

## Proactive Release

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

<b>Title</b>	<b>Reference</b>
<b><i>Report of the Cabinet External Relations and Security Committee: Period Ended 7 April 2023</i></b>	CAB-23-MIN-0119
<b><i>Minute of Decision: Proposed Enhancements to Export Controls</i></b>	ERS-23-MIN-0018
<b><i>Proposed enhancements to the Export Controls regime</i></b>	

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to OIA redaction codes:

- 6(a) – to protect the international relations of the Government of New Zealand



# Cabinet

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### **Report of the Cabinet External Relations and Security Committee: Period Ended 7 April 2023**

On 11 April 2023, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 7 April 2023:

Out of scope

Out of scope

Out of scope

Out of scope

Out of scope

ERS-23-MIN-0018 **Proposed Enhancements to Export Controls**  
Portfolio: Foreign Affairs

CONFIRMED

Out of scope

Out of scope

Out of scope

Rachel Hayward  
Secretary of the Cabinet

Proactively released by the Minister of Foreign Affairs



# Cabinet External Relations and Security Committee

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Proposed Enhancements to Export Controls

**Portfolio**                      **Foreign Affairs**

On 4 April 2023, the Cabinet External Relations and Security Committee (ERS):

1        **noted** that on 3 August 2022, ERS:

- 1.1      agreed to the release of a consultation document on proposals to enhance three key components of the Export Controls regime’s operational policy framework;
- 1.2      invited the Minister of Foreign Affairs to report back on the results of the consultation and with final policy proposals;

[ERS-22-MIN-0037]

2        **noted** that consultation took place from 11 August to 14 September 2022, with workshops targeted to three stakeholder segments (exporters, universities and researchers, and civil society) being held and wider audiences also having the opportunity to contribute their views;

3        **noted** that despite extensive promotion by Te Taumata, and through Ministry of Foreign Affairs and Trade, New Zealand Customs Service and New Zealand Trade and Enterprise channels, the planned Māori focused hui did not attract attendees;

4        **noted** that following consideration of submissions, the Ministry of Foreign Affairs and Trade has developed final operational policy proposals to help to enhance the operation of the Export Controls regime into the future:

- 4.1      a Purpose Statement – setting out what the Export Controls regime aims to achieve and why;
- 4.2      six Assessment Criteria – setting out the parameters considered by the Secretary of Foreign Affairs when assessing an application for a permit to export controlled goods;
- 4.3      a Transparency Approach – setting out the objectives, principles and the key components of a Transparency Implementation Plan to show how the Ministry of Foreign Affairs and Trade will give clarity to its operation of the Export Controls regime;

5        **agreed** to the operational policy proposals outlined in paragraph 4 above;

- 6 **noted** that the Ministry of Foreign Affairs and Trade will consult the Minister of Foreign Affairs before making any future changes to the Assessment Criteria;
- 7 **noted** that the Ministry of Foreign Affairs and Trade intends to publish the new operational policies and commencement information on its website immediately after Cabinet's consideration.

Janine Harvey  
Committee Secretary

---

**Present:**

Rt Hon Chris Hipkins (Chair)  
Hon Carmel Sepuloni  
Hon Kelvin Davis  
Hon Grant Robertson  
Hon Michael Wood  
Hon Andrew Little  
Hon David Parker  
Hon Ginny Andersen

**Officials present from:**

Office of the Prime Minister  
Officials Committee for ERS

Proactively released by the Minister of Foreign Affairs

~~Restricted~~

Office of the Minister of Foreign Affairs

Cabinet External Relations and Security Committee

## Proposed enhancements to the Export Controls regime

### Proposal

- 1 This paper sets out operational policy proposals to provide greater transparency and enhance understanding of the operation of Aotearoa New Zealand's Export Controls regime. It also conveys the implementation information requested by the Cabinet External Relations and Security Committee on 13 December 2022.

### Relationship 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 of these goods.
- 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 also reflect the priority of "making New Zealand proud" by promoting compliance with international law and supporting efforts to strengthen non-proliferation.

### Executive Summary

- 5 Aotearoa New Zealand's Export Controls regime controls 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.
- 6 An independent review of the Export Controls regime in 2021 recommended a number of changes to modernise the regime and ensure it remains fit for purpose.
- 7 On 8 August 2022 Cabinet agreed that the Ministry of Foreign Affairs and Trade could release the consultation document *Proposals to enhance Export Controls Regime Operations* [CAB-22-MIN-0301]. This set out proposed enhancements to three key components of the Export Controls regime:

- 7.1 **Purpose statement** – to develop a succinct high-level statement setting out the objectives and intentions of the Export Controls regime.
- 7.2 **Assessment Criteria** – 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 operation of the regime.
- 8 Cabinet asked me to report back on the results of consultation and final policy proposals by late 2022 [CAB-22-MIN-0301]. The Cabinet External Relations and Security Committee considered this paper on 13 December 2022 and requested further advice on implementation of the Assessment Criteria, including case studies and/or information on how the criteria may be applied [ERS-22-MIN-0061 refers]. This is now attached.
- 9 Consultation took place over a five-week period from 11 August to 14 September 2022. Because of the technical nature of the Export Controls regime, the consultation workshops were targeted to sectors most directly affected by or interested in its operation: exporters, universities and research institutions, civil society, and Māori.
- 10 To ensure other interested parties had the opportunity to provide feedback, the consultation document was also published on the Ministry of Foreign Affairs and Trade’s website and submitters were able to provide their input through an online consultation tool or directly by email.
- 11 The Ministry of Foreign Affairs and Trade partnered with independent Māori trade advisory group Te Taumata to plan hui for Māori. Despite extensive promotion through Te Taumata and Ministry channels, as well as the New Zealand Customs Service and New Zealand Trade and Enterprise, these were not successful in attracting attendance. No submitters identified that they were providing feedback as Māori.
- 12 Submitters welcomed the opportunity to be involved in developing these elements of the Export Controls regime. Key themes arising from consultation were: support for articulating the high level purpose of the regime and for enhancing stakeholder engagement, and broad support for the proposed assessment criteria and for providing more clarity about the process for assessing an application for an export permit.
- 13 There were suggestions that the criteria make explicit mention of the Crown’s obligations under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, and also that the criteria give greater prominence to consideration of international human rights law and international humanitarian law. Some submissions were concerned to ensure that the new operational policies did not detract from Aotearoa New Zealand’s commitments as a signatory to the Arms Trade Treaty.
- 14 The Ministry of Foreign Affairs and Trade has now developed its final proposals for a Purpose Statement, Assessment Criteria and a Transparency Approach. Key changes following consultation include the addition of an explanatory note for the Criteria-as-a-whole to provide more clarity about how considerations are weighed up against each other and how more subjective considerations are approached. Changes were made to the Purpose Statement for accuracy and clarity. The Transparency objectives now

include a specific objective in relation to protection of certain exporter data and information.

- 15 The need to consider whether the export may compromise the Crown's obligations under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi is now incorporated into Criterion 4.
- 16 A summary of submissions will be published on the Ministry of Foreign Affairs and Trade's website. Agreed final proposals will be announced shortly after Cabinet consideration, with implementation approximately four weeks after announcement.
- 17 The Ministry of Foreign Affairs and Trade has had the proposed Purpose Statement, Assessment Criteria (and explanatory material) and Transparency Approach reviewed by David Smol, who led the independent review of the Export Controls regime in 2021.
- 18 This recent review found that the Ministry has developed a comprehensive response to the recommendations of the 2021 review. In the absence of legislative change, the review considered that the Purpose Statement, Assessment Criteria and Transparency Approach do a thorough job of responding to the specific issues identified in 2021.
- 19 The review further noted that effective implementation and ongoing refinement will require commitment of sufficient operational, management and assurance resource, and fit-for-purpose systems and processes.

