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Paper prepared by:	Hon Meka Whaitiri, Minister of Customs
Date considered by Cabinet:	16 August 2021
Name of paper:	Five Customs Prohibition Orders
Cabinet Reference:	CAB-21-MIN-0316 and LEG-21-MIN-0122
Purpose of the paper:	<p>This paper sought authorisation to submit the Customs Import Prohibition (Motor Vehicles) Order 2021, the Customs Export Prohibition (Pounamu) Order 2021, the Customs Import Prohibition (Offensive Weapons) Order 2021, the Customs Export Prohibition (Strategic Goods) Order 2021, and the Customs Import Prohibition (Trout) Order 2021 to the Executive Council.</p> <p>The five Orders give effect to policy decisions by the Committees which considered them, and will continue existing prohibitions.</p>

One part of this paper has been redacted under section 9(2)(h) of the Official Information Act 1982. The redaction appears in the text as a black box, with an explanation of why the redaction was made.



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# Cabinet Legislation Committee

## Minute of Decision

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### Five Customs Prohibition Orders

Portfolio	Customs
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On 12 August 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 12 May 2021, the Cabinet Economic Development Committee agreed to the continuation of the prohibition on the importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven on an indefinite basis through an Order in Council made under the Customs and Excise Act 2018 [DEV-21-MIN-009];
- 2 **noted** that the Customs Import Prohibition (Motor Vehicles) Order 2021 gives effect to the decision above;
- 3 **noted** that on 19 May 2021, the Cabinet Economic Development Committee agreed that it is necessary in the public interest for the prohibition on the export of pounamu to continue by way of Order in Council made under the Customs and Excise Act 2018 [DEV-21-MIN-0100];
- 4 **noted** that the Customs Export Prohibition (Pounamu) Order 2021 gives effect to the decision above;
- 5 **noted** that on 9 June 2021, the Cabinet Social Wellbeing Committee agreed it is necessary in the public interest for the prohibition on the importation of the specified offensive weapons, except with Police consent, to continue indefinitely [SWC-21-MIN-0086];
- 6 **noted** that the Customs Import Prohibition (Offensive Weapons) Order 2021 gives effect to the decision above;
- 7 **noted** that on 9 June 2021, the Cabinet Economic Development Committee agreed to continue the prohibition of the export of strategic goods on an indefinite basis through an Order in Council under the Customs and Excise Act 2018 [DEV-21-MIN-0128];
- 8 **noted** that the Customs Export Prohibition (Strategic Goods) Order 2021 gives effect to the decision above;

- 9 **noted** that on 5 July 2021, Cabinet agreed that:
- 9.1 it is in the public interest to continue the prohibition on the importation of trout and trout products for an indefinite period;
  - 9.2 the import prohibition no longer apply to petfood containing trout that is commercially prepared and packaged for direct retail sale, is labelled as petfood, and is in its original sealed packaging on arrival in New Zealand;
- [CAB-21-MIN-0254.01]
- 10 **noted** that the Customs Import Prohibition (Trout) Order 2021 gives effect to the decision above;
- 11 **authorised** the submission to the Executive Council of the:
- 11.1 Customs Import Prohibition (Motor Vehicles) Order 2021 [PCO 23862/2.0];
  - 11.2 Customs Export Prohibition (Pounamu) Order 2021 [PCO 23913/2.0];
  - 11.3 Customs Import Prohibition (Offensive Weapons) Order 2021 [PCO 23830/2.0];
  - 11.4 Customs Export Prohibition (Strategic Goods) Order 2021 [PCO 23923/2.0];
  - 11.5 Customs Import Prohibition (Trout) Order 2021 [PCO 23908/2.0];
- 12 **noted** that the Customs Import Prohibition (Trout) Order 2021 comes into force on 30 September 2021;
- 13 **noted** that the Customs Import Prohibition (Motor Vehicles) Order 2021, the Customs Export Prohibition (Pounamu) Order 2021, the Customs Import Prohibition (Offensive Weapons) Order 2021, and the Customs Export Prohibition (Strategic Goods) Order 2021 come into force on 1 October 2021.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Andrew Little (Chair)  
Hon David Parker  
Hon Poto Williams  
Keiran McAnulty, MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

Office of the Minister of Customs  
Chair, Cabinet Legislation Committee

## Customs Prohibition Orders 2021

### Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Customs Import Prohibition (Motor Vehicles) Order 2021, the Customs Export Prohibition (Pounamu) Order 2021, the Customs Import Prohibition (Offensive Weapons) Order 2021, the Customs Export Prohibition (Strategic Goods) Order 2021, and the Customs Import Prohibition (Trout) Order 2021.

