

# United Kingdom Free Trade Agreement Legislation Bill

Government Bill

## Explanatory note

### 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 2 obligations in the FTA that New Zealand has a transition period to implement. Legislation for those 2 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.

### **Departmental disclosure statement**

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=145>

### **National interest analysis**

A national interest analysis has been prepared that takes the place of a regulatory impact statement. The Ministry of Foreign Affairs and Trade produced the national interest analysis on 1 March 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill. The national interest analysis was presented to the House of Representatives on 1 March 2022, in accordance with Standing Order 405(2) (presentation and referral of treaties).

A copy of this national interest analysis can be found at—

- <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-FTA-National-Interest-Analysis.pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides for the Bill to commence on a date set by an Order in Council. If the date on which the FTA comes into effect is known before the Bill is passed, *clause 2* will be amended accordingly.

## Part 1

### Amendments to Copyright Act 1994

*Part 1* replaces section 174B of the Copyright Act 1994 to add that a person infringes a performer's rights if the person, in public, plays a recording of the performer's performance without gaining the performer's consent.

## Part 2

### Amendments to Dairy Industry Restructuring Act 2001

*Part 2* amends the Dairy Industry Restructuring Act 2001.

*Clause 6* amends the definition of quota year in section 5(1) by adding the United Kingdom to the list of countries for which a quota year is a period of 12 months from 1 January to 31 December.

*Clause 7* amends section 26 by adding rights in respect of the United Kingdom, and that are listed in Schedule 5A of the Dairy Industry Restructuring Act 2001, to the list of rights that are vested in or revert to the Crown.

*Clause 8* adds *new section 26A*, which provides that quotas must be applied on a pro rata basis if they come into effect during a year, and provides that a transitional tariff rate quota expires after 4 years.

*Clause 9* amends section 29H, which provides for auditing milk collection data. The amendment provides that the collection data relates to milk solids, rather than to milk.

*Clause 10* amends section 31, which provides for offences. The amendment, which follows from the amendment to section 29H, makes it an offence to provide a false declaration in relation to milk solids collection data, rather than in relation to milk collection data.

*Clause 11* amends Schedule 5A by adding the UK WTO tariff quotas (for butter, cheese, and cheese for processing) and UK transitional tariff rate quotas (for butter and cheese).

*Clause 12* amends Schedule 5B to require participants to submit collection data relating to milk solids rather than relating to milk.

### **Part 3**

#### **Amendments to Overseas Investment Act 2005 and Overseas Investment Regulations 2005**

*Subpart 1 of Part 3* amends the Overseas Investment Act 2005 to add the FTA to the list of agreements that may be implemented by regulations to be made under section 61A of the Overseas Investment Act 2005. That section provides for regulations regarding alternative monetary thresholds for overseas investments in significant business assets. The standard threshold is \$100 million, before consent is needed for an overseas investment. Section 13 of the Act envisages increased monetary thresholds for investors from certain countries to whom regulations under section 61A apply.

*Subpart 2 of Part 3* amends the Overseas Investment Regulations 2005 to add the UK to the group of countries for which the increased monetary threshold of \$200 million applies.

*Schedule 1* contains transitional provisions.

### **Part 4**

#### **Amendments to Tariff Act 1988, Tariff, and Customs and Excise Regulations 1996**

##### *Amendments to Tariff Act 1988*

*Clause 21* provides that *clauses 22 and 23* amend the Tariff Act 1988.

*Clause 22* amends the definition of free trade agreement in section 15A by adding the FTA to the list of agreements in that definition.

*Clause 23* amends section 15H by adding the 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.

##### *Amendments to Tariff*

*Clauses 24 to 29* amend the Tariff to add references to the United Kingdom and the FTA, and to make other minor consequential amendments.

##### *Amendments to Customs and Excise Regulations 1996*

*Clause 30* provides that *clauses 31 and 32* amend the Customs and Excise Regulations 1996.

*Clause 31* revokes regulation 42, which relates to the United Kingdom.

*Clause 32* inserts *new regulations 51ZZK and 51ZZL* which set out the relevant provisions of the FTA that specify whether particular goods are treated as being produce or manufacture of the United Kingdom for the purposes of the FTA.

## Part 5

### Apple transitional export quota

#### Subpart 1—Preliminary provisions

*Clause 33* provides that *Part 5* of the Bill will be repealed at the end of the last day of the year that is the second year after the year in which *Part 5* commences. If the date on which the FTA will come into effect is known before this Bill is passed, this provision will be amended to a specific date.

*Clause 34* sets out the purpose of *Part 5*, which is to implement New Zealand's obligations under the FTA as those obligations relate to fresh apples. This will be achieved by New Zealand Apples and Pears Incorporated (NZAPI), on behalf of the Crown, designing and then operating a quota system, over a period of up to 3 years (the lifetime of *Part 5*). The quota system will enable apples to be exported from New Zealand to the UK, free from duty, in the period 1 August to 31 December in each of those years.

*Clause 35* defines terms used in *Part 5*.

*Clause 36* indicates that the transitional, savings, and related provisions for *Part 5* are set out in *Schedule 2*. *Schedule 2* is explained below, in conjunction with *clause 38*.

*Clause 37* provides that *Part 5* binds the Crown.

#### Subpart 2—Quota system and annual allocations

##### *Quota system*

*Clause 38* requires NZAPI to design and operate a quota system for allocating the access to the UK apple market afforded by the FTA. However, if *Part 5* comes into force in 2022, but after August 1, this requirement is overridden in relation to the first quota year. Instead, *Schedule 2* sets out the quota system to apply in that year.

*Clause 39* sets out the minimum requirements that a quota system must meet.

*Clause 40* authorises NZAPI to amend a quota system at any time. However, the consultation and notification requirements in *clauses 41 and 42* (which are applicable to a new system) must be satisfied if the amendments to the system have certain significant consequences, for example, an impact on the share of quota allocated to any person or whether a person receives any allocation in any subsequent quota year.

*Clause 41* imposes a duty on NZAPI to consult with apple exporters before finalising a quota system. *Clause 42* imposes a further duty on NZAPI before implementing the system. NZAPI must give written notice summarising the finalised system to all apple exporters known to it, to any other person that it or the Ministry for Primary Indus-

tries (**MPI**) thinks likely to be directly affected by the system, and to the Minister of Agriculture (the **Minister**).

#### *Annual allocations*

*Clause 43* requires NZAPI, for each quota year, to invite applications for quota allocations and decide them in accordance with the quota system.

*Clause 44* requires NZAPI to notify each quota applicant, in writing, of various matters, including the quota calculation, the allocations for all applicants, and the process for seeking a review of the allocation decision in relation to an applicant's own application. NZAPI must also publish the same information on its Internet site.

*Clause 45* provides a right for a person to have their quota allocation reviewed. NZAPI may increase the allocation or leave it as initially set.