## **Background /Context**

- 20 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, non-proliferation, human rights and international humanitarian law.
- 21 The Export Controls regime is regulated under the Customs and Excise Act 2018 and managed by the Ministry of Foreign Affairs and Trade. 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.
- 22 Both the New Zealand Customs Service and the Ministry of Foreign Affairs and Trade play a role in working to promote compliance with, and detect breaches of, the prohibition requirements. The Ministry of Foreign Affairs and Trade has an emphasis on outreach to raise exporter awareness of the goods that are controlled and which may only be exported with a permit. Where there is an HS Tariff alignment with goods being exported (e.g. firearms), the New Zealand Customs Service checks that the identifiable strategic goods have the required export permit prior to the goods being cleared for export. Where such goods do not have the required export permit they will be stopped.
- 23 An independent review in 2021, led by David Smol, recommended a number of changes to improve the design and implementation of the Export Controls regime. These included changes to review and refresh the criteria for assessment (of an export permit application), and activities to enhance the transparency of and public confidence in the regime.



- 24 I updated the External Relations and Security Committee on the findings of the review on 20 September 2021 and confirmed that the Ministry of Foreign Affairs and Trade was committed to implementing the recommendations [CAB-21-MIN-0380 refers].
- 25 The Ministry has already taken a number of implementation actions. These include increasing staff capacity and capability in relation to its operation of the export controls function and formalising a programme of independent review. Officials are committed to increasing stakeholder education and engagement, and will continue to work with exporters to provide as much certainty as they can to the permit application process, having regard to the nature of the goods and their intended use.

### **Public consultation**

- 26 The Ministry of Foreign Affairs and Trade released the consultation document *Proposals to enhance Export Controls Regime Operations* following Cabinet consideration of the document on 8 August 2022 [CAB-22-MIN-0301 refers].

#### *Consultation approach*

- 27 Public consultation was held from 11 August to 14 September 2022 and was publicised on the Ministry's website. Stakeholders could contribute perspectives by attending a workshop or hui, responding to an online questionnaire, or providing an emailed or written submission. Assistance to provide perspectives by other means was also offered.
- 28 Because of the technical nature of the proposals, the Ministry also used a targeted approach to email over 200 stakeholders across three key sectors (exporters, universities and researchers, civil society) to ensure they were informed about the consultation and given the opportunity to participate in a workshop tailored to their interest area.
- 29 The New Zealand Customs Service used its weekly e-Newsletter to advise registered exporters and importers of consultation details. New Zealand Trade and Enterprise posted information about the consultation on its website.

#### *Workshops and submissions*

- 30 Three 'Zoom' workshops were held in August 2022:
- 30.1 universities and researchers – 24 August 2022 (five attendees);
  - 30.2 exporters – 25 August 2022 (four attendees);
  - 30.3 civil society, specifically non-government organisations, and interest groups – 29 August 2022 (three attendees).
- 31 Ten online or written submissions were received from individuals and organisations in New Zealand and offshore.

- 32 The Ministry of Foreign Affairs and Trade worked with independent Māori trade advisory group Te Taumata to determine the best format for the hui proposed for Māori. Notwithstanding promotion through Te Taumata and Ministry channels, these hui were not successful in attracting attendance. No submitters identified that they were providing feedback as Maori.
- 33 The Ministry will continue to engage with Māori as Treaty partners, and with the Māori export sector which may in future be affected by the operation of the Export Controls regime.

### **Proposed enhancements to Export Controls regime operations**

- 34 Final operational policy proposals are set out in paragraphs 39 to 53 below. They comprise a new Purpose Statement, which describes the overarching policy direction for the Export Controls regime; revised Assessment Criteria against which export permit applications will be assessed; and a Transparency Approach to support enhanced awareness of and confidence in the regime's operation.
- 35 Individually, these proposals address specific recommendations of the independent review. Collectively, they 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.
- 36 To ensure that its final proposals will respond to the relevant recommendations of the independent review, the Ministry of Foreign Affairs and Trade has had the proposed Purpose Statement, Assessment Criteria (and accompanying explanatory material) and Transparency Approach reviewed by David Smol, who led the independent review of the Export Controls regime in 2021.
- 37 This recent review found that the Ministry has developed a comprehensive response to the recommendations of the 2021 review. In the absence of legislative change, the review considered that the Purpose Statement, Assessment Criteria and Transparency Approach did a thorough job of responding to the specific issues identified in 2021 and that they took into account feedback from stakeholders.
- 38 The review further noted that effective implementation and ongoing refinement will require commitment of sufficient operational, management and assurance resource, and fit-for-purpose systems and processes.

#### *Proposal 1 – Purpose Statement*

- 39 The 2021 review noted there is currently no explicit purpose statement for the Export Controls regime in legislation. Some stakeholders considered this hinders their understanding of the legislative instruments and policy documents relating to the regime.
- 40 The Ministry of Foreign Affairs and Trade consulted on a high-level statement setting out what the Export Controls regime aims to achieve and why. Most submitters supported this as helping to clarify why the Export Controls regime existed.
- 41 The Purpose Statement proposed for the Export Controls regime is set out in Table 1. This retains the concepts and much of the wording of the consultation draft but has been reordered and tightened.

**Table 1: Export Controls regime – Purpose Statement**

The purpose of Aotearoa New Zealand’s Export Controls regime is to regulate the export of goods which may be intended for use that could, directly or indirectly, be to the detriment of Aotearoa New Zealand’s security or national interests, or contribute to human rights abuse or the contravention of international humanitarian law. These comprise strategic goods; and also certain other goods intended for export to military and police end-users.

In achieving this purpose, the Export Controls regime fulfils Aotearoa New Zealand’s domestic and international obligations, commitments and policies in relation to controlling the export of these goods, as well as giving effect to our commitment to being a responsible exporter of such goods.

### *Proposal 2 – Assessment Criteria*

- 42 The Assessment Criteria 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.
- 43 At present, export permit applications are assessed against more than twenty criteria. The review recommended consolidating and reducing these in order to reduce the scope for interpretation. It also recommended adding a criterion relating to domestic reputation, defined in a way that minimises uncertainty for exporting businesses and the research community.
- 44 Six criteria were proposed in the public consultation document, each accompanied by guidance material. Submitters were broadly positive about the proposed criteria, and welcomed the increased clarity about the assessment process for applications for an export permit.
- 45 Some submissions raised concerns or requested clarifications. These included:
  - 45.1 Queries about how the criteria would be weighed against each other, and in particular how more definitive obligations would be considered alongside more subjective matters.
  - 45.2 Concern to ensure that Aotearoa New Zealand would give full effect to its obligations and to the intent of the Arms Trade Treaty under the new policies.
  - 45.3 Requests for greater prominence of consideration of international human rights law and international humanitarian law matters.
  - 45.4 Suggestions, from the university sector that Te Tiriti o Waitangi, te Ao Māori and Mātauranga Māori be explicitly mentioned.
  - 45.5 Concerns about academic freedom and international collaborations, also from the university sector.
- 46 After considering all submissions, the Ministry of Foreign Affairs and Trade made some adjustments to the new assessment criteria:

- 46.1 An Explanatory Note has been added for the Criteria-as-a-whole;
  - 46.2 Changes have been made to the wording of Criterion 2 and Criterion 3, in order to reduce ambiguity;
  - 46.3 Criterion 4 has been amended to include recognition of the need to consider whether the export may compromise the government's obligations under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi;
  - 46.4 Changes have been made to the accompanying guidance, to improve clarity and ensure accuracy.
- 47 The six new assessment criteria retain the core concepts of the current criteria and reflect the Government's commitment to making responsible decisions around the export of strategic and military end-use goods (see Table 2).

