

Imports and Exports (Restrictions) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Import Control Act 1988 (“the principal Act”) to provide for the making of export control regulations to give effect to the requirements of—

- the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the **Rotterdam Convention**);
- the Stockholm Convention on Persistent Organic Pollutants (the **Stockholm Convention**);
- any other international obligation that provides for the restriction on, or the prohibition of, the exportation of certain chemicals, products, organisms, wastes, or other substances that pose a risk to human health or to the environment.

The enactment of the Bill (together with certain amendments to the Hazardous Substances and New Organisms Act 1996) will enable New Zealand to ratify the Rotterdam and Stockholm Conventions at the World Summit on Sustainable Development in September 2002.

The key measure mirrors the principal Act’s import control mechanism and provides for the Governor-General, by Order in Council, to make regulations that prohibit the exportation of specified goods. Any prohibition may be general, limited, absolute, or conditional. A conditional prohibition permits exportation of goods subject to the grant of a licence or permit by the Minister or a prescribed person.

Rotterdam Convention

New Zealand signed the Rotterdam Convention on 11 September 1998. The Rotterdam Convention requires information to be exchanged between Parties about trade in hazardous chemicals before any trading takes place. Once Parties are informed of potential trade and their attention is drawn to any related health or environmental risks, they may consent to importation, with or without conditions, or not consent to the trade at all. Parties must ensure that exporters comply with each importing Party's import regimes. The Convention currently lists 31 chemicals for which all Parties must notify import requirements. Its scope extends to controlling exports and notifying an international secretariat of all additional chemicals currently banned or severely restricted at the national level (which in New Zealand amounts to approximately 100 substances). It obliges Parties to appoint a Designated National Authority for administration purposes. Currently, there are no legislative instruments in place to adequately control exports of substances covered by the Rotterdam Convention, as required in that Convention.

Stockholm Convention

New Zealand signed the Stockholm Convention on 23 May 2001. The Stockholm Convention seeks to protect human health and the environment—

- by banning the production, use, or trade of certain persistent organic pollutants:
- by minimising the emissions of 10 highly dangerous substances (of which 8 are also covered by the Rotterdam Convention):
- by taking measures to reduce emissions of 2 further by-products:
- by providing for financial contributions and for the appointment of a Designated National Authority.

Other international obligations

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the **Basel Convention**), which came into force on 5 May 1992, was signed by New Zealand at Basel on 22 March 1989 and ratified on 20 December 1994. It

aims to achieve the environmentally sound management of hazardous wastes through—

- reduction in transboundary movements to the minimum amount that is consistent with environmentally sound and efficient management:
- treatment and disposal as close as possible to the source of generation:
- minimisation of generation.

The Ministry of Economic Development is the New Zealand Competent Authority. The Ministry for the Environment acts as New Zealand's focal point. Currently, the export control regulations needed to meet New Zealand's obligations under the Basel Convention are made via a Customs Export Prohibition Order under the Customs and Excise Act 1996, but that order is subject to review every 3 years. In order to provide legislative certainty in the long term, it is desirable to include the Basel Convention within the scope of this Bill. As the regulatory controls required for the Basel Convention are already in place, there are no additional regulatory impacts or compliance costs involved.

The Waigani 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 (the **Waigani Convention**) was finalised by Pacific Forum countries, Australia, and New Zealand on 16 September 1995 at Waigani, Papua New Guinea. It bans the import of hazardous wastes (and radioactive wastes) generated outside the Forum Island Countries into those countries, and controls movements between those countries, excluding Australia and New Zealand. (Note: the Basel Convention excludes radioactive wastes that are subject to other international instruments and control systems.) The Waigani Convention qualifies as an Article 11 Basel Convention agreement. Therefore, the Basel Convention notification and consent procedures apply, and it is desirable to include the Waigani Convention within the scope of this Bill. As the regulatory controls for the Waigani Convention come under the Basel Convention, there are no additional regulatory impacts or compliance costs involved.

The texts of international agreements that are implemented through this Bill will be available in hardcopy form from, and on the website

of, either or both of the Minister responsible for the administration of the Act and the agency designated as the competent or national authority for a specific international agreement.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purpose of the Bill.

Part 2

Amendments to Acts

Clause 4 repeals the Long Title of the Import Control Act 1988 (“the principal Act”).

Clause 5 renames the principal Act as the Imports and Exports (Restrictions) Act 1988.

Clause 6 defines the term **international obligation**. The definition refers specifically to the Rotterdam, Stockholm, Basel, and Waigani Conventions. It also includes any other international obligation that is or becomes binding on New Zealand and that provides for the restriction on, or the prohibition of, the exportation of certain chemicals, products, organisms, wastes, or other substances that pose a risk to human health or to the environment. The clause makes other minor amendments to definitions.

