

Cabinet Economic Growth and Infrastructure Committee

CUSTOMS AND EXCISE ACT 1996 – PROPOSAL FOR REVIEW

Proposal

- 1 This paper seeks the Cabinet Economic Growth and Infrastructure Committee's (EGI) approval for the New Zealand Customs Service (Customs) to undertake a review of the Customs and Excise Act 1996 (the Act).

Executive Summary

- 2 Customs has an opportunity to create an Act that provides flexibility to meet Government expectations for border interventions and facilitating business growth. Customs' ability to meet economic and security objectives is currently constrained by highly detailed legislative provisions and constant amendments to the Act.
- 3 The Act has not kept pace with digitalisation and globalisation of trade and travel, and changes in global business models and practices. It is not responsive to changes required as a result of increasing volumes of trade and travel, the impact of 'just in time' ordering on supply chains, and computing and data storage advances. It is also struggling to deal with changes in technology and information sharing needs.
- 4 This constantly changing border environment means that under the current Act's structure, the Government continually has to make legislative amendments, some of which are substantive. These ongoing amendments are required to provide statutory mandate for new methods of operating and new technology at the border, but also limit Customs' ability to effectively and efficiently carry out its role. This poses risks to New Zealand's security and economic prosperity.
- 5 Research completed by Customs identifies that while Customs' primary border management roles and functions are likely to remain broadly unchanged in the next ten to fifteen years, the policy settings and operating environment will be subject to ongoing change.
- 6 Customs' approach to a review would be to establish a more enabling, principles-based legislative framework that allows for current and future developments in the border sector. This framework would also improve efficiency by transferring many prescriptive operational provisions to secondary or tertiary legislation. Some technical provisions will be retained in primary legislation, such as tax, duties, penalties and offences, and the powers of Customs officers.
- 7 If a review of the Act is approved, Customs expects to immediately commence a policy development phase which will identify areas of substantive policy change, as well as identifying areas requiring structural revision. The review will involve close consultation with other border agencies and law enforcement agencies in New Zealand and where relevant, those based overseas. Proposals for reform will be

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put to Cabinet for its consideration in April/May 2014 including proposals for consultation.

Background

- 8 The border is an efficient and effective physical point for Government to intervene to regulate the import and export of certain commodities, verify certain standards and requirements and collect levies, fees and taxes. This assists the implementation of a number of policies that relate to eligibility for particular benefits and fulfilment of legal obligations.
- 9 Border management is critical to the prosperity and security of New Zealand. Customs must ensure that all passengers, craft and goods that arrive into New Zealand do not compromise our security, whether through the regulation of prohibited weapons, dangerous or hazardous substances, passenger security concerns or other border related security measures. The impact of terrorism events internationally has increased the importance of security worldwide, and is particularly critical in small countries such as New Zealand.
- 10 Customs is tasked with protecting and promoting New Zealand through world class border management, and expects to continue to be required to manage rising trade and travel volumes in the coming years. The forecast volumes reflect: rising imports for the Christchurch rebuild as well as continued expansions in import and export trade; rising international travel by New Zealanders; rising traveller numbers from Australia and China, our strongest markets; and rising travel from India, South East Asia, and South Africa.
- 11 Customs is actively involved in the Export Markets work stream of the Business Growth Agenda, which has a goal of increasing exports from 30 to 40 percent of GDP by 2025. This work stream has identified a range of actions within Customs' core competencies. These actions include making it easier to trade from New Zealand, including through the Trade Single Window component of the Joint Border Management System (JBMS), more efficient coordination of border services, Customs security arrangements with other countries and SmartGate. These will be important components in meeting the Business Growth Agenda's goal. The development of SmartGate and the JBMS provide opportunities to achieve better integration domestically and overseas, although this is dependent on an effective statutory framework. An enabling framework will be crucial to supporting the Business Growth Agenda's export goal.
- 12 Customs is proposing to undertake a review of the Act to ensure it provides the most effective platform to promote operational efficiency, support future requirements, and to facilitate and create economic value for New Zealand. The proposed review is intended to retain appropriate levels of parliamentary control (through primary legislation) combined with more appropriate use of regulations and rule making processes.
- 13 Some of the current challenges are due to the Act's increasing inability to cope with changes in global border management brought about by advances in technology, supply arrangements and business practices. Such constraints reduce Customs' ability to respond to Better Public Service outcomes such as providing a single point of data entry and increased digitisation of services, because the Act is not agile in its approach to operational procedures.

