

18 December 2017

► Minister of Trade and Export Growth

For action by 22 December 2017

New Zealand-Pacific Alliance Free Trade Agreement: Update

SUBMISSION Issue

PURPOSE To update you on the mandate for the Pacific Alliance FTA and to outline the feedback received to date from the public.

A separate paper to you and delegated Ministers will seek approval of the parameters for New Zealand market access offers on goods (tariffs), services and investment, temporary entry, and government procurement.

Recommended referrals

Contact details

NAME	ROLE	DIVISION	WORK PHONE	MOBILE PHONE
Brad Burgess	Chief Negotiator	Trade and Economic Group	s9(2)(a)	

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Key points

- FTA negotiations with the Pacific Alliance countries (Chile, Colombia, Mexico, and Peru) were launched in June this year. The process presents important opportunities for New Zealand to deepen our trade and political relationships in Latin America. We are working to an ambitious target of concluding an agreement in 2018.
- The first round was held at the end of October. Officials reserved New Zealand's position on key issues in light of the change in government. Positions and proposals will be exchanged before Australia hosts the second round in January.
- Officials have an initial and high-level mandate s9(2)(j)
- This submission identifies areas where the current mandate for Pacific Alliance negotiations needs to be refreshed to reflect the policies of the new Government. The issues are:
 - **Investor-state dispute settlement (ISDS):** this submission notes that New Zealand will oppose the inclusion of ISDS in negotiations.
 - **The new progressive and inclusive trade agenda (NPITA):** while the NPITA is the subject of separate advice to Cabinet, this submission outlines the early high-level wins that could be achieved in promoting the NPITA agenda through labour, environment, small-medium sized enterprises (SMEs), and trade and gender chapters; s6(a), s9(2)(j)
 - **Domestic regulation:** s6(a), s9(2)(j)
 - **E-commerce:** s6(a), s9(2)(j)

s6(a), s9(2)(j)

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- Market access offers on services and investment, temporary entry, and government procurement will be exchanged before Round Two in January. A separate paper will be provided to you and delegated Ministers seeking approval for the parameters of New Zealand's offers.
- Annex 1 to this paper provides a summary of public feedback received to date on the Pacific Alliance FTA.

Vangelis Vitalis
for Acting Secretary of Foreign Affairs and Trade

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Recommendations

It is recommended that you:

- 1 Note that a Pacific Alliance FTA presents important trade, political and strategic opportunities for New Zealand, and that negotiators are working to an ambitious target of concluding a high quality agreement in 2018; Yes / No
- 2 Note that New Zealand responses to Pacific Alliance negotiating proposals will be exchanged in the coming weeks before Round Two begins on 29 January 2018; Yes / No
- 3 Note that while the NPITA policy process is the subject of separate advice to Cabinet and will run well into 2018, the Pacific Alliance negotiations present an opportunity for early gains to be made in this agenda; Yes / No
- 4 Note the current Cabinet mandate for negotiations outlined in this paper; Yes / No
- 5 Note that officials consider a refreshed mandate is needed on some issues to ensure alignment with the new Government's approach; Yes / No
- 6 Note that New Zealand will oppose any form of ISDS in a Pacific Alliance FTA; Yes / No
- 7 s9(2)(j) Yes / No
- 8 s9(2)(j) Yes / No
- 9 s9(2)(j) Yes / No
- 10 s9(2)(j) Yes / No
- 11 Note that public consultations on the negotiation will continue and that regular updates will be published on MFAT's website. Yes / No

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Hon David Parker
Minister for Trade and Export Growth

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Report

Background to the Pacific Alliance negotiations

1. The Pacific Alliance is a regional integration initiative established in 2011 by Chile, Colombia, Mexico, and Peru. The grouping already has its own trade agreement and is now looking to negotiate FTAs with other countries in the Asia-Pacific.

2. We have been an observer to the Alliance since 2012, and have been seeking to deepen trade ties since 2014. In June this year, Alliance Presidents announced the launch of FTA negotiations with New Zealand, Australia, Canada and Singapore.

