

30 November 2022

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I refer to your email of 2 November 2022 in which you request the following under the Official Information Act 1982 (OIA):

- 1- [...] *I am seeking policy analysis and advice and ministerial briefing papers and decisions regarding the interpretation of the scope and adequacy of the GATS limitation and the decision not to provide stronger protection in the JSI on Services Domestic Regulation.*
- 2- [...] *I am seeking the advice that MFAT has received from Māori on those matters.*

In answer to your first question:

Regarding your request for 'policy analysis and advice', please find attached the document 'WTO MC12 Issues Brief - Services Domestic Regulation Joint Statement Initiative'. Some information is being withheld under the following sections of the OIA:

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

There were also internal discussions within the Ministry of Foreign Affairs and Trade (MFAT) to which there is no formal or written record.

In relation to your request for 'Ministerial briefing papers and decisions'. I understand that the Minister for Trade and Export Growth, Hon Damien O'Connor, who was also addressed in your request email, has provided you with a response, on 23 November 2022, to this section of your request. I nonetheless note that the Cabinet paper seeking approval for New Zealand to ratify the WTO Joint Initiative on Services Domestic Regulation is publicly available on the MFAT website (via the link below) and contains information relevant to your request.

<https://www.mfat.govt.nz/en/media-and-resources/pr-2022-0390-world-trade-organization-joint-initiative-on-services-domestic-regulation/>

In answer to your second question:

MFAT's engagement with Māori on New Zealand's services trade negotiations at the WTO in terms of the Doha round (launched in 2001), Trade in Services Agreement (TISA) negotiations, and MC11 did not yield specific written advice from Māori related to services domestic regulation. Therefore, this part of your request is refused under section 18(e) of the OIA, as the information requested does not exist. ^{s9(2)(a)}

We would note that MFAT's engagement with Māori on trade policy has evolved over the years reflecting changes stemming from the Trade for All Agenda and the findings of Wai 2522. Recent advice from Māori, including from our engagement with Te Taumata and Ngā Toki Whakarururanga, in relation to Aotearoa New Zealand's recent Free Trade Agreement (FTA) negotiations with the European Union and United Kingdom have deepened our understanding of Māori interests in services trade policy, including independent reports on Māori interests for both agreements:

<https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Research-Report.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Maori-interests-in-the-EU-FTA.pdf>.

Please note that we may publish this letter (with your personal details redacted) and enclosed documents on the Ministry's website.

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett
for Secretary of Foreign Affairs and Trade

WTO MC12 ISSUES BRIEF: SERVICES DOMESTIC REGULATION JOINT STATEMENT INITIATIVE

Key Objectives

- Conclude negotiations of the Services Domestic Regulation Joint Statement Initiative (DR JSI).
- Meet with Ministers of participating Members in conjunction with release of the Ministerial Declaration announcing conclusion (see separate event brief).

Key Points

- New Zealand welcomes the conclusion of the Services Domestic Regulation Joint Statement Initiative and thanks all Members that have participated to get us to this point.
- Services domestic regulation is an important issue to services providers and these disciplines will help to ensure greater fairness and transparency for services exporters.
- The conclusion of this negotiation is significant for the negotiating function of the WTO.
-
- Participating Members will release a 'Ministerial Declaration on Services Domestic Regulation' announcing conclusion of the negotiations and hold a press conference.
- Only **X** Members have not submitted 'pre-finalisation' schedules of specific commitments. The schedules outline the services sectors against which Members will apply the negotiated rules.
- New Zealand has submitted its 'pre-finalisation' schedule of specific commitments. This will apply the new rules to New Zealand's existing WTO market access commitments and seven new environmental services sub-sectors.

Outstanding Negotiating Issues

- Ensuring all participating Members have submitted their 'pre-finalisation' schedules of commitments.
- Ensuring New Zealand does not come under pressure to modify its 'pre-finalisation' schedule of commitments.

Background

The Services Domestic Regulation Joint Statement Initiative

The DR JSI contains rules on licensing and qualification requirements that affect the ability of service suppliers to export their services. The rules aim to ensure that authorisation procedures are impartial, efficient and transparent. The rules include obligations that require that:

- authorities allow a reasonable amount of time for submission of applications;
- authorities accept authenticated and/or electronic versions of applications;
- authorities process applications in an efficient and transparent manner;
- fees for authorisation are reasonable and transparent;
- the publication of procedures for obtaining, maintaining, amending and renewing authorization; and
- stakeholders are provided the opportunity to comment on laws and regulations affecting authorisation.

Membership

2 Negotiation of the plurilateral DR JSI was launched at MC11, when 59 WTO Members announced their intention to negotiate domestic regulation rules following years of unsuccessful negotiation amongst the broader Membership. At the time of printing, there are now 66 participating Members. In recent months the United States, Singapore and Thailand have joined the initiative. There has been a push to include more Members, including LDCs. Any WTO Member will be able to join at any time by including the rules within their WTO services commitments.

Ministerial Declaration on Services Domestic Regulation

3 Ministers will announce the conclusion of negotiations through a joint Ministerial Declaration. The Declaration will note the concluded set of rules, the pre-finalisation schedules submitted and confirm that Members intend to incorporate these rules into their GATS schedules. The Declaration will also outline that Members aim to submit their revised schedules for certification within twelve months. WTO processes require Members to incorporate changes to their commitments via a certification process, which subjects these changes to comments from the broader Membership.

Pre-finalisation Schedules of Specific Commitments

4 Participating Members adopt the rules by incorporating them into their WTO services schedule. In those schedules, Members made market access commitments in a negotiated set of services sectors during the Uruguay round of negotiations. A number of Members who committed fewer services sectors during the Uruguay round were approached by the s6(a), s6(b)(i) to apply these DR rules to a greater number of services sectors (an additional commitment would not result in a change in market access commitments). s6(a), s6(b)(i)

New Zealand's Pre-Finalisation Schedule of Specific Commitments

5 New Zealand has offered additional commitments in environmental services, covering seven sub-sectors. This represents a significant improvement and shows commitment toward a comprehensive plurilateral outcome. In making these additional commitments, New Zealand has been careful to ensure the appropriate policy space is preserved. In particular, ensuring the application of a carve out to allow preferential treatment to be granted to any Māori person or organization. New Zealand has deviated from scheduling guidance to ensure complete comfort with the application of this carve out. There remains the possibility that a Member may request New Zealand schedule be amended in accordance with the approach proposed by the Secretariat. Explaining the importance New Zealand attaches to the Treaty of Waitangi exception, and the equivalent carve out in GATS, should help clarify the motivation behind this belts-and-braces approach to scheduling.

Next Steps

6 s6(a), s6(b)(i)

Before verification, New Zealand will go through its required domestic approval processes including a National Interest Analysis (implementing these rules will not require any regulatory change).

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*New Zealand Permanent Mission to the WTO/Trade Policy and Negotiations Division
Ministry of Foreign Affairs and Trade
November 2021*

Released under the Official Information Act

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