



Cabinet

Minute of Decision

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Report of the Cabinet External Relations and Security Committee: Period Ended 5 August 2022

On 8 August 2022, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 5 August 2022:

Out of scope

ERS-22-MIN-0037 **Proposed Enhancements to the Export Controls** CONFIRMED
Regime: Release of Consultation Document
Portfolio: Foreign Affairs

Out of scope

Out of scope

Rachel Hayward
Acting Secretary of the Cabinet

Proactively released by the Minister of Foreign Affairs



Cabinet External Relations and Security Committee

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Proposed Enhancements to the Export Controls Regime: Release of Consultation Document

Portfolio Foreign Affairs

On 3 August 2022, the Cabinet External Relations and Security Committee:

- 1 **noted** that an independent review of Aotearoa New Zealand's Export Controls regime in 2021 (the review) made a number of recommendations to modernise the regime;
- 2 **noted** that on 20 September 2021, Cabinet noted the key findings of the review, and noted that the Minister of Foreign Affairs will report back in due course on implementing the recommendations of the review [CAB-21-MIN-0380];
- 3 **noted** that the Minister of Foreign Affairs released the review's report on 24 September 2021, and confirmed the commitment of the Ministry of Foreign Affairs and Trade to respond to the report's recommendations;
- 4 **noted** that the Ministry of Foreign Affairs and Trade has developed proposals for three key components of the Export Controls regime's operational policy framework:
 - 4.1 a purpose statement;
 - 4.2 revised assessment criteria;
 - 4.3 a transparency approach;
- 5 **agreed** to the release of the document *Proposals to Enhance Export Controls Regime Operations* (the consultation document), attached to the paper under ERS-22-SUB-0037, subject to any minor or technical amendments that may be required;
- 6 **noted** that targeted consultation is proposed with three stakeholder segments (including certain exporters, universities and researchers, and civil society) and Māori as Treaty partners, and that wider audiences will also have the opportunity to provide their feedback;
- 7 **noted** that the consultation will take place over a five week period in August and September 2022;

- 8 **invited** the Minister of Foreign Affairs to report back to the Cabinet External Relations and Security Committee on the results of consultation and with final policy proposals by late 2022.

Janine Harvey
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Chris Hipkins
Hon Andrew Little
Hon David Parker
Hon Damien O'Connor
Hon Peeni Henare
Hon Michael Wood
Hon Dr David Clark
Hon Kieran McAnulty

Officials present from:

Office of the Prime Minister
Officials Committee for ERS

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In Confidence

Office of the Minister of Foreign Affairs

Cabinet External Relations and Security Committee

Proposed enhancements to the Export Controls regime

Proposal

- 1 This paper seeks Cabinet's agreement to release a consultation document proposing operational policy adjustments to provide greater transparency and enhance understanding of the operation of Aotearoa New Zealand's Export Controls regime.

Relation to government priorities

- 2 The Export Controls regime manages the export of strategic and certain other military end-use goods and technology from Aotearoa New Zealand. This supports our nation's domestic and international disarmament obligations to counter the proliferation of nuclear, chemical, or biological weapons, and our commitments relating to human rights and international humanitarian law. The regime is part of our commitment as a responsible exporter.
- 3 The regime supports the Government's priority to "lay the foundations for a better future" as a contribution to the international rules based system and supports our National Security Objective to 'strengthen the international order to promote security'.
- 4 The changes proposed in this paper reflect the priority of "making New Zealand proud" by supporting international disarmament efforts, and consultation is sought, including with our Treaty Partner, to ensure public understanding and confidence in these changes and to lift transparency.