3. There is both commercial and strategic value in securing an FTA with the Alliance:

- **Removing tariff and NTBs that currently reduce New Zealand's competitiveness** (US, EU and products from elsewhere benefit from preferences over New Zealand exports in most Alliance markets). Currently an estimated \$70 million in tariffs are levied on New Zealand exports each year. This will fall assuming CPTPP enters into force, but a Pacific Alliance FTA presents an opportunity to establish an FTA relationship with Colombia (where there is considerable scope to enhance trade and investment), to eliminate barriers that remain under CPTPP s6(a), s9(2)(j)
- The Alliance is likeminded on many issues. s6(a), s9(2)(j)
- This is **an early opportunity to promote the NPITA**. High quality labour and environment chapters will be included, as will New Zealand's first-ever chapter on trade and gender issues. s9(2)(j)

Cooperation on SMEs will also be progressed through a dedicated chapter.
- **In strategic terms, an agreement would ensure New Zealand continues to be a part of all leading regional integration initiatives in the Asia-Pacific.** s6(a), s9(2)(j)

Importantly too, bringing the Pacific Alliance directly into the Asia-Pacific will introduce another high quality approach to trade negotiations, s6(a), s9(2)(j)

- Putting in place **an FTA is a key plank in our efforts to deepen our political relationships in Latin America**. Once an agreement takes effect, New Zealand will become the first country, or among the first group of countries, to become an Associated State of the Pacific Alliance.

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The process to date

4. Chief Negotiators first met in September s6(a)
24 subject areas s6(a) will be covered in negotiations,
s6(a)

5. The first round of negotiations was held in Colombia over 23-27 October. s6(a), s9(2)(j)

New Zealand's position on key issues was reserved in light of the change in government.

6. Next steps in the process are:

- Positions on text tabled by the Pacific Alliance will be exchanged in the coming weeks. This submission will frame New Zealand's responses.
- Market access offers on services and investment, temporary entry, and government procurement will be exchanged in January. s6(a), s9(2)(j)

A separate submission to you and delegated Ministers will cover this.

- Round Two begins in Australia on 29 January 2018.
- Round Three begins in Chile on 5 March 2018.
- Round Four is tentatively scheduled for 16 April 2018 in Canada.

7. The Pacific Alliance expects to reach an Agreement quickly. s6(a)

This is the main reason why the negotiating schedule in early 2018 is unusually compressed.

New Zealand's existing negotiating mandate

8. The current mandate for Pacific Alliance negotiations is high-level and was intended to guide New Zealand's approach for the initial stage of negotiations only, after which more detailed guidance would be sought.

9. The current mandate is to seek:

- a comprehensive, high quality agreement that met New Zealand's key trade interests in goods, services, and investment;

s9(2)(j)

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s9(2)(j)

10. Delegated authority also exists for you³, the Prime Minister and Minister of Finance to make decisions on New Zealand's approach to negotiations up until January 2018, following which officials will report back to Cabinet on progress.

Mandate refresh

11. Officials have reviewed this approach and consider that the following areas require adjustment to ensure alignment with the new Government's approach to specific issues.

ISDS

12. Consistent with the Government's clearly stated position, we will oppose ISDS in Pacific Alliance negotiations. s9(2)(j)

s9(2)(j)

s9(2)(j)

³ In your capacity as both Minister of Trade and Export Growth and Minister for Economic Development.

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s9(2)(j)

New progressive and inclusive trade agenda (NPITA)

15. While the NPITA policy process is the subject of separate advice to Cabinet and will run well into 2018, negotiations with the Pacific Alliance present an opportunity for early gains to be made in this agenda.

16. This paper seeks to confirm New Zealand's initial approach on these issues. Paragraphs 18-20 outline an initial, broad approach for trade and gender, indigenous issues, and domestic regional economic development. s9(2)(j), s6(a)

17. s9(2)(j), s6(a)

Trade and gender

18. The Pacific Alliance has proposed to include a Trade and Gender chapter in the FTA, which would be New Zealand's first. s6(a), s9(2)(j)

s6(a)

s9(2)(j), s6(a)

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s6(a), s9(2)(j)

s9(2)(j)

indigenous issues and domestic regional economic development

s9(2)(j)

Domestic regulation in services s6(a), s9(2)(j)

s6(a), s9(2)(j)

E-commerce issues

s6(a), s9(2)(j)

s6(a), s9(2)(j)

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s6(a), s9(2)(j)

Intellectual property and SOEs

s6(a), s9(2)(j)

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s6(a), s9(2)(j)

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Annex 1: Public submissions received

On 18 September 2017 the former Minister of Trade called for public submissions on the Pacific Alliance FTA. The nominal deadline for input was 16 October but the Ministry is continuing to welcome and invite public input and comment.