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- 14 Customs believes the Act may also be subject to specific legal challenges and possible associated Crown revenue loss where the legislation is ambiguous in its interpretation. Some of this ambiguity is a reflection of the large number of amendments that have taken place since 1996, and have added to the complexity of the Act.
- 15 Apart from the specific issues associated with its prescriptive nature, the Act itself was not designed to cover the range of roles and functions that Customs now carries out in the 17 years since the previous Act was passed. Some of these new roles are detailed in paragraph 25 below. For these reasons there is a need for a new Act to define appropriate roles for border management as well as to enable future developments more effectively.
- 16 Systems such as the JBMS and SmartGate have increased efficiency and cost-effectiveness in the long-run. However, to implement these systems, lengthy, substantive legislative amendment processes were required. Further amendments are still required although the JBMS is already operational. Customs believes these core business process requirements should be set out in regulations, where necessary, to provide improved flexibility.
- 17 New developments have occurred including those relating to the electronic transfer of files across borders; e-books, music, movies, and recently, 3D printing files. The Act does not currently have provisions appropriate to undertake border management of virtual goods, including digital files. If such provisions are to be introduced, then it is appropriate to include these in a rewrite of the Act.

Comment

Customs' Vision and Purpose

- 18 Customs must continue to evolve from being solely a regulator of the border and collector of revenue to being both a regulator and facilitator of New Zealand's economic interests, while fulfilling its regulatory and law enforcement responsibilities. Customs' role of border management, border protection and revenue collection is not expected to change significantly in the next ten to fifteen years. However, the way Customs operates is expected to develop further, particularly as new technologies are continually changing the environment in which it operates.
- 19 Customs' key challenge, and the focus of its strategy is to *make compliance easy to do and hard to avoid*. This involves both:
 - delivering a better service experience for customers (traders and travellers) who want, and try, to comply, including providing more easily accessible information and services and, where necessary, removing barriers to compliance or assisting them to comply; and
 - providing more targeted and cost-effective enforcement of non-compliance, by developing a better understanding of the changing dynamics in Customs' operating environment. This can also be achieved through better information, analysis and targeting based on improved partnerships with key stakeholders, enabled by more sophisticated technology and analytics.
- 20 Providing improved services as a means of managing increased volumes requires the use of new technology and consequential changes in operating procedures.

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Prescriptive legislation acts to delay implementation of technology and new practices, and increases costs to Customs' operations and processes.

- 21 Improved targeting in the areas of organised crime and drug trafficking requires better information access, management and analysis to achieve effective risk assessment, combined with appropriate search and surveillance powers and appropriate penalties. Such powers need to be more explicitly defined in legislation including how they relate to activities and powers of other agencies. While administrative penalties were amended in 2012, the financial and custodial penalties for criminal offences have, over time, fallen to levels that lack relativity with both the revised administrative penalties and criminal offences in other legislation.

Research phase and problem definition

- 22 A research phase was undertaken by Customs into the current and future challenges facing Customs' border management role. This research confirms that the international and national border environment has changed significantly since the Act was introduced in 1996.
- 23 The research concluded that future-focused trends and drivers are already occurring or are being prepared for by Customs at an operational level. These trends and drivers will continue to evolve, and include diversity and complexity of risks, a changing security environment, increasing passenger and goods volumes, the need for more efficient border processes and changing supply chain practices.
- 24 The research identified that positioning for the future is constrained by the current Act's restrictive approach, particularly around border processes and the lack of coherence between the components of the Act. A principles and outcomes-based legislative framework encompassing the broad range of Customs' roles and functions is required. This will support an agile approach that enables border processes to be amended to respond efficiently to changing trade, travel and revenue collection environments, as well as information, intelligence and enforcement requirements.
- 25 Technological developments that have led to new systems have had a significant impact on the border management environment since the Act came into force in 1996. The Act has struggled to keep up with these changes as a result of its restrictive approach. A more flexible legislative framework is required so that it can adapt to future technological changes in a continually evolving environment. The specific changes in the last ten years include increased datasets on passenger information, SmartGate, the Secure Export Scheme, Biometrics and the JBMS. Further changes relating to technology and Customs' operating systems are inevitable over the next 10 to 15 years.
- 26 If a review is not approved, there are risks in ensuring Customs can meet border management pressures while continuing with lengthy and resource intensive amendments to the Act still required. These border management pressures would influence border security and impact on Customs' ability to provide support for the Business Growth Agenda objectives as well as with international requirements of major trading partners.
- 27 For each amendment, sufficient resources are required to progress through the policy and legislative processes within Customs, but there are also resource implications for the Parliamentary Counsel Office, Ministerial offices, Cabinet