Executive Summary

- 5 The purpose of Aotearoa New Zealand's Export Controls regime is to control the export of strategic and certain other military end-use goods and technology from New Zealand, in line with our domestic and international obligations and commitments. The regime is regulated under the Customs and Excise Act 2018 and managed by the Ministry of Foreign Affairs and Trade (MFAT).
- 6 An independent review of the Export Controls regime in 2021 recommended a number of changes to modernise the regime and ensure it remained fit for purpose. These included actions to enhance transparency, public understanding and public confidence in the regime. These recommendations were accepted by MFAT.
- 7 I seek Cabinet's agreement to release the consultation document *Proposals to enhance Export Controls Regime Operations* (Appendix 1) setting out proposed amendments to three components of the Export Controls regime:

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- 7.1 Purpose statement – to develop a succinct high-level statement setting out the objectives and intentions of the Export Controls regime.
 - 7.2 Criteria for assessment – to clarify, simplify, and reduce the number of criteria considered by the Secretary of Foreign Affairs and Trade when assessing an application for a permit to export strategic or military end-use goods.
 - 7.3 Transparency – to enhance transparency of the regime.
- 8 Collectively, these proposals aim to strengthen exporter and public understanding of the operation of the regime and ensure confidence that Aotearoa New Zealand is a responsible exporter of strategic and military end-use goods.
 - 9 Consultation is proposed over a five-week period in August and September 2022 and will focus on four key groups: exporters, universities and research institutions, civil society, and Māori. It will include online workshops and an online hui. There will be provision for stakeholders and Treaty partners to engage with MFAT officials.
 - 10 A summary of the consultation feedback will be published on MFAT's website and will inform the final changes proposed to the Export Controls regime. I will report back to Cabinet on the outcomes. Implementation of agreed final proposals is anticipated by November 2022.

Background /Context

- 11 The purpose of Aotearoa New Zealand's Export Controls regime is to control the export of strategic and certain other military end-use goods and technology from New Zealand, in line with our domestic and international obligations and commitments including to disarmament, counter-proliferation, human rights and international humanitarian law.
- 12 The regime is regulated under the Customs and Excise Act 2018 and managed by MFAT. The Customs and Excise Act provides for the prohibition of export from New Zealand of certain goods unless they have a permit issued by the Secretary of Foreign Affairs and Trade.
- 13 An independent review of the regime was conducted in 2021 and is publicly available. It concluded that while the Export Controls regime has been run in accordance with the underlying intent and the legislative requirements, changes were recommended to improve the design and implementation of the scheme to bring it up to contemporary best regulatory practices. The recommended changes included to:
 - 13.1 review and refresh the criteria for assessment;
 - 13.2 invest in more structured and comprehensive systems and processes;
 - 13.3 strengthen the decision-making framework;
 - 13.4 strengthen record-keeping and evidencing of critical steps;
 - 13.5 enhance the transparency of and public confidence in the regime;
 - 13.6 extend proactive outreach and education; and
 - 13.7 conduct regular independent reviews.

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- 14 I updated the External Relations and Security Committee on the findings of the review on 20 September 2021, confirming that MFAT had accepted all recommendations and was committed to implementation [CAB-21-MIN-0380 refers].
- 15 Officials were directed to prioritise the recommendations that would have the most impact and could be implemented reasonably quickly. A number have already been implemented, including to increase staff capacity and capability in relation to MFAT's operation of the export controls function and to commence work on the enhancement of supporting systems, including information management.
- 16 The review's report also contained a recommendation relating to legislative reform, including through new standalone legislation. I expect work to consider legislative reform to commence later in 2022.

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Policy proposals for consultation

- 18 MFAT has developed proposals in relation to three key operational policy areas to provide greater clarity and enhance understanding of the regime. If implemented, these proposals would not impose any additional requirements on exporters.
- 19 Consultation is important to test these proposals against the expectations of key stakeholders and Treaty partners to identify any unintended consequences and to assess whether they adequately address the report's recommendations prior to implementation.

Purpose statement

- 20 The review noted there is currently no explicit purpose statement for the Export Controls regime in legislation. Stakeholders consider this hinders their understanding of the legislative instruments and policy documents relating to the regime.
- 21 It is proposed to consult on a succinct high-level statement setting out what the Export Controls regime aims to achieve and why. The proposed statement is:

“Aotearoa New Zealand is committed to being a responsible exporter of strategic and military end-use goods.