### Policy

- 2 The five Orders proposed will give effect to policy decisions by the Committees which considered them, and will continue existing prohibitions.

#### *Motor vehicle imports*

- 3 On 12 May 2021, the Cabinet Economic Development Committee considered a paper on continuing the import prohibition on motor vehicles with inaccurate or no odometers [DEV-21-MIN-0096 refers]. The Committee:
  - 3.1 noted that the Customs Import Prohibition Order 2017 (the Order) currently prohibits the importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven;
  - 3.2 noted that the Order expires on 30 September 2021;
  - 3.3 agreed that the prohibition of the importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven is necessary in the public interest;
  - 3.4 agreed to the continued prohibition on the importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven on an indefinite basis through an Order in Council made under the Customs and Excise Act 2018;
  - 3.5 invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the above paragraphs.

### *Pounamu exports*

- 4 On 19 May 2021, the Cabinet Economic Development Committee considered a paper on continuing the export prohibition on pounamu [DEV-21-MIN-0100 refers]. The Committee:
  - 4.1 noted that:
    - 4.1.1 the prohibition on the export of pounamu is given effect under the Customs and Excise Act 1996 by way of the Customs Export Prohibition Order 2017 (the Order);
    - 4.1.2 the Order expires on 30 September 2021;
  - 4.2 noted that the Crown has ongoing Treaty of Waitangi/Te Tiriti o Waitangi relationships with Ngāi Tahu and Māwhera Incorporation, and that the policy work to be undertaken on the prohibition (paragraph 7 below) will align with the whole-of-government's work on taonga 'Te Pai Tawhiti – Wai 262';
  - 4.3 noted that pounamu is a taonga of great significance to Ngāi Tahu and Māwhera Incorporation as kaitiaki, and that any policy development will seek to uphold the economic and cultural value of pounamu;
  - 4.4 agreed that it is necessary in the public interest for the prohibition on the export of pounamu to continue by way of Order in Council made under the Customs and Excise Act 2018;
  - 4.5 invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the continued prohibition on the export of pounamu;
  - 4.6 authorised the Minister of Energy and Resources and the Minister of Customs to make decisions on any minor or technical matters that may arise during the drafting process;
  - 4.7 directed the Ministry of Business, Innovation and Employment to report back to DEV by 30 September 2024 on progress on a review of the prohibition to ensure that it remains fit-for-purpose.

### *Specified offensive weapons imports*

- 5 On 9 June 2021, the Cabinet Social Wellbeing Committee considered a paper on continuing the import prohibition of specified offensive weapons except with Police consent [SWC-21-MIN-0086 refers]. The Committee:
  - 5.1 noted that the prohibition on the import of specified offensive weapons except with Police consent, given effect under the Customs and Excise Act 1996 by way of the Customs Import Prohibition Order 2017, expires on 30 September 2021;

- 5.2 agreed it is necessary in the public interest for the prohibition on the importation of the specified offensive weapons, except with Police consent, to continue indefinitely;
- 5.3 invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office for an Order in Council under the Customs and Excise Act 2018 to give effect to the decision in paragraph 2 above;
- 5.4 authorised the Minister of Police and the Minister of Customs to make final decisions on detail, and to make changes, consistent with the policy intent outlined in this paper, on any issues that arise during drafting of the Order in Council.

#### *Strategic goods exports*

- 6 On 9 June 2021, the Cabinet Economic Development Committee considered a paper on continuing the prohibition on the export and import of strategic goods [DEV-21-MIN-0128 refers]. The Committee:
  - 6.1 noted that:
    - 6.1.1 the prohibition on the export of strategic goods is given effect under the Customs and Excise Act 1996, by way of the Customs Export Prohibition Order 2017 (the Order);
    - 6.1.2 the Order expires on 30 September 2021;
  - 6.2 agreed that it is necessary in the public interest for the prohibition on the export of strategic goods to continue by way of Order in Council made under the Customs and Excise Act 2018;
  - 6.3 agreed to continue the prohibition of the export of strategic goods on an indefinite basis through an Order in Council under the Customs and Excise Act 2018;
  - 6.4 invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the continued export prohibition agreed above;
  - 6.5 authorised the Minister of Foreign Affairs and the Minister of Customs to make final decisions, and to make changes, consistent with the policy intent outlined in this paper under DEV-21-SUB-0128, on any issues that arise during the drafting process;
  - 6.6 agreed that a Customs Import Prohibition Order is not required to give effect to the Chemical Weapons (Prohibition) Act 1996, on the basis of the existing mechanism in place to control imports of chemicals and their precursors that are associated with chemical weapons.

