section 1.3 |

**appendix 1**

Context and process

# Section contents

# 1.3 New Zealand: international legal obligations

New Zealand does not operate in isolation from the rest of the world but has entered into a range of international agreements and become a member of various multinational organisations. These instruments and organisations impose certain obligations on New Zealand.

In its Warrant (its terms of reference), the Commission was required to take account of New Zealand's international legal obligations with respect to genetic modification and the international implications of any measures that New Zealand might take with respect to genetic modification. Appendix 2 and Appendix 3 include summary and analysis of the representations made on these Warrant items during the consultation process.

This section outlines the relevant international instruments and organisations of which New Zealand is a party and to which it has obligations. These are grouped as follows:

- United Nations-sponsored instruments and organisations
- other international instruments and organisations
- bilateral Australia–New Zealand instruments and organisations.

For a brief explanation of some of points differentiating types of international agreements, see box "Conventions and protocols".

## United Nations-sponsored instruments and organisations

New Zealand was a founding member of the United Nations (UN) in 1945. A New Zealand diplomat currently serves on the UN Advisory Committee on Administrative and Budgetary Questions (ACABQ). New Zealand has also been elected to the UN Economic and Social Council (ECOSOC) for the period 1998–2000.

Among the numerous instruments promoted by the UN, the Convention on Biological Diversity and the subsequent Cartagena Protocol on Biosafety were repeatedly identified in submissions to the Commission as particularly relevant to New Zealand's international obligations in relation to genetic modification.

# Conventions and protocols

**Convention as a generic term**

Article 38 (1) (a) of the Statute of the International Court of Justice refers to "international conventions, whether general or particular" as a source of law, apart from international customary rules and general principles of international law and, as a secondary source, judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". Black letter law is also regularly referred to as "conventional law", in order to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term "convention" thus is synonymous with the generic term "treaty".

**Convention as a specific term**

Whereas in the last century the term "convention" was regularly employed for bilateral agreements, it now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organisation are entitled conventions (eg Convention on Biological Diversity).

**Protocols**

The term "protocol" is used for agreements less formal than those entitled "treaty" or "convention". It can refer to a number of international legal instruments. The Cartagena Protocol is a protocol based on a framework treaty. It is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law.

When a country signs the Protocol, this indicates general support for the principles of the Protocol, as well as that country's intention to become legally bound by it. However, the Protocol does not become legally binding until a country ratifies the treaty by depositing an instrument of ratification (usually a letter of accession, acceptance or approval) with the United Nations. Once a country ratifies the Protocol, it enters into force for that country 90 days later. At this point the country is bound by the articles of the treaty and must conform to its principles under international law.

## Convention on Biological Diversity

New Zealand is a party to the Convention on Biological Diversity (CBD) and ratified it on 16 September 1993.

The CBD is an international legal instrument and was negotiated under the aegis of the United Nations Environment Programme (UNEP). It was tabled on 5 June 1992 at the United Nation's Conference on Environment and Development in Rio de Janeiro, Brazil (the Rio "Earth Summit"). It entered into force as a treaty on 29 December 1993, 90 days after the 30th ratification. The CBD has 180 parties: 179 countries and the European Union.

The Convention has three objectives:

- conservation of biological diversity;
- sustainable use of the components of biological diversity; and
- fair and equitable sharing of the benefits of the use of genetic resources.

A fundamental aspect of the Convention is the requirement to develop national strategies, plans and programmes for conservation and sustainable use of biological diversity, and to integrate the conservation and sustainable use of biological diversity into plans, programmes and policies for sectors such as agriculture, fisheries and forestry and for cross-sectoral matters such as land-use planning and decision-making.

Parties are required to identify and monitor important ecosystems, species and genetic components of biological diversity, as well as processes and activities that have or are likely to have significant adverse impacts on biological diversity. Countries are then able to determine their priorities with regard to conservation and sustainable use measures which need to be undertaken.

