

28. 9. 2000

**REPORT BY THE CHAIRMAN OF THE  
STRATEGY AND RESOURCES COMMITTEE**

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**1. AGREEMENT BETWEEN NEW ZEALAND AND SINGAPORE ON  
CLOSER ECONOMIC PARTNERSHIP (CEP)**

<b>Officer responsible</b> Director of Policy	<b>Author</b> Mary Richardson
Corporate Plan Output: Policy Advice	

The purpose of this report is to outline the implications for local government of the Agreement Between New Zealand and Singapore on Closer Economic Partnership (CEP). The report seeks endorsement by the Council of a full submission on the agreement.

**BACKGROUND**

The Singapore Free Trade and Investment Agreement is a bilateral agreement between New Zealand and Singapore. This is a comprehensive agreement, covering goods, services, investment and technical barriers to trade in goods. The agreement goes significantly beyond World Trade Organisation (WTO) provisions by eliminating all tariffs, prohibiting export subsidies for all goods and expanding services commitments.

The Foreign Affairs, Defence and Trade Committee has invited written submission from the public on the agreement. It placed an advertisement in the Press on 18 September inviting submissions with a closing date of 25 September 2000 (i.e. a week's notice). The Committee allowed those that required more time to make a pro forma submission by 25 September and provide the substantive part of the submission no later than 2 October 2000.

A pro forma submission was made on behalf of the Council based on the Council's prior submission on MAI and WTO. The pro forma submission (attached) stated that the Council had concerns regarding the impact for local government of:

- The lack of proper consultation and inadequate time frame to analyse the agreement
- Removal of tariffs on all remaining imports from Singapore, including textile, clothing and footwear (TCF)
- Procurement
- Investment

These issues are discussed in more detail below.

## 1 Cont'd

### DISCUSSION

This section discusses some of the issues of relevance to the Council.

#### **Inadequate Timeframe**

As discussed above the first public notice of submissions was in Wellington newspapers on Saturday 16 September, and in others (such as Auckland and Christchurch) on Monday 18 September, yet submissions closed on 25 September.

There was provision for a one week extension (to 2 October 2000) if a pro forma submission was made by 25 September.

The agreement is 180 pages long and comprises 84 clauses and four annexes. (It has been posted on the Web over the last week.)

This timeframe does not allow adequate time to analyse the agreement.

Article 67 makes it clear that this agreement applies to regional and local government (see below). Yet local authorities were not consulted at any stage of negotiations, and Local Government New Zealand was only briefed (not consulted), at its request, shortly before negotiations were concluded. This lack of prior knowledge, combined with the short time frame for submissions, means that few, if any, regional or local authorities will have the opportunity to assess the text and its implications, let alone to prepare a considered submission and process it through the appropriate decision-making bodies.

The NZ Manufacturers' Association has endorsed steps taken by the Government to encourage wide-ranging consultation with business and industry during the negotiation of the agreement. It stated that the extent and quality of this consultation was in marked contrast with that applicable to previous arrangements. However, it also noted that there is still some way to go before consultation arrangements could be considered wholly satisfactory. It recommended that the Select Committee propose to the Government that consultation processes with business and industry be further improved and developed.

In contrast to business and industry, local government was not consulted during the negotiations. However, the Council may wish to echo the NZ Manufacturers' Association recommendation regarding improved and developed consultation processes.

## 1 Cont'd

### **Removal of tariffs on all remaining imports from Singapore, including Textiles, Clothing and Footwear**

All tariffs will be eliminated when the CEP comes into force. New Zealand will eliminate all tariffs on goods of Singapore origin, including textiles, clothing and footwear (TCF).<sup>1</sup>

The Christchurch City Council has previously opposed the move to zero tariffs on the grounds that it would impact severely our region which still depends on the fragile textiles, clothing and footwear (TCF) industries. Other industries susceptible to cheap imports may also be affected. The agreement contradicts the policy position behind the tariff freeze legislated for earlier this year.

Even though they are only for Singapore-sourced goods this time, the weak Rules of Origin (only 40% Singapore content) coupled with the externalisation of much of Singapore's production base (especially to nearby free trade zones in Indonesia) bring considerable fears they will function as a back door into New Zealand markets. Manufacturers, unions and others share the concerns expressed about the robustness of the Rules of Origin and the capacity of Customs to enforce them.

### **Procurement**

All contracts over \$125,000 must be open to Singapore on an equal basis to local companies. The competitive position of local goods suppliers is also weakened by the Rules of Origin mentioned above. Service suppliers may be competing with companies from around the world using a Singapore base for tendering.

There are important restrictions on achieving social ends in procurement (see Article 53). Local governments can not "impose seek or consider" making conditions on suppliers that would "encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements."

