



Digital Economy Partnership Agreement

Briefing for the Economic Development, Science and Innovation Committee

2 July 2020

Introduction

- 1 This briefing covers three inter-related parts:
 - 1) the context for the signing of the Digital Economy Partnership Agreement (DEPA);
 - 2) an overview of the DEPA and a summary of the National Interest Analysis (NIA); and
 - 3) an outline of the way ahead on the DEPA.

Context of signing the DEPA

The DEPA signing

2 At the outset, it is worth putting the DEPA into the context of New Zealand's evolving trade policy. Trade matters for New Zealand and the export sector has traditionally sustained more than half a million New Zealand jobs. It drives productivity, income and employment. The global COVID-19 situation means it is more important than ever to ensure our trade policy supports those jobs and, for this reason, a core element of our economic recovery strategy is trade.

3 Globally, digital trade is growing and creating opportunities for New Zealanders. Digital trade is especially important for the New Zealand economy, which is largely made up of small and medium sized businesses. Digital technologies help these businesses overcome the challenges of scale and distance to enter global markets that were previously only accessible to larger businesses, accelerating their growth.

4 The DEPA was signed, using digital signatures, on 12 June 2020 NZT. The use of digital signatures was necessitated by the COVID-19 travel environment, but it is a practical demonstration of the evolution of the ways of doing business. Signing trade agreements is no different. We believe this was the first international trade treaty to have been signed digitally.

The global context

5 The context of the international rules-based trading system has changed in recent years. The withdrawal of the United States from TPP was one concerning development. There have been others since then and COVID-19 has generated yet more uncertainty. As at 23 June 2020, we have seen 179 notifications to the WTO related to COVID-19.¹ These include measures restricting exports of medical equipment and medicines necessary to treat COVID-19, but also capture positive notifications (such as New Zealand's unilateral tariff reductions on a range of essential COVID-19 goods, including the 5% tariff on soap and our Joint Declaration on Essential COVID-19 goods² with Singapore).

6 All of this reinforces that we have seen the 'end of the golden weather' for international trade rules. But, we are acting through trade policy to protect New Zealand and New Zealanders' interest in the global environment. DEPA in particular acts as a:

- Bulwark against protectionism; given the trend of increasing global protectionism and ongoing assault on the rules which underpin the international trading system. The DEPA demonstrates there continues to be value in looking outward and working together.
- Safety net for the rules-based system at risk; the WTO's dispute settlement system is threatened and new rules, including on digital trade, take a long time to develop. The DEPA allows us to move more quickly.
- Instrument to protect New Zealand interest; we are a small and distant player and our exports face tariffs and non-tariff barriers that cost New Zealand exporters. The DEPA can help reduce these non-tariff and other trade related transaction costs, and facilitate digital trade.

How we got to the DEPA

7 The drivers for trade agreements can be both political and commercial. These may include both first-mover advantage incentives and defensive ones (i.e. to seek parity with competitors), as well as to drive regional economic integration in the absence of progress in the WTO negotiations. The DEPA sits squarely within both. It is one of the first trade agreements globally to focus solely on digital trade, and therefore gives New Zealand a first mover commercial and reputational advantage. Importantly, DEPA positions us to better shape and influence the progress of negotiations on digital trade issues in the WTO and elsewhere. The DEPA demonstrates to the WTO system what small states can do when they work together.

8 New Zealand's first preference is multilateralism through the WTO, OECD, APEC inter alia, but we continue to take difficult decisions on how to engage in regional economic integration outside of the multilateral frameworks. In this way, it is important that DEPA is designed to support, rather than impede, multilateralism. DEPA is therefore part of New Zealand's non-linear strategy of 'paving stones' in the Asia-Pacific. It is a working example of New Zealand's strategy of 'concerted open plurilateralism'.

¹ https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm

² <https://www.beehive.govt.nz/release/joint-ministerial-statement-singapore-and-new-zealand-covid-19-situation>

9 The concept of 'concerted open plurilateralism' involves a deliberate structured focus and emphasis by New Zealand on plurilateral processes and instruments. Concerted open plurilateralism has an explicitly global focus and hinges on three inter-related elements. First, it is an instrument open to all that can meet the standard established through the agreement – i.e. it is an 'open accession' agreement. Second, the negotiation of the instrument is undertaken in a way that supports and complements the multilateral trading system, i.e. it is a building block, not a stumbling block. This means it needs to contain WTO-plus commitments which are extended to the wider WTO membership (even if some WTO members will not be in the agreement) and is plurilateral, i.e. with as many participants as possible. Third, the plurilateral instrument should contain institutional mechanisms that ensure the agreement can be closely aligned and integrated into the WTO over time. Focusing the instrument on the WTO is an important signal of support for the multilateral trading system.

