



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



New Zealand Ministry of
Foreign Affairs and Trade
P.O. Box 104

19 February 2018

Jan Rivers
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Dear Jan Rivers,

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

"A footnote in this report states:

The provision does not cover the 'wholesale trade and retail of bottled mineral, aerated and natural water' Ridings notes that the 'processing and manufacturing' of bottled water is covered, meaning 'that you can take measures to limit the involvement of foreigners in bottled water production' : transcript 4 1 2, pp 741-742

Given the news today that a tax cannot be applied to bottled water to be exported in part because of existing trade agreements can you please provide the MFAT evidence and advice on which Dr Penelope Ridings made this statement including any correspondence and reports discussing how this should be expressed and the basis that "processing and manufacturing" was at that time understood to create a legislative option preventing the involvement of foreigners in bottled water production."

On 19 January 2018 we wrote to you to advise that the timeframe for our response would be extended to 19 February 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).

Thank you for your question. We **enclose** the following documents that relate to Dr Penelope Riding's statement and New Zealand's reservation with respect to water, which we note are also available on the Waitangi Tribunal and Ministry of Foreign Affairs and Trade websites:

- Brief of Evidence of Dr Penelope Ridings dated 3 July 2012 (see page 10);
- Crown Memorandum Regarding Inquiry Planning dated 27 November 2015 (see page 7)
- Affidavit of Penelope Jane Ridings sworn on 19 January 2016 (see page 32);
- Third Affidavit of Penelope Jane Ridings dated 9 February 2016 (see page 23);
- Crown Closing Submissions dated 7 April 2016 (see pages 35 and 60); and
- Trans-Pacific Partnership National Interest Analysis dated 25 January 2016 (see pages 145 and 154).

Some documents requested in scope of your request are withheld in full under s 9(2)(h) of the OIA to maintain legal professional privilege. No public interest in releasing the information has been identified that would be sufficient to override the reasons for withholding it.

We note that Dr Ridings's statements related to New Zealand's investment reservation for water in the Investment Chapter of the Trans-Pacific Partnership Agreement (**TPP**). This reservation applies only to specific obligations in the Investment Chapter, including the national treatment obligation. This is reflected in the Wai 2522 report and was made clear in the evidence of Dr Ridings. As Dr Ridings clarified during the hearing, although the investment reservation does not apply to the *wholesale trade and retail* of bottled water it still allows the Government to discriminate against overseas investors in respect of the *processing and manufacturing* of bottled water where this would otherwise constitute a breach of the Investment Chapter's national treatment obligation.

As was stated in the media reports you have referred to, the New Zealand-Korea Free Trade Agreement, the P4 Agreement (with Chile, Brunei and Singapore) and, if it enters into force for New Zealand, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), include a separate obligation in the Goods Chapter. This obligation prohibits taxes that are placed solely on exports (including bottled water exports) to certain markets. As the obligation is not an investment obligation, New Zealand's reservation with respect to water referred to by Dr Ridings is not applicable.

We hope that this response satisfies your inquiry. You have the right under section 28(3) of the OIA to seek a review of this response by the Ombudsman.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Wendy Adams', written in a cursive style.

Wendy Adams
for Secretary of Foreign Affairs and Trade