

RCEP Summary of Written Public Submissions

The government sought public submissions for the RCEP FTA process during February and March 2013. We received 15 submissions in total (including a submission from New Zealand Manufacturers and Exporters association which comprised brief comments from its members). This was not a substantial number, and fewer than we have received in the past when public submissions have been sought in advance of launching trade negotiations. In this context, we note the comment from the New Zealand Council of Trade Unions' submission "that [RCEP] appears to be less intrusive into domestic policy than [other on-going negotiations]". A list of submissions is annexed.

2 Submissions can be summarised along the following themes:

- **Whether the submitter was for or against New Zealand's participation in an RCEP FTA**

3 The majority of submissions, and entities with views reflected through submissions, explicitly supported the RCEP FTA. Eight of the submitters "supported" and "welcomed" RCEP negotiations. Many of these represented a cross-section of New Zealand exporters and business associations that confirmed they supported the Government's free trade agreement agenda generally, including the New Zealand International Business Forum (NZIBF), Beef and Lamb New Zealand and the Meat Industry Association (B+LNZ/MIA), and NZ Winegrowers (WNZ), Export New Zealand (ENZ), New Zealand Chambers of Commerce (NZCC).

4 Three, from the New Zealand Council of Trade Unions (NZCTU), Jane Kelsey and Tim Blackburn, had strong reservations about the RCEP process. The first two questioned the merit of New Zealand participating in RCEP altogether. NZCTU said "there is no obvious pressing need to be in it".

5 Two further submissions, from Douglas Pharmaceuticals and New Zealand Air Line Pilots Association (NZALPA) highlighted specific areas where their industries could benefit from RCEP. These companies indicated support, at least to the extent that the New Zealand government was able to make progress on their issues.

6 We received one submission from Yum! Restaurants International (YRI) based in Texas, USA. This group comprises a number of international fast food restaurants (e.g. KFC and Pizza Hutt) who source core dairy products from New Zealand for Asian markets and would benefit from the elimination of tariff and non-tariff measures that exist between various RCEP markets. Follow up emails with YRI suggested that they have made similar submissions to the governments of a number of countries participating in RCEP.

- **The relationship and impact that RCEP will have with existing Free Trade Agreements**

7 NZCC believed a comprehensive multilateral trade agreement should be the main goal of New Zealand's trade policy. However, they argued it is still in New Zealand's best interests to pursue bilateral and regional agreements in tandem with multilateral negotiations. Others expanded by saying that RCEP was an opportunity to build upon existing FTAs and would be complementary to other FTA negotiations underway. B+LNZ/MIA said that RCEP and TPP negotiations were "mutually reinforcing as potential pathways to a wider Free Trade Area of Asia Pacific". NZIBF and NZCC both said that the two processes were complementary. NZCC was "watching the increasing number of

overlapping FTAs between these and other economies in the region (“the noodle bowl effect”) which is not only increasingly complicated but has the potential more and more to distort trade flows”. They were therefore “strong supporters of a single consolidated FTA in the Asia Pacific Region, ultimately replacing the multitude of existing agreements and the RCEP is one way of achieving this”. They also said that “Negotiators should keep open the idea of both the RCEP and TPP negotiations eventually coming together”.

8 Deer Industry New Zealand (DINZ) and NZIBF argued that the ASEAN-Australia-New Zealand FTA (AANZFTA) and the NZ/China FTA should serve as the bases for negotiations. Similarly, NZCC suggested that RCEP should go further than AANZFTA and provide new solutions to “stimulate economic activity other than by tariff phase-downs”. DCANZ also made this point specifically with respect to liberalising Dairy Trade.

9 The ASEAN New Zealand Combined Business Council (ANZCBC) saw “the logic of expanding the AANZFTA umbrella to encompass China, Japan, South Korea and India”. They said that ASEAN nations could act as a link between New Zealand and East and North Asia and India and suggested that New Zealand should seek to maximise the benefits that can be derived by engaging with ASEAN in this forum.

