

Departmental Disclosure Statement

Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade.

The Ministry of Foreign Affairs and Trade certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 April 2021

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Part One: General Policy Statement

This Bill is an omnibus Bill that amends the Customs and Excise Act 2018, the Tariff Act 1988, and the Tariff. This Bill is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to amend New Zealand law as part of the implementation of the Regional Comprehensive Economic Partnership (the **RCEP**).

The RCEP is a free trade agreement negotiated between New Zealand, Australia, China, Japan, South Korea, and 10 members of the Association of South East Asian Nations (ASEAN), ie, Brunei-Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. The RCEP was signed at Hanoi, Vietnam, on 15 November 2020.

This Bill will enable –

- the issue of New Zealand certificates of origin in respect of goods for export to the RCEP parties; and
- the application of preferential tariff rates under the RCEP; and
- transitional safeguard measures to be applied in appropriate circumstances on imports originating from the RCEP Parties.

The Agreement will also implemented by regulations, which will amend –

- the Tariff to enable the application of preferential tariff rates for imports originating from the RCEP parties; and
- 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The National interest Analysis (which can be accessed from https://www.mfat.govt.nz/assets/Uploads/RCEP-National-Interest-Analysis.pdf was prepared by the Ministry of Foreign Affairs and Trade and presented to the House of Representatives on 11 February 2021.</p> <p>In addition to the NIA, MFAT commissioned international trade modellers, ImpactEcon, to estimate the economic effects of RCEP on New Zealand. ImpactEcon estimates that once RCEP is fully implemented, New Zealand's annual GDP will be between 0.3 percent and 0.6 percent larger than it would have been if RCEP had not been concluded, equal to between NZ\$1.5 billion and NZ\$3.2 billion. The upper bound of \$3.2 billion assumes India re-joins RCEP. Should India remain outside of RCEP, the economic benefits will be towards the lower end of the range (around \$2 billion). These modelling results are shown in detail in ImpactEcon's report</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill seeks to give effect to the Regional Comprehensive Economic Partnership Agreement (RCEP) ("the Agreement"), done on 15 November 2020 at Ha Noi, Viet Nam. The Agreement text can be found at https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/regional-comprehensive-economic-partnership-rcep/rcep-text-and-resources/</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>The RCEP National Interest Analysis (NIA) was prepared by the Ministry of Foreign Affairs and Trade and presented to the House of Representatives on 11 February 2021 in accordance with the Parliamentary treaty examination process. A copy of the NIA can be accessed through the Parliament website and from https://www.mfat.govt.nz/assets/Uploads/RCEP-National-Interest-Analysis.pdf</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The NIA prepared by the Ministry of Foreign Affairs and Trade in consultation with other relevant government agencies is an extended NIA incorporating the regulatory impact statement requirements. The NIA can be accessed through the Parliament website and from https://www.mfat.govt.nz/assets/Uploads/RCEP-National-Interest-Analysis.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
Treasury was consulted regularly during the NIA drafting process. In consultation with the RIA Team in the Treasury it was decided that it was sufficient for the Ministry of Foreign Affairs and Trade to provide the quality assurance.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>2.5 (a) A cost-benefit analysis of the Agreement is included in sections 3, 4, 7 and 8 of the NIA, which can be found at pages 16-51 and 115-134. The NIA is accessible at https://www.mfat.govt.nz/assets/Uploads/RCEP-National-Interest-Analysis.pdf</p> <p>2.5 (b) The NIA comprehensively assesses the impact for New Zealand of meeting the Agreement's obligations (including as met through implementing legislation). No group of persons is identified as likely to experience any substantial loss of income or wealth as a result of the Agreement. The Agreement is estimated to result in a net economic benefit for New Zealand. There may be, however, a degree of variance between different sectors of the economy.</p> <p>The NIA notes (Section 3.7) that New Zealand choosing to remain outside of RCEP may see New Zealand exporters being excluded from participating into regional value chains, as the rules of origin discourage inputs from non-RCEP countries. Collectively, this would represent lost economic growth and opportunities for New Zealand and therefore relatively lower well-being and living standards for New Zealanders over time. Moreover, RCEP may add new rules as its cooperation matures, as is typical of ASEAN-centric agreements.²⁹ New Zealand would also lose the opportunity to influence the development of these future trade rules (within the region and potentially beyond), and participate in cooperation on economic and other new and emerging issues in the region. As noted above, the more specific cost-benefit analysis is contained within the NIA in sections 3, 4, 7 and 8 on pages 16-51 and 115-134.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO

(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
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Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Bill makes the amendments to New Zealand law necessary for it to ratify the Agreement. MFAT has worked with relevant domestic agencies in order to identify those amendments, and prepare the Bill. MFAT considers that the policy given effect by the Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

RCEP contains the same protections for the Treaty of Waitangi as all recent New Zealand Free Trade Agreements. The Treaty of Waitangi exception, along with other provisions in the Agreement, combine to protect the capacity of the Crown to implement domestic policies that fulfil its obligations to Māori, including under the Treaty of Waitangi, without being obliged to offer equivalent treatment to our RCEP partners. New Zealand's approach of including the Treaty of Waitangi exception in its free trade agreements is unique, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.
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RCEP will not impede New Zealand's current or future ability to meet its obligations to Māori, including under the Treaty of Waitangi. Nor will it prevent domestic changes that might be made in the future. Additional information on engagement with Māori as treaty partners can be found in the NIA at Section 9.2 Engagement with Maori.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice has considered whether the Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and will provided advice on this to the Attorney-General. The Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice and reports are accessible on the Ministry's website at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
Refer to Appendix One.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
While no specific testing or assessment has been completed, the Bill is based on previous models successfully used for implementing other New Zealand free trade agreements, including with Malaysia, China, Hong Kong, Korea and the ASEAN-Australia-New Zealand FTA.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The Bill enables the application of preferential tariff rates under the Agreement to goods imported from specified RCEP parties.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
A power in the Tariff Act will be modified to allow the Governor General, by order in council, to declare a country that is a party to RCEP to be a specified RCEP party for the purposes of the Tariff Act. This enables the preferential tariff rates agreed under RCEP to be applied when the agreement is ratified.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill provides that the Bill comes into force on a date appointed by the Governor-General by Order in Council.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Three

External consultation – question 3.6

The Ministry of Foreign Affairs and Trade organised and conducted a wide-ranging public outreach and consultation programme, including with relevant government agencies, Māori in their capacity as treaty partners and key stakeholders on negotiating objectives and FTA impacts. This programme used printed, emailed and website information, supported by extensive specific discussions with key stakeholders, such as exporters and industry sectors likely to be interested in or affected by the outcomes of the Agreement.

When negotiations first commenced in 2012, a number of public submissions were received from various organisations and individuals in education, business, development, trade union, social services and church-based organisations. The priorities and issues raised in the course of those and subsequent consultations (outlined in the NIA), were used to inform the latter part of negotiations and thinking around eventual implementation.

New Zealand's RCEP negotiating team held regular briefings with a wide range of interested stakeholders, including civil society, businesses and industry groups, to update them on progress. These briefings included stakeholder engagement sessions held as part of the RCEP negotiating rounds. Outreach to civil society included meetings with leaders from the New Zealand Council of Trade Unions.

RCEP was also discussed at public engagement sessions in a number of regional centres around New Zealand between December 2017 and August 2019, including: Dunedin, Auckland, Tauranga, Hamilton, Wellington, Christchurch, New Plymouth, Nelson, Napier, Whāngarei, Palmerston North, Invercargill, Timaru, Rotorua and Gisborne. The Auckland and Wellington events were streamed live on MFAT's social media platforms. At these events, officials provided updates on the progress of the RCEP negotiations, and answered questions from participants sharing their views with government officials.

Engagement with Māori as treaty partners benefitted from effective collaboration between MFAT and Te Taumata. This engagement identified a range of Māori interests and enhanced consideration of RCEP's potential impact on such interests. The RCEP Lead Negotiator regularly discussed issues and outcomes arising from the RCEP negotiations with Te Taumata senior representatives. MFAT officials attended a Federation of Māori Authorities (FOMA)-hosted workshop on trade negotiations, (including RCEP) in November 2017. Furthermore, MFAT also held trade policy consultation hui with claimants in Auckland and Wellington in December 2017 and February 2018 respectively. No concerns relating to RCEP were raised. Additional information on engagement with Māori as treaty partners can be found in the NIA at Section 9.2 Engagement with Maori.

Submissions were also sought for the parliamentary examination of RCEP over the course of December 2020 to January 2021.

Key government agencies were involved throughout the negotiation of RCEP as part of an inter-agency team or as part of the group regularly consulted (including from the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, the Ministry of Primary Industries, Inland Revenue Department, Treasury and the Department of Prime Minister and Cabinet).

The Bill is focussed on a narrow range of adjustments. Consequently, there was no additional public consultation about the Bill itself with Māori treaty partners, stakeholders or the public. Section 9 of the NIA titled Completed or proposed consultation with the community and parties interested in the treaty action (pages 137 – 140) provides further detail on consultations undertaken with respect to RCEP.