

Departmental Disclosure Statement

United Kingdom Free Trade Agreement Legislation Bill
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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 MFAT, MBIE, MPI, Customs and Treasury

MFAT, MBIE, MPI, Customs and Treasury certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9/06/2022

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Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 267(1)(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy). The single broad policy is to amend New Zealand law as part of implementing the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland (the FTA), signed at London on 28 February 2022 (1 March New Zealand time).

Most of the obligations in the FTA are already met by New Zealand's existing domestic legal and policy regime. A limited number of legislative and regulatory amendments are required to align New Zealand's domestic law with certain obligations in the FTA.

This Bill is necessary to bring the FTA into force and will enable New Zealand to implement its obligations under the FTA. The Bill amends the Copyright Act 1994, the Dairy Industry Restructuring Act 2001, the Overseas Investment Act 2005, the Overseas Investment Regulations 2005, the Tariff Act 1988, the Tariff, and the Customs and Excise Regulations 1996. Part 5 of the Bill also creates a new regime required to administer a transitional apple export quota. The intention is that Part 5 will be separated out as a separate Bill at the Committee of the Whole House stage.

This Bill will enable—

- the application of preferential tariff rates under the FTA; and
- provisional transitional safeguard measures to be applied if necessary under the FTA; and
- the implementation of transitional quotas on dairy products exported to the United Kingdom (the UK) that originate from New Zealand; and
- the division of New Zealand's country-specific World Trade Organization dairy quotas between the UK and the European Union that is required post-Brexit; and
- the extension of the scope of a performer's property rights in sound recordings of their performances under the Copyright Act 1994 to include the playing of those sound recordings in public; and
- the increase in the investment screening threshold from NZ\$100 million to \$200 million for non-government investors from the UK; and
- the implementation of New Zealand's commitments to administer a 3-year transitional quota for apple exports.

The FTA will also be implemented by—

- giving effect to the rules of origin applicable to imports into New Zealand that originate from the UK (in the amendments to the Customs and Excise Regulations 1996); and

- conferring on investors from the UK the preferential monetary threshold for screening significant business assets (in the amendments to the Overseas Investment Regulations 2005).

There are two obligations in the FTA that New Zealand has a transition period to implement. Legislation for those two commitments will be required by a later date. New Zealand has agreed to—

- introduce a new artist resale right scheme within 2 years of the FTA entering into force; and
- extend copyright and related rights terms within 15 years of the FTA entering into force. This will require a further amendment to the Copyright Act 1994.

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 NZ-UK FTA National Interest Analysis (NIA) was prepared by the Ministry of Foreign Affairs and Trade and published on 1 March 2022. The NIA is available from https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-National-Interest-Analysis.pdf.</p> <p>The Foreign Affairs, Defence and Trade Select Committee (FADTC) examined the NZ-UK FTA and NIA in March and April 2022. FADTC's report on the FTA was published on 12 April 2022. Public submissions on the FTA and FADTC's final report are available from International treaty examination of the UK-NZ Free Trade Agreement - New Zealand Parliament (www.parliament.nz).</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 <i>Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland</i> (the FTA), done on 28 February 2022 (1 March New Zealand time) at London, England. The Agreement text can be found at NZ-UK Free Trade Agreement by chapter New Zealand Ministry of Foreign Affairs and Trade (mfat.govt.nz).</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 NZ-UK FTA National Interest Analysis was prepared by the Ministry of Foreign Affairs and Trade and published on 1 March 2022. The NIA is available from https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-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 and incorporates the regulatory impact statement requirements. The NIA was published on 1 March 2022 and can be found at https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-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
<p>Treasury (including the International Team and Regulatory Strategy team) was consulted during the NIA drafting process, as is normal practice.</p>	

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?	YES
<p>The Foreign Affairs, Defence and Trade Select Committee (FADTC) examined the NZ-UK FTA and NIA in March and April 2022. FADTC’s report on the FTA was published on 12 April 2022. Public submissions on the FTA and FADTC’s final report are available from International treaty examination of the UK-NZ Free Trade Agreement - New Zealand Parliament (www.parliament.nz).</p>	

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?	YES
<p>2.5 (a) A cost-benefit analysis of the Agreement is included in sections 3, 4, 7, 8 of the NIA, which is available from https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-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 (Section 1).</p> <p>Overall, the Government considers that obligations in the Intellectual Property chapter would involve minor short term costs for New Zealand, with potentially higher longer term costs after the commitment to extend the term of protection for copyright and related rights by 20 years is implemented. An artist’s resale right scheme may impose costs on the government, and would impose compliance costs on the secondary art market. Any such costs must also be considered in the context of the benefits provided across the Agreement as a whole (Section 4).</p> <p>The NIA also notes that without an FTA with the UK, New Zealand goods exporters would face increasing deterioration of comparative market access opportunities relative to other trading partners, which either already enjoy preferential access into the UK or will in the future as the UK expands its free trade coverage post-Brexit (Section 4).</p> <p>As noted above, the more specific cost-benefit analysis is contained within the NIA in sections 3, 4, 7 and 8.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(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

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 to by the Bill is consistent with New Zealand's international obligations.
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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?