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members and Parliament itself. Such amendments are likely to be required each year just to keep up with changes in the border environment, without considering any major "shocks" that could impact on Customs' role at the border. Given the resource intensive nature of the required amendments and their increasing complexity to align with current provisions, there is a risk that the economic value of the legislation and the role of Customs in regulating and enforcing such amendments will decrease.

Scope of the Act

- 28 The Act has provisions relating to:
- 28.1 Requirements for clearing imports and exports, information to be provided to Customs on such transactions, and Customs' powers relating to inspection of people, craft, and goods crossing the border;
 - 28.2 Management of systems and sharing of information relating to border management functions. Details of the provision of information by individuals, companies, aircraft and ship operators;
 - 28.3 Details of the imposition of tariff duty, levies, GST and excise, including issues of valuation methodology, calculation and payment of tax, refunds processes; the issuance of rulings as to correct tariff classifications, and preferential tariff treatment under Free Trade Agreements;
 - 28.4 Customs' powers and enforcement mechanisms, a civil forfeiture regime, administrative penalties, criminal offences and various appeals processes;
 - 28.5 Provisions for the large number of regulations relating to prohibited or restricted imports and exports, cost recovery mechanisms and low value goods thresholds.
- 29 The 1996 Act was not a complete rewrite of the 1966 legislation and it even transferred some major sections from the 1966 Act. Since the Act was passed in 1996, amendments have been made to increase Customs' border protection functions in the wake of 11 September 2001, allow for cost recovery, a secure exports scheme, goods for export management systems, provide statutory support for SmartGate and the JBMS, expand search and surveillance powers and allow for border information sharing.
- 30 In each of the amendments made since 1996, only the most urgent amendments have been proposed. Currently, Customs has a substantial backlog of other amendments that are important, even if they have been assessed as less urgent. A review of the Act would allow for the legislation to be recast achieving clarity in a number of areas of current uncertainty.

Approach to the Review

- 31 The regulatory framework needs to be adaptable and agile to achieve better outcomes while adapting to changes in business supply chain systems. It also needs to be developed in consultation with domestic and international law enforcement agencies.
- 32 Customs has identified that a review and rewrite of the Act could address issues around cost-effectiveness and efficiency that are evident with the current Act. A review could improve efficiency by transferring many of the prescriptive operational

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provisions to secondary or tertiary legislation, such as the Customs and Excise Regulations 1996 or various Customs Rules.

- 33 A review of the Act could define guiding principles and objectives in primary legislation, while including operational detail in second or third level regulation. This would allow modernisation and operational changes when necessary without a full legislative amendment process.
- 34 Although a full legislative process is required and often desirable for major policies, it is not cost-effective for the government to incur this process for minor changes to operational procedures and systems. Direct parliamentary control for areas of operational detail is considered unnecessary. Under the proposed approach, some details of process could be provided in regulations and rules, which are still reviewable by the Regulations Review Committee and subject to confirmation, assuring ultimate parliamentary oversight.
- 35 Even if a review of the Act is undertaken, some existing prescriptive elements would be retained in areas where direct legislative prescription is in line with the Legislation Advisory Committee guidelines. Highly detailed legislation will continue to be needed in the areas of tax (including excise and excise-equivalent duties), penalties and offences and the powers of Customs officers.
- 36 However, even in the areas where such detailed provisions are retained, the proposed review of the Act is still intended to support greater drafting consistency and alignment throughout the Act. The result would be an Act that allows efficient and cost-effective decision-making, operations, and collaboration at the border. A rewritten Act should allow for better alignment with international obligations and other customs organisations, particularly our international partners.
- 37 The proposed review of the Act will also provide an opportunity to improve the interrelationships and consistency with other border and law enforcement legislation.
- 38 Customs, in undertaking its research, has considered whether there are substantial benefits to be achieved from developing a single Act which covers all border agencies and their activities. While establishment of single border agencies has been trialled overseas, mainly for security and immigration reasons, no countries have amalgamated the range of relevant statutes.
- 39 Separate legislation for different policy areas appears appropriate in the New Zealand context. For example, Immigration New Zealand and the Ministry for Primary Industries (MPI) (re Biosecurity) have very specific objectives relating to the New Zealand economy and environment and hence are appropriately covered under separate legislation. On 10 September 2012, EGI agreed that the benefits of a single delivery system are unlikely to outweigh the investment it would require and the risks it would create [EGI (12) 186]. However, EGI also agreed that border sector agencies would continue to work together to improve functions and services at the border. The "Future Directions" work is proceeding with a number of initiatives involving increased collaboration in border activity amongst agencies operating at the border.

