Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

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Report of the Foreign Affairs, Defence and Trade Committee

September 2021

Contents

Hon Jenny Salesa
Chairperson

Regional Comprehensive Economic Partnership (RCEP) Legislation Bill

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Regional Comprehensive Economic Partnership (RCEP) Legislation Bill and recommends that the bill proceed without amendment.

About the bill as introduced

The Regional Comprehensive Economic Partnership (RCEP) Legislation Bill is an omnibus bill that seeks to amend the Customs and Excise Act 2018, the Tariff Act 1988, and change the definition of "Tariff" to implement the RCEP free trade agreement.[1]

The bill aims to enable:

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

We note that part of the agreement will also be implemented by regulations affecting the application of tariff rates and the rules of origin for imports into New Zealand from RCEP countries.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. Apart from the following matter raised by the Regulations Review Committee, we have no issues regarding the legislation's design to bring to the attention of the House.

Commencement by Order in Council

Clause 2 of the bill provides for it to come into force on a date appointed by Order in Council. The Regulations Review Committee noted that clause 2 does not provide a fall-back provision specifying a date when the bill would come into force if an Order in Council is not made. It also noted that the usual approach in legislation is to provide a fall-back date of no more than one year following enactment.

[1] The RCEP free trade agreement is between 15 countries in the Asia-Pacific region. The countries comprise the ten members of the Association of Southeast Asian Nations (ASEAN), together with Australia, China, Japan, South Korea, and New Zealand.

After considering the views of the Regulations Review Committee, we are satisfied that the date being appointed by Order in Council, without a fall-back date, is appropriate.

Inserting a fixed date for commencement would make it difficult to coordinate the commencement of the bill and the entry into force of the RCEP agreement. The agreement states that it will enter into force 60 days after six of the ASEAN member states and three non-ASEAN members have formally advised the ASEAN secretariat, in accordance with the requirements of the agreement. Each member state will have different domestic processes for ratification and each will be working to different timeframes for domestic ratification. At worst, inserting a fall-back date in the bill could mean that it would come into force without the relevant secondary legislation and result in an ineffective Act.

Not including a fall-back date in the bill gives New Zealand the flexibility to commence the legislation within the 60-day period triggered by final ratification, as stated in the agreement. At the time of this report, Japan, Singapore, and the People's Republic of China have ratified RCEP domestically, with all other signatories working to ratify the agreement by the end of 2021.

We note that New Zealand has enacted trade agreements by way of Order in Council on other occasions, including the following:

- Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018
- Tariff (Malaysia Free Trade Agreement) Amendment Act 2010
- Tariff (AANZFTA) Amendment Act 2009.

We are satisfied with the provision for the bill to come into force on a date appointed by Order in Council.

Comments from submitters

Submitters commented on a range of issues, although none related to the specific provisions in the bill.

Human rights and other protections

Two submitters raised concerns about the implications of signing RCEP for human rights. It was suggested that some RCEP signatories do not have the same standard for human rights that New Zealand does, and that New Zealand should be wary of signing an agreement with those countries. The particular concerns were about modern day slavery, persecution of minorities, and freedom of speech. We appreciate the points raised by submitters and note that New Zealand's trade agreements do not affect the ability to voice concerns about human rights issues when necessary.

Other concerns noted by submitters included the absence of provisions regarding the environment and the labour force. Concern was expressed that this absence could damage New Zealand's goals in those areas, and New Zealand's global reputation.

One submitter also commented that there may be a lack of substantial protections for intellectual property rights in this agreement.

Better conditions for trade

Some submitters commented that the RCEP agreement provides better trading conditions and that New Zealand will benefit economically from being an RCEP signatory. One submitter mentioned that better access and easier trading conditions with Indonesia will significantly benefit the red meat sector. It was noted that good trade deals which can improve New Zealand's export prospects will be important in a post-COVID environment, as will a consistent regulatory framework for trade and investment in the region.

Agreements with other countries

One submitter expressed concern about how RCEP may affect New Zealand's free trade agreement with Chinese Taipei. The submitter noted that Chinese Taipei is a major producer of semiconductors, which are used in electronic circuits. The submitter was wary of jeopardising this country's relationship with Chinese Taipei by joining RCEP. We note that ratifying RCEP does not preclude New Zealand from continuing to trade with Chinese Taipei.

Others were disappointed that India withdrew from RCEP negotiations in late 2019. Submitters said that India is a highly protected market, and entering into that market would have been beneficial to exporters—particular in the dairy industry. We note that a fast-track process for joining RCEP is available should India decide it would like to join in the future. We note that New Zealand is open to future free trade agreements with India, either through a bilateral agreement or through RCEP.

Concerns about the Treaty of Waitangi

One submitter asked how the Crown's obligations under the Treaty of Waitangi would be addressed in the agreement. We note that RCEP includes a Treaty of Waitangi exception clause. This clause means that nothing in RCEP will prevent New Zealand from fulfilling its obligations under the Treaty of Waitangi. This clause is present in all of New Zealand's contemporary trade agreements.

Cryptocurrency

One submitter was supportive of the bill under the belief that the agreement would provide more opportunity for realising the benefits of cryptocurrency for New Zealand. We note that RCEP does not have any specific cryptocurrency provisions. However, the e-commerce provisions will provide a consistent framework for the development of e-commerce and the benefits that may come from it.

Appendix

Committee procedure

The Regional Comprehensive Economic Partnership (RCEP) Legislation Bill was referred to the committee on 18 May 2021. The closing date for submissions was 17 June 2021. We received and considered seven submissions from interested groups and individuals. We heard oral evidence from one submitter at a hearing in Wellington.

We received advice on the bill from the Ministry of Foreign Affairs and Trade. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to the committee on the regulation making powers contained in clause 2 of the bill.

Committee members

Hon Jenny Salesa (Chairperson)
Hon Gerry Brownlee
Golriz Ghahraman
Ingrid Leary
Simon O'Connor
Louisa Wall

Nicola Grigg participated in some of the consideration of this bill.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.