Regulatory Impact Statement

Autonomous Sanctions and United Nations Amendment Bill

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Foreign Affairs and Trade.

It provides an analysis of options for establishing a comprehensive legislative power to impose sanctions unilaterally against specified countries, individuals and entities.

This regulatory impact analysis focuses on the prospective ambit of autonomous sanctions, the appropriate threshold for applying them, and the various safeguards that should be incorporated to protect the rights of targeted individuals and groups and ensure that any measures imposed can withstand scrutiny.

A key assumption underpinning the impact analysis is that, given New Zealand's small size and geographic isolation, sanction measures will in practice be of limited application to persons and assets present in New Zealand; and will have a limited impact on New Zealand business interests. This assumption is based on New Zealand's experience in implementing United Nations Security Council sanctions, and has informed the conclusion that the regulatory impact on New Zealanders and New Zealand business will be minimal.

The regulatory impact analysis requirements will apply to any regulations made under the proposed legislation, applying specified sanction measures. This will provide the opportunity to consider the regulatory impact of any individual proposal at that time.

Some of the proposals recognise the possibility of additional compliance costs being imposed on business, the restriction of certain business dealings, or the impairment of private property rights. The analysis concludes that such impacts will occur infrequently; will be insignificant in the wider context; or merely extend compliance requirements that affected institutions are already accustomed to. In some cases mitigating factors are proposed to be included in the framework.

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Status quo and problem definition

1 Sanctions are a common global tool for seeking to influence foreign governments and responsible individuals to modify their behaviour in situations of international concern. The aim of sanctions is to exert political and economic pressure to bring about change. Sanctions can take a variety of forms, but the most common in current usage are:

- travel bans or entry restrictions against specified individuals or groups;
- trade restrictions including arms embargoes;
- economic sanctions such as the freezing of assets and restrictions on the transfer of funds; and
- diplomatic sanctions such as the expulsion or recall of diplomats.

2 The United Nations (UN) Charter requires all UN member states to give effect to measures adopted by the Security Council under Chapter VII of the UN Charter where there is a threat to international peace and security.[1] New Zealand implements sanctions imposed by the Security Council under the United Nations Act 1946. New Zealand has implemented UN sanctions consistent with recent Security Council mandates in respect of North Korea, Iran and Libya, among others.[2] To varying degrees, New Zealand's regulations implementing these sanctions have included all the forms of sanctions described above, except diplomatic sanctions (which the Security Council has not required member states to impose in recent history and which, in any event, do not require regulatory implementation).

3 In some situations the Security Council fails to adopt measures under Chapter VII of the Charter. This may be because there is disagreement over the scope of the measures proposed, the individuals and entities to be targeted, or the very existence of a threat to international peace and security. It may also be because one of the five permanent members of the Security Council is unwilling to see sanctions imposed in the circumstances under consideration and chooses to exercise its power of veto, thereby blocking Security Council action. In situations like these, some countries opt to act independently of the UN and impose sanctions unilaterally in an effort to influence the behaviour of the regime concerned. On occasions (such as the current situation in Iran) some countries wish to go further than the sanctions adopted by the Security Council. New Zealand is regularly called upon by our key security partners to join them in applying pressure in such cases.

4 In addition, there may be situations of regional rather than international concern which do not reach the attention of the Security Council, but which New Zealand wishes to respond to robustly.

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[1] Charter of the United Nations, Articles 41 and 48.

[2] United Nations Sanctions (Democratic People's Republic of Korea) Regulations 2006; United Nations Sanctions (Iran) Regulations 2010; United Nations Sanctions (Libya) Regulations 2011.

5 All New Zealand's key security partners have the ability to impose sanctions outside the UN framework. In 2011, Australia passed the Autonomous Sanctions Act 2011, an enabling Act which provides for the making of regulations to proscribe persons or entities to which sanctions apply, and to restrict or prevent dealings with assets or the supply, sale, transfer or procurement of goods or services. In Canada, the Special Economic Measures Act provides a legislative basis for imposing unilateral economic sanctions including the freezing of assets; trade restrictions; and restrictions on the provision of financial or other services. The United States and European Union impose a wide array of sanctions on foreign states, individuals and entities through a system of Executive Orders made by the President in the case of the US, and under the framework of the Common Foreign and Security Policy in the case of the EU.

