

# Proactive Release

Date: 18 February 2019

This briefing from the Ministry of Foreign Affairs and Trade to the Minister for Trade and Export Growth has been proactively released by the Ministry of Foreign Affairs and Trade:

## **13 December 2018: *WTO e-commerce – launch of plurilateral negotiations***

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- 6(a): to avoid prejudicing the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information to the Government of New Zealand on a confidential basis from another Government;
- 6(e)(vi): to avoid damage to the New Zealand economy by the premature disclosure of decisions relating to the entering into of overseas trade agreements;
- 9(2)(a): to protect the privacy of natural persons; and
- 9(2)(j): to avoid prejudice to negotiations.



13 December 2018

➤ Minister for Trade and Export Growth For action by 17 December 2018

## WTO e-commerce – launch of plurilateral negotiations

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**BRIEFING** General Purpose.

**PURPOSE** This paper seeks your approval for New Zealand to co-sponsor a Ministerial statement announcing the launch of WTO e-commerce negotiations in the margins of the Davos Mini-Ministerial in January 2019.

## Recommended referrals

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Prime Minister	For information by	18 December 2018
Minister of Foreign Affairs	For information by	18 December 2018
Minister of Agriculture	For information by	18 December 2018

## Contact details

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NAME	ROLE	DIVISION	WORK PHONE	MOBILE PHONE
Alana Hudson	Unit Manager	Trade Negotiations Division	s9(2)(a)	

## Minister's Office comments

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## Key points

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- At the WTO Ministerial Council Meeting in Buenos Aires in December 2017, New Zealand and approximately 70 other WTO members issued a joint Ministerial statement on electronic commerce (e-commerce). Throughout 2018, 117 Members participated in a series of exploratory discussions at the WTO in Geneva scoping potential elements for a future e-commerce negotiation.
- As the next step in this process, we seek approval for New Zealand to co-sponsor a further joint Ministerial statement in the margins of the Davos WTO Mini-Ministerial in January 2019, announcing the launch of WTO e-commerce negotiations.
- While the final number of co-sponsors is not yet known, we expect it will include many of the signatories to the statement in Buenos Aires, such as the United States (US), the European Union, Australia, Canada, Japan, Chile, Switzerland, Norway and Singapore. New Zealand's participation in the process can be reassessed at any time (as can that of other Members).
- In co-sponsoring this statement, New Zealand will continue to form part of the group of Members in favour of ambitious e-commerce work in the WTO, which is important both for the possible outcomes but also to demonstrate the ongoing relevance of the WTO.
- The proposals under discussion fall comfortably within the existing Cabinet mandate, and are broadly aligned with New Zealand's longer-term goals in progressing multilateral rules on e-commerce. s6(a), s6(e)(vi)
- No provisions under discussion would impact on Members' ability to impose normal value-added taxes (such as New Zealand's Goods and Services Tax (GST) regime).
- Given the range of ambition displayed by participants, s6(e)(vi), s9(2)(j)
- As part of this process, public outreach will be undertaken early next year to build New Zealanders' understanding of the issues under negotiation and allow stakeholders an opportunity to provide input on topics of interest.
- Once there is greater clarity of the substance and form of the negotiations, we will seek further guidance from Cabinet on New Zealand engagement.

Vangelis Vitalis  
for Secretary of Foreign Affairs and Trade

## Recommendations

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It is recommended that you:

- 1 **Agree** that New Zealand co-sponsor the Ministerial Statement in the margins of the Davos Mini-Ministerial announcing the launch of WTO electronic commerce negotiations in January 2019. Yes / No
- 2 **Note** that officials will seek further Cabinet guidance on the New Zealand approach once the substance and form of negotiations becomes clearer. Yes / No
- 3 **Agree** that officials will undertake public outreach in 2019 on WTO e-commerce negotiations. Yes / No
- 4 **Note** that officials will prepare a draft press release for your consideration announcing the launch of negotiations to issue in January 2019. Yes / No
- 5 **Agree** to the proactive release of this paper in conjunction with the launch announcement of negotiations. Yes / No

