



CUSTOMS AND EXCISE ACT 1996 REVIEW

Summary of key issues



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA

PROTECTING NEW ZEALAND'S BORDER

ABOUT THIS SUMMARY PAPER

This paper, prepared by the New Zealand Customs Service (Customs), focuses on key issues identified in our review of the Customs and Excise Act 1996 (the Act).

The full discussion paper contains the complete set of issues considered under this review and is available on our website at www.customs.govt.nz.

We need your feedback to help us develop firm proposals for the Government to consider. Options or opportunities discussed in this paper do not represent Government policy. No decisions have been made at this stage.

For each issue discussed, the relevant page numbers in the full discussion paper are noted so that you can easily reference the discussion paper for more information.

We want your input on:

- whether we have identified the right issues and proposals for change
- how significant these issues are for you
- impacts of potential change.

KEY DATES AND HAVING YOUR SAY

Make a submission by Friday 1 May 2015. You can:

- email your submission to: C&EReview@customs.govt.nz or
- post it to: PO Box 2218, Wellington 6140
- complete an online submission.

Attend a seminar: details can be found on our website at www.customs.govt.nz. If you have specific questions and cannot attend a seminar, please contact us by email: C&EReview@customs.govt.nz or phone: 0800 428 786.

INFORMATION SHARING

Why?

We want to ensure that our legislation supports trust and confidence in how we handle information along with maximising the value for New Zealand from the information we collect.

With changes in technology, business practices, and Government priorities and expectations we believe we need to change the status quo to better respond to our operating environment.

The Act currently does not:

- support new ways of sharing information between government agencies in order to protect New Zealand
- anticipate sharing information within government for broader government purposes
- provide explicit direction on when and how to share information outside of government.

What we are seeking feedback on

Our preference is to establish a transparent, coherent framework for Customs to share more information with more government and non-government agencies.

We are open to what the framework would look like in practice, but want to ensure that it:

- allows for direct access to Customs' information for specified agencies for law enforcement, national security and border protection purposes
- provides a process to follow for sharing information for broader government purposes
- provides a process to follow for sharing information internationally
- provides a process to follow for sharing information outside of government
- respects our wider international obligations.

We recognise that this option requires careful thought about how we maintain the trust and confidence of the public and business when personal and commercially sensitive information is shared, while maximising value for New Zealand from our information.

We are interested in feedback about:

- what our framework for information should seek to achieve
- how we could improve our legislation or our administrative processes, to achieve a transparent, coherent framework.

INFORMATION

PROTECTING COMMERCIALLY SENSITIVE INFORMATION

Why?

There is an expectation that appropriate protections will apply to the use of information.

Personal information is protected through the Privacy Act. However, there is no guiding authority for how non-personal, commercially sensitive information should be protected by government.

The Customs and Excise Act is silent on what commercially sensitive information is, and how to treat that information. However, material requested under the Official Information Act may be withheld if its release would unreasonably prejudice the commercial position of the supplier or subject of the information and there is no overriding public interest in its release.

What we are seeking feedback on

We could include a process for protecting non-personal commercial information in our legislation. This may reduce uncertainty about the management of commercial information that is held by Customs, and contribute to building trust and confidence in how we deal with this information.

We are seeking feedback about how Customs should protect non-personal commercially sensitive information and whether we should consider legislative or other means to do this.

INFORMATION

TIMEFRAMES FOR PROVIDING INFORMATION

Why?

Current timeframes for providing information to Customs are prescribed by regulation. We would like to test whether:

- this process is fit for purpose and flexible enough to stand the test of time, or
- whether there are other options for setting timeframes that we should consider.

We have identified that some of our current timeframes were originally designed for a primarily paper-based system. These timeframes need to be reviewed in light of advances in technology and changes in business practice.

We are not proposing changes to the types of information that Customs accesses.

What we are seeking feedback on

The full discussion paper contains a series of proposed changes to timeframes for providing information for marine craft and goods entries. We propose changes to timeframes (information is either provided to us earlier or later, depending on the situation) so that Customs can:

- ensure risks are appropriately managed. Receiving some information sooner will allow us to target our risk assessment more effectively and ensure threats are managed. In most cases, this reflects current practice as the information is usually available in advance of the current prescribed timeframes
- be more responsive to business practices, including better reflecting the speed of modern supply chains. This needs to be balanced with allowing adequate time for Customs to perform our risk assessment and control at the border.

We are interested in feedback on the practicality of changing the timeframes and the size of any additional compliance costs or benefits.

TECHNOLOGY

BIOMETRIC INFORMATION

Why?

Customs' current authority to use and collect biometric information (currently biometric photographs incorporating facial recognition technology) derives from:

- the Customs and Excise Act
- several other pieces of legislation, including the Immigration Act 2009 for traveller processing purposes
- arrangements with other government agencies that Customs works on behalf of at the border.

We consider it important to be upfront and open about our use of biometric information as a particular class of personal information.

Customs does not propose to duplicate any biometric information provisions in the Immigration Act 2009 in its own legislation, extend the types of biometric information collected, or establish any new databases to store this information.

Customs could further contribute to border security and law enforcement by having the authority to use biometric information beyond passenger processing purposes. For example, there is potential for unidentified law enforcement and security targets to be identified at the border in real-time, using biometric information derived from photographs of people of interest.

What we are seeking feedback on

We propose to clarify Customs' authority to collect, access, share, and use biometric information for Customs, law enforcement, and national security purposes in the Act.

We are mindful of the sensitive nature of biometric information. We are interested in your views as to whether Customs' access to, collection, use, and sharing of biometric information requires additional protections above those in place for other types of personal information.

We are also considering how long biometric information should be stored so that it can be used and shared for the purposes of law enforcement.

TECHNOLOGY

BUSINESS RECORDS

Why?

The Act currently requires traders to keep their business records in New Zealand.

This requirement exists to ensure that Customs has access to the records needed to perform audits to meet our revenue assurance obligations. However, it is becoming increasingly impractical for businesses wanting to take advantage of the storage capacity that cloud-based computing offers. Cloud-based computing can be located offshore.

Inland Revenue allows tax records to be kept in New Zealand or outside New Zealand, including in the cloud. Taxpayers can apply to the Commissioner of Inland Revenue to store records offshore.

What we are seeking feedback on

We want to allow businesses to store their records offshore with the prior approval of Customs. This would allow flexibility for trusted businesses to take advantage of the opportunities offered by evolving technology.

This option would align the Act with the Tax Administration Act and allow Customs and Inland Revenue to jointly provide a better customer experience for businesses trading in New Zealand.

We want to hear feedback about how this proposed change could affect you or your business.

REVENUE

EXCISE AND EXCISE-EQUIVALENT DUTY

Why?

While Customs considers the excise system to be fundamentally sound, from discussions to date we are aware that there may be opportunities to improve the operation of the excise system and reduce costs to business while preserving Crown revenue.

What we are seeking feedback on

We have identified seven areas where the excise system could be improved. We are seeking feedback on these areas, including any expected financial impacts if changes are made.

Deferred payment: whether to reduce the excise return and payment deferral periods for business to one, two and six months and align them with GST periods. Also, whether Customs should have the ability to shorten the return and payment period where excise filers fall behind.

Off site storage: whether other alcohol manufacturers, aside from the wine industry, should be able to be granted permanent Off-Site Storage.

Definition of manufacture: reduce ambiguity about what types of activities constitute 'manufacture' and therefore require a licenced area and excise to be paid.

Audit: designing audits to reduce risk and cost, and whether third party audits should be compulsory in certain circumstances.

Refunds, remissions and drawbacks: we wish to better understand what evidence and processes are needed for remission and refund applications, without increasing the Crown's revenue risk.

Permits between Customs Controlled Areas (CCAs): whether seeking approval from Customs, via permit, to move goods between CCAs is an unnecessary burden on businesses.

Defining licensed manufacturing areas: a standardised definition may help address national inconsistencies and better accommodate changes in business growth or times of peak production.

REVENUE

GST AT THE BORDER

Why?

Managing GST between Customs and Inland Revenue

People who import goods and are registered for GST must pay GST to Customs and subsequently claim a refund or input tax credit from Inland Revenue.

Some businesses have indicated to Customs that the reporting times and payment dates for each agency may not align, which can create cash flow issues for them. Start-ups or small businesses may be particularly affected as they may need to import costly capital equipment, and GST could be a significant liability.

Temporarily imported items

Temporary goods are non-consumable goods entering New Zealand for a period of less than 12 months for later export. Temporary imports may require a bond to be paid. Any bond/security paid is later refunded on evidence of export of the goods.

Businesses that temporarily import items and do not have access to Customs' Deferred Payment Scheme can have difficulty in providing a bond or cash security for the GST and duty on the item, or find the process resource intensive.

What we are seeking feedback on

Managing GST between Customs and Inland Revenue

We know that approximately 85% of commercial importers are on Customs' Deferred Payment Scheme. We believe that these importers are less likely to experience cash flow issues with the GST reporting and payment dates of Customs and Inland Revenue.

We do not have a clear picture of the compliance burden and costs for businesses associated with managing GST across both Customs and Inland Revenue. We are seeking information on the extent and nature of this issue.

Temporarily imported items

We are interested in seeking the views of individuals or businesses that have had to provide a security or bond to Customs when temporarily importing an item. In particular, we are seeking feedback on any problems that you have faced.

REVENUE

VALUATION OF IMPORTED GOODS

Why?

We have considered whether:

- the customs value of an imported good should include or exclude the costs of international freight and insurance - undertaking two different calculations to determine tariff duty and GST can be confusing and create extra compliance costs for importers.

We are considering whether:

- the Act should define “sale for export” to clarify which sale in a supply chain determines the customs value of an imported good, because there may be a degree of unfairness and complexity in the current situation
- the provisions about using the transaction value method to value goods bought and sold between “related parties” could be made clearer.

What we are seeking feedback on

We consider that the costs of international freight and insurance should continue to be excluded when determining the customs value and therefore determining tariff duty. This approach is consistent with New Zealand’s commitments as a World Trade Organization member. If New Zealand was to include the costs of insurance and freight in determining tariff duty, importers would pay more tariff duty (because tariff duty would be levied on a higher base). We are interested in receiving feedback about the compliance costs and difficulties associated with this issue.

We think it is worth considering whether to define in the legislation which sale in a supply chain should be the “sale for export” used to determine the value of an imported good. We are interested in your views on:

- whether Customs should define “sale for export” in the legislation
- what a possible definition of “sale for export” could look like
- what the impact of defining “sale for export” would be on you or your business.

We propose clarifying the provisions about “related parties” by better aligning the provisions with the World Trade Organization’s Customs Valuation Agreement.

POWERS

ELECTRONIC DEVICES

Why?

The Customs and Excise Act predates today's extensive use of electronic devices and we want to make it absolutely clear that the content of those devices is included in our examination powers.

In addition, when Customs is examining electronic devices, the owner is not legally obliged to provide us with the password, or other form of access. If access is not provided, evidence of offending often remains undetected and it undermines the purpose for examining electronic devices.

EMPTYING POCKETS

Why?

Currently, a person can be asked by a Customs officer to empty their pockets of any items, but they are not required by law to do so. We think there is a risk that people crossing the border could bring illegal or dangerous goods into New Zealand (or take them out of New Zealand) in the pockets of their clothing.

What we are seeking feedback on

- We want to make Customs' power to examine electronic devices clearer in the Act. This would mean that there is increased transparency when Customs examines the content of electronic devices as part of a routine baggage search at the border.
- We are also considering whether it is more appropriate to perform more intensive examinations of electronic devices (such as forensic examination and cloning of the device) only after a threshold is met. A threshold could be that a Customs officer must have reasonable cause to suspect the device carries prohibited material or evidence of particular offending before performing these more intensive examinations.
- We also want to create a new obligation on passengers to provide Customs with access to their electronic device when requested to do so.
- We are considering whether to provide a new power for Customs to require that a person empty their pockets at the border, and an obligation on passengers to do so. This would align with comparable countries, such as Australia and Canada.

SANCTIONS

PENALTY LEVELS AND RELATIVITY

Why?

Offence provisions and related penalties in the Act have not been comprehensively reviewed since 1996. This has led to an effective decrease in penalties. Several fines are now quite low by 2015 standards.

Multiple amendments to the Act over the years have led to a lack of relativity between similar provisions within the Act, and inconsistencies between different types of sanctions.

What we are seeking feedback on

We want to review the penalties in the Act.

Recommendations for change could affect a wide range of people and businesses. Throughout the process of reviewing penalties we will talk with interested parties, and work with the Ministry of Justice and other government agencies.

PETTY OFFENCES

Why?

While the petty offences regime is a useful compliance tool for minor offending, the current regime is resource intensive, and lacks transparency and key safeguards.

What we are seeking feedback on

We want to:

- replace the petty offences regime with an infringement notice scheme
- provide for higher penalties to be prescribed for second and subsequent offending for the same offence.

We are interested in your view on which minor offences could be under an infringement notice scheme, and the amount of fines.

SANCTIONS

ADMINISTRATIVE PENALTIES

Why?

Concern about the amounts that can be imposed

Some industry groups have told Customs that:

- the minimum administrative penalty of \$200 may not be an effective deterrent
- the maximum administrative penalty of \$50,000 is too high.

Administrative penalties do not apply to all export goods, but do apply to all imports

This is due to a drafting error. Prior to 2012, administrative penalties included all import and export entries.

Customs spends time adjusting or cancelling information submitted due to errors made by a person or business

There is currently no charge to a person when Customs has to approve an adjustment or cancellation to an entry resulting from the person's error.

ADDITIONAL DUTY

Currently, additional duty cannot be imposed on all overdue payments to Customs. This creates an anomaly in the Act.

Also, we are aware that Inland Revenue operates interest provisions for tax refunds that are paid out by Inland Revenue but subsequently found to be in error, i.e. the taxpayer must pay back the refund plus interest.

What we are seeking feedback on

- We are interested in your views on the minimum and maximum administrative penalty amounts. How do the current penalty amounts impact you or your business?
- Are there are other matters associated with administrative penalties that we should consider? For example, some countries reduce or cancel penalties if the business has a good compliance record.
- Should administrative penalties be reinstated for exports?
- We have considered introducing a small processing fee to recover costs to Customs. Do you agree Customs should recover its costs of processing and approving adjustments/cancellations of import and export entries?
- We want to extend additional duty to:
 - all payments to Customs and to refunds
 - drawbacks paid by Customs and later found to be in error.

We are interested in your views on the potential impact of these changes on you or your business.

CUSTOMS AREAS

DESIGNATION OF CUSTOMS PLACES

Why?

The Act provides limited guidance about the procedures and processes for designating or revoking a place as a “Customs place”.

The absence of a clear framework creates uncertainty and is misaligned with other border agencies.

PURPOSES

Why?

The Act prescribes specific activities to be undertaken in a Customs Controlled Area. This specificity has created ambiguity for some businesses, particularly those wanting to use warehouses for a range of activities.

Currently, only one company operates a Customs-Approved Area for storing exports with all other exporters using the same facilities as those used for imports. There is currently a specific provision in the Act for exports, but this does not reflect the fact that many exporters are also importers.

What we are seeking feedback on

We are interested in hearing how the absence of a clear process for designating or revoking a Customs place affects you.

What benefits would there be for you or your business if the process for designating/revoking a Customs place was clarified?

What we are seeking feedback on

We are interested in your views on whether you see value in describing the purposes of Customs Controlled Areas.

We are also interested in your views on whether the legislation should provide a separate provision for storage of exports under Customs control.

CUSTOMS AREAS

STORAGE CHARGES AND ALIGNMENT WITH OTHER AGENCIES

Why?

Storage charges

The Customs and Excise Regulations allow a 24-hour period of grace for importers to store their goods in a Customs Controlled Area without charge by operators or owners of the area. This is so that the goods are not subject to charges while they are waiting for Customs clearance or examination.

Customs believes that this principle still stands. However, we think that there could be a need to review the current arrangement for a 24-hour grace period given most goods arriving in New Zealand are now pre-cleared.

Possible alignment with other agencies

There are potential opportunities for alignment of security/processing areas across border agencies. Aligning areas across government agencies may reduce compliance costs for businesses by reducing overlapping requirements.

What we are seeking feedback on

- We are interested in your views about the current arrangement for a 24-hour grace period before storage charges are imposed. Does the current grace period affect you or your business? Should it be reviewed?
- We are interested in your views on whether there would be benefits in alignment between agencies, and what the benefits would be.