Scope of The Review

- 40 Throughout the research phase conducted by Customs, there were various areas of the legislation that were identified as less likely to be subject to a major rewrite.

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These areas include those specifying excise and excise-equivalent duties (included in part 7 of the Act), powers of Customs officers (included in part 12 of the Act) and Goods and Services Tax (GST).

- 41 Excise and excise-equivalent duties are the imposition of a tax on certain goods (currently alcoholic beverages, tobacco and fuel). Such taxes are applied equally to such goods whether they are locally manufactured or imported. Legislative provisions to tax levels and their imposition remain as matters for the Ministers of Finance and Revenue, and Parliament. As a result, Customs does not expect that changes will be made to the primary purpose and application of excise. However, it is possible that collection mechanisms and other process related elements may be subject to review.
- 42 The powers of Customs officers are set out in part 12 of the Act and include powers of detention, search, seizure, boarding craft and questioning. These powers sustained scrutiny under the New Zealand Bill of Rights Act 1990 when the provisions were developed. Customs considers that these enforcement powers are still substantially appropriate in the current border environment, but could be subject to review in terms of simplification, clarity and to assure alignment with possible future technology and processes. A review of these powers could also be appropriate where there are interrelationships with powers of other agencies operating in border management and control.
- 43 Section 12 of the Goods and Services Act 1985, which provides for the imposition of GST on imported goods, is deemed to be part of the Customs and Excise Act 1996. The provisions for the imposition of GST are administered by the Inland Revenue Department. However, some elements of the provision in the Act may require redrafting in the interests of clarity
- 44 The purpose of the proposed review of the Act is therefore:
 - 44.1 To provide a clear statement of Customs' roles and purpose relating to border management and regulatory intervention;
 - 44.2 To review the structure and format of the Act;
 - 44.3 To support the operational functions of the border sector, allowing for operational detail to be specified in regulations and rules;
 - 44.4 To redraft sections which will retain existing prescriptive elements (such as those relating to tax, penalties, and offences) to support improved coherency and clarity of intent while allowing for some detail to be amended to suit new business processes;
 - 44.5 To provide more consistent approaches to Customs' border functions undertaken on behalf of other government agencies;
 - 44.6 To provide a better statutory framework for alignment and linkages among border agencies;
 - 44.7 To provide a framework for Customs' roles relating to virtual goods and new technologies relevant to border management.

Risks

45 The risks relating to the proposed review are:

- If the proposed review and consequent major amendments are delayed, then valuable minor amendments which are not proceeded with would mean poorer overall outcomes for Customs' operations during the review period. This risk will be mitigated by tracking progress with the review, and if necessary, undertaking any critical minor amendments in the interim as a separate legislative exercise
- Risk that the proposed timeframe for production of a discussion document and consultation on the proposed reforms, will not align with other Government initiatives and priorities. This will be mitigated by reporting back to Cabinet in April/May 2014 on the proposed consultation material and processes, for decision on the appropriate way forward, taking into account Government priorities
- That the objective of achieving increased integration and alignment of activity across agencies is not achieved. It is important that the review of the Act and the proposed changes support greater integration of operations across border agencies and law enforcement agencies. This will be achieved by substantial and informed engagement with other agencies throughout the policy development and subsequent phases of the review, and through the establishment of a Senior Officials group of agency representatives to assist in overseeing the Review Process.

Timeline

- 46 If Cabinet approves a review of the Act, Customs will commence a policy development phase immediately. Customs officials are currently finalising the details of the work plan for this. Government agencies will be consulted on the resulting plan.
- 47 The policy development phase will continue until the completion of a discussion paper in April/May 2014, for consideration by Cabinet. Customs anticipates that border agencies, Inland Revenue and law enforcement/security agencies will be closely involved in the development and consideration of options during the policy development phase and production of the discussion document.
- 48 A consultation phase on the discussion document could follow, primarily aimed at consulting with export and import industry stakeholders, port companies, and other participants in international supply chains on the range of proposals.