To date, Submissions have been received from:

- 1) Integration Technologies Limited
- 2) s9(2)(b)(ii)
- 3) Pacific Basin Exports Limited
- 4) New Zealand Institutes of Technology and Polytechnics
- 5) Professor Jane Kelsey
- 6) Mercer Interiors Limited
- 7) New Zealand International Business Forum
- 8) Export New Zealand
- 9) Wood Processors and Manufacturers Association
- 10) Otago University Department of Public Health
- 11) New Zealand Winegrowers
- 12) Wellington Chamber of Commerce
- 13) Apples and Pears New Zealand
- 14) New Zealand Chambers of Commerce
- 15) Fonterra
- 16) Dairy Companies Association of New Zealand
- 17) New Zealand Council of Trade Unions
- 18) It's Our Future/Greg Rzesniowiecki
- 19) Horticulture New Zealand
- 20) Latin America-New Zealand Business Council
- 21) Beef and Lamb New Zealand/Meat Industry Association of New Zealand

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Most submissions supported the negotiations. Key priorities that stakeholders identified as important to them included:

- 1.1. **Tariff elimination:** stakeholder submissions focused on the impact of tariffs on business competitiveness in-market, particularly vis-à-vis competitors who benefit from preferential market access for goods as a result of existing FTAs, such as those the US has with all Pacific Alliance countries. As such, this FTA offered the opportunity to remove this disadvantage and level the playing field for New Zealand businesses across a broad range of sectors (e.g. dairy, wood, horticulture, meat, specialised industrial/manufacturing) and should do so as quickly as possible. It also represents an opportunity to secure improvements to goods market access beyond that agreed in CPTPP (for Mexico and Peru).
- 1.2. **Investment and services export opportunities:** several stakeholders cited the importance of improved market access for New Zealand services exporters and investors, particularly in the export education sector. For example, there was a strong interest in limiting restrictions on the operation and ownership of New Zealand businesses in overseas markets, in securing better access to international student markets, and supporting deeper aviation links between New Zealand and Latin America.
- 1.3. **'Behind-the-border' issues:** alongside tariff elimination and improved market access for New Zealand exporters, stakeholders emphasised the importance of broader trade considerations in-market, such as regulatory coherence and alignment, NTBs impacting New Zealand exporters, technical barriers to trade, sanitary and phyto-sanitary measures, SMEs, intellectual property, and the digital economy/electronic commerce. This should be achieved while maintaining the integrity of New Zealand's highly-effective existing systems and standards.
- 1.4. **ISDS:** there were mixed views on ISDS: while some business stakeholders strongly supported a binding investor-state dispute settlement mechanism to protect New Zealand investments abroad, others insisted that it is an unnecessary encroachment on national sovereignty and must be excluded from the agreement.
- 1.5. **Preserving the right to regulate and honouring the Treaty of Waitangi:** a number of stakeholders reiterated well-known concerns about ensuring the primacy of public policy objectives (e.g. public services, health, the environment, food safety, human rights, labour standards, equality, capital controls, sustainable development, and appropriate anti-dumping/countervailing measures) and therefore the importance of retaining the Government's regulatory sovereignty in this agreement. Similarly, some stakeholders emphasised the importance of retaining policy space to freely regulate overseas investment. Several submissions asserted that the agreement should not undermine commitments in other international agreements, and should require Parties' compliance with other agreements in order to access the benefits of the FTA, such as the 2015 Paris Agreement and International Covenant on Economic Social and Cultural Rights. A comprehensive Treaty of Waitangi exception was also important to several stakeholders, some of which asserted that the existing exception required strengthening.

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- 1.6. **Full, transparent, and ongoing public consultation:** stakeholders emphasised the importance of ensuring wide and thorough consultation with all domestic stakeholders, ensuring an inclusive and transparent process from start to finish. Some stakeholders expressed concerns at the CPTPP process and outcomes. Some business stakeholders also requested an active communications and outreach programme to support business understanding of the opportunities presented by the FTA negotiation.
- 1.7. **Swift but ambitious negotiation:** supportive stakeholders were in favour of concluding negotiations as soon as possible subject to meeting New Zealand's expectations on the substance of the outcome.

This feedback will help inform the approach officials will take to framing detailed positions and priorities, consistent with the mandate for negotiations. It will also help develop our engagement strategy, which has at its core the provision of regular updates to the public through on-going consultations and website updates.

Submissions will be published on the MFAT website, excluding information that we have been asked to hold in confidence (e.g. commercially sensitive information).

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Annex 2: Labour and Environment

s6(a), s9(2)(j)

s9(2)(j)

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