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Paper prepared by: Hon Meka Whaitiri, Minister of Customs

Date considered by Cabinet: 27 October 2022

Name of paper: Customs and Excise (Rules of Origin for RCEP Goods – Harmonized System) Amendment Regulations 2022

Cabinet Reference: LEG-22-MIN-0178

Purpose of the paper: This paper sought authorisation to submit the Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022 to the Executive Council.

No part of the document has been redacted.



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Cabinet Legislation Committee

Minute of Decision

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Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022

Portfolio **Customs**

On 27 October 2022, the Cabinet Legislation Committee:

- 1 **noted** that in September 2021, the Cabinet Economic Development Committee agreed to amend the New Zealand Tariff and the consequential amendments required to rules of origin under the Customs and Excise Regulations 1996, to implement the Harmonized System 2022 [DEV-21-MIN-0184];
- 2 **noted** that New Zealand is required to update its domestic legislation to implement an updated Schedule of Product Specific Rules of Origin using the 2022 version of the Harmonized System for the Regional Comprehensive Economic Partnership (RCEP) Agreement;
- 3 **noted** that section 407(1)(b) of the Customs and Excise Act 2018 requires that regulations relating to the country of produce made for the purposes of the Tariff Act 1988 may only be made after consultation with the Minister of Commerce and Consumer Affairs, and that this requirement has been met;
- 4 **noted** that notice was given in respect of the intention to incorporate a revised Product Specific Rules Schedule for the RCEP Agreement by reference on the Customs website on 19 September 2022, which adheres to requirements under schedule 2, clause 1 of the Legislation Act 2019;
- 5 **authorised** the submission to the Executive Council of the Customs and Excise (Rules of Origin for RCEP Goods—Harmonised System) Amendment Regulations 2022 [PCO 25013/3.0].

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Michael Wood (Chair)
Hon Kiri Allan
Hon Meka Whaitiri
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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Office of the Minister of Customs

Cabinet Legislation Committee

CUSTOMS AND EXCISE (RULES OF ORIGIN FOR RCEP GOODS - HARMONIZED SYSTEM) AMENDMENT REGULATIONS 2022

Proposal

- 1 This paper seeks authorisation to submit the Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022 to the Executive Council.

Executive Summary

- 2 In September 2021 Cabinet [DEV-21-MIN-0184 and CAB-21-MIN-0388 refers] agreed that the New Zealand Tariff and Part 6 of the Customs and Excise Regulations 1996, relating to rules of origin, be amended in order to implement the revised Harmonized System 2022 (HS 2022).
- 3 Simultaneous to these revisions, New Zealand was completing its domestic ratification process for the Regional Comprehensive Economic Partnership (RCEP) Agreement. The RCEP Agreement then entered into force on 1 January 2022, albeit citing the earlier HS 2012 version, the version under which the agreement was negotiated.
- 4 Subsequently, in June 2022 the Parties to the RCEP Agreement endorsed a transposed HS 2022 version of the PSR Schedule and agreed that this new PSR Schedule be implemented into each Party's domestic law by 1 January 2023.
- 5 The Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022 will give effect to the new PSR Schedule, ensuring the rules of origin of the RCEP Agreement are aligned with the current version of the Tariff and that New Zealand meets its commitments to RCEP partners.
- 6 The amendments are purely technical and affect only the description and coding of the goods; they do not change rates of duty.

Policy

The Harmonized System (HS) Code

- 7 The HS Code is an international product classification and coding system. In free trade agreements, the HS Code is used to design rules of origin, which determine whether a particular good qualifies for preferential tariff treatment under the agreement. The HS Code is administered by the World Customs Organisations and is used by over 200 countries.
- 8 The HS Code is updated five-yearly, generally to reflect new developments in technology and changes in trade patterns. The most recent HS nomenclature came into effect on 1 January 2022, and is known as the HS 2022.
- 9 The five yearly changes to the HS Code require adjustments to the PSR Schedules contained in each of New Zealand's free trade agreements. These adjustments ensure that New Zealand adheres to the commitments made in free trade agreements under the revised nomenclature.
- 10 The amendments made to New Zealand free trade agreements from the HS 2022 revision affect only the description and coding of the goods; not their rates of duty. Goods that are free of duty will remain free while those that are subject to duty will remain dutiable at the same rates.

Government has previously agreed to update New Zealand's legislation to implement HS 2022

- 11 In September 2021, the Minister for Commerce and Consumer Affairs advised Cabinet of the need to make changes to New Zealand's free trade agreements to reflect changes arising from the implementation of HS 2022, including to the rules of origin regulations [DEV-21-MIN-0184 and CAB-21-MIN-0388 refers].
- 12 Included in this advice was an invitation to the Minister of Customs to instruct the New Zealand Customs Service to draft the necessary legislative amendments to update the Working Tariff Document, and the Excise and Excise-equivalent Duties Table, and on behalf of all relevant Ministers, to instruct Parliamentary Counsel Office to draft consequential amending legislation.