Parties are to introduce appropriate procedures for environmental impact assessment of projects, programmes and policies that are likely to have significant adverse effects on biological diversity. The Convention also provides for the notification of activities that are likely to significantly damage biological diversity and the promotion of emergency response arrangements.

The Convention requires parties to facilitate access to their genetic resources for environmentally sound uses while affirming national sovereignty. It enables parties to obtain a fair and equitable share of benefits arising from the use of their genetic resources by other parties.

The Convention also requires parties to protect and encourage customary use of biological resources in accordance with sustainable traditional practices. It also provides for the maintenance and wider application of relevant indigenous

knowledge, innovations and practices and the equitable sharing of benefits arising from their use.

## Cartagena Protocol on Biosafety

The Conference of the Parties to the Convention on Biological Diversity adopted a supplementary agreement to the Convention known as the Cartagena Protocol on Biosafety on 29 January 2000. The Protocol is open for signing until 4 June 2001. New Zealand signed on 24 May 2000 but to date has not yet ratified the protocol. It is due to enter into force on the 90th day after ratification by the 50th party to the CBD. Until the Biosafety Protocol enters into force, signatory States are obliged to refrain from actions that would defeat the object and purpose of the CBD and its protocols.

The Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms (LMOs, equivalent to genetically modified organisms (GMOs) under New Zealand's Hazardous Substances and New Organisms (HSNO) Act 1996) resulting from modern biotechnology. It enshrines the "precautionary approach" as a principle of international environmental law and puts environment on a par with trade-related issues in the international area. The Protocol also establishes a Biosafety Clearing-House to facilitate the exchange of information on LMOs and to assist countries in the implementation of the Protocol.

The Protocol establishes a procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The advance informed agreement (AIA) procedure requires exporters to have prior consent from importers before shipment of LMOs destined for environmental release. Bulk shipments of LMO commodities intended for food, feed or for processing are not subject to the AIA process but must have documentation that indicates the possible presence of LMOs and that they are not intended for environmental release.

The Protocol also sets up a process for the consideration of more detailed identification and labelling of LMOs that cross international borders in trade. The Protocol is specifically stated not to alter rights and obligations of members of the World Trade Organization (WTO) or under other existing international agreements.

## International Plant Protection Convention

The International Plant Protection Convention (IPPC) is a multilateral treaty deposited with the Director-General of the Food and Agriculture Organization

of the United Nations (FAO) and administered through the IPPC Secretariat located in the FAO's Plant Protection Service. Some 113 governments are currently contracting parties to the IPPC. The IPPC came into force in 1952 (New Zealand ratified the treaty on 16 September 1952) and has been amended once in 1979 and again in 1997. The latest amendment is not yet in force. New Zealand accepted the new revised text of the IPPC in October 1999.

The purpose of the IPPC is to secure common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control. The Convention provides a framework and forum for international cooperation, harmonisation and technical exchange in collaboration with regional and national plant protection organisations (RPPOs and NPPOs). The IPPC plays a vital role in trade as it is the organisation recognised by the WTO in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) as the source for international standards for phytosanitary measures (ISPMs) affecting trade.

Amendments to the Convention were unanimously adopted by the FAO Conference in November 1997. This revision (New Revised Text of the IPPC) updates the Convention and reflects the role of the IPPC with relation to the WTO's SPS Agreement, primarily the institutional arrangements for standard setting. The new version will come into force 30 days after acceptance by two-thirds of the contracting parties.

The IPPC provides for a Commission on Phytosanitary Measures which will serve as its governing body and will adopt international standards. Currently 13 ISPMs have been adopted, some of which are relevant to consideration of genetic modification. These international standards include: ISPM 1, Principles of Plant Quarantine as Related to International Trade (1995); ISPM 2, Guidelines for Pest Risk Analysis; ISPM 3, Code of Conduct for the Import and Release of Exotic Biological Control Agents.

## World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) is an international organisation promoting the use and protection of intellectual property. WIPO is one of the 16 specialised agencies of the United Nations system of organisations. It administers 21 international treaties dealing with different aspects of intellectual property protection. WIPO counts 175 nations as member states, of which New Zealand is one.