**Table 2: Export Controls regime – Assessment Criteria**

<p><b>Criterion 1:</b> Consistency with Aotearoa New Zealand's disarmament, arms control and non-proliferation obligations, commitments and policies.</p> <p><b>Criterion 2:</b> Consistency with Aotearoa New Zealand's obligations, commitments and policies regarding fundamental principles of international law, as well as international human rights law and international humanitarian law.</p> <p><b>Criterion 3:</b> Consistency with Aotearoa New Zealand's other international obligations, commitments and policies.</p> <p><b>Criterion 4:</b> Whether the export may compromise Aotearoa New Zealand's national interests including, without limitation: security, international relationships and international reputation; and whether it may compromise the Government's obligations under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.</p> <p><b>Criterion 5:</b> The impact the export is expected to have on peace, security and stability.</p> <p><b>Criterion 6:</b> Whether the export may undermine confidence in Aotearoa New Zealand's commitment to being a responsible exporter of strategic and military end-use goods.</p>
---

- 48 The full set of criteria and explanatory material is set out in Appendix 2.
- 49 Implementation information about the assessment criteria, including three case studies, is set out in Appendices 4 and 5.

### *Proposal 3 – Promoting Transparency*

- 50 The Ministry of Foreign Affairs and Trade consulted on the three key elements of its proposed approach to formalise its commitment to transparency in the operation of the Export Controls regime:
- 50.1 Objectives – focusing on promoting understanding and providing confidence and assurance about the operation of the Export Controls regime;

- 50.2 Principles – aligned with the Open Government framework and good regulatory practice expectations;
- 50.3 Key components of a transparency implementation plan – specific actions to be undertaken by the Ministry of Foreign Affairs and Trade.
- 51 There was solid support for the overall proposal to increase visibility of the regime’s operations, for the proposed principles and objectives, and for explicit reference to the desire for Aotearoa New Zealand to be a ‘responsible exporter’ of controlled goods. Submitters also strongly supported the proposals to increase engagement with and guidance for stakeholders and Māori as Treaty partners.
- 52 However, some submissions noted that increased transparency may have unintended consequences and sought assurance that private or sensitive information would be protected. As the policy proposals have no legislative impact, existing statutory protections relating to data and information remain unchanged.
- 53 The proposed Transparency Approach for the Export Controls regime is set out in full in Appendix 3. Only minor changes are proposed:
- 53.1 The Ministry of Foreign Affairs and Trade has articulated a goal for its operation of the Export Controls regime:
- “We strive to operate the Aotearoa New Zealand Export Controls regime in an open and transparent manner that promotes New Zealanders’ confidence.”
- 53.2 A new objective reinforces the commitment of the Ministry to appropriately protect exporter data and information.
- 53.3 The Ministry has committed to publish an annual report on the operation of the Export Controls regime.

### **Impacts on key stakeholders**

- 54 There are no regulatory proposals in this paper and therefore Cabinet’s impact analysis requirements [CO (20) 2, paragraph 13] do not apply.
- 55 The Ministry of Foreign Affairs and Trade expects that the main impacts of these changes on stakeholders will be positive. Increased stakeholder engagement will include development of targeted guidance material, and a more active programme of engagement with stakeholders. This should help exporters, in particular, to better understand where they interface with the Export Controls regime, what they need to do, and how their application for a permit will be considered.

### **Implementation**

- 56 In implementing the recommendations of the 2021 independent review, it is important that the regime is clear in its intent and transparent, and workable for exporters.
- 57 The Ministry of Foreign Affairs and Trade proposes to announce the changes shortly after Cabinet consideration. However, to allow exporters and other stakeholders to

become familiar with the new policies, and in keeping with the expectations of good regulatory practice, changes will not commence until at least four weeks after announcement. Supporting communications will assist stakeholders to become familiar with the new framework ahead of commencement date. Ministry officials will continue to be available to provide advice and assistance to exporters and others interfacing with the Export Controls regime.

- 58 The Ministry of Foreign Affairs and Trade will review the new Assessment Criteria not later than 2025 to ensure they remain relevant. This is consistent with the recommendations of the independent review. The Ministry will consult the Minister of Foreign Affairs before making any future changes to the Assessment Criteria.

### **Financial Implications**

- 59 Financial implications from implementation of these operational policy proposals will be met from within the Ministry of Foreign Affairs and Trade's existing baselines.

### **Legislative Implications**

- 60 There are no legislative implications arising from implementation of these operational policies.

### **Population Implications**

- 61 There are no direct implications for population groups in Aotearoa New Zealand arising from this paper.
- 62 The Ministry of Foreign Affairs and Trade and Te Taumata have undertaken productive discussions on increasing outreach to Māori exporters, in anticipation of an increasing number of Māori businesses becoming involved in this space.

### **Human Rights**

- 63 The operation of the Export Controls regime is underpinned by adherence to New Zealand's international obligations, including in relation to protection of our security and national interests, international human rights law and international humanitarian law. Examples of these obligations are set out in Appendix 2 and include conventions which aim to protect specific population groups (such as women and children) who are disproportionately affected by war.
- 64 Proposed exports are assessed against these obligations and may be prohibited where they would contribute to human rights abuse or contravene international humanitarian law, or where they would damage New Zealand's international reputation. Effective operation of the regime therefore helps to prevent controlled goods from being obtained by other states and used for nefarious purpose.
- 65 The effective operation of the Aotearoa New Zealand Export Controls regime also helps to protect New Zealand's security and national interests (for example, defending New Zealanders against external threats).
- 66 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 67 The following government agencies were consulted over the development of this Cabinet paper and the accompanying proposals, along with Appendices 1, 2 and 3. Their comments have been incorporated where received: Department of Prime Minister and Cabinet; Public Service Commission; Ministry of Business, Innovation and Employment; New Zealand Customs Service; Ministry of Defence; Ministry of Justice; Te Puni Kōkiri; Government Communications Security Bureau; New Zealand Defence Force, New Zealand Security Intelligence Service; the New Zealand Treasury, Ministry for Women.
- 68 Appendices 4 and 5 were consulted direct with Ministers.

## Communications

- 69 Information about the new operational policies, commencement information and a summary of the feedback received on the proposals will be posted on the Ministry of Foreign Affairs and Trade's website following Cabinet consideration.

## Proactive Release

- 70 I will release this Cabinet paper proactively on the Ministry of Foreign Affairs and Trade's website once Cabinet has considered the proposals, subject to redactions as appropriate under the Official Information Act 1982.