The NZ-UK FTA contains the same protections for the Treaty of Waitangi as all New Zealand Free Trade Agreements since 2001. 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 the UK. 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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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
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The Ministry of Justice is considering whether the Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and will provide 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/
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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)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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Part 5, Apples, creates new strict liability offences for exporting not in compliance with the quota system. The offences may result in a fine not exceeding \$10,000. There is a defence available if the defendant proves the contravention was due to an event or cause beyond their control and they took all reasonable steps to prevent the contravention.
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The Act also empowers the NZAPI to take certain actions if an exporter exports not in compliance with the quota system. The NZAPI may suspend an export certificate, refuse to issue and export certificate, or cancel an export certificate (all no longer than 12 months from issuing the notice of action). A person has the right of review and also the right of appeal to the High Court.

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?	YES
Part 5, Apples, empowers NZAPI to request information from applicants and exporters for the purpose of operating the system and to provide information to Customs NZ or MPI. This could include personal contact details. The Act requires NZAPI, MPI and Customs NZ to ensure appropriate protections are in place to maintain the confidentiality of information collected. Applicants may provide personal contact details when applying for allocation and export certificates. The Privacy Act applies to personal information so the Act does not include specific provision to cover this.	

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?	YES
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 5, Apples, Part is based on the existing Meat Board Act, which includes a similar quota system arrangement administered by the Meat Board. MPI has also consulted NZAPI on a draft version of the Bill to ensure that the regime is workable.	

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 traded between the Parties. Part 5 (Apples) also authorises NZAPI to recover its costs relating to performing its functions and duties under Part 5 by way of fees payable by quota applicants and quota holders.	

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
Part 5 (Apples) creates strict liability offences for exporting not in compliance with the quota system requirements. There is a defence available if the defendant proves the contravention was due to an event or cause beyond their control and they took all reasonable steps to prevent the contravention.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
Part 5 (Apples), protects the Crown and NZAPI from being liable to any person for loss or damage as a result of reductions in total quota access to the UK or other such limits or conditions on access under the FTA. The Apples Part also protects authorised persons (who undertake investigations) from civil or criminal liability in respect of any act or omission while exercising a power under the Part, unless done in bad faith or without reasonable cause.	

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?	YES
<p>Part 5 (Apples) authorises the NZ API to</p> <ul style="list-style-type: none"> • Design and operate a quota allocation mechanism • Make decisions on who should receive a quota allocation in accordance with the allocation mechanism • Issue export certificates, suspend, cancel or refuse to issue certificates. • Take enforcement action if a person commits an offence under the Act <p>These powers are all necessary to implement a quota system in compliance with the UK FTA.</p>	

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill provides that the Governor General will set the Bill's commencement date by Order in Council. Part 5 (Apples) empowers the NZAPI to design a quota system and set fees to cover the costs of performing its functions and duties. The Part also provides the Governor General may appoint a replacement to NZAPI via Order in Council if NZAPI ceases to operate. These are secondary legislation and must comply with the publication, presentation and disallowance requirements under the Legislation Act 2019.</p>	

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?	YES
<p>Part 5 (Apples) requires NZAPI to report directly to the relevant UK authority about quota allocation volumes and export certificate issuances; and publish information about export volumes and quota. This is an obligation on NZ under the FTA, which will be carried out by NZAPI on behalf of NZ.</p>	

Appendix One: Further Information Relating to Part Three

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. The priorities and issues raised in the course of those and subsequent consultations (outlined in the NIA), were used to inform negotiations.

From 23 November 2018 to 11 February 2019, MFAT asked for New Zealanders' views on a future New Zealand-United Kingdom Free Trade Agreement. A report on these initial public consultations can be found at <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Public-Voice-Report-June-2020.pdf>.

After the launch of negotiations in 2020, New Zealand's NZ-UK FTA 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 Chief Negotiator led webinars and tailored briefings. Outreach to civil society included meetings with leaders from the New Zealand Council of Trade Unions.

In 2021, the Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise led two public events in North and South Auckland to facilitate a dialogue with stakeholders on New Zealand's trade agenda and the government's Trade Recovery Strategy. Both events were led by Ministers and included presentations and conversation with senior officials from across the public sector. The UK FTA negotiation was a key focus of discussions.

New Zealand officials and negotiators undertook intensive and comprehensive engagement with Māori on interests they wished to see in the Agreement. This informed and shaped the Māori Trade and Economic Cooperation chapter, as well as provisions in a range of other areas, including the Intellectual Property chapter, the Environment chapter and the Trade and Gender Equality chapter.

Additional information on consultation with Māori, the community and interested parties in respect of the NZ-UK FTA can be found in section 10 of the NIA.