*Clause 46* prohibits a quota holder from trading their quota allocation.

*Clause 47* sets out the procedure NZAPI must follow to reallocate quota if it requires quota holders to return any unused allocation to it during a quota year.

#### *Export certificates*

*Clause 48* requires NZAPI to issue export certificates to quota holders for the purpose of providing evidence of eligibility into the UK of a particular consignment or quantity of apples. NZAPI may refuse to issue a certificate to a quota holder if the application is deficient, NZAPI is satisfied on reasonable grounds that the certificate should not be issued, or the quota holder has outstanding fees owing under *Part 5* or has paid them after the due date. NZAPI must ensure that the export certificates it issues comply with any relevant requirements of the FTA.

*Clause 49* prohibits a person from exporting apples to the UK under the quota system unless the person holds an export certificate for the apples, the export is carried out in accordance with the information stated in the certificate and any other applicable requirements of the quota system, and the export is not prohibited because the person is subject to an action taken by NZAPI under *clause 55* (for non-compliance with some aspect of the quota system).

### Subpart 3—General provisions

#### *Information requests and sharing*

*Clause 50* authorises NZAPI to request and use information from any person to enable the quota system to be designed, operated, and enforced effectively and to enable New Zealand to fulfil its obligations under the FTA. Requests by NZAPI must be in writing and set out why the information is required. A request may be a one-off request or a request for information to be given at specified intervals (for example, periodic reports on the volume of apples actually exported under a quota allocation). A request must be complied with as soon as practicable or by any date specified in the request. NZAPI is required to ensure that appropriate protections are or will be in place to maintain the confidentiality of the information collected and used.

*Clause 51* gives NZAPI, the New Zealand Customs Service (**Customs**), and MPI the right to share certain information, including commercially sensitive information, for the purposes of operating and enforcing the quota system and fulfilling New Zealand's obligations under the FTA. NZAPI may share information it collects under *clause 50* with Customs and MPI. Customs may share any relevant information that it holds under any legislation with NZAPI and MPI. Each entity is required to ensure that appropriate protections are or will be in place to maintain the confidentiality of the shared information.

*Clause 52* requires NZAPI to share information or a copy of a document that it holds with the Director-General of MPI (the **Director-General**), if requested to do so by the Director-General. The Director-General may make a request if satisfied that the information or document will assist them in providing information to the Minister so that the Minister may be satisfied that New Zealand is fulfilling its obligations under the FTA.

*Clause 53* requires NZAPI to share information relating to quota and export certificates with a UK entity, for the purpose of fulfilling New Zealand's reporting obligations under the FTA.

*Clause 54* requires NZAPI to publish on its Internet site, during each quota year, information about quota volumes exported during the quota year. NZAPI must also publish a notice when the maximum volume of apples permitted to be exported to the UK for the quota year is reached.

### *Enforcement*

*Clause 55* sets out the actions NZAPI may take against a person for acting in breach of the quota system or in relation to providing information under *Part 5*. Breaches include a person exporting apples to the UK as a quota holder but in excess of their quota allocation or without an export certificate. If satisfied that a breach has occurred, NZAPI may, for a maximum period of 12 months, suspend any right the person has to export under the quota system or refuse to issue export certificates to the person. It may also cancel any export certificate already issued. Before doing so, NZAPI must give notice to the person, with reasons, of the action it intends to take and the person's right to seek a review of its decision. *Clause 56* then sets out the process by which a person may seek a review and how the review may be conducted, and *clause 57* provides a right of appeal to the High Court if the person is dissatisfied with NZAPI's review decision.

*Clause 58* allows NZAPI to authorise suitably qualified and trained individuals to search certain places under a search warrant (issued under *clause 59*) for the purpose of investigating whether a person has, is, or is intending to commit an offence against *Part 5*. *Clause 67* protects an authorised person from civil or criminal liability unless they have acted, or omitted to act, in bad faith or without reasonable cause.

### *Offences, penalties, and proceedings*

*Clause 60* sets out the offences against *Part 5*. A person commits an offence if the person does any of the following:

- exports apples to the UK as if doing so under the quota system when no quota has been allocated to the person;
- exports apples to the UK in breach of *clause 49* (which prohibits exports under the quota system unless specified criteria are met);
- with intent to deceive, gives false or misleading information, or makes a material omission, when required or requested to provide information under *Part 5*.

A person who commits an offence is liable on conviction to a fine not exceeding \$10,000.

Under *clause 61*, it is not necessary for the prosecution to prove that a person intended to commit either of the “exporting” offences, however, *clause 62* provides a defence in certain circumstances. *Clause 63* sets out the liability of companies and other entities for the actions of their agents or employees, and *clause 64* sets out the liability of directors and managers if a body corporate commits an offence. *Clause 65* requires a charge to be laid within 2 years after the date on which offences are committed.

### *Recovery of costs*

*Clause 66* 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. Before setting any fee, NZAPI must consult apple exporters and consider their feedback. NZAPI must notify any fees set under this clause to all apple exporters known to it, any other person that it or MPI thinks likely to be directly affected by the quota system, and the Minister.

### *Conflicts of interest*

*Clauses 68 and 69* set out how officers of NZAPI must deal with any conflicts of interest that arise when NZAPI is performing its duties or exercising its powers under *Part 5*. (NZAPI is an incorporated society and, as such, its decisions are made and carried out by members of the society, known as officers under the legislation that governs incorporated societies.) An officer with a conflict of interest is prohibited from voting or taking part in any decision in relation to which they have the conflict. Nor may they sign any document in relation to the matter or participate in any other way in relation to the matter, except with the permission of the chairperson. NZAPI must notify the Minister if an officer does not disclose an interest and acts in a prohibited way.

### *Notices*

*Clause 70* provides for the delivery of written notices given by NZAPI.



*Replacement of NZAPI*

*Clause 71* authorises the Governor-General to appoint a replacement body to carry out the functions and duties conferred on NZAPI by *Part 5*, should NZAPI cease to operate.

*Provisions relating to FTA*

*Clause 72* provides protection to the Crown and NZAPI against any person for any loss or damage arising from changes to access to the UK apple market relating to the quota system and the FTA. *Clause 73* makes it clear that certain matters are not affected by *Part 5*, including the ability of any person to export apples to the UK outside the quota system so long as there is a right to do so or any relevant tariff is paid.



*Hon Damien O'Connor*

# **United Kingdom Free Trade Agreement Legislation Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the United Kingdom Free Trade Agreement Legislation Act **2022**.

**2 Commencement**

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council. 5
- (2) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

## Part 1 Amendment to Copyright Act 1994

### 3 Principal Act

This Part amends the Copyright Act 1994.

### 4 Section 174B replaced (Consent required for making sound recording available to public) 5

Replace section 174B with:

#### 174B Consent required to communicate or play sound recording to public

A performer's rights are infringed by a person who, without the performer's consent, and by means of a recording,—

- (a) communicates to the public the whole or a substantial part of a performance; or
- (b) plays in public the whole or a substantial part of a performance.

