



17/02/2022

Minister of Foreign Affairs
Minister of Customs

For consultation by 18 February 2022
For consultation by 18 February 2022

Prohibition on Military Use Goods to Russia: Gazette Notice Consultation

BRIEFING Overview Submission

PURPOSE To consult you on issuing a new Gazette Notice covering the prohibition of the export of military, dual-use and catch-all controlled goods to Russia in the event of a Russian military incursion into Ukraine.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	22 February 2022
Minister Responsible for the NZSIS	For information by	22 February 2022
Minister of Defence	For information by	22 February 2022
Minister for Disarmament and Arms Control	For information by	22 February 2022
Minister for Trade and Export Growth	For information by	22 February 2022
Associate Minister of Foreign Affairs	For information by	22 February 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Katy Donnelly	Acting Divisional Manager	International Security and Disarmament Division	s9(2)(a)
Peter Noble	Senior Adviser Export Controls	International Security and Disarmament Division	

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Comments

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Pito matua – Key points

- Following the Ministry of Foreign Affairs and Trade's (MFAT) 14 February submission 'Russia/Ukraine: Aotearoa New Zealand Response Measures', Ministers agreed that officials should prioritise preparatory work to ensure that, in the event of a Russian military incursion into Ukraine, the Government is able to quickly implement a range of tangible measures which register Aotearoa New Zealand's opposition to such conduct.
- Under section 97(1) of the Customs and Excise Act 2018 (the Act) the Secretary of Foreign Affairs and Trade may by Gazette Notice, after consultation with the Minister of Customs, prohibit the exportation of goods described by any use to which they may be put, if the Secretary considers that the prohibition is necessary in the public interest.
- In the event of a Russian military incursion into Ukraine, I intend to Gazette an export prohibition Notice covering certain goods that could be used for military purposes by Russia under section 97(1) of the Act. This reflects Aotearoa New Zealand's opposition to any Russian military violation of Ukraine's sovereignty and territorial integrity in contravention of international law, and the strong challenge such aggression poses to our core values - including Aotearoa New Zealand's support for democracy, human rights and the rule of law. Exports to a military that is engaged in such a grave violation of international law would cause damage to the international relations of Aotearoa New Zealand and its national security interests.
- There is public support for arms control, counter-proliferation and ensuring that exports of goods for military use are appropriate and meet our international obligations and commitments. In the event of a Russian military incursion into Ukraine officials assess that there would be a strong public expectation that any goods intended for military end uses will not be exported to Russia.
- The recommended prohibition would encompass the export to military or security end users of military and dual-use goods captured in the New Zealand Strategic Goods List, as well as catch-all controlled goods (i.e. non-listed goods which have a civil use but which could materially enable or support operations and activities of a military or internal security nature). This prohibition would include a broad range of export items, such as agricultural products, where such items are intended for use by the Russian military or security end users.
- We believe that a number of our partners are likely to introduce similar measures in response to a Russian military incursion into Ukraine. ^{s6(a), s6(b)(i)}

s6(a)

- Exports to commercial entities, including for ongoing product support, would continue to be considered on a case-by-case basis (for example, exports of encryption-capable communications equipment to civil users in Russia). This could be reviewed if it is determined in the future that Aotearoa New Zealand should escalate its response.
- In the event of a Russian military incursion into Ukraine, I intend to issue a Notice in the Gazette (at **Annex A**) prohibiting the export to Russia of military, dual-use and catch-all controlled goods that could be used for military purposes.

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- The New Zealand Customs Service has been consulted on this submission and the proposed wording of the Gazette Notice. Customs has no issues in respect of either.

Chris Seed
Secretary of Foreign Affairs and Trade

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|--|-----------------|
| 1 | Note Ministers have agreed that officials should prioritise preparatory work to ensure the Government is able to quickly implement a range of tangible measures which register Aotearoa New Zealand's opposition to a Russian military incursion into Ukraine; | Yes / No |
| 2 | Note that, in the event of a Russian incursion to Ukraine, New Zealand is able to implement an export controls prohibition on certain goods that could be used for military purposes; | Yes / No |
| 3 | Note that the Secretary of Foreign Affairs and Trade considers it is necessary in the public interest to Gazette an export prohibition Notice covering certain goods that could be used for military purposes by Russia in the event of a Russian incursion into Ukraine; | Yes / No |
| 4 | Note that in the event of a Russian military incursion into Ukraine, the Secretary intends to issue a Notice under the Customs and Excise Act 2018 prohibiting the export of military, dual-use and catch-all controlled goods that could be used for military purposes to military and security end users in Russia; | Yes / No |
| 5 | s6(a), s6(b)(i) | |
| 6 | Note that exports to commercial entities, including for ongoing product support, would continue to be considered case-by-case. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Hon Meka Whaitiri
Minister of Customs

Date: / /

Date: / /

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Annex A:**Draft Gazette Notice: Export Controls (Export Prohibition to Specified Places) Notice 2022**

1. This is the Export Controls (Export Prohibition to Specified Places) Notice 2022.
2. This Notice is issued under section 97 of the Customs and Excise Act 2018.
3. This Notice is a legal document issued by the Secretary of Foreign Affairs and Trade (**Secretary**) after being satisfied of the matter set out in section 97(1) of the Customs and Excise Act 2018.
4. This Notice comes into effect on [the date of publication in the *Gazette*].
5. The exportation of the goods described at paragraph 6 are prohibited from exportation to the following specified places:
 - a. Russian Federation.
6. The following goods that relate directly or indirectly to one or more of the following purposes are prohibited:
 - a. Military use or applications; or
 - b. The development, production or use of military goods; or
 - c. Other goods that have a civilian use but that are intended for military use or that may have military applications.
7. Goods intended for military use or applications, in relation to paragraph (6)(a) to (c) is defined as: "any goods, including but not limited to, weapons and military equipment; or goods incorporated into weapons or military equipment, or used in the production, maintenance or testing of weapons or military equipment; or goods which materially enable or support operations and activities of a military or internal security nature".
8. Military includes any armed force, paramilitary force, police force or militia.

Dated this xx day of xx 2022

CHRIS SEED, Secretary, Ministry of Foreign Affairs and Trade