Process for the Review

- 49 Customs intends to undertake the review with the following governance arrangements:
- Regular reporting to me, and I will consult with my Ministerial colleagues on issues, as required;
 - Oversight of the project by a senior officials group representing other interested agencies as appropriate to the identified issues;

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- Establishment of a reference group of stakeholders with supply chain interests to advise of changes sought by businesses.
- 50 During the period for this review of the Act, it is expected that only very urgent and essential amendments to the Act would be considered for introduction separately.

Consultation

- 51 Customs has consulted with relevant government agencies by releasing a preliminary issues paper for comment and discussion. The issues paper was provided to agencies on 30 August 2013, and agencies were invited to presentations and discussions on the paper in September 2013.
- 52 Targeted working papers will be developed throughout the process of any approved review. Customs anticipates that the development of these working papers will be undertaken in close collaboration with other agencies with interests in security and border issues.
- 53 The following agencies have been consulted on this paper and their comments incorporated in the relevant parts of this paper: the Accident Compensation Corporation; Civil Aviation Authority; Commerce Commission; Crown Law Office; Departments of Conservation; Internal Affairs and Inland Revenue; Energy Efficiency and Conservation Authority; Government Communications Security Bureau; Maritime New Zealand; Ministries for Primary Industries; Culture and Heritage; and Environment; Ministries of Business, Innovation and Employment; Defence; Foreign Affairs and Trade; Health; Justice; Social Development; and Transport; the Human Rights Commission; New Zealand Police; New Zealand Trade and Enterprise; New Zealand Transport Agency; New Zealand Security Intelligence Service; Offices of Film and Literature Classification; the Auditor-General; the Ombudsman; and the Privacy Commissioner; Serious Fraud Office; Statistics New Zealand; the Treasury; and the State Services Commission. The Department of the Prime Minister and Cabinet has been informed.

Implications

- 54 This proposal has no implications in the following areas:

Human Rights Implications	Not Applicable
Business Compliance Implications	Not Applicable
Gender Implications	Not Applicable
Disability Implications	Not Applicable

Financial Implications

- 55 A review of the Act will require a dedicated team of officials from Customs with the assistance of other key border sector agencies. This is proposed to be completed within current baselines.

Legislative Implications

- 56 If approved, the review of the Act will involve the development of policy proposals to be considered by EGI as a basis for consultation in mid-2014 with a Bill

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scheduled to be drafted in 2015. No legislative implications will directly result from this paper.

Regulatory Impact Analysis

57 A Regulatory Impact Statement will be prepared where any significant policy changes are recommended throughout the review process. A series of policy proposals is likely to be developed following approval to commence a review, and regulatory impact statements will be produced as part of the policy development process.

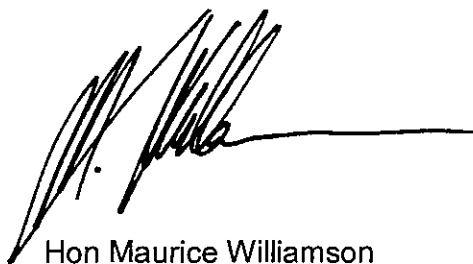
Publicity

58 If approved, the review of the Act will be announced by myself, as Minister of Customs, (for which Customs will prepare a communications plan) and widely communicated to government agencies, industry and the general public through established communication channels, such as the Customs' website and newsletters, as well as direct engagement with government agencies.

Recommendations

59 I recommend that the Cabinet Economic Growth and Infrastructure Committee:

- 1 **note** the New Zealand Customs Service has completed research which supports a review of the Customs and Excise Act 1996 to provide the basis for an increased ability to achieve key business outcomes, traveller facilitation and border risk management;
- 2 **approve** the immediate commencement of a review of the Customs and Excise Act 1996 by the New Zealand Customs Service;
- 3 **note** the review of the Customs and Excise Act 1996 will be achieved within current budget baselines;
- 4 **note** that officials expect to bring proposals for reform and options for further consultation back to the Cabinet Economic Growth and Infrastructure Committee in April/May 2014.



Hon Maurice Williamson
Minister of Customs

Date: 7 / 11 / 2013