

Proactive Release

Date: 12 November 2019

The following Cabinet paper and related Cabinet minute has been proactively released by the Ministry of Foreign Affairs and Trade:

Continuing the Prohibition on Import of Goods Produced by Prison Labour

(DEV-19-MIN-0179 refers)



Cabinet Economic Development Committee

Minute of Decision

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Continuing the Prohibition on Import of Goods Produced by Prison Labour

Portfolio **Trade and Export Growth**

On 26 June 2019, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that the prohibition of the import of goods produced by prison labour, given effect under the Customs and Excise Act 1996, expires on 30 September 2019;
- 2 **agreed** to continue the prohibition of goods produced by prison labour on an indefinite basis, through an Order in Council under the Customs and Excise Act 2018;
- 3 **invited** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the continued prohibition referred to above;
- 4 **authorised** the Minister for Trade and Export Growth and the Minister of Customs to make final decisions on detail and to make changes, consistent with the policy intent outlined in the paper under DEV-19-SUB-0179, on any issues that arise during drafting process;
- 5 **noted** that approving the continuation of the prohibition would provide scope for relevant policy agencies (including the Ministry of Business, Innovation, and Employment, Ministry of Justice, Department of Corrections, New Zealand Customs Service and Ministry of Foreign Affairs and Trade) to conduct a review of the policy in due course, without the prohibition expiring first;
- 6 **directed** the relevant policy agencies listed above to collaborate in providing a report back to DEV by 1 April 2021, detailing consolidated thinking on the merits and nature of a prospective review of the policy, and any related issues.

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Shane Jones
Hon Kris Faafoi
Hon James Shaw
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister for Trade and Export Growth

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Minister for Trade and Export Growth

In Confidence

Office of the Minister for Trade and Export Growth
Chair, Cabinet Economic Development Committee

Continuing the prohibition on import of goods produced by prison labour

Proposal

1. This paper seeks Cabinet's agreement to continue the prohibition on import of goods produced by prison labour, which would otherwise expire on 30 September 2019, but with provision for officials to report back to Ministers by 1 April 2021.

Background

2. New Zealand Customs Service administers the Customs and Excise Act 2018 ("the 2018 Act").
3. The 2018 Act effects a twelve-month extension of the previously 'permanent' import prohibitions specified in Schedule 1 of the Customs and Excise Act 1996 ("the 1996 Act"), beginning on the date of the 2018 Act's entry into force (1 October 2018).
4. Section 54(1)(a) of the 1996 Act provides that it is unlawful to import any of the goods listed in Schedule 1 into New Zealand. Schedule 1 specifies an absolute prohibition on the import of goods produced by prison labour¹, amongst other things. Gazette records indicate New Zealand has maintained a policy to this effect in various forms since at least 1908.
5. The current prohibition in Schedule 1 of the 1996 Act reads as follows:

"Goods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary, excluding a bona fide gift made by a prisoner for the personal use of a private individual, also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such institutions, or by an agent of such person, firm, or corporation, or when originally purchased from or transferred by any such contractor."

¹ Article XX(e) of the General Agreement on Tariffs and Trade 1994 allows World Trade Organisation members to adopt or enforce measures relating to the products of prison labour provided those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries (where the same conditions prevail) or are a disguised restriction on trade.

6. Under current settings this prohibition will expire on 30 September 2019.
7. As policy on this issue has traditionally fallen into the Trade portfolio, I now seek Cabinet's approval to continue the prohibition on an indefinite basis, but with a report back in two years' time to allow for fuller consideration of the issues.
8. The 2018 Act enables prohibition on the import of "any specified goods", via Order in Council, if the Minister of Customs considers it "necessary in the public interest." Procedurally, this necessitates the Minister of Customs issuing instructions to the Parliamentary Counsel Office to draft an Order in Council that will continue the import prohibition for approval by Cabinet Legislation Committee, which I recommend for the reasons below.
9. Continuing the current policy is consistent with the Trade for All agenda principle, agreed by Cabinet, of using trade policy to "maximise opportunities and minimise risks associated with global issues". Continuation will have no implications for Customs' operations. Nor will it preclude removal or reform in future. Rather, it will provide relevant agencies² with scope, in due course, to review the policy and consider whether it might be updated and if so, how this might be achieved.

Comment

Public interest

10. There is a strong public interest in continuing the import prohibition on goods produced by prison labour, given the potential that such goods may have been produced under forced labour or conditions akin to it, or that they might potentially distort competition.
11. There is also a public interest in ensuring this prohibition does not expire without full and considered analysis of any potential implications of its expiry. Given the impending expiry of the prohibition, and the procedural legislative requirements necessary to continue it, such an analysis is not possible in the timeframe available. I therefore propose that in conjunction with the retention of the current policy, officials be asked to report back within two years to allow fuller consideration of the issues.