Similarly, local government must "use value for money as the primary determinant in all procurement decisions" (Article 49), where 'value for money' means the best available outcome for money spent in terms of the procuring agency's needs. The test of value for money requires relevant comparison of the whole of life costs and benefits relating directly to the procurement. "Whole of life costs and benefits" include fitness for purpose and other considerations of quality, performance, price, delivery, accessories and consumables, service support and disposal" (Article 48(g)).

---

<sup>1</sup> Textiles, clothing and footwear imports from Singapore are worth approximately NZ\$5 million pa

## 1 Cont'd

### Compliance

The Government must “use its best endeavours to encourage wider application” of the procurement provisions of the agreement, “in the case of regional or local governments or authorities, and in the case of procurement of services by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities”. (Article 48). Whilst the Government is not required to secure compliance, it may still decide to do so using persuasive techniques that range from consultation to legislation.

There are extensive requirements to provide information to potential suppliers. There is also a requirement to provide information to unsuccessful suppliers: “on request from an unsuccessful supplier which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.” (Article 52(4))

There are elaborate disputes procedure which suppliers may use to challenge a decision, including international arbitration (Article 54).

### Services

Part 5 of the agreement expands on those already entered into globally, through the 1994 General Agreement on Trade in Services (GATS). The list of services which New Zealand has agreed it applies to has been extended considerably from GATS, and there is agreement to work towards including all services by 2010 (Article 20 (4, 5)).

Schedules attached to the CEP set out each country’s initial commitments to liberalise services trade between them. Each country will review its schedule at least every two years, and progressively add to these initial commitments, in accordance with the APEC objective of free and open trade in services by 2010.

New Zealand has added commitments in a number of sectors including engineering services, computer and related services, transport services, dental services, environmental services, and some business services (market research, management consulting and security and investigation services).

Government procurement of services is covered by the Government procurement provisions described above. The requirement not to discriminate in favour of New Zealand service suppliers in all scheduled services (Article 18) will make it difficult for small local suppliers to compete with those from Singapore.

## 1 Cont'd

For example, the inclusion of Environmental Services means that a local authority would have to call for tenders for the work of a voluntary group carrying out recycling for a local authority if it was worth more than \$125,000, and ensure Singapore-based service companies were treated equally.

There is an obligation not to limit the access of Singapore service providers to the market for their services (by imposing numerical limitations on the size of the market for those services (Article 17)). This will, for example, prevent regional and local authorities from imposing limits on the number of waste disposal services or transport providers to the extent they are covered by the schedules.

### **Investment**

Treatment of Singaporean investors must be at least as favourable as locals (Article 29).

The definition of investment includes many permits, rights etc conferred by local bodies: “business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources” (Article 27).

Reinvestment of profits locally could not be required (Article 31).

Therefore local investors cannot be favoured over investors based in Singapore in such areas, either explicitly or in effect. For example, a Council could not favour a community trust or local government owned utility over one owned by a Singapore-based company.

An exception is “to New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations”. Note that exception applies only to individuals, not companies, trusts, etc (Annex 3.1F).

(Note that the “Singaporean” investor could be a Singapore-based subsidiary of a company from anywhere else in the world and still have the same protection (Article 27 (3b)).

For the first time, in the case of a dispute there is a provision for investor enforcement, not just enforcement by governments (Article 34). This has enormous implications that are a current major concern under the NAFTA agreement.

## 1 Cont'd

### **Enforcement of Compliance**

For other than government procurement, central government must force compliance by local government (Article 67). The Government “shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, and, in respect of trade in services under Part 5, by non-governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.”

The disputes procedure “may be invoked in respect of measures affecting the observance of this agreement taken by regional or local governments or authorities”. Such disputes (arbitral) tribunals meet in secret, and there is no right for third parties (such as local governments affected) to be represented. Regarding rulings of the disputes (arbitral) tribunal, the Government “shall take such reasonable measures as may be available to it to ensure its observance”, which may include legislation, otherwise retaliatory trade or investment action may be taken.

Central government could threaten local authority (or use financial leverage), take it to court, or legislate to stop it acting in a particular way which is claimed to be in breach of the agreement. It could possibly use Local Government Act provisions regarding local authorities acting ultra vires the powers given under the Act and any related legislation or regulations.

Local Government New Zealand has also made a pro forma submission seeking assurances from Government regarding the interpretation of “reasonable” measures

### **Future Implications**

This agreement is apparently seen as a “catalyst” for similar agreements with ASEAN, Chile, the U.S.A., Canada and other members of APEC. It should therefore be seen as considerably more than a single bilateral agreement – albeit with its own significant implications – with a relatively small economy.