6 At present, New Zealand can apply a limited range of sanctions and sanction-type measures in an ad hoc way within existing policy and legal frameworks. These include the refusal of entry visas, diplomatic sanctions such as the expulsion of diplomats, the suspension of official visits and the suspension of aid and cooperation. Measures of this nature have been applied in the past against countries like Zimbabwe and Fiji.

7 However, there is currently no general legislative power to impose economic sanctions in the absence of a Security Council resolution. This means New Zealand is unable to participate fully in a wider network of countries applying sanctions so as to contribute to their overall transparency and effectiveness. Moreover, there is a growing risk of New Zealand being perceived as an easy target because of gaps in the range of sanction measures able to be imposed. For these reasons, New Zealand is increasingly regarded as being out of step with security partners such as Australia, Canada, the European Union and the United States.

8 Separately, the penalties in the United Nations Act 1946 have not been updated since 1990 and are now ill-matched to the seriousness of a breach of sanction measures. Accordingly it is proposed to update and align the penalty and enforcement provisions of the United Nations Act 1946 with the new autonomous sanctions framework.

Objectives

9 The sanction measures available to New Zealand under current policy settings are not seen, either here or by our like-minded partners, as being sufficient to address situations of real concern. While there have been some questions about the effectiveness of sanction measures in the past, targeted economic and financial sanctions (also known as "smart" sanctions) are considered to be among the most effective measures available, and are accordingly regarded as a critical element of an effective sanctions regime.

10 It is recognised that, in many cases, the practical impact of sanctions imposed unilaterally by New Zealand will be limited by our comparatively small size and our

geographic isolation. Nevertheless, it is important for New Zealand to be able to demonstrate its commitment to addressing situations of concern, by enhancing our ability to act in concert with security partners.

11 For these reasons it is in New Zealand's interests to adopt a consolidated legislative framework for the imposition of sanction measures, enabling New Zealand to:

- list individuals or entities targeted by sanction measures;
- place restrictions on using or dealing with assets linked to those persons or entities; and
- restrict the sale, procurement or transfer of goods and services.

12 It is also appropriate for the penalty and enforcement provisions of the United Nations Act 1946 to be aligned with those applying to sanctions imposed unilaterally, since the offences are directly comparable.

13 The objectives of the proposal are therefore:

- to create a legislative power to impose economic sanctions against specified individuals and entities in the absence of an explicit UN Security Council mandate;
- to improve overall efficiency and transparency in the operation of New Zealand's sanctions regime by combining in a single legislative instrument the power to impose unilateral sanctions requiring legislative authority; and
- to align the enforcement and penalty provisions of the United Nations Act 1946 with the new autonomous sanctions framework.

14 The broader policy goals of the regime are:

- to contribute to regional and international peace and security;
- to promote respect for international law and human rights;
- to uphold democratic principles and the rule of law; and
- to enable New Zealand to join with like-minded countries in sending a signal to foreign governments and responsible individuals and entities that fail to abide by recognised international standards.

Regulatory impact analysis

15 It is important that any restrictive measures imposed by the government are supported by appropriate enforcement capabilities and penalties for breach. Likewise, it is imperative that banks and other financial institutions that might be required to freeze the assets of a given individual or group, or to prevent otherwise legitimate financial transactions from taking place, have the necessary legal basis for doing so.

16 For these reasons, a non-regulatory option would not meet the objectives described in the previous section. In developing this policy initiative, consideration has focused on the prospective ambit of autonomous sanctions, the appropriate threshold for applying them, and the various safeguards that might be incorporated to protect the rights of targeted individuals and groups and ensure that any measures imposed can withstand scrutiny.