## Recommendations

The Minister of Foreign Affairs recommends that the Committee:

- 1 **note** that on 8 August 2022, Cabinet approved release of the document *Proposals to enhance Export Controls Regime Operations*, which sought consultation input on proposals to enhance three key components of the Export Controls regime's operational policy framework [CAB-22-MIN-0301 refers];
- 2 **note** that Cabinet asked me to report back to the Cabinet External Relations and Security Committee on the results of consultation and with final policy proposals by late 2022 [CAB-22-MIN-0301 refers];
- 3 **note** that consultation took place from 11 August to 14 September 2022 with workshops targeted to three stakeholder segments (exporters, universities and researchers, civil society) being held and wider audiences also having the opportunity to contribute their views;
- 4 **note** that despite extensive promotion by Te Taumata, and through Ministry of Foreign Affairs and Trade, New Zealand Customs Service and New Zealand Trade and Enterprise channels, the planned Māori focused hui did not attract attendees;
- 5 **note** that following consideration of submissions, the Ministry of Foreign Affairs and Trade has developed final operational policy proposals to help to enhance the operation of Export Controls regime into the future:

- 5.1 A Purpose Statement – setting out what the Export Controls regime aims to achieve and why;
  - 5.2 Six Assessment Criteria – setting out the parameters considered by the Secretary of Foreign Affairs when assessing an application for a permit to export controlled goods;
  - 5.3 A Transparency Approach – setting out Objectives, Principles and the key components of a Transparency Implementation Plan to show how the Ministry of Foreign Affairs and Trade will give clarity to its operation of the Export Controls regime;
- 6 **agree** to the operational policy proposals outlined in recommendation 5 above;
  - 7 **note** that the Ministry of Foreign Affairs and Trade will consult the Minister of Foreign Affairs before making any future changes to the Assessment Criteria; and
  - 8 **note** that the Ministry of Foreign Affairs and Trade intends to publish the new operational policies and commencement information on its website immediately after Cabinet consideration.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Foreign Affairs



## **Appendix 1: Export Controls regime – Purpose Statement**

---

The purpose of Aotearoa New Zealand’s Export Controls regime is to regulate the export of goods which may be intended for use that could, directly or indirectly, be to the detriment of Aotearoa New Zealand’s security or national interests, or contribute to human rights abuse or the contravention of international humanitarian law. These comprise strategic goods; and also certain other goods intended for export to military and police end-users.

In achieving this purpose, the Export Controls regime fulfils Aotearoa New Zealand’s domestic and international obligations, commitments and policies in relation to controlling the export of these goods, as well as giving effect to our commitment to being a responsible exporter of such goods.

Proactively released by the Minister of Foreign Affairs

## Appendix 2: Export Controls regime – Assessment Criteria

---

### Explanatory Note to the Assessment Criteria-as-a-whole

The Export Controls regime Assessment Criteria set the parameters considered by the Ministry when assessing an application for a permit to export strategic or military end-use goods under the Customs and Excise Act 2018. They reflect the government's commitment to making responsible decisions around the export of such goods. Taken together, the six Assessment Criteria outline the basis for the assessment of the risks posed by the export of goods covered by the Export Controls regime, ensuring decisions are taken using a consistent approach.

By providing succinct information on the factors the Ministry takes into account when considering applications to export controlled goods, the Assessment Criteria and accompanying guidance seek to reduce uncertainty for exporters. They assist exporters to determine whether an application to export goods would have a reasonable prospect of being approved. Nevertheless, exporters and potential exporters are encouraged to contact the Ministry to discuss what the Assessment Criteria mean in terms of particular exports they may be contemplating.

There is some overlap between the individual Assessment Criteria. For example, some of Aotearoa New Zealand's international obligations and policies apply to more than one Criterion. The Arms Trade Treaty (2014), for example, is relevant to both Criterion 1 (which covers disarmament, arms control and non-proliferation obligations), and to Criterion 2 (which covers the fundamental principles of international law, international human rights law and international humanitarian law).

Taken together, the six Assessment Criteria cover all matters to be considered in determining whether to approve or decline an application for a permit. Criteria 1, 2 and 3 are largely definitive in nature. They deal with the potential impact of the proposed export on Aotearoa New Zealand's legal obligations, commitments and policies. Applications to export goods in violation of Aotearoa New Zealand's legal obligations will be declined.

Where approval of an application would not put Aotearoa New Zealand at risk of violating obligations and commitments outlined Criteria 1, 2, and 3, the application would then be considered against Criteria 4, 5 and 6. This involves the weighing up of diverse factors, some positive and some negative, in order to arrive at a final determination. Potential positive impacts of an export may be considered under Criteria 4, 5 and 6 but these will not override a negative assessment under Criteria 1, 2 or 3.

Assessments of applications to export goods are undertaken on the basis of technical expertise and multiple data inputs. All assessments are peer reviewed internally. Complex assessments undergo additional scrutiny at senior levels within the Ministry. Ministers may also be consulted before the Secretary of Foreign Affairs and Trade makes a final decision.

The Ministry welcomes contact from exporters who wish to discuss whether their proposed export falls within the Export Controls regime and how to navigate the application process, including how to self-assess whether your goods may be controlled. Supporting materials can be found at [www.mfat.govt.nz](http://www.mfat.govt.nz)

**Criterion 1. Consistency with Aotearoa New Zealand's disarmament, arms control and non-proliferation obligations, commitments and policies**

**Guidance on Criterion 1**

Under Criterion 1, an export will be assessed against both the legal obligations and non-legally binding commitments Aotearoa New Zealand has undertaken in respect of disarmament, arms control and non-proliferation. Relevant policies will also be taken into account to ensure that the export would be consistent with Aotearoa New Zealand's broader approach to these issues.

**Legal obligations**

Legal obligations relevant for Criterion 1 include the international disarmament and non-proliferation treaties Aotearoa New Zealand is party to, related domestic legislative or regulatory requirements, and obligations contained in resolutions of the United Nations Security Council (UNSC). They include obligations relating to weapons of mass destruction as well as conventional weapons.

An assessment under Criterion 1 will consider whether the item for export is prohibited, regulated or illegal in Aotearoa New Zealand under domestic legislation such as:

- New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987
- Chemical Weapons (Prohibition) Act 1996
- Anti-Personnel Mines Prohibition Act 1998
- Cluster Munitions Prohibition Act 2009
- Arms Act 1983

Assessment will also include determining whether the export would be consistent with Aotearoa New Zealand's obligations under treaties to which Aotearoa New Zealand is a party but which are not the subject of specific implementing legislation. These include:

- Arms Trade Treaty (2014)
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed Excessively Injurious or to Have Indiscriminate Effects (Convention on Certain Conventional Weapons) (1980) and its Protocols

Assessment of Aotearoa New Zealand's international obligations under Criterion 1 may also engage other binding international obligations such as international humanitarian law, although international humanitarian law considerations are primarily addressed under Criterion 2.

**Non-legally binding commitments**

Aotearoa New Zealand has signed up to a number of non-legally binding commitments in the field of disarmament, arms control and non-proliferation which will be taken into account in the assessment of any proposed export. These include the guidelines and best practices adopted at meetings of states party to the Arms Trade Treaty and by members of the international control regimes set up under the Wassenaar Arrangement, Missile Technology Control Regime, Australia Group and Nuclear Suppliers Group.

Commitments also include those made in international political declarations and national or joint statements on arms control, disarmament or non-proliferation, which may have implications for the assessment of the proposed export item, its end user and/or its potential end-use. For example, the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas (2022) is a non-legally binding commitment.

**Relevant policy**

Assessments will also consider whether the proposed export is consistent with Aotearoa New Zealand's broader policies on disarmament, arms control and non-proliferation. For example, the position taken by the government on autonomous weapons systems will be taken into account as a relevant policy. Relevant policies can be found on the disarmament section of the Ministry website at [mfat.govt.nz/peace-rights-and-security/disarmament](https://mfat.govt.nz/peace-rights-and-security/disarmament)

Proactively released by the Minister of Foreign Affairs

**Criterion 2: Consistency with Aotearoa New Zealand's obligations, commitments and policies regarding fundamental principles of international law, as well as international human rights law and international humanitarian law**

**Guidance on Criterion 2**

Under Criterion 2, an export and its intended use is assessed against Aotearoa New Zealand's obligations and commitments regarding fundamental principles of international law, international human rights law and international humanitarian law. Relevant policies will also be taken into account to confirm an export or intended use is consistent with Aotearoa New Zealand's policy positions to these issues.