Clause 7 inserts *new section 2A*, which provides that the principal Act binds the Crown.

Clause 8 repeals subsections (4) and (5) of section 3, which apply only to imports. The same provisions, which will apply to both imports and exports, reappear in substantially the same form in *new sections 3C and 3D*.

Clause 9 inserts *new sections 3A to 3E*. *New sections 3A and 3B*, which apply to exports, mirror the existing provisions of the principal Act in relation to the prohibition of imports. The effect of the Bill, with 1 significant difference, is to confer, in relation to exports, the same powers of prohibition that already exist in the case of

imports. The difference is that, in the case of exports, the Governor-General must be satisfied that the prohibition is necessary to give effect to an international obligation.

New sections 3C and 3D simply restate, with minor modifications, subsections (4) and (5) of section 3, which are repealed. Under *new section 3E*, provisions in other enactments are not affected by the provisions of the principal Act.

Clause 10 adapts the existing provisions creating offences under the principal Act by extending them, where appropriate, to the export of goods.

Clause 11 amends a reference to the principal Act in the Temporary Safeguard Authorities Act 1987.

Regulatory impact and compliance cost statement

Statement of problem and need for action

The dramatic growth in international chemicals production and trade in the past 4 decades has raised both public and official concern about the potential risks posed by hazardous chemicals and pesticides. Countries that lack adequate infrastructure to monitor the import and use of these chemicals are particularly vulnerable. New Zealand's legislation in this respect, the Hazardous Substances and New Organisms Act 1996 (the **HSNO Act**), provides a useful framework.

Persistent organic pollutants (**POPs**) are among the most highly toxic substances on Earth. They are transported by ocean and air currents, and bioaccumulate in the tissues of living organisms. There are clear human health and environmental advantages to their substantial reduction and elimination where feasible.

Statement of the public policy objective

Rotterdam Convention

Parties to the Rotterdam Convention will have access to the latest information in respect of dangerous chemicals and pesticides in international trade. New Zealand will benefit by being able to take decisions on whether to import those substances based on best current international analysis in addition to its screening procedures, primarily through the HSNO Act. New Zealand will also contribute to the sound management of global trade in those substances through

adherence to import decisions of other Parties and dissemination of its own regulatory decisions on potentially dangerous chemicals.

The Government has previously signalled New Zealand's support for the measures set out in the Rotterdam Convention through approval of New Zealand's full participation in the voluntary Prior Informed Consent (PIC) procedure since 1989. The PIC procedure has continued in effect on an interim basis since the Convention was opened for signature in September 1998. The Convention also complements the domestic management of hazardous substances as set out in the HSNO Act.

The Government has signalled New Zealand's intention to work towards the achievement of Convention objectives by signing it in May 2001, by instructing officials to report back on options for ratification by December 2001, and by contributing US\$0.03 million to the trust fund in support of the Convention. A further important objective of ratification will be to demonstrate New Zealand's commitment to contribute to multilateral solutions to global problems.

Stockholm Convention

Objectives to which ratification of the Stockholm Convention will contribute include: protection of health of New Zealanders now, and in the future, by reducing exposure to POPs; safeguarding the quality of food, especially meat and dairy products; and strengthening and protecting New Zealand's clean green image. The Government has previously enunciated these objectives— most recently in the draft Action Plan for Reducing Discharges of Dioxin to Air— and has taken a range of measures to reduce the use and production of POPs in New Zealand, including reregistering POP pesticides and the Ministry for the Environment's Organochlorines Programme, which has been in operation since 1995.

Being able to ensure full compliance with the Stockholm Convention will ensure the domestic measures to achieve these objectives are complemented by rigorous use, import, and export controls on POPs, thus eliminating the entry of new POP chemicals into New Zealand, and by ensuring access to best international practice on the reduction of byproduct POPs, including dioxin.

Statement of options for achieving the desired objective

There are, broadly speaking, 2 types of obligations imposed on Parties by each of the Rotterdam Convention and the Stockholm Convention.

Rotterdam Convention

Under the Rotterdam Convention, the following obligations arise:

- for imports, notification of import decisions in respect of listed chemicals:
- for exports, adherence to other Parties' import decisions, and notification of exports of domestically prohibited or severely restricted substances.

In respect of import obligations under the Convention, the HSNO Act and the Import Control Act 1988 already provide a regulatory framework for making decisions on imports of listed substances. No further regulation is required.