“In line with our domestic and international obligations, commitments and policies, the purpose of our Export Controls regime is to control the export of military and dual-use goods and technology from New Zealand, as well as certain other goods to military and police end-users, which may contribute to the detriment of our security or national interests or to human rights abuse, or contravene international humanitarian law.”

- 22 The purpose statement can be issued as an aspect of operational policy without a requirement for legislative reform. To avoid introducing unintended complexities and inconsistencies, care has been taken to ensure that the draft purpose statement neither expands nor diminishes the application of the assessment criteria.

Assessment criteria

- 23 The assessment criteria provide the foundation for decision-making under the Export Controls regime. They set out the parameters to be considered by the Secretary of Foreign Affairs and Trade when assessing an application for a permit to export controlled goods. Currently, MFAT publishes the assessment criteria, numbering more than 20, on its website.
- 24 The review recommended consolidating and reducing the number of criteria to simplify their interpretation. The ability to understand and apply these criteria is critical for exporters, and underlies public confidence. It is proposed to reduce the number of criteria to six. These reflect the Government's commitment to making responsible decisions around the export of strategic and military end-use goods. The proposed new criteria are framed with reference to those used by other export controls regimes and have been tailored to suit the Aotearoa New Zealand context. All core concepts of the current criteria remain in the revised criteria, but in a more structured and succinct form.
- 25 The assessment criteria proposed for consultation are:
- 25.1 Consistency with Aotearoa New Zealand's disarmament, arms control and non-proliferation obligations, commitments and policies;
 - 25.2 Consistency with Aotearoa New Zealand's obligations, commitments and policies regarding fundamental principles of international law, international human rights law and international humanitarian law;
 - 25.3 Consistency with Aotearoa New Zealand's other international obligations;
 - 25.4 Whether the export may compromise Aotearoa New Zealand's national interests including, without limitation: security, international relationships and international reputation;
 - 25.5 The impact the export is expected to have on peace, security and stability;
 - 25.6 Whether the export may undermine confidence in Aotearoa New Zealand's commitment to being a responsible exporter of strategic and military end-use goods.
- 26 Each criterion will be accompanied by guidance setting out the scope of issues taken into account including relevant legislation, policies or other documents. This guidance is also included in the consultation document.

Transparency

- 27 The review made a number of recommendations to promote transparency to help exporters of controlled goods better understand and meet requirement and support MFAT's commitment to Open Government.
- 28 MFAT proposes to formalise its approach to transparency in the operation of the Export Controls regime. The transparency approach proposed for consultation comprises:

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- 28.1 Objectives – focussing on promoting understanding and providing confidence and assurance about the operation of the Export Controls regime;
- 28.2 Principles – aligned with the Open Government framework; and
- 28.3 Key components of a transparency implementation plan (discussed below).

Transparency implementation plan key components

- 29 The key components of the transparency implementation plan MFAT will develop and implement are:
 - 29.1 A statement of the government’s objectives for the Export Controls regime;
 - 29.2 Targeted guidance material to help exporters and brokers navigate the Export Controls regime, particularly with regard to decision-making;
 - 29.3 Statistical summaries of the Export Controls regime’s activities (proactive release);
 - 29.4 Other information about the operation of the Export Controls regime, potentially including through annual reporting (proactive release);
 - 29.5 A programme of engagement with external stakeholders;
 - 29.6 Ensuring the Export Controls regime’s operations are included in a regular programme of internal audit;
 - 29.7 Commissioning and publishing periodic independent reviews of the Export Controls regime;
 - 29.8 Ensuring that information management systems support collection of full records of export controls decisions and provide access to quality statistical and other information over time.
- 30 The proposed transparency approach recognises that the nature and size of Aotearoa New Zealand’s strategic and military end-use goods sector means that in some situations there may be good reasons (for example, international relationships or commercial sensitivity) why information or data cannot be released proactively.

