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Legislative Statement for the Third Reading of the European Union Free Trade Agreement Legislation Amendment Bill

Presented to the House of Representatives in accordance with Standing Order 272

Overview of the Bill

The European Union Free Trade Agreement Legislation Amendment Bill (the **Bill**) is an omnibus Bill under Standing Order 267(1)(a). The amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Bill amends New Zealand law as part of the implementation of the *Free Trade Agreement between New Zealand and the European Union*, signed in Brussels on 9 July 2023 (the **EU FTA**).

Most of the obligations in the EU FTA will be met by New Zealand's existing domestic legal and policy regime. However, legislative and regulatory amendments will be required to align New Zealand's domestic law with certain obligations in the EU FTA and thereby enable New Zealand to ratify the EU FTA. The Bill introduces amendments to the following:

- the Consumer Information Standards (Country of Origin (Clothing and Footwear Labelling) Regulations 1992, to allow goods from a Member State of the EU to be labelled as "Made in the EU" or, alternatively, as made in that Member State;
- the Dairy Industry Restructuring Act 2001, to bring additional and revised dairy quotas under the existing quota management system;
- the Geographical Indications (Wine and Spirits) Registration Act 2006, to protect geographical indications from the EU in New Zealand, including enforcement measures;
- the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005, to increase from \$100 million to \$200 million the monetary threshold above which consent is required for investments by EU non-government investors in "significant business assets" in New Zealand;
- the Tariff Act 1988, to provide for the bilateral safeguard mechanism under Chapter 5 of the EU FTA (Trade Remedies);
- the New Zealand Tariff, to enable the application of the preferential tariff rates agreed in the EU FTA and to implement obligations relating to the tariff treatment of goods returned after repair or alteration; and

- the Customs and Excise Regulations 1996, to implement the agreed rules of origin and product-specific rules of origin for goods imported from the EU.

There are some obligations that will be implemented in separate legislation. First, there are certain copyright-related obligations in the EU FTA that New Zealand has a transition period to implement. New Zealand has agreed, within 4 years of the EU FTA entering into force, to amend the Copyright Act 1994 to—

- (a) extend copyright and related rights terms of protection by 20 years; and
- (b) prohibit the act of unauthorised circumvention of technological protection measures (TPMs), otherwise known as “digital locks”; and
- (c) extend existing protections for TPMs to include access-control TPMs.

Second, New Zealand has also agreed to implement a visual artist resale royalty regime within 2 years of the EU FTA entering into force. This obligation is being met through implementation of the Resale Right for Visual Artists Act 2023.

A summary of the key provisions in the Bill is set out below.

Summary of the key provisions in the Bill

The Bill will commence on a date set by an Order in Council. Commencement by Order in Council is necessary because commencement depends on the date that the EU FTA will enter into force, which has not yet been decided.

Part 1 – Amendments to the Consumer Information Standards (Country of Origin (Clothing and Footwear) Labelling) Regulations 1992

Part 1 amends the principal regulations to permit the supplier of an article of clothing or footwear that was made or produced in the European Union (the **EU**) to label or mark it as such, as an additional alternative to the specific country of origin.

Part 2 – Amendments to the Dairy Industry Restructuring Act 2001

Part 2 amends the Dairy Industry Restructuring Act 2001 to:

- (a) insert new tariff rate quotas agreed under the EU FTA and to amend existing EU World Trade Organization tariff rate quotas in relation to butter and cheese;
- (b) apply EU FTA tariff rate quotas on a pro rata basis for the first calendar year that the agreement is in force, if the EU FTA comes into force on a day other than 1 January; and
- (c) repeal spent provisions and definitions relating to the implementation of tariff rate quotas during the (now expired) initial and interim periods after enactment of the Dairy Industry Restructuring Act 2001.

Part 3 – Amendments to the Act previously called the Geographical Indications (Wine and Spirits) Registration Act 2006

Part 3 amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **GIs Act**) to provide for the registration of EU geographical indications agreed to be protected in New Zealand under the EU FTA (**EU FTA geographical indications**). Part 3 also inserts provisions for the enforcement of geographical indications, and those provisions will apply to both EU FTA geographical indications and geographical indications registered under other provisions of the GIs Act (**New Zealand and foreign geographical indications**).

Clauses 22 to 83 amend the existing registration procedures for New Zealand and foreign wine and spirits geographical indications under the GIs Act to clearly distinguish them from provisions concerning the protection of EU FTA geographical indications as set out in clause 84. In particular, clauses 25 to 29 create a new Part 2 (Types of geographical indications) providing for three types of registered geographical indications: New Zealand geographical indications, foreign geographical indications and EU FTA geographical indications.

Clause 30 creates a new Part 3 (New Zealand and foreign geographical indications). Clauses 31 to 83 amend the existing registration procedures to make it clear that they only apply to the registration of New Zealand and foreign wine and spirits geographical indications.

