

Proactive Release

Date: 28 May 2024

The following Cabinet paper/s and related Cabinet minutes have been proactively released by the Minister for Trade:

Title	Reference
Report of the Cabinet Legislation Committee: Period Ended 19 January 2024	CAB-24-MIN-0127
European Union Free Trade Agreement Legislation Amendment Bill: Approval for Introduction	LEG-24-MIN-0061
Commencement Order and Regulations to Implement the New Zealand- European Union Free Trade Agreement	

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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 12 April 2024

On 15 April 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 12 April 2024:

LEG-24-MIN-0061 **Commencement Order and Regulations to Implement the New Zealand-European Union Free Trade Agreement** CONFIRMED
Portfolio: Trade

Rachel Hayward
Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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Commencement Order and Regulations to Implement the New Zealand-European Union Free Trade Agreement

Portfolio Trade

On 11 April 2024, the Cabinet Legislation Committee:

- 1 **noted** that the entry into force date for the Free Trade Agreement between New Zealand and the European Union (EU FTA) will be 1 May 2024, and that, prior to that date, secondary legislation must be approved in order to implement and give effect to New Zealand's obligations under the EU FTA;
- 2 **noted** that New Zealand owes "most-favoured-nation" services and investment obligations under the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) to the PACER Plus Parties;
- 3 **agreed** that Regulations made under the Geographical Indications Registration Act 2006 provide:
 - 3.1 that the procedures related to the public notification, opposition and examination of requests from the EU to update Annex 18-B of the EU FTA to be prescribed in regulations made under the Geographical Indications Registration Act 2006 should mirror, to the extent applicable, the current procedures for interested persons to oppose an application to register a New Zealand or foreign wine or spirits Geographical Indications;
 - 3.2 for the infringement fee for failure to comply with a notice of direction under section 120 to be \$400 for an individual and \$800 for any other person;
 - 3.3 that the maximum that may be imposed by a court for an infringement offence should not exceed \$1,200 for an individual and \$2,400 for any other person;
 - 3.4 for the infringement and reminder notices to be in standard form as is typically used in other regulatory infringement regimes;

- 4 **authorised** the submission to the Executive Council of the:
- 4.1 European Union Free Trade Agreement Legislation Amendment Act Commencement Order 2024 [PCO 26212/4.0];
 - 4.2 Geographical Indications Registration Regulations 2024 [PCO 25932/5.0];
 - 4.3 Overseas Investment (PACER Plus) Amendment Regulations 2024 [PCO 25856/4.0] (OI Regulations);
- (together, the Order and the Regulations);
- 5 **noted** that section 61A(3) of the Overseas Investment Act 2005 requires that the Minister of Finance must be satisfied that the OI Regulations do not provide for an alternative monetary threshold that is higher than the amount provided for in the relevant international agreements;
- 6 **noted** that the Associate Minister of Finance (Hon Seymour) has confirmed he is satisfied as to paragraph 5 above;
- 7 **noted** that a waiver of the 28-day rule is sought:
- 7.1 so that the Order and the Regulations can come into force on 1 May 2024;
 - 7.2 on the grounds that early commencement is necessary for compliance with New Zealand's obligations under the EU FTA and PACER Plus;
- 8 **agreed** to a waiver of the 28-day rule.

Rebecca Davies
Committee Secretary

Present:

Hon Brooke van Velden
Hon Shane Jones
Hon Chris Bishop (Chair)
Hon Dr Shane Refi
Hon Simeon Brown
Hon Paul Goldsmith
Hon Todd McClay
Hon Tama Potaka
Hon Matt Doocey
Hon Nicole Mckee
Hon Casey Costello
Hon Andrew Bayly
Hon Scott Simpson
Todd Stevenson, MP
Jamie Arbuckle, MP

Officials present from:

Officials Committee for LEG
Office of the Leader of the House

Office of the Minister for Trade
Cabinet Legislation Committee

Commencement Order and Regulations to Implement the New Zealand-European Union Free Trade Agreement

Proposal

- 1 This paper seeks authorisation for:
 - 1.1 submission to the Executive Council of the final versions of the:
 - 1.1.1 European Union Free Trade Agreement Legislation Amendment Act Commencement Order 2024 (Order);
 - 1.1.2 Geographical Indications Registration Regulations 2024 (GI Regulations); and
 - 1.1.3 Overseas Investment (PACER Plus) Amendment Regulations 2024 (OI Regulations); and
 - 1.2 a waiver of the 28-day rule for the Order, the GI Regulations and the OI Regulations (together, the Order and the Regulations).
- 2 The Order and the GI Regulations must be approved in order to implement and give effect to New Zealand's obligations under the *Free Trade Agreement between New Zealand and the European Union* (EU FTA), which will enter into force on 1 May 2024.
- 3 The OI Regulations must be approved in order to implement and give effect to the "most-favoured-nation" (MFN) services and investment obligations in the *Pacific Agreement on Closer Economic Relations Plus* (PACER Plus), which were triggered by the entry into force of the New Zealand-United Kingdom Free Trade Agreement (UK FTA) and which will be triggered by the entry into force of the EU FTA.

Policy

- 4 On 23 January 2024, Cabinet authorised officials to bring the EU FTA into force (in accordance with the provisions of the EU FTA), following the passage of implementing legislation [CAB-24-MIN-0004]. The European Union Free Trade Agreement Legislation Amendment Act 2024 (EU FTA Act) received Royal assent on 25 March 2024. New Zealand also ratified the EU FTA on 25 March 2024, by notifying the European Union (EU) that New Zealand had completed its "applicable legal requirements and procedures" for the entry into force of the EU FTA. New Zealand and EU have agreed that the EU FTA will enter into force on 1 May 2024.

- 5 The Order and the GI Regulations implement the previous Cabinet's decision to invite the former Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft the necessary legislative and regulatory amendments to give effect to New Zealand's obligations under the EU FTA [DEV-23-MIN-0120]. The OI Regulations implement Cabinet's decision on 31 May 2017 to invite the then Minister of Trade to issue drafting instructions to PCO to draft the appropriate legislation to give effect to New Zealand's obligations under PACER Plus [EGI-17-MIN-0121].
- 6 Accordingly, I propose that Cabinet authorise the submission to the Executive Council of the final versions of the Order and the Regulations summarised below.

Order

- 7 The EU FTA Act provides for the Act to commence on a date set by an Order in Council. The Order will set a commencement date of 1 May 2024 for the Act.

GI Regulations

- 8 Section 58(2) of the Geographical Indications Registration Act 2006 as amended by the EU FTA Act (the Amended GI Act) sets out what the Registrar is required to do in respect of a request from the EU to update Annex 18-B of the EU FTA. An update to Annex 18-B of the EU FTA is made by either amending a geographical indication (GI) already listed, or by adding a new GI. Under section 58(2) of the Amended GI Act, the Registrar is required to:
 - 8.1 give public notice of the request;
 - 8.2 give interested persons an opportunity to oppose the request; and
 - 8.3 examine the request to determine whether any grounds exist to refuse the request.
- 9 The opposition and examination procedures to be prescribed in the regulations should mirror, to the extent applicable, the current procedures for interested persons to oppose an application to register a New Zealand or foreign wine or spirits GI.
- 10 The public notice would be required to include relevant information about the GIs protection in New Zealand, including the term to be protected as a GI, the product class to which the GI would relate, the country of origin where the GI is protected (i.e. relevant EU Member State), the date by which an interested person may oppose the request, and any other information the Registrar considered relevant.
- 11 An interested person would be required to provide, within three months of the Registrar publicly notifying the request, a notice of opposition setting out the

grounds upon which they oppose the request, and to pay a fee of \$700 dollars.¹ A person giving notice of opposition would have a further two months to provide any evidence in support of their ground(s) for opposing the request.

