

Proactive Release

Date: 16 November 2021

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister **of State for Trade and Export Growth**:

Secondary Legislation to Implement the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill CAB-21-MIN-0399

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:

- 9(2)(f)(iv): the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 1 October 2021

On 4 October 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 1 October 2021:

Proactively released by the
Minister of State for Trade and Export Growth

LEG-21-MIN-0162 **Secondary Legislation to Implement the Regional
Comprehensive Economic Partnership (RCEP)
Legislation Bill** CONFIRMED
Portfolios: Commerce and Consumer Affairs, Customs /
Trade and Export Growth

Michael Webster
Secretary of the Cabinet

Proactively released by the
Minister of State for Trade and Export Growth

[In Confidence]

Office of the Minister of State for Trade and Export Growth

Office of the Minister of Commerce and Consumer Affairs

Office of the Minister of Customs

Chair, Cabinet Legislation Committee

Secondary Legislation to Implement the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

Proposal

- 1 It is proposed that the Cabinet Legislation Committee (LEG) authorise the submission to the Executive Council of the following items of secondary legislation:
 - 1.1 Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021;
 - 1.2 Tariff (Specified RCEP Parties) Order 2021;
 - 1.3 Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021; and
 - 1.4 Customs and Excise (Specified RCEP Parties) Order 2021.
- 2 These secondary legal instruments under the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill are necessary to implement and give effect to New Zealand's obligations under RCEP. The accompanying draft secondary legal instruments contain placeholders for the commencement date of each instrument, and placeholders for the list of specified RCEP parties. These details will be inserted, and the secondary legal instruments finalised, once the date of entry into force of RCEP is known.
- 3 The list of specified RCEP parties will grow over time, as more countries complete their ratification processes. For this reason, it is also proposed that the relevant portfolio Ministers (the Minister of State for Trade and Export Growth, the Minister of Customs and the Minister of Commerce and Consumer Affairs) submit the future amendment orders needed (to secondary legislation instruments listed in 1.2 and 1.4 above) to declare a party to the RCEP to be a specified RCEP party, directly to the Executive Council without recourse to Cabinet. This will be necessary as and when the relevant RCEP signatories and their respective dates of ratification become known. This is consistent with the approach taken in previous free trade agreements.

Policy

- 4 The RCEP legal instruments implement Cabinet decision of 9 November 2020 inviting the Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office to draft the appropriate Bill and regulations to give effect to the Regional Comprehensive Economic Partnership Agreement (RCEP) (CAB-20-MIN-0469). The Minister for Trade and Export Growth has delegated authority for all matters related to RCEP and its ongoing implementation processes to the Minister of State for Trade and Export Growth.
- 5 RCEP will be implemented domestically through an Act (RCEP Legislation Bill) and secondary legal instruments, as has been usual practice for the majority of New Zealand's previous free trade agreements. The RCEP Legislation Bill (the Bill) has been accorded a Category 2 (must be passed in 2021) priority on the 2021 Legislation Programme (CAB-21-MIN-0121).
- 6 The Bill amends the Tariff Act 1988 and the Tariff to implement New Zealand's obligations under RCEP. Specifically, the Bill will enable the application of preferential tariff rates under RCEP; and transitional safeguard measures to be applied in appropriate circumstances on imports originating from the RCEP parties. The Bill also makes changes to the Customs and Excise Act 2018 in order for authorised certification bodies to operate for the purposes of RCEP. The Bill is intended to proceed through its final stages in the House in October and receive Royal Assent in early November 2021.
- 7 The secondary legal instruments required to implement and give effect to RCEP will:
 - 7.1 amend the Customs and Excise Regulations 1996 to give effect to the rules of origin applicable to imports into New Zealand that originate from the RCEP parties;
 - 7.2 declare the countries that have ratified the RCEP Agreement as specified RCEP parties for the purposes of the Tariff Act 1988 and the Customs and Excise Act 2018; and
 - 7.3 set the commencement date of the RCEP Legislation Bill.

Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021

- This order will commence the provisions of the RCEP Legislation Act 2021 that are required to implement RCEP when it enters into force for New Zealand.

Tariff (Specified RCEP Parties) Order 2021

- The Tariff (Specified RCEP Parties) Order 2021 is made under section 7A of the Tariff Act (as amended) declaring countries party to RCEP to be specified parties for the purposes of the Tariff Act 1988. This will enable goods imported from these parties into New Zealand to access the agreed preferential tariff

rates contained in RCEP. Countries will only be declared specified parties when the RCEP enters into force between that country and New Zealand.

- This Order in Council will also operationalise the transitional safeguard mechanisms to be applied in appropriate circumstances on imports originating from the RCEP parties.

Customs and Excise (Specified RCEP Parties) Order 2021

- Customs and Excise (Specified RCEP Parties) Order 2021 is made under section 435(8) of the Customs and Excise Act (as amended) declaring countries party to RCEP to be specified parties for the purposes of section 435. This will allow the certification process provided for in section 405 to apply to goods for export to parties to RCEP.

Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021

- The Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021 will amend Part 6 of the Customs and Excise Regulations 1996. These will prescribe the rules of origin, including the product-specific rules, for goods imported into New Zealand from countries who have ratified the RCEP to give effect to the RCEP.
- Under sections 403 and 407 of the Customs and Excise Act 2018, the Governor-General may, by Order in Council, make regulations prescribing the goods, which are deemed to be the produce and manufacture of any country, and the conditions to be fulfilled. Section 407 provides that the Minister of Customs shall consult the Minister of Commerce in relations to such regulations. This is discussed further under the Consultation section below.

Timing and 28-day rule

- 8 RCEP was signed by 10 members of ASEAN (Brunei-Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) plus the five regional countries with which ASEAN has existing free trade agreements (Australia, China, Japan, South Korea, and New Zealand) on 15 November 2020.
- 9 RCEP will enter into force 60 days after the date on which at least three non-ASEAN signatories and six ASEAN signatories have completed their necessary domestic procedures and deposited their instruments of ratification, acceptance or approval to the Depository for RCEP (the Secretary-General of ASEAN).
- 10 There is therefore no set entry into force date for RCEP on which to base the commencement date for the Bill. Consequently, the Bill provides for a commencement date to be appointed by an Order in Council. This form of commencement is necessary in order to coordinate the Bill's commencement with the entry into force of RCEP for New Zealand. Officials anticipate it is possible that RCEP will enter into force internationally as soon as 1 January 2022 based on RCEP signatories affirming their commitment to complete

domestic ratification procedures by 31 October 2021 at the 2nd RCEP Interim Joint Committee held on 10 March. As of 10 September 2021, the Depository of the Agreement has circulated instruments of ratification from Singapore, China and Japan. s6(a), s9(2)(f)(iv)

- 11 s6(a), s9(2)(f)(iv)
- 12 The secondary legal instruments must be confirmed by Cabinet before New Zealand is in a position to provide the Depository with its instrument of ratification. The secondary legal instruments must come into force on the same date as RCEP enters into force for New Zealand. It is therefore recommended that the Cabinet Legislation Committee approve the draft secondary legal instruments for submission to the Executive Council, finalised with necessary amendments, when the date of entry into force of RCEP is known.
- 13 The amendments will be necessary:
- 13.1 To add the commencement date in the Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021; and
- 13.2 To update the list of specified RCEP parties once the date of entry into force of RCEP is known and to reflect the latest list of RCEP signatories that have ratified the Agreement since this lodgement of the secondary legislation instruments.
- 14 Depending on their own domestic ratification procedures, as and when other RCEP signatories ratify the Agreement, New Zealand will need to ensure that we confer the preferential tariff rates contained in the Agreement on the additional Parties. This will be done through amending the Tariff (Specified Parties) Order 2021 and the Customs and Excise (Specified RCEP Parties) Order 2021 to declare each additional RCEP Party.
- 15 This Cabinet paper also seeks authorisation for relevant portfolio Ministers to submit the necessary amendment orders directly to the Executive Council without recourse to Cabinet as the relevant countries and dates become known. This is the approach that has been used in previous free trade agreements, and is permissible given that Cabinet has agreed to New Zealand's ratification of the Agreement.
- 16 If a waiver from the 28-day rule is sought for any reason, the relevant changes will be submitted to Cabinet.

Compliance

- 17 The legal instruments comply with the following:

- 17.1 the principles of the Treaty of Waitangi;
- 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (no inconsistencies have been identified);
- 17.3 the principles and guidelines set out in the Privacy Act 2020;
- 17.4 relevant international standards and obligations;
- 17.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 18 During the RCEP Legislation Bill's examination by the Foreign Affairs, Defence and Trade Committee (FADTC), the Regulations Review Committee noted that clause 2 of the RCEP Legislation Bill does not provide a fall-back provision specifying a date when the Bill would come into force if an Order in Council is not made. It also noted that the usual approach in legislation is to provide a fall-back date of no more than one year following enactment.
- 19 In its final report to the House (tabled on 3 September 2021) on the RCEP Legislation Bill, FADTC noted that "after considering the views of the Regulations Review Committee, we are satisfied that the date being appointed by Order in Council, without a fall-back date, is appropriate. Inserting a fixed date for commencement would make it difficult to coordinate the commencement of the bill and the entry into force of the RCEP agreement."
- 20 There are no grounds for the Regulations Review Committee to draw the Orders or the Regulations to the attention to the House under Standing Order 327.

Certification by Parliamentary Counsel

- 21 The following draft regulations and orders have been certified by the Parliamentary Counsel as being in order for submission to Executive Council:
 - 21.1 Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021;
 - 21.2 Tariff (Specified RCEP Parties) Order 2021;
 - 21.3 Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021; and
 - 21.4 Customs and Excise (Specified RCEP Parties) Order 2021.

Impact analysis

- 22 An extended NIA, approved by Cabinet on 9 November 2020 (CAB-20-MIN-0469) and subsequently publically released, was prepared in accordance with

the necessary requirements for a regulatory impact analysis. The NIA sets out, among other things, the minor technical amendments arising from RCEP.

Publicity

- 23 The RCEP page on the MFAT website (<https://mfat.govt.nz/rcep>) provides the full text and resources explaining the key aspects of RCEP.
- 24 Extensive consultations and public outreach, including with relevant government agencies, Māori in their capacity as treaty partners and key stakeholders on negotiating objectives and FTA impacts took place in the context of the RCEP negotiation. This was covered extensively in the previous LEG paper seeking approval for the RCEP Legislation Bill's introduction in the House on 4 May 2021 (LEG-21-MIN-0045).
- 25 The following steps will be taken to publicise the Orders and Regulations: (a) the Orders and Regulations will be gazetted and published on the New Zealand Legislation website or the New Zealand Customs Service Website; (b) the New Zealand Customs Service will publish an article on their weekly Customs Release covering all the instruments; and (c) the New Zealand Customs Service will notify Customs brokers of the Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021.

Consultation

Section 407 of the Customs and Excise Act 2018

- 26 Section 407 of the Customs and Excise Act 2018 requires that the Minister of Customs consult with the Minister of Commerce and Consumer Affairs about any amendment to the rules of origin regulations. The Minister of Customs and the Minister of Commerce and Consumer Affairs have considered the matters outlined in the Cabinet Manual on "Exercise of Ministers' statutory powers and functions in the collective Cabinet context" in sections 5.34 to 5.37.
- 27 Based on the advice received, both the Minister of Customs and the Minister of Commerce and Consumer Affairs have consulted each other and confirm that the required consultation under section 407 of the Customs and Excise Act 2018 has taken place.

Departmental Consultation

- 28 The Ministry of Business, Innovation and Employment, which administers the Tariff Act 1988, and the New Zealand Customs Service, which administers the Customs and Excise Act 2018, have been consulted and concur with the recommendations of this paper. The Parliamentary Counsel Office has also

been consulted in the preparation of this paper. The Department of Prime Minister and Cabinet has been informed.

Proactive Release

- 29 This paper will be proactively released subject to any necessary redactions within 30 business days of final decision being taken by this Cabinet Committee.