DEPA and COVID-19 Trade Recovery Strategy

10 The DEPA comes at a time of considerable disruption to international trade and supply chains due to COVID-19. The WTO's 20 April 2020 annual trade forecast in light of the large degree of uncertainty around the pandemic's severity and economic impact, set out two plausible paths: a relatively optimistic scenario in which the volume of world merchandise trade in 2020 would contract by 13%, and a pessimistic scenario in which trade would fall by 32%.³ New Zealand's immediate goal has been to bring the pandemic under control and to mitigate its negative impacts on our people, health systems and the economy. Work is also under way to implement New Zealand's trade recovery strategy, which seeks to ensure that New Zealand is in the best possible position to emerge from the COVID-19 pandemic as quickly as possible⁴.

11 COVID-19 demonstrates the value of our digital economy and digital trade.⁵ The DEPA with Singapore and Chile will encourage further growth of the digital aspects of our trading relationships. The digital economy is an opportunity for New Zealand to continue diversifying exports which will improve our resilience to possible shocks in any one exporting sector. The DEPA will assist New Zealand's COVID-19 trade recovery strategy by contributing to the revitalisation of our trade architecture. New Zealand's trade networks provide predictable rules and other mechanisms to facilitate New Zealand exports of goods and services to markets around the world.

Overview of the DEPA and NIA

New Zealand's objectives for the DEPA

12 The DEPA covers all aspects of the digital economy that might support trade in the digital era; from business and trade facilitation through to the wider trust environment and digital inclusion. In this way, it is more ambitious than the traditional subject matter

³ https://www.wto.org/english/news_e/pres20_e/pr858_e.htm

⁴ <https://www.mfat.govt.nz/en/trade/trade-recovery-strategy/trade-recovery-strategy-overview/>

⁵ WTO Information Note: E-commerce, Trade and the COVID-19 Pandemic
https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

of the e-commerce chapters in free trade agreements or the current WTO-based e-commerce negotiations. The DEPA identifies the areas where Chile, New Zealand and Singapore will be able to work together under the DEPA as a 'living agreement'. This ensures that the agreement can be updated to evolve in response to the ever-changing digital environment.

13 New Zealand's overarching objectives for the DEPA are to:

- *Co-create and shape global norms for digital trade.* This is an area that is commercially critical to small economies (in particular their SMEs) and is integral to the Government's productive, sustainable and inclusive economic strategy, as well as wider well-being objectives.
- *Create a model digital economy agreement that can act as a pathfinder for others,* raising ambition in other contexts and forums, and that can be integrated into and support processes in the WTO, OECD, APEC and elsewhere.
- *Build confidence on new economy issues* to advance and sustain a rules-based order for trade and to demonstrate the benefits of working together with others on trade policy at a time when many economies are choosing to go it alone (or bilaterally).

Benefits of the DEPA

14 The modules (or chapters) which cover the substance of the DEPA are summarised as follows:

- Business and Trade Facilitation: The DEPA promotes the adoption and use of technology to facilitate trade through paperless trading, faster customs procedures and supporting the growth of e-payments. The DEPA also promotes the use of e-invoicing across borders in the DEPA region. E-invoicing will reduce business costs by no longer requiring paper-based or printable PDF invoices to be sent and eliminating the need for manual entry of these invoices into the recipient's accounting system.
- Digital products: This module affirms existing levels of commitments relating to customs duties on electronic transmissions and protecting the integrity of cryptography.
- Data issues: The DEPA recognises importance of data and requires DEPA partners to have legal frameworks in place to protect personal information. The DEPA adds to other international discussions on privacy by setting out the principles that underpin strong protection frameworks including transparency, data quality and accountability. The Agreement affirms existing commitments on transmission of information across borders and location of computer facilities while also including a public policy safeguard.
- Wider Trust Environment: This module promotes consideration of cyber security and the safe and secure online environment.