The treaties can be divided into three general groups:

- The first group of treaties defines internationally agreed basic standards of intellectual property protection in each country, such as the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).
- The second group, known as the registration treaties, ensures that one international registration or filing will have effect in any of the relevant signatory States.
- The third group is the classification treaties, which create classification systems that organise information concerning inventions, trademarks and industrial designs into indexed, manageable structures for easy retrieval.

## Food and Agriculture Organization

The Food and Agriculture Organization was founded in October 1945 with a mandate to raise levels of nutrition and standards of living, to improve agricultural productivity, and to better the condition of rural populations.

FAO is now the largest autonomous agency within the United Nations system with 180 member nations plus the European Community. FAO provides direct development assistance, collects, analyses and disseminates information, provides policy and planning advice to governments and acts as an international forum for debate on food and agriculture issues.

FAO has projects and other involvement in land and water development, plant and animal production, forestry, fisheries, economic and social policy, investment, nutrition, food standards and commodities and trade. It also plays a major role in dealing with food and agricultural emergencies.

A specific priority is encouraging sustainable agriculture and rural development, a long-term strategy for the conservation and management of natural resources. This aims to meet the needs of both present and future generations through programmes that do not degrade the environment and are technically appropriate, economically viable and socially acceptable.

## Codex Alimentarius Commission

The Codex Alimentarius Commission is an international organisation established jointly by the FAO and the World Health Organization (WHO). The name Codex Alimentarius (Latin for *code for food*) explains the general purpose of the Commission's work. The Codex is drawn from a collection of food standards

assembled during 1897 and 1911 in the Austro-Hungarian Empire and used as a legal reference by the courts. CAC deals with a wide range of food issues: labelling, hygiene standards, pesticide residue levels and definitions of foods.

After the establishment of FAO in 1945 and the WHO in 1948, both organisations engaged in promotion of higher food safety standards. In the 1950s international cooperation on food safety issues increased, leading to the founding of the Codex Alimentarius Commission by FAO in 1961. In 1963, FAO and WHO established a joint food standards programme, taking over some earlier efforts by European institutions to establish an international food code and adopting the statutes of the Codex Alimentarius Commission. The current membership of CAC includes 165 countries, of which New Zealand is one.

CAC works through a number of committees, which include the Codex Committee on Food Labelling (CCFL), Codex Committee on General Principles (CCGP) and an Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology. New Zealand chairs two Codex Commodity Committees (Milk and Milk Products, and Meat Hygiene).

The General Principles of the Codex specify the ways in which member countries may "accept" Codex standards. Forms of acceptance vary depending on whether the standard is a commodity standard, a general standard, or concerns levels for pesticide or veterinary drug residues or food additives. Member States and Associate Members of FAO and/or WHO notify the Secretariat if they wish to accept the Codex standard and the form of acceptance, which can be *full acceptance*, *acceptance with minor deviations* and *free distribution*. The published standards constitute the Codex Alimentarius.

Examples of the application of Codex standards in international trade can be found in the WTO's SPS Agreement and Agreement on Technical Barriers to Trade (TBT Agreement).

The SPS Agreement designates the standards, guidelines and recommendations established by the Codex Alimentarius Commission as the benchmarks against which national measures and regulations are evaluated, in the areas of:

- food additives
- veterinary drugs and pesticide residues
- contaminants
- methods of analysis and sampling
- codes and guidelines of hygienic practice.

The TBT Agreement documents member states' commitment not to create unnecessary obstacles to trade with technical regulations and standards, including packaging, marking and labelling requirements, and analytical procedures for assessing conformity with technical regulations and standards. Article 2 of the TBT Agreement states that where technical regulations are required and relevant international standards exist or their completion is imminent, members shall use them, or the relevant parts of them, as a basis for their technical regulations.

This means that Codex standards are the benchmarks against which national food measures and regulations are evaluated within the legal parameters of the Uruguay Round Agreements.