Hon David Parker  
Minister for Trade and Export Growth

Proactive Release  
Ministry of Foreign Affairs and Trade

## Report

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1. New Zealand and approximately 70 WTO Members agreed a Joint Statement on e-Commerce at the Buenos Aires WTO Ministerial Conference in December 2017. With this statement, Members undertook to initiate exploratory work towards future WTO negotiations on trade related aspects of electronic commerce.
2. Since then, Members have held “exploratory discussions” in Geneva on issues and elements to consider in a WTO e-commerce negotiation. These meetings have been open to all WTO members, including those who are not signatories to the Buenos Aires statement. Overall, 113 members have attended at least one session with 17 formal presentations coming from the most active “core” of participants, including New Zealand. We have worked closely with the co-convenors of the Joint Statement Initiative (Australia, Singapore and Japan), on establishing a clear process that maintains momentum. Some members while not likely to co-sponsor the statement, s6(a), s6(e)(vi) have registered their strong interest in the process and underscored the importance of an inclusive approach. s6(a), s6(e)(vi)
3. Discussions have clustered around a set of themes which are expected to provide the basis for the eventual negotiation:
  - Enabling Digital Trade/E-commerce:
    - Customs, digital trade facilitation and logistics
    - Facilitating electronic transactions
    - Customs duties on electronic transmissions
  - Openness and Digital Trade/E-commerce:
    - Market access
    - Flow of information (i.e. data provisions)
    - Access and non-discrimination
  - Trust and Digital Trade/E-commerce:
    - Business trust (e.g. cybersecurity)
    - Consumer trust (e.g. consumer protection, privacy)
    - Intellectual property
  - Cross Cutting issues
    - Transparency
    - Infrastructure gaps/digital divide
    - Cooperation.
4. Members have shared a diverse exchange of perspectives, with some advocating highly ambitious outcomes on issues such as data, while others have emphasised the importance of robust personal privacy safeguards. New Zealand has contributed to the process, in particular, sharing our experience on the interface with free trade agreement (FTA) practice and domestic frameworks, including coordinating with other Members on shared

priorities such as consumer protection, privacy, and paperless trading. A key focus of our interventions has been to direct efforts towards an outcome that is inclusive, commercially meaningful and pays due regard to and protects personal privacy. The majority of the discussion has centred around FTA experience with e-commerce chapters or provisions. Many participants support making permanent the current biennially-renewed moratorium on the imposition of customs duties on electronic transmissions. Following the conclusion of the exploratory discussions in November, Members' attention has now shifted to next steps to support the initiative's transition to negotiations.

## Transitioning to negotiations

5. In launching the exploratory process, there was always an expectation that formal negotiations would follow, with current planning focusing on the January Davos WTO Mini-Ministerial meeting as a venue for a launch announcement. The working assumption is, however, that this will necessarily need to be a "soft" launch of negotiations. This is likely to mean that Ministers issue a statement noting the progress in discussions since Buenos Aires, and confirming intentions to commence WTO negotiations in 2019. While relatively high-level in nature, we anticipate this statement will recognise the need for a dual focus on achieving a high standard outcome that builds on existing WTO agreements and frameworks, while encouraging the participation of as many WTO Members as possible.
6. This is a similar approach to that used for the launch of negotiations for the update of the Information Technology Agreement and the Environmental Goods Agreement. Its attraction is that it does not require a heavy pre-negotiation regarding the scope of the agreement, and will allow the text to develop more organically. That said, we already have a good sense of the core elements likely to be negotiated and these are consistent with our existing FTA practice and policy preferences, addressing issues within the four themes noted above.  
s6(e)(vi), s9(2)(j)

There is scope for New Zealand to bring new ideas to the table and we are already exploring these with relevant agencies.