Proposed approach to consultation

- 31 The objective of the consultation is to gain feedback on the extent to which the proposals are understandable, workable, and adequate as an operational response to address specific recommendations of the review. It also seeks to identify how the proposals could be improved to make them more understandable, or workable, or to give better effect to the recommendations of the review.
- 32 The technical nature of the proposals indicates that a targeted consultation is appropriate. Four key groups have been identified: exporters who are (or are highly likely to be) affected by the regime; universities and researchers who are (or are highly likely to be) affected by the regime; civil society, specifically non-government organisations, and

interest groups; and Māori, including iwi and hapū as Treaty partners and the Māori export sector.

- 33 Consistent with its obligations under Te Tiriti o Waitangi, the Ministry is working on the consultation with Māori trade advisory group Te Taumata to determine the best format for the hui, including identifying suitable facilitation.

Implementation

- 34 Implementation is anticipated to commence by November 2022.

Financial Implications

- 35 Financial implications of a public consultation can be met through existing baselines.

Legislative Implications

- 36 There are no legislative implications from releasing this consultation document.

Impact Analysis

- 37 The proposals do not involve the potential introduction of new legislation, or amendment to or repeal of existing legislation. The Cabinet impact analysis requirements therefore do not apply.

Population and Human Rights Implications

- 38 Release of the consultation document does not have population implications or human rights implications.
- 39 Analysis of population implications and human rights implications will be undertaken following public consultation and prior to final policy decisions.
- 40 The effective operation of the Export Controls regime is underpinned by adherence to New Zealand's international obligations, including in relation to international human rights law and international humanitarian law. Proposed exports will be assessed against these obligations and may be prohibited where they contribute to human rights abuses or contravene international humanitarian law, or where they would damage New Zealand's international reputation.

Consultation

- 41 The following government agencies were consulted over the development of this Cabinet paper and the accompanying proposals, and their comments have been incorporated where received: Department of Prime Minister and Cabinet, Public Service Commission, New Zealand Treasury, Ministry of Business, Innovation and Employment, Ministry of Defence, New Zealand Customs Service, Government Communications Security Bureau, Ministry of Justice, Te Puni Kōkiri, New Zealand Security Intelligence Service, Ministry for Women.

- 42 The New Zealand Customs Service is supportive of any initiatives that support ease of exporter compliance. It advises that the proposals to improve the transparency of the regime should assist in this.

Communications

- 43 I propose to issue a media statement advising of the start of MFAT's public consultation following receipt of Cabinet approval. The consultation document will be available on MFAT's website.
- 44 The New Zealand Customs Service will include notice of the consultation in its regular exporter communications.

Proactive Release

- 45 I will release this Cabinet paper proactively on MFAT's website once consultation has commenced subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Foreign Affairs recommends that the Committee:

- 1 **note** that an independent review of Aotearoa New Zealand's Export Controls regime in 2021 made a number of recommendations to modernise the regime;
- 2 **note** that I provided an update on the review and its recommendations to Cabinet External Relations and Security Committee on 20 September 2021;
- 3 **note** that I released the review's report on 24 September 2021 and confirmed the commitment of the Ministry of Foreign Affairs and Trade to respond to the recommendations;
- 4 **note** that the Ministry of Foreign Affairs and Trade has developed proposals for three key components of the Export Controls regime's operational policy framework: a purpose statement, revised assessment criteria, and a transparency approach;
- 5 **agree** to the release of the document *Proposals to enhance Export Controls Regime Operations*, subject to any minor or technical amendments that may be required;
- 6 **note** that targeted consultation is proposed with three stakeholder segments (including certain exporters, universities and researchers, civil society) and Māori as Treaty Partners, and that wider audiences will also have the opportunity to provide their feedback;
- 7 **note** that consultation on the proposals to enhance Export Controls regime operations is expected to take place over a five week period in August and September 2022;
- 8 **note** that, subject to receiving Cabinet approval to release the consultation document, it will be published on the Ministry of Foreign Affairs and Trade's website along with this Cabinet paper; and

- 9 **note** that I will report back to Cabinet on the results of consultation and final policy proposals by late 2022.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Foreign Affairs

Proactively released by the Minister of Foreign Affairs

Appendix 1

Consultation document - *Proposals to enhance Export Controls Regime Operations*

Proactively released by the Minister of Foreign Affairs