes copyright is subject to an NTM (measure E315).

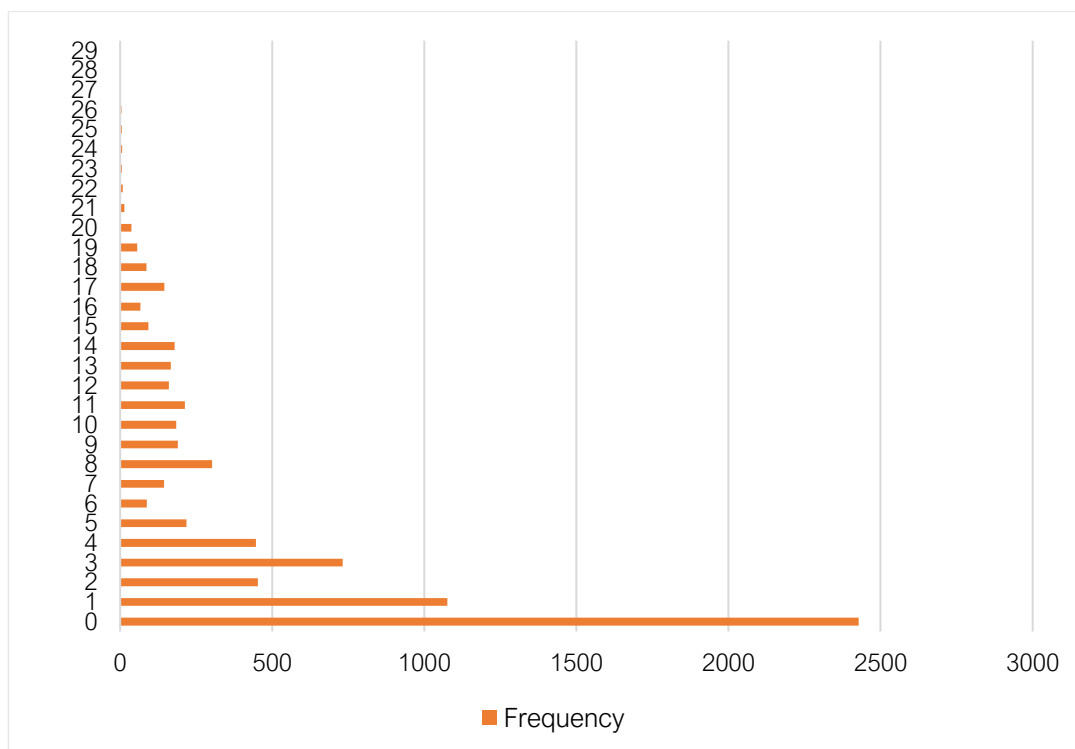
Figure 8.2 illustrates where individual tariff lines are affected by multiple types of NTMs (in chapters A, B, or C of the UNCTAD NTM classification). About one-third of all tariff lines are not subject to any NTM in these chapters. The most regulated products are meat, fresh fruit, and vegetables, which are subject to a range of SPS measures for both biosecurity and food safety as well as some measures classified as TBTs (e.g., labelling requirements). Tariff lines that attract more than 25 types of NTMs are generally miscellaneous categories such as food preparations not elsewhere specified (Harmonised System subheading 2106.90), animal products not elsewhere specified (Harmonised System subheading 0511.99), or tariff lines that contain a range of different products (e.g., tariff line 0804.50.00 covering guavas, mangoes, and mangosteens).

Figure 8.1. Incidence of Non-tariff Measures, by Product, as a Percentage of Total Tariff Line in New Zealand



Source: Authors.

Figure 8.2: Frequency of Multiple Non-tariff Measures in Chapters A, B, and C in New Zealand



Source: Authors.

## 5. Policy Recommendations

We are confident that we have collected comprehensive and high-quality data,<sup>11</sup> due in part to New Zealand's relatively transparent legislative system, as well as key agencies being willing to provide information, including on NTMs.

We note that regulations associated with NTMs often deal with complex issues and that it will be challenging to reduce or harmonise some NTMs. We also note that New Zealand has already made progress in reducing the effect of regulations on trade, such as harmonised food standards with Australia, and providing treatment options for fresh fruit and vegetables under import health standards and choices of international standards, particularly in the vehicle sector. We suggest that making improvements in the following areas may be particularly useful for policymakers:

- (i) Support the Ministry for Primary Industries' efforts to move to a generic import health standard for each product, rather than separate standards for each exporting country.
- (ii) Further investigate the complex regime for hazardous substances, with standards depending on the properties of a substance (e.g., if it is corrosive or flammable). It may be useful to explore the extent to which this poses a barrier to exporters and whether the regime can be simplified.
- (iii) Further investigate possibilities for harmonising regulations with Australia and other trading partners, for example, building on experience with joint food standards between New Zealand and Australia.
- (iv) Although already practiced widely in New Zealand, investigation of the scope to further recognise international standards might be useful in a range of areas.
- (v) As proposed by the New Zealand Productivity Commission (2014), all regulations should be available from a single source, such as the government legislation website.
- (vi) Continue active involvement in FTA negotiations, particularly regional agreements such as the Regional Comprehensive Economic Partnership, which may provide a basis for further regulatory alignment, including eventual harmonisation or mutual recognition.

Given the potential gains from reducing NTMs, policymakers and officials in New Zealand and other countries must carefully examine areas where non-tariff barriers to trade may be reduced, while still achieving legitimate objectives of the NTMs.

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<sup>11</sup> There will, of course, be limitations to the data collected. For example, most NTMs do not indicate the tariff lines covered. Some judgement, therefore, is required in assigning tariff codes, particularly for complex areas such as those under the Hazardous Substances and New Organisms Act 1996. The database is a snapshot in time as in May 2016.

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