

Proactive Release

Published on or before: 17 July 2024

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister for Trade

Title	Reference
<i>Cabinet Minute of Decision – Report of the Cabinet Legislation Committee: Period Ended 31 May 2024</i>	CAB-24-MIN-0192
<i>Cabinet Legislation Committee Minute of Decision – United Kingdom’s Accession to the Comprehensive and Progressive Agreement for the Trans-Pacific (CPTPP): Approval of New Zealand’s Ratification and Implementing Legislation</i>	LEG-24-MIN-0116
<i>United Kingdom’s Accession to the Comprehensive and Progressive Agreement for the Trans-Pacific (CPTPP): Approval of New Zealand’s Ratification and Implementing Legislation</i>	

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 OIA). Where this is the case, the relevant sections of the OIA 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 OIA redaction codes:

- 6(b)(i): to protect the passing of information from another government on a confidential basis; and
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials.



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 31 May 2024

On 4 June 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 31 May 2024:

LEG-24-MIN-0116

United Kingdom's Accession to the Comprehensive and Progressive Agreement for the Trans-Pacific (CPTPP): Approval of New Zealand's Ratification and Implementing Legislation
Portfolio: Trade

CONFIRMED

Rachel Hayward
Secretary of the Cabinet



Cabinet Legislation Committee

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.

United Kingdom's Accession to the Comprehensive and Progressive Agreement for the Trans-Pacific (CPTPP): Approval of New Zealand's Ratification and Implementing Legislation

Portfolio Trade

On 30 May 2024, the Cabinet Legislation Committee:

- 1 **noted** that in July 2023, the former government approved the text of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the Protocol), and authorised the signature of the Protocol [DEV-23-MIN-0130];
- 2 **noted** that New Zealand signed the Protocol on 16 July 2023;
- 3 **agreed** that New Zealand ratify the Protocol;
- 4 **noted** that the Ministry of Foreign Affairs and Trade will submit the required notification to the Depository of the Protocol;
- 5 **noted** that in July 2023, the previous government invited the Minister for Trade and Export Growth and relevant portfolio Ministers to issue drafting instructions to the Parliamentary Counsel Office to draft amendments to the Overseas Investment Regulations 2005 and the Tariff (Specified CPTPP Parties) Order 2018, to implement New Zealand's obligations under the Protocol [DEV-23-MIN-0130];
- 6 **noted** that, when the entry into force date of the Protocol is known, the final version of the following secondary legislation will give effect to the decision referred to in paragraph 5 above:
 - 6.1 Overseas Investment (CPTPP—United Kingdom) Amendment Regulations 2024 [PCO 26311] (the Regulations);
 - 6.2 Tariff (Specified CPTPP Parties—United Kingdom) Amendment Order 2024 [PCO 26310] (the Order);
- 7 **authorised** relevant portfolio Ministers (the Minister for Trade, the Associate Minister of Finance (Hon David Seymour), and the Minister of Commerce and Consumer Affairs) to submit the final version of the Regulations and the Order directly to the Executive Council, without recourse to Cabinet, when the entry into force date of the Protocol becomes known;

- 8 **noted** that the indicative Regulations and Order lodged with the paper under LEG-24-SUB-0116 currently do not contain a commencement date but that, once known, a commencement date will be added to the Regulations and the Order prior to the Regulations and the Order being submitted to the Executive Council;
- 9 **noted** that a waiver of the 28-day rule is sought:
- 9.1 in the event that the entry into force date of the Protocol means that it will not be possible to comply with the 28-day rule and to ensure that the Regulations and the Order come into force on the same date that the Protocol enters into force;
- 9.2 on the grounds that early commencement is necessary for compliance with international obligations, in accordance with paragraph 7.101(c) of the Cabinet Manual;
- 10 **agreed** to waive the 28-day rule so that the Regulations and the Order can come into force on the same date that the Protocol enters into force.

