CUSTOMS AND EXCISE ACT 1996 REVIEW

DISCUSSION PAPER 2015

NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA

PROTECTING NEW ZEALAND'S BORDER

New Zealand Customs Service

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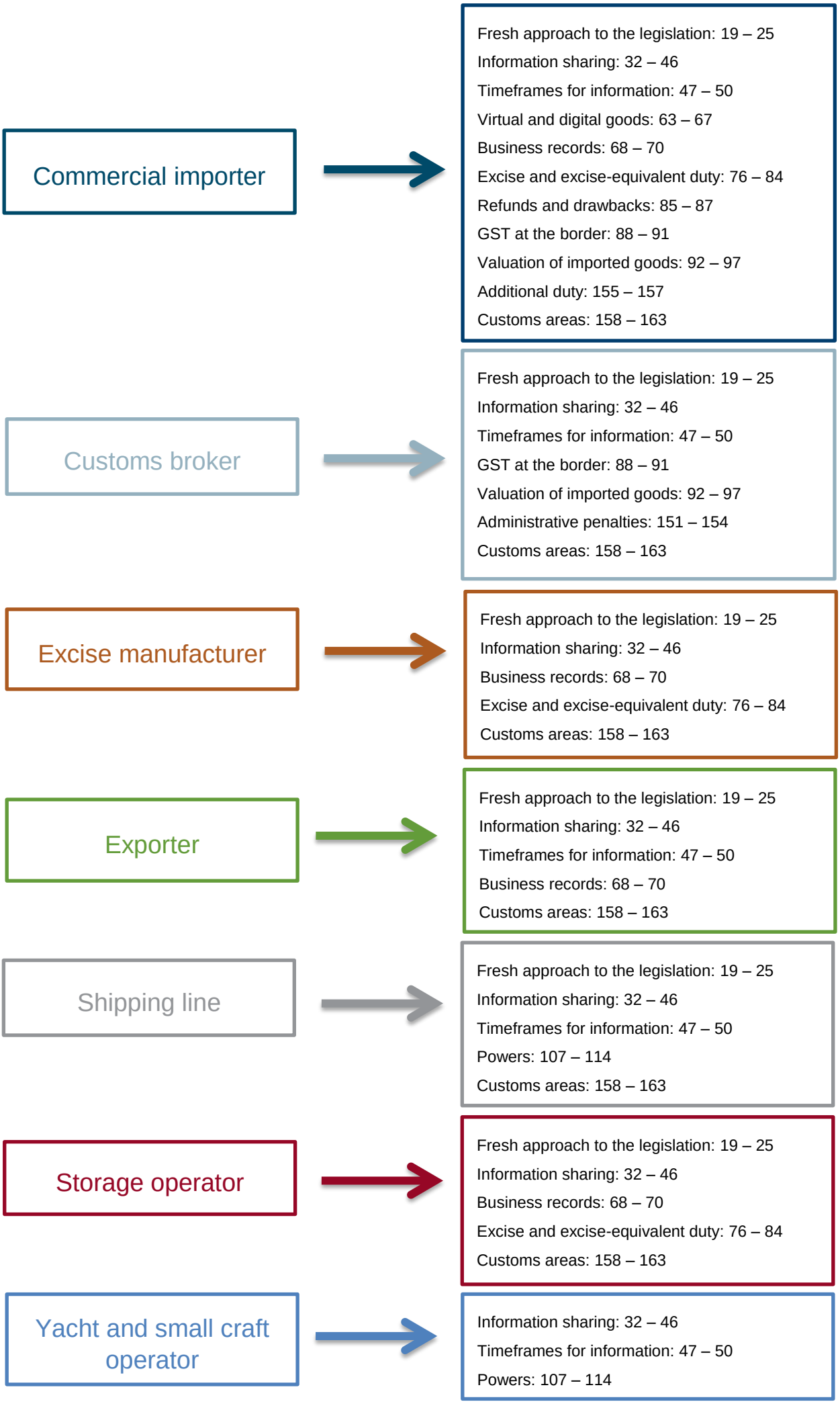
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MINISTER'S FOREWORD

I'm pleased to release this public discussion paper as part of the review of the Customs and Excise Act 1996.

The Customs Service's roles in trade, travel and protection are essential to New Zealand's economic performance and social well-being. Customs' revenue collection role also contributes a substantial amount to the Government's accounts.

The current Act needs to be updated to reflect the way Customs operates in the 21st century and the advances in trade, travel and revenue collection. In the past 20 years there have been technological and other advances that were never planned for or even imagined. The numerous amendments to the current Act over that time to cater for those changes have left it cumbersome, hard to use, and open to interpretation.

In this consultation phase we want your feedback so that we can draft an Act that supports not only world-class border management but also the wider New Zealand economy. This will help maintain New Zealand's reputation as a great place to travel to and do business with.

The proposals in this discussion paper support government priorities, including the Better Public Services programme and the Business Growth Agenda. The proposals are also aimed at supporting traders and travellers by making compliance with our border and revenue processes easy to do and hard to avoid.

At a time when new threats are emerging at our borders, Customs is also increasingly playing a critical role in supporting other border and law enforcement agencies. The proposals in this paper are also intended to support Customs in working with other government agencies to keep New Zealanders safe.

The border is a place where the Government and the community have clear expectations on how it's managed, and it's vital that we have fit-for-purpose legislation that supports Customs' border management role. Your feedback will be important in enabling us to develop the right legislation, and I encourage you to read this document and provide your views on the issues and proposals discussed in it.

Hon Nicky Wagner

Minister of Customs

ABOUT THIS DOCUMENT

The purpose of this discussion paper

This discussion paper has been produced to enable businesses, traders, travellers and members of the general public to give feedback on proposed changes to the Customs and Excise Act 1996, as part of the Government's review of that legislation.

In identifying the issues and opportunities discussed in this paper, Customs consulted with a range of government agencies and business groups.

We have focused on identifying the key issues that we think may be relevant for businesses and travellers and for Customs' own role, now and in the future. We would like your views on whether we have identified the right issues, and we would also like you to tell us how significant the issues we have identified are for you and whether you agree with our proposals for change. Your feedback will help us develop some firmer proposals for the Government to consider.

It is likely you will identify other areas of concern that are not mentioned here, and we welcome your feedback on those issues as well.

We want to use this consultation process to listen to and work with affected parties to better understand the issues and to develop potential solutions.

After this consultation process, we will seek Cabinet's agreement to changing the legislation. In some areas there may be no proposed changes. If Cabinet agrees, we expect that the new Act will be drafted during the second half of 2015 and that a Bill will be introduced in 2016.

The proposals presented in this paper do not represent Government policy. The Government has not yet made any decisions on these issues.

The scope of the review and of this paper

This review relates only to those of Customs' activities that are dealt with in the Customs and Excise Act, but it will also affect wider government activities, particularly within the border sector. The review does not cover:

- the range of Customs activities provided for under other legislation, unless those activities would be directly affected by changes to the Customs and Excise Act
- the Government's general policy principles and settings (for example, whether excise and excise-equivalent duty will continue to be collected on alcohol, tobacco and fuel)
- border operations where the relevant policies are developed by other border agencies, such as immigration policy and biosecurity policy
- the collection of GST and other duty owing on low-value goods, and the setting of the upper limit for those low-value items (under the current law GST and duty is usually

not collected if it is less than $60; Customs sometimes calls the upper limit the “de minimis”).

How to use this paper

The next two chapters of this discussion paper (pages 9 to 18) explain how to make a submission and why we are reviewing the Customs and Excise Act.

The main parts of this paper then follow. Those chapters (starting at page 19) detail and discuss the key issues that have been identified during the initial stages of this review. Each of these chapters also present questions for you to consider.

In the Appendices to this paper we have included:

- explanations of the key terms and abbreviations used in this document (Appendix 1)
- a list of all relevant legislation (Appendix 2)
- a complete list of all the questions presented in this paper (Appendix 3).

Finally, at the back of this discussion paper we have attached a submission form that you can use to give us your feedback. This form is also available on our website at www.customs.govt.nz.

HAVING YOUR SAY

We encourage you to make a submission as part of the review of the Customs and Excise Act. We are keen to hear from you whether you think we have identified the right issues in this discussion paper and whether you agree with our proposals for change. We value your feedback, particularly on the practical implications of different approaches and opportunities.

We have included questions throughout this paper, but these are to help you provide your feedback. We would welcome your comments on any other issues or proposals for change that you think are important.

HOW TO HAVE YOUR SAY

Make a submission by Friday 1 May 2015

The closing date for submissions is Friday 1 May 2015.

You can:

- Email your submission to: C&EReview@customs.govt.nz, or
- Post it to: PO Box 2218, Wellington 6140, or
- Complete an online submission.

If you will be posting or emailing your feedback, you may want to use the submission form on page 181 of this document.

Your submission may be made public

We intend to publish all written submissions on the Customs website at www.customs.govt.nz. Please note also that all submissions are subject to the Official Information Act 1982, and that your submission may therefore be the subject of a request for it to be released under that Act.

If you do not want your submission to be made public, please state this clearly in your submission, along with your reasons for wanting it withheld. If your objection to publishing your submission applies only to a part or parts of your submission, please state clearly which part or parts.

Any personal information you supply to Customs in the course of making a submission will be used by us only in relation to the matters covered by this discussion paper. Please clearly indicate in your submission if you do not want your name to be included in any summary of submissions that we may publish.

Attend a seminar

We will be hosting seminars in different centres to explain this paper. The number of seminars and where they will be held will depend on the level of interest in each centre.

We will advertise details of these seminars on our website at www.customs.govt.nz.

If you have specific questions you want to raise but you cannot attend one of the seminars, please contact us at:

- Email: C&EReview@customs.govt.nz or
- Phone: 0800 428 786.

WHY WE ARE REVIEWING THE ACT

In this section we summarise Customs' current role and why we believe new legislation is needed to enable us to respond and adapt effectively to new technologies, business practices and security risks.

Introduction

This year the New Zealand Customs Service is marking 175 years of serving New Zealand and protecting our borders.

Managing New Zealand's borders has changed a lot over the last 175 years. Our functions are now much broader than when the first Customs post was set up at Kororāreka (Russell) in 1840 to collect import duties on goods from arriving ships.

The Old Custom House in Russell was used from 1870 to the 1890s.

Today, our role covers protecting the community, facilitating trade and travel into and out of the country, and collecting revenue. Our work covers the length of New Zealand, from the Bay of Islands to Bluff.

> "We are not proposing to change Customs' functions"

The nature of the border is also changing. Today we continue to look at how we can better identify and assess threats, and facilitate legitimate trade and travel, **before** people, goods and air or marine craft reach our shores.

Protecting and maintaining New Zealand's borders, while at the same time facilitating trade and travel, has become more important than ever. Globalisation, the pace of trade, emerging technologies and new security concerns are just some of the current and future challenges for border management. However, while these factors make our job more challenging, our job remains fundamentally the same. We are not proposing to change Customs' functions.

The Act needs to support future developments and opportunities

The current Customs and Excise Act came into force in 1996. It was based largely on the 1966 Act, which in turn was based on legislation from 1913. The current Act is highly prescriptive and much of this detail could be better placed in supporting legislation such as Regulations or Rules.

Since 1996 the Act has been amended a number of times to deal with the considerable growth in trade and travel and with developments in security and new technologies. While many of these amendments have made particular provisions clearer, they have also made the Act more complex. As a result, the Act is now hard to read and understand, difficult to apply, and even more difficult to amend when Customs has to deal with changes in technology and business practices.

Example: Duty credits under section 85 of the Act

The section of the Act dealing with when a manufacturer can claim an excise or excise-equivalent duty credit does not reflect modern business practice and is too inflexible.

This credits provision assumes that manufacturing will happen on only one licensed site and will involve only one owner. However, with modern manufacturing or supply chain practices there may be several different owners and manufacturing sites involved. The legislation needs to give Customs the flexibility to deal with these changing business practices by giving us discretion to grant the credit to the appropriate party.

The Government also expects Customs to deliver more efficient, customer-focussed services that are integrated with other government services and that can be accessed electronically. All this requires effective and flexible legislation that can respond to and support future developments and opportunities.

What might new technologies look like?

Import data on a consignment might include data captured by a GPS-enabled chip on the status and integrity of the consignment since it was packed at the original exporter's premises.

As the power and availability of computer processing increases, and as electronic devices get cheaper, Customs expects to have new opportunities to interact electronically with traders and travellers, including through social media, and in ways that we may not even be able to imagine at present.

Customs' current role

Working alongside other agencies to manage the border

Our legislation has to allow us to work effectively and efficiently alongside other government agencies that operate at the border or that have border-related interests (such as the New Zealand Police), so that we can protect our citizens and maintain New Zealand's international reputation as a great place to visit and do business with.

Customs is one of five main government agencies working at the border. The others are the Ministry for Primary Industries, Immigration New Zealand (part of the Ministry of Business, Innovation and Employment), the Aviation Security Service (part of the Civil Aviation Authority), and Maritime New Zealand.

The table below shows the different functions these agencies perform at the border, and also offshore and onshore.

	New Zealand Customs Service	Immigration New Zealand	Transport Sector: Ministry of Transport, Civil Aviation Authority, Maritime New Zealand	Ministry for Primary Industries
Offshore (pre-border)	Surveillance and intelligence gathering relating to goods and craft.	Issue visas and other approvals for people to enter New Zealand. Screen and assess for immigration risks offshore.	Negotiate air services agreements and license foreign airlines. Participate in international transport forums.	Set international food and biosecurity standards. Negotiate market access.
At the border	Screen and assess risk of people, goods and craft, revenue collection. Primary processing on behalf of Immigration NZ.	Physically profile, assess risk and make entry decisions (incl on referral by Customs).	Ensure air and sea movements are clean, safe and secure.	Inspect inbound people, goods, and craft for biosecurity risks.
Onshore (post-border)	Customs-related investigations and prosecutions.	Settlement of migrants and compliance monitoring. Investigation and deportation of people unlawfully in New Zealand.	Promote an efficient, safe, responsible and resilient transport sector.	Respond to detected harmful pests and diseases. Investigate and prosecute breaches of biosecurity standards. Export market assurance.

Customs also works closely with a range of other government agencies that have interests at the border – for example the New Zealand Police. We are also authorised under other legislation to perform some functions on behalf of other government agencies, as the border is a point where government can intervene efficiently with businesses and individuals to achieve a wide range of its priorities.

Example: Work on behalf of Immigration New Zealand

Customs officers are designated as “Immigration officers” under the Immigration Act 2009 so that they can verify the identity of foreign nationals and grant them entry permission (based on immigration pre-directives) as they come into the country.

Another example of Customs working on another agency’s behalf is where we stop people leaving the country because the Police have alerted us to an outstanding arrest warrant.

Customs also works alongside government agencies to implement new developments, particularly those that may improve our interactions with businesses. The review of the legislation provides an opportunity to ensure the legislation supports these developments. An example is the implementation of the New Zealand Business Number,[1] which will not require changes to the Customs and Excise Act, but is likely to require changes to the Rules.

[1] The New Zealand Business Number is a single identifying number for all businesses, government agencies and commercial entities in New Zealand.

Protecting New Zealand while supporting our sovereignty, reputation and the economy

Effective border management is directly connected to New Zealand's sovereignty, reputation and standing in the international community and to economic growth. It facilitates trade in goods and services while managing risks of smuggled goods (both exports and imports), people and craft, and revenue fraud.

Customs is the first point of contact for people arriving in our country. We provide a "welcome here, welcome home" to those arriving. We are responsible for protecting New Zealand from threats to our community, environment and economy, including threats from illegal drugs, imported firearms and money laundering.

Our wide range of functions reflects expectations that Customs will manage increasing volumes of trade and travel, the increasing complexity of international travel routes and goods supply chains, and the fast flow of travellers and goods that will give New Zealand a competitive advantage in the global economy.

The following boxes show some of the work we did in the year 2013/2014.

