



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



18 April 2019

➤ Minister for Trade and Export Growth For action by 3 May 2019

Digital Economy Partnership – commencement of negotiations

BRIEFING General Purpose

PURPOSE This paper seeks your approval to commence negotiations with Singapore and Chile towards a Digital Economy Partnership Agreement, including a formal announcement to this effect at APEC MRT on 17 to 18 May.

Recommended referrals

Prime Minister	For information by	10 May 2019
Minister of Foreign Affairs	For information by	10 May 2019
Minister of Broadcasting, Communications and Digital Media	For information by	10 May 2019
Minister of Commerce and Consumer Affairs	For information by	10 May 2019
Minister for Maori Development	For information by	10 May 2019
Minister for Government Digital Services	For information by	10 May 2019

Contact details

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Vangelis Vitalis	Deputy Secretary	Trade and Economic Group		

Minister's Office comments

Digital Economy Partnership – commencement of negotiations

Key points

- This paper seeks your approval to commence formal negotiations with Singapore and Chile towards a Digital Economy Partnership Agreement. The intention is to announce the commencement of these negotiations together with Chile and Singapore in the margins of the APEC MRT meeting on 17 to 18 May.
- The scope of the proposed agreement is still under discussion. The intention is to consider all aspects of the digital economy that might support trade in the digital area, and for any agreement to create a new set of norms for digital trade and emerging digital economy issues.
- Officials will seek to strike a careful balance between achieving New Zealand's commercial objectives and (crucially) safeguarding individual privacy considerations in accordance with New Zealand law and practice and securing the necessary policy space to protect legitimate public interests.
- The form and structure of the proposed agreement is not yet clear as decisions on this will depend in part on the substance of the agreement.
- We intend to launch a public submissions process at the same time as any Ministerial announcement and for this to inform any mandate from Ministers. The public submissions process will ensure New Zealanders have an opportunity to input into the negotiations and will inform a mandate if one is required.
- Particular attention will be paid to consulting Māori on the range of issues this agreement poses including in Treaty of Waitangi terms.
- Officials will seek further guidance from Ministers and Cabinet approval if required once there is more clarity on the options for legal form and on the substance of the proposed agreement.

Vangelis Vitalis
for Secretary of Foreign Affairs and Trade

Digital Economy Partnership – commencement of negotiations

Recommendations

It is recommended that you:

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| 1 | Agree that New Zealand will commence formal negotiations with Singapore and Chile towards a proposed Digital Economy Partnership Agreement. | Yes / No |
| 2 | Note the current intention is to announce the commencement of these negotiations together with Chile and Singapore in the margins of the APEC MRT Meeting on 17 to 18 May 2019. | Yes / No |
| 3 | Note that officials will prepare with counterparts from Chile and Singapore a draft joint Ministerial statement for your consideration that will be released immediately following the joint announcement at APEC MRT. A separate press release from you will also be prepared. | Yes / No |
| 4 | Note that preparations are on track to launch a public submissions process at the same time as any Ministerial announcement and the intention is for this to inform any negotiating mandate sought from Ministers. | Yes / No |
| 5 | Note that officials will seek to strike a careful balance between achieving New Zealand's commercial objectives and (crucially) safeguarding individual privacy considerations in accordance with New Zealand law and practice and securing the necessary policy space to protect legitimate public interests. | Yes / No |
| 6 | Note that particular attention will be paid to consulting Māori on the range of issues this agreement poses including in Treaty of Waitangi terms. | Yes / No |
| 7 | Note that officials will seek further guidance from Ministers and Cabinet approval if required once there is more clarity on the form and substance of the proposed agreement. | Yes / No |

Hon David Parker
Minister for Trade and Export Growth

Digital Economy Partnership – commencement of negotiations

Report

1. In March this year officials met with counterparts from Singapore and Chile in the margins of an APEC meeting to explore what the three countries might be able to achieve together in the digital trade and digital economy space including through a potential “Digital Economy Partnership Agreement” (DEPA).
2. This initiative had previously been discussed and endorsed in principle by you and Prime Minister Ardern in bilateral meetings with Singapore and Chile.
3. Since the March meeting, discussions have progressed such that it should be possible for Ministers from New Zealand, Chile and Singapore to announce in the margins of the upcoming APEC Ministers Responsible for Trade (MRT) meeting (17 to 18 May 2019) that the three countries are formally commencing negotiations towards a Digital Economy Partnership Agreement. It is proposed that a joint ministerial statement be released immediately following the joint announcement at APEC MRT. This could be followed by a separate press release from you.
4. The current goal is to substantially conclude negotiations on the proposed agreement by November this year, or preferably to finalise an agreement that can be signed by Chile, Singapore and New Zealand, with the substantive conclusion or signature announced and overseen by Leaders in the margins of APEC Economic Leaders’ Meeting in November. We note however that this is an ambitious timeframe and may need to be revisited as discussions progress and the scope of the proposed agreement becomes clearer.