10 DINZ sought to place “products exported by the New Zealand deer industry immediately on at least as favourable basis as those enjoyed by other exporting countries that have negotiated or are in the process of negotiating preferential access with RCEP members. Similarly, WNZ requested that New Zealand achieve equivalence with the EU (and other wine producing countries e.g. Chile) in terms of preferential trade arrangements across RCEP markets, particularly in order to mitigate the EU’s competitive advantage. Douglas Pharmaceuticals (DP) noted that the differences which already existed in the region in Intellectual Property could have “very harmful” effects on the ability of generic pharmaceutical manufacturers to export, referring to the five countries that have patent term extensions of up to 5 years beyond the TRIPS-mandated 20-year patent term, “generally as a result of previous bilateral agreements with the US”.

11 ANZCBC and B+LNZ/MIA believed that engagement with the RCEP process was “promising” and “sensible”, but cautioned against the potential to dilute the benefits already secured in ASEAN markets through the AANZFTA. Likewise, Douglas Pharmaceuticals made the point that new ‘improved’ group standard regulations could, in individual countries, be layered on top of, rather than substituted for, existing local regulations. These duplicative affects ran the risk of making regulatory processes slower and less effective contrary to their intended effect.

12 ENZ supported RCEP principally as a mechanism to add India, Korea and Japan to New Zealand’s already extensive FTA network.

13 NZCTU acknowledged that the RCEP Guiding Principles “portray a considerably less obtrusive and dangerous proposal than that of [other on-going negotiations.]”

14 Jane Kelsey questioned the strategic rationale for RCEP in the foreign policy context. She presented RCEP and TPP as a dichotomy between China (ASEAN, and other major Asian powers) and the United States in the international arena and called in to question “statements from the government [that] claim it can straddle both these hegemonic strategies in a naïve belief that [they] will somehow converge”.

- **The scope or quality that should be sought**

15 NZCC and ENZ said that New Zealand should not compromise its long standing FTA stance for comprehensive, high quality agreements.

16 WNZ and DINZ “strongly support[ed]” the Guiding Principles objective to achieve “a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement”. ANZCBC agreed that RCEP’s goal should be “to eliminate barriers in all goods, services and investment” sectors. B+LNZ/MIA strongly supported the elimination of all tariff and non-tariff barriers to trade by the agreed deadline of 2015. ENZ called for a comprehensive and high quality agreement for goods that included comprehensive coverage (no exclusions) with all quotas and import licensing removed and tariffs eliminated within 10 years.

17 NZIBF supported the objectives laid out by RCEP participating countries’ leaders in November 2012. They believe that RCEP should conform with Article XXIV (8) (b) of the WTO’s GATT for the FTA to cover “substantially all trade” among participating countries. They sought a comprehensive agreement with a commitment to eliminate barriers in all goods and services sectors by an agreed deadline. In their view, there should be no “a priori sectoral exclusions from the ambit of the negotiations” although they recognised that differing sectors may be subject to different timetables for liberalisation.

18 ANZCBC and NZCC called for the elimination of barriers in all sectors, without exclusions. YRI and B+LNZ/MIA encouraged short and reasonable phase-out periods for tariffs for all sectors. NZIBF agreed that any timetables should if possible reduce and in no case extend the timeframe for liberalisation set by other agreements to which New Zealand is already a party. DCANZ sought total tariff elimination with quotas removed and a limited transition period. DINZ sought total elimination of tariffs on all deer products. Similarly, YRI sought that dairy products of interest to them be lowered to be in line with international standards. “Ultimately, YRI is seeking that each of these tariffs be reduced to below 5% or less”.

19 As mentioned in section 2, many said that the AANZFTA agreement (and the NZ/China FTA) should be the benchmark from which the RCEP negotiations should proceed. NZIBF said that the AANZFTA approach should be the model for Rules of Origin.