### *Trout imports*

- 7 On 30 June 2021, the Cabinet Economic Development Committee (the Committee) considered a paper on continuing the prohibition on the importation of trout meat and trout products. On 5 July 2021, following reference from the Committee, Cabinet:
- 7.1 noted that the importation of trout and trout products in any form for sale is generally prevented by the Customs Import Prohibition (Trout) Order 2018, which expires at the close of 29 September 2021;
  - 7.2 noted that if imports and sale of trout or trout products are allowed, there could be risks to the recreational trout fishery and supporting businesses if the fishery declines as a result of impacts from illegal poaching of trout;
  - 7.3 noted that there will be ongoing restriction in consumer choice, s 9(2)(h) if the trout import prohibition continues;
  - 7.4 noted that some Māori have interests in wild trout fisheries and some are interested in commercial farming of trout, and that wide consultation would therefore be appropriate before changing the status quo;
  - 7.5 noted that a Customs Import Prohibition (Trout) Order 2021 may be made under section 96 of the Customs and Excise Act 2018 only if the Minister of Customs considers the prohibition is necessary in the public interest;
  - 7.6 noted that any Customs Import Prohibition (Trout) Order can, if required, be revoked by a subsequent Order;
  - 7.7 agreed that it is in the public interest to continue the prohibition on the importation of trout and trout products for an indefinite period, and acknowledged that the mechanism available under the Customs and Excise Act 2018 is the only available statutory vehicle;
  - 7.8 agreed that the import prohibition no longer apply to petfood containing trout that is commercially prepared and packaged for direct retail sale, is labelled as petfood, and is in its original sealed packaging on arrival in New Zealand;
  - 7.9 invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council giving effect to the above decisions to come into effect on 30 September 2021 [CAB-21-MIN-0254.01 refers].

### **Impact analysis**

- 8 The Regulatory Quality Team at the Treasury (the Team) has determined that the regulatory decisions represented by the Orders attached to this paper in

respect of pounamu, offensive weapons, and motor vehicles either missing or with inaccurate odometers are exempt from the requirements to provide Regulatory Impact Assessments as they have no or minor impacts on businesses, individuals, or not for profit entities [CAB-21-MIN-0162, CAB-21-MIN-0180 and CAB-21-MIN-0222 refer].

- 9 The Team has determined the regulatory decisions represented by the Order attached to this paper in respect of strategic goods is exempt from the requirement to provide a Regulatory Impact Assessment as it is necessary to comply with existing international obligations that are binding on New Zealand [CAB-21-MIN-0218 refers].
- 10 A regulatory impact assessment was prepared in respect of the Order continuing the prohibition on the import of trout and trout products. This was submitted at the time that Cabinet approval was sought [attachment to DEV-21-SUB-0143 and CAB-21-MIN-0254.01 refer].

## Compliance

- 11 The Orders are compliant with:
  - 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no potential inconsistencies identified;
  - 11.3 the principles and guidelines set out in the Privacy Act 2020;
  - 11.4 relevant international standards and obligations;
  - 11.5 the Legislation Design and Advisory Committee's Legislation Guidelines: 2018 edition.
- 12 Orders to prohibit the import or export of goods or a specified class of goods may only be made under the Customs and Excise Act 2018, providing the Minister of Customs considers the prohibition proposed is necessary in the public interest.
- 13 I consider each of the prohibitions proposed meet that prerequisite, based on the information considered by the relevant Cabinet Committee and confirmed or decided by Cabinet.

## Consultation

### *Motor vehicle imports*

- 14 The Ministry of Business, Innovation and Employment, in developing the policy to continue the import prohibition on motor vehicles with no odometer, or with an inaccurate odometer, has consulted Waka Kotahi NZ Transport Agency, and Parliamentary Counsel Office.



#### *Pounamu exports*

- 15 The Ministry of Business, Innovation and Employment, in developing the policy to continue the prohibition on the export of pounamu, has consulted Te Puni Kōkiri, Te Arawhiti, the New Zealand Customs Service, the Treasury, the Department of the Prime Minister and Cabinet, and the Ministry of Foreign Affairs and Trade.
- 16 Ngāi Tahu and the Māwhera Incorporation were included in the decision making which lead to the recommendations of the policy paper.

#### *Specified offensive weapons imports*

- 17 The New Zealand Police, in developing the policy to continue the prohibition on the import of specified offensive weapons, has consulted the New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, Te Arawhiti, Te Puni Kokiri, the Treasury, the Department of the Prime Minister and Cabinet, and the Parliamentary Counsel Office.

#### *Strategic goods exports*

- 18 The Ministry of Foreign Affairs and Trade, in developing the policy to continue the prohibition on the export of strategic goods, has consulted the New Zealand Customs Service and the Treasury.