## Part 2

### Amendments to Dairy Industry Restructuring Act 2001 15

### 5 Principal Act

This Part amends the Dairy Industry Restructuring Act 2001.

### 6 Section 5 amended (Interpretation)

In section 5(1), definition of **quota year**, paragraph (a), replace “and the Dominican Republic” with “the Dominican Republic, and the United Kingdom”. 20

### 7 Section 26 amended (Later allocation of export licences)

After section 26(1)(d), insert:

- (e) any rights in respect of the United Kingdom listed in Schedule 5A that become available at the expiry of any other allocations.

### 8 New section 26A inserted (Commencement and expiry of UK quotas) 25

After section 26, insert:

#### 26A Commencement and expiry of UK quotas

- (1) If the UK FTA first comes into effect on a day other than 1 January in any year, a transitional tariff rate quota must be applied in that year on a pro rata basis.
- (2) If a UK WTO tariff quota first becomes available under this Act on a day other than 1 January in any year, the tariff quota must be applied in that year on a pro rata basis. 30

- (3) Despite anything to the contrary in section 26, a transitional tariff rate quota expires at the end of the last day of the fourth year after the year in which the UK FTA comes into effect.
- (4) In this section,—
- transitional tariff rate quota** means a UK transitional tariff rate quota listed in Schedule 5A 5
- UK FTA** means the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland done at London on 28 February 2022
- UK WTO tariff quota** means a UK WTO tariff quota listed in Schedule 5A. 10

## 9 Section 29H amended (Power to audit milk collection data)

- (1) In the heading to section 29H, after “milk”, insert “solids”.
- (2) In section 29H(1), after “milk”, insert “solids”.

## 10 Section 31 amended (Offences)

In section 31(3), after “milk”, insert “solids”. 15

## 11 Schedule 5A amended

In Schedule 5A, after the item relating to the Dominican Republic, insert:

### *UK WTO tariff quotas*

United Kingdom	Butter	Destined for import into the United Kingdom under the World Trade Organization tariff quota for butter of New Zealand origin, as provided for in the United Kingdom’s Customs (Tariff Quotas) (EU Exit) Regulations 2020, including any amendment or any successor to those regulations.
United Kingdom	Cheddar cheese	Destined for import into the United Kingdom under the World Trade Organization tariff quota for cheddar cheese of New Zealand origin, as provided for in the United Kingdom’s Customs (Tariff Quotas) (EU Exit) Regulations 2020, including any amendment or any successor to those regulations.
United Kingdom	Cheese for processing	Destined for import into the United Kingdom under the World Trade Organization tariff quota for cheese for processing of New Zealand origin, as provided for in the United Kingdom’s Customs (Tariff Quotas) (EU Exit) Regulations 2020, including any amendment or any successor to those regulations.

### *UK transitional tariff rate quotas*

United Kingdom	Butter	Destined for import into the United Kingdom under the transitional tariff rate quota for butter of New Zealand origin, as provided for in TRQ-3 Butter, Part 2B-2, Annex 2A of the Free Trade Agreement between the United Kingdom and
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United Kingdom	Cheese	New Zealand, including any amendment or any successor to that Annex. Destined for import into the United Kingdom under the transitional tariff rate quota for cheese of New Zealand origin, as provided for in TRQ-4 Cheese, Part 2B-2, Annex 2A of the Free Trade Agreement between the United Kingdom and New Zealand, including any amendment or successor to that Annex.
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**12 Schedule 5B amended**

In Schedule 5B, clause 3, after “milk”, insert “solids”.

**Part 3**

**Amendments to Overseas Investment Act 2005 and Overseas Investment Regulations 2005**

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Subpart 1—Amendment to Overseas Investment Act 2005

**13 Principal Act**

This subpart amends the Overseas Investment Act 2005.

**14 Section 61A amended (Regulations regarding alternative monetary thresholds for overseas investments in significant business assets)**

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Replace section 61A(1)(aaa) to (g) with:

- (a) the Trans-Pacific Strategic Economic Partnership Agreement done at Wellington on 18 July 2005:
- (b) the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008: 15
- (c) the New Zealand–Hong Kong, China Closer Economic Partnership Agreement done at Hong Kong on 29 March 2010:
- (d) the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011: 20
- (e) the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation done at Wellington on 10 July 2013:
- (f) the Free Trade Agreement between New Zealand and the Republic of Korea done at Seoul on 23 March 2015: 25
- (g) the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016:

- (h) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago, Chile, on 8 March 2018:
- (i) the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland done at London on 28 February 2022.

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## Subpart 2—Amendments to Overseas Investment Regulations 2005

### 15 Principal regulations

This subpart amends the Overseas Investment Regulations 2005.

### 16 Regulation 84 amended (Introduction to Part 5)

Replace regulation 84(3)(a) to (f) with:

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- (a) the Trans-Pacific Strategic Economic Partnership Agreement done at Wellington on 18 July 2005 (the **P4 Agreement**):
- (b) the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008 (the **China FTA**):
- (c) the New Zealand–Hong Kong, China Closer Economic Partnership Agreement done at Hong Kong on 29 March 2010 (the **Hong Kong CEP**):
- (d) the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation done at Wellington on 10 July 2013 (**ANZTEC**):
- (e) the Free Trade Agreement between New Zealand and the Republic of Korea done at Seoul on 23 March 2015 (the **Korea FTA**):
- (f) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018 (the **CPTPP Agreement**):
- (g) the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland done at London on 28 February 2022 (the **UK FTA**).

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### 17 Regulation 85 amended (Definitions)

- (1) In regulation 85(1), definition of **type A enterprise**, after paragraph (c), insert:

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- (d) the United Kingdom of Great Britain and Northern Ireland

- (2) In regulation 85(1), definition of **type A individual**, after paragraph (d), insert:

- (e) a person who is a British citizen or permanent resident described in paragraph (b) of the definition of national in Article 1.3 of the UK FTA

- (3) In regulation 85(1), definition of **type A territory**, after paragraph (c), insert:

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- (d) the territory of the United Kingdom of Great Britain and Northern Ireland.