Clause 84 repeals sections 57 to 64 of the GIs Act and inserts new Parts 4 to 6:

- (a) new Part 4 implements EU FTA obligations by establishing a regime for the protection of EU FTA geographical indications;
- (b) new Part 5 provides new civil and administrative enforcement measures, procedures and remedies applicable to all registered geographical indications; and
- (c) new Part 6 sets out general provisions applicable to all registered geographical indications.

Clause 85 replaces the existing Schedule of the GIs Act with two new Schedules, as set out in Schedule 1 of the Bill. New Schedule 1 sets out transitional provisions. New Schedule 2 sets out provisions relating to reviews and appeals.

Clause 86 makes consequential amendments to other Acts, as set out in Schedule 2 of the Bill. The amendments to other Acts include minor amendments to the Trade Marks Act 2002.

Part 4 – Amendments to the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005

Part 4 amends the Overseas Investment Act 2005 to:

- (a) add the EU FTA to the list of free trade agreements in section 61A of the Overseas Investment Act 2005, which provides for regulations regarding alternative monetary thresholds for investments in New Zealand in significant business assets;
- (b) insert a reference to the Pacific Agreement on Closer Economic Relations Plus into section 61A (to implement the services and investment most-favoured-nation obligations in that agreement); and
- (c) remove a reference to the Trans-Pacific Strategic Economic Partnership Agreement from section 61A, which has become an obsolete reference since Brunei Darussalam

became a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on 12 July 2023.

Part 4 amends the Overseas Investment Regulations 2005 to:

- (a) add the EU 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; and
- (b) provide for transitional provisions – Clause 93 inserts new Part 11 into Schedule 1AA of the Overseas Investment Regulations 2005, as set out in Schedule 3 of the Bill.

Part 5 – Amendments to the Tariff Act 1988, the New Zealand Tariff, and the Customs and Excise Regulations 1996

Part 5 amends the Tariff Act 1988 to:

- (a) make it clear that preferential treatment under the Tariff can be given to a group of countries, like the EU, in the same way as an individual country;
- (b) add the EU FTA to the list of agreements in the definition of free trade agreement in section 15A to which a transitional safeguard measure can apply;
- (c) add the EU FTA to the list of free trade agreements under which the Minister may determine that there are grounds for applying a provisional transitional safeguard measure; and
- (d) make minor consequential amendments to Trade (Safeguard Measures) Act 2014.

Part 5 amends the New Zealand Tariff to provide for preferential tariff entry and concessionary entry of goods from the EU and four other territories that for the purposes of trade in goods are treated as an EU Member, or as a territory of an EU Member: Andorra, Monaco, San Marino, and the Sovereign Base Areas of Akrotiri and Dhekelia (**EU FTA group**).

Part 5 amends the Customs and Excise Regulations 1996 to insert new regulations which prescribe when particular goods are treated as being the produce or manufacture of the EU FTA group for the purpose of the Customs and Excise Act 2018 and the Tariff Act 1988.

Select Committee Recommendations

The Foreign Affairs, Defence and Trade Committee has examined the Bill and recommended that it be passed with amendments. These amendments are consistent with the original policy of the Bill but make some technical amendments. The recommended amendments are as follows:

- **Clause 84, new section 58 (Examination and opposition requirements before registration of EU FTA geographical indication):** new section 58(2)(a) should be amended in order to allow the Registrar to give public notice of a proposed EU FTA geographical indication in the format, manner and frequency that the Registrar thinks appropriate. The public notice would need to be given in accordance with requirements in regulations about the information that must be included in the notice;
- **Clause 84, new section 124 (What an infringement Notice must contain):** new section 124(a) should be amended to make it clear that the infringement notice must specify the

nature of the alleged offence, including, to any applicable extent, the time and place of the alleged offence; and

- **Clause 108, new regulation 51ZZN (Originating goods)** – subclause (3)(c) of the regulation should be amended to refer to Annex 3-B of the EU FTA rather than Appendix 3-B-1 of Annex 3-B of the EU FTA.

Changes to the Bill made by Government Amendment Paper

A Government Amendment Paper was introduced at the Committee of the whole House stage that made the following amendments to the Bill:

- **Clause 84, new section 59**, which relates to the date of registration of EU FTA geographical indications, was replaced to clarify that the deemed date of registration of an EU FTA registered geographical indication that is changed is the date on which the Registrar gives public notice of the proposed change to registration.
- **Schedule 2**, which sets out consequential amendments to other legislation, was amended with respect to the Trade Marks Act 2002. New section 20(1)(c) of that Act is replaced to provide that the Commissioner of Trade Marks must not register a trade mark if the Registrar has given public notice of the proposed registration or change to registration of an EU FTA geographical indication and:
 - the trade mark contains the geographical indication that is the subject of the proposed registration or change to registration;
 - the trade mark relates to a wine, spirit, or other good that does not originate in the place of origin to which the geographical indication relates;
 - the use of the trade mark is likely to deceive or confuse; and
 - if the geographical indication is registered or changed, the deemed date of registration in respect of the geographical indication is earlier than the deemed date of registration of the trade mark (if registered).

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Minister for Trade