20 ANZCBC and DCANZ said that all tariff reductions/elimination should occur through a single schedule.

21 The NZCTU said that they “believe that New Zealand’s international trade and investment policies should be driven by, and be consistent with, its economic and social development policies”. They said “New Zealand should not make any significant concessions to become part of [RCEP]”.

- **The approach the submitters would like us to take in negotiations (strategy)**

22 ENZ was representative of the majority of submissions and represented entities who did not believe that New Zealand had substantial commercial defensive interests to protect in this negotiation. “We are already largely open to the world, and all remaining tariffs are low – lower often than fluctuations in the exchange rate”. They argued that this meant our approach should be focused on achieving the best possible deal for our exporters, and working to break down the high levels of protection our export sectors face in certain markets.

23 Industry identified a number of areas that negotiators should focus on in this regard, including the reduction and elimination of tariffs and addressing non-tariff

barriers. The responses provided by the New Zealand Manufacturers and Exporters Association (NZMEA) focused on the need to address non-tariff measures that currently made markets difficult to access in the region. Key themes emerged from these comments, including the need to simplify rules and requirements and ensure that these provisions would improve the transparency of processes.

24 NZCC sought a stronger focus on services including “full liberalisation across all four modes of supply”. They said that “the services sector is important not just as a growth area for NZ, but also as a way to make an agreement (on agriculture/goods) more appealing to other countries”. Similarly, ENZ sought market access in services beyond the WTO GATS

25 B+LNZ/MIA warned that if RCEP partners maintained different levels of ambition this might lead to a more flexible outcome that would compromise the maximum benefits that could result from trade liberalisation.

- **What should be included or excluded from the RCEP FTA**

26 As part of ENZ’s focus on a comprehensive outcome, they argued that RCEP should achieve “far more than has to date been achieved in the WTO GATS negotiations. It should include investment, intellectual property, customs procedures, trade remedies, TBT and SPS and include a robust disputes settlement process.”

Goods

27 YRI said that on the basis of free and fair trade among all parties they would discourage any product exclusions or exemptions. They asked negotiators to eliminate current, and ban outright, quota systems. They were comfortable with any modality that would reduce quotas over time to zero.

28 YRI was eager to ensure that dairy products were a core focus during negotiations. They said that tariffs on dairy products such as butter, liquid milk, sliced cheese and culinary cream should be brought into line with “international standards”. DINZ said that the elimination of tariff and non-tariff barriers on New Zealand deer products exports would remove a significant element of cost, a benefit that would be shared by export market consumers and New Zealand producers. WNZ said that the elimination of burdensome tariffs would “reduce the costs of cross-border wine trade, stimulate demand, and increase sales”. NZB+L/MIA sought the elimination of all existing tariffs on all red meat and associated co-products, including prepared meats (i.e. no sector or product exclusions) within a reasonable time frame.

29 YRI supported Sanitary and Phyto-Sanitary (SPS) arrangements that would bring all RCEP countries in to line with international standards. YRI reinforced the need for harmonized, science-based regulations that are fully enforceable and with penalties for non-compliance.

30 DCANZ, DINZ and B+LNZ/MIA also supported the inclusion of strong, science-based SPS and Technical Barriers to Trade (TBT) chapters that incorporated references to international science-based standards, robust and liberalising Rules of Origin, and Customs administration provisions that were WTO plus.

NTMs and standards

31 ANZCBC asked that negotiators find solutions within the agreement that would resolve existing difficulties experienced by New Zealand exporters with non-tariff barriers, with specific reference to the impediments to effective marketing of meat and horticultural products in specific markets.

32 DCANZ asked negotiators to address non-tariff and technical barriers to trade. WNZ also focused on their industry specific technical barrier issue seeking mutual acceptance of conformity assessment procedures; wine making practices; labelling; use of geographical indications (GI's); and import procedures and licensing.

