

Proactive Release

Date: 15 August 2023

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister for Trade & Export Growth

| Title | Reference |
|---|-----------------|
| Report of the Cabinet Economic Development Committee: Period Ended 30 June 2023 | CAB-23-MIN-0280 |
| United Kingdom's Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) | DEV-23-MIN-0130 |
| United Kingdom's Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) | |

The additional information relevant to this proactive release was published to the Ministry of Foreign Affairs and Trade's (The Ministry's) website and is available via the below links:

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/ISDS-Side-Letter-NZ-to-UK.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/ISDS-Side-Letter-UK-to-NZ.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/Grace-Period-Side-Letter-UK-to-NZ.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/Grace-Period-Side-Letter-NZ-to-UK.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/01.-Accession-Protocol-of-the-United-Kingdom-to-the-CPTPP.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/02.-Annex-2-D-Tariff-Schedule-of-the-United-Kingdom-General-Notes.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/04.-Appendix-A-Tariff-Rate-Quotas-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/05.-Annex-12-A-The-United-Kingdoms-Schedule-of-Commitments-for-Temporary-Entry-for-Business-Persons.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/06.-Annex-15-A-Schedule-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/07.-Annex-I-Schedule-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/08.-Annex-II-Schedule-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/09.-Annex-III-Schedule-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/03.-Tariff-Schedule-of-the-United-Kingdom.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/UK-accession/NIA-Protocol-for-the-Accession-of-the-United-Kingdom-to-the-Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-002.pdf>

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis; and
- 9(2)(j): to avoid prejudice to negotiations.

Proactively Released by the Minister for Trade and Export Growth



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Economic Development Committee: Period Ended 30 June 2023

On 3 July 2023, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 30 June 2023:

Proactively Released by the Minister for Trade and Export Growth

DEV-23-MIN-0130

United Kingdom's Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
Portfolio: Trade and Export Growth

CONFIRMED

Diana Hawker
Acting Secretary of the Cabinet

Proactively Released by the Minister for Trade and Export Growth



Cabinet Economic Development Committee

Minute of Decision

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United Kingdom's Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Portfolio Trade and Export Growth

On 28 June 2023, the Cabinet Economic Development Committee (DEV):

1 **noted** that on 11 August 2021, DEV:

- 1.1 agreed a mandate for negotiating the terms and conditions of the United Kingdom's (UK) accession to the CPTPP in respect of outcomes for Goods, Services, Investment, Movement of Business Persons, and Government Procurement;
- 1.2 authorised a group of Ministers (delegated Ministers) to approve the terms and conditions of the UK's accession to the CPTPP, so long as those terms and conditions did not significantly depart from the agreed parameters;
- 1.3 noted that the Minister for Trade and Export Growth will report back at the conclusion of the accession process;

[DEV-21-MIN-0177]

2 s9(2)(i)

3 **noted** that the outcomes of the negotiations achieve New Zealand's objectives and are within the Cabinet-approved mandate, as updated through the supplementary submissions to delegated Ministers;

4 **approved:**

- 4.1 the text of the *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (attached as Annex 3 to the paper under DEV-23-SUB-0130);
- 4.2 the text of the treaty-level side letter between New Zealand and the UK to exclude Investor-State Dispute Settlement (ISDS) between New Zealand and the UK (attached as Annex 1 to the paper under DEV-23-SUB-0130);

- 4.3 the text of the treaty-level side letter between New Zealand and the UK regarding patent grace periods (attached as Annex 2 to the paper under DEV-23-SUB-0130);
- 4.4 the content of the National Interest Analysis (NIA) (attached as Annex 4 to the paper under DEV-23-SUB-0130);
- 5 **authorised** the Minister of State for Trade and Export Growth, in consultation with relevant portfolio Ministers where appropriate, to approve any changes to the text of the Protocol, the side letters and the National Interest Analysis (attached as Annexes 1 to 4 to the paper under DEV-23-SUB-0130 respectively) that do not materially alter their content, between now and public release at signature;
- 6 **authorised** signature of the:
 - 6.1 *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership*;
 - 6.2 treaty-level side letter between New Zealand and the UK to exclude ISDS between New Zealand and the UK;
 - 6.3 treaty-level side letter between New Zealand and the UK regarding patent grace periods;
- 7 **noted** that CPTPP parties and the UK are working towards signing the Protocol on 16 July 2023, in conjunction with the 7th CPTPP Commission meeting hosted by New Zealand in Auckland;
- 8 **agreed** that the text of the Protocol, along with the NIA, the paper under DEV-23-SUB-0130 and the associated Cabinet minute, be made public no later than the time of signature with redactions where necessary;
- 9 **agreed**, following signature, to present the text of the Protocol, the side letters and the National Interest Analysis to the House of Representatives for Parliamentary treaty examination in accordance with Standing Order 405;
- 10 **noted** that to implement New Zealand's obligations under the Protocol will require amendments to the specified legislation set out in paragraph 73 of the paper under DEV-23-SUB-0130;
- 11 **invited** the Minister for Trade and Export Growth and relevant portfolio Ministers to issue drafting instructions to the Parliamentary Counsel Office to draft amendments to the Tariff (Specified CPTPP Parties) Order 2018 and the Overseas Investment Regulations 2005, to implement New Zealand's obligations under the Protocol;
- 12 **noted** that the Protocol will enter into force in accordance with its entry into force provisions, which is likely to be by late 2024;
- 13 **noted** that financial costs to implement the Protocol will be met from the baselines of the relevant agencies, including Vote Foreign Affairs.