- 12 The Registrar would then examine the request and, if there is an opponent, hear the opponent (if required), and consider any evidence provided by the opponent. The Registrar could also take into account any other information they considered to be relevant to the examination.
- 13 The Amended GI Act provides that an infringement offence is committed if a person fails to comply with a notice of direction issued by a GI officer. Section 120(3) of the Amended GI Act provides for an infringement fee and maximum fine to be prescribed in regulations. I therefore recommend that the GI Regulations provide that:
 - 13.1 the infringement fee for an infringement offence against section 120 of the Amended GI Act is \$400 for an individual, and \$800 for any other person; and
 - 13.2 the fine the court may impose for an infringement offence against section 120 of the Amended GI Act should not exceed \$1,200 for an individual, and \$2,400 for any other person.
- 14 The GI Regulations also include standard forms for an infringement notice and a reminder notice as required under sections 124 and 127 respectively of the Amended GI Act.

OI Regulations

- 15 The OI Regulations implement the MFN services and investment obligations in PACER Plus, which were triggered by the entry into force of the UK FTA (on 31 May 2023), and which will also be triggered by the entry into force of the EU FTA. The OI Regulations will amend the Overseas Investment Regulations 2005. In particular, the OI Regulations will add the PACER Plus Parties to the group of New Zealand's trading partners 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 OI Regulations will be made under section 61A of the Overseas Investment Act 2005.
- 16 Section 61A(3) of the Overseas Investment Act 2005 requires that the Minister of Finance be satisfied that the OI Regulations do not provide for an alternative monetary threshold that is higher than the amount provided for in the relevant international agreement. The relevant international agreements are the UK FTA and the EU FTA. The Associate Minister of Finance (Hon David Seymour)

¹ MBIE is currently undertaking a comprehensive review of all the fees payable under the intellectual property statutes and subsequent approval may be sought to change the amount of this fee after the EU FTA enters into force.

confirms he is so satisfied regarding the \$200 million threshold for the PACER Plus Parties to whom New Zealand owes MFN obligations.

Timing and 28-day rule

- 17 I am seeking a waiver of the 28-day rule for the Order and the Regulations in accordance with paragraph 7.101(c) of the Cabinet Manual, because early commencement is necessary for compliance with New Zealand's obligations under the EU FTA and PACER Plus. Further, prompt entry into force of the EU FTA will ensure that New Zealand's exporters will benefit from preferential access into the EU, including lower tariffs, as soon as possible. It is estimated that on tariffs alone \$100 million per annum will be waived on New Zealand exports from the date that the EU FTA enters into force (the largest tariff cut by value of any of our FTAs), growing to \$110 million per annum after seven years. In addition, having certainty about the date for entry into force of the EU FTA will allow New Zealand exporters to plan their shipments to the EU and market orientations accordingly.
- 18 The Order and the Regulations will be published in the *New Zealand Gazette* as soon as possible after they have been approved by the Executive Council.

Compliance

- 19 The Bill, the Order and the Regulations comply with the following:
- 19.1 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);
 - 19.2 the principles and guidelines set out in the Privacy Act 2020;
 - 19.3 the principles of the Treaty of Waitangi;
 - 19.4 the relevant international standards and obligations; and
 - 19.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

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

Certification by Parliamentary Counsel

- 21 The Order and the Regulations have been certified by PCO as being in order for submission to Cabinet subject to a waiver of the 28-day rule being granted.

