



Cabinet

Minute of Decision

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Tariff (Specified CPTPP Parties – Chile) Amendment Order 2023 and Overseas Investment (CPTPP – Chile) Amendment Regulations 2023

Portfolio **Trade and Export Growth**

On 8 February 2023, Cabinet:

- 1 **noted** that on 23 December 2022, Chile notified the Depository of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that it had completed necessary legal procedure and the Agreement will enter into force for Chile on 21 February 2023;
- 2 **noted** that New Zealand is required to confer to Chile from 21 February 2023 tariff preferences and investment treatment negotiated under CPTPP, which requires amendment of relevant orders and regulations;
- 3 **noted** that in November 2018, Cabinet authorised the Minister of Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs and the Associate Minister of Finance (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 [CAB-18-MIN-0568];
- 4 **noted** that the relevant portfolio Ministers have authorised the submission to the Executive Council of the:
 - 4.1 Overseas Investment (CPTPP – Chile) Amendment Regulations 2023 (the Regulations) [PCO 21738/3.0].
 - 4.2 Tariff (Specified CPTPP Parties – Chile) Amendment Order 2023 (the Order) [PCO 25211/3.0];
- 5 **noted** that a waiver of the 28-day rule is sought:
 - 5.1 so that the Order and the Regulations can come into force on 21 February 2023, when CPTPP enters into force between Chile and New Zealand;
 - 5.2 on the grounds that early commencement is necessary to comply with statutory or international obligations;

6 **agreed** to waive the 28-day rule so that the Order and the Regulations come into force on 21 February 2023.

Rachel Hayward
Secretary of the Cabinet

Proactively Released by the Minister
for Trade and Export Growth

Office of the Minister for Trade and Export Growth
Chair, Cabinet

Tariff (Specified CPTPP Parties – Chile) Amendment Order 2023 and Overseas Investment (CPTPP – Chile) Amendment Regulations 2023

Proposal

- 1 This paper seeks authorisation for a waiver of the 28-day rule for:
 - 1.1 The Tariff (Specified CPTPP Parties – Chile) Amendment Order 2023; and
 - 1.2 The Overseas Investment (CPTPP – Chile) Amendment Regulations 2023.

Policy

- 2 On 23 December 2022 Chile notified New Zealand, as Depository for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), that it had completed its necessary legal procedures for the entry into force of the Agreement. CPTPP will enter into force for Chile on 21 February 2023, 60 days following its notification.
- 3 Relevant orders and regulations need to be amended to ensure New Zealand complies with its obligations to Chile from 21 February 2023. These orders and regulations will confer to Chile tariff preferences and the higher screening threshold for overseas investment in significant business assets negotiated under CPTPP. In relation to overseas investment screening, the amendment regulations will also remove the most-favoured nation (MFN) treatment under the P4 Agreement that Chile has received since 2018 (as a result of CPTPP entering into force that year). Chile will no longer need to receive MFN treatment under the P4 Agreement because, as a CPTPP Party, it will directly receive the higher quality commitments and investment treatment.
- 4 On 12 November 2018 Cabinet authorised the submission to the Executive Council of the orders and regulations necessary to bring CPTPP into force. In that context, Cabinet also authorised relevant portfolio Ministers (the Minister for Trade and Export Growth, the Minister of Commerce and Consumer Affairs, the Minister of Customs, and the Associate Minister of Finance) to submit further amendment orders and regulations directly to the Executive Council, without recourse to Cabinet, after the other CPTPP signatories had completed their respective legal procedures for the entry into force of the Agreement and the entry into force dates become known [CAB-18-MIN-0568]. This streamlined process was used for Viet Nam’s ratification (in December 2018), Peru’s ratification (in August 2021) and Malaysia’s ratification (in October 2022).
- 5 Accordingly, the relevant portfolio Ministers have authorised the submission to the Executive Council of the following order and regulations:
 - 5.1 Tariff (Specified CPTPP Parties - Chile) Amendment Order 2023; and

5.2 Overseas Investment (CPTPP - Chile) Amendment Regulations 2023.

Timing and 28-day rule

- 6 Pursuant to Article 3.2 of CPTPP, the Agreement enters into force for Chile 60 days following its ratification notification to the Depositary, on 21 February 2023. In order to comply with the 28-day rule, the relevant amendment orders and regulations would need to be notified in the *New Zealand Gazette* by 24 January 2023. Due to the summer recess, there are no Executive Council meetings that are more than 28 days before the entry into force date for Chile.
- 7 Therefore, I am seeking a waiver of the 28-day rule for the notification of regulations so that the regulations can enter into force on 21 February 2023, in compliance with New Zealand's obligations under CPTPP.