33 Douglas Pharmaceuticals sought the creation of a system of mutual recognition of drug data throughout the RCEP group, arguing that inconsistent standards around packaging regulations leads to high compliance costs, higher drug costs, and therefore reduced access to medicine. They said that varying standards impose substantial costs and delays and operate as a barrier to trade in generic pharmaceuticals within the region. Similarly, inconsistent standards around packaging regulations also lead to unnecessarily increased compliance costs and they seek the mutual recognition of a single package design throughout the region.

34 WNZ encouraged RCEP to be "a platform for improving the non-tariff market access conditions for New Zealand goods into [RCEP] markets". They asked for the inclusion of a wine-specific annex as a "sensible approach" to adequately address the trade issues that are unique to wine.

35 As mentioned above, NZMEA's submission focused heavily on the need to address the complexity and transparency of standards, certification and other non-tariff measures in RCEP markets.

36 DINZ encouraged the inclusion of a robust disputed settlement mechanism to address issues easily and efficiently and clear disciplines and consultative mechanisms to deal with NTMs (e.g. non-science based sanitary and technical impediments).

Investment

37 DCANZ emphasised their significant interest in investment chapters with "an eye towards the future".

For investment, ENZ also stated a preference for a negative list approach and a compulsory investor state dispute settlement mechanism "to improve the rights of New Zealand investors" in certain jurisdictions.

39 In investment, the NZCTU saw no need to "compromise or relax New Zealand's [existing] regime". The NZCTU opposed the inclusion of investor-state disputes settlement provisions.

40 NZCTU "opposes binding commitments on migration being made in the context of a trade and investment agreement" and prefers that these are dealt with in a "non-binding way", however they were "less concerned about working holiday schemes" if they are monitored to reduce incidences of abuse.

Services

41 In Services, ANZCBC and NZIBF favoured a negative list approach, national treatment provisions and a WTO GATS plus outcomes for market access.

42 The New Zealand Air Line pilots Association (NZALPA) sought gains in the area of services: the incorporation of labour standards, specifically between New Zealand and Australia with respect to the aviation sector. They sought improvements in occupational health and safety (compliance with ICAO; mutual recognition of medical certificates) and increased regulation in the area of outsourcing to countries with "cheaper labour". NZALPA sought the incorporation of labour standards agreements that would resolve regulatory inconsistencies between New Zealand and Australia. They sought to bring countries in line with the International Civil Aviation Organisation's cooperative regulation

43 NZCTU would oppose "significant extension of [services] commitments without wide consultation. They are concerned to ensure that New Zealand's domestic policy space is preserved. They prefer a "positive list approach" specifically identified their preference that negotiators should avoid commitments that could restrict the government's ability to enforce qualification and licensing requirements for education services, where these might put at risk our quality, health and safety regimes. NZCTU also "strongly opposed" the reinforcement or extension of commitments on Financial Services, and would be "very concerned" if Financial Services were to cover Mode 1 and 2 supply.

Labour

44 NZCTU were wary of "commitments which permit or encourage increased international outsourcing" where the labour conditions experienced by workers were unequal and not compliant with core international labour conventions.

45 NZCTU opposed binding commitments on migration being made in the context of a trade and investment agenda. NZCTU make it clear that any trade and labour provisions in the Agreement needed to require adherence to core labour standards, prevent labour rights and working conditions being used for trade or investment advantage, and include strong provisions to enforce commitments and deal with complaints. They considered that existing arrangements with some RCEP countries were "inadequate".

46 ENZ was less convinced that provisions on trade and labour were necessary and realistic.

Environment

47 ENZ encouraged provisions on trade and environment. NZCTU supported "enforceable provisions that would prevent environmental standards being compromised for trade or investment advantage.

Government Procurement

48 ENZ and ANZCBC said that schedules should include Government Procurement. NZCC reiterated this. However NZCTU "would be concerned if any provisions on government procurement further constrained the ability of central and local government to use procurement to foster economic development and provide social services using local providers".

