



COVERSHEET

Minister	Hon David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Review of Motor Vehicle Import Prohibition Under the Customs Import Prohibition Order 2017	Date to be published	29 June 2021

List of documents that have been proactively released		
Date	Title	Author
12 May 2021	Review of Motor Vehicle Import Prohibition Under the Customs Import Prohibition Order 2017	Office of the Minister of Commerce and Consumer Affairs
12 May 2021	DEV-21-MIN-0096 Minute	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of legal professional privilege.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

REVIEW OF MOTOR VEHICLE IMPORT PROHIBITION UNDER THE CUSTOMS IMPORT PROHIBITION ORDER 2017

Proposal

- 1 This paper seeks Cabinet's agreement to continue on an indefinite basis, an existing prohibition under the Customs Import Prohibition Order 2017. Specifically, the prohibition on importation of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven. This prohibition is currently set to expire on 30 September 2021.

Executive Summary

- 2 There is an existing prohibition on the importation into New Zealand of motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven. The legislative mechanism for the prohibition is the Customs Import Prohibition Order 2017 (CIPO 2017).
- 3 CIPO 2017 is an Order in Council made under section 54 of the now repealed Customs and Excise Act 1996. CIPO 2017 came into force on 1 October 2017. It was due to automatically expire after three years on 30 September 2020, as required under section 55 of the Customs and Excise Act 1996. However, due to government priorities in dealing with the COVID-19 pandemic, that expiry date was extended through bespoke COVID-19 legislation by 12 months, until 30 September 2021.
- 4 To continue the existing prohibition after 30 September 2021, it is necessary to make a new Customs Import Prohibition Order (CIPO) under section 96 of the Customs and Excise Act 2018. Section 96 provides for the Minister of Customs to recommend that an Order in Council be made under that section if the Minister considers that the proposed prohibition is necessary in the public interest. Unlike its predecessor Act of 1996, the Customs and Excise Act 2018 does not specify any expiry period for an Order in Council made under section 96.
- 5 As the policy issue related to the prohibition falls under the Commerce and Consumer Affairs portfolio, I am now seeking Cabinet's agreement to continue the prohibition through a new CIPO from 1 October 2021 on an indefinite basis. A prohibition has in fact been in place since 1991 through a series of CIPOs made every three years.

- 6 In seeking Cabinet's agreement, I have considered the public interest argument and advice received from Crown Law in 2007 which provides support for continuing the existing prohibition.
- 7 I consider that without the prohibition there is a risk that consumers looking to purchase a motor vehicle could be misled about the true distance travelled by the vehicle, which is not in the public interest. Consumers who are not well-informed about the particular history or particular previous use of a vehicle in relation to distance travelled would likely lead to a less efficient market for used motor vehicles.
- 8 I have also considered whether a time limit should be imposed on a new CIPO. In my view, there is no reason for the next CIPO to expire in three years or after some other period of time, as has been the case since CIPO 1991. This is an inefficient use of Cabinet's time, while the public interest issue would remain ongoing. There is nothing preventing the need for a CIPO being reconsidered by Cabinet in the future should the circumstances change.

Background

- 9 Section 96 of the Customs and Excise Act 2018 provides that the Governor-General may, by Order in Council, on the recommendation of the Minister of Customs, prohibit the importation of any specified goods or any specified class of goods if the Minister considers that the proposed prohibition is necessary in the public interest.
- 10 The Customs and Excise Act 2018 is administered by the New Zealand Customs Service. I am seeking Cabinet's agreement on the proposal in this paper as policy on the proposal belongs under the Commerce and Consumer Affairs portfolio.