#### *Trout imports*

- 19 The Department of Conservation, in developing the policy to continue the prohibition on the import of trout and trout products, consulted the Ministry of Foreign Affairs and Trade, the Ministry for Business, Innovation and Employment, the Ministry for Primary Industries, Te Puni Kōkiri, Te Arawhiti, The Treasury, Parliamentary Counsel Office, and the New Zealand Customs Service.
- 20 The NZ Fish and Game Council provided advice in support of continuing the trout import prohibition. This Council has a statutory function under the Conservation Act 1987 to provide advice on issues relating to sports fish.

#### *Attached Orders*

- 21 The Ministry for Business, Innovation and Employment, the New Zealand Police, the Ministry of Foreign Affairs and Trade, and the Department of Conservation have been consulted in respect of this paper and the attached Orders.

#### **Regulations Review Committee**

- 22 There are no anticipated grounds for the Regulations Review Committee to draw the Orders to the attention of the House of Representatives under Standing Order 327.

## **Certification by Parliamentary Counsel Office**

- 23 The Orders have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## **Commencement of legislation**

- 24 All Orders attached excluding that for trout will come into effect on 1 October 2021. The Order prohibiting the importation of trout and trout products will come into effect on 30 September 2021.
- 25 These dates will ensure the uninterrupted continuation of the import/export restrictions already in place. The statutory mechanisms legislating these restrictions lapse on 29 or 30 September 2021.

## **Proactive Release**

- 26 Following Cabinet consideration I propose to proactively release this paper, subject to any redactions as appropriate under the Official Information Act 1982.

## **Recommendations**

- 27 The Minister of Customs recommends that the Committee:
- 1 note that on 12 May 2021, the Cabinet Economic Development Committee agreed to the continuation of the prohibition on the importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven on an indefinite basis through an Order in Council made under the Customs and Excise Act 2018 [DEV-21-MIN-0096 refers];
  - 2 note that the Customs Import Prohibition (Motor Vehicles) Order 2021 will give effect to the decision referred in recommendation 1 above;
  - 3 note that on 19 May 2021, the Cabinet Economic Development Committee agreed that it is necessary in the public interest for the prohibition on the export of pounamu to continue by way of Order in Council made under the Customs and Excise Act 2018 [DEV-21-MIN-0100 refers];
  - 4 note that the Customs Export Prohibition (Pounamu) Order 2021 will give effect to the decision referred in recommendation 3 above;
  - 5 note that on 9 June 2021, the Cabinet Social Wellbeing Committee agreed it is necessary in the public interest for the prohibition on the importation of the specified offensive weapons, except with Police consent, to continue indefinitely [SWC-21-MIN-0086 refers];
  - 6 note that the Customs Import Prohibition (Offensive Weapons) Order 2021 will give effect to the decision referred in recommendation 5 above;

- 7 note that on 9 June 2021, the Cabinet Economic Development Committee agreed to continue the prohibition of the export of strategic goods on an indefinite basis through an Order in Council under the Customs and Excise Act 2018 [DEV-21-MIN-0128];
- 8 note that the Customs Export Prohibition (Strategic Goods) Order 2021 will give effect to the decision referred in recommendation 7 above;
- 9 note that on 5 July 2021, Cabinet agreed it is in the public interest to continue the prohibition on the importation of trout and trout products for an indefinite period. Cabinet further agreed the import prohibition no longer apply to petfood containing trout that is commercially prepared and packaged for direct retail sale, is labelled as petfood, and is in its original sealed packaging on arrival in New Zealand [CAB-21-MIN-0254.01 refers];
- 10 note that the Customs Import Prohibition (Trout) Order 2021 will give effect to the decision referred in recommendation 9 above;
- 11 authorise the submission to the Executive Council of the Customs Import Prohibition (Motor Vehicles) Order 2021, the Customs Export Prohibition (Pounamu) Order 2021, the Customs Import Prohibition (Offensive Weapons) Order 2021, the Customs Export Prohibition (Strategic Goods) Order 2021, and the Customs Import Prohibition (Trout) Order 2021;
- 12 note that the Customs Import Prohibition (Trout) Order 2021 comes into force on 30 September 2021; and
- 13 note that the Customs Import Prohibition (Motor Vehicles) Order 2021, the Customs Export Prohibition (Pounamu) Order 2021, the Customs Import Prohibition (Offensive Weapons) Order 2021, and the Customs Export Prohibition (Strategic Goods) Order 2021 come into force on 1 October 2021.

Authorised for lodgement

Hon Meka Whaitiri  
Minister of Customs