Recommendations

- 30 The Minister of State for Trade and Export Growth, Minister of Commerce and Consumer Affairs and the Minister of Customs recommends that the Committee:

- 1 **Note** that RCEP will be implemented domestically through an Act (Regional Comprehensive Economic Partnership (RCEP) Legislation Act 2021) and the RCEP secondary legislation noted below.

1.1 Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021;

1.2 Tariff (Specified RCEP Parties) Order 2021;

1.3 Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021; and

1.4 Customs and Excise (Specified RCEP Parties) Order 2021.

- 2 **Note** that RCEP will enter into force 60 days after the date on which at least three non-ASEAN signatories and six ASEAN signatories have completed their necessary domestic procedures and deposited their instruments of ratification, acceptance or approval with the Secretary-General of ASEAN in accordance with Article 20.6 of the RCEP.

- 3 s6(a), s9(2)(f)(iv)

- 4 **Authorise** the submission to the Executive Council of all secondary legislation listed in recommendation 1, when the date of entry into force of RCEP is known.

- 5 **Note** that the date on which the Act and secondary legislation come into force will be the date on which RCEP enters into force for New Zealand.

- 6 **Authorise** relevant portfolio Ministers (the Minister of State for Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs) to submit future amendment orders (to secondary legislation instruments listed in 1.2 and 1.4) that would declare a party to the RCEP to be

a specified RCEP party, directly to the Executive Council without recourse to Cabinet, as the relevant countries and their ratification dates become known.

Statutory prerequisite for consultation under the Customs and Excise Act 2018

- 7 **Note** that section 407 of the Customs and Excise Act 2018 requires the Minister of Customs to consult the Minister of Commerce about making regulations determining country of produce or manufacture.
- 8 **Note** that the Minister of Customs and Minister of Commerce and Consumer Affairs confirms that adequate consultation in terms of section 407 has taken place.

Authorised for lodgement

Hon Phil Twyford
Minister of State for Trade and Export Growth

Hon Dr David Clark
Minister of Commerce and Consumer Affairs

Hon Meka Whaitiri
Minister of Customs

Proactively released by the
Minister of State for Trade and Export Growth



Cabinet Legislation Committee

Minute of Decision

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Secondary Legislation to Implement the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

Portfolio Commerce and Consumer Affairs, Customs, Trade and Export Growth

On 30 September 2021, the Cabinet Legislation Committee:

- 1 **noted** that RCEP will be implemented domestically through an Act (Regional Comprehensive Economic Partnership (RCEP) Legislation Act 2021) and the RCEP secondary legislation noted below:
 - 1.1 Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021 [PCO 23841/2.0];
 - 1.2 Tariff (Specified RCEP Parties) Order 2021 [PCO 23821/3.0];
 - 1.3 Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021 [PCO 23819/2.0];
 - 1.4 Customs and Excise (Specified RCEP Parties) Order 2021 [PCO 23820/3.0];
- 2 **noted** that RCEP will enter into force 60 days after the date on which at least three non-ASEAN signatories and six ASEAN signatories have completed their necessary domestic procedures and deposited their instruments of ratification, acceptance or approval with the Secretary-General of ASEAN in accordance with Article 20.6 of the RCEP;
- 3 s6(a), s9(2)(f)(iv)
- 4 **authorised** the submission to the Executive Council of the secondary legislation listed in paragraph 1, when the date of entry into force of RCEP is known;
- 5 **noted** that the date on which the Act and secondary legislation come into force will be the date on which RCEP enters into force for New Zealand;

- 6 **authorised** relevant portfolio Ministers (the Minister of State for Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs) to submit future amendment orders (to secondary legislation instruments listed in 1.2 and 1.4) that would declare a party to the RCEP to be a specified RCEP party, directly to the Executive Council without recourse to Cabinet, as the relevant countries and their ratification dates become known.