Janine Harvey
Committee Secretary

Present:

Rt Hon Winston Peters
Hon David Seymour
Hon Chris Bishop (Chair)
Hon Dr Shane Reti
Hon Brooke van Velden
Hon Shane Jones
Hon Simeon Brown
Hon Louise Upston
Hon Todd McClay
Hon Tama Potaka
Hon Nicole McKee
Hon Casey Costello
Hon Simon Watts
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP
Todd Stephenson, MP

Officials present from:

Office of the Leader of the House
Office of the Minister of Revenue
Officials Committee for LEG

Office of the Minister for Trade
Cabinet Legislation Committee

United Kingdom's Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"): Approval of New Zealand's Ratification and Implementing Legislation

Proposal

- 1 This paper seeks:
 - 1.1 approval for New Zealand to take the binding treaty action of ratifying the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* ("Protocol");
 - 1.2 approval of the following indicative secondary legislation lodged with this paper:
 - 1.2.1 Overseas Investment (CPTPP—United Kingdom) Amendment Regulations 2024 ("Regulations"); and
 - 1.2.2 Tariff (Specified CPTPP Parties—United Kingdom) Amendment Order 2024 ("Order"); and
 - 1.3 authorisation for the relevant portfolio Ministers (the Minister for Trade, the Associate Minister of Finance (Hon Seymour), and the Minister of Commerce and Consumer Affairs) to submit the final version of the Regulations and the Order directly to the Executive Council, without recourse to Cabinet, when the entry into force date of the Protocol becomes known; and
 - 1.4 approval to waive the 28-day rule for notification in the *New Zealand Gazette* of the Regulations and the Order.
- 2 The Regulations and the Order must be approved to implement and give effect to New Zealand's obligations to the United Kingdom ("UK") when the UK's accession to CPTPP enters into force.

Executive Summary

- 3 The Protocol is a legally binding treaty that will amend the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* ("CPTPP") to include the UK as a party to CPTPP.

- 4 Subject to Cabinet's approval of the proposals in this paper, New Zealand will be in a position to notify the CPTPP Depository¹ that New Zealand has completed its "applicable legal procedures" necessary to become a Party to the Protocol.² The acts of completing applicable legal procedures and notifying the Depository will convey New Zealand's consent to be bound by the Protocol. This process is referred to as "ratifying" the Protocol throughout this paper.
- 5 ^{s6(b)(i)} the UK, Japan, Singapore and Chile have already ratified. For the Protocol to enter into force, the UK and at least six CPTPP parties must ratify the Protocol. I recommend New Zealand is part of this first group of signatories that bring the Protocol ^{s6(b)(i)} ^{s9(2)(f)(iv)} ^{s6(b)(i)} Given the entry into force provisions of the Protocol (as set out in paragraph 22 below), it would likely enter into force by the end of 2024 or in early 2025.
- 6 The effect of the Regulations is that non-government investors from the UK will be entitled to the same treatment provided to non-government investors from the other CPTPP Parties under the Overseas Investment Regulations 2005 ("2005 Regulations"). In practice, UK investors already enjoy these benefits under New Zealand's free trade agreement with the UK ("NZ-UK FTA"), with only minor differences.⁴ New Zealand investors will also benefit from the same CPTPP rules when investing in the UK.
- 7 The Order will ensure that goods imported into New Zealand from the UK will be entitled to receive the same preferential tariff rates and rules of origin as goods of other CPTPP Parties. The Order will not, however, provide the UK with greater market access than what it already receives under the NZ-UK FTA.
- 8 It is not possible to provide the Cabinet Legislation Committee with a final version of the Regulations and the Order that can be submitted to the Executive Council until New Zealand knows the date that the Protocol will enter into force which is contingent on other Parties' ratification processes as outlined above. Consequently, I seek approval of the indicative Regulations and Order lodged with this paper, subject to the addition of the entry into force date, for the purpose of supporting New Zealand's ratification.
- 9 New Zealand is not required to bring the Regulations and the Order into force until the date that the Protocol enters into force for New Zealand. When that date is known, the indicative Regulations and Order lodged with this paper will be updated to insert that date and approval from the relevant portfolio Ministers

¹ New Zealand is the Depository of the Protocol, and its services are administered by the Legal Division of the Ministry of Foreign Affairs and Trade.

² Article 20 of the Protocol.
^{s6(b)(i)}

⁴ Specifically, CPTPP may provide marginal additional benefits for UK investors for investments between \$100-200 million in the assets of businesses that provide audio-visual services or services on behalf of the New Zealand Government. Proposed investments in strategically important businesses will continue to require consent under the Overseas Investment Act 2005 ("OI Act").

will be sought to submit the final versions of the Regulations and the Order to the Executive Council.