Impact analysis

GI Regulations

- 22 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 EU FTA was prepared in accordance with the necessary requirements for a regulatory impact analysis. The NIA sets out, among other things, the advantages and disadvantages of the FTA, costs and benefits, as well as policy changes from the NZ-EU FTA and what they mean for New Zealand. This includes a discrete impact analysis of the discretionary aspects of the legislative changes arising from the implementation of the GI obligations. The NIA was submitted to the former Cabinet at the time that approval to sign the FTA was sought [DEV-23-MIN-0120]. The NIA was considered by the Foreign Affairs, Defence and Trade Committee during the parliamentary treaty examination process for the EU FTA, and the NIA was submitted to Cabinet when it approved the introduction of the EU FTA Bill.
- 23 In respect of the policy approvals for the regulations to be made under the Geographical Indications Registration Act 2006, as discussed in paragraphs 8 to 12, Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

OI Regulations

- 24 An extended NIA for PACER Plus was prepared in accordance with the necessary requirements for a regulatory impact analysis. The NIA was submitted to Cabinet in May 2017 at the time that approval to sign PACER Plus was sought [EGI-17-MIN-0121]. The NIA outlines the legislative changes required to implement PACER Plus.
- 25 At the time at which Cabinet approval was sought for the signature of PACER Plus, Treasury's Regulatory Impact Analysis team reviewed the NIA, which was prepared by the Ministry of Foreign Affairs and Trade (MFAT). The review team considered that the regulatory impact analysis in the NIA meets the quality assurance criteria for national interest analyses.

Consultation

- 26 MFAT consulted the following agencies in developing the policy and the Order and the Regulations: PCO, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Ministry for Primary Industries, the New Zealand Customs Service, and The Treasury. The Department of the Prime Minister and Cabinet was informed about the Order and the Regulations.

Proactive Release

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

Recommendations

The Minister for Trade recommends that the Cabinet Legislation Committee:

- 1 **note** that the entry into force date for the *Free Trade Agreement between New Zealand and the European Union* (EU FTA) will be 1 May 2024, and that, prior to that date, secondary legislation must be approved in order to implement and give effect to New Zealand's obligations under the EU FTA;
- 2 **note** that New Zealand owes "most-favoured-nation" services and investment obligations under the *Pacific Agreement on Closer Economic Relations Plus* (PACER Plus) to the PACER Plus Parties;
- 3 **agree** that Regulations made under the Geographical Indications Registration Act 2006 provide:
 - 3.1 that the procedures related to the public notification, opposition and examination of requests from the EU to update Annex 18-B of the EU FTA to be prescribed in regulations made under the Geographical Indications Registration Act 2006 should mirror, to the extent applicable, the current procedures for interested persons to oppose an application to register a New Zealand or foreign wine or spirits GI;
 - 3.2 for the infringement fee for failure to comply with a notice of direction under section 120 to be \$400 for an individual and \$800 for any other person;
 - 3.3 for the maximum that may be imposed by a court for an infringement offence should not exceed \$1,200 for an individual and \$2,400 for any other person; and
 - 3.4 for the infringement and reminder notices to be in standard form as is typically used in other regulatory infringement regimes;
- 4 **authorise** the submission to the Executive Council of the final versions of the:
 - 4.1 European Union Free Trade Agreement Legislation Amendment Act Commencement Order 2024 (Order);
 - 4.2 Geographical Indications Registration Regulations 2024 (GI Regulations);
 - 4.3 Overseas Investment (PACER Plus) Amendment Regulations 2024 (OI Regulations);(together, the Order and the Regulations);

- 5 **note** that section 61A(3) of the Overseas Investment Act 2005 requires that the Minister of Finance must be satisfied that the OI Regulations do not provide for an alternative monetary threshold that is higher than the amount provided for in the relevant international agreements;
- 6 **note** that the Associate Minister of Finance (Hon Seymour) has confirmed he is satisfied as to recommendation 5 above;
- 7 **agree** to a waiver of the 28-day rule for the Order and the Regulations, because early commencement is necessary for compliance with New Zealand's obligations under the EU FTA and PACER Plus.

Authorised for lodgement

Hon Todd McClay

Minister for Trade

Proactively Released by the Minister for Trade