- (4) In regulation 85(1), revoke the definitions of **ANZTEC, Australian CER Investment Protocol, China FTA, CPTPP Agreement, Hong Kong CEP, Korea FTA, and P4 Agreement**.
- (5) After regulation 85(1), insert:
- (1A) *See* regulation 84(3) for the meanings of **ANZTEC, Australian CER Investment Protocol, China FTA, CPTPP Agreement, Hong Kong CEP, Korea FTA, P4 Agreement, and UK FTA**. 5
- 18 Subpart 2 heading in Part 5 replaced**  
In Part 5, replace the subpart 2 heading with:
- Subpart 2—Implementation of free trade agreements 10
- 19 Regulation 88 amended (Introduction to subpart 2 and interaction between regulations in Part 5)**  
Replace regulation 88(1) and (2) with:
- (1) The purpose of this subpart is to implement obligations in the agreements listed in regulation 84(3). 15
- (2) For that purpose, this subpart is to be applied subject to the exclusions contained in the following provisions:
- (a) Article 12.3 of the P4 Agreement:
- (b) Articles 105 and 137.5 of the China FTA:
- (c) Article 2 of Chapter 13 of the Hong Kong CEP: 20
- (d) Articles 3.3 and 9.5 of Chapter 12 of ANZTEC:
- (e) Articles 10.3.3 and 10.15.5 of the Korea FTA:
- (f) Article 9.12.6 of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016) as incorporated into the CPTPP Agreement by Article 1.1 of that agreement: 25
- (g) Articles 14.3.3, 14.3.5, 14.10.5, and 14.10.6 of the UK FTA.
- 20 Schedule 1AA amended**  
In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments. 30

## Part 4

### Amendments to Tariff Act 1988, Tariff, and Customs and Excise Regulations 1996

#### *Amendments to Tariff Act 1988*

- 21 Principal Act** 5  
**Sections 22 and 23** amend the Tariff Act 1988.
- 22 Section 15A amended (Interpretation)**
- (1) In section 15A, definition of **free trade agreement**, after paragraph (h), insert:  
 (i) the UK FTA
- (2) In section 15A, insert in its appropriate alphabetical order: 10  
**UK FTA** means the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland done at London on 28 February 2022
- 23 Section 15H amended (Provisional transitional safeguard measure)**
- In section 15H(1)(b)(ii), replace “or the RCEP” with “the RCEP, or the UK FTA”. 15

#### *Amendments to Tariff*

- 24 Principal legislation**
- Sections 25 to 29**, in accordance with section 9F(1) of the Tariff Act 1988, amend the Tariff. 20
- 25 Note 2 amended**
- In the notes to the Tariff, note 2, penultimate paragraph, replace “TPA or TW” with “TPA, TW, or UK”.
- 26 Note 3 amended**
- (1) In the notes to the Tariff, note 3, revoke the item relating to the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, and the Channel Islands. 25
- (2) In the notes to the Tariff, note 3, after the item relating to country that is a specified TPA party, insert:  
 United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man UK
- 27 Footnotes amended** 30
- In the Tariff, in each footnote, replace “TPA and TW” with “TPA, TW, and UK”.

- 28 Section XVI amended**
- In Section XVI, Chapters 84 and 85, sixth column,—
- (a) delete “GB Free” in each place; and
  - (b) in the item relating to number 8512.30.29, delete “GB 3.5”.
- 29 Part II Concessions amended** 5
- In the Tariff, Part II Concessions, table, in the item relating to Concession Reference Number 66, after subsection (4), insert:
- |     |  |      |
|-----|--|------|
| (5) | Goods re-entered after repair or alteration—   |      |
| (a) | in the territory of the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man; and |      |
| (b) | in accordance with Article 2.7 of the UK FTA.  | Free |
- Amendments to Customs and Excise Regulations 1996*
- 30 Principal regulations**
- Sections 31 and 32** amend the Customs and Excise Regulations 1996. 10
- 31 Regulation 42 and cross-heading revoked**
- Revoke regulation 42 and the cross-heading above regulation 42.
- 32 New regulations 51ZZK and 51ZZL and cross-heading inserted**
- After regulation 51ZZJ, insert:
- Provisions relating to UK FTA parties* 15
- 51ZZK Interpretation**
- In **regulation 51ZZL**, unless the context otherwise requires,—
- UK FTA** means the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland done at London on 28 February 2022 20
- United Kingdom and the Crown Dependencies** means the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man.
- 51ZZL Originating goods**
- Particular goods are treated for the purposes of the Act and the Tariff Act 1988 as being the produce or manufacture of the United Kingdom and the Crown 25

Dependencies if the goods meet all applicable requirements set out in the following provisions of the UK FTA:

- (a) Chapter 3 (Rules of Origin and Origin Procedures); and
- (b) Annex 3A (Product Specific Rules of Origin); and
- (c) Annex 3B (Origin Declarations – Guidance).

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## Part 5

### Apple transitional export quota

#### Subpart 1—Preliminary provisions

#### 33 Repeal of **this Part**

**This Part** is repealed at the end of the last day of the year that is the second year after the year in which **this Part** comes into force. 10

#### 34 Purpose

(1) The purpose of **this Part** is to implement New Zealand’s obligations under the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland (UK) done at London on 28 February 2022, as those obligations relate to fresh apples. 15

(2) To achieve that purpose, **this Part** provides for New Zealand Apples and Pears Incorporated, on behalf of the Crown,—

(a) to design and operate a quota system that—

- (i) operates for up to 3 years (in the period 1 August to 31 December in each of those years); and 20

- (ii) enables apples to be exported from New Zealand to the UK free from duty, in accordance with the Agreement; and

(b) to fulfil New Zealand’s reporting obligations under the Agreement in relation to the quota system. 25

#### 35 Interpretation

In **this Part**, unless the context otherwise requires,—

**apple exporter** means a person who exports apples grown in New Zealand

**apples** means fresh apples, other than cider apples

**authorised person** means an individual authorised by NZAPI under **section 58** 30

**Customs** means the New Zealand Customs Service

**Director-General** means the Director-General of MPI

**export** means to send to another country, whether directly or indirectly

**export certificate** means a certificate issued by NZAPI under **section 48** 35

	<b>FTA</b> means the Free Trade Agreement between New Zealand and the UK done at London on 28 February 2022	
	<b>Minister</b> means the Minister of Agriculture	
	<b>MPI</b> means the Ministry for Primary Industries	
	<b>NZAPI</b> means New Zealand Apples and Pears Incorporated	5
	<b>quota system</b> means a system designed under <b>section 38</b>	
	<b>quota year</b> means,—	
	(a) for the year in which <b>this Part</b> comes into force,—	
	(i) the period from 1 August until 31 December, if the commencement date of <b>this Part</b> is before 1 August; or	10
	(ii) from the commencement date of <b>this Part</b> until 31 December, if the commencement date of <b>this Part</b> is after 1 August:	
	(b) for every other year that <b>this Part</b> is in force, the period from 1 August until 31 December in each year	
	<b>UK</b> means the United Kingdom of Great Britain and Northern Ireland.	15
<b>36</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions set out in <b>Schedule 2</b> have effect, for <b>this Part</b> , according to their terms.	
<b>37</b>	<b>Part binds the Crown</b>	
	<b>This Part</b> binds the Crown.	20
	Subpart 2—Quota system and annual allocations	
	<i>Quota system</i>	
<b>38</b>	<b>NZAPI must design and operate quota system</b>	
(1)	NZAPI must design and operate a quota system for allocating the access to the UK apple market afforded by the FTA (but <i>see</i> <b>Schedule 2</b> if <b>this Part</b> commences in 2022 but after 1 August).	25
(2)	NZAPI has complete discretion to determine all elements of a quota system, including its allocation mechanisms, but, in doing so, NZAPI must—	
	(a) comply with the requirements of <b>section 39</b> ; and	
	(b) consider the extent to which the system will be fair and equitable to, and efficient for, all apple exporters.	30
(4)	A quota system designed and operated under this section is secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
<b>39</b>	<b>Minimum requirements</b>	
(1)	A quota system must comply with all relevant requirements of the FTA.	35