Background

- 10 On 3 July 2023, the former Cabinet authorised the signature of the Protocol and two treaty-status side letters⁵ to the Protocol. It also invited the then-Minister for Trade and Export Growth and relevant portfolio Ministers to issue drafting instructions to the Parliamentary Counsel Office (“PCO”) to draft amendments to the Tariff (Specified CPTPP Parties) Order 2018 and the 2005 Regulations, to implement New Zealand’s obligations under the Protocol [CAB-23-MIN-0280]. New Zealand signed the Protocol and the side letters on 16 July 2023. The parliamentary treaty examination of the Protocol and the side letters was completed on 25 August 2023.
- 11 The Protocol sets out the obligations that will apply between the UK and the original CPTPP Parties when the Protocol enters into force. The UK’s accession to CPTPP will mean that the obligations and other commitments that the original CPTPP Parties made to each other under the CPTPP Agreement will be extended to the UK.
- 12 The original CPTPP rules will not change as a result of the UK’s accession to CPTPP. New Zealand’s CPTPP obligations, and the exceptions and other flexibilities in CPTPP that New Zealand relies upon, will also not change.

Policy

Strategic and economic rationale for New Zealand’s ratification of the Protocol

- 13 CPTPP is the world’s premier open plurilateral free trade agreement, with high standards and broad membership. There are currently 11 Parties: New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam. Together these economies represent around 13 percent of global gross domestic product – a total of over NZ\$18 trillion.
- 14 CPTPP is also a cornerstone of our work to create strategic depth in New Zealand’s trade relationships. Recent experiences have highlighted the need to have a well-diversified range of trading partners to build resilience while responding to shocks such as COVID-19 shutdowns, supply chain disruptions, economic coercion, and geopolitical tensions. New Zealand’s two-way goods trade with the current CPTPP bloc amounted to 29 percent of our goods trade in 2023, exceeding that of our trade with China and Hong Kong combined (25 percent). The UK’s accession to CPTPP will increase CPTPP’s share to 31 percent (\$46 billion).

⁵ One side letter will exclude Investor-State Dispute Settlement between New Zealand and the UK. The second side letter is one of a series of bilateral side letters between CPTPP Parties and the UK to provide the UK an open-ended transition period during which it will be excused from the CPTPP patent grace period obligation while it also pursues harmonisation of the European Patent Office grace period rules with CPTPP.

- 15 Given the importance of CPTPP for New Zealand's trade interests, we have always supported its expansion through accession by economies willing to meet the Agreement's high standards. Accessions decrease barriers and increase opportunities for New Zealand businesses and support the Government's ambition to double exports.
- 16 New Zealand has specific trade policy and geostrategic interests in the UK's accession to CPTPP. As a G7 member, the world's sixth-largest economy, and as a country committed to high standards and rules-based trade, accession to CPTPP embeds the UK into regional architecture, which will significantly benefit CPTPP, regional prosperity more broadly, and further strengthen the rules-based trading system upon which we rely.

Why is the implementing legislation needed?

- 17 The Regulations and the Order would implement and give effect to New Zealand's obligations to the UK under the Protocol when the UK's accession to CPTPP enters into force:
 - 17.1 The Regulations ensure that non-government investors from the UK will be entitled to the same treatment provided to non-government investors from the other CPTPP Parties under the 2005 Regulations.
 - 17.2 The Order ensures that goods imported into New Zealand from the UK will be entitled to receive the same preferential tariff rates and rules of origin as goods of other CPTPP Parties. The Order will not, however, provide the UK with greater market access than what it already receives under the NZ-UK FTA, because New Zealand's goods market access commitments in CPTPP are effectively the same as the goods market access commitments in the NZ-UK FTA.

Overview of the Implementing Legislation

- 18 The key provisions in the Regulations and the Order are outlined below.

Regulations

- 19 The Regulations will amend the 2005 Regulations. In particular, the Regulations will add the UK to the list of CPTPP Parties for which an increased monetary threshold of \$200 million applies to investments in New Zealand by non-government investors in significant business assets. (The standard monetary threshold for investments in significant business assets is \$100 million.) The Regulations also revoke two exclusions that currently apply to UK investors under the NZ-UK FTA, because the exclusions must not apply to UK investors when the UK becomes a CPTPP Party.⁶ The Regulations will be made under section 61A of the Overseas Investment Act 2005 ("OI Act").