The CCFL met in May 2000 and discussed draft recommendations on food labelling. The Task Force met in March 2000 and decided to work on a set of broad general principles for risk analysis of foods derived from biotechnology and specific guidelines on the risk assessment of foods derived from biotechnology. The Task Force noted that the Biosafety Protocol now formed part of the international regulatory framework and that the objective and provisions of the Protocol would need to be taken into account during the development of appropriate Codex texts.

## Universal Declaration on the Human Genome and Human Rights

At its 27th session in November 1993, the General Conference of United Nations United Nations Educational, Scientific, and Cultural Organization (UNESCO) approved the establishment of an International Bioethics Commission, and invited the Director-General "to continue in 1994–1995 the preparation of an international instrument on the protection of the human genome ...". At its eighth meeting, the Commission finalised the Universal Declaration on the Human Genome and Human Rights (20 December 1996).

At its 29th session, on 11 November 1997, the General Conference of UNESCO adopted, unanimously and by acclamation, the Universal Declaration on the Human Genome and Human Rights.

The Universal Declaration on the Human Genome and Human Rights forms part of the framework of thinking known as bioethics, dating from the 1980s. Bioethics, the study of ethical problems arising from biological research and its application, relates to the principles that must guide human action in the face of the challenges raised by biology, including the ability to transform life as a result of advances in the field of genetics and human reproduction.

The 25 articles of the Declaration establish limits on intervention in the genetic heritage of humanity and in individuals. The international community has a moral obligation not to transgress these limits. The basic principles are:

- recognition that the human genome is part of heritage of humanity
- respect for the dignity and human rights of every individual, regardless of his/her genetic characteristics
- rejection of genetic determinism by recognising that the genome, being subject to mutations through evolution, contains "potentialities that are expressed differently according to each individual's natural and social environment".

The Declaration is a non-binding, non-treaty declaration that is imperative in nature.

## Draft Declaration on the Rights of Indigenous Peoples

The Working Group on Indigenous Populations (which is a subsidiary of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the office of the United Nations High Commissioner for Human Rights) was mandated to develop international standards concerning the rights of indigenous peoples.

In 1985, the Working Group began preparing a draft declaration on the rights of indigenous peoples, taking into account the comments and suggestions of participants in its sessions, particularly representatives of indigenous peoples and governments. At its 11th session, in July 1993, the Working Group agreed on a final text for the draft declaration and submitted it to the Sub-Commission.

By resolution 1994/45 of 26 August 1994, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted the draft declaration and submitted it to the Commission on Human Rights for consideration.

The Draft Declaration on the Rights of Indigenous Peoples consists of 19 preambular paragraphs and 45 articles and covers rights and freedoms such as: the preservation and development of ethnic and cultural characteristics and distinct identities; protection against genocide and ethnocide; rights related to religions, languages and educational institutions; ownership, possession or use of indigenous lands and natural resources; protection of cultural and intellectual property; maintenance of traditional economic structures and ways of life, including hunting, fishing, herding, gathering, timber-sawing and cultivation; environmental protection; participation in the political, economic and social life of the States concerned, in particular in matters that may affect indigenous peoples' lives and

destinies; self-determination; self-government or autonomy in matters relating to indigenous peoples' internal and local affairs; traditional contacts and cooperation across State boundaries; and the honouring of treaties and agreements concluded with indigenous peoples.

The Draft Declaration also foresees mutually acceptable and fair procedures for resolving conflicts or disputes between indigenous peoples and States, involving means such as negotiations, mediation, arbitration, national courts, and international and regional human rights review and complaints mechanisms.

The Draft Declaration further provides that the rights mentioned in it constitute the minimum standards for the survival and wellbeing of the indigenous peoples of the world.