Impact Analysis

- 8 In accordance with the Cabinet Manual and Standing Orders 405 and 406, all multilateral treaties or "major bilateral treaties of particular significance" concluded by New Zealand require the preparation of a National Interest Analysis (NIA). An NIA for CPTPP was prepared in accordance with the necessary requirement, and was considered by Cabinet at the time that approval to sign the FTA was sought (CAB-18-MIN-0044).

Publicity

- 9 The Orders will be gazetted and published on the New Zealand Legislation website.

Proactive release

- 10 This paper should be proactively released within 30 business days of the final decision being taken by Cabinet, with redactions where necessary.

Consultation

- 11 The following agencies were consulted in the development of this paper: Customs, the Ministry of Business, Innovation and Employment, the Treasury, and Parliamentary Counsel Office.

Recommendations

I recommend that Cabinet:

- 1 **note** that on 23 December 2022 Chile notified the Depositary of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that it had completed necessary procedures and the Agreement will enter into force for Chile on 21 February 2023;
- 2 **note** that New Zealand is required to confer to Chile from 21 February 2023 tariff preferences and investment treatment negotiated under CPTPP, which will require amendment of relevant orders and regulations;
- 3 **note** that in November 2018, Cabinet authorised relevant portfolio Ministers (the Minister of Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs and the Associate Minister of Finance) to submit the necessary amendment orders directly to the Executive Council without recourse to Cabinet as the relevant countries and dates become known [CAB-18-MIN-0568];
- 4 **note** that the relevant portfolio Ministers (the Minister of Trade and Export Growth, the Minister of Customs, the Minister of Commerce and Consumer Affairs and the Associate Minister of Finance) have approved the submission to the Executive Council of:
 - 4.1 the Tariff (Specified CPTPP Parties – Chile) Amendment Order 2023; and
 - 4.2 the Overseas Investment (CPTPP – Chile) Amendment Regulations 2023.
- 5 **note** that a waiver of the 28-day rule is sought:
 - 5.1 so that the regulations can come into force on 21 February 2023, when CPTPP enters into force between Chile and New Zealand;
 - 5.2 on the grounds that early commencement is necessary to comply with statutory or international obligations;
- 6 **agree** to waive the 28-day rule so that the regulations can come into force on 21 February 2023.

Authorised for lodgement

Hon Damien O'Connor

Minister for Trade and Export Growth

Overseas Investment (CPTPP—Chile) Amendment Regulations 2023

Order in Council

At Wellington this day of 2023

Present:
in Council

These regulations are made under section 61A of the Overseas Investment Act 2005—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Finance made in accordance with section 61A(3) of that Act.

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Regulations

1 Title

These regulations are the Overseas Investment (CPTPP—Chile) Amendment Regulations 2023.

2 Commencement

These regulations come into force on 21 February 2023.

3 Principal regulations

These regulations amend the Overseas Investment Regulations 2005.

4 Regulation 85 amended (Definitions)

(1) In regulation 85(1), revoke the definitions of **Chile branch**, **Chile enterprise**, **Chile individual**, and **Chile territory**.

(2) In regulation 85(1), definition of **type A enterprise**, after paragraph (a)(ii), insert:

(ia) Chile:

(3) In regulation 85(1), definition of **type A individual**, after paragraph (a)(ii), insert:

(ia) Chile:

(4) In regulation 85(1), definition of **type A territory**, after paragraph (a)(ii), insert:

(ia) Chile:

5 Regulation 86 amended (Definition of ownership and control test)

In regulation 86(2)(b) and (c), replace “a Brunei individual, or a Chile individual” with “or a Brunei individual”.

6 Regulation 92 amended (Definition of type 2 investor)

(1) In regulation 92(1)(a)(i), delete “or a Chile individual”.

(2) In regulation 92(1)(a)(ii), delete “or a Chile enterprise”.

(3) In regulation 92(1)(a)(ii)(A), delete “or the Chile territory”.

(4) In regulation 92(1)(a)(iii), delete “or a Chile branch”.

(5) In regulation 92(1)(a)(iii)(A), delete “or the Chile territory”.

(6) In regulation 92(3), definition of **commercial presence**, replace “, the Brunei territory, or the Chile territory” with “or the Brunei territory”.