Competition Policy

49 NZCTU strongly opposed "any provisions regarding state owned entities that constrain their activities or government ownership or its ability to direct them".

Electronic Commerce

50 The NZCTU supported consideration of electronic commerce provisions that reduced “the ability of international electronic suppliers to avoid GST”.

- **Intellectual property**

51 A number of submissions focused specifically on issues relating to Intellectual Property (IP).

52 ENZ asked for stronger disciplines than those that exist in the WTO TRIPS agreement (the so-called ‘TRIPS-plus’ standard). They were “not convinced that the stance taken by New Zealand in the [...] negotiations on this topic reflect the interests of our members”.

53 In contrast, with reference to other negotiations, Douglas Pharmaceuticals was concerned about the risk of any agreement that would increase IP protection to a level higher than currently in force in New Zealand. “[They] would oppose the introduction of patent term extensions and/or other provisions such as patent linkage or restrictions on the timing of pharmaceutical regulatory activities for export”.

54 Douglas Pharmaceuticals called for “efficiently administered, effective and enforceable intellectual property regimes which are reasonably consistent amongst trading partners”.

55 WNZ argued that New Zealand needed to take a defensive position with respect to intellectual property terms for wine. In particular, they said that New Zealand needed to ensure that its rights under the WTO’s TRIPs Agreement were maintained, particularly as they referred to geographical indications for wine.

56 NZCTU supported more liberal rules for IP and would oppose any extension of IP provisions that went beyond TRIPS. They argued for tighter protection of traditional (Māori) knowledge, “given the commercial value in Asia of traditional medicines and of investment opportunities for marketing such remedies internationally”.

57 YRI requested that to “ensure proprietary information is protected, requests for percentages of ingredients on new and existing imports should not be allowed”. YRI would rather not disclose percentages of ingredients on new and existing imports for proprietary reasons.

- **Other issues**

58 NZCTU said that negotiators should allow for the application of the Treaty of Waitangi relationship.

59 NZCC asked that negotiators continue to engage with the business community as the negotiations progressed.

60 NZCTU asked that draft text from the negotiations should be regularly released for public comment. They suggested that there should also be ongoing consultation with the New Zealand public as negotiations proceed, and particularly if new areas were introduced to the negotiations. They said that “the full document should not be ratified until after full public consultation following the release of the draft final text.”

61 Jane Kelsey sought wider public consultations that would allow for a debate of the “foreign policy implications of pursuing two me[g]a-agreements that have potentially conflicting foreign policy and strategic objectives and obligations”.

62 NZCC and NZIBF offered to reach out to their overseas network of national chambers of commerce and business groups in support of the negotiation process.

*Trade Negotiations Division
Ministry of Foreign Affairs and Trade
December 2013*

LIST OF SUBMISSIONS RECEIVED

Organisation/Author	Date received
1. New Zealand Airline Pilots Association (NZALPA)	March 2013
2. Tim Blackburn	March 2013
3. Jane Kelsey	March 2013
4. Douglas Pharmaceuticals	March 2013
5. New Zealand Council of Trade Unions (NZCTU)	March 2013
6. Yum! Restaurants International (YRI)	March 2013
7. Dairy Companies Association of New Zealand (DCANZ)	March 2013
8. New Zealand International Business Forum (NZIBF)	March 2013
9. New Zealand Chambers of Commerce (NZCC)	March 2013
10. New Zealand Wine (WNZ)	March 2013
11. Deer Industry New Zealand (DINZ)	March 2013
12. Export New Zealand (ENZ)	March 2013
13. Beef + Lamb New Zealand/Meat Industry Association (B+LNZ/MIA)	March 2013
14. ASEAN New Zealand Combined Business Council (ANZCBC)	April 2013
15. New Zealand Manufacturers and Exporters Association (NZMEA)	June 2013