Structure of autonomous sanctions framework

17 The proposed Bill will establish an enabling regime for the imposition of sanctions outside the UN framework. As framework legislation, it is proposed that the Bill be broad, flexible and empower the making of regulations on a case-by-case basis. The regulations to be passed under the authority of the legislation would implement specified sanctions against named countries, individuals, entities or classes of individuals or entities.

18 The use of a combination of primary empowering legislation and subsidiary legislative instruments for the application of specific sanction measures will enable New Zealand to respond in a timely way to situations of concern. An alternative option of implementing detailed sanctions through an Act of Parliament alone would not be sufficiently flexible to accommodate fast-moving developments on the international stage.

19 Since the primary and subsidiary legislation form an interconnected package, this regulatory impact analysis considers not only the effects of the Bill, but also the range of impacts potentially resulting from the imposition of specific sanctions by regulation, and how they may be mitigated. The regulatory impact analysis requirements will apply to any regulations made under the proposed Bill, and there will be the opportunity to consider the regulatory impact of any individual proposal at that time.

Threshold for applying autonomous sanctions

20 There is no single universally accepted test for determining when it may be appropriate to impose sanctions. Under Article 39 of the UN Charter, the Security Council is required to determine the existence of a threat to the peace, a breach of the peace, or an act of aggression, and may then decide what multilateral measures should be applied to maintain or restore international peace and security.

21 Most like-minded countries take a flexible approach to the imposition of autonomous sanctions, based on a foreign policy interest in bringing about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles. Before autonomous sanctions can be applied under Australia's Autonomous Sanctions Act 2011, the Minister of Foreign Affairs must be satisfied that the proposed regulations:

- will facilitate the conduct of Australia's relations with other countries or with entities or persons outside Australia; or
- will otherwise deal with matters, things or relationships outside Australia.[3]

22 Canada's Special Economic Measures Act applies a different test, requiring a determination that a grave breach of international peace and security has occurred that has resulted, or is likely to result in a serious international crisis.[4]

23 To accommodate the range of circumstances potentially giving rise to a need to impose sanctions unilaterally, it is proposed that New Zealand adopt an approach similar to that of Australia, the European Union and the United States, whereby the Minister of Foreign Affairs may decide to impose sanctions when it is in New Zealand's foreign policy interests to do so. This approach will provide New Zealand with the flexibility to respond appropriately to a variety of situations of concern.

24 Beyond this threshold test, the application of any sanctions must be in accordance with international law, including New Zealand's obligations under the World Trade Organisation and relevant free trade agreements.

Subjects of autonomous sanctions

25 It is possible for sanctions to be applied so as to target the governments of third countries and individual regime members, as well as non-state individuals and entities. It is proposed that New Zealand's framework provide for the possibility of action against any of these categories. This approach acknowledges that broad-ranging economic or financial restrictions may fail to target and thereby influence the perpetrators of a situation of concern, and may result in disproportionately high economic and humanitarian impacts on the wider population.

26 Empowering the taking of action only against a foreign government responsible for a matter of international concern would not meet the objectives of the legislation and would be inconsistent with the approaches of our key security partners. Therefore it is proposed that the legislation include the ability to list individuals, groups or entities who would be subject to sanction measures. This approach recognises that "smart" sanctions are highly targeted measures designed to maximise the objective of effecting change in the regime's behaviour, while minimising deleterious effects on the general population.

27 The benefit of such a flexible approach is that it will enable New Zealand to impose targeted measures (such as admission restrictions or the freezing of assets) against the individuals or groups most responsible for, or who have a close connection with, a situation of concern; at the same time as allowing measures of general application (such

[3] Autonomous Sanctions Act 2011, section 10(2).

[4] Special Economic Measures Act, section 4(1).

as arms embargoes or a ban on the provision of specified technologies) against specified countries.

28 While New Zealand citizens and permanent residents could theoretically be subject to autonomous sanctions, in practice there will be limited direct impact on them, since any measures must be based on foreign policy considerations.