- Business and Consumer Trust: This module makes it easier for businesses and consumers to take advantage of the opportunities digital trade presents. The DEPA includes provisions to minimise SPAM messages, protect consumers online and recognising the benefits of access and use of the internet (without including net neutrality).
- Digital Identity: The DEPA promotes cooperation to increase regional and global connectivity with respect to digital identity (e.g. national business numbers). This is a new issue for trade agreements and includes a public policy safeguard.
- Emerging Trends and Technologies: The DEPA identifies emerging areas to deepen cooperation including the financial technology (FinTech) sector, artificial intelligence, government procurement and competition policy. The DEPA is a living agreement and is able to evolve as new technologies emerge, and new challenges arise. The DEPA provides an important vehicle for us to discuss these issues with likeminded small countries.
- Innovation and the Digital Economy: This module highlights the importance of technological innovation, creativity, and technology as a means to achieve social and economic welfare. It promotes open government data, including by providing that the DEPA Parties strive towards open data to the extent a Party chooses and when information is made available to the public.
- SME Cooperation: The DEPA sets up a framework for cooperation, enabling us to test ideas and promote our businesses, particularly our SMEs, with DEPA partners. There will, for instance, be a Digital SME Dialogue held after entry into force of the agreement to promote the benefits of the DEPA.
- Digital Inclusion: The DEPA module on Digital Inclusion is the first of its kind. The DEPA Parties want to expand and facilitate digital economy opportunities, to the benefit of all people. Importantly for New Zealand, the DEPA provides a platform for enhancing cultural and people-to-people links, including between Indigenous Peoples, while preserving the ability of the Crown to meet its Treaty obligations to Māori. It is worth recording here that Te Taumata was engaged in the formation of this module.⁶ Te Taumata has already proposed specific projects to support Māori business through the DEPA, including a digital platform to distribute and promote Māori exports. How to give effect to Te Taumata's ideas will be a critical part of New Zealand's planning for implementation of the DEPA.
- Transparency: The DEPA promotes openness by requiring that laws and regulations relating to the digital economy are promptly published and made available.

⁶ Te Taumata is a unique engagement model established by Māori for engagement with the Ministry of Foreign Affairs and Trade – specifically the Trade and Economic Group (<https://www.tetaumata.com/>). It provides a dedicated platform for deeper discussion with Māori/iwi stakeholders on priority trade policy issues. Te Taumata draws on the extensive skills, experiences and connectivity of its members, who are involved in a diverse range of Māori business, international trade, academia, Treaty claims and community development. Te Taumata is chaired by Chris Karamea Insley (Te Whānau-ā-Apanui, Ngāti Porou).

- Dispute Settlement: DEPA's dispute settlement module provides efficient, fair, and transparent processes for resolving disputes between governments. The mechanism is designed to minimise the need for formal arbitration. There is no provision for an investor-state dispute mechanism.

How New Zealand meets the DEPA obligations

15 The obligations in the DEPA and associated side letters are already met by New Zealand's existing domestic legal and policy regime, and will therefore not require legislative or regulatory amendments. Some of the modules reflect New Zealand's existing commitments in other Agreements. While this, therefore, reflects a commitment to existing regulatory settings, there are exceptions and public policy safeguards that ensure New Zealand retains regulatory policy space.

16 The costs of servicing any DEPA implementation committees are expected to be met from Departmental baselines. A number of commitments in the Agreement establish mechanisms that allow for future cooperation between New Zealand, Chile, and Singapore in areas of mutual interest. Cooperation proposals are expected to be developed over time through these mechanisms.

17 The DEPA includes public policy safeguards, including to address issues such as consumer protection and the protection of personal information in the digital environment. The Agreement also takes a proactive approach towards issues such as privacy protection. For example, it requires that all Parties have a legal framework for protection of personal information. It also includes an exception that supports the protection of 'creative arts', which New Zealand sought as a priority in the negotiation.

18 As with all of New Zealand's trade agreements since 2001, the DEPA includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. This exception is identical to what we agreed in the CPTPP and in all our previous FTAs.

The way ahead on DEPA

19 The DEPA identifies the areas where Chile, New Zealand, and Singapore will be able to work together now and in the future through the DEPA as a 'living agreement.' A living agreement means that the DEPA can evolve both in membership and substance. With respect to membership, it is open to all WTO members who can meet DEPA standards, consistent with New Zealand's approach to concerted open plurilaterals. And, consistent with our view that the digital economy will continue to be regularly updated, the DEPA is able to evolve as new technologies emerge, and new challenges arise. The DEPA also provides an important vehicle for us to discuss these issues with likeminded small countries.

20 New Zealand is the depository for the DEPA. As depository, we will receive applications for future state accessions, akin to our role in CPTPP. This places New Zealand at the heart of DEPA's future evolution as a living agreement.