## International Covenant on Economic, Social and Cultural Rights

The 1996 International Covenant on Economic Social and Cultural Rights (ICESCR), which entered into force in 1976, spells out in more detail the economic, social and cultural rights enumerated earlier in the Universal Declaration of Human Rights (UDHR) and is legally binding on those countries that have ratified it. Together, the ICESCR, International Covenant on Civil and Political Rights (ICCPR) and UDHR are known as the International Bill of Rights. The ICESCR includes the right to work, to just and favourable conditions of work, to form and join trade unions, to family life, to an adequate standard of living, to the highest attainable standard of health, to education, and to take part in cultural life. It prohibits all forms of discrimination in the enjoyment of these rights, including on the basis of sex, and requires that countries ensure the equal rights of women and men.

## Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty that was drawn up in 1973 to protect wildlife against over-exploitation and to prevent unregulated international trade from threatening plant and animal species with extinction. CITES came into effect in January 1975 and currently has 152 members. New Zealand acceded to the treaty on 10 May 1989 and ratified it on 8 August 1989.

CITES comprises three appendices: Appendix I, which protects threatened species from all international commercial trade; Appendix II, which regulates trade in species that are not threatened with extinction but may become threatened if trade

goes unregulated; and Appendix III, which gives countries the option of listing native species already protected within their own borders.

The member countries have committed to the principles established by CITES: in particular, that any trade in protected plant and animal species is sustainable and a process through which member countries work together to ensure that wildlife trade is carried out in accordance with the treaty.

CITES is part of the UN system of organisations and its secretariat is administered by UNEP.

## World Health Organization and Ottawa Charter for Health Promotion

The WHO was founded in 1948. It is a specialised agency of the United Nations with 191 member states. WHO has four main functions:

- to give worldwide guidance in the field of health
- to set global standards for health
- to cooperate with governments in strengthening national health programmes
- to develop and transfer appropriate health technology, information and standards.

The Ottawa Charter was promulgated by the First International Conference on Health Promotion held in Ottawa, Canada, in November 1986, under the aegis of the WHO. Its basic premise is expressed as:

> Health promotion is the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical mental and social well being, an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy lifestyles to well being.

## World Bank

The World Bank is a multilateral lending agency consisting of five closely-associated institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID). The common objective of the institutions is to help raise the living

standards in developing countries by channelling financial resources from developed countries to them. New Zealand joined the World Bank in 1961.

New Zealand has subscribed to a total of 7236 shares in the IBRD, which represents 0.51% of the total voting shares. The shares have a total par value of US$723.6 million, although over 90% of this amount has not been called up but, together with the uncalled subscription of the other member countries, acts as a guarantee for the bank's borrowing in the financial markets. New Zealand owns 2025 fully paid shares in the IFC which have a total par value of US$2.025 million.

## Other international instruments and organisations

Other instruments and organisations that do not come under the umbrella of the United Nations are also of importance to New Zealand in its international obligations. Chief among these is the WTO.

### World Trade Organization

With the completion of the Uruguay Round of trade negotiations, WTO came into existence on 1 January 1995 as a forum for the facilitation of international trade. The WTO was established under the Marrakesh Agreement or General Agreement on Tariffs and Trade (GATT) 1994.

The Uruguay Round agreements represented a milestone in the multilateral trading system because, for the first time, agriculture and food were incorporated under operationally effective rules and disciplines.

Countries participating in the round of negotiations recognised that measures ostensibly adopted by national governments to protect the health of their consumers, animals and plants could become disguised barriers to trade as well as being discriminatory. Consequently, the SPS Agreement, the TBT Agreement and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) were included among the Multilateral Agreements on Trade in Goods, annexed to the 1994 Marrakesh Agreement.

The WTO does not engage in standard setting itself but rather ensures that standards (and the procedures for their assessment and for achieving conformity with them) do not create unnecessary obstacles to international trade.

#### SPS Agreement and TBT Agreement

The SPS Agreement acknowledges that governments have the right to take sanitary and phytosanitary measures necessary for the protection of human

health. However, the SPS Agreement requires them to apply those measures only to the extent required to protect human health. It does not permit member governments to discriminate by applying different requirements to different countries where the same or similar conditions prevail, unless there is sufficient scientific justification for doing so.