Statutory prerequisite for consultation under the Customs and Excise Act 2018

- 7 **noted** that section 407 of the Customs and Excise Act 2018 requires the Minister of Customs to consult the Minister of Commerce about making regulations determining country of produce or manufacture;
- 8 **noted** that the Minister of Customs and Minister of Commerce and Consumer Affairs confirms that adequate consultation in terms of section 407 has taken place.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Kris Faafoi
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Phil Twyford

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet Legislation Committee

Summary

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Secondary Legislation to Implement the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

Portfolios

Commerce and Consumer Affairs / Customs / Trade and Export Growth

On 9 November 2020, Cabinet agreed the text of the Regional Comprehensive Economic Partnership (RCEP) and invited the Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office for the legislation required to implement the Agreement [CAB-20-MIN-0469].

Secondary legal instruments under the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill are necessary to implement and give effect to New Zealand's obligations under RCEP. The accompanying draft secondary legal instruments contain placeholders for the commencement date of each instrument, and placeholders for the list of specified RCEP parties. These details will be inserted, and the secondary legal instruments finalised, once the date of entry into force of RCEP is known.

The Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021 will commence the provisions of the RCEP Legislation Act 2021 that are required to implement RCEP when it enters into force for New Zealand.

The Tariff (Specified RCEP Parties) Order 2021 is made under section 7A of the Tariff Act (as amended) declaring countries party to RCEP to be specified parties for the purposes of the Tariff Act 1988. This will enable goods imported from these parties into New Zealand to access the agreed preferential tariff rates contained in RCEP. Countries will only be declared specified parties when the RCEP enters into force between that country and New Zealand.

The Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021 will amend Part 6 of the Customs and Excise Regulations 1996. These will prescribe the rules of origin, including the product-specific rules, for goods imported into New Zealand from countries who have ratified the RCEP to give effect to the RCEP.

The Customs and Excise (Specified RCEP Parties) Order 2021 is made under section 435(8) of the Customs and Excise Act (as amended) declaring countries party to RCEP to be specified parties for the purposes of section 435. This will allow the certification process provided for in section 405 to apply to goods for export to parties to RCEP.

The Minister of Commerce and Consumer Affairs and Minister of Customs and Minister of State for Trade and Export Growth recommends that the Committee:

- 1 note that RCEP will be implemented domestically through an Act (Regional Comprehensive Economic Partnership (RCEP) Legislation Act 2021) and the RCEP secondary legislation noted below:
 - 1.1 Regional Comprehensive Economic Partnership (RCEP) Legislation Act Commencement Order 2021 [PCO 23841/2.0];
 - 1.2 Tariff (Specified RCEP Parties) Order 2021 [PCO 23821/3.0];
 - 1.3 Customs and Excise (Rules of Origin for RCEP Goods) Amendment Regulations 2021 [PCO 23819/2.0];
 - 1.4 Customs and Excise (Specified RCEP Parties) Order 2021 [PCO 23820/3.0];
- 2 note that RCEP will enter into force 60 days after the date on which at least three non-ASEAN signatories and six ASEAN signatories have completed their necessary domestic procedures and deposited their instruments of ratification, acceptance or approval with the Secretary-General of ASEAN in accordance with Article 20.6 of the RCEP;
- 3 s6(a), s9(2)(f)(iv)
- 4 authorise the submission to the Executive Council of the secondary legislation listed in paragraph 1, when the date of entry into force of RCEP is known;
- 5 note that the date on which the Act and secondary legislation come into force will be the date on which RCEP enters into force for New Zealand;
- 6 authorise relevant portfolio Ministers (the Minister of State for Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs) to submit future amendment orders (to secondary legislation instruments listed in 1.2 and 1.4) that would declare a party to the RCEP to be a specified RCEP party, directly to the Executive Council without recourse to Cabinet, as the relevant countries and their ratification dates become known.

Statutory prerequisite for consultation under the Customs and Excise Act 2018

- 7 note that section 407 of the Customs and Excise Act 2018 requires the Minister of Customs to consult the Minister of Commerce about making regulations determining country of produce or manufacture;
- 8 note that the Minister of Customs and Minister of Commerce and Consumer Affairs confirms that adequate consultation in terms of section 407 has taken place.

Rebecca Davies
Committee Secretary

Hard-copy distribution:

Cabinet Legislation Committee
Minister of Customs
Minister of State for Trade and Export Growth