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Willie Jackson
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Rino Tirikatene
Hon Dr Deborah Russell
Hon Rachel Brooking
Hon Jo Luxton

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Proactively Released by the Minister for Trade and Export Growth

Office of the Minister for Trade and Export Growth

Cabinet Economic Development Committee (DEV)

United Kingdom's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Proposal

This paper proposes Cabinet:

- 1 approves the final outcomes of the *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* ("the Protocol") and authorises signature of the Protocol;
- 2 approves the final text of and authorises the signature of a side letter to the Protocol to exclude Investor-State Dispute Settlement (ISDS) between New Zealand and the UK;
- 3 approves the final text of and authorises the signature of a side letter to the Protocol between New Zealand and the UK covering patent grace periods; and
- 4 approves the National Interest Analysis (NIA) for the Protocol and, following signature, presentation of the Protocol and NIA to the House of Representatives for parliamentary treaty examination.

Relation to government priorities

- 5 Expansion of CPTPP, and the UK's accession in particular, supports the Government's Trade Recovery Strategy 2.0, which commits to continuing to invest in building free trade architecture, both through the negotiation of new agreements, and implementation of those agreements already concluded.

Executive Summary

- 6 CPTPP is the world's premier open plurilateral free trade agreement, with high standards and broad membership. There are currently 11 members, including New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam. Together these economies represent around 13 percent of global gross domestic product – a total of over NZ\$18 trillion.
- 7 CPTPP is also a cornerstone in the Government's current effort to create strategic depth in our trade relationships. Recent experiences have highlighted the need to have a well-diversified range of trading partners to build resilience while responding to shocks such as COVID-19 shutdowns, supply chain disruptions, and geopolitical tensions. New Zealand's two-way goods trade with the CPTPP bloc (28 percent) exceeds that of trade with China and Hong Kong (26 percent). The UK's accession to CPTPP will increase CPTPP's share to 30% (\$46 billion).
- 8 Given CPTPP's importance, New Zealand has always supported its expansion through accession by those economies willing to meet the Agreement's high standards. Accessions increase the value of the Agreement to New Zealand business, advance New Zealand's goal of strengthening rules-based trade in the Indo-Pacific,

and demonstrate the ongoing importance of the Agreement as a critical piece of regional trade architecture.

9 New Zealand has specific trade policy and geostrategic interests in the UK's accession to CPTPP. As a G7 member, the world's sixth-largest economy, and as a country committed to high standards and rules-based trade, accession to CPTPP embeds the UK into regional architecture, which will significantly benefit the CPTPP, regional prosperity more broadly, and further strengthen the rules-based trading system upon which we rely.

10 The UK's accession to CPTPP needs to be considered in the context of the NZ-UK FTA. The UK knew a high-quality bilateral FTA was a necessary precursor to ^{s9(2)(j)} CPTPP membership, ^{s9(2)(j)}

eliminating 100 percent of UK tariffs for New Zealand exports over time, with 99.5 percent of current trade enjoying duty-free access from entry into force. As a consequence New Zealand agreed, as part of the NZ-UK FTA package, that it would not seek additional tariff liberalisation through the UK's accession to CPTPP. The benefits to New Zealand of the UK accession to CPTPP therefore are primarily strategic, in having a likeminded G7 economy within CPTPP and embedded in regional architecture.

11 The proposed terms of the UK's accession to CPTPP are in line with the original Cabinet mandate [DEV-21-MIN-0177] and consistent with the outcomes in the bilateral NZ-UK FTA. ^{s6(a), s9(2)(j)}

12 The quality of the UK's overall package of outcomes in the NZ-UK FTA, ^{s6(a), s9(2)(j)} outweighed concerns about impact from any dilution of access to Canada, Japan and Mexico. In addition, when the United States withdrew from the Trans Pacific Partnership (TPP), quota volumes were not revised downwards ^{s9(2)(j)}

13 Importantly, the UK's accession process has set an appropriate precedent for future aspirants given the robust compliance exercise that was undertaken and the overall quality of the UK's offers. It will also demonstrate to other aspirant economies that there is a credible and functioning pathway to accession. ^{s6(a)}

This is important as the continued expansion of the Agreement is in

New Zealand's commercial and strategic interests, ^{s6(a)}

- 14 Efforts are now underway to prepare for signing the UK's accession protocol when Ministers meet for the 7th CPTPP Commission Meeting in Auckland on 16 July 2023.
- 15 This paper also seeks approval to present the Protocol and NIA to the House of Representatives for parliamentary treaty examination in accordance with Standing Order 405.
- 16 The Protocol will enter into force after the UK and all the CPTPP Parties have ratified it, or after 15 months if a majority of CPTPP Parties have ratified it. The side letters between New Zealand and the UK will enter into force on the date that the Protocol enters into force as between New Zealand and the UK.