29 It is conceivable that breaches of sanction measures may take place overseas by people who subsequently enter New Zealand (for example, the provision of paramilitary training in-country by a New Zealander in breach of sanctions). To cater for this possibility and ensure that New Zealand's autonomous sanctions have the furthest appropriate reach, it is proposed to include an enabling provision in the legislation so that specific sanctions may be expressed as having extraterritorial effect.

Scope of autonomous sanctions

30 New Zealand and the international community commonly have recourse to three broad classes of sanction measures requiring legislative authority to impose:[5]

- restrictions on the admission of specified individuals or groups of individuals (entry/travel bans);
- arms embargoes and other restrictions on the exchange of goods or services; and
- economic and financial sanctions such as the freezing of assets and restrictions on the transfer of funds.

31 To enable New Zealand to apply the most effective measures available in a given situation, and to act in concert with our key security partners, it is important that the autonomous sanctions framework make provision for all these classes of sanctions. Any other option would not meet the objectives of the sanctions regime.

Admission restrictions

32 Designating a sanctioned individual for the purpose of preventing them from travelling to, entering or remaining in the country sends an important signal about the seriousness with which New Zealand regards the behaviour, policies or activities of that individual. It has been found to be an effective sanction in particular circumstances.

33 Currently the Immigration Act and Instructions are used to restrict entry to New Zealand by named individuals. However, there are efficiency and transparency benefits to incorporating a power to restrict entry into the wider general legislative framework for the imposition of sanctions.

[5] Ancillary measures such as diplomatic sanctions, the suspension of co-operation with a third country, and the disruption of sporting or cultural ties are largely available at the discretion of the government choosing to impose them, and generally do not require legislative authority.

34 Admission restrictions would not apply to New Zealand citizens or permanent residents.

Trade restrictions

35 Trade sanctions can currently be imposed under powers in the Customs and Excise Act 1996. As with travel restrictions, there are considered to be efficiency and transparency benefits to incorporating a power to impose trade restrictions into the wider legislative framework for the imposition of sanctions.

36 A common type of trade restriction is an arms embargo, which appears in virtually all United Nations Security Council resolutions imposing sanction measures. Some trade restrictions do go beyond this. The United Nations Sanctions (Iran) Regulations 2010 prohibit the export of specified military equipment and technology to Iran. The Regulations also establish a scheme for the registration of business dealings with Iran, in an effort to control business dealings which might contribute to Iran's proliferation-sensitive nuclear activities or the development of delivery systems for nuclear weapons.

37 While arms embargoes are the most common form of trade sanction, there are situations where it may be appropriate to restrict trade in goods more broadly, perhaps extending to cover goods or technologies on the New Zealand Strategic Goods List[6] or other sensitive goods. Restrictions on the supply of services might extend to technical advice, assistance or training in a specified domain (such as military or paramilitary training); financial services; or services relating to the supply, sale, transfer, manufacture, maintenance or use of a restricted good.

38 The application of trade sanctions will in some cases restrict New Zealand companies in their dealings with sanctioned countries, individuals or entities; or hinder the provision of specified goods and services by them. However, the economic and compliance costs associated with such restrictions are anticipated to be minimal in the overall context of New Zealand's exports, especially when restrictions are more likely to target goods and services of a military or proliferation-sensitive nature.

39 Any trade-restrictive measures, whether applied under the existing powers in the Customs and Excise Act or under new powers in the Autonomous Sanctions Bill, must be applied consistently with New Zealand's international obligations, especially under the World Trade Organisation agreements and free-trade agreements to which New Zealand is party. Outside UN-mandated sanctions, these agreements broadly speaking allow trade restrictions to be imposed in circumstances where they are necessary to protect New Zealand's essential security interests. Any proposed trade sanctions would be

[6] http://www.mfat.govt.nz/Trade-and-Economic-Relations/3-Export-controls/1-NZ-Strategic-Goods-List/01-Strategic-Goods-List.php

assessed for consistency with international trade obligations by the Ministry of Foreign Affairs and Trade on a case-by-case basis prior to the promulgation of regulations.