The Ministry for the Environment, acting as New Zealand's Designated National Authority for the Convention, will meet notification requirements in respect of imports through non-regulatory means in liaison with the Environmental Risk Management Authority (ERMA), which administers the HSNO Act.

In respect of exports, while there are no current exports of substances covered by the Convention from New Zealand, there is no satisfactory legal framework to guarantee that exports cannot take place. Regulatory options for meeting export obligations included—

- an amendment to the Import Control Act 1988 to include the provision for export controls on substances that are subject to international treaty obligations, and subsequent controls on exports of substances listed in the Rotterdam Convention based on the provisions of such an amendment:
- an Order in Council under the Customs and Excise Act 1996 placing export controls on Rotterdam Convention substances (perhaps in conjunction with the Stockholm Convention).

The first option was selected because it provides legislative certainty in the long term and may provide a more reliable and cost-effective framework for meeting export obligations under other international treaties. Although the second option would have been simpler in the

short term, Orders in Council under the Customs and Excise Act 1996 must be renewed every 3 years.

There were no non-regulatory measures available to ensure compliance in respect of export obligations.

Stockholm Convention

Under the Stockholm Convention, the following obligations arise:

- the elimination (or severe restriction) of the production, use, import, and export of 10 listed substances:
- reduction (with a view to ultimate elimination where feasible) of 2 further byproduct POP emissions, commonly termed dioxins.

As outlined above, the Government is already addressing the issue of dioxin emissions through the Ministry for the Environment's work programme. Other Stockholm Convention substances do not have approvals for import and manufacture in New Zealand because they were reregistered under the Pesticides Act 1979, and no applications for approval have been submitted for import or manufacture under the HSNO Act. The potential for use, import, and export is therefore largely theoretical.

The current legislative structure in New Zealand does not, however, guarantee that New Zealand will meet its obligations under the Convention in terms of use, import, and export. While the HSNO Act enables the prohibition of manufacture and importation of POPs substances, and it is highly unlikely that applications for manufacture or importation of those substances would ever be approved, the Act does not guarantee that approval would not be granted, taking into account all relevant factors.

Regulatory options for meeting import obligations included—

- an amendment to the HSNO Act to ensure that New Zealand complies with import restriction obligations under the Convention:
- a new Act covering the use, import, and export of POP substances (perhaps in conjunction with implementation of the Rotterdam Convention).

The first option was selected for reasons of legislative certainty, simplicity, and cost-effectiveness. Amending the existing statute (the HSNO Act) rather than preparing and introducing a new one

will be less time consuming. And amending the HSNO Act most appropriately fits the legislative proposal within the existing Legislation Advisory Committee Guidelines on Process and Content of Legislation.

Non-regulatory measures only included a reliance on the assumption that no import or manufacture approvals for Convention substances would ever be granted. This method of meeting import obligations under the Convention was not selected because of the uncertain legal position that would prevail.

While there are no current exports of POP substances from New Zealand, there is no satisfactory legal framework to guarantee that exports cannot take place. (From time to time, POP substances are exported as hazardous wastes for destruction, but these exports are managed to conform with the requirements of the Basel Convention. Regulatory options for meeting export obligations included—

- an amendment to the Import Control Act 1988 to include the provision for export controls on substances that are subject to international treaty obligations, and subsequent prohibition of exports of substances listed in the Stockholm Convention based on the provisions of such an amendment:
- an Order in Council under the Customs and Excise Act 1996 that prohibits or restricts the export of POP substances (perhaps in conjunction with implementation of the Rotterdam Convention):
- a new Act covering the use, import, and export of POP substances (perhaps in conjunction with implementation of the Rotterdam Convention).

The first option was selected because it provides legislative certainty in the long term and may provide a more reliable and cost-effective framework for meeting export obligations under other international treaties. Although the second option would have been simpler in the short term, Orders in Council under the Customs and Excise Act 1996 must be renewed every 3 years.

There were no non-regulatory measures available to ensure compliance in respect of export obligations.

*Statement of the net benefit of this proposal***Rotterdam Convention**

Benefits of ratifying the Convention and implementing it through the mechanism provided in this Bill include added value to domestic efforts to protect the health of New Zealanders now and in the future through access to the best international information regarding chemical and pesticidal risks. Ratification will also demonstrate New Zealand's commitment to contributing to multilateral solutions to global problems and will continue New Zealand's association with the PIC procedure that dates back to 1989.

Economic costs to the public sector for controls on use, import, and export have been estimated as follows:

- Ministry for the Environment: NZ\$0.025 million per annum for administrative duties under Convention obligations;
- secretariat contribution estimated as NZ\$0.013 million per annum.

