



United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 20th day of December 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 2 of the United Nations Act 1946, Her Excellency the Governor-General, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) for the purpose of giving effect to resolutions 1493 (2003) and 1552 (2004) of the Security Council of the United Nations adopted pursuant to the United Nations Charter on 28 July 2003 and on 27 July 2004 respectively, calling upon the Government of New Zealand and all other member States of the United Nations to apply in respect of the Democratic Republic of the Congo the measures set out, or referred to, in those resolutions,—

makes the following regulations.

Contents

| | | | |
|----|--|----|--|
| 1 | Title | 11 | Liability of owner, charterer, master, or pilot in command |
| 2 | Commencement | | |
| 3 | Interpretation | | |
| | <i>Exportation of arms</i> | | <i>Provision of assistance, advice, or training relating to military activities</i> |
| 4 | Exportation of arms to DRC prohibited | 12 | Provision to DRC of assistance, advice, or training relating to mili- tary activities prohibited |
| 5 | Customs and Excise Act 1996 to apply to prohibited exports | | <i>Minister's consent</i> |
| 6 | Detention of prohibited exports | 13 | Preconditions to consent |
| 7 | Prohibited exports not to be loaded onto ships or aircraft | | <i>Miscellaneous provisions</i> |
| 8 | Power to withhold clearance of ship or aircraft | 14 | Offences |
| | <i>Dealings with arms</i> | 15 | Attorney-General's consent and cer- tificate in certain cases |
| 9 | Transactions with persons in DRC in relation to arms prohibited | 16 | Customs and Excise Act 1996 not affected |
| | <i>Carriage of arms</i> | | |
| 10 | Carriage of arms to DRC prohibited | | |

Regulations

1 Title

These regulations are the United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004.

2 Commencement

These regulations come into force on 14 January 2005.

3 Interpretation

In these regulations, unless the context otherwise requires,—
arms includes—

- (a) related materiel of all types (for example, weapons, ammunition, military vehicles and equipment, or paramilitary equipment); and
- (b) spare parts for any arms, or for any goods specified in paragraph (a)

Customs or the **Customs** and **Customs officer** have the same meaning as in section 2(1) of the Customs and Excise Act 1996

DRC means the Democratic Republic of the Congo

Minister means the Minister of Foreign Affairs and Trade

New Zealand includes Tokelau

New Zealand aircraft means an aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand

resolution means resolution 1493 (2003) of the Security Council of the United Nations, as renewed until 31 July 2005 by paragraph 2 of resolution 1552 (2004) of that Council.

Exportation of arms

4 Exportation of arms to DRC prohibited

- (1) No person may directly or indirectly export arms from New Zealand to the DRC.
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister has consented to that exportation of those goods.

Compare: SR 2001/26 r 4

5 Customs and Excise Act 1996 to apply to prohibited exports

All provisions of the Customs and Excise Act 1996 with respect to prohibited exports (except section 209) apply with respect to goods whose exportation is prohibited by regulation 4 in all respects as if the exportation of the goods were prohibited under section 56 of that Act.

Compare: SR 2001/26 r 5

6 Detention of prohibited exports

A Customs officer may detain any goods he or she suspects on reasonable grounds to be goods whose exportation is prohibited by regulation 4.

Compare: SR 2001/26 r 6

7 Prohibited exports not to be loaded onto ships or aircraft

The master of a ship or the pilot in command of an aircraft must not permit to be laden in the ship or aircraft any goods whose exportation is prohibited by regulation 4, knowing that

the goods are intended to be exported in contravention of that regulation.

Compare: SR 2001/26 r 7

8 Power to withhold clearance of ship or aircraft

The Customs may withhold the clearance of any ship or aircraft so long as there are on board the ship or aircraft any goods any Customs officer knows to be goods whose exportation is prohibited by regulation 4.

Compare: SR 2001/26 r 8

Dealings with arms

9 Transactions with persons in DRC in relation to arms prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may enter into, or be concerned in, any sale, transfer, carriage, or delivery of, or other dealing with, any of the goods specified in regulation 4, knowing that those goods—
 - (a) are intended to be imported by a person within the DRC; or
 - (b) are to be supplied or delivered to, or to the order of, a person within the DRC.
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister has consented to that sale, transfer, carriage, or delivery of, or other dealing with, those goods.