- (2) For each quota year, a quota system must provide for all of the following:
- (a) a portion of the quota to be allocated to each existing apple exporter who applies for quota for that year; and
  - (b) a portion of the quota to be set aside for new apple exporters who may apply for quota for that year; and 5
  - (c) a process for a quota applicant to seek a review of any allocation decision in relation to their application; and
  - (d) a process for issuing export certificates under **section 48**.
- (3) A quota system may take into account any proportion of quota allocated to a person that— 10
- (a) was unused in the previous quota year; and
  - (b) was notified to the person under **section 44(1)(c)** as required to be returned to NZAPI for reallocation; but
  - (c) was not returned or was incorrectly returned—
- when determining the allocation of quota, or any adjustment of allocation of quota, to the person for the following year (for example, by reducing the allocation by the amount of the unused quota). 15
- (4) A quota system must not—
- (a) discriminate between persons or classes of person (except to the extent authorised under **subsections (2)(a) and (b) and (3)**); or 20
  - (b) make the allocation of quota subject to preconditions or requirements other than for the purposes of—
    - (i) complying with the FTA; or
    - (ii) ensuring that the quota system, and any particular quota consignment, is accepted by UK or New Zealand government and administrative bodies (as relevant); or 25
  - (c) impose any condition or limitation on quota that has been allocated (for example, by prescribing when, within a quota year, a quota consignment may be exported); or
  - (d) require any person to give information to NZAPI under **this Part** except to the extent necessary to enable— 30
    - (i) the quota system to be designed, operated, and enforced effectively; and
    - (ii) New Zealand to fulfil its obligations under the FTA.
- (5) Despite **subsection (4)(c)**, a quota system may require that unused allocation be returned to NZAPI. 35
- (6) If NZAPI replaces a quota system, it must ensure that the new system provides for a fair adjustment of any amounts already allocated or set aside under the system it is replacing.



- (7) To avoid doubt, nothing in this section prohibits a quota system design that uses a first-come-first-served allocation mechanism, so long as the system complies with **subsection (2)**.
- (8) In this section,—
- existing apple exporter** means an apple exporter who exported apples to the UK during the previous quota year (or calendar year, in the case of the first quota year) 5
- new apple exporter** means an apple exporter who did not export apples to the UK during the previous quota year (or calendar year, in the case of the first quota year). 10
- 40 Amendment**
- (1) NZAPI may amend a quota system at any time.
- (2) If a quota system is amended, the consultation and notification requirements in **sections 41 and 42** apply as if it were a new quota system, unless the amendment clearly has— 15
- (a) no impact on the share of quota allocated to any person; and
- (b) no impact on whether a person receives any allocation in any subsequent quota year; and
- (c) no significant financial impact on any person to whom quota has been allocated. 20
- (3) An amendment made to a quota system under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 41 Consultation**
- NZAPI must not finalise a quota system without consulting apple exporters and considering their feedback. 25
- 42 Notification to apple exporters and others**
- Before implementing a finalised quota system, NZAPI must give a written notice summarising the system (including an explanation of any allocation calculation) to—
- (a) all apple exporters known to NZAPI; and 30
- (b) any other person NZAPI or MPI thinks likely to be directly affected by the quota system; and
- (c) the Minister.
- Annual allocations*
- 43 Allocations to be made in accordance with quota system** 35
- For each quota year, NZAPI must—

- (a) invite applications for quota allocations; and
- (b) decide them in accordance with the quota system.

#### **44 Notification of decisions**

- (1) NZAPI must notify each quota applicant of the following:
  - (a) the quota allocation calculation (if any); and 5
  - (b) the name of, and quota amount allocated to, each applicant; and
  - (c) if applicable, the date by which any unused allocation must be returned to NZAPI; and
  - (d) the status of any amount not yet allocated; and
  - (e) the process, and latest date, by which an applicant may request a review of the quota allocation decision in relation to their application. 10
- (2) NZAPI must give the notice in writing as soon as practicable after deciding the allocations.
- (3) NZAPI must also publish the same information on its Internet site.

#### **45 Review of allocation decisions** 15

- (1) A person may request a review of a quota allocation decision in relation to their application, and NZAPI must reconsider its decision if the person has applied—
  - (a) in accordance with the process as notified to applicants under **section 44(1)(e)**; and 20
  - (b) by the date stated in the notice.
- (2) NZAPI may decide either of the following and must notify the person, in writing, accordingly:
  - (a) to increase the allocation:
  - (b) to leave the allocation as initially set. 25

#### **46 Use of allocations**

A quota holder must not trade their quota allocation.

#### **47 Return of unused allocations**

- (1) This section applies if NZAPI requires quota holders to return unused allocation to it during a quota year. 30
- (2) A quota holder must return any unused allocation by the date specified under **section 44(1)(c)**, and NZAPI must, as soon as practicable,—
  - (a) notify all other apple exporters known to it that it has quota to reallocate; and
  - (b) invite applications for a share of the reallocation by a date specified in the notice; and 35

- (c) publish the same information on its Internet site.
- (3) NZAPI must then reallocate the quota among any applicants as if it were allocating annual quota, and **sections 43 and 44** apply accordingly with any necessary modifications.

*Export certificates*

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**48 Export certificates**

- (1) NZAPI must issue tariff rate quota export certificates to quota holders for the purpose of providing evidence of eligibility for entry into the UK of—
  - (a) a particular consignment of apples; or
  - (b) a particular quantity of apples exported or to be exported by a specified exporter. 10
- (2) NZAPI must issue an export certificate to a quota holder if—
  - (a) the quota holder applies for a certificate; and
  - (b) the application is made in accordance with any requirements specified in the quota system; and 15
  - (c) NZAPI is satisfied that the certificate should be issued.
- (3) NZAPI may refuse to issue an export certificate to a quota holder if—
  - (a) their application does not comply with any requirements specified in the quota system; or
  - (b) NZAPI is satisfied on reasonable grounds that the certificate should not be issued; or 20
  - (c) the quota holder has not paid any fees owing under **this Part**, or has paid them after the due date.
- (4) NZAPI must ensure that export certificates issued under this section comply with any relevant requirements specified in the FTA. 25

**49 Exports must be in accordance with certificate**

No person may export apples to the UK under the quota system unless—

- (a) the person holds an export certificate for the apples; and
- (b) the export is carried out in accordance with—
  - (i) the information stated in the certificate; and 30
  - (ii) any other applicable requirements of the quota system; and
- (c) the person is not subject to any action taken by NZAPI under **section 55** that would prohibit the export.