**Legal obligations**

Legal obligations relevant to Criterion 2 include a wide range of international legal instruments that Aotearoa New Zealand is party to, principles of customary international law; related domestic legislative or regulatory requirements; and obligations contained in resolutions of the United Nations Security Council. They include obligations covered by the broad framework of international law, as well as international human rights law and international humanitarian law (which establishes rules around the conduct of war to limit the effects of armed conflict).

Assessment under Criterion 2 can include the country or public authority's stability, and where relevant, the success of any previous mitigation efforts applied by Aotearoa New Zealand or close international partners when cooperating with the country or authority.

An assessment under Criterion 2 will consider whether a proposed export would, or would be likely to, be used in the commission of breaches of Aotearoa New Zealand's primary obligations under general international law. It will also consider whether it is lawful or appropriate to provide support to the end user (regardless of what the proposed export is). This criterion will also assess secondary obligations which place Aotearoa New Zealand at risk of being complicit in other states' internationally wrongful acts or breaches of international law. This assessment can include the state or end user's stability and human rights record.

***Difference between primary and secondary legal obligations***

Aotearoa New Zealand, like all states, has primary legal obligations which derive from signing up to treaties or through customary international law (general practice accepted as law). These obligations apply directly to Aotearoa New Zealand. They can range in nature from requiring action, to prohibiting conduct or recognising rights. Primary legal obligations are vital to ensuring consistency with international law, as all states, not just Aotearoa New Zealand, are expected to comply with and fulfil their international legal obligations in good faith.

Secondary legal obligations are intended to reinforce primary legal obligations by ensuring that states do not aid or assist another state to breach its primary international legal obligations. In the context of export controls, the concern as it is sometimes expressed is whether a state, by permitting an export, could be in breach of its international obligations because the ultimate recipient of that export may engage in unlawful acts. The allegation is sometimes put that a state is "complicit" in that unlawful act. Complicity is a very serious allegation. In order to be complicit, a state must have:

- Done something (e.g. issued a permit) which materially facilitated the unlawful act by the other state; and
- Done so with the intention to materially facilitate that act, or knowledge to a virtual certainty that issuing the permit would materially facilitate the unlawful act.

***Examples of primary and secondary legal obligations in the export controls space***

*Primary legal obligations*

- Aotearoa New Zealand has primary legal obligations under United Nations Security Council resolutions not to export goods in breach of sanctions, or deal with particular entities or states in certain ways. Contravening these sanctions would be a breach of Aotearoa New Zealand's primary obligations under international law.
- The prohibition on genocide is what is known as a peremptory norm of international law, and so is binding on all states whether or not they are parties to the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) (1948). This status means that states must:
  - cooperate to bring to an end through lawful means any serious breach of the prohibition; and
  - not recognise as lawful a situation created by a serious breach, nor render aid or assistance in maintaining that situation. This prohibition places a primary legal obligation on Aotearoa New Zealand to act as outlined, even if Aotearoa New Zealand is not the state engaging the prohibition.
- International humanitarian law, also known as the law of armed conflict, regulates the conduct of parties engaged in an armed conflict. Under international humanitarian law, there is a range of obligations that apply to states involved in an armed conflict, including that parties to the conflict must take all feasible precautions to minimise harm to civilians and must not carry out indiscriminate attacks. Aotearoa New Zealand would be in breach of international humanitarian law by knowingly issuing a permit for an export where this would be encouraging, aiding or assisting in violations of international humanitarian law by a party to a conflict.

*Secondary legal obligations*

- The International Covenant on Civil and Political Rights (ICCPR) (1966) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984) provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Aotearoa New Zealand would likely be complicit and in breach of its secondary legal obligations by issuing a permit for an export where:
  - This would materially facilitate the unlawful act by the other state; and
  - There was an intention to materially facilitate a foreign state breaching its obligations under the ICCPR or CAT.

- Aotearoa New Zealand has a range of international obligations in respect of gender equality and women's empowerment, and in respect of the prohibition of sexual and gender-based violence in armed conflict<sup>1</sup> Aotearoa New Zealand would likely be in breach of its secondary legal obligations by issuing a permit for an export where:
  - This would materially facilitate an unlawful act by the other state; and
  - There was an intention to materially facilitate a foreign state breaching its obligations in these areas.

### **Sources and instruments of international law**

Relevant sources and instruments of international law in relation to this criterion include, but are not limited to, the following:

#### *General international law*

- Customary international law
- United Nations Charter (1945) (including basis for United Nations Security Council Resolutions)
- International Law Commission, Draft Articles on State Responsibility (2001)

#### *International human rights law*

- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- Convention on the Rights of the Child (CRC) (1989)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)
- Convention on the Rights of Persons with Disabilities (CRPD) (2006)
- Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) (1948)
- Optional protocols to the above treaties that have been adopted by Aotearoa New Zealand

---

<sup>1</sup>This includes United Nations Security Council, Resolution 1325 on women, peace and security (2000) – the landmark resolution which recognises the disproportionate and unique impact of armed conflict on women and girls.

### *International humanitarian law*

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) (1949)
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (1949)
- Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (1949)
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (1949)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (2005)
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction (1972)
- Convention on Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1980)
- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)
- Protocol for the Protection of Cultural Property in the Event of Armed Conflict (Hague Protocol for the Protection of Cultural Property) (1954)
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)
- Convention on Cluster Munitions (2008)
- Rome Statute of the International Criminal Court (1998)
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989)

The Arms Trade Treaty (2014) discussed in the Guidance to Criterion 1 is also relevant to the assessment of consistency with international human rights law and international humanitarian law under Criterion 2.

### **Non-legally binding commitments**

Aotearoa New Zealand has signed up to a number of non-legally binding commitments in the field of international human rights. These include:

- Universal Declaration of Human Rights (1948)
- United Nations Declaration on the Rights of Indigenous Peoples (2007)
- Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict (2008)



## Policy considerations

Assessments under Criterion 2 will consider whether the proposed export is consistent with Aotearoa New Zealand's broader policies and commitment to promoting and protecting human rights.

For example, Aotearoa New Zealand's position is that the death penalty is the ultimate form of cruel, inhuman and degrading treatment. Aotearoa New Zealand has a long-standing and strong opposition to the use of torture, cruel, inhuman or degrading treatment or punishment, including the death penalty, in all cases and under all circumstances, including in response to threats to national security. This reflects Aotearoa New Zealand's position that the use of torture, cruel, inhuman and degrading treatment and punishment is prohibited under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

The New Zealand International Human Rights Action Plan 2019-2023: Advocacy Priorities sets out our international human rights engagement priorities. An assessment under Criterion 2 will consider whether a proposed export would be consistent with Aotearoa New Zealand's commitment to these human rights priorities. The United Nations Guiding Principles on Business and Human Rights recognise that businesses have a responsibility to respect human rights and should work with states to ensure they comply with international human rights principles in the course of their business activities. An assessment under Criterion 2 will consider whether a proposed export would be consistent with Aotearoa New Zealand's commitment to ensuring businesses and other private sector actors promote and respect human rights.