Travel

- Risk assessed and processed 11.2 million arriving and departing travellers by air or sea, including crew
- 96.3 percent of arriving air passengers processed through Customs within 45 minutes
- 0.8 percent of air passengers and crew selected for secondary assessments at airports
- 3.3 million SmartGate passengers processed.

Trade

- Risk-assessed and processed 7.8 million import transactions and 2.5 million export transactions (excludes transhipment)
- 99.7 percent of compliant trade transactions processed within 30 minutes
- 48.25 million mail items screened
- 405,598 import sea containers and 540,312 export sea containers crossed the border.

Revenue

- Collected $11.8 billion in Crown revenue, consisting of:
  - $7.8 billion GST
  - $1.8 billion excise duty
  - $2.2 billion customs duty
- Collected $38.57 million additional revenue through the Customs Trade Assurance (audit) function.

Protection

- 705 kilos of ephedrine and pseudoephedrine seized
- 1.6 million cigarettes and 2.1 tonnes of loose tobacco seized
- 243 interceptions of goods suspected of intellectual property infringements
- 1,042 interceptions of weapons.

Customs' responsibilities range from checking if goods coming into the country meet standards for hazardous waste, to seizing arriving shipments of controlled goods such as high-powered laser pointers, to stopping and searching passengers suspected of importing illegal drugs.

Our functions are also heavily influenced by international obligations – in particular, free trade agreements and the International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention), to which New Zealand is a signatory.

Customs operates not just at the physical border

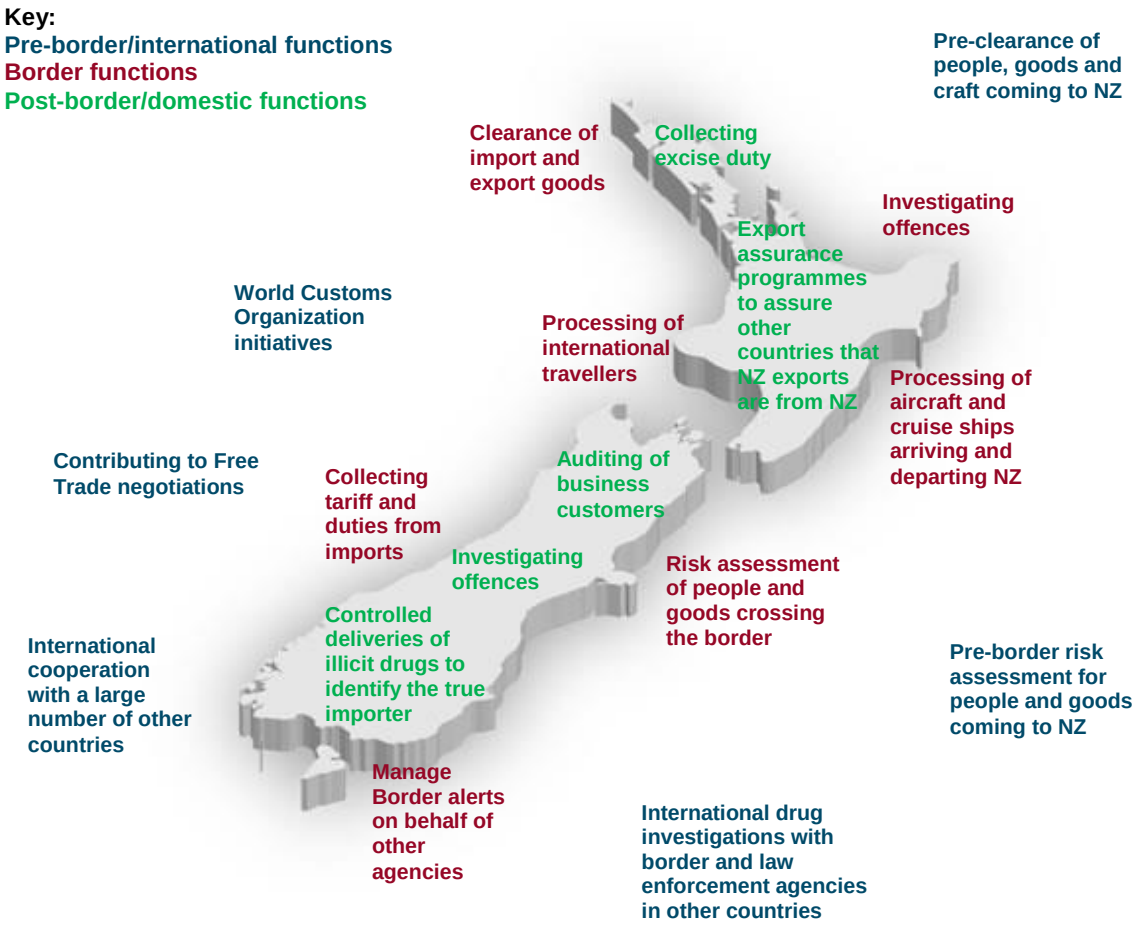
The Customs and Excise Act sets out the obligations of travellers and traders crossing our border, and Customs' responsibilities in managing the border. A national border is commonly understood as a point of entry or exit from one sovereign state to either international territory or another state; in New Zealand's case, entry or exit is from New Zealand's sovereign territory into or over international waters.

The reality is our role requires us to carry out activities not just at the physical border – that is, at airports and seaports – but also before and after people and goods come into the country.

We need to know in advance who or what is coming into or leaving the country so that we can quickly identify and deal with threats, collect revenue efficiently, and ensure that legitimate travellers and goods are not unduly held up at the border. Our work to achieve this includes some pre-screening of passengers before they leave the departing country, and export assurance programmes.

The previous table on page 12 in this chapter set out some of the functions performed by government agencies before, at, and after the border. The picture below provides some further examples of the different functions Customs has before, at, and after the border.

Examples of Customs' Functions



The border is a unique place

New Zealand has the right to refuse entry to people or goods if they bring threats to the country. The border provides a critical, and one of the earliest, opportunities to identify a threat and act decisively to prevent it from harming New Zealand and New Zealanders.

> "Over 50 New Zealand Acts of Parliament impact on Customs' role"

Customs has a range of powers under the Customs and Excise Act that we can exercise to protect New Zealand's borders, facilitate legitimate trade and travel, and collect revenue.

Powers include substantial and, in some cases, special powers to intercept, examine and search goods. These powers allow Customs to undertake the functions the public, our international

partners and the Government expect of Customs. They enable us to act quickly so that we don't hold up legitimate trade and travellers.

How we manage the border

Customs' operating model is built around collecting and analysing information to assess the risks presented by people, goods and craft moving in and out of New Zealand. Having information that is timely, accurate and relevant is crucial for us to make effective decisions about risk and about how to intervene.

Our approach to risk-assessment and compliance (see the diagram below) assumes that most traders and travellers want to comply with border controls, and we have little if any interaction with those traders and travellers who do comply. We have some interaction with those who are accidently non-compliant, and here we aim either to educate them or to change our processes to make compliance easier. This approach allows us to free up the resources needed to work with other agencies to focus on those who are deliberately non-compliant. This approach enables us to protect the border without unduly intervening in legitimate trade and travel.

The Customs and Excise Act supports Customs in managing the border by:

- creating obligations and incentives for travellers and traders to provide us with good quality information
- setting powers for Customs to obtain, use, store and share that information
- enabling flexibility for Customs to take a range of actions to support or enforce compliance, based on the information we receive.

Why we need new legislation

New legislation would enable improved border management

Customs wants to develop new legislation that allows us to improve border management and therefore give greater protection for New Zealand from risks and threats, while also giving greater assurance over trade and travel flows and revenue collection. We want to be able to take advantage of new systems and technologies that will allow us to better identify and target offending and that will better facilitate the flow of travellers, trade and craft across the border.

Effective and flexible legislation will also allow us to create and make use of opportunities to collaborate and share information with other agencies, both in New Zealand and internationally, and to support the law enforcement functions of the New Zealand Police and other government agencies.

As people and businesses take advantage of new technologies and developments, such as electronically transmittable goods, legislation should be able to be adapted.

Our goal and outcomes for a new Act

Our goal is an Act that enables effective and responsive border and excise systems that protect and support citizens and businesses.

A significant driver for this review has been Customs' increasing use of intelligence and technology. In particular, recognising our role in supporting wider law enforcement priorities as well as our traditional responsibilities of protecting the border and facilitating border movements.

Outdated provisions in the Customs and Excise Act do not allow for technological developments, and they would prevent us from effectively using future technologies to better assess risks and facilitate trade and travel flows.

We are seeking a new Act that would support Customs in achieving the following outcomes.

- **Making compliance easy to do and hard to avoid** – Most travellers and traders want to comply with border controls, and Customs will help them achieve this. We will focus our operational activity on the small minority who deliberately refuse to comply.
- **Providing high assurance, light touch** – Customs collects and analyses information to enable us to facilitate the flow of compliant people and goods at the border and to focus on the areas of non-compliance. This provides a high level of assurance that we are identifying risks accurately and a light touch for those who pose no risk.
- **Providing effective and efficient facilitation and protection** – Customs supports New Zealand's economic growth and protects New Zealand's border through our management of trade and border controls, our use of information and technology, and our international relationships.
- **Supporting New Zealand's international competitiveness** – How well Customs carries out its functions matters for New Zealand's export competitiveness, which

depends on efficient trade supply chains and on New Zealand being seen as an attractive place to do business and travel to.

We are not proposing to change what we do at the border

This review is about ensuring that New Zealand's customs legislation is, and will continue to be, fit-for-purpose. There are aspects of the current Act that we think need to change to deal with challenges and opportunities we currently face and to meet future changes, but we are not adding new roles or functions for the New Zealand Customs Service.

A FRESH APPROACH TO THE LEGISLATION

AT A GLANCE

The Customs and Excise Act includes unnecessary detail, which makes it overly prescriptive and difficult to update.

The Act can be inconsistent and hard to follow because of the complexity that frequent amendments have added.

We want to make the Act clearer and easier to use, and provide more flexibility to allow for operational and technological changes in the future.

Getting your feedback

We are interested in your views on the following issues:

- whether to shift detail from the Act to Regulations and Customs Rules
- whether a new Act should prescribe consultation requirements for making Regulations and Rules
- how to publish Regulations and Rules to ensure that they are transparent and accessible to the people affected by them.

The law as it stands

The current Act is divided into 18 parts, each on a particular subject – for example, entry and accounting for goods, and powers of Customs officers.

The Act provides for two main types of delegated legislation: Regulations and other Orders in Council, and Customs Rules.

The Customs and Excise Regulations and Orders in Council are “legislative instruments”, providing for matters such as entry timeframes, exemptions from some requirements in the Act, and import and export prohibitions (such as those for offensive weapons). Regulations and Orders in Council require Cabinet approval and are made by the Governor-General in Council.

Customs Rules, a different type of delegated legislation, provide for technical and procedural matters, including the content of forms, setting out how goods entering or leaving New Zealand are entered into the Trade Single Window computer system, and the methods by which alcoholic volume must be calculated for the purpose of assessing excise duty.

Because these matters are comparatively minor and technical, the power to make the Rules is delegated to the chief executive of Customs.

An opportunity to change

The Customs and Excise Act 1996 has been in force for 19 years. The Act is overly prescriptive and it is becoming increasingly unwieldy in an environment designed to move passengers and goods quickly and seamlessly through border processes.

The Act presents obstacles because of its highly prescriptive approach:

- will continue to require regular amendments
- does not allow the Government to easily respond to changes in the global environment, such as increasing volumes of trade and travel
- does not allow the Government to easily respond to changes in business practices or in domestic and international border management practices
- does not sufficiently support collaborative border management with other government agencies
- does not enable the Government to change its policy settings without substantive amendment to the legislation.

Numerous amendments to the Act have created duplication and, in some cases, complexity that makes the Act hard to follow.

> “The original provisions of the 1996 Act were focused primarily on imports and duty revenue”

The 1996 Act was not a complete rewrite of the 1966 legislation, and some key sections from the 1966 Act were transferred over to it. The original provisions of the 1996 Act were focused primarily on imports and duty revenue. Since the Act was passed in 1996, amendments have been made to increase Customs’ border protection functions in the wake of 11 September 2001. In particular, amendments were made to enhance the security of imports and exports through a secure exports scheme and goods for export management systems. Changes have also been made to support the use of SmartGate, enable the Joint Border Management System that we have established jointly with the Ministry for Primary Industries, to expand search and surveillance powers, and to allow for information sharing.

What we propose: Principles–based legislation

We want to make the Act easier to understand and use, and more responsive to change. One way of doing this is to use a principles-based approach which would set out in the Act what is to be achieved or done in broad terms. Where detail is required about precisely what is done or how it is done, this detail would better sit in delegated legislation, such as Regulations and Customs Rules.

Detail frequently becomes outdated over time. The benefit of the principles-based approach is that the detail in delegated legislation can be more easily amended than primary legislation, so it is easier to keep up-to-date. The drawbacks are that delegated legislation can be less transparent and open to less consultation than legislation made by Parliament.

In the example below, which shows a possible redrafting of section 21(1) of the Act, you can see that the overarching requirement is retained in the Act, the primary legislation – for a person in charge of a craft en route to New Zealand to give advance notice. However, all of the detail about what the advance notice should contain could be moved into delegated legislation, such as Regulations.

Current section 21(1):

The person in charge of a craft that is en route to New Zealand from a point outside New Zealand must, unless otherwise approved by the chief executive,—

(a) give to the Customs, in such form and manner (for example, in an electronic form and manner) as may be approved in writing by the chief executive (either generally or for a particular case or class of case), such advance notice as may be prescribed of any or all of the following matters:

- (i) the impending arrival of the craft:
- (ii) its voyage:
- (iii) its crew:
- (iv) its passengers:
- …
- (vii) the Customs place at which the craft will arrive; and

(b) on arriving within New Zealand, proceed directly to that Customs place, unless directed elsewhere by a Customs officer.