Background

- 17 CPTPP is open to accession by any economy that can demonstrate it can meet its high standards and rules. In addition to the UK, six economies have lodged formal accession requests to join CPTPP: China, Chinese Taipei, Ecuador, Costa Rica, Uruguay, and Ukraine.

Accession process

- 18 The UK's accession request was received on 1 February 2021, and on 2 June 2021 the CPTPP Commission established an Accession Working Group (AWG), chaired by Japan, to examine the UK's ability to comply with CPTPP rules and facilitate negotiations with the UK.
- 19 The focus of the accession process was to determine whether the UK could comply with all of CPTPP's existing rules, and to conduct negotiations to ensure the UK's market access commitments meet the quality expectations of CPTPP members. The Agreement itself was not open for renegotiation and the CPTPP text has not altered as a result of the UK's accession. The Accession Protocol is a treaty in its own right, which sets out the terms and conditions of the UK's accession to CPTPP (see annex 3).
- 20 On 10 August 2021, the Cabinet Economic Development Committee agreed a mandate for negotiating the terms and conditions of the UK's accession to CPTPP [DEV-21-MIN-0177] and authorised the Prime Minister, Deputy Prime Minister, Minister of Finance, Minister for Trade and Export Growth, Minister of Agriculture and any relevant portfolio Minister(s) as delegated Ministers to approve the terms and conditions of the UK's accession on the basis that they do not significantly depart from the parameters agreed by Cabinet.
- 21 Negotiations were conducted with the UK from 2021 to 2023. On 29 March 2023, Parties confirmed that the UK's final offers were in line with the CPTPP benchmarks on goods, investment, cross-border trade in services, financial services, temporary entry for business persons, and government procurement.

- 22 The drafting and legal verification of the UK accession protocol was completed on 31 May 2023.

Strategic and Economic Drivers

- 23 The UK's accession to CPTPP advances the government's priority to pursue high quality and comprehensive trade agreements that diversify trade relationships. The inclusion of the UK into CPTPP provides another pathway for New Zealand exporters and business people to access the UK market, providing useful additional flexibility and more options for diversification.
- 24 As a G7 member, the world's sixth-largest economy, and as a country committed to high standards and rules-based trade, the UK's membership will bring benefits to CPTPP Parties and support the growing prosperity of our region.
- 25 New Zealand places great importance on international rules based trade at a time of rising living costs, protectionism, and supply chain fragility – the UK is a likeminded partner in this regard. The UK's accession to CPTPP is an important outcome for New Zealand that firmly embeds the UK in the region.
- 26 Trade makes a significant contribution to New Zealand's economic performance: one in four jobs depend on exports of goods and services¹. FTAs like CPTPP help New Zealand exporters to remain competitive by providing access into larger markets, enabling companies to benefit from economies of scale and specialise in the areas in which they have an advantage, and improving the domestic economy by allowing for access to more knowledge and resources, improved technology and foreign investment, which help boost productivity and income for New Zealand firms.
- 27 The principal gains for New Zealand in the UK's accession to CPTPP are:
- 27.1 **UK inclusion in regional architecture:** UK inclusion in CPTPP will advance New Zealand's wider goal of encouraging major powers to engage constructively in regional mechanisms in the Indo-Pacific. It is in New Zealand's interests to encourage and support greater economic and political engagement in our region by an influential global partner such as the UK.^{s6(a)}
- 27.2 **Protecting New Zealand's interests:** Important provisions for New Zealand in the original CPTPP text remain untouched by the UK's accession, including the Treaty of Waitangi exception. The UK has also agreed that Investor State Dispute Settlement (ISDS) will be carved out bilaterally via a side letter (for which approval is sought in this paper).

¹ Statistics New Zealand Household Labour Force Survey (HLFS) data, June 2018.

27.3 **Increasing options for New Zealand business:** UK accession to CPTPP advances the government's priority to pursue high quality and comprehensive trade agreements that diversify trade relationships. The inclusion of the UK into CPTPP provides another pathway for New Zealand exporters and business people to access the UK market, providing useful additional flexibility and more options for diversification.

28 The UK's accession to CPTPP does not introduce significant additional market access over and above the NZ-UK FTA. This is because the NZ-UK FTA and the UK's accession to CPTPP were concluded in quick succession and the outcomes of the two agreements form a package.

Outcomes in the UK Accession Protocol

29 The Accession Protocol is a treaty in its own right, which sets out the terms and conditions of the UK's accession to CPTPP. These terms and conditions align with the existing CPTPP text for the most part, however, there are additional elements, and specific points of deviation relating to the Windsor Framework on Northern Ireland and Intellectual Property Grace Periods in the Protocol. There are also specific elements of the UK's accession that directly impact New Zealand as a CPTPP Member. These are all set out below.