⁶ UK investors are already entitled to the same treatment as CPTPP investors under the 2005 Regulations, with two exceptions. Under Regulation 88(2)(g), the standard monetary threshold for consent under the OI Act (\$100 million) currently applies to investments by UK non-government investors in the assets of businesses that provide: (1) audio-visual services; or (2) services on behalf

Order

- 20 The Order will amend the Tariff (Specified CPTPP Parties) Order 2018 (“2018 Order”) by adding the UK to the list of CPTPP Parties in the 2018 Order for the purposes of the Tariff Act 1988. The effect of the Order will mean that goods imported into New Zealand from the UK will be entitled to receive preferential tariff rates under CPTPP. The Order will be made under section 7A(1)(baa) of the Tariff Act 1988.
- 21 As a result of the Order, regulation 51ZZF of the Customs and Excise Regulations 1996 will apply (without need for amendment) to goods imports from the UK that seek CPTPP tariff rates. That regulation prescribes rules of origin, including product-specific rules and other applicable requirements, for goods imports from CPTPP Parties (as required by CPTPP obligations).

Process for Ratifying the Protocol and Next Steps

- 22 Subject to Cabinet approval, the process for ratifying the Protocol and subsequent steps are as follows:
 - 22.1 The Ministry of Foreign Affairs and Trade will formally notify the Depositary of the completion of New Zealand’s applicable legal procedures, and the Depositary will provide a copy of the notification to all other Protocol signatories. This international legal process will occur prior to Executive Council approval of the Regulations and the Order.
 - 22.2 The entry into force date of the Protocol will become clear as the UK and other CPTPP Parties ratify the Protocol during 2024.
 - 22.3 The Protocol will enter into force 60 days after the UK and all CPTPP Parties have ratified the Protocol. If that process takes longer than 15 months after signature, from that point in time (i.e., 16 October 2024), the Protocol may enter into force 60 days after the UK and at least six CPTPP Parties have ratified it. The side letters between New Zealand and the UK will enter into force on the same date that the Protocol enters into force between New Zealand and the UK.
 - 22.4 For any CPTPP Party that requires a longer period of time to complete its domestic process, the Protocol will enter into force for that Party 60 days after the date on which that Party ratifies the Protocol.

Timing and 28-day rule

- 23 At this time, it is not possible to provide the Cabinet Legislation Committee with a final draft of the Regulations and the Order that can be submitted to the Executive Council because, until New Zealand knows the date that the Protocol will enter into force, we cannot include a commencement date in the

of the New Zealand Government, rather than the increased threshold of \$200 million that applies to CPTPP non-government investors (and all other investments by UK non-government investors in significant business assets). Proposed investments in strategically important businesses, however, will continue to require consent under the OI Act.

Regulations and the Order. The commencement date for the Regulations and the Order will be the date that the Protocol enters into force for New Zealand.

- 24 I seek a waiver of the 28-day rule in the event that the entry into force date of the Protocol becomes known in mid or late-December 2024, which would mean that there would not be enough time to convene an Executive Council meeting during the Christmas-New Year period and gazettal of the Regulations and the Order more than 28 days before the Protocol enters into force. In such circumstances, a waiver of the 28-day rule would be necessary to ensure New Zealand complies with its international obligations under the Protocol, as permitted by paragraph 7.101(c) of the *Cabinet Manual*.

Compliance

- 25 The Regulations and the Order comply with the following:
- 25.1 the principles of the Treaty of Waitangi;
 - 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 25.3 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 25.4 relevant international standards and obligations;
 - 25.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 26 Section 61A(3) of the OI Act requires that the Minister of Finance be satisfied that the Regulations do not provide for an alternative monetary threshold that is higher than the amount provided for in the relevant international agreement (i.e., CPTPP). The Associate Minister of Finance (Hon David Seymour) is responsible for making this decision under delegation. Officials advise that the monetary threshold in the Regulations is equal to (and not higher than) the amount provided for in CPTPP (\$200 million).

Regulations Review Committee

- 27 Officials do not consider there to be any grounds for the Regulations Review Committee to draw the Regulations or the Order to the attention of the House of Representatives as a Standing Order requirement.