The TBT Agreement seeks to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and analytical procedures for assessing conformity with technical regulations and standards, do not create unnecessary obstacles to trade.

The SPS and TBT Agreements both acknowledge the importance of harmonising standards internationally so as to minimise or eliminate the risk of sanitary, phytosanitary and other technical standards becoming barriers to trade.

For example, in its pursuance of harmonisation with regard to food safety, the SPS Agreement has identified and chosen the standards, guidelines and recommendations established by the CAC for food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice. This means that Codex standards are considered scientifically justified and are accepted as the benchmarks against which national measures and regulations are evaluated.

As a member of the WTO, New Zealand is obliged to notify the WTO of changes to food standards to allow other members to comment. Notification is required of any new or changed standards that may have a significant trade effect and that depart from the relevant international standard (or where no such standards exist). The Ministry of Agriculture and Forestry (MAF) is the contact point in New Zealand for SPS compliance and queries.

### TRIPS Agreement

The TRIPS Agreement, which came into effect on 1 January 1995, is a comprehensive multilateral agreement on intellectual property rights.

The basic principles of the TRIPS Agreement are a commitment that the nationals of other parties must be given no less favourable protection of intellectual property than that given a party's own nationals and a most-favoured-nation clause, under which any advantage a party gives to the nationals of another country must be extended immediately and unconditionally to the nationals of all other parties, even if such treatment is more favourable than that which it gives to its own nationals.

The Agreement covers copyright, trademarks and service marks, geographical indications, patents, trade secrets and know-how, and anti-competitive practices

in contractual licences. It also sets out the obligations of member governments to provide procedures and remedies under their domestic law to ensure that intellectual property rights can be effectively enforced, by foreign right holders as well as by their own nationals.

In addition to complying with the provisions of the Paris Convention, the TRIPS Agreement requires that 20-year patent protection be available for all inventions, whether of products or processes, in almost all fields of technology. Inventions may be excluded from patentability if their commercial exploitation is prohibited for reasons of public order or morality; otherwise, the permitted exclusions are for diagnostic, therapeutic and surgical methods, and for plants and animals (other than microorganisms) and essentially biological processes for the production of plants or animals (other than microbiological processes). Plant varieties, however, can be protected either by patents or by a system such as breeders' rights provided in the International Convention for the Protection of New Varieties of Plants.

Dispute settlement relating to intellectual property takes place under the integrated GATT dispute settlement procedures as revised in the Uruguay Round. Transitional provisions for developed, developing and least developed countries are provided. Subject to certain exceptions, the general rule is that the obligations in the agreement would apply to existing intellectual property rights as well as to new ones.

## International Union for the Protection of New Varieties of Plants

The International Union for the Protection of New Varieties of Plants (UPOV, from the French *Union internationale pour le protection des obtentions végétale*) is an intergovernmental organisation, based on the International Convention for the Protection of New Varieties of Plants, as revised since its signature in Paris on 2 December 1961. The objective of the Convention is the protection of new varieties of plants by an intellectual property right. The main activities of UPOV are concerned with promoting international harmonisation and cooperation, mainly between its member States, and with assisting countries, in the introduction of plant variety protection legislation. New Zealand has been a member of UPOV since 1981.

Like all intellectual property rights, plant breeders' rights are granted for a limited period of time, at the end of which varieties protected by them pass into the public domain. The rights are also subject to controls, in the public interest, against any possible abuse. Authorisation of the holder of a plant breeder's right is

not required for the use of the variety for research purposes, including its use in the breeding of further new varieties.

To be eligible for protection, varieties have to be:

- distinct from existing, commonly known varieties
- sufficiently uniform
- stable
- new in the sense that they must not have been commercialised prior to certain dates established by reference to the date of the application for protection.