## Subpart 3—General provisions

*Information requests and sharing***50 Requests by NZAPI for information**

- (1) NZAPI may request and use information from any person, including quota holders, quota applicants, and any other apple exporters, to enable— 5
- (a) the quota system to be designed, operated, and enforced effectively; and
  - (b) New Zealand to fulfil its obligations under the FTA.
- (2) Without limiting **subsection (1)**, NZAPI may request and use information for 1 or more of the following purposes: 10
- (a) allocating quota: 10
  - (b) monitoring compliance with **this Part** and the relevant parts of the FTA:
  - (c) sharing information under **sections 51 to 53**:
  - (d) conducting a review under **section 56**.
- (3) For the purposes of designing a quota system and making allocations, NZAPI 15 may request—
- (a) an apple exporter’s total export volume of apples for all export markets, for up to 3 calendar years before the first quota year, broken down by market locations; and
  - (b) an apple exporter’s total export volume of apples in any quota year, broken 20 down by quota exports and non-quota exports.
- (4) A request under this section must be in writing and set out why the information is required.
- (5) A request under this section may be— 25
- (a) a one-off request; or
  - (b) a request for information to be given at specified intervals (for example, periodic reports on the volume of apples actually exported under a quota allocation).
- (6) A person must comply with a request as soon as practicable or by any date specified in the request. 30
- (7) NZAPI must ensure that appropriate protections are or will be in place to maintain the confidentiality of information collected and used under this section.

**51 NZAPI, Customs, and MPI may share information**

- (1) For the purposes of operating and enforcing the quota system and fulfilling New Zealand’s obligations under the FTA,— 35
- (a) NZAPI may share any information it collects under **section 50** with Customs or MPI, or both; and

- (b) Customs may share any relevant information that it holds under any legislation with NZAPI or MPI, or both.
- (2) Without limiting **subsection (1)**, information may be shared between NZAPI, Customs, and MPI for the following purposes:
- (a) to allow NZAPI to inform Customs that it has cancelled an export certificate: 5
- (b) to allow NZAPI to verify that a quota holder is providing correct information to it:
- (c) to allow MPI to receive information from Customs so that MPI may assist in ensuring that New Zealand is fulfilling its obligations under the FTA. 10
- (3) NZAPI, Customs, and MPI must ensure that appropriate protections are or will be in place to maintain the confidentiality of information shared under this section.
- (4) To avoid doubt, NZAPI, Customs, and MPI may share commercially sensitive information under this section. 15

## 52 NZAPI must share information with Director-General

- (1) The Director-General may request NZAPI to share information, or a copy of a document that it holds, with the Director-General.
- (2) The Director-General may make a request if satisfied that the information or document will assist the Director-General in providing information to the Minister so that the Minister may be satisfied that New Zealand is fulfilling its obligations under the FTA. 20
- (3) NZAPI must comply with a request from the Director-General as soon as practicable, and the Director-General may use the information or document for the purpose referred to in **subsection (2)** so long as appropriate protections are in place or will be in place to maintain the confidentiality of the information. 25
- (4) To avoid doubt, NZAPI may provide commercially sensitive information to the Director-General under this section.

## 53 NZAPI must share information with UK authority 30

- (1) For the purpose of fulfilling New Zealand's reporting obligations under the FTA, NZAPI must provide to the UK authority, for each quota year,—
- (a) information relating to the initial allocation and any reallocation of the annual quota volume for that year; and
- (b) information relating to export certificates issued by NZAPI during that year. 35
- (2) The information provided under **subsection (1)(b)** must—
- (a) be provided monthly, or as otherwise agreed between NZAPI and the UK authority; and

- (b) include the following information for each export certificate issued:
  - (i) the exporter's name and address; and
  - (ii) the corresponding UK importer's name and address; and
  - (iii) the quantity of apples; and
  - (iv) the quota year to which the certificate relates and its expiry date (if any). 5
- (3) In this section, **UK authority** means the entity nominated by the UK for receiving the information provided by NZAPI under this section.

#### 54 NZAPI must publish certain information

- (1) NZAPI must publish the following information on its Internet site: 10
  - (a) for each month of a quota year, the percentage of the total quota volume exported for that month and the quota year to date:
  - (b) when the total quota volume for the quota year is reached, a notice to that effect.
- (2) The information required under **subsection (1)(a)** must be published within 10 working days after the end of each month. 15
- (3) The information required under **subsection (1)(b)** must be published as soon as practicable after the total quota volume is reached.
- (4) In this section, **total quota volume** means the maximum volume of apples permitted to be exported to the UK under the quota system for a quota year. 20

### *Enforcement*

#### 55 Actions NZAPI may take for non-compliance

- (1) NZAPI may take 1 or more of the actions specified in **subsection (2)** against a person if it is satisfied that the person—
  - (a) has exported apples to the UK as a quota holder but in excess of their quota allocation; or 25
  - (b) has exported apples to the UK as a quota holder but without an export certificate for the apples; or
  - (c) has done or is likely to have done any other thing in breach of the quota system; or 30
  - (d) without reasonable excuse, has failed to—
    - (i) provide information to NZAPI when required or requested to do so under **this Part**; or
    - (ii) return unused quota allocation to NZAPI by the date specified under **section 44(1)(c)**; or 35
    - (iii) pay any fee owing under **this Part** by the required date; or

- (e) has knowingly given false or misleading information when required or requested to provide information under **this Part**.
- (2) The actions are—
- (a) suspend, by written notice, any right the person has to export under the quota system for a period specified in the notice (which must be no longer than 12 months from the day on which the notice is issued): 5
- (b) refuse, by written notice, to issue 1 or more export certificates to the person for a period specified in the notice (which must be no longer than 12 months from the day on which the notice is issued):
- (c) cancel any export certificate issued to the person. 10
- (3) Before acting under **subsection (2)**, NZAPI must, by written notice, inform the person of the following:
- (a) that it intends to act in the way specified in the notice; and
- (b) the reasons for doing so; and
- (c) the person’s right to seek a review of its decision under **section 56**; and 15
- (d) the latest date by which the person may exercise that right.