Relevant policy documents, include but are not limited to, the following:

- New Zealand International Human Rights Action Plan 2019 – 2023<sup>2</sup>
- United Nations Guiding Principles on Business and Human Rights<sup>3</sup>

---

<sup>2</sup> Ministry of Foreign Affairs and Trade New Zealand International Human Rights Action Plan 2019-2023: Advocacy Priorities, (2019).

<sup>3</sup> United Nations Human Rights Council United Nations Guiding Principles on Business and Human Rights, 1 January 2012.

**Criterion 3. Consistency with Aotearoa New Zealand's other international obligations, commitments and policies**

**Guidance on Criterion 3**

Under Criterion 3, an export will be assessed against a wide range of other international obligations and commitments applying to Aotearoa New Zealand (not including those covered in Criteria 1 and 2). These obligations and commitments engage a range of specific and thematic considerations which may be relevant to particular or specialised exports. Relevant policies will also be taken into account to ensure that the export would be consistent with Aotearoa New Zealand's broader approach to these issues.

**Legal obligations**

Legal obligations relevant to Criterion 3 include a number of international legal instruments that Aotearoa New Zealand is party to, and related domestic legislative or regulatory requirements.

As with Criterion 2, assessments under Criterion 3 require consideration of both primary and secondary international legal obligations. Aotearoa New Zealand has a wide range of primary legal obligations arising from relevant conventions covering:

- Use of Force
- Terrorism and transnational organised crime
- Environmental law
- Law of the sea
- Maritime law
- Space
- Antarctica
- Labour conventions
- International trade

Of particular note is the large number of legal obligations arising in respect of hazardous substances and waste. Exports of these products are highly regulated.

In addition to the above, the United Nations Charter outlines a wide-ranging prohibition against the use of force, requiring that all states refrain from both the threat of and use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Secondary legal obligations may also be invoked where a proposed export would place Aotearoa New Zealand at risk of being complicit in other states' internationally wrongful acts or breaches of international law (see Guidance on Criterion 2).

## **Instruments of international law**

Relevant instruments of international law in relation to Criterion 3 include, but are not limited to, the following:

### ***Use of Force***

- United Nations Charter (1945)

### ***Terrorism and transnational organised crime***

- United Nations Security Council resolutions imposing sanctions
- United Nations Convention against Transnational and Organized Crime (2000)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)
- International Convention against the Taking of Hostages (1979)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- International Convention for the Suppression of Terrorist Bombings (1997)
- Convention on the Physical Protection of Nuclear Material (1979)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)
- International Convention on the Suppression of Acts of Nuclear Terrorism (The Nuclear Terrorism Convention) (2005)
- Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)

### ***Environmental law***

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)
- Cartagena Protocol on Biosafety (2000)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
- Convention on the Law of the Non-Navigational Uses of International Watercourses (1973)
- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1997)
- Convention on Biological Diversity (1992)
- United Nations Framework Convention on Climate Change (1992)
- International Convention for the Regulation of Whaling (1946)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (1992)

- Montreal Protocol on Substances that Deplete the Ozone Layer (and protocols) (1987)
- Paris Agreement (2015)
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)
- Stockholm Convention on Persistent Organic Pollutants (2001)
- Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (Waigani Convention) (1995)
- Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat (1971)
- United Nations Convention to Combat Desertification (1994)

#### ***Law of the sea***

- United Nations Convention on the Law of the Sea (UNCLOS) (1982)
- United Nations Fish Stocks Agreement (1995)
- Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994)

#### ***Maritime law***

- International Convention for the Prevention of Pollution from Ships (MARPOL) (1973)
- Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention) (1972)
- International Convention for the Safety of Life at Sea (SOLAS) (1965)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978)
- Maritime Labour Convention (2006)

#### ***Space***

- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) (1967)
- Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement) (1968)
- Convention on International Liability for Damage Caused by Space Objects (Liability Convention) (1972)
- Convention on Registration of Objects Launched into Outer Space (Registration Convention) (1974)

### ***Antarctica***

- Antarctic Treaty (1959)
- Protocol on Environmental Protection to the Antarctic Treaty (1991)
- Convention for the Conservation of Antarctic Marine Living Resources (1982)
- Agreed Measures for the Conservation of Antarctic Fauna and Flora (1964)
- Convention for the Conservation of Antarctic Seals (1972)

### ***Labour Conventions***

- International Labour Organization (ILO) conventions to which Aotearoa New Zealand is a party

### ***International trade***

- General Agreement on Tariffs and Trade (GATT) (1947)
- General Agreement on Trade in Services (GATS) (1995)
- Trade Related Aspects of Intellectual Property Rights Agreement (1994)
- Agreement on Government Procurement (1979)
- Information Technology Agreement (1996)
- Individual free trade agreements to which Aotearoa New Zealand is a party

### **Non-legally binding commitments and relevant policy**

Aotearoa New Zealand has signed up to a number of non-legally binding international political or regional commitments in these areas. These include commitments made in international political declarations and national or joint statements in the international sphere, which may have implications for the assessment of the proposed export item, its end user and its potential end-use. More information about particular areas can be found on relevant sections of the Ministry's website: [www.mfat.govt.nz](http://www.mfat.govt.nz)

**Criterion 4. Whether the export may compromise Aotearoa New Zealand's national interests including, without limitation: security, international relationships and international reputation; and whether it may compromise the Government's obligations under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.**

#### **Guidance on Criterion 4**

Under Criterion 4, consideration will be given to the impact an export may have on Aotearoa New Zealand's security and national interests.

This will include consideration of whether an export may directly or indirectly challenge the security of Aotearoa New Zealand, for example, by contributing to capabilities that might be used against us, or to the conduct of transnational organised crime that targets or affects us. Consideration will also be given to whether the proposed export is consistent with Aotearoa New Zealand's broader national interests, including in preserving and strengthening the international rules-based order. For example, where relevant, an assessment may consider whether a proposed export contributes to Aotearoa New Zealand's interest in supporting maritime security and the freedom of navigation under the law of the sea.

The extent to which the proposed export may affect, directly or indirectly, Aotearoa New Zealand's international relationships is a further consideration under Criterion 4. This might include, for example whether the decision to approve or deny an export might prejudice our relationship with a third country. Such an assessment could include consideration of whether permitting an export would be consistent with decisions made by like-minded partners (for example, partners that are also members of the multilateral export controls regimes), or whether it would undercut decisions made by them to deny similar exports. Sanctions applied by other countries may be a relevant factor taken into account as part of the assessment process.

Consideration of whether a proposed export may compromise Aotearoa New Zealand's international reputation also comes within Criterion 4. This reputation affects Aotearoa New Zealand's ability to maintain international relationships, and to pursue and achieve national interests in multilateral settings. Protecting it is important. Even if a proposed export does not breach international law or directly contribute to a gross violation of human rights, it may be that a denial is still appropriate to avoid a negative impact on Aotearoa New Zealand's international reputation. Any such assessment will include consideration of Aotearoa New Zealand's interest in making consistent, rules-based decisions that do not unnecessarily hinder trade and that are understandable for exporters and their offshore consumers.

Where appropriate, assessment under Criterion 4 should also include consideration of the Māori interests engaged by the regime in respect of any particular export and consideration of whether or not any such interest or interests are protected under the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

**Criterion 5. The impact the export is expected to have on peace, security and stability**

**Guidance on Criterion 5**

While assessment under Criterion 4 will focus on the impact an export may have on the security or national interests of Aotearoa New Zealand, Criterion 5 will consider its potential impact on peace, security and stability elsewhere, including in relation to our security interests. In some circumstances, that impact may have been the subject of existing scrutiny or assessment. For example, in some situations the United Nations Security Council (UNSC) may have already mandated an arms and equipment embargo on relevant exports to a particular destination or end-user. (Such mandates would also be considered under Criterion 2 if relevant to the export in question.)