7 Regulation 94 amended (Definition of type 3 investor)

(1) In regulation 94(1)(a)(i), replace “a Brunei individual, or a Chile individual” with “or a Brunei individual”.

- (2) In regulation 94(1)(a)(ii), replace “a Brunei enterprise, or a Chile enterprise” with “or a Brunei enterprise”.
- (3) In regulation 94(1)(a)(ii)(A), replace “the Brunei territory, or the Chile territory” with “or the Brunei territory”.
- (4) In regulation 94(1)(a)(iii), replace “a Brunei branch, or a Chile branch” with “or a Brunei branch”.
- (5) In regulation 94(1)(a)(iii)(A), replace “the Brunei territory, or the Chile territory” with “or the Brunei territory”.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 21 February 2023, which is the date on which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018 (the **CPTPP Agreement**) enters into force for Chile.

These regulations amend Part 5 of the Overseas Investment Regulations 2005 (the **principal regulations**), which provides for alternative monetary thresholds for overseas investments in significant business assets for the purpose of implementing New Zealand’s obligations under the CPTPP Agreement. The thresholds apply for the purpose of determining whether overseas investments in business assets require consent under the Overseas Investment Act 2005 (the **Act**).

These regulations bring Chile into the same overseas investment position as countries for which the CPTPP Agreement has already entered into force. Monetary thresholds in section 13 of the Act increase from \$100 million to \$200 million for investors from those countries.

The CPTPP Agreement also triggered “most favoured nation” obligations that New Zealand has under the Korea FTA, ANZTEC, the Hong Kong CEP, the China FTA, and the P4 Agreement. Chile is a party to the P4 Agreement. Those “most favoured nation” obligations require New Zealand to treat investors from the other parties to those agreements in the same way as, or in a similar way to, the way it treats investors from other parties to the CPTPP Agreement. These regulations remove Chile’s “most favoured nation” treatment under Part 5 of the principal regulations, which will no longer be needed once Chile has become a party to the CPTPP Agreement.

Regulatory impact statement

The Ministry of Foreign Affairs and Trade produced a national interest analysis (which incorporated all elements of a regulatory impact assessment) to help inform the decisions taken by the Government relating to the CPTPP Agreement.

**Overseas Investment (CPTPP—Chile) Amendment
Regulations 2023**

Explanatory note

A copy of the national interest analysis can be found (appended to the report of the Foreign Affairs, Defence and Trade Committee) at—

- https://www.parliament.nz/en/pb/sc/reports/document/SCR_78363/international-treaty-examination-of-the-comprehensive-and#RelatedAnchor
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Treasury.

Proactively Released by the Minister
for Trade and Export Growth

Tariff (Specified CPTPP Parties—Chile) Amendment Order 2023

Order in Council

At Wellington this day of 2023

Present:
in Council

This order is made under section 7A(1)(baa) of the Tariff Act 1988 on the advice and with the consent of the Executive Council.

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Order

1 Title

This order is the Tariff (Specified CPTPP Parties—Chile) Amendment Order 2023.

2 Commencement

This order comes into force on 21 February 2023.

3 Principal order

This order amends the Tariff (Specified CPTPP Parties) Order 2018.

4 Clause 3 amended (Specified CPTPP parties)

After clause 3(b), insert:

(ba) Chile:

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 21 February 2023, declares Chile to be a specified party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the **CPTPP**) for the purposes of the Tariff Act 1988. The CPTPP is a free trade agreement, done at Santiago on 8 March 2018.

The effect of this order is to entitle Chile to preferential tariffs set under the Tariff Act 1988 in accordance with the CPTPP.

Also, regulation 51ZZF of the Customs and Excise Regulations 1996 will now apply to Chile as a result of this order. For the purpose of giving effect to the CPTPP, that regulation prescribes rules of origin, including product-specific rules and other applicable requirements, for goods imported to New Zealand from parties to the CPTPP.

Regulatory impact statement

The Ministry of Foreign Affairs and Trade produced a national interest analysis (which incorporated all elements of a regulatory impact assessment) to help inform the decisions taken by the Government relating to the CPTPP Agreement.

A copy of the national interest analysis can be found (appended to the report of the Foreign Affairs, Defence and Trade Committee) at—

- https://www.parliament.nz/en/pb/sc/reports/document/SCR_78363/international-treaty-examination-of-the-comprehensive-and#RelatedAnchor
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Business, Innovation, and Employment.