The process surrounding this agreement will set a precedent for the way that other such international agreements are dealt with by Parliament. Local Government New Zealand raised a number of concerns with the Government in relation to the failed Multilateral Agreement on Investment and its implications for local authorities which remain unresolved and which relate directly to the Singapore Agreement.

## 1 Cont'd

The NZ Manufacturers' Association has raised reservations regarding "the wholesale importation of all of these provisions to existing or new arrangements". It has recommended that provisions in the agreement do not automatically become benchmarks for inclusion in future trade arrangements but are assessed on a case by case basis, in consultation with business and industry

The Government's decision to bring the treaty before Parliament and refer it to a select committee is to be welcomed. Other proposals have been made to require a fuller Parliamentary procedure leading to a Parliamentary vote on international treaties. There is also an inquiry into standing orders, including those relating to international treaty-making (submissions due 30 November 2000). Both have implications for the ability of local authorities to intervene in this area.

### **Comment**

The Canterbury Development Corporation (CDC) has endorsed the direction of this paper and stated that it is consistent with early submissions on MAI and the maintenance of apparel industry tariffs. CDC also commented on the importance of this treaty not being taken as precedent for future trade agreements. CDC made a general caution that it could not support a total anti trade liberalisation stance as New Zealand could not isolate itself from the rest of the world. Rather, a balanced trade agreement was required which enhanced the equitable balance of trade while protecting in particular issues of sovereignty and local purchasing preference options.

### **Submission**

A draft submission is attached for the Council's approval. The submission states that:

1. The Council requests an extension of the consultation timeframe with local authorities to allow time for local governments to review the proposed treaty and assess its implications.
2. The Council seeks assurances that in future local authorities will be consulted during negotiations and given sufficient time for appropriate input.
3. The Council requests that the tariff freeze legislated for earlier this year be applied to this agreement.
4. The Council requests the removal of restrictions on achieving social ends in procurement (Article 53).

**1 Cont'd**

5. The Council requests the removal of restrictions regarding conditions on suppliers that would “encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements”.
6. The Council seeks assurances that Central Government will not threaten a local authority (or use financial leverage), take it to court, or legislate to stop it acting in a particular way which is claimed to be in breach of the agreement.
7. The Council requests the exclusion from this agreement of any extension of services beyond those already in GATTS.
8. The Council requests continuation of the right to favour local investors over Singapore investors.
9. The Council requests the removal of investor enforcement (Article 34).
10. The Council recommends that provisions in the agreement do not automatically become benchmarks for inclusion in future trade arrangements but are assessed on a case by case basis, in consultation with business and industry

- Recommendation:**
1. That the Council note the pro forma submission (attachment 1).
  2. That the Council endorse the detailed submission to the Foreign Affairs, Defence and Trade Committee Secretariat (attachment 2).

The Chairman comments

I would like to offer the following additional comments for the consideration of the Council:

1. The thrust of the Council’s draft submission is not to oppose the trade agreement in general, but to draw attention to those provisions that could have an adverse impact on local government and local industry.
2. The Council’s policies on preference for local suppliers are as follows:

*That the Council adopt a policy of active preference within a small financial cost for local firms for the supply of goods and services, and actively seek out quotes from local firms for all possible supplies. (25.6.90)*



28. 9. 2000

**1 Cont'd**

*That all future tender documents be worded in such a way as to enable a comparison between New Zealand and overseas produced goods, where relevant. (19.11.90)*

3. In practice most tenders are from local firms so the issue of giving them preference does not arise. The Council has adopted a balanced, pragmatic approach, sometimes awarding a contract to a local supplier, sometimes preferring an offer from an overseas company, and sometimes choosing a combination. The following examples illustrate the Council's practice:

- Printing of "Christchurch Book". The Council chose a local printer in preference to a Hong Kong printer, whose tender was lower.
- Tender for collection of recyclables from kerbside. The Council chose an overseas company that was prepared to invest significant capital in the development of a fleet of specially designed vehicles.
- Design of new art gallery. The Council awarded the design contract to an Australian company, but required that the company use local consultants for quantity surveying, and mechanical, electrical and other services.

The Council's submission is intended to seek amendments or exceptions that would preserve the freedom of the Council to exercise the sort of choice illustrated above in order for decisions to be made in the best overall interests of its community.

4. Staff had very little time to prepare the draft submission. Further information is being sought from various sources, including local manufacturers. There will be opportunity at the Council meeting to make appropriate amendments or additions to the draft submission.

**Chairman's**

**Recommendation:** That the draft submission be endorsed, subject to amendments or additions in the light of further information.

**CONSIDERED THIS 28TH DAY OF SEPTEMBER 2000**

**MAYOR**