Goods access into the United Kingdom

30 The specific economic effects of the UK's accession to CPTPP (i.e. over and above the impacts of the NZ-UK FTA) are summarised as follows:

30.1 For traders importing from the UK into New Zealand, the tariff outcomes will be identical to the NZ-UK FTA from day one of the UK's accession to CPTPP: i.e. full removal of all import duties at the New Zealand end. As a result, there will be no additional impact from the UK's CPTPP accession on UK imports into New Zealand.

30.2 For traders exporting from New Zealand to the UK, there will be some small differences under the two agreements during the transition to the full elimination of tariffs. The UK's CPTPP tariff schedule provides better transitional outcomes for New Zealand than the NZ-UK FTA on 1.5 percent of tariff lines, through eliminating tariffs immediately upon UK accession or over a shorter transition period than provided for in the NZ-UK FTA.

30.2.1 This covers products such as certain fruits and vegetables, some processed food, cat and dog food, and certain fish and agricultural products. New Zealand trade on these tariff lines into the United Kingdom averages NZ\$800,000 per year.² Exporters trading on these tariff lines will be able to access a lower tariff under CPTPP than under the NZ-UK FTA for a short period until tariffs are also phased out under the NZ-UK FTA.

² UK imports from New Zealand, pre-COVID (2017-2019 average).

- 31 Once the UK's accession to CPTPP enters into force between the UK and New Zealand, New Zealand traders will have the choice of using either the NZ-UK FTA or CPTPP. This may provide useful additional flexibility for some traders, for example should they wish to use inputs from multiple CPTPP Parties, which is a key benefit of CPTPP.
- 32 In addition, by harmonising rules across a large group of economies, CPTPP has the potential to reduce compliance costs over time for New Zealand businesses trading in these markets. CPTPP contains a range of mechanisms that provide a platform for enhanced regulatory cooperation to facilitate trade and reduce associated transaction costs in both goods and services trade and for cooperating on a range of other trade-related issues such as customs procedures. Over time, CPTPP will remove unnecessary duplication, reduce costs, and foster greater business opportunities. This will be particularly beneficial for small to medium sized businesses, which can least afford burdensome compliance costs.

Impact of UK accession on existing CPTPP Parties' quotas

- 33 The UK's CPTPP accession will give it access to CPTPP Parties' existing quotas – most notably from New Zealand's perspective Canada, Japan and Mexico's dairy quotas. This means that existing CPTPP dairy exporters – chiefly New Zealand, but also Australia – will face additional competition from the UK when accessing these quotas. This may ultimately dilute existing exporters' access to these markets for quotas that are highly subscribed, and where the UK is a competitive exporter ^{s9(2)(i)}
- 34 The actual commercial impact of the UK's access to these quotas on New Zealand's existing access will be dependent on a number of factors, including competitiveness, commercial relationships, prioritisation of export opportunities, etc., but officials assess the impact could be approximately NZ\$20 million per year across CPTPP quota markets ^{s9(2)(i)}

35 ^{s9(2)(i)}

the quotas ^{s9(2)(i)} were not revised downwards with the advent of the CPTPP without the United States.

- 36 While it is unfortunate that New Zealand and other CPTPP dairy exporters will have to share access to the existing dairy quotas with the UK after it accedes to CPTPP, the likely commercial impact is small when assessed against the commercial market access gains secured into the UK through the package of outcomes in the NZ-UK

^{s9(2)(i)}

FTA and the UK's CPTPP accession, including for the dairy sector, which benefits from tariff elimination on all dairy products within a maximum of five years (i.e. by 1 January 2028).

37 s6(b)(i)

38 s6(a), s9(2)(i)

39

40

41 The issue of how existing quotas should be handled in the context of subsequent accessions to the Agreement remains a live issue, which Parties have agreed to discuss in future.

Cross-Border Trade in Services and Investment

42 The inclusion of the UK into CPTPP provides another pathway for New Zealand services suppliers and business people to access the UK market. The alignment of the UK's commitments and market access schedules with CPTPP members gives services providers operating in CPTPP markets greater certainty and predictability, making it easier for them to identify new opportunities in the UK, allowing them to diversify and hedge against over-reliance on a small number of markets. Once the UK joins

CPTPP, it will become easier for New Zealand services exporters, such as providers of professional, business, education, environmental, transportation and distribution services, to identify and take up new opportunities in the UK market and increase their competitiveness and profitability.