Not all situations of conflict, insecurity or instability are the subject of UNSC resolutions, however. As a result, the assessment under Criterion 5 has an important role to play in ensuring that the impact of any controlled export on peace, security and stability is taken into account.

Whether the government has a policy against exporting controlled items to the destination in question, or has expressed concern about the actions of a destination state or end-user that are relevant to the export in question will be considered under Criterion 5. The government's decision in 2022 to sanction Russia, and its position on the provision of assistance to Ukraine, are examples of policies relevant to the application of this Criterion.

For states not subject to a specific government policy, assessment under Criterion 5 will still include a range of factors. For example, whether the export destination or end-user is involved in an inter- or intra-state conflict, is known or suspected to sponsor terrorism, or has threatened the security of another state or group of states will be relevant considerations.

In addition, the assessment may consider whether the proposed export would help support a state's ability to defend itself in accordance with the United Nations Charter, or to legitimately ensure its security (for example, by strengthening its ability to monitor and patrol its maritime environment or to communicate securely). Consideration may also be given to whether the export may introduce, contribute to, or exacerbate a destabilising imbalance in the capabilities of two potential adversaries, or address an existing imbalance.

**Criterion 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**

**Guidance on Criterion 6**

An assessment will take into account the risk of harm, if any, from an export. This includes risks of harm that fall short of the threshold applicable under other Criteria. Criteria 2 and 3, for example, cover international obligations and commitments to avoid a range of harms, some of which have a very high threshold for non-compliance. For some exports, however, even though the potential harm (or the degree of certainty about whether a harm may eventuate) does not meet the relevant thresholds under Criteria 2 and 3, assessors may determine that a decision to approve the export would nevertheless undermine confidence in Aotearoa New Zealand's commitment to being a responsible exporter. The determination would be discretionary but would require more than a purely theoretical link between the potential harm and the export.

Under Criterion 6 the question of whether there is reputational risk by association – in other words, reputational risk resulting not from the export itself but from other behaviours of the end user – will also be considered. This is particularly relevant to questions of human rights abuses and repression (behaviours relating to peace, stability and security would be considered under Criterion 5). Under Criterion 6, a determination may be made to decline an export which, for example, in the Secretary of Foreign Affairs and Trade's view, would be to a disreputable end-user even where the specific export itself may not be problematic. In conducting this assessment, consideration will be given to any parent organisation or other associated organisations of the end-user and, where relevant, to the state itself. The assessment would include consideration of whether the concerning behaviour consists of isolated incidents or is systemic; whether procedures are in place or being put in place to prevent occurrences and to undertake investigation and enforcement of alleged abuses or repression; and whether the behaviour appears to be 'endorsed' by the state (for example, through legislation or through a demonstrated lack of will to address it).

If the degree of reputational risk by association is determined to be low, it is unlikely to lead to a permit denial in the absence of other factors of concern. Where reputational risk is assessed as medium, there may be occasions where it is offset by positive factors under other criteria such as Criterion 5. As an illustration, an export to a maritime entity associated with an armed force that presents reputational risk and is also part of a repressive regime, may be offset by the contribution of the export to the ability of that entity to counter transnational organised crime including piracy, drugs and people smuggling. In circumstances where these positive factors outweigh the reputational risk, the export permit would be likely to be approved.



## Appendix 3: Export Controls regime – Transparency Approach

---

### 1. Our goal

We strive to operate the Aotearoa New Zealand Export Controls regime in an open and transparent manner that promotes New Zealanders' confidence.

This means being clear about what we aim to achieve (our Objectives), how we do this (the Implementation Plan), and what our guiding parameters are (the Principles).

### 2. Objectives

Our transparency effort is directed towards helping to achieve the following objectives:

- Providing confidence that Aotearoa New Zealand is a responsible exporter of strategic and military end-use goods and that these are not being exported to support unacceptable end use;
- Providing assurance to New Zealanders that the Ministry is making export permit decisions within its legislated mandate;
- Enabling exporters and other interested parties to gain a clear understanding about the operation of the regime and its relevance to them;
- Providing confidence to exporters that their personal, confidential and classified data and information will be appropriately protected;
- Providing confidence that Aotearoa New Zealand is fulfilling its international and domestic obligations and commitments;
- Providing assurance that the Ministry's operation of the scheme is meeting the wider expectations of government relating to promoting trust and confidence in the public service; and
- Encouraging and supporting international transparency efforts.

### 3. Principles

The principles guide decision-making in relation to the wider transparency effort. They are aligned with current legislative requirements and with Open Government Partnership commitments. The principles acknowledge that protections exist for certain types of data and information.

- Accessibility – data and information about the operation of the Export Controls regime is available to New Zealanders unless grounds for refusal or limitations exist.
- Protection – Personal, confidential and classified data and information are protected.
- Accountability – the actions and policies taken by the Ministry of Foreign Affairs and Trade in operating the regime are known, and can be judged.
- Certainty – interested parties have reasonable certainty about how the Export Controls regime operates and how it is likely to impact on them.
- Participation – New Zealanders have the opportunity to contribute to public policy processes relating to the Export Controls regime and to engage with the Ministry of Foreign Affairs and Trade as the regime operator.

#### 4. Key components of the transparency implementation plan

The Ministry will develop and implement a transparency implementation plan:

- This will bring together (as a minimum) the finally-agreed key components and current obligations and practices (such as mandatory reporting and publication of web-based information).
- The implementation plan is likely to comprise actions across the short, medium and longer term.

The key components for the implementation plan are:

- Develop targeted guidance material to help exporters and brokers navigate the regime, particularly with regard to decision-making;
- Develop and implement a programme of engagement with external stakeholders;
- Publish statistical summaries of the regime's activities;
- Publish an annual report;
- Publish other information about the operation of the regime, including the annual Arms Trade Treaty report;
- Ensure the regime's operations are included in a regular programme of internal audit;
- Commission and publish periodic independent reviews of the regime;
- Ensure that information management systems support collection of full records of export controls decisions and provide access to quality statistical and other information over time.