Economic/financial sanctions

40 The ability to impose economic and financial sanctions, such as the freezing of assets or a prohibition on financial transactions relating to specified individuals or entities, is at the heart of an effective sanctions regime. Targeted sanctions of this nature have become increasingly popular as part of the move to make sanctions "smarter" by isolating the key actors responsible for objectionable policies or behaviour, limiting their access to funds and to international financial markets, while avoiding wider adverse impacts on the general population. Recourse to targeted economic and financial sanctions has been a growing trend not only in the decisions of the Security Council under the UN Charter, but also in the suite of measures applied by security partners such as Australia, Canada, the European Union and the United States.[7]

41 A legislative framework that did not provide for the possibility of applying the full range of sanctions, including economic and financial sanctions, would not take New Zealand much beyond our current ability to impose sanction-type measures in a piecemeal way under existing legislation. It would not only deny the government a vital tool in its arsenal against egregious policies and behaviour, it would also be inconsistent with the approach adopted by all New Zealand's key security partners and would be regarded as not fulfilling the fundamental purpose of an autonomous sanctions regime.

42 For these reasons it is important for New Zealand's autonomous sanctions framework to include the ability to restrict the use of, dealing with, or making available of assets (including money, securities and property) in appropriate cases.

43 The application of economic and financial sanctions in particular cases will impose additional compliance costs on banks and other financial institutions in terms of:

- monitoring and conducting appropriate due diligence on account holders;
- freezing assets held in New Zealand by specified individuals or entities; and
- monitoring and controlling other restricted financial activities such as the transfer of funds to specified individuals and entities.

44 The affected institutions are already well accustomed to managing compliance with economic and financial sanctions imposed by the Security Council via regulations under

[7] See, for example, Autonomous Sanctions Regulations 2011 (Australia), Special Economic Measures (Burma) Regulations (Canada), Council Decision 2012/35/CFSP (European Union), Executive Order 13599 (United States).

the United Nations Act 1946.[8] The additional cost of compliance with measures imposed under the autonomous sanctions framework is anticipated to be minimal.

45 In limited cases, it is possible that individuals or companies in New Zealand may be prevented from recuperating debts due to them, for example under contractual arrangements, if the funds to be used to make such payments have been frozen. In the context of New Zealand's small size and geographic isolation, it is considered that such cases will be rare and the impact on persons in New Zealand is anticipated to be minimal.

Safeguards to be incorporated into the framework

46 In practice, the impact of autonomous sanctions on persons in New Zealand is expected to be limited, since the focus for autonomous sanctions will be the situation in third countries. Nevertheless, aspects of the proposed framework have the potential to adversely affect the position of individuals and entities, whether in New Zealand or overseas, raising issues with respect to certain fundamental human rights such as the right to be informed, the right to be heard, the right to a fair trial, the right to freedom of movement, and the right to property.

47 A number of cases heard in European and British courts have highlighted the importance of ensuring autonomous sanctions are applied in a way that protects the human rights of individuals to the extent possible; and have been willing in some instances to strike down measures that failed to provide adequate protections.[9] Among other things, several of these cases have underscored the need to make available a statement of reasons for the listing; to notify affected parties that they have been listed; and to provide genuine review procedures.

48 For these reasons, it is proposed that the framework provide for a number of safeguards in order to protect the rights of targeted individuals and groups and ensure that any measures imposed can withstand scrutiny.

Validity measures

49 To ensure listing decisions are as robust as possible, it is proposed that any decision to list persons or entities be made domestically by New Zealand, rather than applying lists prepared by our security partners.

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[8] Existing United Nations Sanctions Regulations in respect of Côte d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Eritrea, Iran, Lebanon, Liberia, Libya, Somalia and Sudan, for example, all include economic and financial measures of this nature.

[9] See, for example, *HM Treasury v Ahmed & Ors* [2010] 2 AC 534, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, *Der Generalbundesanwalt beim Bundesgerichtshof v E and F*, Case C-550/09, 17 May 2010.