- 43 Similarly, having the UK joining CPTPP will benefit New Zealand investors, providing improved conditions when making investments and doing business in the UK across a range of sectors, including our agricultural, manufacturing and natural resource industries. Improved conditions for investment are also important for many New Zealand goods and services exporters, who increasingly look to undertake activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service).
- 44 New Zealand has already secured high quality commitments in our bilateral FTA with the UK. Through CPTPP, New Zealand is able to benefit from further improved commitments for services and investment in certain areas, including audio-visual services, which, for the first time, the UK has included within its services and investment commitments. While the UK has carved out its audio-visual sector from all reservable disciplines, the sector is still subject to a number of non-reservable disciplines including transparency, minimum standard of treatment, expropriation and denial of benefits obligations. This is an improvement from the NZ-UK FTA, which carved the audio-visual sector entirely out from the agreement.
- 45 Similarly, we are able to benefit from a narrower Most-Favoured Nation (MFN) reservation from the UK than what we were able to achieve bilaterally in the UK FTA. The CPTPP reservation preserves the UK's ability to enter into economic integration arrangements without passing on preferential treatment to CPTPP Parties, but limits the scope of the reservation to European countries only.
- 46 New Zealand's obligations in the Cross-Border Trade in Services and Investment chapters do not change with the UK's entry into CPTPP, as no changes were made to the chapter text or New Zealand's market access schedules. The side letter with the UK (discussed further at paras 59-63) carves out the application of Investor-State Dispute settlement (ISDS) and addresses a key disadvantage that was identified in the original CPTPP. This treaty-status legally binding side letter with the UK will mean that no investor of the UK will have recourse to ISDS against New Zealand under CPTPP and vice versa. This is not just an advantage in terms of reducing New Zealand's legal risk, but it also expands the existing precedent for New Zealand's policy to exclude ISDS from future trade agreements and for future accessions to the CPTPP.

Financial Services

- 47 New Zealand already has an open and transparent financial services policy regime, and its obligations in the Financial Services Chapter do not change with the UK's entry into CPTPP. The UK's CPTPP financial services commitments broadly replicate the high quality commitments New Zealand was able to secure in the bilateral FTA. We are able to benefit from meaningful improvements in CPTPP in regards to treatment the UK may provide its future free trade agreement partners. If the UK agrees in a future FTA to provide preferable treatment to financial service

providers from a third country beyond that which it offers in CPTPP, New Zealand will be entitled to receive that preferential treatment so long as we reciprocate.

Temporary Entry for Business Persons

- 48 The UK's accession to CPTPP will provide service suppliers and independent professionals seeking opportunities with additional pathways to the UK market, and conversely, will allow New Zealand companies to access speciality services and skilled professionals from the UK who can contribute to upskilling our domestic labour force.
- 49 With the UK's accession to CPTPP, New Zealand has the opportunity to improve the high quality temporary entry access to the UK already secured under our bilateral FTA. This is because many of the UK's commitments – for example in the categories of Independent Professionals, Investors and Contractual Service Suppliers – are made on a reciprocal basis, and in some instances the UK's commitments go beyond what is offered in the NZ-UK FTA.

Government Procurement

- 50 The UK's government procurement market is substantial, totalling approximately NZ\$600 billion or a third of all its public expenditure each year⁴. Access to this sizeable market on the terms set out in the Government Procurement Chapter text represents a significant addition to the overall value of the Government Procurement Chapter to both existing CPTPP Parties and other potential accession candidates.
- 51 The UK's market access commitments reflect the commitments the UK has made in the WTO Agreement on Government Procurement (GPA), often referred to as a high standard international benchmark for government procurement. As such, the UK's accession provides a good government procurement precedent for future accession candidates by maintaining the expectation of comprehensive market access coverage and the high standards set out in the GP chapter text.
- 52 However, New Zealand does not gain any additional Government Procurement market access above that already in place through our membership in the WTO GPA or the New Zealand-UK Free Trade Agreement.

State-owned Enterprises

- 53 The UK's accession to CPTPP will ensure New Zealand companies and investors can operate on an equal footing with the UK and other CPTPP state-owned enterprise (SOE) or designated monopoly regardless of whether the SOE or designated monopoly is operating in a Party's territory or in the market of a non-party.
- 54 It will create further assurances that the UK's state-owned entities must operate in a manner to avoid adverse effects. New Zealand companies or investors will have greater access to information on UK SOEs and designated monopolies through the CPTPP publically available SOEs list, enabling New Zealand exporters to make more

⁴ Transforming Public Procurement: Government response to consultation, December 2021, www.gov.uk/official-documents.

informed decisions about operating in the UK or competing with UK SOEs or designated monopolies in CPTPP markets.

UK-Specific Exceptions and Definitions

- 55 The definitions and scope provisions in the Protocol will govern how CPTPP will apply to the UK's devolved administrations in Northern Ireland, Scotland and Wales as well as the UK's Crown Dependencies (the Baliwick of Guernsey, the Baliwick of Jersey, and the Isle of Man, which are all part of the UK's customs territory). The provisions will apply more rules on the UK's devolved administrations and Crown Dependencies than the NZ-UK FTA.
- 56 Parties agreed to a cross-cutting exception that will allow the UK to adopt or maintain measures relating to the Northern Ireland Protocol (part of the UK's Withdrawal Agreement with the EU) that would be inconsistent with CPTPP, provided that such measures do not discriminate against a Party or constitute a disguised restriction on trade. While the scope of the exception is narrower in CPTPP than the NZ-UK FTA
- ^{s6(a)}