Costs to the economy of measures aimed at import and use will not arise as a result of ratification, because decisions regarding those measures are within the mandate of ERMA under the provisions of the HSNO Act. Costs to the economy of measures that arise from export controls are expected to be nil, based on the absence of current exports. Costs could potentially arise, however, should a New Zealand exporter wish to export a substance currently covered by the Convention, or a substance that might be added to the Convention in the future.

Stockholm Convention

Benefits of ratifying the Convention and implementing it through the mechanisms provided in this Bill include added value to domestic efforts to protect the health of New Zealanders now and in the future by reducing exposure to POPs, safeguarding the quality of food, and strengthening and protecting New Zealand's clean green image. This will primarily be achieved through the tightening of controls on the import and use of POP substances, thus ensuring lower potential for future exposure. Ratification will also demonstrate New Zealand's commitment to contributing to multilateral solutions to global problems.

Economic costs to the public sector for controls on use, import, and export have been estimated as follows:

- Ministry for the Environment: NZ\$0.025 million per annum for administrative duties under Convention obligations:
- secretariat contribution estimated as NZ\$0.018 million per annum.

Costs to the economy of measures aimed at use, import, and export controls are expected to be nil, based on current use and trade. Due to their high toxicity, and the risks associated with the use of POPs, it is highly unlikely that New Zealand would wish to approve the import or manufacture of any substance that is added to the Convention in the future. While opportunity costs could potentially arise if the ability to approve such a substance is constrained, the Convention provides for a reviewable country-specific exempted use of a substance.

Consultation

The following departments were consulted on both the Rotterdam and Stockholm Conventions and concurred with this analysis: Agriculture and Forestry, Economic Development, Environment, Foreign Affairs and Trade, Health, NZ Customs Service, and the Environmental Risk Management Authority. The Business Compliance Costs Unit of the Ministry of Economic Development was also consulted.

Public views on ratification of both the Rotterdam and Stockholm Conventions were canvassed through a letter to industry representatives, environmental non-governmental organisations, and other stakeholders. Replies in support of ratification of the Conventions were received from Greenpeace New Zealand, the New Zealand Chemical Industry Council, the New Zealand Association for Animal Health and Crop Protection, the Institute of Environmental Science and Research Ltd, Tredi NZ Ltd, and GHD Ltd. Neutral replies were received from the New Zealand Shipping Federation and AE & SD Taylor. No opposition to ratification was expressed in any of the replies. No respondents raised issues of compliance costs.

Hon Paul Swain

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Imports and Exports (Restrictions) Amendment Act **2002**.
- (2) In this Act, the Act that was previously called the Import Control Act 1988¹ is called “the principal Act”.

¹ 1988 No 157

Part 1 Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

- 3 Purpose**
The purpose of this Act is to enable New Zealand to give better effect to its international obligations to restrict the exportation of certain goods.

Part 2 5
Amendments to Acts

- 4 Title repealed**
The Long Title of the principal Act is repealed.
- 5 Name of principal Act changed** 10
- (1) After the commencement of this section, the principal Act is called the Imports and Exports (Restrictions) Act 1988.
- (2) Section 1(1) of the principal Act is consequentially amended by omitting the words “Import Control”, and substituting the words “Imports and Exports (Restrictions)”.
- 6 Interpretation** 15
- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
- “**international obligation** means—
- “(a) the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand: 20
- “(b) the Convention on Persistent Organic Pollutants, done at Stockholm on 23 May 2001; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand: 25
- “(c) the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, done at Basel on 22 March 1989; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand: 30
- “(d) the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes 35

and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, done at Waigani on 16 September 1995; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand: 5

“(e) any other international obligation that is or becomes binding on New Zealand and that provides for the restriction on, or the prohibition of, the exportation of certain chemicals, products, organisms, wastes, or other substances that pose a risk to human health or to the environment 10

“**Ministry** means the ministry or department for the time being responsible for the administration of this Act”.

(2) Section 2(1) of the principal Act is amended by repealing the definitions of the terms **Minister** and **prescribed**, and substituting, in their appropriate alphabetical order, the following definitions: 15

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 20

“**prescribed** means prescribed by an Order in Council for the time being in force under section 3 or **section 3A**; and, in relation to forms, includes prescribed by the chief executive of the Ministry.” 25

(3) Section 2(2) of the principal Act is amended by inserting, after the words “**Customs place**,” the word “**exportation**,”.