Compare: SR 2001/26 r 9

Carriage of arms

10 Carriage of arms to DRC prohibited

- (1) No ship or aircraft may be used for the carriage of any of the goods specified in regulation 4 if the carriage is, or forms part of, the carriage of those goods from any place to the DRC.
- (2) Subclause (1) does not apply if the Minister has consented to that carriage of goods under regulation 4(2) or 9(2).
- (3) In subclause (1), **ship or aircraft** means—
 - (a) any New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3); or

- (b) any other ship or aircraft that is, for the time being, chartered to any New Zealand citizen, or to any body incorporated or constituted under the law of New Zealand.
- (4) Subclause (1) does not limit any of regulations 4 to 9.
- Compare: SR 2001/26 r 10

11 Liability of owner, charterer, master, or pilot in command

- (1) If any ship or aircraft is used in contravention of regulation 10, each of the following persons is guilty of an offence against these regulations:
- (a) in the case of a New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3), the owner and the master of the ship or, as the case requires, the owner and the pilot in command of the aircraft:
 - (b) in the case of any other ship or aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a New Zealand citizen, the master or pilot in command.
- (2) However, it is a defence to any such offence if the person concerned proves that he or she did not know and had no reason to suppose—
- (a) that the goods carried on the ship or aircraft were or included arms; or
 - (b) that the carriage of the arms was, or formed part of, the carriage of goods from any place to the DRC.
- (3) In this regulation, **owner** and **charterer**, in relation to a ship, include any person acting as the agent of the owner or, as the case requires, the agent of the charterer.

Compare: SR 2001/26 r 11

Provision of assistance, advice, or training relating to military activities

12 Provision to DRC of assistance, advice, or training relating to military activities prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may provide to, or at the request of, any person within the DRC, any assistance, advice, or training related to military activities.

- (2) The assistance, advice, or training referred to in subclause (1) includes, without limitation, any technical assistance or training relating to the provision, manufacture, maintenance, or use of arms.
- (3) Subclause (1) does not apply if the Minister has consented to the provision of the assistance, advice, or training.

Compare: SR 2001/26 r 12

Minister's consent

13 Preconditions to consent

Before consenting to an activity under regulation 4(2), 9(2), or 12(3), the Minister must be satisfied that the activity—

- (a) is not inconsistent with the measures set out in paragraph 20 of the resolution; or
- (b) is, under paragraph 21 of the resolution, an activity to which those measures do not apply.

Miscellaneous provisions

14 Offences

Every person commits an offence against these regulations, and is liable accordingly under section 3 of the United Nations Act 1946, who acts in contravention of or fails to comply in any respect with any of the provisions of these regulations.

Compare: SR 2001/26 r18

15 Attorney-General's consent and certificate in certain cases

If an offence against these regulations is alleged to have been committed outside New Zealand, a prosecution for the offence may not be commenced without—

- (a) the Attorney-General's consent; and
- (b) the Attorney-General's certificate that it is expedient that the proceedings be commenced.

Compare: SR 2001/26 r 19

16 Customs and Excise Act 1996 not affected

These regulations do not affect the operation of the Customs and Excise Act 1996.

Compare: SR 2001/26 r 20

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 14 January 2005, give effect to resolutions 1493 (2003) and 1552 (2004) of the Security Council of the United Nations adopted on 28 July 2003 and on 27 July 2004 respectively, which call for the imposition of sanctions in respect of the Democratic Republic of the Congo (DRC).

These regulations prohibit—

- the exportation of arms and related materiel from New Zealand to the DRC; and
- the carriage of arms and related materiel on any New Zealand ship, or New Zealand aircraft, if the carriage is, or forms part of, the carriage of arms and related materiel to the DRC; and
- a person in New Zealand, or a New Zealand citizen outside New Zealand,—
 - from entering into, or being concerned in, any sale, transfer, carriage, or delivery of, or other dealing with arms and related materiel if he or she knows that they are destined for the DRC; and
 - from providing to, or at the request of, any person within the DRC, any assistance, advice, or training related to military activities.

The prohibitions do not apply to an activity if the Minister of Foreign Affairs and Trade, in accordance with *regulation 13*, consents to that activity.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 23 December 2004.

These regulations are administered in the Ministry of Foreign Affairs and Trade.