Treaty of Waitangi

- 57 The Treaty of Waitangi exception remains unchanged from the existing CPTPP as a result of the UK's accession to CPTPP and provides clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. The exception continues to apply in respect of matters covered by CPTPP, which includes trade in goods and services, investment, environment, intellectual property and all other matters dealt with in the existing CPTPP and the UK's Accession Protocol.
- 58 In its third and final Wai 2522 report, the Waitangi Tribunal found that in negotiating the CPTPP E-commerce Chapter, the Crown breached the Tiriti o Waitangi/Treaty of Waitangi ("Treaty") principles of partnership and active protection for the taonga that is mātauranga Māori. While the Crown is responding to this finding in other ways, the CPTPP accession process did not provide an opportunity to reopen the CPTPP text and, accordingly, this was not part of the accession negotiations with the UK. This is consistent with the Tribunal's recognition that opportunities to seek changes internationally are limited and difficult. However, officials have begun the process of awareness raising with CPTPP partners on issues relating to Wai 2522, including through the discussions on the CPTPP General Review and through the Inclusive Trade Action Group (ITAG) Review of CPTPP, and will also pursue opportunities that may arise in the context of our CPTPP chairing role in 2023. Notwithstanding this, there is likely to be concern expressed publicly from some Māori groups on this issue (see paragraph 85).

Side letters

Investor State Dispute Settlement

- 59 ISDS is a dispute resolution mechanism that allows foreign investors to pursue remedies directly against a State before an international arbitral tribunal in relation to breaches of a treaty's investment provisions. The ISDS mechanism in CPTPP applies to the Investment chapter, and limited aspects of the Financial Services chapter which relates to investment in financial services. The ISDS mechanism, while providing recourse for aggrieved New Zealand investors in CPTPP economies, has the reciprocal potential consequence of an increased exposure of the New Zealand Government to ISDS claims. New Zealand's negotiating approach since 2017 is to oppose the inclusion of ISDS provisions in future FTA negotiations.
- 60 In concluding the CPTPP, it was not possible to re-open the text to fully exclude ISDS provisions from the agreement, and failing this New Zealand sought to render the ISDS provisions non-operational through side letters with our respective CPTPP partners. At that time, the mandate agreed by Cabinet was that negotiators should "seek to make ISDS voluntary for New Zealand through a series of reciprocal bilateral side agreements where possible" [CAB-17-MIN-0488 refers].
- 61 Consistent with this policy, New Zealand has agreed a treaty-status side letter with the UK to carve out ISDS, similar to those concluded with original CPTPP signatories, Australia, Brunei Darussalam, Chile, Malaysia, Peru and Viet Nam. This is also consistent with the exclusion of ISDS from the bilateral New Zealand – UK Free Trade Agreement and means we will not have any exposure to ISDS from UK investors as we have no other ISDS provisions with the UK.
- 62 The inclusion of ISDS provisions in the original Trans-Pacific Partnership (TPP) Agreement was the subject of strong public concern and protest. Officials consider that there remains widespread public support for efforts to limit the Government's risk of ISDS exposure, and public consultations in the context of the New Zealand-United Kingdom FTA reiterated these concerns regarding ISDS. Entering into the side letter with the UK will further limit New Zealand's ISDS exposure under CPTPP beyond the 80 percent of investment under the agreement which is already carved out, and sets a helpful precedent for future accessions.
- 63 The ISDS side letter text reflects the approach taken in the side letter New Zealand agreed with Peru and Chile under CPTPP and is a complete exclusion. This is New Zealand's preferred model. It is the most direct and straightforward approach to carving out the ISDS provisions, so these do not apply for investors and investment between New Zealand and the UK. Alternatives, such as voluntary application of ISDS, have only been agreed to where complete exclusion has not been possible - as was the case with Viet Nam, Malaysia and Brunei in CPTPP (please see annex 1).

Patent Grace Periods

- 64 Because patents protect novel or new inventions, normally a patent application will be rejected if the relevant invention was already published, for example in a scientific journal, before the patent application was made. CPTPP parties must provide an exemption to this rule in cases where the prior publication was made by the inventor up to 12 months before the patent application was made. This is known as a patent grace period. The UK is a member of the European Patent Office (EPO), which does not apply CPTPP-consistent grace period rules. As a result, CPTPP Parties have agreed to provide the UK an open-ended transition period during which it will be excused from the CPTPP grace period obligation while it also pursues harmonisation of the European Patent Office grace period rules with CPTPP. This will be given effect by a series of bilateral side letters between CPTPP Parties and the UK.
- 65 We have heard from New Zealand patent holders and their representatives who are supportive of the UK receiving a transition period for this obligation. They benefit from the UK being a member of the EPO, in that it allows them to file centrally to protect their patents in Europe, saving them time and simplifying the application process. As the advantages of having a 12 month grace period are hard to quantify, it may be that for some New Zealand inventors, the cost savings of the UK being a member of the European Patent Office are far greater than any benefit that a grace period might provide (see annex3)