Transparency measures

50 To ensure affected parties have access to information about decisions affecting them, any decision to list an individual or entity (e.g. for the purposes of an admission restriction or asset freeze) would be set out in a public document such as the *New Zealand Gazette*, along with a brief explanation of the reason for the listing.

51 Similarly, information on any assets subject to an asset freeze would be made publicly available.

52 An up-to-date list of persons and entities subject to autonomous sanctions would be maintained on a website.

Reviewability and sunset measures

53 The legislation would include an administrative review mechanism allowing affected individuals and entities to apply for the revocation of a listing decision; or for the revocation of a decision to freeze specified assets. Listing decisions would also be able to be revoked on the initiative of the Minister of Foreign Affairs.

54 Autonomous sanctions should be essentially of a temporary, not a permanent nature. Accordingly the framework would provide for a listing decision or a decision to freeze specified assets to expire after a period of three years from the date on which the decision took effect, unless deliberately renewed.

Compensatory measures

55 The framework would provide the power for the Crown to grant relief to a third party with an interest in controlled assets that is adversely affected by a sanctions decision; and/or immunity from legal proceedings to a New Zealand individual or entity acting in reliance on sanction measures.

Exemption measures

56 Recognising that all cases are different, the legislation would give the Minister power to authorise activities that would otherwise contravene a sanctions measure. This will provide the flexibility to allow exceptions, for example on humanitarian grounds, or to allow personal needs or contractual requirements to be met from frozen assets. Such authorisations would be made subject to any conditions that were considered necessary.

57 The benefits of including safeguards such as those listed above in the autonomous sanctions framework include:

- better recognition and protection of fundamental human rights such as the right to property and the right to natural justice; and
- a more robust autonomous sanctions regime that is better able to stand up to scrutiny.

Offences and penalties

58 In keeping with the purpose of autonomous sanctions and the seriousness with which they should be regarded, an offence would be committed for engaging in conduct that contravenes the sanctions regulations, for example by:

- supplying, selling or transferring a good or technology in breach of a sanctions measure;
- providing a service in breach of a sanctions measure;
- importing or exporting a good or technology in breach of a sanctions measure;
- making available, using or dealing with an asset that is subject to a sanctions measure; or
- dealing with a designated person or entity in a way that breaches a sanctions measure (such as providing funds to that person or entity).

59 In a similar vein, an offence would be committed for contravening a condition under an authorisation granted pursuant to a regulation. An offence would also be committed for providing false or misleading information in connection with a sanctions measure.

60 Penalties for breach will apply to both individuals and bodies corporate. To accommodate issues relating to knowledge on the part of bodies corporate, it will be sufficient to show in their case that a director, employee or agent of the body corporate, acting within the scope of their authority, had the requisite knowledge.

61 In line with New Zealand's sentencing regime, and to reflect the seriousness of a breach of sanction measures and provide a deterrent effect, the following maximum penalties for offences are proposed:

- in the case of individuals, imprisonment for a term not exceeding five years, or a fine of $100,000, or both
- in the case of bodies corporate, a fine of $1 million.

Enforcement of autonomous sanctions

62 Reliance on penalties alone for deterrence and enforcement has certain disadvantages. It addresses the situation following the commission of an offence and tends to reserve enforcement action for only the most egregious situations where it is in

the public interest to prosecute. It does nothing to prevent an imminent breach or the continuation of a breach pending legal proceedings.

63 To address this shortcoming, the legislation will include the ability to seek an injunctive remedy where a person has engaged, is engaging, or proposes to engage in conduct involving a contravention of the sanctions regulations, thus restraining the person from that conduct. Preventative action of this nature may assist in furthering the objectives of the autonomous sanctions. An injunctive remedy of this nature would be able to be granted only on application by the Attorney-General.

64 To assist in the enforcement of sanction measures, the legislation will include a power to require specified information or documents to be provided for the purpose of determining whether a measure is being complied with. While this requirement could impose additional compliance costs on businesses, the incidence of the power being exercised is expected to be low, therefore the overall impact is anticipated to be minimal.