CIPO 2017

- 11 CIPO 2017 is the legislative mechanism for the existing import prohibition on motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven.
- 12 CIPO 2017 was made under section 54 of the Customs and Excise Act 1996. The 1996 Act was repealed on 1 October 2018 by the replacement Customs and Excise Act 2018, with the previous import prohibition power in section 54 now provided for in section 96 of the new Act.
- 13 Under section 55 of the Customs and Excise Act 1996, an Order in Council made under section 54 of the Act would automatically expire three years after the date on which it came into force. This meant that to continue the import prohibition on motor vehicles without an odometer or with an incorrect odometer reading under section 54, it was necessary for a new CIPO to be made every three years. The existing import prohibition in relation to such motor vehicles in CIPO 2017 has been in place since 1991.¹

1

- 14 Unlike the Customs and Excise Act 1996 (through section 55), the Customs and Excise Act 2018 does not limit the duration of a CIPO. This means that a new CIPO to continue the existing import prohibition in CIPO 2017 in relation to odometers could be made for an indefinite period of time.
- 15 CIPO 2017 came into force on 1 October 2017 and was due to expire on 30 September 2020. However, due to the interruption caused by the COVID-19 pandemic, the expiry date was extended by 12 months until 30 September 2021 through legislation enacted to address COVID-19.²


The case for continuing the existing import prohibition in relation to motor vehicles in CIPO 2017

Continuing the import prohibition is supported by a public interest argument

- 16 If motor vehicles without an odometer or with an odometer reading that does not record correctly the distance the vehicle has been driven are able to be imported into New Zealand, there is a risk that consumers looking to purchase a vehicle could be misled about the true distance travelled by the vehicle. Consumers who are not well-informed about the particular history or particular previous use of a vehicle in relation to distance travelled would likely lead to a less efficient market for used motor vehicles, which would not help to promote consumer welfare.
- 17 In that perspective, continuing with the existing import prohibition in relation to motor vehicles in CIPO 2017 through a new CIPO would be necessary in the public interest, in particular for the ongoing protection and welfare of New Zealand consumers.

Continuing the import prohibition through a CIPO is supported by legal advice

- 18 Whether or not it is necessary to continue with the import prohibition through a CIPO has been previously considered in Crown Law advice provided to the New Zealand Customs Service and the then Ministry of Economic Development in 2007.

- 19 Legal professional privilege
- 

- 20 Taking into account the public interest argument and Crown Law advice, I consider that the current 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 under CIPO 2017 should continue in a new CIPO from 1 October 2021.

The original CIPO was made under the Customs Act 1966. That Act preceded the Customs and Excise Act 1996.

²

COVID-19 Response (Further Management Measures) Legislation Act 2020.

- 21 Furthermore, I consider that the new CIPO should be made on an indefinite basis. There is currently no good reason for a CIPO to expire every three years or after some other period of time, as has been the case since CIPO 1991. This is an inefficient use of Cabinet's time, while the public interest issue would remain ongoing. There is also nothing preventing the need for a CIPO being reconsidered by Cabinet in the future should the circumstances change.

Financial Implications

- 22 There are no financial implications associated with the proposal in this paper.

Legislative Implications

- 23 The proposal in this paper will require making an Order in Council under section 96 of the Customs and Excise Act 2018, on an indefinite basis, to prohibit 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.
- 24 The Minister of Customs will be responsible for making the Order in Council under the Customs and Excise Act 2018.

Impact Analysis

Regulatory Impact Statement

- 25 The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposal relating to the prohibition of motor vehicles with tampered or missing odometer imports in this paper is exempt from the requirement to provide a Regulatory Impact Statement on the basis that it has no or minor impacts on businesses, individuals or not-for-profit entities.

Population Implications

- 26 There are no population implications from the proposal in this paper.

Human Rights

- 27 The proposal in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no gender or disability perspective implications from the proposal in this paper.

Consultation

- 28 Officials from Waka Kotahi NZ Transport Agency, and the Parliamentary Counsel Office were consulted on this paper, and support the recommendations. The New Zealand Customs Service, the Treasury and the Department of Prime Minister and Cabinet have been informed.

Communications

- 29 I do not intend to release any communications about this paper. I understand that previous CIPOs have been publicised by the New Zealand Customs Service in its business publication.

Proactive Release

- 30 The Ministry of Business, Innovation and Employment will proactively publish a copy of this paper on its website, subject to withholdings as appropriate under the Official Information Act 1982, within 30 business days.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Customs Import Prohibition Order 2017 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;
- 2 **note** that the Customs Import Prohibition Order 2017 expires on 30 September 2021;
- 3 **agree** 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;
- 4 **agree** 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;
- 5 **invite** 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 prohibition agreed above.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs