

# APPENDIX 3

## COMPLETE LIST OF QUESTIONS

### A fresh approach to the legislation

- Q 1 Are there provisions in the current legislation that you think are ambiguous or overly complex? If yes, please provide specific examples.
- Q 2 What is your view on principles-based legislation, where the detail is in delegated legislation (Regulations, Orders in Council or Customs Rules)? Please give your reasons.
- Q 3 What would be the impact on you or your business as a result of moving administrative detail from the Act to delegated legislation (Regulations, Orders in Council or Customs Rules)? If you think the impacts would be negative, how could Customs manage those negative impacts?
- Q 4 Should Customs prescribe consultation requirements for delegated legislation (Regulations, Orders in Council or Customs Rules) in the new Act? If so, what consultation requirements would you expect there to be?
- Q 5 What publication requirements would you expect there to be for delegated legislation (Regulations, Orders in Council or Customs Rules)?
- Q 6 Should a new Act include a purpose statement?
- Q 7 Should a new Act include a set of principles?

### Information

#### Customs' information framework and goals

- Q 8 What are your views on Customs' principles for how we collect, use, store, share and dispose of information? Is anything missing? Should anything be added?
- Q 9 What are your views on our goal for our information framework?
- Q 10 What are your views on how we should ensure that our information framework aligns with broader government frameworks and initiatives for managing and sharing information?

#### Information sharing

- Q 11 What are your views on how our legislative framework for information works now? Do you see any tensions or uncertainty in how we deal with information in general, or, more specifically, with the information that you provide to us?

- Q 12 What are your views on how we could improve our legislation or our administrative processes to achieve our goal for information sharing?
- Q 13 Should Customs allow specified government agencies to directly access our information for the purposes of law enforcement, national security, and border protection? Are our principles for how we collect, use, store, share and dispose of information robust enough to address the risks associated with direct access? Are there other protections we should consider for direct access specifically?
- Q 14 Should Customs share information with government agencies for broader government purposes beyond border protection? Please give your reasons.
- Q 15 Should Customs share information about goods internationally and with a broader range of overseas agencies? Please give your reasons.
- Q 16 Should our Act provide an explicit process for Customs to share information with non-government bodies? Please give your reasons.
- Q 17 How should Customs protect non-personal, commercially sensitive information? Should protection be through our legislative framework or through other means?
- Q 18 What concerns do you have about allowing more sharing of the information that Customs holds? How could those issues be managed?
- Q 19 What benefits do you see in greater information sharing? In particular, do you see any opportunities for you or your business or organisation?

### **Receiving and accessing information**

#### *Timeframes for providing information*

- Q 20 Do you agree that the current process of setting timeframes by Regulation is fit for purpose and flexible enough to accommodate future developments? Please give your reasons. What other processes could we consider, and why?
- Q 21 Are all the indicated options for changes to timeframes practical? (Please see the column "Indicative options" in the table on page 49).
- Q 22 Are there other timeframes that we have not considered that you think need to change?
- Q 23 How would changes to timeframes for providing information affect you or your business?
- Q 24 Would your compliance costs be higher or lower if timeframes were changed? If so, what would your costs be, and how significant would the increase or reduction be for you?

*Protections for travel records*

- Q 25 What protections do you think should be required for Passenger Name Record information?
- Q 26 What are your views on our preferred option to remove from the Customs and Excise Act the 28-day window for accessing Passenger Name Record information?
- Q 27 How would you be affected if the 28-day window were removed or changed?
- Q 28 Do you think the requirement to obtain a District Court warrant would still be a necessary protection under the new “push” system described above? In what situations, if any, should a warrant be required? Are there other measures Customs should be considering to protect Passenger Name Record information?

## Technology and digital goods

### **Biometric information**

- Q 29 Do you agree with Customs’ proposal that our legislation should explicitly recognise that Customs needs to access, collect, use, and share biometric information to carry out our functions? Please give your reasons.
- Q 30 If you do agree with that proposal, do you have a view on how long biometric information should be stored so that it can be used and shared for law enforcement purposes? Please give your reasons.
- Q 31 Do you think Customs’ access to, and collection, use, and sharing of biometric information requires additional protections above those in place for other types of personal information? If so, what further protections do you think there should be?

### **Virtual and digital goods**

- Q 32 Would you be affected by legislative change to Customs’ powers in relation to digital files? If so, how?
- Q 33 What do you think is the best option to address the gaps that have been identified? What are your reasons?
- Q 34 Are there other issues around the cross-border transfer of digital files (other than revenue issues) that are not considered in this section and that you believe should be considered?

### **Business records**

- Q 35 How would maintaining the status quo (that is, requiring business records to be kept in New Zealand) affect you or your business? If possible, please provide examples that show the scale of any obstacles or issues that this would present for you or your business.

- Q 36 If you were to store your business records offshore, what benefits would this have for your business?
- Q 37 Which option do you prefer? Please give your reasons.
- Q 38 Are there other parts of the Customs and Excise Act that you think need to be updated because they do not support the use of digital technology or other technological changes in your operating environment?

## Revenue

### **Excise and excise-equivalent duty**

In your responses to the questions below, please focus in particular on the financial impact for your business or industry of potential changes to the excise system.

#### *System design*

- Q 39 What do you see as the major issues with the collection and administration of excise generally (on alcohol, transport fuels and tobacco)? What impact, if any, have these had on your industry or business?
- Q 40 Are there specific issues in excise collection processes that affect small and medium-scale businesses more than others? If so, what are these?
- Q 41 Should other alcohol manufacturers be able to be granted permanent licences for offsite storage of product? Should location of the off-site storage matter? What impact if any, does the location of off-site storage have on your business?
- Q 42 Are applications (permits) to move goods between Customs Controlled Areas necessary? Do you have a view on what would be a less administratively burdensome process?
- Q 43 Should the approach to defining a Licensed Manufacturing Area or off-site storage be standardised? Could Land Information New Zealand boundary data be used? Could local council resource consent approval be used?
- Q 44 How can the excise audit system be designed to reduce risk and cost? Should third-party audits be compulsory under certain conditions? What parts of your business are currently subject to third-party audits?

#### *Definitions*

- Q 45 Do the definitions of “manufacture” need reviewing to better reflect changing industry practices? How detailed or broad should they be? Should the current definition of manufacture of tobacco be extended to include the curing of tobacco leaf? Please give your reasons.

*Payment*

- Q 46 Should the excise return and payment deferral periods be reduced to one, two and six months? What impact would this have on your business?
- Q 47 Would it be useful to have the excise return timing aligned with the filer's GST filing periods? What impact would this have on your business?
- Q 48 Should Customs have the ability to shorten the return and payment period for excise payers who fall behind in their filing and/or payment?

*Refunds, remissions and drawback*

- Q 49 What changes to processes (applications and physical evidence), if any, are needed for remissions and refunds for excise duty? If changes were made to the current processes, what impact would this have on your business?
- Q 50 Should goods recalled from sale by the manufacturer and exported for destruction generate drawback? Please give your reasons.

*General*

- Q 51 Is there anything else we could consider in relation to how Customs administers excise on alcohol, transport fuels and tobacco? In particular, are there amendments that could be made to reduce costs and simplify the system for excise payers without involving fundamental change?

**Refunds, remissions and drawbacks**

- Q 52 Have you experienced issues with refunds, remissions or drawbacks of duty and, if so, what were they?
- Q 53 What might be the impact on your business or industry of expanding the refund provision for imports? Can you estimate how big this impact would be?
- Q 54 What is your view on extending the current drawback provisions for duty-paid goods sold to incoming passengers or to departing passengers for collection on return to New Zealand? What effect would this have on you or your business?

**GST at the border**

*Managing GST between Customs and Inland Revenue*

- Q 55 Is accounting for GST separately to Customs and Inland Revenue a significant issue for your business or industry? If so, in what way?
- Q 56 Are there areas of GST collection that you think require better legislative provisions in the Act?
- Q 57 Are there areas of GST collection where you think Customs and Inland Revenue need to work together better to provide benefits for businesses?

*Temporary imports*

Q 58 Have you experienced issues working with Customs around temporary imports or in providing a security for temporary imported items? If so, how?

Q 59 In what ways do you think Customs could make the temporary importing of goods easier for businesses?

**Valuation of imported goods**

Q 60 What would be the impact of changing the valuation method for the Customs value of imported goods?

Q 61 What are the financial costs to you of having to do two calculations using different values to determine tariff duty and GST?

Q 62 Do you think the legislation should define the sale for export to be used for customs valuation purposes? Please give your reasons.

Q 63 If you think the legislation should define the sale for export, what is your preferred definition? Please give your reasons.

Q 64 What would be the impact on you or your business if sale for export were defined? Please give specific or identifiable costs and benefits if possible, including if sale for export were to be defined as the last sale.

Q 65 Do you currently encounter difficulties with interpreting the “related party” provisions in clause 2 of Schedule 2?

Q 66 Would clearer wording in clause 2 of Schedule 2 help you or your business? Please give your reasons.

**Comptroller’s discretion in collecting revenue**

Q 67 Do you think managerial discretion should be explicitly added to the Customs and Excise Act, similar to that provided for in the Tax Administration Act 1994? Please give your reasons.

**Review of duty assessments**

Q 68 Does the 20 day working period set out in the Act allow enough time to prepare and lodge an appeal?

Q 69 Have you ever decided not to appeal a Customs assessment because you thought the Customs Appeal Authority process was too difficult or complex? If yes please give details of why you came to that conclusion.

Q 70 Do you have any views on whether and how the review of duty process could be improved? Please specify what you think should be different and why.

- Q 71 Should due duty be required to be paid before a dispute is settled? Please give your reasons.
- Q 72 What are your views on the application of additional duties while an assessment is under dispute?

## Powers

### Arrival and departure powers for marine craft

- Q 73 Do you think the arrival exemptions discussed above for marine craft should be removed? Please give your reasons.
- Q 74 Do you think the Act should make it explicit that Customs can stop and direct departing marine craft? Please give your reasons.
- Q 75 Can you think of other ways in which Customs could manage the risks posed by marine craft within New Zealand waters?
- Q 76 Would Customs' preferred solutions proposed above result in additional compliance costs for you or your business?

### Powers available in the contiguous zone

- Q 77 Do you think there should be greater transparency in the Act about the range of powers Customs can exercise in the contiguous zone? Please give your reasons.

### Other agencies' staff as authorised Customs officers

- Q 78 Do you think new legislation should recognise Police officers and Defence Force officers as Customs officers in certain emergency or high-risk situations? Please give your reasons.
- Q 79 Do you think Police officers and Defence Force officers should be armed (if authorised to be armed in their ordinary work) when acting as Customs officers?
- Q 80 Can you think of other improvements that would allow government to operate more efficiently in responding to high-risk and emergency situations, particularly in the contiguous zone?

### Performing Customs' functions outside New Zealand

- Q 81 Do you think that Customs officers should be authorised to perform certain functions outside New Zealand? Please give your reasons.
- Q 82 What types of functions do you think Customs should be able to perform overseas? What functions should we not be able to perform overseas?

- Q 83 Do you think Customs should play a greater role overseas to enable us to best facilitate the movement of people, goods, and craft into New Zealand? Please give your reasons.

#### **Controlled deliveries**

- Q 84 Do you think Customs should be allowed to carry out controlled deliveries of prohibited goods? Please give your reasons.
- Q 85 If you support the option of expanding the range of goods that can be subject to a controlled delivery, then what prohibited goods do you think should be included? What prohibited goods should not be included?

#### **Baggage accompanying passengers**

- Q 86 Which of the two options do you support, and why?
- Q 87 Do you support Customs officers having discretion to determine what constitutes accompanying baggage for the purposes of a baggage search?
- Q 88 Do you understand what baggage you are required to make available for examination by Customs officers when travelling? If not, what would make this clearer for you?

#### **Examining goods in the pockets of a person's clothing**

- Q 89 Which of the three options do you support and why?
- Q 90 Do you understand your current obligations and rights in relation to items carried across the border in the pockets of your clothing? If not, what could make this clearer?
- Q 91 Would you be opposed to presenting the contents of your pockets for examination by a Customs officer who is already searching your baggage? Please give your reasons.
- Q 92 If you support the third option – a power to require passengers to empty their pockets if a particular threshold is met – what do you think the applicable threshold should be?

#### **Electronic devices**

- Q 93 Do you think the new Act should explicitly include electronic devices in the scope of Customs' routine baggage search powers at the border? Please give your reasons.
- Q 94 Do you think there should be a threshold that must be met before Customs can examine an electronic device? If yes, what should that threshold be?
- Q 95 Do you think Customs should have the power to require travellers to provide access to their electronic devices? Please give your reasons.
- Q 96 Can you think of other ways for Customs to respond when new technology provides new ways of concealing offending at the border?

## Sanctions

### Low penalty levels and poor relativity

- Q 97 Do you have any comments on relativities between penalties in the current Customs sanctions system and the effect of available sanctions on compliance levels?
- Q 98 Do you have any concerns with the current penalty levels in the Act?
- Q 99 What do you think we need to consider as we review the financial and imprisonment penalties in the Act?

### Petty offences

- Q 100 Do you have any concerns about the current petty offences regime? If so, what are these?
- Q 101 Do you think the petty offences regime should be replaced by an infringement notice scheme? Please give your reasons.
- Q 102 What do you think we should consider if we were to replace the petty offences regime with an infringement notice scheme?
- Q 103 What minor offences do you think would be suitable or not suitable for an infringement notice scheme?

### Administrative penalties

- Q 104 Do you think the current administrative penalty regime supports compliance by individuals and businesses? Please give your reasons.
- Q 105 What are your views on the current minimum administrative penalty amount of \$200? Is it about right? Please give your reasons.
- Q 106 What are your views on the current maximum administrative penalty amount of \$50,000? Is it about right? Please give your reasons.
- Q 107 Should administrative penalties be imposed for exports? What issues should Customs consider if this happens?
- Q 108 Should Customs be able to recover its costs of processing and approving adjustments or cancellations of import and export entries? Please give your reasons.
- Q 109 Do you have any other comments on any aspects of the current administrative penalty regime?

### **Additional duty**

- Q 110 Should additional duty be extended to all payments to Customs, and to refunds and drawbacks paid to businesses by Customs and later found to be paid in error? Please give your reasons.
- Q 111 Do you have any other comments on any aspects of the current additional duty regime?

### **Customs Areas**

- Q 112 How is your business affected by the absence of clearly defined procedures and processes around designating and revoking Customs places?
- Q 113 What benefits could there be for you and your business if Customs' approach to designating and revoking Customs places were clarified?
- Q 114 Should the legislation better prescribe the purposes of Customs Controlled Areas? Please give your reasons.
- Q 115 Should the legislation continue to provide a separate provision for storage of exports under Customs control? Alternatively, is there value in aligning the export and import Regulations for goods subject to Customs control? Please give your reasons.
- Q 116 How is your business affected by the current arrangement for a 24-hour grace period before storage charges are imposed on goods in Customs Controlled Areas? Should the current arrangement be reviewed? Please give your reasons.
- Q 117 Do you have suggestions for ways to potentially increase the alignment of controlled areas between Customs and other border agencies?

### **Feedback on any other issues**

- Q 118 Are there any issues of concern to you that have not been identified in this paper? If yes, please set out each issue and explain how it affects you or your business.