Objectives, scope and approach

5. This initiative forms part of New Zealand’s response to global trade policy turbulence and the changing nature of trade in the digital era. New Zealand’s three overarching objectives for the proposed agreement are:
 - To help co-create and shape global norms for digital trade and lead on important issues in the wider digital economy space. This is an area that is commercially critical to small economies (e.g. in particular SMEs) and is integral to the Government’s productive, sustainable and inclusive economic strategy as well as wider well-being objectives;
 - To create a model digital economy agreement (or provisions) that can act as a pathfinder for others, that can raise ambition in other contexts and forums, and that can be integrated into and support processes in APEC, the World Trade Organization (WTO) and elsewhere;
 - To build frameworks on new economy issues to advance our goal of preserving a rules-based order for trade, and to demonstrate the benefits of working together with others on trade policy at a time when many economies are choosing to go it alone (or bilaterally).

Digital Economy Partnership – commencement of negotiations

6. The envisaged scope of the proposed agreement is considerable and rather more ambitious than the traditional subject matter of e-commerce chapters in free trade agreements or indeed the recently launched e-commerce negotiations at the WTO. The intention is to consider all aspects of the digital economy that might support trade in the digital era¹, building on existing trade agreement commitments in e-commerce chapters and advancing facilitative provisions traditionally contained in other chapters such as services, investment and regulatory coherence.
7. Officials will also consider a range of emerging digital economy issues and subject areas which are expected to include among others cross border data flows, digital identity, artificial intelligence, electronic invoicing, and open data.
8. In light of the recent terrorist attack in Christchurch, and the Government's strong concern about the role of internet technologies in enabling and promoting violent extremism, thought will also be given to how the agreement might be used to address wider digital economy issues relating to a safe, secure and free internet, including the issue of countering violent extremist content online.
9. Officials will seek further guidance from Ministers and a Cabinet agreed negotiating mandate as required once there is further clarity on scope and substance. In the interim we propose to commence work on the basis of our existing commitments in other trade agreements and within domestic policy. We will advocate a high quality outcome that seeks to balance New Zealand's commercial interests in the development of robust, transparent and interoperable international rules while also (and crucially) safeguarding individual privacy considerations and providing the necessary policy space to protect legitimate public policy interests. An area of particular sensitivity will relate to how data issues are managed, including in the context of Māori interests generally and the Treaty of Waitangi in particular. It is proposed that substantive and ongoing consultations with Māori will form a key element of our stakeholder engagement on this process. Our approach will also be closely informed by the parallel work being undertaken in respect of the WTO e-commerce negotiations.

Process, structure and form

10. The form and structure of the agreement is also not yet clear. Partners are beginning legal and policy assessment of a number of issues in order to provide parameters within which the agreement is able to be structured. For example, officials are considering the relationship between the provisions of the proposed agreement and WTO Most Favoured Nation obligations. This analysis cannot be

¹ The OECD states that while there is no single recognised and accepted definition of **digital trade**, there is a growing consensus that it encompasses **digitally-enabled transactions of trade in goods and services** that can either be **digitally or physically delivered**, and that involve consumers, firms, and governments. The WTO defines **e-commerce** as the **production, distribution, marketing, sale or delivery of goods and services by electronic means** and recognises that an e-commerce transaction can be **between enterprises, households, individuals, governments and other public or private organizations**. The terms e-commerce and digital trade are often used interchangeably.

Digital Economy Partnership – commencement of negotiations

completed until the content of the agreement is clearer. As advice on these issues becomes available, partners will consider options for the optimal structure of the agreement, including whether the agreement will include political commitments based on cooperation and best practice, whether the focus will be legally binding commitments, or a hybrid.

11. Whatever legal form the agreement takes, New Zealand will be looking to:

- Take a “partnership” approach, by collaborating and co-creating the substance of the agreement. The aim is to agree what can be agreed, and look to be creative about building in continuing work on what cannot yet be agreed.
- Draft so as to avoid irrelevance, by aiming to ensure that the agreement is structured and expressed so that its language does not go out of date and the agreement can be refreshed (a ‘living agreement’) as partners agree further issues and welcome new members.
- Adopt an approach whereby the process is as transparent as possible and any agreement is offered to others on an open accession basis.

12. Officials will seek further guidance from Ministers and Cabinet approval if required once there is further clarity on the proposed structure and legal form.

Seeking the views of New Zealanders

13. A public submissions process will be initiated at the same time as any Ministerial announcement. This process will help inform any mandate from Ministers. The public submissions process will ensure New Zealanders (including Māori, business, academics, NGOs and wider civil society) have an opportunity to input into the discussions, including providing feedback on issues of interest on an ongoing basis.
14. Consistent with current practice, engagement with New Zealanders on this initiative will also occur as part of targeted emails, social media and MFAT’s programme of face-to-face outreach on trade policy with the general public, Te Iwi Māori, unions, NGOs and New Zealand businesses.