## Organisation for Economic Co-operation and Development

The forerunner of the OECD was the Organisation for European Economic Co-operation (OEEC), which was formed to administer American and Canadian aid under the Marshall Plan for reconstruction of Europe after World War II. Since it took over from the OEEC in 1961, the OECD vocation has been to build strong economies in its member countries, improve efficiency, hone market systems, expand free trade and contribute to development in industrialised as well as developing countries. New Zealand became a member of the OECD in 1973.

The OECD groups 30 member countries in an organisation that, most importantly, provides governments with a setting in which to discuss, develop and perfect economic and social policy. They compare experiences, seek answers to common problems and work to coordinate domestic and international policies that increasingly in today's globalised world must form a web of even practice across nations. Their exchanges may lead to agreements to act in a formal way; for example, by establishing legally binding codes for free flow of capital and services, agreements to crack down on bribery or to end subsidies for shipbuilding. But more often, their discussion makes for better informed work within their own governments on the spectrum of public policy and clarifies the impact of national policies on the international community. And it offers a chance to reflect and exchange perspectives with other countries similar to their own.

OECD countries produce two-thirds of the world's goods and services, and membership is open to countries committed to a market economy and a pluralistic democracy. The core of original members has expanded from Europe and North America to include Japan, Australia, New Zealand, Finland, Mexico, Czech Republic, Hungary, Poland and Korea.

## Asia Pacific Economic Co-operation

Asia Pacific Economic Co-operation (APEC) is a grouping of regional economies created in 1989 to promote growth and economic development in the Asia–Pacific Region. APEC works in three broad areas:

- advancing free and open trade and investment
- making it easier to do business, through improving trade rules and reducing 'red tape'
- promoting economic and technical cooperation.

APEC's Agricultural Technical Cooperation Experts' Group (ATC) is the main body working on biotechnology within APEC. At its June 2000 meeting in Darwin, APEC Ministers Responsible for Trade endorsed a report by the ATC on work already undertaken in the biotechnology area, and directed the ATC to proceed with its agreed work programme.

Operating from a principle of development and utilisation of agricultural biotechnology in a safe and equitable manner, APEC's main focus is on technical cooperation and capacity-building aimed at:

- facilitating the safe and effective use of biotechnology for its contribution to society through the development of transparent and science-based national approaches for risk assessment and risk management
- encouraging effective communications approaches, thereby enhancing public awareness and understanding of biotechnology.

The ATC's work programme for 2000 and the medium term also includes the issues of science-based assessment of the products of biotechnology, as well as transparency and information exchange.

## Asian Development Bank

The Asian Development Bank (ADB) is a development finance institution. Established in 1965, it is owned by 37 countries from the Asia–Pacific region, including New Zealand and 16 countries from Europe and North America. The ADB's principal function is to promote and finance the economic and social advancement of its 33 Asia–Pacific developing country members.

New Zealand currently holds 27,170 shares in the ADB, about 2.6% of the bank's voting shares. The shares have a total par value of US$381.35 million. The country also makes contributions to the periodic replenishment of the ADB's Asian Development Fund, the bank's facility for lending to its poorest developing

member countries. New Zealand has contributed over $51 million to the ADB since 1974.

## Bilateral Australia–New Zealand instruments and organisations

Various Trans-Tasman agreements exist to simplify or strengthen the interaction of Australia and New Zealand. The most significant instrument in terms of genetic modification relates to joint food standards.

### ANZCERTA

The Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) is the primary instrument governing the conduct of trade between Australia and New Zealand in goods and services. Its central provision creates a comprehensive bilateral free trade area that is consistent with GATT/WTO obligations regarding the formation of free-trade areas. There is now free trade in goods and virtually free trade in services.

The objectives of the ANZCERTA are:

- to strengthen the broader relationship between Australia and New Zealand
- to develop closer economic relations between Australia and New Zealand through a mutually beneficial expansion of free trade between the two countries
- to eliminate barriers to trade between Australia and New Zealand in a gradual and progressive manner under an agreed timetable and with a minimum of disruption
- to develop trade between New Zealand and Australia under conditions of fair competition.

