

# Memo

19 December 2017

To: His Worship the Mayor, Councillors, Local Board members, Independent Māori Statutory Board members  
Executive Leadership Team

cc: Koro Dickinson, Manager, Global Partnerships and Strategy

From: Niels Meinderts, Global Partnerships and Strategy Advisor

Date: 19 December 2017

Subject: Update on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

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## Summary

1. This memo provides a brief update on New Zealand's involvement in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and why it is relevant to Auckland Council.
2. The new Government remains supportive of New Zealand's trade agenda in CPTPP but is keen to reassure the public that Free Trade Agreements (FTAs) exist to facilitate export growth and not impinge on future Government decision making. On 5 December Trade Minister David Parker and the Ministry of Foreign Affairs and Trade (MFAT) held a public outreach event on the CPTPP in Auckland. The event was part of a broader effort to rebuild public support for trade liberalisation with greater transparency, broad-based stakeholder engagement, and rethinking the scope and ambition of FTAs.
3. Should a deal be reached on CPTPP, National Party support will be needed to get the implementing legislation through Parliament as the Green Party has confirmed they will not support the deal. MFAT officials expect the CPTPP agreement to be signed in the 'first quarter of 2018'.

## From TPP to CPTPP

4. The twelve<sup>1</sup> participating Trans Pacific Partnership (TPP) countries concluded the Agreement in November 2015, and signed it in Auckland in February 2016. The subsequent decision by the new United States (US) Administration in January 2017 to not become a Party meant the TPP could no longer enter into force.
5. Over the course of 2017, officials from the remaining 11 signatories have negotiated a revised deal that incorporates much of the TPP into what has been coined the CPTPP.
6. Trade Ministers, including New Zealand's David Parker, met in the margins of the Asia-Pacific Economic Cooperation (APEC) meeting in Da Nang in early November 2017 to finalise the new deal.
7. The core elements of the new CPTPP were agreed upon in Da Nang, however four issues required further technical work and discussion – all of which were 'not unsolvable' according to New Zealand's Chief Negotiator Vangelis Vitalis, who is expecting countries to be able to sign the CPTPP agreement in the 'first quarter of 2018'.

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<sup>1</sup> New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, Viet Nam and the United States.

## What has changed?

8. According to Minister Parker, a number of the most controversial parts of the TPP in the new Agreement have been suspended, but there will be no change to the goods market access outcomes contained in the original TPP. The CPTPP suspends 20 provisions from various chapters of the original TPP, many of which were compromises made to the US during negotiations, particularly in the intellectual property space.<sup>2</sup>
9. The CPTPP will for the first time provide New Zealand preferential market access into Japan, the world's third-largest economy, as well as Canada, Mexico and Peru. Minister Parker said in Auckland last week that the deal also continues to uphold the unique status of the Treaty of Waitangi; and preserves New Zealand's right to regulate in the public interest.

## Why is the CPTPP relevant to Auckland Council?

10. The CPTPP is relevant to Auckland Council both in terms of its potential to be a catalyst for further economic development in Auckland and the potential to impact on future Council decision making processes, planning and costs. These issues are outlined below.
11. *Economic development* - 198,000 jobs are dependent on exports in the Auckland region. Improving tariff free access to international markets is of significant benefit to Auckland's exporting businesses as it enables them to compete on an even playing field overseas – it is estimated that NZ\$20.3 million of tariffs will be saved annually by the Auckland region alone through CPTPP.<sup>3</sup>
12. *Right to regulate* - In 2013, Auckland Council's former Regional Development and Operations Committee (2013 Committee) provided a number of recommendations to TPP negotiators, to protect Auckland Council's ability to regulate and develop public policy in the interests of ratepayers.<sup>4</sup> This included a request to ensure Council can continue to adopt procurement policies that provide for a degree of local preference; or to require higher health and safety, environmental protection, employment rights and conditions, or community participation in procurement policy. Both Minister Parker and MFAT officials have emphasised that the Government's right to regulate has been adequately protected under the CPTPP. It is also important to note that local government currently remains exempt from the Government Procurement (GP) Chapter of CPTPP. The ability to negotiate expanded coverage of the GP Chapter to cover local government contracts has been delayed from a three year period in TPP, to at least five years after CPTPP's date of entry into force.
13. *Costs of increasing intellectual property protection* - Under CPTPP copyright protection has been reduced from what was 70 years in TPP, back to 50 years, effectively re-enforcing the current status quo in New Zealand. The Government's TPP impact assessment had estimated that the long-term cost of the extension of copyright from 50 to 70 years would have been NZ\$55 million per year to New Zealand consumers. This would have increased projected copyright costs for Auckland Council's libraries, but has been averted under the CPTPP.
14. *Investor-State Dispute Settlement (ISDS)* – The 2013 Committee also recommended that negotiators ensured the TPP did not give overseas investors or suppliers any greater rights than domestic investors and suppliers, through an ISDS clause in TPP. The ISDS provision in TPP that would have allowed overseas investors to sue the central government (and potentially local governments indirectly) for breach of an investment agreement or an investment authorisation has been narrowed in scope under CPTPP.