Proactively released by the Ministry of Foreign Affairs

## Appendix 4: Export Controls regime – How MFAT assesses export permit applications

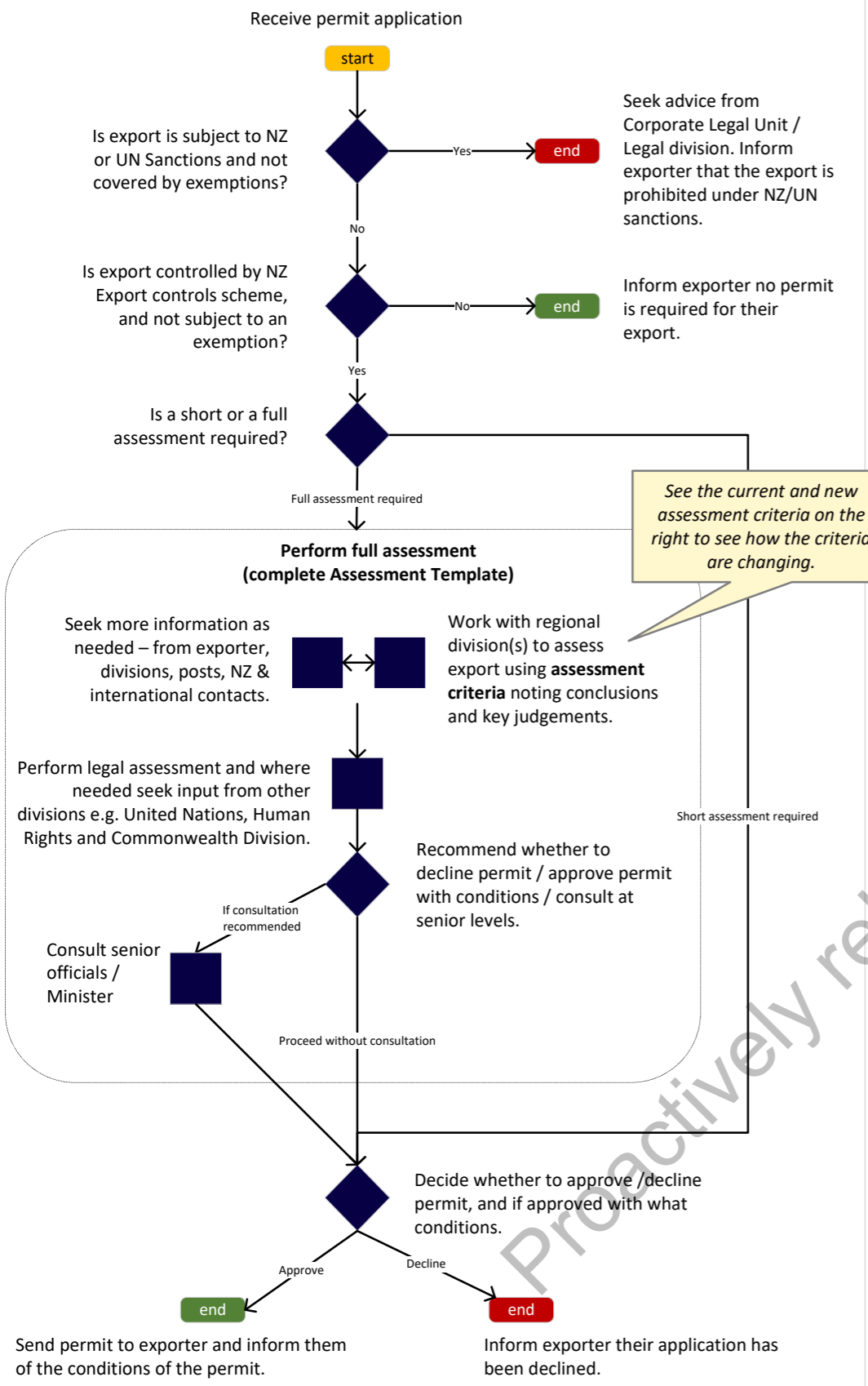
---

Proactively released by the Minister of Foreign Affairs

# How MFAT assesses export permit applications

The process for assessing permit applications will remain largely the same: the same steps will occur and same MFAT divisions will be involved. The assessment criteria have been revised. The revised criteria are intended to be more succinct and easier to understand. They incorporate all the considerations in the current criteria and in addition include specific references to the Treaty of Waitangi / Te Tiriti o Waitangi, and to reputational risk for New Zealand.

## Permit Assessment Process Flow



## Revised Assessment Criteria

An export permit will be refused if criteria 1-3 are breached.

The probability of negative outcomes under criteria 4-6 will be assessed and weighed when deciding whether to approve/decline a permit.

- Criterion 1:** Consistency with Aotearoa New Zealand's disarmament, arms control and non-proliferation obligations, commitments and policies.
- Criterion 2:** Consistency with Aotearoa New Zealand's obligations, commitments and policies regarding fundamental principles of international law, as well as international human rights law and international humanitarian law.
- Criterion 3:** Consistency with Aotearoa New Zealand's other international obligations, commitments and policies.
- Criterion 4:** Whether the export may compromise Aotearoa New Zealand's national interests including, without limitation: security, international relationships, international reputation and obligations under the Treaty of Waitangi / Te Tiriti o Waitangi.
- Criterion 5:** The impact the export is expected to have on peace, security and stability.
- Criterion 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.

Guidance will be provided on the MFAT website on how the Treaty of Waitangi / Te Tiriti o Waitangi applies to export control decision making, and how to alert MFAT of Māori interests in controlled exports.

The new criteria include specific references to reputational risk for NZ: International reputation is considered in criterion 4 and domestic reputational risk is covered by criterion 6.

## Current Assessment Criteria

### A. Situations where an export permit will be refused

- MFAT will refuse an application for a permit to export strategic goods if:
- the export would violate New Zealand's obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes
  - the export would contravene New Zealand's other international obligations
  - we have knowledge at the time of considering the application, that the goods are to be used in the commission of genocide, crimes against humanity or war crimes.

### B. Risk Assessment

If the application for an export permit is not refused under section A, MFAT will undertake a risk assessment of whether:

- The goods to be exported would undermine peace and security.
- The goods to be exported could be used to commit or facilitate:
  - a serious violation of international humanitarian law
  - a serious violation of international human rights law
  - an act constituting an offence under international conventions or protocols relating to terrorism to which New Zealand is a party
  - an act constituting an offence under international conventions or protocols relating to transnational organised crime to which New Zealand is a party
- serious acts of gender-based violence or serious acts of violence against women and children.

If MFAT's assessment is that there is a substantial risk of any of the negative consequences set out above in 1 and 2, and the risk can't be mitigated, MFAT will refuse the application for an export permit.

### C. Additional factors

MFAT will also take into account the following factors in undertaking a risk assessment for a permit to export strategic goods:

- Is there a substantial risk that the goods to be exported could be diverted or on-sold prior to, or after, delivery to their intended end-user?
- Are there any requests for restraint or expressions of concern by competent international bodies (eg United Nations Security Council, Wassenaar Arrangement) or any other arms restrictions in place?
- Would the export undercut a denial from an export control regime of which New Zealand is a member?

- Is the export consistent with decisions made by like-minded countries operating similar export controls to New Zealand?
- Is there evidence that the country of import is involved in the development of weapons of mass destruction?
- Is the export part of an existing contract that has previously been approved? Is the country of import involved in any conflict?
  - Issues to consider for internal conflicts:
    - the legitimacy of the government
    - factors contributing to the conflict
    - the commitment of parties to peaceful settlement.
  - Issues to consider for external conflicts:
    - the nature of the conflict under international law (eg self-defence under Article 51 of the United Nations Charter)
    - the commitment of parties to peaceful settlement.
    - How would the export contribute to the conflict in question?
    - Is there evidence that child soldiers are being used in the conflict and, if so, how would the export affect this?
- Would the export introduce a new capability into a regional/internal security situation?
- Would the export significantly enhance capabilities already employed (including, for instance, manpower effectiveness)?
- How would this enhancement be perceived?
- Could this enhancement materially affect an already unstable situation?
- Is there potential for the goods to be used in any terrorist activity?
- Could the export of the goods in question prejudice New Zealand's relationship with a third country?
- Could the export compromise New Zealand's wider defence and security interests?
- Could the export prejudice New Zealand's international relations?
- What is the human rights record of the country of import?
- Is there a possibility that the goods could be used in, or contribute to, an abuse of human rights?
- What is the country of import's record in International Humanitarian Law/Law of Armed Conflict?
- Are the items prohibited under New Zealand law?

## **Appendix 5: Export Controls regime – Hypothetical case studies**

---

Withheld for the reasons set out in section 6(a) of the Official Information Act 1982

Proactively released by the Minister of Foreign Affairs