## **56 Review of decisions about action for non-compliance**

- (1) A person may seek a review of a decision NZAPI has made in relation to them under **section 55**.
- (2) NZAPI may— 20
- (a) conduct the review itself and make a decision; or
- (b) appoint an independent person to investigate and make recommendations to NZAPI, and then make the decision.
- (3) In either case, NZAPI has complete discretion to decide upon the process.
- (4) NZAPI must give written notice to the person of— 25
- (a) its decision; and
- (b) the reasons for its decision; and
- (c) the person’s right of appeal under **section 57**.
- (5) NZAPI must publish information about the right to reviews, and the manner in which they may be conducted, on its Internet site. 30

## **57 Appeal against review decisions**

A person who is dissatisfied with a decision of NZAPI made under **section 56** may, within 20 working days after notice of the decision is given to them, appeal to the High Court against the decision.

**58 Authorised persons**

- (1) NZAPI may authorise suitably qualified and trained individuals to execute a search warrant issued under **section 59**.
- (2) An authorisation must—
- (a) be made in writing; and 5
  - (b) state that it is made under this section; and
  - (c) set out the following:
    - (i) the name of the individual:
    - (ii) the purpose for which the authorisation is given:
    - (iii) the duration of the authorisation (which may be until it is 10  
revoked).

**59 Powers of inspection to investigate offence**

- (1) An issuing officer (as defined in the Search and Surveillance Act 2012) may issue a search warrant to an authorised person, or a constable, authorising them— 15
- (a) to search—
    - (i) any place where apples are held or are likely to be held (including any place that is not a place of business); or
    - (ii) any place where documents relating to apples are held or are likely to be held (including any place that is not a place of busi- 20  
ness); or
    - (iii) any vehicle, aircraft, or ship; and
  - (b) to copy any document, or part of a document, relating to apples found at that place, vehicle, aircraft, or ship; and
  - (c) to seize any computer system or other data storage device in order to 25  
access any document, or part of a document, relating to apples that may be stored on that device.
- (2) An issuing officer may issue the search warrant if satisfied that there are reasonable grounds to believe that—
- (a) an offence against **this Part** has been, is being, or is intended to be 30  
committed; and
  - (b) there is evidential material in relation to the offence on or in the place, vehicle, aircraft, or ship.
- (3) Part 4 of the Search and Surveillance Act 2012 applies in relation to this sec- 35  
tion, but sections 118 and 119 apply only in respect of a warrant issued to a constable.



*Offences, penalties, and proceedings***60 Offences**

- (1) A person commits an offence if the person—
- (a) exports apples to the UK as if doing so under the quota system when no quota has been allocated to the person; or 5
  - (b) exports apples to the UK in breach of **section 49**; or
  - (c) with intent to deceive, gives false or misleading information, or makes a material omission, when required or requested to provide information under **this Part**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000. 10

**61 Strict liability**

In any proceedings for an offence under **section 60(1)(a) or (b)**, it is not necessary for the prosecution to prove that the defendant intended to commit the offence. 15

**62 Defence available**

- (1) It is a defence in any proceedings for an offence under **section 60(1)(a) or (b)** if the defendant proves that—
- (a) the contravention was due to an event or a cause beyond the defendant's control; and 20
  - (b) the defendant took all reasonable steps to prevent the contravention.
- (2) A defendant is not entitled to rely on any event or cause referred to in **subsection (1)(a)** as part of a defence under this section unless—
- (a) they have served on the prosecutor notice in writing identifying the event or cause relied on; and 25
  - (b) the notice is served no later than 10 working days before the date on which the hearing of the proceedings commences.
- (3) **Subsection (2)** does not apply if the defendant has leave of the court to rely on the event or cause.

**63 Liability of companies and persons for actions of agents or employees** 30

- (1) For the purpose of proceedings for an offence against **this Part**, an act done or omitted to be done on behalf of a person other than a body corporate (**person A**) by—
- (a) an agent or employee of person A; or
  - (b) any person at the direction or with the consent or agreement, whether 35  
express or implied, of an agent or employee of person A,—
- is treated also as the act or omission of person A.

- (2) For the purpose of proceedings for an offence against **this Part**, an act done or omitted to be done on behalf of a body corporate by—
- (a) a director, agent, or employee of that body corporate; or
  - (b) any other person at the direction or with the consent or agreement, whether express or implied, of a director, agent, or employee of that body corporate—
- is treated also as the act or omission of the body corporate.
- (3) However, if proceedings are brought under **section 60(1)** in respect of an act or omission under this section, it is a defence if the defendant proves,—
- (a) if they are a person other than a body corporate, that—
    - (i) they did not know, nor could reasonably be expected to have known, that the offence was to be or was being committed; or
    - (ii) they took all reasonable steps to prevent the commission of the offence:
  - (b) if they are a body corporate, that—
    - (i) neither the directors nor any person involved in the management of the body corporate knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or
    - (ii) the body corporate took all reasonable steps to prevent the commission of the offence:
  - (c) in all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (4) For the purposes of this section,—
- (a) a person (**person A**) may act as an agent of another person, including a body corporate (**person B**), irrespective of whether person A is employed by person B or acting for reward:
  - (b) an agent or employee of person A is treated as also acting as an agent for person B.
- 64 Liability of directors and managers**
- (1) If a body corporate commits an offence under **section 60(1)**, every director, and every person concerned in the management of the body corporate, also commits an offence under that section if it is proved that—
- (a) the act or omission that constituted the offence took place with the director's or person's authority, permission, or consent; or
  - (b) the director or person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

- (2) Every person to whom **subsection (1)** applies is liable on conviction to the fine specified in **section 60(2)**.
- (3) A person may be convicted of the offence even though the body corporate has not been charged with that offence or a similar offence.

**65 Time for filing charging document** 5

- (1) A charging document in respect of an offence against **this Part** must be filed within 2 years after the date on which the offence was committed.
- (2) This section overrides section 25 of the Criminal Procedure Act 2011.

*Recovery of costs*

**66 Recovery of costs** 10

- (1) NZAPI may recover its costs relating to performing its functions and duties under **this Part**, including its costs relating to—
- (a) designing and operating the quota system:
  - (b) issuing quota allocations and export certificates:
  - (c) monitoring compliance: 15
  - (d) fulfilling New Zealand's reporting obligations under the FTA.
- (2) For that purpose, NZAPI may, by notice, set fees payable by quota applicants and quota holders that—
- (a) are fair and reasonable; and
  - (b) provide NZAPI with adequate funding to perform its functions and duties under **this Part**. 20
- (3) However, before setting any fee, NZAPI must consult apple exporters and consider their feedback.
- (4) NZAPI must notify fees set under this section, and the date by which they must be paid, to— 25
- (a) all apple exporters known to NZAPI; and
  - (b) any other person NZAPI or MPI thinks likely to be directly affected by the quota system; and
  - (c) the Minister.
- (5) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30

*Protection of authorised persons***67 Protection of authorised persons**

- (1) An authorised person who does any act or omits to do any act in exercising a power conferred on them under **this Part** is not under any civil or criminal liability in respect of the act or omission. 5
- (2) **Subsection (1)** applies unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