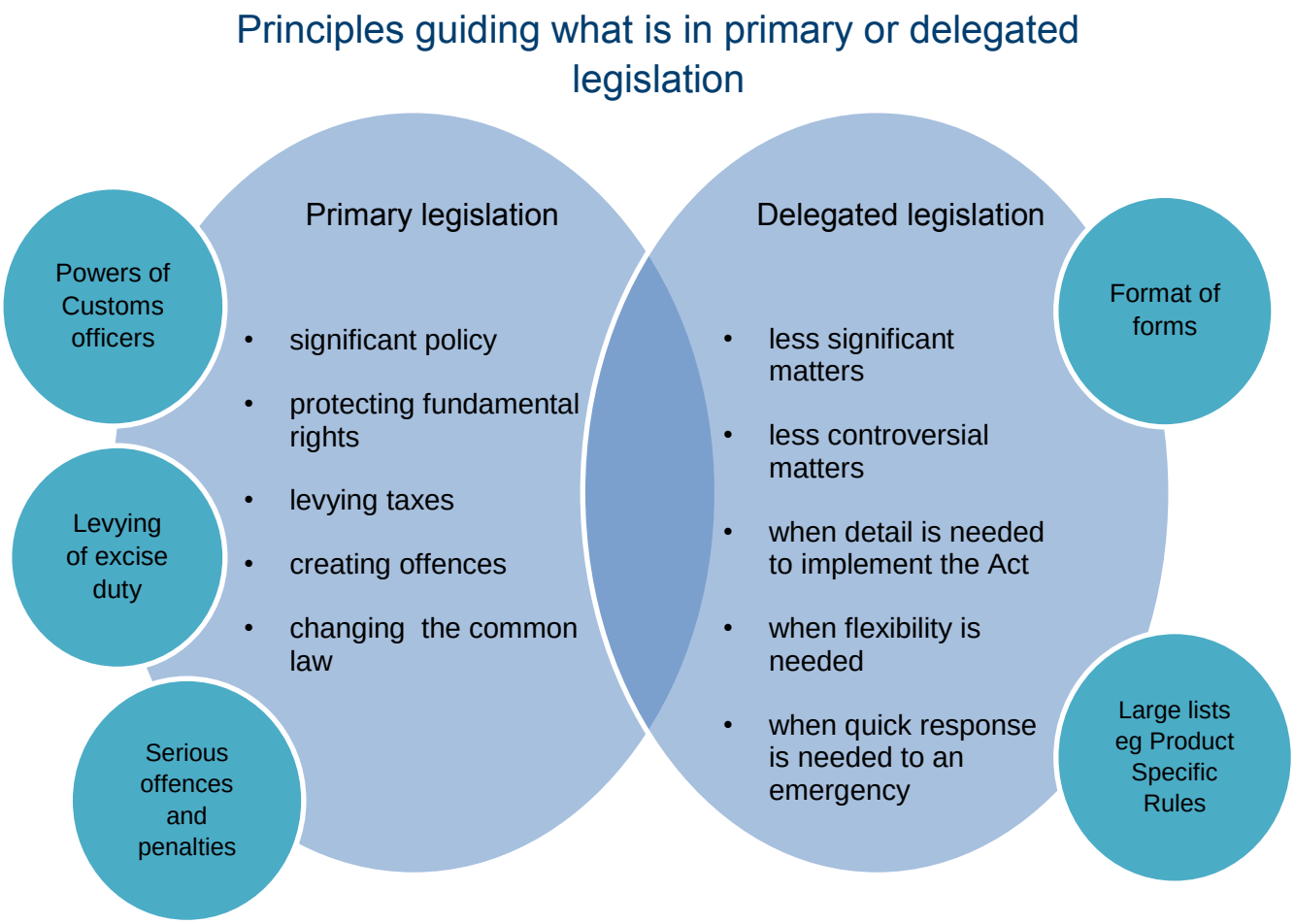
Possible new section 21(1):

The person in charge of a craft that is en route to New Zealand from a point outside New Zealand must, unless otherwise approved by the chief executive,—

(a) give to the Customs such advance notice as may be prescribed

(b) on arriving within New Zealand, proceed directly to a specified Customs place, unless directed elsewhere by a Customs officer.

The Legislation Advisory Committee, which promotes good legislative standards in New Zealand, has developed guidelines that set out principles to inform whether provisions should be included in primary legislation or when they should be in delegated legislation. The diagram below sets out some of those principles.



In the Customs context, provisions that would need to remain in the primary legislation would include those that, for example:

- levy excise duty
- create offences
- give powers to Customs officers.

Provisions suited for delegated legislation generally cover less significant matters, when detail is needed to implement the Act.

Consultation requirements in the Act

Regulations made under the Act must be consulted on with appropriate parties before they are submitted to Cabinet.

For other types of delegated legislation, such as Rules, consultation processes may be prescribed in legislation to ensure that relevant parties are adequately consulted.

Customs is considering whether a new Act should include consultation requirements for all delegated legislation, including Customs Rules. If consultation were to be required, we would want to adopt requirements similar to those found in other legislation, such as the Maritime Transport Act 1994 (section 446) – see below.

Maritime Transport Act 1994

Procedure for making of rules by Minister

"Before making any rule under this Act, the Minister shall—

(a) publish a notice of his or her intention to make the rule in the Gazette, and any other media the Minister considers appropriate; and

(b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposal; and

(c) consult with such persons, representative groups within the maritime industry or elsewhere, government departments, Crown entities, and in the case of rules made under Part 4 (to the extent that the rules relate to pilotage or harbourmasters) or Part 27 with such regional councils or other local authorities, as the Minister in each case considers appropriate."

Ensuring that customs legislation is transparent

We recognise the importance of safeguards that should accompany delegated legislation, to ensure that the law is transparent and accessible to everyone. We want to ensure that delegated legislation, where used in the Customs context, also contains these safeguards.

The publication of regulations is the responsibility of the Parliamentary Counsel Office in accordance with the Legislation Act 2012. There are standard processes for the publication of Regulations, including on the New Zealand Legislation website (www.legislation.govt.nz).

For Rules, we intend to ensure that transparency is achieved by requiring rules to be published on the Customs' website, and notifying the making of rules in the *New Zealand Gazette*.

A FRESH APPROACH: WHAT DO YOU THINK?

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)?

Include statements of purpose and principles

The current Act has a long title that is outdated and of little help to travellers and traders who must comply with the legislation, and to Customs and the courts, when they are interpreting or applying the legislation. Typically a long title lists at a high level what the Act does rather than stating the purposes underpinning the Act. Including a purpose statement in a new Act, and omitting a long title, would be in line with modern legislative practice.

Benefits of a purpose statement

The main rule for the interpretation of statutes in New Zealand is that the meaning of an Act "must be ascertained from its text and in the light of its purpose" (Interpretation Act 1999, section 5(1)). Adding a formal purpose statement may therefore reduce ambiguity and make it easier for users and the courts to interpret the Act, by providing a guide to Parliament's intent when enacting the Act.

A purpose statement would ideally:

- represent the purpose of the Act, and
- encompass Customs' functions and powers, including the management of goods, people and craft and the management of the border.

An example of a purpose statement is in the Immigration Act 2009:

"The purpose of this Act is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals."

A principles statement

A set of principles could also provide context and assist users of the Act in interpretation. A lack of a principles statement does not deter from the application or effectiveness of the Act, however, similar to the purpose statement, principles assist the courts and users of the Act in interpreting the legislation.

A set of principles could represent various components of the Customs system and could be related to key areas of Customs' functions.

Here is an example of a set of statutory principles, from the Policing Act 2008:

Policing Act 2008, section 8

"This Act is based on the following principles:

a) principled, effective, and efficient policing services are a cornerstone of a free and democratic society under the rule of law.

b) effective policing relies on a wide measure of public support and confidence.

c) policing services are provided under a national framework but also have a local community focus.

d) policing services are provided in a manner that respects human rights:

e) policing services are provided independently and impartially:

f) in providing policing services every Police employee is required to act professionally, ethically, and with integrity."

A FRESH APPROACH: WHAT DO YOU THINK?

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

AT A GLANCE

Having timely, accurate and relevant information enables Customs to protect the border while facilitating the movement of legitimate trade and travel.

Our goal is to develop a coherent, transparent framework for collecting, using, storing, sharing and disposing of information that:

- maintains and builds trust and confidence in the way that Customs collects, uses, stores, disposes and shares information
- maximises value for New Zealand from the information that we hold
- supports our principles for how we collect, use, store, dispose and share information.

Getting your feedback

We are interested in your views on how our framework for information can:

- support new ways of sharing information between government agencies to better protect New Zealand
- support the sharing of information within government for broader government purposes
- clarify our ability to share information with overseas agencies
- provide direction on when and how we share information outside of government
- provide guidance on how to treat commercially sensitive information
- ensure flexibility in the process for setting timeframes, and updating particular timeframes, for when Customs receives information
- ensure that personal travel records are protected.

Our role will remain the same

Customs provides essential border services and infrastructure that protect New Zealand and make our trade and travel more competitive in the global market.

The options we are considering for change to our information framework would not change this role or our functions, or those of other agencies.

> "Since 1996 travel volumes have doubled and trade volumes have increased seven-fold"

Information is essential to Customs

Worldwide, border agencies face a common problem: how to move legitimate travellers and goods across borders quickly and seamlessly while also protecting the integrity of the border by preventing unlawful people or goods from coming into the country.

Like our international counterparts, New Zealand Customs works in an environment where the way we work needs to keep up with the growing volumes of trade and travel. Since 1996 travel and trade volumes have increased dramatically:

Increase in travel and import volumes (1996/97 – 2013/14)		
	1996/97	**2013/14**
Passengers processed	5.4 million	11.2 million
Import transactions	1.0 million	7.8 million

This growth, which shows no sign of slowing, requires us to work faster so we don't slow down the trade and travel that is so critical to our economy. It also requires us to be smarter so that we can identify any goods or people that may pose a risk to New Zealand.

It is not easy to predict how many people, goods and craft crossing the border will break the law or how they will do this. We do know that those who seek to break the law will try to use legitimate means to cover their activities – such as hiding illegal items in a legitimate consignment of imported goods. Yet it is not realistic to try to check all goods, people and craft entering or leaving the country to find out whether they are complying with the law.

We expect the amount of information we receive to grow over time. In 2013/14 Customs received information about:

- 11.2 million travellers
- 10.3 million import and export transactions
- 945,910 import and export sea containers
- 4,948 commercial craft
- 1,223 small craft
- 198 cruise ships
- 454,000 arriving and departing passengers and crew from cruise ships.

Our response has been to develop an intelligence-led risk management approach to identify risks so we can achieve what we call "high assurance, light touch" – meaning that travellers and traders that present risks are identified early on and can be managed appropriately without holding up legitimate border traffic.

To help us identify risks we work closely with other government agencies to protect the border and New Zealand. Customs and other government agencies give and receive information to build a fuller picture of risk and help coordinate our agencies' responses.

Border agencies around the world are responding to the same challenges in a similar way.

To ensure we can respond effectively to changes in our environment, we continue to develop and refine our intelligence-led risk management model.

Information and trust

Intelligence-led risk management relies not just on good-quality information, but also on trust. We trust the majority of travellers and businesses to comply with border controls. In turn, trust is built on people and businesses providing us with accurate, timely and relevant information.

Who provides Customs with information?

- importers and exporters, including their intermediaries such as customs brokers, couriers and freight forwarders
- passengers of air and sea craft – for example, when they fill in a departure or arrival card
- owners and operators of air and sea craft, such as airlines
- domestic and international government agencies
- domestic businesses that produce goods subject to excise (alcohol, tobacco and transport fuels).

The types of information we collect

Information enables our intelligence-led risk management approach. Our unique position at the border also allows us to support other government agencies to manage risk and to meet New Zealand's wider international obligations.

Customs collects information on all goods, people, sea and air craft that cross the New Zealand border. We collect some information for our own purposes, while some we collect jointly with other government agencies, and some we collect for and on behalf of other government agencies. Customs, as a government department, is also legally required to create, maintain and dispose of records as part of normal, prudent business practice.

Overall, Customs acts as a custodian of a vast, and growing, amount of information for the New Zealand Government.

Examples of information collected by Customs

Information collected for Customs purposes:

- value and volume of goods
- origin of goods and craft
- destination of goods and craft
- identity of people crossing the border (New Zealanders and non-New Zealanders)
- prohibited and restricted goods
- intelligence on goods and people from domestic and government agencies
- excise-related information
- information from overseas agencies
- business records.

Information collected on behalf of other government agencies:

- identity of non-New Zealanders crossing the border
- border-crossing movements of New Zealanders
- goods subject to tariff duty
- anti-dumping
- countervailing duties
- prohibited and restricted goods
- origin of goods and craft.

Information collected jointly:

- goods and craft information submitted through the Joint Border Management System
- statistical information about people, goods and craft
- restricted goods (such as firearms).

Why information sharing is important

The information we collect and hold has value, not just for Customs, but for a range of government agencies. The information can be used to help manage security, support the maintenance of the law and, more broadly, to derive social and economic value in a variety of ways. For example, we have an information matching agreement with the Ministry of Justice to identify fine defaulters trying to leave New Zealand.

Another example of the value of Customs' information to other agencies is the use of our system to place "alerts" on people and goods crossing the border. An alert is when someone or something is flagged for attention when crossing the border – for example, a person whose parole conditions restrict them from travelling overseas.

> We have over 65,000 alerts on our system; 94 percent are for other

The environment in which we work has changed since 1996. Risks are constantly changing, while new technologies are allowing us to extract greater value from information to achieve government objectives such as greater customer segmentation or risk targeting. We are working in an environment that anticipates and encourages greater information sharing for public benefit, such as through the Better Public Services programme. And we are working in new ways ourselves – for example, by participating in special "operational coordination centres" for multi-agency activities.[2]

Making appropriate use of the information that Customs collects is an efficient way for the Government and others to achieve their goals. Information can be collected once and then shared, in clearly defined circumstances, to enable different agencies to perform their legitimate functions. An example is the Joint Border Management System developed by Customs and the Ministry for Primary Industries (MPI); under this new system businesses need only provide import/export information once, rather than separately to both Customs and MPI.

We discuss information sharing further from page 32 of this paper.

[2] Operational coordination centres are multi-agency teams that coordinate government activities in one place. Customs is the lead agency for two coordination centres – the Integrated Targeting and Operations Centre (often referred to as a "fusion centre") and the National Maritime Coordination Centre – and is a member of several others.

Our principles for managing information

Businesses and the travelling public trust Customs to deal appropriately with the information they provide to us. A 2013/14 survey showed that:

- 89 percent of commercial customers trusted Customs
- 89 percent of the travelling public trusted Customs.[3]

It is essential to our way of operating that we maintain and build upon this trust. Without trust we potentially undermine the provision of accurate information, which would not support our intelligence-led risk management approach to managing the border.

We use the principles set out below to support trust and confidence in the way that we collect, use, store, share and dispose of information. Our principles draw from and align with the Government's data and information management principles.[4]

Our principles governing how we collect, use, store, share, and dispose of information

Information is only collected, accessed, used and shared for clear, legally supported purposes.

- the information we collect is protected by appropriate ICT security measures (for example, our servers are built to Government Restricted level) and, for certain levels of information, access is restricted to designated Customs staff
- the information is protected from being unlawfully accessed or hacked
- if the information has been received from another government agency, it is protected in ways requested by that agency
- the information is protected from inappropriate access or use by users of our system, by the following measures:
    - there must be a clear purpose for access and sharing
    - people who are granted access are specifically identified and trained, and have the appropriate security clearances
    - access is traceable, audited with clear accountabilities for the access, use, storage and sharing of information
    - Customs carries out frequent risk and security audits (both internal and external) of our information databases.

[3] New Zealand Customs Service, *Annual Report 2013/14* p17 and p22.

[4] These principles can be found here: https://ict.govt.nz/guidance-and-resources/open-government/new-zealand-data-and-information-management-principles/

Our goal for our information framework

Our goal is to develop a coherent, transparent framework for collecting, using, storing, sharing and disposing of information that:

- maintains and builds trust and confidence in the way that Customs collects, uses, stores, shares, and disposes information
- maximises value for New Zealand from the information that we hold
- supports our principles for how we deal with information (see the previous page)
- ensures we have flexibility so that we can respond to changes in our operating environment – for example, new technologies and business practices
- ensures we receive accurate information and at the right time, preferably in advance
- ensures we collect the information we need in the most efficient and effective way.

We anticipate that some aspects of our information framework may be set out in Customs' new legislation, while other aspects may be dealt with in other legislation, such as the Privacy Act. Other features may be achieved as a result of Customs working better at an administrative or process level.

In developing the framework we need to ensure that Customs continues to be aligned with broader government frameworks and initiatives for managing and sharing information – for example, the New Zealand Data Futures Programme, the Better Public Services programme, and the Government ICT Strategy and Action Plan.[5]

Alignment will mean that we ensure any changes to our own information framework complement these broader initiatives. Key to this is ensuring that we align with and support the common thread that runs throughout the Government's frameworks and initiatives – namely, the aim of building public trust and confidence in government's ability to maintain the privacy and security of information.

OUR INFORMATION FRAMEWORK: WHAT DO YOU THINK?

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?

[5] Information on these initiatives can be found on the following websites: www.nzdatafutures.org.nz; www.ssc.govt.nz/better-public-services; and https://ict.govt.nz/strategy/

Information sharing

Overall, our current legislative framework for sharing information is not transparent or coherent. Across the various regimes in the Act there is an inconsistent approach to handling information. Five specific issues are set out below.

From page 30 we discuss these five issues in the context of our principles for how we collect, use, store, share and dispose information and our goal for our legislative framework.

Terms used in this chapter

Information: we use this term to refer to both raw data (for example the elements of an import or export entry) and to information that provides context to data (who, what, when, where); and therefore makes it meaningful.

Personal information: information about an identifiable individual – for example, names and addresses of individuals. This includes biometric information (see page 56 for biometrics).

***Non-personal information*:** information that is not about an identifiable individual – for example, import or export information provided to us by a business. This information may be commercially sensitive.

Issue A: Difficulty supporting new ways of sharing information between government agencies to support the protection of New Zealand.

Issue C: International sharing provisions need to be clarified in two particular areas:

- information about goods
- the range of agencies we can share with internationally.

Issue B: Difficulty sharing information within government for broader government purposes.

Issue D: No explicit direction on sharing information outside of government.

Issue E: No guidance on how to protect commercially sensitive information.

Information sharing: The law as it stands

In our Act there are several specific regimes governing different types of information. The information Customs holds is also governed by the different regimes in the Privacy Act 1993, the Official Information Act 1982, the Public Records Act 2005 and, in some cases, other agencies' legislation.

Different rules apply to each of these regimes, dependent on the type of information, the information source, with whom we are sharing, or for what purpose we are sharing.

There are a range of rules in New Zealand legislation that determine:

- what type of information we can share
- with whom we can share the information
- the purpose of sharing the information.

The number of different information-sharing regimes can create lack of clarity about how Customs must deal with information – for example when regimes overlap and there is uncertainty about which regime to apply.

Nine of the different regimes that relate to Customs-held information are explained in the boxes below as examples (this is not an exhaustive list).

Joint Border Management System (JBMS)

JBMS applies to information about imported or exported goods that is provided to Customs or the Ministry for Primary Industries (MPI) by traders for border-clearance purposes. Both Customs and the MPI can access and use the information held in JBMS for their purposes.

When a request for information collected through JBMS is received from an agency other than the MPI, we consider the request under the principles of either the Official Information Act or the Privacy Act.

Personal information: Travel records and other

Information we hold about individual passengers will usually consist of personal information from different sources and is governed by two different Acts.

Information is governed by the Privacy Act if it has been collected from the passengers themselves when crossing the border (for example, the number of times they have crossed the border in a certain time period, or their destination), or during any interaction with Customs.

Information about the individual's travel that we have obtained from an airline is governed by the specific provisions in the Customs and Excise Act dealing with travel record information (see page 51).

When another agency asks us to share information we hold on a passenger, we need to first determine which legislation applies to the information, and then which legislation applies to the other agency.

Direct access to Customs' information database

The Police and the Security Intelligence Service (SIS) have the legislative authority to directly access our information database for counter-terrorism investigations until 1 April 2017 (due to a "sunset" clause in our Act). This permits them to log directly onto Customs' database, but they can only search it for information relevant to counter-terrorism investigations.

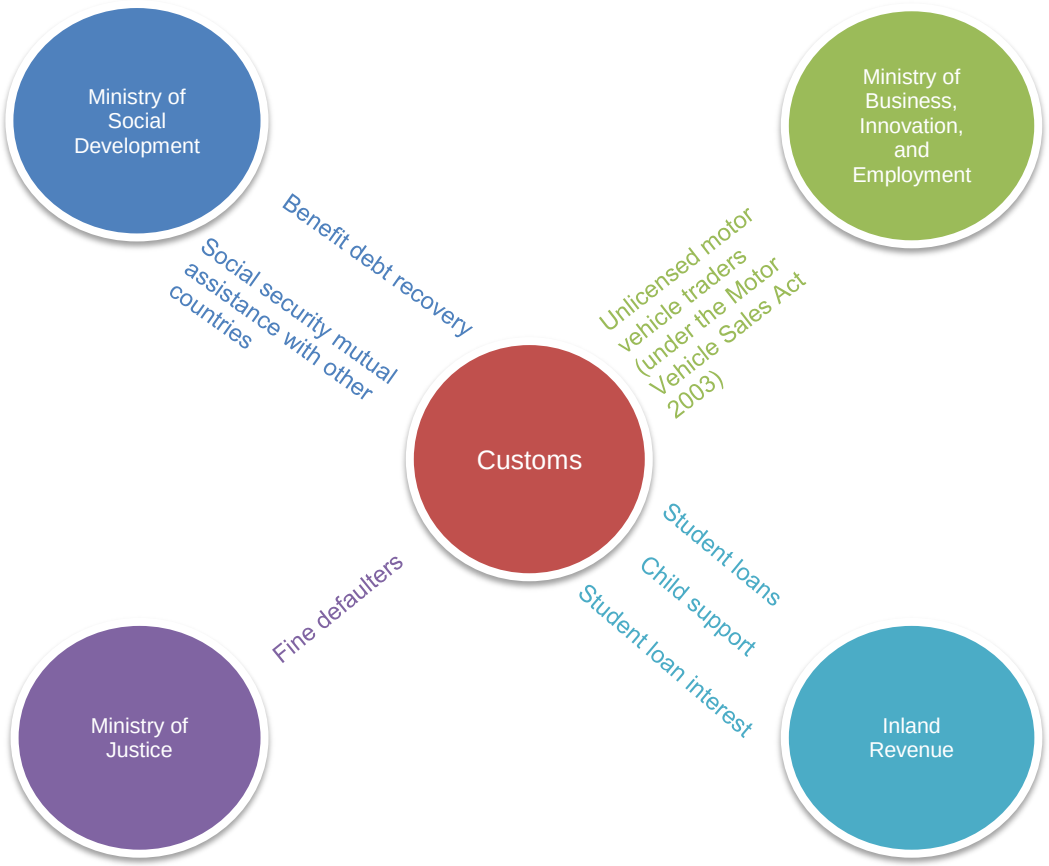
To guard against unwarranted or inappropriate access there are a number of procedural and administrative steps that must be followed to balance privacy and confidentiality issues. For example, before direct access is allowed, a written agreement must be developed between Customs, the Police and the SIS, and the Privacy Commissioner must also be consulted.

Information-matching programmes

The Customs and Excise Act sets out seven specific information-matching programmes. Information matching involves one agency matching its information datasets against another agency's to identify individuals appearing in both datasets. These programmes are governed by rules in the Privacy Act and are monitored by the Privacy Commissioner.

These programmes work well. We do not propose any changes to the provisions in the Act that govern these programmes.

Information Matching Programmes



Information sharing Regulations

The Act allows for Regulations to be made permitting Customs to enter into information-sharing agreements with other agencies that work at the border – for example, Immigration New Zealand and Maritime New Zealand – but only for border-protection purposes. These arrangements could include other border agencies having direct access to Customs' database.

This regulation-making power was added to the Act in 2012 in anticipation of substantial ongoing needs for new information-sharing arrangements relating to border security, particularly for the purposes of operational coordination centres such as the Integrated Targeting and Operations Centre (ITOC) and the National Maritime Coordination Centre. No Regulations have yet been made under this power.

International information sharing

Under Customs Cooperative Arrangements, New Zealand may be asked to share information with customs agencies overseas.

If their request is for personal information we are able to share it, with few limitations under the international information-sharing regime.

If the request concerns non-personal information on imports or exports, there is no guidance in our Act as to how we should protect this information.

Non-personal, commercially sensitive information

Different considerations apply to sharing non-personal information domestically. As there is no guidance in the Customs and Excise Act as to how Customs should treat commercially sensitive information, the approach we take is to treat it in accordance with the principles of the Official Information Act, and therefore protect it from disclosure when this would unreasonably prejudice the commercial position of the information supplier.

We recognise that much of the information that importers, exporters and their representatives are required to provide to us is commercially sensitive.

Sharing outside of government

Some industry bodies regularly request import or export data from Customs to assist them in providing services to their members. Currently we only give this data to these bodies if we have the consent of the individual importers or exporters.

Each request from outside of government is dealt with under the Official Information Act. That Act allows a maximum turn-around time of 20 working days for responding to a request.

The Customs and Excise Act gives no explicit directions on when and how Customs can share information outside of government, including with businesses and industry bodies.

Personal information: biometrics

Our current Act does not explicitly deal with the collection, use, storage, sharing and disposal of biometric information.

This topic is discussed in a separate chapter at page 56.

Information sharing: Key issues and opportunities

We believe that our current legislative framework for information sharing is not transparent or coherent. There is an inconsistent approach to the handling of information across the various regimes, as explained above. Given the changes that have occurred in technology, business practices and government priorities and expectations, we do not believe we can carry out our functions effectively without changes to the current legislation in this area.

In particular, we have identified that our current legislative framework:

- may not adequately support new ways of sharing information between government agencies for the purpose of protecting New Zealand
- may not adequately anticipate possible needs for sharing information within government for government purposes other than border protection and law enforcement
- needs to clarify the types of information that can be shared with overseas agencies, and with which overseas agencies
- gives no explicit directions on when and how to share information outside of government
- provides no guidance on how to treat commercially sensitive information.

The issue of biometric information (which is a form of personal information), and of how our legislative framework deals with this information, is dealt with separately from page 56.

Issue A: Sharing information with security and law enforcement agencies

Our legislative framework does not support new ways of working with non-border agencies for purposes other than border protection, particularly in operational coordination centres such as the Integrated Targeting and Operations Centre (ITOC).

Within centres like ITOC, staff from several agencies are located together for quick, easy cooperation between agencies for joint purposes. Staff can access their own agency's information systems and share information in accordance with the existing law to coordinate multi-agency operations.

ITOC and other operational centres have significantly increased the level of cooperation between agencies, within the limitations of the existing legislative framework.

However, the way in which understanding risk works means that the traditional way of sharing information, through formal information requests from one agency to another in the same room, could be improved on by allowing other agencies to have direct access to Customs' information in some situations. This would allow government to extract the full potential value of Customs' information for purposes beyond border protection.

Advantages of direct access

To protect New Zealand, government agencies need to understand potential risk. To assess risk it is not enough to look only at one piece of information – agencies need to lawfully access and put together multiple pieces of information to develop a richer picture of risk. However, not all this information will come from one agency's information system. Sometimes it is by accessing information held by other agencies that an insight can be developed into the risk posed by someone or something crossing the border. Accessing information in this way can also help government agencies identify risks that they did not know existed.

We believe that in some situations allowing other government agencies to directly access our information, for specific purposes (such as law enforcement, national security and border protection), is an effective and efficient way to work.

Located in Auckland, the Integrated Targeting and Operations Centre (ITOC) is New Zealand's border operations connection to the world, 24 hours a day, 7 days a week.

Agencies in the ITOC are: Customs, the Ministry for Primary Industries, Immigration New Zealand (Ministry of Business, Innovation, and Employment), Maritime New Zealand, the New Zealand Police, Aviation Security (part of the Civil Aviation Authority), and the Security Intelligence Service.

For sharing information within ITOC:

- two agencies can directly access our information but only for counter-terrorism purposes
- the Ministry for Primary Industries can directly access JBMS for border purposes
- all other requests for information must follow a formal request process on a case-by-case basis.

A scenario of how information sharing can help in understanding risk

A person uses cash to buy a ticket to travel to New Zealand two days before travel. The way the ticket was bought and when it was bought could indicate criminal activity, or it could simply indicate rushed travel plans due, for example, to a death in the family.

To understand the risk posed here, government agencies would need access to information such as previous travel history, criminal records, and known associates. Government agencies might also need to question the traveller directly.

Direct access may allow an agency to quickly piece together all relevant information rather than relying on each agency separately identifying and requesting information. It may also allow an agency to make connections between people and goods and identify investigative opportunities that would not be apparent otherwise.

Relying on Customs to provide agencies such as the Police with information to help protect New Zealand creates a risk that relevant information will be overlooked, especially as Customs would be unlikely to have the contextual understanding to know whether the information is relevant.

Direct access can also remove time-lags and reduce the resource costs of accessing information. For example, at the moment the Police are only authorised to directly access our information to create or amend border alerts and to search for information for counter-terrorism purposes. If they want to check whether someone is in New Zealand they must prepare a request asking Customs for this information, and we must then assess the validity of the request against the Privacy Act. If we decide the request is necessary, we check in our databases and then inform the Police officer of the outcome of our search. A brief query may turn into a lengthy process and the Police still may not get the information they are looking for.

A scenario of how direct access could help protect New Zealand

Police have concerns about illegal weapons in a particular house. Specific Police officers, who have the appropriate training and security clearances, are able to directly access Customs' information.

They find that we hold information about a person of interest to the Police – a known high-level organiser of illegal weapons trading and a close associate of the occupant of the house in question. Our information tells them that this person has just left New Zealand. This ties in with information the Police have that a weapons deal is taking place as soon as the organiser leaves, and it enables the Police to immediately start operational planning for their response.

Here, direct access to Customs' information saves the Police time, and also helps them to link people together and build a picture of potential criminal activity.

Risks involved with direct access

We recognise that direct access also carries risk in the form of potential for inappropriate access and sharing of information. This could happen if the allowable purposes for access are not clear, or if the security and protection settings are not clear or are not followed consistently.

Issue B: Sharing information with government agencies for broader government purposes

Increasing recognition of the value of Customs' information is meaning higher numbers of information requests from other government agencies. For example, while in 2008/09 we received 89 of these requests, in 2013/14 this had increased to 164. This figure does not

include the formal requests for information in centres such as ITOC (discussed above) or requests that were not made because they were not permitted under the current legislation.

We believe that the current legislative framework for sharing information for broader government purposes could be improved so that greater value is extracted from Customs' information to support purposes beyond border protection.

We have identified some examples of where there could be some benefit in sharing information with other agencies:

Examples of sharing for broader government purposes

For regulatory compliance purposes: If the Energy Efficiency and Conservation Authority (EECA) were provided with information on product imports, this could help them:

- verify the information that importers provide to them directly
- ensure that all importers are aware of their obligations under the EECA's regulatory regime, and
- determine whether there is a need to regulate new classes of products for energy efficiency, and what the impact of regulating new classes would be.

For trade promotion purposes: If Customs shared information on exporters and importers with the Ministry of Foreign Affairs and Trade, the Ministry could consult with those traders on the negotiation of Free Trade Agreements and inform relevant traders about regulatory changes in other countries.

For service delivery: The Ministry of Transport collects information on freight through surveys of business, but some of this information is already collected by Customs. If Customs could share this information with the Ministry of Transport, this could reduce the compliance burden on business.

For revenue: Sharing excise or duty information with Inland Revenue could provide them with a broader tax picture.

This is only an initial list, and we believe there could be value in exploring this further. We would like your feedback on whether there is value in us sharing information more broadly than just for border protection purposes, and what those additional purposes should be.

Issue C: Sharing information with overseas agencies

International cooperation is vital to protect citizens from cross-border risks, to assist in response to natural or human-made crises, and to support economic growth through more effective movement of goods and people to and from New Zealand. This is why Customs has authority to share information with overseas agencies (including a number of international agencies, such as the World Customs Organization).

Current international information sharing

Customs works closely with international partners to combat crime, including in the areas of people-smuggling, drug-smuggling, terrorism, objectionable material, and cyber-crime.

Our current international information-sharing capability works well and enables us to cooperate with our overseas partner agencies. We are therefore not proposing substantive changes to the legislative framework for this type of sharing. We do, however, think that two specific areas need to be clarified:

- the types of information Customs can share internationally, and
- the types of overseas agencies Customs can share information with (by overseas agencies we mean here not just agencies of foreign governments but also international organisations that are part of the worldwide customs regulatory system, such as the World Customs Organization or the World Trade Organization).

The Customs and Excise Act does not specifically include non-personal information – such as information on imports and exports – as part of the information that Customs can share internationally, except where this is covered by a treaty, agreement or arrangement concluded by our Government. However, facilitating international trade is a key part of Customs' role.

> "Customs has a role in health protection, such as preventing and responding to pandemics, including the recent outbreak of Ebola, and the spread of avian/swine influenza"

In addition, the provisions for sharing with overseas agencies are inconsistent and have not kept pace with changes in Customs' role.

For example, the Act permits us to share travel records with overseas agencies whose functions include protecting public health and safety (see page 33). However, the Act does not permit us to share information other than travel records with those same overseas agencies.

We think Customs' legislation should clarify that Customs can share all relevant information with an agency who meets specific criteria set out in the Act, and those criteria should incorporate a broader range of agencies.

Issue D: Sharing information outside government

As with sharing within government, our interest in sharing with non-government organisations is to ensure we act appropriately as information custodians. We want a framework for information sharing that, among other things, allows value to be derived from the information we hold, and that builds **trust and confidence** in the way we deal with information.

The Customs and Excise Act gives no explicit directions as to when and how Customs can share information outside of government - for example, with businesses and industry bodies. This does not support transparency, and potentially undermines trust and confidence in Customs.

As with our current ability to share information with most government agencies, each request from outside of government must be treated case by case in accordance with the Customs and Excise Act, the Privacy Act and the Official Information Act.

Formal information sharing arrangements with bodies outside of government could produce further value for New Zealand from the information Customs holds. Specifically they could:

- reduce the burden on Customs by removing the need to respond to numerous individual requests for information under the Official Information Act (we currently deal with over 200 trade-related requests each year)
- improve our service to bodies outside of government by potentially speeding up our responses to information requests
- reduce costs for industry bodies and their members by making regular flows of information more systematic and timely.

One example of potentially reducing costs for industry is if we had systematic sharing with port companies. We currently have no guidance on whether we can enter into an agreement to share non-personal commercial information with organisations such as port companies.

Example: Sharing with port companies

Port companies collect information from traders, which is similar to information those traders must provide to Customs – for example, container numbers, shipper details, and the port of loading. There could be benefit in traders providing the information once only, to Customs, and Customs then sharing that information with the port company. This could reduce costs for the trader and possibly the port company.

Issue E: Protecting commercially sensitive information

All those who deal with information, including government agencies, are expected to apply appropriate protections for the information.

Personal information is protected through the Privacy Act. However, there is no legislative guidance on how Customs should protect non-personal, commercially sensitive information. The Customs and Excise Act is silent on what commercially sensitive information is and how we should deal with it. (However, Customs can withhold information requested under the Official Information Act if releasing it would unreasonably prejudice the commercial position of the supplier or subject of the information and if there is no overriding public interest in releasing it.)

Possible solutions for sharing information

We are considering two options. We prefer the first option and are interested in your feedback.

We believe our preferred option below would contribute to achieving our goal for our information framework (this goal is set out on page 31). Under this option our functions would not change, nor would those of other government agencies.

Our preferred solution: Create a transparent, coherent framework for sharing information

This option would establish a transparent, coherent framework for Customs to share more information with more government and non-government agencies. We are open to what practical arrangements the framework would involve. We want to ensure that it achieves our information framework goal (see page 34) and, more specifically, that it:

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

The framework would also give us a process for sharing biometric information (biometrics are discussed in detail from page 56).

We expect that some aspects of a new information sharing framework might be set out in our legislation, while other aspects may rest in other legislation, and some aspects may be achieved as a result of us working smarter at an administrative or process level. Before we work through the detail of how the framework might work we want to get feedback on what the framework should aim to achieve.

We recognise that this option requires careful thought about how Customs will maintain the trust and confidence of businesses and the public in how information is shared, at the same time as we maximise value for New Zealand from our information.

We need to consider whether our principles for how we collect, use, store, share and dispose of information need to be expanded to include, for example, whether consultation requirements need to be explicit in the legislation, or whether access to our information database should be ring-fenced to protect certain "pools" of information.

Summary of issues under this preferred solution

Issue	Solution
Issue A: Difficulty supporting new ways of sharing information between government agencies to support the protection of New Zealand.	Allow direct access by specific agencies to our information for law enforcement, national security and border protection purposes.
Issue B: Difficulty sharing information within government for broader government purposes.	Include a wider range of purposes in the Act, such as regulatory compliance, trade promotion, revenue and service delivery.
Issue C: International sharing provisions need to be clarified in two particular areas: • information about goods • the range of agencies we can share with internationally.	Expand our information sharing with overseas agencies to include: • goods and revenue information • a wider range of agencies.
Issue D: No explicit direction on sharing information outside of government.	Provide an explicit process in the Act for sharing information outside government.
Issue E: No guidance on how to protect commercially sensitive information.	Include a process in the Act for protecting non-personal, commercially sensitive information.

Issue A: Direct access for law enforcement, national security and border protection

Customs' legislation could be changed so that Customs could allow specified agencies to directly access our systems on an ongoing basis for law enforcement, national security and border protection purposes. This would formalise direct access by the Police and the Security Intelligence Service for counterterrorism investigations beyond the current sunset clause of 1 April 2017. It would also broaden the reasons for access.

To maintain trust and confidence in our protection of information, the development of a process for direct access would need to address potential risks, such as inappropriate access and sharing. Direct access should be restricted to identified and trained people with appropriate security clearances and it should only take place in a secure environment. Access would also need to be auditable and traceable. We expect that the development of an appropriate process will require consultation with the Privacy Commissioner, the Ombudsman, and affected parties.

We believe our principles for how we deal with information could be used in addressing the risks of direct access. We would like your feedback on whether these principles are robust enough to manage this risk and whether there are other protections we also need to consider.

Issue B: Sharing with government agencies for broader government purposes

We have identified a range of different government purposes, beyond border protection, for sharing Customs information. We would like your feedback on those purposes, and on whether there are other purposes we should consider.

These are some of the purposes we have identified:

- **regulatory compliance:** this could permit sharing to support regulatory regimes run by other agencies
- **trade promotion:** this could permit sharing to support the government's broader economic growth objectives
- **revenue:** this could permit sharing to support Inland Revenue's broader revenue function
- **service delivery:** this could permit sharing of information with agencies to help them improve their services to their customers and clients.

This information sharing would need to be consistent with our information principles (set out on page 30) and may also require consultation with the Privacy Commissioner, the Ombudsman, and affected parties.

Issue C: Expanding our information sharing with overseas agencies

The information sharing framework would provide a process to follow for sharing information internationally in accordance with our international obligations.

Two ways of improving our information-sharing internationally would be to:

- explicitly permit goods and revenue information to be shared with overseas agencies
- permit Customs to share with a greater range of overseas agencies, with the types of agencies being specified.

These changes would contribute to our reputation as a trusted international partner and improve our ability to support collaborative border management around the world.

Issue D: Sharing information outside of government

The framework would provide an explicit process for information-sharing with non-government agencies and organisations. The process would need to be consistent with Customs' principles for dealing with information and would require consultation with the Privacy Commissioner, the Ombudsman, and affected parties about possible "opt in" and "opt out" alternatives.

Issue E: Protecting commercially sensitive information

We could include a process for protecting non-personal commercial information in our legislation. This could reduce uncertainty, and build trust and confidence, as to how Customs manages the commercial information we hold.

Other solutions we are considering

Status quo

The second option is for Customs to retain our current legislative framework for sharing information, as set out from page 33. This would mean retaining and continuing to operate under the multiple information-sharing regimes in the Act, along with the Privacy Act, the Official Information Act, and, in some cases, other agencies' legislation.

We are concerned that this option does not provide us with the transparency we want in order to build trust and confidence in how we treat information. We also may not extract maximum value from the information that Customs holds for the benefit of New Zealand.

However, we would maintain our commitment to our principles for how we collect, use, store, share and dispose of information.

Who would be affected by change

Changes to the way we share information could affect all people and businesses that provide Customs with information. This includes traders, travellers, and excise manufacturers. Each of these customers' information could be subject to different information sharing mechanisms and could potentially be shared with more agencies for broader government purposes. Any changes would not affect the principles we use to manage the information provided to us though and the information will continue to be subject to protections where appropriate.

Such changes may also reduce compliance costs for individuals and businesses that may provide their information to fewer agencies. We are interested in hearing whether changes to our information sharing regimes could result in different compliance costs for you or your business.

INFORMATION SHARING: WHAT DO YOU THINK?

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 What are your views on Customs allowing 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

We believe that our current framework for receiving and accessing information could be improved in two specific areas:

- providing flexibility in the setting of timeframes, and in the updating of particular timeframes, for when traders and travellers must provide Customs with information
- reviewing the protections for travel records.

Customs has considered these issues in the context of our principles for how we deal with information (see page 30) and our goal for our legislative information framework (see page 31).

The two areas of potential improvement identified above are considered in more detail in the following pages.

Timeframes for providing information

The law prescribes certain timeframes for providing Customs with information. However, because of the following developments some timeframes may no longer be practical or may not support our risk-assessment and other functions:

- most information is now provided to Customs electronically, and well within or in advance of the prescribed timeframe (some timeframes have not been changed since information was required to be sent by post)
- changes in business practices have created faster supply chains and faster transporting of goods
- changes in risks at the border post-9/11, and increases in the volume of people and goods crossing the border, have meant that border agencies now rely more heavily on timely and accurate information to ensure we can perform our risk-management functions.

Customs now receives more electronic information more quickly, and can process that information faster than ever before.

Some of the current timeframes were originally designed for a mainly paper-based system that provided little opportunity for advanced risk-management methods. Now, Customs is an intelligence-led agency with significant capability to target individuals and businesses that are illegally operating at the border and in revenue-collection areas.

Currently timeframes are set by regulation. We would like to confirm whether this process is fit for purpose and flexible enough to deal with future developments, or whether there are other options for setting timeframes that

> “The Customs and Excise Regulations 1996 prescribe 26 timeframes for different types of information to be provided to Customs”

we should consider that would be more flexible yet still able to provide adequate certainty to those who provide us with information.

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

Solutions we are considering

The suggested changes to timeframes that we are considering (see below) relate only to marine craft, goods entries, and claiming imported goods, not to aircraft and airline information. Airlines face quick turnarounds and Customs believes that that information is already provided in the most efficient way.

The options we are considering for timeframes for marine craft and cargo are as follows:

- **maintain the status quo:** timeframes would be unchanged for providing information to Customs
- **change timeframes:** whether timeframes would be changed so that Customs received the information earlier or later would depend on the specific requirement. For example:
    - requiring information to be provided to Customs earlier rather than later will allow us to target our risk assessment more effectively and ensure threats are managed. In most cases, information is already available earlier than the prescribed timeframes.
    - allowing businesses to provide information to Customs later will be more responsive to business practices, including better reflecting the speed of modern supply chains. However, this needs to be balanced against allowing adequate time for Customs to carry out risk assessments and maintain control at the border.

Customs' indicative options for the setting of timeframes are shown in the table on the following page:

Indicative options for the setting of timeframes

Requirement	Direction of travel/trade	Status quo: current timeframes	Indicative options
Advance Notice of Arrival (sea)	Incoming	Not less than 48 hours before arrival	Status quo; or An earlier timeframe of up to 72 hours before arrival
Advance Notice of Departure (sea)	Outgoing	Not less than 4 hours before departure	Status quo; or An earlier timeframe of up to 12 hours before departure
Inward Cargo Report (sea)	Incoming	Not less than 48 hours before arrival	Status quo; or An earlier timeframe of up to 72 hours before arrival
Outward Cargo Report (sea)	Outgoing	For cargo that is ½ not in bulk: 48 hours after departure For cargo that is more than ½ in bulk: 24 hours after departure	Status quo; or An earlier timeframe of up to the time of departure
Inward Report (sea)	Incoming	Within 24 hours of arriving	Status quo; or An earlier timeframe of up to 12 hours of arriving
Import Entry	Incoming	Standard: within 20 days after arrival For goods that are for transportation in New Zealand or removal for export where further entry is required: within 20 working days after first entry	Status quo; or An earlier timeframe so the import entry is submitted on or shortly before arrival
Export Entry	Outgoing	48 hours before departure	Status quo; or A later timeframe of up to 12 hours before departure
Claiming imported goods	Incoming	3 months to claim imported goods	Status quo; or Reduce the timeframe, for example up to one month

Who would be affected by change

If changes are made to the timeframes and processes for providing information to Customs, then all businesses and individuals that provide information would be affected – this includes ship operators, shipping lines, cargo operators, ports, importers, exporters and other associated businesses.

There may be some additional compliance requirements or costs for these groups as a result of changes to particular timeframes. We are interested in hearing from businesses about whether different timeframes would be practical, and on how significant they think any additional requirements or costs would be.

TIMEFRAMES FOR PROVIDING INFORMATION: WHAT DO YOU THINK?

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?

Reviewing the protections for travel records

International standards provide airlines with guidance on how to provide passenger information to border agencies worldwide. Passenger Name Record information is created by airlines and is governed by international standards that apply to all countries receiving Passenger Name Record information.

What are Passenger Name Records?

The Customs and Excise Act requires airlines to provide Customs with information on people crossing the border.

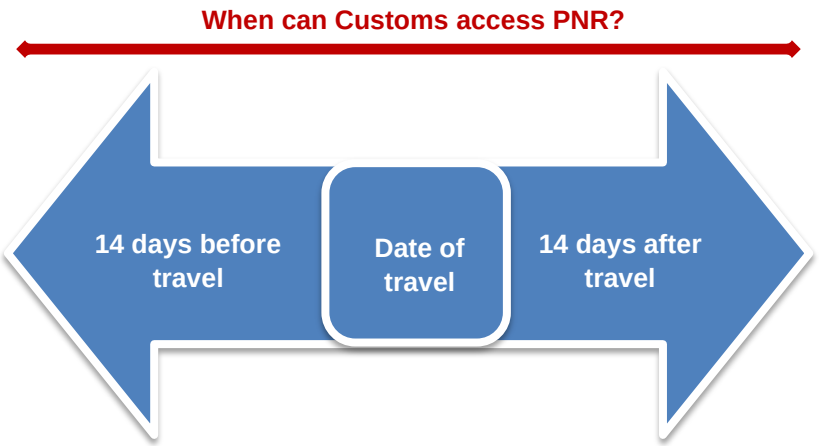
Customs receives this information in the form of Passenger Name Records. This includes personal information about passengers, such as their ticketing details.

Passenger Name Records are one of the main forms of information used by Customs to assess the risk that air passengers could pose to New Zealand, so we can intervene where appropriate. It is a key tool in our investigations into transnational criminal activity.

How Customs currently accesses travel records (the "pull" system)

Passenger Name Record information is currently provided by airlines to Customs by allowing us to access parts of their reservation systems and to "pull" the relevant information.

The Customs and Excise Act currently contains protections around Passenger Name Records based on the "pull" method of access. One of the most significant is that the information can only be accessed by Customs within 14 days either side of travel (28 days in total). For example, if a passenger books a flight six months before their travel date, Customs cannot access his or her booking information until 14 days before the travel date.



If Customs needs to view the information outside this timeframe, we must apply for, and obtain, a warrant from a District Court Judge.

A new automatic "push" system for travel records

The World Customs Organization, the International Civil Aviation Organization, and the International Air Transport Association have jointly developed guidelines recommending that Passenger Name Records be automatically sent by airlines to governments (called "pushing" the information) in a standard electronic format.

This new system is expected to be in place later in 2015. Customs will then no longer need to access airline databases for this information, as it will be systematically provided to us by airlines. The information will be available to us from 72 hours before the relevant flight departs. We will store the information securely and dispose of it once it is no longer necessary for Customs' purposes.

The Ministry of Business, Innovation, and Employment (MBIE) is currently progressing an amendment to the Immigration Act that would accommodate the changes to the way in which Passenger Name Record information is provided to Immigration New Zealand under the "push" system. This would include removing the 28-day window for access.

In the context of the new "push" system and those proposed Immigration Act changes, Customs would like to discuss the most appropriate mechanisms for protecting Passenger Name Record information while at the same time having access to the information we need to protect New Zealand's border, when we need it. In particular we would like to discuss whether the 28-day window for accessing airlines' Passenger Name Records should be retained.

How Customs uses historic travel information

Organised crime syndicates, transnational trafficking groups and terrorist networks are often extremely resilient. These organisations are very conscious of law enforcement techniques and are adaptable. Work by agencies, such as Customs, to build an accurate intelligence picture of these groups can therefore extend over a number of years.

Previous Passenger Name Record information can be used specifically to identify syndicate members, travel companions, previous drug couriers, previous travel patterns, and links to travel and drug shipments. This information can help Customs to investigate and prosecute criminal offending.

We also want to explore whether a warrant to access information in certain situations is still an appropriate protection under the new "push" system, or whether there are other protections we should consider.

If a court warrant is still an appropriate form of protection, we want to consider when it would apply and what the process for obtaining a warrant should be.

Our preferred solution: Remove the 28-day window for accessing travel records, and consider additional protections

Customs' preferred option is to remove the 28-day window for accessing Passenger Name Record information. This would reflect the changes in the way Customs will receive this information from airlines, and it would be consistent with MBIE's proposed changes to the Immigration Act. Customs would receive the information 72 hours before travel, and store it securely and only for as long as is necessary. There would be no restriction on accessing the information in the airlines' reservations system when this is necessary at other times.

For this option to be effective, we need to consider the impact on the current need for a court warrant to request Passenger Name Record information from airlines outside of the 28 day window. Taking into account the "push" system for receiving the information, and if there is no restriction on accessing the information when otherwise necessary, we see no circumstances in which a court warrant would be formally required under this option.

However, we will need to consider whether there are other protections that might be put in place around accessing, storing and disposing of the information, to ensure that these processes are consistent with our goal and principles for managing information (see pages 30 and 31).

Other solutions we are considering

Change the window for accessing travel records and consider whether warrants should still be required in some cases

This option would retain a window for accessing Passenger Name Record information **before** the date of travel. There would be no restriction on accessing Passenger Name Records after the date of travel, as Customs would already have received this information from the airlines under the new "push" system.

There will need to be a process for obtaining access outside of the window (that is, before the window period begins) when necessary. Customs would need to consider whether applying for a District Court warrant is still an appropriate process.

Again, we would need to consider whether there are other protections that might be put in place around accessing, storing and disposing of the information.

Continuing the status quo

The status quo would retain the 28-day window (14 days either side of travel) on Customs' accessing Passenger Name Record information, and the need to obtain a District Court warrant for access outside of that 28-day window. However, this could sit uncomfortably with the new internationally agreed system for managing this information once it is introduced later in 2015.

Who would be affected by the change

There would be no additional compliance costs or requirements for airline passengers or airlines. The information would be provided by passengers to airlines in the normal way, and airlines would provide Customs with the information through the new systematic "push" approach without change.

RECEIVING AND ACCESSING INFORMATION: WHAT DO YOU THINK?

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

AT A GLANCE

Advances in technology have meant that Customs has had to continually adapt to ensure we can effectively respond to threats at the border and facilitate trade and travel.

One of the key goals for this review is to ensure that Customs' legislation is future-proofed so that it can adapt to changes, particularly technological advances.

Getting your feedback

We would like your views on the following issues and proposals:

- the need to clarify Customs' role in managing biometric information for Customs purposes
- the need to clearly define the digital files that Customs can intercept at the border
- whether businesses should be allowed to store their business records offshore if they have Customs' prior approval.

Since the current legislation, the Customs and Excise Act 1996, was introduced, technology has advanced far beyond what was thought of in the mid-1990s. Business is now conducted mainly online and through electronic devices, and people now deal with significant portions of their lives on electronic devices.

Customs has been adapting our capabilities and driving changes in our legislation to support these technological advances. This is both to ensure that we can operate efficiently alongside wider supply chains for trade and travel, and so we can perform our functions effectively.

We know that technology will continue to advance, and we want to make sure Customs' legislation allows us to adapt to and make use of these advances without having to amend the legislation. The three areas of technology that we think will expand further in the coming years and that require our attention are:

- biometric information, and how Customs collects and uses it
- virtual and digital goods, and how we manage them at the border
- alternative methods for storing business records.

These areas are discussed further in the following pages.

Biometric information

We are considering whether our legislation should include clearer authority for Customs to collect, access and use biometric information. We think that this would clarify our present legislative authority to manage biometric information for Customs purposes and general law-enforcement purposes. It would also allow us to accommodate future potential changes in the use of biometric information to manage the security of the border and to facilitate people crossing the border.

As we discussed earlier in this paper (see page 31), Customs' goal for how we manage information (including personal information) is to develop a coherent, transparent framework for the collection, use, storage and management of information that, among other things:

- maintains and builds trust and confidence in the way that Customs deals with information
- maximises value for New Zealand from the information that Customs holds, particularly for better protecting New Zealand and growing the economy, and
- supports our principles for information (see page 30).

We want to more clearly provide for biometric information in our information management framework.

Customs does not intend to create any additional computer infrastructure to store biometric information. The Government has invested in Immigration New Zealand and the Department of Internal Affairs to be lead repositories of identity information, including biometric information. Customs does not intend to replicate or replace those systems.

Terms used in this chapter

Biometric information: information about an individual's physical or behavioural characteristics that can be scientifically measured, most commonly including a facial image, fingerprints, iris scans, DNA profiles, and finger and palm prints.

SmartGate: an automated border-processing system that gives certain electronic passport holders the option to self-process through passport control when arriving at and departing from New Zealand international airports. SmartGate uses the electronic information held in an electronic passport and facial recognition technology to verify the identity of the passport holder for Customs and Immigration purposes.

Customs does not intend to duplicate in the Customs and Excise Act any uses for biometric information for traveller processing that are already covered by the Immigration Act.

We also do not intend to extend the types of biometrics collected beyond those currently used in traveller processing. Immigration New Zealand would lead any changes to the types of biometrics required for foreign nationals, and the Department of Internal Affairs would lead

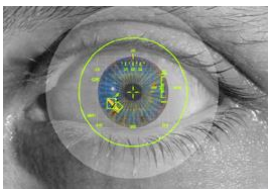
any changes to biometrics in New Zealand passports. Changes are not currently on these agencies' agendas.

Biometrics and their use

Biometric information is becoming an increasingly common way of establishing or confirming a person's identity. Inland Revenue, for example, has over one million subscribers to its voice recognition programme, and new generation smartphones can be locked and unlocked using a fingerprint.

A number of different biometrics are already in wide use, and new and emerging biometrics range from DNA to voice and vein patterns. The most relevant biometrics in the border context are:

Face – currently the most widely used internationally for traveller processing



Eyes – iris or retina recognition

Fingerprints and palm prints

Biometric information is more accurate and reliable than traditional methods of verifying identity, such as simply looking at a photo or signature. Biometric information that is encrypted and stored on an electronic chip inside a passport is more secure than information recorded on traditional passports, and it reduces the risk of identity theft and passport fraud.

How Customs currently uses biometrics

Customs' authority to use and collect biometric information (currently biometric photographs incorporating facial recognition technology) derives from the Customs and Excise Act, several other different pieces of legislation, and under arrangements with other government agencies whom we work on behalf of at the border.

Our largest source of biometric information is from processing travellers for customs purposes and for immigration purposes when acting as Immigration officers, through SmartGate. A traveller can use SmartGate as an alternative option to being processed by a Customs officer. The SmartGate technology compares live facial images with biometric images on electronic chips in the passports of eligible travellers.[6] This automated processing enables us to process large numbers of travellers quickly, enabling a faster and more reliable means of identifying people of interest to Customs.

[6] Currently these are Australian, New Zealand, United Kingdom, United States and Canadian electronic passport holders. More nationalities will be added over time.

Developing and future uses of biometrics at the border

Worldwide, more biometric-compatible passports (that is, those with an electronic chip), conforming to international standards, are coming into circulation. Advances in technology are also allowing biometric information to be collected from a wider range of travellers, including from those holding non-electronic passports. More sophisticated automated systems are also being developed around the world that can accept electronic passports from different countries and with different types of biometric information.

As technology advances, government agencies are looking to use additional and multiple biometrics to provide greater certainty of people's identities. Systems that rely solely on facial biometrics, for example, are subject to some obvious limitations: people wanting to defeat the system can change their appearance or use the passport of someone who looks very like them (twins or other siblings for example), and the appearance of legitimate travellers will of course simply change over time.

Biometric information at the border of the future

In addition to facial images, Immigration New Zealand can also collect fingerprints and iris scans from foreign nationals when they arrive and depart. However, it does not currently have the capability to collect iris scans, or share these with domestic or overseas partners.

Agencies that Customs represents at the border could collect the biometric information of people of interest and share this information with Customs. Customs may then use that information to identify and intercept these people at the border. Customs needs the capability to respond to that information.

What other countries do at the border

Australia, which also uses SmartGate technology, keeps biometric information (photographs incorporating facial recognition technology) collected at the border for seven years, so that the information can be matched against travel records and accessed as needed for law enforcement purposes. The photographs and biometric templates must also be kept as evidence of the grounds on which the traveller was cleared across the border.

The United States records all fingerprints and a photograph of foreign airline passengers visiting the United States (except Canadians), keeping it in databases for 75 years for border management and control purposes. The United States also plans to test a biometric programme on departure soon. A voluntary joint Canada-United States program uses iris recognition biometric technology.

Proposed European Union regulations would require Member States to use fingerprints and a photograph for immigration purposes. The European Union currently stores biometric information (mainly fingerprints) of foreign national visa applicants for five years.

Biometrics: The law as it stands

Biometric information falls within the definition of "personal information" in the Privacy Act 1993. The use of biometrics is also explicitly authorised under the Immigration Act 2009 and the Policing Act 2008. In the Immigration Act, biometric information (defined as including head and shoulder photographs, fingerprints, and iris scans) may be used to establish or verify a person's identity or assist in immigration-related decisions. In the Policing Act, biometric information (defined as including DNA profiles and finger and palm prints) may be used to match prospective Police employees against other information held by the Police.

The Customs and Excise Act currently allows Customs to use biometric photographs incorporating facial recognition technology provided by SmartGate to confirm the identity of eligible travellers for Customs and Immigration purposes. Travellers' use of SmartGate to verify their identity on arrival and departure is voluntary, as an alternative option to manual processing.

> In 2014, 71.7 percent of SmartGate users were New Zealanders

As designated Immigration officers under the Immigration Act 2009, Customs officers can also collect and use biometric information from arriving and departing foreign nationals in order to confirm their identity. However, there is no clear equivalent authority to require this information from New Zealanders when they arrive and depart. There is an opportunity to simplify Customs' collection, use, access to and sharing of biometric information, similar to our collection of other personal information and use of facial recognition technology in SmartGate.

Our information-sharing arrangements with key agencies that collect biometric information allow us to access these agencies' biometric information when authorised so that we can investigate Customs offences. To increase transparency, the Act should give Customs clearer authority to collect biometric information for our own purposes and to share that information with other agencies for law-enforcement purposes.

The opportunity to provide for Customs' use of biometrics

Protecting New Zealand at the border through intelligence-led, risk-based border management, and as part of the law enforcement community, means that accurately verifying the identity of both New Zealanders and foreign nationals matters to Customs.

Customs' role at the border also means that we need to be able to effectively perform tasks on behalf of other agencies by being able to receive and share biometric information with them. Customs' role is to assess risk across all travellers, regardless of nationality or immigration status. Our use of the biometric information authorised by the Immigration Act covers only part of Customs' wider border security functions.

There is an opportunity to consider how long biometric information is stored. Technology is providing opportunities for biometric information to be used beyond immediate traveller processing purposes. This could include real-time matching of images, converting still or

closed circuit television (CCTV) images to a biometric form, and sharing biometric photographs of persons of interest from Customs investigations with other agencies to establish or confirm their identity.

Customs would not be able to take full advantage of these opportunities if we could not retain access to biometric information for a reasonable period of time to investigate possible offences against our Act and other legislation that we enforce at the border.

Examples of potential Customs uses of biometric information beyond those authorised by the Immigration Act

Customs currently uses manual processes in trying to identify and intercept unidentified criminals at the border. For example, Customs officers at airports manually compare travellers with photographs of Police targets involved in organised crime such as Automated Teller Machine (ATM) scams. Customs investigators also manually compare CCTV coverage of arriving and departing passengers with photographs of Customs targets taken during controlled deliveries of illegal drugs and precursor substances ("controlled deliveries" are where a consignment of, for example, illegal drugs is detected and allowed to go ahead under their control and surveillance in order to obtain evidence against the organisers).

Biometric technology could convert photographs of unidentified law enforcement and security targets into biometric information. Customs could then match this information in real-time against CCTV coverage of departing and arriving passengers. This would allow us to identify unidentified individuals of interest to Police, terrorist suspects, transnational criminals, and people who feature in surveillance from controlled deliveries of prohibited goods.

Other agencies also provide Customs with the names of particular people of interest – for example, people who are not permitted to leave New Zealand. If these people travel using other unknown aliases, then without biometric information Customs would be less effective in preventing them from leaving.

Customs' processes for protecting biometric information

We recognise that there are concerns and sensitivities around the collection and use of biometric information.

We currently protect biometric information in the same way as all information held by Customs: our servers are built to Government Restricted level and, for certain levels of information, access is restricted to only designated staff.

In addition, we secure biometric information both physically (through locks and surveillance) and electronically. No biometric information remains stored at SmartGate processing points. Live images are not directly accessible to other agencies.

Customs carries out frequent risk and security audits of SmartGate, and SmartGate information is protected by these specific security measures:

- the system generates automatic and regular reports for the appropriate managers, to prompt reviews of who has permission to access the SmartGate computer system
- when a staff member leaves Customs their access permission is cancelled
- access to the SmartGate computer system is audited every six months.

The confidentiality of biometric information is also protected by these measures:

- SmartGate uses local matching (that is, the person presenting the passport is matched against the biometric information in the passport's electronic chip) rather than remote matching to central biometric databases, which are potentially more vulnerable to abuses of privacy
- the Office of the Privacy Commissioner assessed and approved the Privacy Impact Assessments that Customs carried out on SmartGate before the system was used. Government agencies are required to carry out these assessments, which are a risk identification and management tool, whenever a new or amended initiative involves personal information.

Our preferred solution

Providing for Customs' use of biometrics in the Customs and Excise Act

We think it is important that we are up-front and open about our use of biometric information as a particular class of personal information. We also want to clarify how we are able to use biometric information when acting on behalf of other government agencies who are not present at the border. We think that having explicit authority for Customs to use biometric information for our own and for general law enforcement and security purposes would increase transparency. It would allow us to incorporate biometric information into our wider information-management framework. We would then be able to make the best use of this information as it becomes available, and also adapt to potential future uses, in our management of the border.

We also believe that providing for Customs' handling of biometric information in the Customs and Excise Act would clarify that we can then access and share this information for law enforcement purposes where this is authorised under our information sharing provisions and arrangements.

To avoid any confusion or uncertainty, we think Customs' legislation should not duplicate any powers that Customs already has under the Immigration Act 2009.

We consider that any provision dealing with the storage of biometric information should be aligned with the wider approach adopted for handling personal information in the Act. We note that our key international enforcement partner, Australia, stores biometric information for up to seven years so that it can be accessed for investigations and law enforcement purposes.

Other solutions we are considering

Status quo

Around the world, travel documents and border systems are becoming increasingly sophisticated, and Customs needs to be able to adapt to these changes. The status quo would leave Customs' ability to handle biometric information continuing to be governed by a combination of the Customs and Excise Act (for SmartGate), the Privacy Act, the Immigration Act, and other legislation.

We would also be limited in exploring future and emerging opportunities for the use of biometric information to enhance border security.

Who would be affected by change

International arriving and departing travellers already submit photographs (one form of biometric information) to Customs, whether this is by using SmartGate, or by passport-reading devices used by Customs officers. Customs also monitors CCTV feeds in the arrivals and departures areas at international airports. These are not currently biometric, but in future they could be capable of scanning faces to match them against images of people of interest.

Travellers would therefore not notice any significant change to current traveller processing. Any change to biometrics other than photographs would be subject to a Privacy Impact Assessment. The changes we propose would only be to clarify the purposes for which biometric information collected by Customs can be used and shared for Customs and law enforcement purposes.

BIOMETRICS: WHAT DO YOU THINK?

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

In this section, we look at the role of Customs in managing virtual and digital goods at the border as part of enforcing controls over restricted or prohibited imports. This section does not examine revenue or taxation issues relating to virtual or digital goods.

For more information on Customs' ability to examine and access a person's electronic devices (such as laptop computers and smartphones), see page 131 in the "Powers" chapter.

Throughout this section we will refer to virtual and digital goods as "digital files".

Terms used in this chapter

Virtual and digital goods: Also known as "digital files", these can include, for example, computer code, software, e-books, data files and video files.

The widespread use of digital technologies means that there are now numerous means by which digital files can be transferred across borders. They can be transmitted over the internet, or carried on laptops, smartphones and other devices. The instantaneous transfer of files challenges the traditional notions of border control.

Digital files are largely used by people for legitimate purposes, but there are situations where they are used to evade border controls.

Restricted items that would once have crossed the border in a physical form, such as a book, can now be carried in digital form. Sophisticated encryption of files means that it can be harder for Customs to detect illegal activity.

Customs' interest in relation to digital files is in the following enforcement areas:

- intercepting prohibited or restricted items
- identifying infringements of intellectual property rights.

> "Worldwide consumer spending on digital movies, games, and apps grew 30 percent from 2012 to 2013"

Customs will continue to intercept digital files at the border

In this review, we are not proposing to expand Customs' role in relation to digital files into areas such as actively monitoring cross-border internet traffic. We will continue our role of intercepting digital files that have content subject to an import or export restriction and that are transported across the border on a physical device, such as a laptop or portable hard drive.

As appropriate, Customs will also continue to investigate cases of import or export offences that are referred to us by a domestic agency, such as the Department of Internal Affairs, or by an overseas enforcement agency. These investigations could include exercising search warrants and following up on border interceptions of digital files on physical devices. Currently the most common types of prohibited digital files that we intercept and investigate are those containing objectionable material.

Other agencies have a lead role in relation to digital files

Agencies other than Customs have the main responsibility and capability for identifying and investigating offences relating to digital files. For example, the Office of Film and Literature Classification (OFLC) is responsible for classifying publications (including digital file formats) as objectionable material.

However, Customs' unique role of intercepting prohibited material when it is physically carried across the border means that we work alongside these other government agencies – for example, by submitting intercepted digital material to the OFLC for classification if we believe it may be objectionable.

Virtual and digital goods: The law as it stands

The Customs and Excise Act was developed largely before the emergence and expansion of the digital world. The Act's focus has been mainly on traditional travel, trade and commerce.

The Act defines "goods" as "moveable personal property". Some digital files do not meet this definition, and this means parts of the Act relating to importing and exporting goods do not apply to these digital files.

Our Act does enable us to enforce the law in relation to the following prohibited goods when they are in a digital format:

- objectionable material and images – "objectionable" has a very broad definition under the Films, Videos, and Publications Classification Act 1993, and can capture material ranging from violent or degrading sexual images to material that encourages criminal acts or terrorism
- designs for weapons or for other items of potential military use
- designs and blueprints for making nuclear, biological, chemical or radiological weapons.

If the Office of Film and Literature Classification classifies a publication as objectionable, then Customs has powers to investigate and to intercept imports and exports of these publications, including in digital formats.

Virtual and digital goods: Key issues and opportunities

We believe that our legislation needs to be both clearer and more flexible in defining the types of digital files that Customs can intercept. We want to ensure that our legislation can meet the current and future challenges of rapid digitalisation, and can complement any domestic controls that may apply, so that, for example, a restriction on possessing a particular digital file within New Zealand can be supported by restrictions on importing and exporting.

One particular area for attention is where imported digital files may fall outside the definition of "publication" in the Films, Videos, and Publications Classification Act and therefore outside Customs' current enforcement powers. Examples could include computer instructions for producing goods through 3D printing,[7] and computer malware.

Example of a gap in the legislation

It is an offence to access a computer system without authorisation – for example to introduce malware, such as a computer virus. However, malware brought across the border on an electronic device such as a laptop does not fall within the definition of "goods" in the Customs and Excise Act.

We expect that as technology advances, there will be new opportunities for importing prohibited goods through digital means. For example, several digital files may be imported that, when combined, would result in a prohibited item.

Solutions we are considering

We are considering the three options discussed below. We believe change is needed to keep up with changes in technology, but we do not have a view as to which of the two options for change would be best.

Status quo: Make no legislative changes

Under this option, there would be no change to Customs' responsibilities for policing certain types of digital files that constitute objectionable material, or that have a military/weapons design use or a prohibited "strategic" weapons use (designs for making nuclear, biological, chemical or radiological weapons).

We believe this option would prove increasingly impractical over time and that Customs would be unable to quickly adapt to new challenges presented by digital material.

[7] 3D printing is a process of making a solid three-dimensional object by a printer driven by instructions contained in a data file.

Prescribe which digital files are covered by the Act through Regulations

Under this option, a change to the definition of "goods" in the Customs and Excise Act would add the words "certain types of electronic goods". "Certain types of electronic goods" would then need to be defined or specified further, probably through Regulations made under the new Act. This could be done quickly as government policy changes in response to changes in technology.

This option would allow Customs to intercept, seize and investigate specific types of digital files that do not fall under the definition of "publication" in the Films, Videos, and Publications Classification Act, or that are not electronic publications classified as prohibited exports by Order in Council. Under this "opt in" approach, the list of types of digital files could be updated as new threats emerge. This would enable existing powers over the current range of digital files to be applied also to other specified digital files through a simple and transparent process.

Expand the definition of "goods" to cover all digital files unless specifically excluded

This option would give Customs the flexibility to control other types of digital files as new technologies emerge, and as concerns arise about harm to the community or to national security that are comparable to concerns for those digital files already covered in the legislation currently. This option would potentially bring all digital files within the ambit of Customs' legislation.

Like the previous option, this option would expand the definition of "goods" in the Customs and Excise Act by adding "certain types of electronic goods" to the definition.

This option would also expand the current provisions relating to importing and exporting goods to cover other types of digital files in the interests of public safety and national security, in addition to the specific digital files already covered in the Act.

The option differs from the second option presented above in that digital files would automatically come under the potential control of Customs. It would require amending the Act to **remove** any specified type of digital goods from Customs' control, whereas under the second option the Government would make a policy decision each time to place a digital file format or content under Customs' control through (most likely) Regulations.

Penalties for importing or exporting any new prohibited digital files would be in line with penalties for existing prohibited digital files.

Who would be affected by change

People importing or exporting digital files may be affected by the two change options we have put forward. Customs recognises that we will need to balance the rights of individuals with the need to protect the community and national security.

VIRTUAL AND DIGITAL GOODS: WHAT DO YOU THINK?

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

The Customs and Excise Act currently requires traders to keep their business records in New Zealand. This is to ensure that Customs has access to the records we need to be able to carry out audits under our revenue assurance obligations.

If there were no restrictions on where businesses records are kept, it is likely that Customs would not be able to give the same level of assurance to the Government and the public that the right amount of revenue is being collected and from the right businesses.

This requirement is, however, becoming increasingly impractical for businesses wanting to take advantage of cloud-based storage for their digital information. This is because cloud-based computing is usually located offshore.

By contrast, taxpayers can apply to Inland Revenue to store their tax records offshore, and this can include cloud storage.

Our preferred solution

Allow businesses to store business records offshore with Custom's prior approval

Our preferred option would allow businesses, and others such as a data storage provider on a business's behalf, to store their records offshore if they have Customs' prior approval. This would allow trusted businesses to take advantage of the opportunities offered by cloud storage and other evolving technologies.

This option would also align the Customs and Excise 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.

If we had concerns about the reliability of a particular business Customs could require it to keep its records in New Zealand, where we would have guaranteed access to them. As with the current Act, a penalty would apply if that business did not comply, and permission for offshore storage could also be revoked if Customs has evidence that the particular business is not complying with requirements.

We would develop criteria to be used to determine whether a business is eligible to store their records offshore. These criteria would be transparent, and they would be aligned to other government agencies' requirements to ensure that businesses are not having to meet very different requirements for different agencies. While Customs would assess each request for approval against those criteria, we would also take into account the particular circumstances of each individual case.

Examples of criteria that Customs might use in permitting a business to store records offshore

- the form and manner in which the information will be stored
- how accessible the information will be
- whether the business has breached any previous obligations for record-keeping or for providing Customs or other government agencies with access to those records.

Other solutions we are considering

Allow all businesses to store their records offshore

This option would allow all business to store their business records offshore if they decided to. This would enable businesses to take advantage of the opportunities provided by cloud storage and other technologies.

However, this may present a risk that Customs would be unable to verify business records to safeguard Crown revenue. If records are stored offshore they are effectively outside the jurisdictional reach of the Customs and Excise Act. This means Customs would not provide the same level of assurance to the Government and the public that the right revenue is being collected and from the right businesses.

Status quo

Retaining the status quo would require all businesses to continue storing their business records in New Zealand. This would allow Customs to maintain confidence that at all times we have access to the records we need, but it would constrain businesses from taking advantage of technological advances.

The status quo is also inconsistent with other government agencies' requirements, particularly Inland Revenue.

Who would be affected by change

There are likely to be lower compliance costs for those businesses that are granted approval to store their records offshore, as they would be able to use more cost-effective storage methods. All businesses that are required by us to store records could be affected by changes to the current storage requirements.

BUSINESS RECORDS: WHAT DO YOU THINK?

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

AT A GLANCE

Customs wants to be able to collect the correct amount of revenue in the most effective and efficient way. It is important to us that travellers and traders understand what is required of them.

Getting your feedback

We would like to get your views and gather information on the following issues:

- excise and excise-equivalent duty:
    - the major issues for businesses and how the administration and collection of excise could be improved
- drawbacks, refunds and remissions:
    - how the legislation could be made easier to use
    - whether to allow private importers (such as internet shoppers) to claim a refund of GST and duty paid when goods are returned in good condition
    - whether to extend the drawback provisions to duty-paid goods that are sold duty-free (our preference is not to extend those provisions)
- GST at the border and its impacts on businesses:
    - managing GST accounts between both Customs and Inland Revenue
    - for temporary imports, determining the value of the item and providing Customs with a bond or cash security for the GST and duty on the item
- valuation of imported goods for tariff duty:
    - whether to continue to exclude international freight and insurance costs when determining the customs value and tariff duty obligations (our preference is to retain it)
    - whether to define “sale for export”, what a possible definition would be, and the impact on businesses of defining this term
    - our proposal to clarify the provision about valuing imported goods bought and sold between related parties.
- Comptroller’s discretion:
    - allowing the Comptroller of Customs (Customs’ chief executive) to use discretion in collecting revenue in order to increase efficiency
- review of duty assessments:
    - whether and how the appeals process could be improved.

Terms used in this chapter

Assessment of duty: the determination of the amount of duty payable. In this chapter, the word "assessment" also includes amendments of assessments that were originally made by the duty payer.

Customs Appeal Authority: sits as a judicial authority for hearing and deciding appeals which are authorised by the Customs and Excise Act or any other Act against assessments, decisions, rulings, determinations and directions made by the Customs chief executive. Every Authority is appointed by the Governor-General on the joint recommendation of the Minister of Justice and the Minister of Customs.

Drawback: a refund of previously paid duty (and sometimes GST) when goods are exported.

Excise duty: a tax on certain locally manufactured goods (currently alcohol, transport fuels, and tobacco). When these types of goods are imported, a rate of duty is levied on them that is equivalent to the excise liability that would apply if the goods had been manufactured in New Zealand – this is called ***"excise-equivalent duty"***.

Goods and Services Tax (GST): a tax on most goods and services in New Zealand, most imported goods, and certain imported services. The rate of GST applied is 15 percent.

Input tax credit: When a registered person buys goods or services to use in a taxable activity, the GST portion of the price is called "input tax" and the person is credited with this amount (Inland Revenue generally calls this a "GST credit").

Refund: a return of previously paid duty, available only to the importer or producer of the goods.

Remission: where duty is no longer due because goods do not enter the New Zealand market, do not enter in a usable state, are considered sample goods, or are exempt under the Tariff Act or exempted by the Customs chief executive.

Tariff duty: In New Zealand this is a tax on specific imports and is expressed usually as a percentage of a good's value.

Temporary imports: goods imported into New Zealand temporarily before being exported.

Customs collects approximately 15 percent of total Crown revenue through customs duties and GST on imports, and through excise and excise-equivalent duties and levies. People who pay revenue to Customs are travellers and traders – for example, an international air passenger who pays GST and excise-equivalent duty on tobacco brought into the country that is above the duty-free concession.

> In the year to 30 June 2014, Customs collected $11.847 billion in Crown revenue"

Customs' revenue collection is based largely on the voluntary compliance of travellers and traders. We carry out field audits and verify transactions to check whether businesses have correctly declared how much they owe to the Crown, and we take action against businesses that make false declarations.

> In the year to 30 June 2014, Customs collected 99.2 percent of the revenue due on time"

Most businesses meet their revenue obligations.

Customs aims to make it easier for businesses to comply with their revenue obligations. To achieve this, we undertake an outreach programme with businesses and we actively look for ways to improve our processes.

Revenue: The law as it stands

The Customs and Excise Act and Regulations cover Customs' collection and administration of:

- GST on all imported goods[8]
- excise and excise-equivalent duty on tobacco, alcohol and transport fuels
- tariff duty on imported goods (where applicable)
- anti-dumping duty on imported goods (where applicable)
- countervailing duty on imported goods (where applicable)
- levies on behalf of other agencies (for example, the Petroleum and Engine Fuel Monitoring Levy on petrol).

Our revenue functions are also defined and heavily influenced by a range of international obligations, such as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the World Trade Organization Customs Valuation Agreement) and free trade agreements.

[8] GST is governed by the Goods and Services Tax Act 1985.

You can appeal to the Customs Appeal Authority if you disagree with a duty assessment.

Revenue: Our goal

Our goal is to have legislation that supports Customs in collecting the correct amount of revenue due in the most effective and efficient way. We also want to make it easier for traders and travellers to understand what is required of them and to comply voluntarily. When a trader or traveller disagrees with a duty assessment, we want to ensure that they have access to dispute resolution that is fair, accessible, transparent, effective and efficient.

THE REVENUE PROVISIONS IN THE ACT MUST:	WHICH WILL RESULT IN THE FOLLOWING BENEFITS:
• support and improve the collection of the correct amount of revenue in a sustainable and efficient manner • support flexibility (where possible) in the way that Customs and our customers work • accommodate changes in the operating environment to ensure that all due revenue can be collected • improve the level of compliance, while also (where possible) reducing compliance costs for both Customs and our customers • provide our customers with access to dispute resolution that is fair, accessible and transparent.	• strengthening of the Government's accounts • improving revenue risk management through the targeting of high-risk areas, such as deliberate under-valuation and misdescription of goods • increased voluntary compliance based on legislation that is transparent and easy to understand and comply with • the legislation supports future changes in the operating environment • greater customer trust and satisfaction in Customs as we refine our compliance-based approach • greater collaboration with other government agencies.

Revenue: Key issues and opportunities

Changes in business models and processes over the last 15 years have meant that transactions can be more complex, more diverse, and faster than in the past.

Changing technology has influenced the types of goods traded and how they are imported. For example, new fuels, such as synthetic fuels, are continuing to be developed for the market. Free trade agreements have also had an impact on business processes at the border.

The key issues we have identified are summarised in the boxes below:

Excise and excise-equivalent duty

The Act has not kept pace with changes in excise industries.

Some elements of the system may create unnecessary costs for businesses or for Customs.

GST at the border

GST-registered importers have to work with both Customs and Inland Revenue. A financial security can be required for temporary imports into the country.

Comptroller's discretion to collect revenue

The Act does not allow for discretion to consider individual circumstances in the collection of revenue to promote compliance/highest net revenue over time.

Refunds, remissions and drawbacks

The Act's provisions are not always consistent or clear, and the process can be complex.