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<sup>2</sup> See the list of 20 suspended provisions at <https://www.mfat.govt.nz/en/trade/free-trade-agreements/agreements-under-negotiation/cptpp-2/tpp-and-cptpp-the-differences-explained/>

<sup>3</sup> MFAT estimate.

<sup>4</sup> Refer 2013 Auckland Council Resolution on TPP [RDO/2012/266] see:

<http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/committees/regionaldevelopmentandoperationscommittee/meetings/regionaldevelopmentandoperationscomm20121206.pdf>

According to leading law firm, Chapman Tripp, investors will only be able to sue governments in relation to the obligations set out in the Investment Chapter of CPTPP itself. These are tightly bounded, making it very difficult to mount a successful action against a Government on matters of public interest such as health or the environment.

15. New Zealand has retained the reciprocal agreement with Australia that ISDS clauses will not apply between them. According to Minister Parker similar agreements with the other countries in CPTPP will be sought and ISDS will no longer be pursued in future trade agreements by the current Government.
16. *Ban on non-resident ownership of existing homes* – On 31 October 2017 Prime Minister Ardern announced that "The Government would introduce an amendment to the Overseas Investment Act to classify housing as 'sensitive' and introduce a 'residency test' for purchasing existing housing stock". According to Minister Parker, the proposed changes would need to be introduced prior to New Zealand agreeing on CPTPP as they would otherwise breach the agreement. The necessary Bill was presented to Parliament on 14 December 2017 after which Land Information Minister Eugenie Sage said "for practical purposes, it will mean that foreign buyers will not be able to buy residential property unless they are either increasing the number of residences and then selling them or converting the land to another use".
17. *Tax on water exports* - According to Chief CPTPP Negotiator Vangelis Vitalis the Government's promise to charge exporters of New Zealand water a 'royalty' in their coalition agreement could not be applied as an export tax. Vitalis told the Foreign Affairs, Defence and Trade Select Committee on 28 November that while the CPTPP protected the Government's right to create policy around water, an export tax on water would breach it - and several other FTAs. He suggested any controls on water could perhaps be managed instead under the Resource Management Act (RMA). For example, the RMA allows the Minister for the Environment to prepare National Policy Statements on water use – to guide local authorities.

### **Next Steps**

18. We understand CPTPP negotiators will meet again in the 'next few months' to address the four issues to be finalised. MFAT officials expect the CPTPP agreement to be signed in the 'first quarter of 2018'.
19. The implementing legislation passed for TPP will not apply to CPTPP and so new legislation will have to be passed. The Foreign Affairs, Defence and Trade Select Committee are currently scrutinising the CPTPP and Parliament will consider the necessary legislative changes needed to give effect to the agreement in early 2018. Recognising the high level of public interest in the CPTPP, MFAT has in the meantime begun publishing relevant material on its website.<sup>5</sup>
20. Looking ahead, Auckland Council staff will regularly report back on the CPTPP's progress and maintain Council's close working relationship with MFAT (covered by an MOU signed in 2016 between Auckland Council and NZ Inc.) to ensure Auckland's interests are represented.
21. Any immediate enquiries can be directed to Council's Global Partnerships and Strategy unit: Niels Meinderts, Advisor ([niels.meinderts@aucklandcouncil.govt.nz](mailto:niels.meinderts@aucklandcouncil.govt.nz); 021 508 114).

*December 2017  
Global Partnerships and Strategy Unit  
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<sup>5</sup> See <https://www.mfat.govt.nz/en/trade/free-trade-agreements/agreements-under-negotiation/cptpp-2/>