

16 October 2024

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OIA 29691

Tēnā koe

Thank you for your email of 18 September 2024 in which you request the following under the Official Information Act 1982 (OIA):

" wishes to report an update on work on the NZ export control regime and the List, and requests info from MFAT.

The 2021 Smol review found the regime falls short.

Pls could MFAT

1. *Summarise if the key shortcomings in 2021, persist in 2024, or not*
2. *Detail what it is doing 3 years later, in 2024, to address the shortcomings*
3. *Re the review's recommendations*, detail which 3 priority ones it has addressed and in what way/s*
4. *When was the last regular independent review done?*

Also, re this article - <https://www.minterellison.co.nz/insights/navigating-export-controls-what-new-zealand-s-defe> - it notes several countries NZ trades with have introduced unilateral export controls on dual-use civilian-military goods, and suggests NZ will soon update the list to align with this.

5. *requests MFAT advise if it is engaged in or aware of*
 - a. *Any consideration of if the List needs changing*
 - b. *The outcome of any such consideration*
 - c. *Any work on changing it, and how and why*

The article also notes that to participate fully in AUKUS Pillar II, changes would be needed to the List to align with AUKUS partners; more controls over emerging advanced technologies; introducing deemed export controls; strengthening end-use and end-user verification processes; creating new offences and increasing penalties for breaches; enhanced regime monitoring and enforcement. requests MFAT advise if it is engaged in or aware of

6. *Any work looking at any of the above changes*

This is not an OIA. Pls provide the info if possible by midday Tues next week.

*(*Smol review recommendations:*

1. *reviewing and refreshing the criteria for assessment*
2. *investing in more structured and comprehensive systems and processes*
3. *strengthening the decision-making framework*
4. *strengthening record-keeping and evidencing of critical steps*
5. *enhancing the transparency and public confidence in the regime*
6. *extending proactive outreach and education*
7. *conducting regular independent reviews.)*

For background, the Review of the Ministry of Foreign Affairs and Trade's Export Controls Regime (the Review), written by David Smol and Jennie Kerr in July 2021, referred to by you as 'the Smol report' can be found on the Ministry of Foreign Affairs and Trade (the Ministry) website: <https://www.mfat.govt.nz/en/media-and-resources/independent-report-into-export-controls-system-released>

Response

Questions 1 and 2

In line with the Review recommendations, the Ministry continues to update its Export Controls policies and procedures on an ongoing basis. Several changes we have already made in line with the Review recommendations are listed below in the response to question 3.

Question 3

The Ministry has not prioritised any 3 specific recommendations. However, based on the recommendations, we have taken the following steps:

- Refreshed the Export Controls assessment criteria and made these available on the export controls webpage: <https://www.mfat.govt.nz/en/trade/export-controls/how-is-my-application-assessed>;
- Increased staffing numbers to meet the export assessment and permit determination workload;
- Updated the assessment template to reflect the refreshed assessment criteria;
- Standardised internal processes;
- Revised the decision-making authority level for non-standard applications;
- Developed a comprehensive assessment template for the assessment process;
- Revised and refreshed the export controls webpage: <https://www.mfat.govt.nz/en/trade/export-controls>
- Drafted a purpose statement: <https://www.mfat.govt.nz/en/trade/export-controls/purpose>;
- Published an annual report for 2022: <https://www.mfat.govt.nz/en/trade/export-controls/transparency/reporting> to be followed shortly by the 2023 report;
- Created a series of education and awareness videos which are available on the export controls webpage: <https://www.mfat.govt.nz/en/trade/export-controls/training-and-engagement>;
- Included data on outreach activities in the Export Controls annual report;

- Planned an independent review for 2025/26.

Question 4

The last independent review was commissioned in April 2021.

Question 5

New Zealand monitors the export control policies and controls of other countries, including our major partners, to ensure our controls are consistent with broader efforts to ensure dual use goods do not fall into the wrong hands.

The New Zealand Government is currently considering how our national controls can be further strengthened.

Further information on these considerations, including any formal advice prepared, is withheld under section (9)(2)(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Once any decisions have been finalised, the outcome will be proactively released on the Ministry website.

Question 6

The Ministry is, as already mentioned, exploring potential legislative reform in line with the Review's recommendation on ensuring the Export Controls regime is fit for the future. This does not stem from any work in relation to AUKUS.

The changes being explored include ensuring intangible transfers are captured, as well as aspects of cloud computing, regulation making powers, appeals, and incorporating other best regulatory practices.

The policy objectives for the additional controls under consideration relate to national security (including to counter foreign interference) and ensure broad export controls alignment with international commitments. It is logical that we would seek to do this in line with our partners, where possible. Plans for taking legislative reform forward will include public consultation.

All advice relating to these proposed changes are withheld in full under section 9(2)(f)(iv) of the OIA.

For detail on AUKUS, please refer to the following websites for relevant publicly available information:

- The Ministry of Foreign Affairs and Trade website:
 - Proactive release on AUKUS papers <https://www.mfat.govt.nz/en/media-and-resources/proactive-release-aucus?m=867152#search:YXVrdXM=>.
 - Proactively released OIA responses <https://www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses>.
- The Ministry of Defence website: <https://www.defence.govt.nz/publications>.

Where the information has been withheld under section 9 of the OIA, we identified no public interest in releasing the information that would override the reasons for withholding it.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



Sarah Corbett
for Secretary of Foreign Affairs and Trade

Proactively released by the Ministry of Foreign Affairs and Trade