Certification by Parliamentary Counsel

- 28 PCO will consider whether the Regulations and the Order are in order for submission to the Executive Council after the date of entry into force for the Protocol is known, and the Regulations and the Order have been amended to insert their commencement date.

Financial Implications

- 29 The implementation of the Protocol is not expected to result in any financial implications. When the Protocol enters into force, the UK will become the twelfth CPTPP Party and CPTPP already has established implementation arrangements and work programmes. I confirm that the UK's accession to CPTPP will not have any impact on New Zealand's tariff revenue, because all imports from the UK are already entitled to duty-free treatment under the NZ-UK FTA, which entered into force on 31 May 2023.

Impact Analysis

- 30 In accordance with the *Cabinet Manual* and Standing Orders 405 to 408, "major bilateral treaties of particular significance" concluded by New Zealand require a National Interest Analysis (NIA) to be tabled in the House with the text of the treaty. An extended NIA for the Protocol was prepared in accordance with the necessary requirements for a regulatory impact analysis.
- 31 The NIA sets out, among other things, the advantages and disadvantages of the Protocol, costs and benefits, a summary of the Regulations and the Order, and what implementation of the Protocol means for New Zealand. The NIA was submitted to the former Cabinet at the time that approval to sign the Protocol was sought [DEV-23-MIN-0130]. The NIA was also considered by FADTC during the parliamentary treaty examination process for the Protocol.

Publicity

- 32 Decisions on what steps will be taken to publicise New Zealand's ratification of the Protocol, commencement of the Regulations and the Order, and entry into force of the Protocol to make the UK a CPTPP Party will be taken when key dates are known.

Proactive Release

- 33 This paper will be proactively released within 30 business days of final decisions being confirmed by Cabinet, subject to redactions as appropriate under the Official Information Act 1982.

Consultation

- 34 The Ministry of Foreign Affairs and Trade has worked with PCO and the following agencies during the development of the Regulations and the Order: Land Information New Zealand, the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, and The Treasury.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that, on 3 July 2023, the former Cabinet approved the text of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (“Protocol”) and authorised the signature of the Protocol [CAB-23-MIN-0280];
- 2 **note** that New Zealand signed the Protocol on 16 July 2023;
- 3 **approve** New Zealand ratifying the Protocol;
- 4 **note** the Ministry of Foreign Affairs and Trade will submit the required notification to the Depository of the Protocol;
- 5 **note** that, on 3 July 2023, Cabinet invited the then-Minister for Trade and Export Growth and relevant portfolio Ministers to issue drafting instructions to the Parliamentary Counsel Office to draft amendments to the Overseas Investment Regulations 2005 and the Tariff (Specified CPTPP Parties) Order 2018, to implement New Zealand’s obligations under the Protocol [CAB-23-MIN-0280];
- 6 **note** that, when the entry into force date of the Protocol is known, the final version of the following secondary legislation will give effect to the decision referred to in recommendation 5 above:
 - 6.1 Overseas Investment (CPTPP—United Kingdom) Amendment Regulations 2024 (“Regulations”); and
 - 6.2 Tariff (Specified CPTPP Parties—United Kingdom) Amendment Order 2024 (“Order”); and
- 7 **authorise** relevant portfolio Ministers (the Minister for Trade, the Associate Minister of Finance (Hon Seymour), and the Minister of Commerce and Consumer Affairs) to submit the final version of the Regulations and the Order directly to the Executive Council, without recourse to Cabinet, when the entry into force date of the Protocol becomes known;
- 8 **note** that the indicative Regulations and Order lodged with this paper currently do not contain a commencement date but that, once known, a commencement date will be added to the Regulations and the Order prior to the Regulations and the Order being submitted to the Executive Council;
- 9 **note** that a waiver of the 28-day rule is sought:
 - 9.1 in the event that the entry into force date of the Protocol means that it will not be possible to comply with the 28-day rule and ensure that the Regulations and the Order come into force on the same date that the Protocol enters into force; and

- 9.2 on the grounds that early commencement is necessary for compliance with international obligations, in accordance with paragraph 7.101(c) of the *Cabinet Manual*;
- 10 **agree** to waive the 28-day rule so that the Regulations and the Order can come into force on the same date that the Protocol enters into force.

Authorised for lodgement

Hon Todd McClay
Minister for Trade

Proactively Released by the Minister for Trade