Prison labour in New Zealand

12. Domestic policy on prison labour has developed significantly since this prohibition's introduction. Prisoners in New Zealand undertake work and/or training on a voluntary basis. Under section 66 of the Corrections Act 2004, prisoners receive earnings at a rate approved by the Minister. Products of prisoners' labour go into the New Zealand economy (at commercial market rates, according no financial gain to purchasers), including for export – for example, milk produced on the Waikeria Prison dairy farm is

² Including Ministry of Business, Innovation, and Employment; Department of Corrections; Ministry of Justice; New Zealand Customs Service; Treasury; and Ministry of Foreign Affairs and Trade.

sold to Fonterra. Opportunities are provided for rehabilitative and re-integrative purposes, and to prepare prisoners for future employment upon release.³

Providing opportunity for policy review

13. This prohibition was originally adopted for mercantilist economic reasons, including to address concern about cheap or free offshore labour undercutting domestic production. In the ensuing decades, a broader swathe of issues—including regarding corrections, human rights, and labour policy—have become increasingly relevant considerations. Continuing the current policy aligns with this government's Trade for All agenda. It also provides scope for agencies to consider whether or not the policy might be updated, and how this might be achieved, in due course.
14. A more deliberate, longer-term review of this prohibition would provide an opportunity to take into account developments in traceability for products, prison labour policies in other jurisdictions, and New Zealand's own corrections, human rights, labour and trade policies. It would also look to the policy settings of like-minded countries, and reflect commitments at the International Labour Organization and the World Trade Organization (particularly Article XX(e) of the General Agreement on Tariffs and Trade).
15. A review would also need to consider challenges in enforcing the prohibition, which has proven difficult to enforce. Under current settings New Zealand Customs Service captures goods produced by prison labour at the border – but because such goods have no specific observable characteristics, border agents rely on self-declaration or tip-offs. New Zealand does not currently have capability to monitor prison labour regimes of other countries (nor assess whether the conditions in those regimes amount to forced labour).

Consultation

16. Ministry for Business, Innovation, and Employment; Ministry of Justice; Department of Corrections; New Zealand Customs Service; the Treasury; Department of the Prime Minister and Cabinet; and the Parliamentary Counsel Office have been consulted on this paper.

Financial Implications

17. There are no financial implications to this paper.

Legislative Implications

18. The proposal in this paper will require making an Order in Council under section 96 of the Customs and Excise Act 2018 to prohibit the importation of goods produced by prison labour.

³ Work undertaken by prisoners occurs outside the statutory framework set out in the Employment Relations Act 2000. Rather, prisoners' rights and protections are set out under the legislation and regulations that govern Corrections.

Impact Analysis

19. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no or minor impacts on businesses, individuals or not for profit entities.

Human Rights

20. There are no inconsistencies between the proposal in this paper and the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no gender or disability perspective implications from the proposal in this paper.

Publicity

21. There is no planned publicity for the matter addressed in this paper.

Proactive Release

22. The Ministry of Foreign Affairs and Trade will proactively publish a copy of this paper on its website.

Recommendations

23. The Minister for Trade and Export Growth recommends that Cabinet:
 - a) **note** that the prohibition of the import of goods produced by prison labour, given effect under the Customs and Excise Act 1996, expires on 30 September 2019;
 - b) **agree** to continue the prohibition of goods produced by prison labour on an indefinite basis through an Order in Council under the Customs and Excise Act 2018;
 - c) **invite** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the continued prohibition agreed above;
 - d) **authorise** the Minister for Trade and Export Growth and Minister of Customs to make final decisions on detail and to make changes, consistent with the policy intent outlined in this paper, on any issues that arise during drafting of the Order in Council;
 - e) **note** that approving continuation of the prohibition would provide scope for relevant policy agencies—including Ministry of Business, Innovation, and Employment, Ministry of Justice, Department of Corrections, New Zealand Customs Service and Ministry of Foreign Affairs and Trade—to conduct a

review of the policy in due course, without it expiring first;

- f) **invite** the relevant policy agencies listed above to collaborate in providing a report-back to Cabinet Economic Development Committee by 1 April 2021 detailing consolidated thinking on the merits and nature of a prospective review of the policy, and any related issues.

Authorised for lodgement

Hon David Parker

Minister for Trade and Export Growth

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Minister for Trade and Export Growth