*Conflicts of interest***68 Conflicts of interest must be disclosed**

- (1) NZAPI must have a process for its officers to manage any conflicts of interest that arise when they are acting under **this Part**. 10
- (2) For that purpose, NZAPI may use any process that it currently implements when conducting its operations or affairs but must adapt it (where necessary) to provide for the following:
- (a) an officer must disclose any interest in a matter, with details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) as soon as practicable after they become aware that they have an interest; and 15
- (b) the details must be recorded—
- (i) in a register kept by NZAPI; and 20
- (ii) in the minutes of the meeting at which the disclosure is made or the first meeting held after the disclosure (as the case may be); and
- (c) the officer must not—
- (i) vote or take part in any decision relating to the matter; or 25
- (ii) sign any document relating to the matter; or
- (iii) participate in any other way in relation to the matter, except with the chairperson's permission.
- (3) If an officer does not disclose an interest (and does anything contrary to **subsection (2)(c)**),— 30
- (a) NZAPI must notify the Minister; and
- (b) NZAPI may reconsider any relevant decision; but
- (c) NZAPI must not cancel or amend any quota allocation already made in reliance on the decision.
- (4) The criteria set out in **section 69** must be used to determine whether an officer has an **interest** in a matter for the purposes of this section. 35

- (5) In this section and **section 69**, **matter** means NZAPI's performance of its duties or exercise of its powers under **this Part**.

## **69 When officer has interest**

- (1) An officer is **interested** in a matter if the officer—
- (a) may obtain a financial benefit from the matter; or 5
  - (b) is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of a person who may obtain a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates. 10
- (2) However, the officer is not **interested** in a matter—
- (a) just because they receive an indemnity, insurance cover, remuneration, or other benefits permitted under NZAPI's constitution, or any legislation, in their capacity as an officer; or 15
  - (b) if their interest is the same or substantially the same as the benefit or interest of all or most other members of NZAPI due to the membership of those members; or
  - (c) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under **this Part**. 20

### *Notices*

## **70 Notices**

NZAPI may give a person written notice under **this Part** by—

- (a) delivering or leaving it at the person's last known home or work address; or 25
- (b) emailing it to the person at their last known personal or work email address.

### *Replacement of NZAPI*

## **71 Governor-General may replace NZAPI** 30

- (1) If NZAPI ceases to operate, or is going to cease to operate, the Governor-General may, by Order in Council, appoint a replacement body to carry out the functions and duties conferred on NZAPI by **this Part**.
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 35

*Provisions relating to FTA*

- 72 No liability for changes in UK access arrangements**
- Neither the Crown nor NZAPI is liable to any person for any loss or damage arising from—
- (a) any reduction (including a reduction to zero) in quota allocation to any person arising out of a reduction in the total quantity of quota access available to the UK; or 5
  - (b) any other action that has the effect of nullifying, limiting, or imposing conditions on the quota access available to the UK as set out in the FTA.
- 73 Matters not affected** 10
- (1) Nothing in **this Part** prevents the Crown from engaging in international trade negotiations for the purpose of—
    - (a) amending or terminating the FTA; or
    - (b) establishing, amending, or terminating any other quota or other trade system for apples. 15
  - (2) Nothing in **this Part** prevents any person from exporting apples to the UK without holding a quota allocation or an export certificate if the person is doing so under a right that lies outside the quota system.
  - (3) For example,—
    - (a) a person who is not a quota holder may export apples during the quota year so long as they pay the relevant tariff; and 20
    - (b) a person who is a quota holder may export apples during the quota year beyond their quota allocation so long as they do not claim the apples as falling within their allocation and pay the relevant tariff.
  - (4) This section is to avoid doubt. 25

**Schedule 1**  
**New Part 9 inserted into Schedule 1AA of Overseas Investment**  
**Regulations 2005**

s 20

<b>Part 9</b>		5
<b>Provisions relating to United Kingdom Free Trade Agreement</b> <b>Legislation Act 2022</b>		
<b>19</b>	<b>Application</b> The amendments made by the <b>United Kingdom Free Trade Agreement Legislation Act 2022</b> apply only to the acquisition of rights or interests in securities or of other property, or the establishment of any business, after the commencement of that Act.	10
<b>20</b>	<b>No refunds</b> No person is entitled to a refund of any fee or charge paid to the regulator for a matter under Schedule 2 of these regulations on the ground that the amendments made by the <b>United Kingdom Free Trade Agreement Legislation Act 2022</b> mean that the matter is no longer relevant (for example, that a consent that had been applied for is no longer required).	15

## Schedule 2

### Transitional, savings, and related provisions for **Part 5**

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#### 1 Requirements in Act replaced if first quota year in 2022

- (1) This clause applies only if **Part 5** (and therefore the first quota year) commences— 5
- (a) in 2022; but
  - (b) after 1 August.
- (2) For the first quota year,—
- (a) the provisions of this Schedule override **subpart 2 of Part 5** (other than **sections 48(4) and 49**) and **section 66**; and 10
  - (b) the rest of **Part 5** (including **sections 48(4) and 49**) applies with any necessary modifications.

#### 2 NZAPI must implement quota system

- (1) As soon as practicable after **Part 5** commences, NZAPI must implement the quota system set out in this clause. 15
- (2) NZAPI must calculate the total quota amount.
- (3) NZAPI must publish a notice on its Internet site inviting applications from any apple exporter for quota allocations.
- (4) The notice must state— 20
- (a) the total quota amount available for allocation; and
  - (b) that applications close at the end of the day after the day on which the notice is published; and
  - (c) that applications will be decided at the sole discretion of NZAPI, taking into account— 25
    - (i) the relevant requirements of the FTA; and
    - (ii) the amount of time remaining in the quota year; and
    - (iii) the number of applications received; and
    - (iv) whether there are more applications received than the total quota amount available for allocation. 30
- (5) In this clause, **total quota amount** means the amount of quota available for allocation (being the remainder, on a pro rata basis, of the total quota amount set out in the FTA for the first quota year).

#### 3 NZAPI must make allocations as soon as practicable

- NZAPI must, as soon as practicable after the application period closes,— 35



- (a) allocate quota (taking into account the matters listed in **clause 2(4)(c)**);  
and
- (b) notify applicants in writing of their quota allocation (if any).

#### **4 Export certificates**

- (1) NZAPI may issue 1 or more export certificates to a person— 5
  - (a) at the same time as it notifies the person of the outcome of their quota application under **clause 3**; or
  - (b) at any other time that NZAPI thinks fit, taking into account the amount of time remaining in the quota year.
- (2) NZAPI must ensure that export certificates issued under this clause comply with any relevant requirements specified in the FTA. 10

#### **5 Recovery of costs**

- (1) NZAPI may charge a fee for issuing an export certificate under **clause 4**.
- (2) The fee is payable by the person to whom the certificate is issued.
- (3) The amount of the fee may include an amount necessary to recover NZAPI's costs associated with allocating quota to the person. 15