7. More importantly, however, it also provides further time to build comfort among Members with the form of the negotiation. We have been clear that we can support a plurilateral process, but have stressed that this must be transparent, open to all Members, and that results must apply on a Most-Favoured-Nation (MFN) basis. This is consistent with the position we have taken on WTO reform, including our proposal on Flexible and Open Negotiation Approaches (FONA). This view is shared by many members. There is, however, a concern about the effect of "free-riders" who do not join the initiative but benefit from commitments extended to all WTO members. We have not heard other Members voice major concerns. s6(a), s6(e)(vi)

s6(a), s6(e)(vi)

8. The question of participation will also be important. A certain critical mass of key larger Members will need to be on board the negotiations at an early stage, especially given concerns about 'free-rider' benefits to non-participants. Securing this requires a degree of constructive ambiguity regarding the scope of the negotiation, and sufficient room for Members to step away from an outcome if they are not comfortable with the result of the negotiation. This question of a balance between ambition and participation is a central one and is likely to continue to be a point of discussion following the announcement of the soft launch of negotiations in January.

### Proposed approach

9. The existing Cabinet Mandate (CAB-17-MIN-0513.01) provides for New Zealand to support the launch of a plurilateral negotiation on electronic commerce, subject to your assessment that this aligns with New Zealand's long term goal of progressing electronic commerce multilaterally. We judge that co-sponsoring the Ministerial Statement at Davos is consistent with this goal. Accordingly, we seek your agreement to co-sponsor the Ministerial joint statement.
10. Officials will seek further guidance and Cabinet approval on New Zealand's approach to these e-commerce negotiations once further clarity is provided on both form and substance. s6(a), s6(b), s6(e)(vi)
11. Negotiations are an opportunity for New Zealand to deliver an outcome on e-commerce that demonstrates the wider systemic benefits of an active WTO negotiating agenda. This is an opportunity to reinforce the importance of multilateral outcomes that respond to modern trading realities, benefitting both developed and developing Members.
12. Proactive engagement will assist in our ability to play a constructive role in shaping the e-commerce principles captured in the negotiations that reflect our core interests. Consistent with our engagement in regional trade agreements on e-commerce, we will advocate for a high quality outcome that balances New Zealand's commercial interests through the development of robust international rules while also providing the necessary policy space to protect legitimate public policy interests, including on issues such as privacy, consumer protection and cyber security. This includes efforts to facilitate growth in e-commerce that will contribute to the government's economic diversification and well-being goals, including in areas such as regional economic development and the transition to a low carbon economy.

13. Any provisions under negotiation would not interfere with Members' right to impose internal taxes, fees or other charges (such as New Zealand's GST regime). This approach provides opportunities for revenue collection on a non-discriminatory basis, one of the fundamental principles of the WTO.
14. Key areas where we may want to take a proactive role include:
  - Issues of key concern to New Zealanders including privacy and protection of personal information, consumer protection and other issues that may be identified through domestic public engagement;
  - Provisions supporting goods exports, including paperless trading and electronic authorisation. Such provisions benefit New Zealand businesses, improve the efficiency of regulators and ability to manage biosecurity risks, which is likely to be of interest to a wider range of WTO Members; and
  - Provisions on making permanent the customs duties moratorium and providing protection from spam messages, similar to those we agreed in the CP-TPP.

### Seeking the views of New Zealanders

15. Following the soft launch at Davos, we will initiate domestic public engagement, to ensure New Zealanders have an understanding of the issues under negotiation at the WTO and an opportunity to input into the process, including providing feedback on issues of interest. Future engagement will consider specific issues in more detail, as negotiations progress and policy positions are developed.
16. The development of an effective communications strategy, including key messages for various domestic audiences, is an important first step. We anticipate key audiences to include industry, academia and Māori / Iwi and recognise that it may be useful to provide dedicated opportunities for different interest groups and for different issues. Specific areas of particular interest to the public include personal information protection, consumer protection and higher ambition data-flow articles (cross-border transfer of data, data localisation and disclosure of source code).
17. We recommend that the public outreach process begin with a press release by the Minister for Trade and Export Growth directly following the announcement launching e-commerce negotiations at Davos. This press release will include a link to the MFAT website providing the latest information regarding opportunities for consultation and a copy of this submission.
18. Specific and logistical details of the various engagement opportunities will be developed in consultation with relevant agencies prior to the announcement. This communication will include a mix of online and in-person outreach.