



**NEW ZEALAND**  
FOREIGN AFFAIRS & TRADE



New Zealand Ministry of  
Foreign Affairs and Trade  
Manatū Aorere

16 January 2018

Jan Rivers

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Dear Jan Rivers,

I refer to your email of 30 October 2017 in which you request the following under the Official Information Act 1982 (OIA):

*"any communications within MFAT or between MFAT and other government departments providing guidance about the National Interest Analysis for the TPPA including how it should be structured and what material should be included in order that the Foreign Affairs and Trade Select Committee could understand the impacts of the TPPA. I would also like to have any communications about how this advice played out in the decision to exclude section of Annex 11 related to non compliant measures that says:*

*" This reservation does not apply to the wholesale trade and retail of bottled mineral, aerated and natural water."*

On 27 November 2017 we wrote to you to advise that the timeframe for our response would be extended to 16 January 2018. This was because consultations necessary to make a decision on the request were such that we could not make a proper response within the original timeframe (section 15A(1)(b) of the OIA refers).

### **Material provided to meet this request**

We are releasing to you material provided to the staff responsible for drafting the National Interest Analysis (NIA), including both generic material relating to the structure of an NIA more generally and specific advice relating to the allocation and drafting responsibilities adopted during this process. Some portions of the documents are withheld under the following sections of the OIA:

- 9(2)(a): to protect individuals' privacy;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- and

- 9(2)(h): to maintain legal professional privilege.

Some material within the documents provided has been withheld as being outside of the scope of your request.

Where the information has been withheld in this release under section 9 of the OIA, no public interest in releasing the information has been identified that would be sufficient to override the reasons for withholding it.

### **Drafting of the National Interest Analysis**

The Cabinet Manual and Parliament's Standing Orders set out the requirements for NIAs. Additionally the guidance regarding the overall structure of an NIA is set out in the International Treaty Making Guide is provided as part of this release.

The purpose of an NIA is to explain for the reader the nature of the obligations of a Treaty, its advantages and disadvantages, and refer readers to the specific article, provision or chapter of the treaty, should they wish to read the obligation in its context. As an informational tool designed to be accessible by the broader public, an NIA is a summation and analysis of an Agreement only. The intention in drafting an NIA is not to replicate or provide detailed explanation of every provision contained in the Agreement. In this instance the text of the Agreement was available at the time of select committee consideration of the NIA. This is the case with the non-conforming measures, which are collectively summarised in the section "Investment reservations – Annex II" on pages 145-147 of the NIA and where the reference to Annex 2 is highlighted in the sub-heading and text of that section of the NIA.

We were unable to identify any specific communications about how guidance from MFAT impacted on the drafting of the NIA with respect to the non-conforming measure you have highlighted. As such we are refusing that part of your request under Section 18(e) of the Official Information Act as relevant information does not exist or cannot be found.

The language regarding non-conforming measures in the NIA (including the one you have highlighted) however, is broadly consistent with the language prepared for similar sections in other NIAs produced for free trade agreements New Zealand has concluded recently.

You have the right under section 28(3) of the OIA to seek a review of this response by the Ombudsman.

Yours sincerely



Wendy Adams  
for Acting Secretary of Foreign Affairs and Trade