The Closer Economic Relations (CER) Agreement was signed in 1983, but has undergone several reviews that have accelerated, widened and deepened the scope and implementation of the Agreement. In addition, over the past 10 years ANZCERTA has been augmented by a number of other agreements and arrangements. CER is now an umbrella term that covers a wide range of instruments governing the wider trade and economic relationship. Two components of CER relevant to the Commission's Warrant are the Australia New Zealand Joint Food Standards Treaty and the Trans-Tasman Mutual Recognition Arrangement.

## Australia New Zealand Joint Food Standards, ANZFA and ANZFSC

A National Food Authority was established in Australia in 1991 after an intergovernmental agreement between the Commonwealth, States and Territories to develop food standards that were nationally uniform. New Zealand joined this partnership in 1996 with the operational commencement of the Treaty for a joint Food Standards System. The Australia New Zealand Food Authority (ANZFA) was then formed, based on the former National Food Authority. The (Commonwealth) Australia New Zealand Food Authority Act 1991 (ANZFA Act) contains the current form of the enabling legislation. ANZFA conducts risk assessments and undertakes consultation to develop recommended food standards but it does not have the authority to make final decisions to adopt new food standards. These decisions are made, through consensus or a majority vote, by Health Ministers from Australia, New Zealand and each of the Australian States and Territories, sitting as the Australia New Zealand Food Standards Council (ANZFSC).

The Agreement between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards (referred to here as the Treaty) established an official partnership between New Zealand and Australia in relation to food standards. Australia and New Zealand signed the Treaty on 5 December 1995 and it came into effect on 5 July 1996.

The objectives of the Treaty are:

- to reduce unnecessary barriers to trade
- to adopt a joint system for the development of food standards for Australia and New Zealand
- to provide for the timely development and adoption of food standards appropriate for both Member States
- to facilitate the sharing of information between the Member States on matters relating to food.

In signing the Treaty, New Zealand agreed to join in the national Australian food standards system. The joint Food Standards System focuses on the development of an Australia New Zealand Food Standards Code (the 'Joint Code'), a project which is now almost complete. The Joint Code is due for final consideration by the ANZFSC later this year. The Treaty provides for joint food standards

covering:

- the safety of food, including its microbiological status
- the composition of food, including the maximum or minimum amounts, where appropriate, of contaminants, residues, additives or other substances that may be present in food
- the method of sampling and testing the food to determine its composition and safety
- the production, manufacture or preparation of food
- materials, containers, appliances or utensils used in relation to food
- the packaging, storage, carrying, delivery, or handling of food
- any information about food, including labelling, promotion and advertising
- such other matters affecting food as may affect the health of persons consuming food
- the interpretation of other standards.

At this stage, the Treaty relates only to ANZFA's work in developing food standards. Specifically, the Treaty excludes:

- specification of maximum residue limits for agricultural and veterinary chemicals in food
- specification of food hygiene provisions including requirements for food safety programmes or other means of demonstrating the safety and compliance of foods
- export requirements relating to third-country trade.

New Zealand may 'opt out' of a food standard if it considers the standard to be inappropriate on the grounds of "exceptional health, safety, third country trade, environmental or cultural factors". To date, New Zealand has not formally opted out of any food standard. Under Article 6 of the Treaty, an annual Partnership Agreement is established between the New Zealand Minister of Health and the chairperson of ANZFA. Under these arrangements, New Zealand makes financial contributions to ANZFA's work in developing food standards for both countries, but not to ANZFA functions outside the Treaty. This contribution is in proportion to population share.

## Trans-Tasman Mutual Recognition Arrangement

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) came into effect in 1998, two years after the Joint Food Standards Treaty. It provides that any product sold in either Australia or New Zealand can lawfully be sold in the other

country without needing to meet any additional standards, and that a person registered to practise an occupation in one country is entitled to practise an equivalent occupation in the other.

Food is covered under the TTMRA, so that any genetically modified food that can lawfully be sold in one jurisdiction can under the TTMRA be sold in the others. Permanent exemptions to the TTMRA must be agreed unanimously by the parties.