Relationship to the United Nations Act 1946

65 The United Nations Act 1946 provides for regulations to be made to implement United Nations Security Council Resolutions, which may include sanction measures. This stand-alone system for UN-mandated sanctions will continue in parallel with the autonomous sanctions framework.

66 The penalty provisions of the United Nations Act 1946 have not been updated since 1990, and the applicable penalties[10] are now ill-matched to the seriousness of a breach of sanction measures. Accordingly it is proposed to update and align the penalty and enforcement provisions of the United Nations Act 1946 with the new autonomous sanctions framework. In addition to aligning the penalties for committing an offence under either regime, the possibility of seeking an injunctive remedy to prevent a breach of sanctions from taking place will be reflected also in the United Nations Act, as will the provisions relating to knowledge on the part of bodies corporate.

Conclusions and recommendations

67 A non-regulatory option would not enable the objectives of an autonomous sanctions regime to be achieved. In particular, it would not provide the legal authority for controlling dealings in assets or the necessary penalty and enforcement provisions to address past, present or future breaches.

68 It is recommended that New Zealand establish a comprehensive legislative framework for the imposition of autonomous sanctions which would consist of an Act of

[10] In the case of an individual, imprisonment for a term not exceeding 12 months or a maximum fine of $10,000. In the case of a body corporate, a maximum fine of $100,000.

Parliament, supplemented by regulations and tertiary legislative instruments which would be passed on a case-by-case basis to address particular situations. An empowering Act, supplemented by subsidiary legislation containing details of the specific application of sanction measures will best meet the objectives of the policy proposal and be sufficiently flexible to deal with fast-moving developments on the international stage.

Consultation

69 The Crown Law Office, New Zealand Customs Service, Department of Prime Minister and Cabinet, Government Communications Security Bureau, Ministry of Justice, Ministry of Business, Innovation & Employment, New Zealand Defence Force, New Zealand Security Intelligence Service, Parliamentary Counsel Office, New Zealand Police, Reserve Bank of New Zealand, Ministry of Transport and the Treasury were consulted on this Regulatory Impact Analysis and the accompanying policy paper.

70 No consultation outside government has taken place, given the limited anticipated impact on the wider New Zealand public and businesses.

Implementation

71 Implementation of the empowering legislation will be achieved by promulgating regulations applying sanction measures to specified countries, individuals and entities.

72 Sanctions imposed under the United Nations Act 1946 are administered by the Ministry of Foreign Affairs and Trade. It is appropriate that both UN-mandated sanctions and autonomous sanctions be administered and implemented by the same department.

73 The implementation of sanction measures requires a co-ordinated approach involving operational agencies and financial institutions. While many of the sanctions will be imposed on individuals and entities with little or no connection to New Zealand, there may be individuals or financial institutions which are not aware of the sanctions. The dissemination of public information on any sanctions and their ambit will therefore be crucial to assist with enforcement and ensure that the proposal meets its public policy objectives.

74 The proposed framework will create a consolidated basis for the imposition of autonomous sanctions. This is likely to reduce the complexity of the current approach which is a mix of UN sanctions and ad hoc measures (such as travel bans) taken in respect of particular countries. This will help to reduce compliance costs and ensure a more streamlined approach to the implementation of sanctions.

Monitoring, evaluation and review

75 Under a co-ordinated regime, sanctions could be imposed either under the United Nations Act 1946, or under the proposed autonomous sanctions legislation. The United Nations reviews UN sanctions on a regular basis. The UN and New Zealand's key security partners consider international situations of concern on a regular basis. Such international monitoring will be of assistance in monitoring and evaluating the effectiveness of New Zealand's sanctions regime. This is in line with the foreign policy nature of this issue.

76 Autonomous sanctions will be subject to review. In addition, certain sanctions, such as the listing of individuals, may be time-bound and would expire unless deliberately renewed. More generally, sanctions imposed under an autonomous sanctions regime will be reviewed on a regular basis to ensure that they remain fit for purpose.