

# Memo

14 March 2018

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: 14 March 2018

Subject: Auckland Council update on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

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## Summary

1. This memo follows up on our 19 December 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. CPTPP negotiations reached their conclusion on 23 January and the Agreement was signed on 8 March in Santiago, Chile. The Government had earlier released the text<sup>1</sup> along with a National Interest Analysis (NIA) that assessed the likely costs and benefits for New Zealand of entering into the Agreement.<sup>2</sup>
3. The Agreement will eliminate over 95 percent of all tariffs in a grouping worth \$US10 trillion, covering 13.5% of the world's GDP. Minister of Trade David Parker said the importance to New Zealand of CPTPP had recently grown because of rising trade protectionism in the world – the latest example being the proposed tariffs on steel and aluminium imported into the United States (US).
4. CPTPP will now be submitted to parliamentary Treaty examination - both Labour and National have committed to supporting the implementing legislation meaning it will likely pass through Parliament. Entry into force will occur when at least six countries notify their readiness – which according to the Ministry of Foreign Affairs and Trade (MFAT) is likely to be 12 -18 months from now.

## From TPP to CPTPP

5. The text confirms the CPTPP<sup>3</sup> will incorporate much of the original TPP signed in Auckland in February 2016, but with some important differences. All the goods market access outcomes between the 11 remaining parties have been retained, 19 provisions have been suspended, one provision amended, and two provisions have been clarified.<sup>4</sup> Agreement amongst all CPTPP members will be needed for suspended provisions to be re-introduced in the future.

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<sup>1</sup> The full text of the CPTPP is available online at <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/>.

<sup>2</sup> The National Interest Analysis is available online at <https://www.mfat.govt.nz/cptpp>. It will be updated in March 2018 with more details of side letters that will be signed along with the agreement.

<sup>3</sup> With 11 signatories including: New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam.

<sup>4</sup> Refer to our 19 December Memo for more background on the relevant content of the suspensions or see the list of 22 suspended provisions at <https://www.mfat.govt.nz/en/trade/free-trade-agreements/agreements-under-negotiation/cptpp-2/tpp-and-cptpp-the-differences-explained/>

6. The CPTPP has the potential to deliver an estimated NZ\$222.4 million of tariff savings for New Zealand annually once fully implemented. Once the overall impact of the deal is fully realised, it will add between NZ\$1.2 billion and NZ\$4 billion to annual GDP growth – that's between 0.3% and 1% extra growth a year.<sup>5</sup>
7. The NIA document concludes that it would be in New Zealand's national interest to sign the CPTPP, despite economic benefits not being as substantive after the withdrawal of the United States. The NIA emphasises that the importance of CPTPP has increased because of current threats to the World Trade Organisation and the effective operation of global trade rules - important for a small export dependent nation such as New Zealand.

### **Why is the CPTPP relevant to Auckland Council?**

8. The relevance of the CPTPP to Auckland Council was outlined in our 19 December 2017 Memo. We provide a further update below on these issues.
9. *Economic development* – Auckland Tourism Events and Economic Development (ATEED) in a recent article<sup>6</sup> outlined the importance of international trade for Auckland after hosting the APEC Business Advisory Council's meeting in early February. Auckland's continued GDP growth is dependent on generating international revenues - taking full advantage of current and future Free Trade Agreements is therefore essential. ATEED emphasises that a partnership approach is central to achieving this, both domestically and internationally - fostering collaboration between city, government, and business.
10. *Right to regulate* – Auckland Councillors said in a 2013 Council Resolution<sup>7</sup> that it was important the Government continues to protect Council's ability to be able 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. Following the release of the CPTPP text - Minister Parker and MFAT officials continue to emphasise that the Government's right to regulate has been adequately protected under the CPTPP with a series of exceptions that preserve the right to regulate in the interests of public welfare or the environment.
11. *Investor-State Dispute Settlement (ISDS)* –The ISDS provision in CPTPP that allows overseas investors to bring a claim against central government (and potentially local governments indirectly) for breach of an investment agreement has been narrowed in scope. However, Minister Parker confirmed that "there remains a potential for an ISDS claim to be bought under CPTPP, although we don't think these can ever succeed based on what regulations the Government brings in".
12. He said to further protect New Zealand 'Side Letters' had been negotiated with five countries<sup>8</sup> to exclude the use of the ISDS clause in CPTPP. This will exclude access to ISDS for 80% of CPTPP Foreign Direct Investment currently coming into New Zealand. Furthermore, Canada and Chile have agreed to use ISDS clauses "responsibly" with New Zealand. It therefore appears that our Government will be subject to ISDS claims from companies based in Mexico, Japan, and Singapore. Leading commentators have been sceptical about the ability of the Side Letters negotiated to adequately protect the Government from being subject to ISDS claims.<sup>9</sup> Despite this, it is important to note that New Zealand has had ISDS clauses in agreements with 13 countries over the past 27 years and has never been subject to an ISDS claim.

<sup>5</sup> See National Interest Analysis above.

<sup>6</sup> Refer to 5 March Stuff article: [https://www.stuff.co.nz/business/101971866/tapping-into-aucklands-potential--trade-is-the-fastest-route-to-prosperity?lipi=urn%3Ali%3Apage%3Ad\\_flagship3\\_feed%3BAHJoaauvSH%2Bngw%2BiLH95WA%3D%3D](https://www.stuff.co.nz/business/101971866/tapping-into-aucklands-potential--trade-is-the-fastest-route-to-prosperity?lipi=urn%3Ali%3Apage%3Ad_flagship3_feed%3BAHJoaauvSH%2Bngw%2BiLH95WA%3D%3D)

<sup>7</sup> Refer 2013 Auckland Council Resolution on TPP [RDO/2012/266] see: <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/committees/regionaldevelopmentoperationscommittee/meetings/regionaldevelopmentandoperationscommin20121206.pdf>

<sup>8</sup> These countries are Australia, Brunei Darussalam, Malaysia, Peru and Vietnam.

<sup>9</sup> Refer to 10 March Newshub story: <http://www.newshub.co.nz/home/money/2018/03/cptpp-side-letters-won-t-stop-companies-suing-nz-critic.html>

13. *Ban on non-resident ownership of existing homes* – The Overseas Investment Amendment Bill was presented to Parliament on 14 December 2017 and submissions opened in early March 2018. This Bill will amend the Overseas Investment Act to classify housing as 'sensitive' and introduces a 'residency test' for purchasing existing housing stock. According to Minister Parker, the Bill will need to be passed prior to CPTPP entering into force as the changes would otherwise breach the Agreement. Several Local Councils, companies, and lobby groups have provided submissions to the Select Committee currently overseeing the Bill – many have questioned the workability of the new Bill and provided suggestions to improve it.

#### **Next Steps**

14. The CPTPP will now be submitted for parliamentary Treaty examination. The Foreign Affairs, Defense and Trade Select Committee (made up of 4 National, 3 Labour and 1 Green MP – of note no NZ First MP) will further scrutinize the necessary legislative changes needed to give effect to the Agreement and provide a forum for public submissions. Entry into force will occur when at least six signatories notify their readiness - this is expected to be 12-18 months from now.
15. Looking ahead, Auckland Council staff will regularly report on the CPTPP's implementation and maintain Council's working relationship with MFAT to ensure Auckland's interests are represented. As New Zealand is the elected depositary for the CPTPP, ATEED has also shown interest in pitching for Auckland to host the CPTPP Secretariat - should this be established.
16. 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).

*March 2018  
Global Partnerships and Strategy Unit  
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