Implementation

- 66 The Protocol for the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the Protocol) sets out the conditions for the Accession of the United Kingdom of Great Britain and Northern Ireland (UK) to the CPTPP, which was signed on 8 March 2018 and entered into force on 30 December 2018.
- 67 The Protocol is a treaty in its own right, which sets out the terms and conditions of the UK's accession to CPTPP. When the Protocol enters into force the UK will become a Party to CPTPP and the Protocol (including its schedules) will become an integral part of CPTPP. In other words, the provisions of the Protocol complement and are to be read alongside the provisions of CPTPP.
- 68 The Protocol is likely to enter into force by late 2024 in accordance with the entry into force provisions of the Protocol.
- 69 The ISDS and grace periods side letters are treaty level-agreements that will enter into force on the date of entry into force of the Protocol as between New Zealand and the UK.
- 70 The Protocol and side letters do not apply to Tokelau, the Cook Islands or Niue. Therefore, consultation regarding the Protocol with Tokelau, the Cook Islands or Niue is not required.

Financial Implications

- 71 Total duties paid on goods of declared UK origin averaged NZ\$19.5 pre-COVID (2017-2019). However, under the NZ-UK FTA, New Zealand fully liberalised 100% of tariff lines at entry into force, covering all UK-originating goods exported to New Zealand. Therefore, the UK's CPTPP accession will not impact New Zealand tariff revenue as there will be no remaining tariffs on UK-originating goods.
- 72 The implementation of the Protocol will have some minor financial implications that are expected to be met from within departmental baselines.
- 72.1 The costs of a signing event during the 7th CPTPP Commission meeting in Auckland in July 2023 will be met from departmental baselines.
- 72.2 There may be some resourcing implications from some of the new obligations imposed by the UK's accession to CPTPP, which we expect will be covered through existing FTEs and will not require additional resourcing. As far as possible, resourcing implications will be minimised by looking for efficiencies through combining with existing activities or mechanisms.

Legislative Implications

- 73 In order to implement New Zealand's obligations under the Protocol, the following amendments are required to secondary legislation:
- 73.1 amendments to the Tariff (Specified CPTPP Parties) Order to declare the UK to be a specified party to CPTPP for the purposes of the Tariff Act 1988, to enable the application of the preferential tariff rates agreed in CPTPP;⁵ and
- 73.2 amendments to the Overseas Investment Regulations 2005 to increase from \$100 million to \$200 million the monetary threshold for investments by UK non-government investors in "significant business assets" in New Zealand.

Impact Analysis

Regulatory impact statement

- 74 The Treasury's Regulatory Impact Analysis team has determined that the amendments proposed to the Tariff (Specified CPTPP Parties) Order 2018 and the Overseas Investment Regulations 2005 are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it would substantively duplicate the extended National Interest Analysis.

Climate Change and the Environment

- 75 The Protocol will not inhibit the New Zealand Government's ability to regulate for environmental protection. CPTPP (as amended by the Protocol) contains general exceptions that are consistent with those provided for in existing international

⁵ The commencement of the amendment order would also mean that regulation 51ZZF of the Customs and Excise Regulations 1996 would apply to the UK. That regulation prescribes rules of origin, including product-specific rules and other applicable requirements, for goods imported to New Zealand from parties to CPTPP.

agreements (GATT and GATS), which are designed to provide policy space for governments to regulate for legitimate public policy purposes, such as the protection of natural resources and the protection of human, animal or plant life or health. The Protocol will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a manner that would constitute a disguised restriction on trade.

- 76 The Ministry for the Environment's Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights

- 77 The Protocol does not include any provisions that are inconsistent with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand.

Consultation

- 78 The following departments and agencies have been consulted: the Ministry of Business, Innovation and Employment, Ministry for Primary Industries, the Treasury, Customs, Te Puni Kōkiri, New Zealand Qualifications Authority, Ministry of Education, the Department of Prime Minister and Cabinet, Ministry for Environment, and the Reserve Bank of New Zealand.
- 79 The Government has engaged with the public, Māori and business on CPTPP expansion and the UK's accession specifically. The focus of the government's engagement has been to:
- 79.1 Outline the process, scope and timeframes for the negotiation, and update on progress as the negotiations progressed.
 - 79.2 Outline and seek feedback on the reasons why New Zealand is engaging in negotiations on the UK's accession to CPTPP, including the potential benefits.
- 80 In line with the government's Treaty Partner obligations and 'Trade for All' policy, from 29 March-2 May 2021, MFAT conducted a consultation process to seek the public's views on priority interests and potential concerns regarding accession of any new members to CPTPP.⁶ The public consultation process in 2021 resulted in fifty-four full submissions and over 170 social media comments were received, with submitters including individuals, academics and industry bodies.

Treaty Partner Engagement

- 81 The level of Treaty partner engagement throughout negotiations has been informed by the interests and capacity of the Treaty partner representative groups the Ministry of Foreign Affairs and Trade (MFAT) engages with, including Ngā Toki Whakarururanga, Te Taumata, and the Federation of Māori Authorities (FoMA).

⁶ <https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/CPTPP-Consultation-Outcome-Summary-Final.pdf>

- 82 Treaty partner interest and engagement in the UK CTPPP accession negotiations was proportionate to the fact the UK's accession to CPTPP does not change the CPTPP text and, given the understandings reached as part of the NZ-UK FTA, does not significantly impact on market access between New Zealand and the UK.
- 83 Specific areas of trade interest to Treaty partners include the Treaty of Waitangi exception clause, E-commerce and investment. The Treaty of Waitangi clause and CPTPP E-commerce provisions were outside the scope of the UK Accession process. On investment, New Zealand secured a side-letter with the UK so that ISDS will not apply between us under CPTPP.
- 84 Te Taumata strongly supports the UK accession to CPTPP noting in particular the benefits to Māori exporters of the market access to the UK market secured across the package of NZ-UK FTA and UK CPTPP accession outcomes
- 85 Ngā Toki Whakarururanga's interest in the UK accession centres on the Wai 2522 outcome on the E-commerce chapter of CPTPP. Ngā Toki Whakarururanga remains concerned that the UK's accession to CPTPP would "expand the breaches" found by the Tribunal by giving an additional avenue for CPTPP rules to apply between the UK and New Zealand even if the review in the Digital chapter of the NZ-UK FTA leads to increased protections for Māori data in that agreement. However, as explained in para 58 above, as the UK accession process does not change in any way CPTPP rules it is not possible to make the changes to the E-commerce chapter that Ngā Toki Whakarururanga would prefer. ^{s9(2)(j)}

Communications

- 86 On 31 March 2023, CPTPP Ministers and the UK held a virtual ministerial meeting to announce substantial conclusion of the UK accession process. It is intended that the Protocol will be signed by CPTPP Ministers and the UK on 16 July 2023, in conjunction with New Zealand's hosting of the 7th CPTPP Commission meeting in Auckland.

Proactive Release

- 87 This paper will be proactively released within 30 business days of the signing of the Second Protocol, with redactions as necessary, for example to protect New Zealand's leverage in other FTA negotiations.

Recommendations

The Minister for Trade and Export Growth recommends that the Committee:

- 1 **note** that on 11 August 2021, the Cabinet Economic Development Committee agreed a mandate for negotiating the terms and conditions of the United Kingdom's accession to CPTPP in respect of outcomes for Goods, Services, Investment, Movement of Business Persons, and Government Procurement [DEV-21-MIN-0177];
- 2 s9(2)(i)
- 3 **note** the outcomes of negotiations achieve New Zealand's objectives and are within the Cabinet-approved mandate, as updated through the supplementary submissions to delegated Ministers;
- 4 **approve** the:
 - 4.1 text of the *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (attached as Annex 3);
 - 4.2 text of the treaty-level side letter between New Zealand and the UK to exclude Investor-State Dispute Settlement (ISDS) between New Zealand and the UK (attached as Annex 1);
 - 4.3 text of the treaty-level side letter between New Zealand and the UK regarding patent grace periods (attached as Annex); and
 - 4.4 content of the National Interest Analysis (NIA) (attached as Annex 4);
- 5 **authorise** the Minister of State for Trade and Export Growth, in consultation with relevant portfolio Ministers where appropriate, to approve any changes to the text of the Protocol, the side letters and the NIA (attached as Annexes 1 to 4 respectively) that do not materially alter their content, between now and public release at signature;
- 6 **authorise** signature of the:
 - 6.1 *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* ("Protocol");
 - 6.2 treaty-level side letter between New Zealand and the UK to exclude ISDS between New Zealand and the UK; and
 - 6.3 treaty-level side letter between New Zealand and the UK regarding patent grace periods;
- 7 **note** that CPTPP parties and the UK are working towards signing the Protocol on July 16 2023, in conjunction with the 7th CPTPP Commission meeting hosted by New Zealand in Auckland;

- 8 **agree** that the text of the Protocol, along with the NIA, this Cabinet paper and the Cabinet Minute be made public no later than the time of signature with redactions where necessary;
- 9 **agree**, following signature, to present the text of the Protocol, the side letters and the NIA to the House of Representatives for parliamentary treaty examination in accordance with Standing Order 405;
- 10 **note** that to implement New Zealand's obligations under the Protocol will require amendments to the specified legislation set out in paragraph 73 of this paper;
- 11 **invite** the Minister for Trade and Export Growth and relevant portfolio Ministers to issue drafting instructions to the Parliamentary Counsel Office to draft amendments to the Tariff (Specified CPTPP Parties) Order 2018 and the Overseas Investment Regulations 2005, to implement New Zealand's obligations under the Protocol;
- 12 **note** that the *Protocol for the Accession of the United Kingdom to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* will enter into force in accordance with the entry into force provisions of the Protocol, and that the Protocol is likely to enter into force by late 2024;
- 13 **note** that financial costs to implement the Protocol will be met from the baselines of the relevant agencies, including Vote Foreign Affairs.

Authorised for lodgement

Hon Damien O'Connor

Minister for Trade and Export Growth

Proactively Released by the Minister for Trade and Export Growth