(4) The principal Act is amended by repealing section 2(3), and substituting the following subsection: 30

“(3) Sections 1 to 4, and Parts 1, 2, 3, 4, 10, 12 (except section 142), 13 (except sections 209 and 214), 14, 15, and 17 of the Customs and Excise Act 1996 apply to any goods, the importation or exportation of which is prohibited under this Act, in all respects as if the importation or exportation of the goods is prohibited, or is an offence, under the Customs and Excise Act 1996.” 35

- 7 New section 2A inserted**
The principal Act is amended by inserting, after section 2, the following section:
- “2A **Act binds the Crown**
This Act binds the Crown.” 5
- 8 Control of imports**
- (1) Section 3 of the principal Act is amended by omitting the heading, and substituting the heading “**Prohibition of imports**”.
- (2) Section 3 of the principal Act is amended by repealing subsections (4) and (5). 10
- 9 New sections 3A to 3E inserted**
The principal Act is amended by inserting, after section 3, the following sections:
- “3A **Prohibition of exports** 15
- “(1) The Governor-General, if satisfied that it is necessary to give effect to an international obligation, may, by Order in Council, prohibit the exportation from New Zealand of—
- “(a) specified goods:
- “(b) goods of a specified class or classes. 20
- “(2) A prohibition may be—
- “(a) general:
- “(b) limited to the exportation of goods to a specified place or class of places:
- “(c) limited to the exportation of goods to a specified person or class of persons: 25
- “(d) limited to the exportation of goods by a specified person or class of persons:
- “(e) absolute:
- “(f) conditional. 30
- “3B **Conditional prohibition of exportation**
- “(1) A conditional prohibition allows the exportation of goods subject to—
- “(a) the grant of a licence or permit by the Minister or a prescribed person; or 35
- “(b) prescribed conditions.

- “(2) The terms and conditions of a licence or permit must be consistent with the prohibition.
- “(3) A conditional prohibition may require payment of consideration to the Crown in respect of the application for, or the granting of, a licence or permit. 5
- “3C Forms**
- “(1) For the purposes of this Act, the chief executive of the Ministry may prescribe forms that he or she considers necessary.
- “(2) In all proceedings, a document is sufficient evidence that a form was prescribed if it— 10
- “(a) is signed by the chief executive of the Ministry; and
- “(b) purports to be a prescribed form, an extract from a prescribed form, a copy of the form, or a copy of the extract.
- “(3) A Court must take judicial notice of the signature of the chief executive of the Ministry to a prescribed form or to an extract or copy of a prescribed form. 15
- “3D Order in Council not invalid**
- An Order in Council is not invalid because—
- “(a) it leaves a matter to the discretion of the Minister or another person: 20
- “(b) it authorises the Minister or another person to issue a licence or permit subject to conditions imposed or approved by the Minister.
- “3E Other Acts not affected** 25
- The provisions of this Act are in addition to, and not in substitution for, the provisions of any other enactment relating to the importation or exportation of any substances or goods, and nothing in this Act limits or otherwise affects any provisions.” 30
- 10 Offences**
- (1) Section 4(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(ab) exports, or transports with intent to export, goods from New Zealand in breach of an Order in Council made under **section 3A**; or”. 35

- (2) Section 4(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph: 5
“(b) commits any breach of, or fails in any respect to comply with, any term or condition on, or subject to, which there has been granted, under any Order in Council made under section 3 or **section 3A**, any licence or permit under the authority of which any goods are imported into, or exported from, New Zealand.”
- (3) Section 4(2)(a) of the principal Act is amended by inserting, after the word “importation,”, the words “exportation, transportation, shipment,”. 10
- (4) Section 4 of the principal Act is amended by repealing subsection (3), and substituting the following subsections: 15
“(3) **Subsection (3A)** applies where goods are imported into, or are exported from, New Zealand under the authority of a licence or permit granted under an Order in Council made under section 3 or **section 3A**.
“(3A) A person commits an offence who— 20
“(a) knowingly makes a false declaration or statement for the purpose of obtaining the licence or permit:
“(b) knowingly makes a false declaration or statement as to compliance with a condition on, or subject to, which the licence or permit was granted:
“(c) otherwise knowingly makes a false declaration or statement in relation to the importation or exportation of the goods.” 25
- (5) Section 4 of the principal Act is amended by inserting in subsections (6) to (9), in each case after the words “section 3”, the words “or **section 3A**”. 30

11 Consequential amendment to Temporary Safeguard Authorities Act 1987

Section 7(3)(b) of the Temporary Safeguard Authorities Act 1987 (1987 No 88) is amended by omitting the expression “Import Control Act 1988”, and substituting the expression “Imports and Exports (Restrictions) Act 1988”. 35