Updating Product Specific Rules of Origin for the RCEP Agreement

- 13 The RCEP Agreement came into force for New Zealand on 1 January 2022 with a PSR Schedule based on HS 2012. To adhere to commitments under the revised HS 2022, RCEP Parties endorsed a HS 2022 transposed PSR Schedule in June 2022. Each Party undertook to implement the revised Schedule in domestic law by 1 January 2023.
- 14 The RCEP Parties have agreed that as the transposition of the rules from HS 2012 to HS 2022 nomenclature is a technical exercise (that does not alter commitments made in the original agreement), the Parties can adopt the

agreed and endorsed HS 2022 version without seeking a formal treaty change. New Zealand's domestic implementation process requires an amendment to the Customs and Excise Regulations 1996. The Order in Council under Part 6 of the Customs and Excise Regulations 1996 will incorporate the endorsed Schedule by reference.

- 15 The Amendment sought in this paper for the RCEP Agreement is a continuation of the activity undertaken last year (outlined in paragraphs 11 and 12 of this paper), that updated the relevant legislation for New Zealand's other free trade agreements to implement the HS 2022.

Timing and 28-day rule

- 16 A waiver of the 28-day rule is not required.
- 17 The updated RCEP Agreement PSR Schedule in HS 2022 will be published on the Customs website and amendments to the Customs and Excise Regulations 1996 will come into effect no earlier than 28 days after they have been notified in the *New Zealand Gazette*.

Compliance

- 18 The amendments comply with:
- 1.1 the principles of the Treaty of Waitangi;
 - 1.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 1.3 the principles and guidelines set out in the Privacy Act 2020;
 - 1.4 relevant international standards and obligations; and
 - 1.5 the Legislation Guidelines (2018 edition), maintained by the Legislation Design and Advisory Committee.
- 19 Section 407(1)(b) of the Customs and Excise Act 2018 requires that regulations relating to the country of produce or manufacture, made for the purposes of the Tariff Act 1988, may only be made on the recommendation of the Minister of Customs after consulting the Minister of Commerce and Consumer Affairs.
- 20 The Minister of Commerce and Consumer Affairs has previously advised of the need to make changes to New Zealand's free trade agreements to reflect changes arising from the implementation of HS 2022, and invited the Minister of Customs to instruct the New Zealand Customs Service to draft the necessary legislative amendments, and for the New Zealand Customs Service to instruct Parliamentary Counsel Office to draft consequential amending legislation. As such, I consider the requirement to consult has been satisfied.

- 21 Schedule 2, clause 1 of the Legislation Act 2019 requires, before secondary legislation incorporates material by reference, that public notice is given of the proposal to incorporate the material, of the reasons for the proposal, and of how the material has been made publicly available. This notice was given in respect of the revised PSR Schedule for the RCEP Agreement on the Customs website on 19 September 2022.

Regulations Review Committee

- 22 There are no grounds for the Regulations Review Committee to draw this Order to the attention of the House of Representatives under Standing Order 327.

Certification of legislation

- 23 The Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022 has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 24 A Regulatory Impact Statement is not required as the Order falls within the scope of the exemptions for proposals which;
- are essential in order to comply with existing international obligations that are binding on New Zealand and,
 - have no or only minor impacts on businesses, and
 - involve technical “revisions” or consolidations that substantially re-enact the current law.

Publicity

- 25 Publicity to the proposed HS changes will be provided by the New Zealand Customs Service and the Ministry of Foreign Affairs and Trade through their respective websites and regular news releases.
- 26 A copy of the revised RCEP Agreement PSR Schedule will be formally published on the Customs’ website.

Proactive release

- 27 The Minister of Customs will release the paper proactively with redactions where appropriate.

Consultation

- 28 The Ministry of Foreign Affairs and Trade and the Ministry of Business, Innovation and Employment have been consulted and support this submission. The Department of the Prime Minister and Cabinet has been advised of the proposal.

- 29 The Ministry of Foreign Affairs and Trade provided no comment. The Ministry of Business, Innovation and Employment advised it was comfortable with the contents of the paper.

Recommendations

I recommend that the Cabinet Legislative Committee:

- 1 **note** that on 27 September 2021, Cabinet approved the amendment of the New Zealand Tariff and the consequential amendments required to rules of origin under the Customs and Excise Regulations 1996, to implement the Harmonized System 2022 [CAB-21-MIN-0388 refers];
- 2 **note** that New Zealand is required to update its domestic legislation to implement an updated Schedule of Product Specific Rules of Origin using the 2022 version of the Harmonized System for the Regional Comprehensive Economic Partnership (RCEP) Agreement;
- 3 **note** that section 407(1)(b) of the Customs and Excise Act 2018 requires that regulations relating to the country of produce made for the purposes of the Tariff Act 1988 may only be made after consultation with the Minister of Commerce and Consumer Affairs, and that this requirement has been met;
- 4 **note** that notice was given in respect of the intention to incorporate a revised Product Specific Rules Schedule for the RCEP Agreement by reference on the Customs website on 19 September 2022, which adheres to requirements under schedule 2, clause 1 of the Legislation Act 2019; and
- 5 **authorise** the submission to the Executive Council of the Customs and Excise (Rules of Origin for RCEP Goods - Harmonized System) Amendment Regulations 2022.

Authorised for lodgement

Hon Meka Whaitiri
Minister of Customs