Valuation of imported goods

Importers have to use two different values to determine GST and tariff duty.

An importer can choose which sale for export applies.

Review of duty assessments

The Act provides for direct appeal to the Customs Appeal Authority when a duty assessment is disputed. Appeals must be lodged within 20 working days.

Even if an appeal has been lodged, duty must still be paid by the due date and an additional duty is charged on any outstanding amount.

These issues are each discussed in more detail below.

Excise and excise-equivalent duty

Excise is a tax or duty on the domestic manufacture of specific goods – currently these are alcohol, transport fuels, and tobacco.

When goods subject to excise-equivalent duty are imported, a rate of duty is levied on them that is equivalent to the excise that would apply if these goods had been manufactured domestically. This ensures that excisable goods are treated consistently in the New Zealand market. Products for export are not subject to excise.

Excise and excise-equivalent duty are levied for a number of reasons, including reducing demand for goods that contribute to social costs.

Terms used in this section

In the text below we have used **"excise"** to refer both to excise duty levied on domestically manufactured goods and to excise-equivalent duty on imported goods. We also use the term **"excisable goods"** to mean goods that are subject to excise.

The Act and Regulations set out the current excise duty system and the requirements that manufacturers and importers of excisable goods must meet. Manufacturers and importers may also have to pay other government levies to Customs at the same time as excise.[9]

> "In the year to 30 June 2014, we collected $3.8 billion of excise and excise-equivalent duty"

Excisable goods must be manufactured in an area that has been licensed by Customs unless specifically exempted. Once the finished goods are released from the licensed area, excise becomes due. This system enables the Crown to collect revenue efficiently and at the right amount, and to manage the risk of revenue "leakage" as early as practicable in the supply chain.

The current excise legislation appears to be fundamentally sound. The excise scheme is underpinned by a combination of Customs control of the goods in Customs Controlled Areas and a trust-based approach that relies on licensees submitting accurate excise returns and paying the appropriate excise due.

[9] Alcohol goods liable for excise are subject to the Health Promotion Agency levy (formerly the ALAC levy). Fuel goods liable for excise are subject to an ACC levy and the Petroleum or Engine Fuel Monitoring levy.

We believe that some fundamental components of the excise system should not significantly change. These are:

- the level and timing of revenue collection
- the types of goods that excise should apply to (that is, we believe it should continue to apply to alcohol, transport fuels and tobacco)
- excise-equivalent duty
- Customs remains able to exercise its existing powers
- the requirement for licensing or registration for the commercial manufacture of excise goods.

Any proposals for change in the excise and excise-equivalent regimes should not adversely affect these components of the system.

We are aware that there may be some elements of the current legislation and in the way Customs manages the excise scheme that creates unnecessary costs for businesses or for Customs. Some streamlining of current processes could therefore be appropriate.

Changes and opportunities for the excise system

The excise industries of alcohol, transport fuels and tobacco have seen considerable changes since the Act was introduced in 1996.

Alcohol

There has been considerable growth in small, medium and large-scale beer production.

There can now be several participants at different stages of the wine production process, including blending and bottling.

There have also been an increasing number of domestic distillers producing spirits in New Zealand.

Storage of bulk supply outside a manufacturing area has grown.

Fuel

Since the 1990s the fuel industry has seen many changes in the way businesses operate. There has been a growth in independent petrol stations and in intermediaries (such as retailers) operating at multiple sites.

Synthetic fuels and fuel blends have also been developed, while the use of compressed natural gas (CNG) as a vehicle fuel has decreased.

Tobacco

Tobacco is now mainly imported into New Zealand. Excise increases are used by the Government as a means of reducing smoking and the harm it causes.

We are aware of some concerns that the excise system may work better for alcohol manufacturers who operate their own bottling facilities, and may be less suitable for other

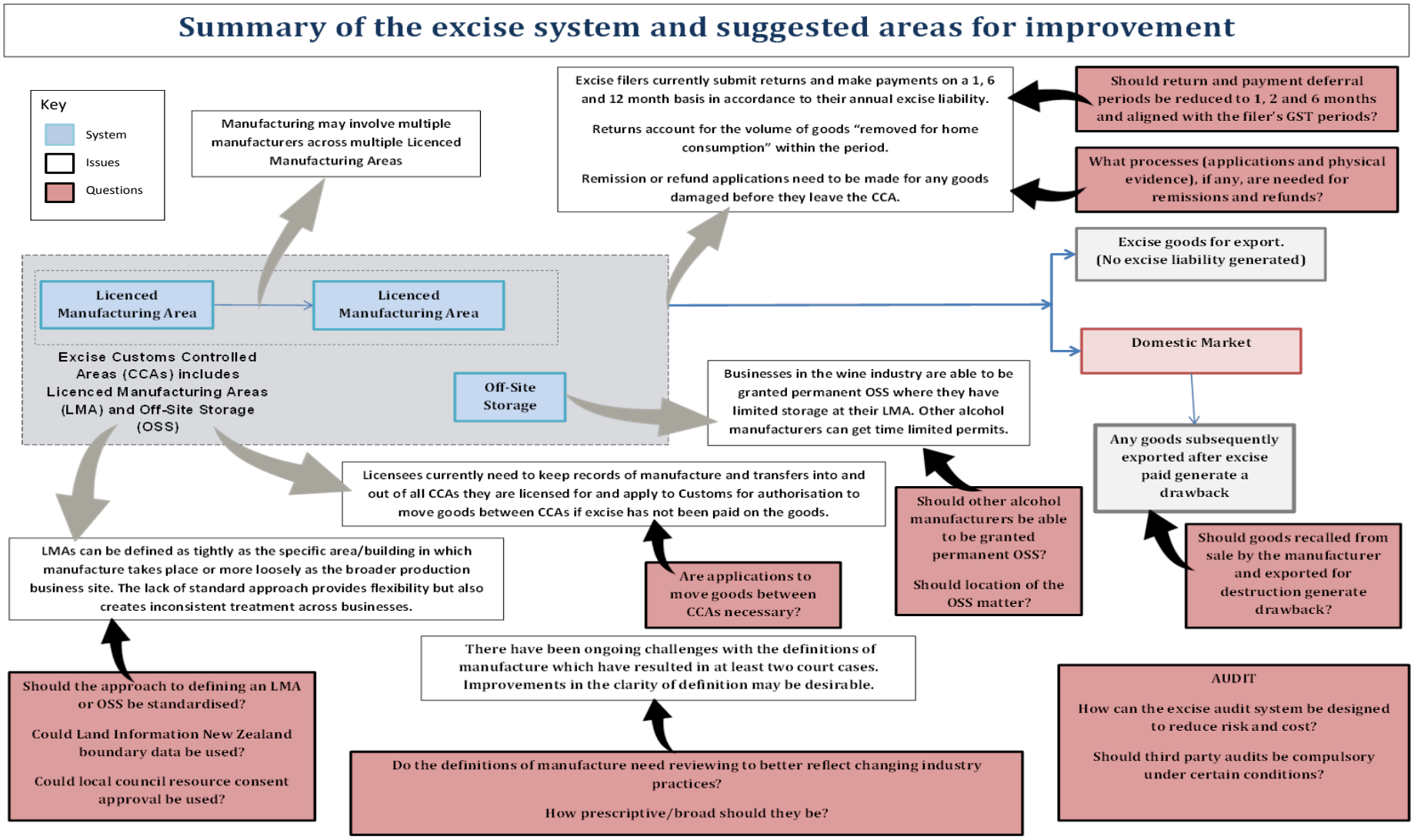
operators. We would like to gather more information on the issues faced by small and medium-sized businesses involved in alcohol production in relation to excise collection and payment.

While Customs believes that the excise system is not fundamentally broken, we are aware from discussions to date that there may be ways to improve the system and reduce costs to business, while at the same time preserving revenue.

This review gives us the opportunity to consider whether the excise legislation could be made more flexible so that it is able to respond to future market developments or goods, such as new fuel blends or changes in the manufacturing of tobacco, or to future Government decisions, such as new types of goods being added to the excise scheme. It also gives us the opportunity to ensure that businesses' excise obligations are sufficiently clear.

Getting your input on some specific issues

The diagram on the following page is a stylised view of the excise system and how it operates (the blue-shaded boxes), and it also presents some issues that have arisen (the white boxes) and asks questions about whether there are opportunities to streamline the system (the red-shaded boxes).


Summary of the excise system and suggested areas for improvement
Key
System
Issues
Questions
Manufacturing may involve multiple manufacturers across multiple Licenced Manufacturing Areas
Excise filers currently submit returns and make payments on a 1, 6 and 12 month basis in accordance to their annual excise liability.
Returns account for the volume of goods "removed for home consumption" within the period.
Remission or refund applications need to be made for any goods damaged before they leave the CCA.
Should return and payment deferral periods be reduced to 1, 2 and 6 months and aligned with the filer's GST periods?
What processes (applications and physical evidence), if any, are needed for remissions and refunds?
Excise goods for export. (No excise liability generated)
Licenced Manufacturing Area
Licenced Manufacturing Area
Excise Customs Controlled Areas (CCAs) includes Licenced Manufacturing Areas (LMA) and Off-Site Storage (OSS)
Off-Site Storage
Domestic Market
Businesses in the wine industry are able to be granted permanent OSS where they have limited storage at their LMA. Other alcohol manufacturers can get time limited permits.
Any goods subsequently exported after excise paid generate a drawback
Licensees currently need to keep records of manufacture and transfers into and out of all CCAs they are licensed for and apply to Customs for authorisation to move goods between CCAs if excise has not been paid on the goods.
Should other alcohol manufacturers be able to be granted permanent OSS?
Should location of the OSS matter?
Should goods recalled from sale by the manufacturer and exported for destruction generate drawback?
LMAs can be defined as tightly as the specific area/building in which manufacture takes place or more loosely as the broader production business site. The lack of standard approach provides flexibility but also creates inconsistent treatment across businesses.
Are applications to move goods between CCAs necessary?
There have been ongoing challenges with the definitions of manufacture which have resulted in at least two court cases. Improvements in the clarity of definition may be desirable.
Should the approach to defining an LMA or OSS be standardised?
Could Land Information New Zealand boundary data be used?
Could local council resource consent approval be used?
Do the definitions of manufacture need reviewing to better reflect changing industry practices?
How prescriptive/broad should they be?
AUDIT
How can the excise audit system be designed to reduce risk and cost?
Should third party audits be compulsory under certain conditions?

The sections below provide more detail on the questions we have posed in the diagram. We are interested in whether you see opportunities to improve the operation of the system for your particular business or industry, while still preserving the fundamentals of the system as listed on page 77. We would also like to know what you would expect the financial impact of those improvements to be for your business or industry.

Deferred payment

As “excise filers”, manufacturers of alcohol have three return periods depending on their total excise liability per year. The table below sets out the requirements for alcohol manufacturers.

Current requirements for alcohol excise returns

Annual excise duty liability	Return and payment frequency
$0 – $50,000 (for any year starting 1 July)	15th working day of July immediately following that year
$50,000 – $100,000 (for any period starting 1 July)	15th working day of January immediately following that period
$50,000 – $100,000 (for any period starting 1 January)	15th working day of July immediately following that period
>$100,000	15 working days from the end of the month in which the goods are removed from the Customs Controlled Area

The thresholds and the deferred return and payment options have provided flexibility for small manufacturers, although it appears that in some cases this contributed to them falling into debt. Reducing the deferral period (from twelve to six months, and from six months to two months) may help some businesses avoid debt problems. We would like your feedback on the effect this change would have on your business.

Customs is currently not able to shorten the return and payment period when excise filers fall behind in filing or payment. We would like your feedback on whether Customs should have this option, and also on whether aligning the timing of the excise return periods with the return periods for GST would lower compliance costs for businesses.

Off-site storage

If they have limited storage in their Licensed Manufacturing Area (LMA), wine industry businesses can be granted permanent approval for additional storage of wine outside of the Licensed Manufacturing Area without excise duty becoming due, as it normally would once the wine leaves the manufacturing area. This additional storage, commonly referred to as “Off-Site Storage”, has the status of a Customs Controlled Area; it is a secure and controlled environment where the activities are monitored by Customs in the same way as an LMA. Within an Off-Site Storage area Customs has extensive powers to control the movement of wine, people and vehicles that enter the area. Off-Site Storage areas are licensed under

section 10(f) of the Customs and Excise Act 1996 and regulation 6(a) of the Customs and Excise Regulations 1996.

The current Off-Site Storage provisions reflect the dynamics of the wine production process but also create inconsistencies across alcohol manufacturers, as other alcohol manufacturers are restricted to applying for time-limited permits for Off-Site Storage. However, this may not be a problem because of the short shelf life of most non-wine alcohol products. Customs is interested in hearing your views on whether other alcohol manufacturers should also be able to be granted permanent Off-Site Storage.

Definition of "manufacture"

The current definitions of "manufacture", as set out in the Act, may not reflect changing industry practices and so may not cover the entire manufacturing process. They may also create some ambiguity about what types of activities amount to "manufacture" and therefore what activities require a licensed area and the payment of excise.

Example of a difficulty with the definition of "manufacture"

Tobacco can be grown and stored in New Zealand before it is manufactured, but can only be manufactured in a Licensed Manufacturing Area (there is a personal use exemption). The Act allows for growers to sell commercial quantities of tobacco leaf, which is cured[9] but not cut, without paying excise.

Curing is a significant step in tobacco processing. Once cured, tobacco can be cut and used in self-rolled cigarettes. Technically, anyone who buys this tobacco and then cuts it (usually with small home cutters) should be required to have a Licensed Manufacturing Area; however, they are unlikely to become licensed and it may be difficult for Customs to identify them.

In future, as excise rates on tobacco increase, we believe Customs may need to exercise greater control over both the commercial growing and curing of tobacco leaf.

Audit

A number of the issues we have discussed in this section involve the need for more flexibility in the excise system. However, in looking at introducing more flexibility, it will be important to consider the key role of auditing in maintaining the appropriate collection of revenue.

[10] Curing of tobacco leaf involves a drying process to control the temperature and moisture content to produce tobacco fit for smoking. It is commonly done by "flue-curing" the leaf in a kiln.

Refunds, remissions and drawbacks

In order for manufacturers to get a remission of the excise due on goods that have been lost or spoiled while in a Customs Controlled Area, they must apply to Customs. Applicants must be able to provide physical evidence that the goods are lost. If the goods were spoiled, the manufacturer must also get Customs to oversee the destruction of the goods if they want to get a full remission or refund.

As part of the licence agreement for a Licensed Manufacturing Area or Off Site-Storage, the licensee must keep production records and records of all movements into and out of the area. Customs is interested in your feedback on what processes should be used for remission and refund applications and what evidence should be required.

Permits for movements between Customs Controlled Areas

Owners of excise goods must obtain a permit from Customs if they want to move goods between Customs Controlled Areas without paying excise on those goods. This requirement may place an unnecessary administrative burden on businesses, given they are already required to maintain robust records of movement into and out of, and production within the Customs Controlled Area.

Defining Licensed Manufacturing Areas (LMAs)

The applicant for approval for a Licensed Manufacturing Area (LMA) is responsible for defining the area to be licenced. However, there are currently no set requirements or guidelines for defining the area. An LMA can be defined as either an entire business premise, or specific buildings on a premise, or areas within buildings.

The absence of requirements or guidelines appears to have led to inconsistencies across the country. In some cases Licensed Manufacturing Areas may have been established that do not sufficiently allow for business growth or peak production, so that the manufacturers then must apply for temporary or permanent Off-Site Storage. Better and more precise initial licensing may help address this.

EXCISE AND EXCISE-EQUIVALENT DUTY: WHAT DO YOU THINK?

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 need to 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

Refunds, remissions and drawbacks provide mechanisms for the return of duty to a person or business, but they each serve a distinct purpose.

In the previous section on excise and excise-equivalent duty, we asked for your views on refunds, remissions and drawback for goods recalled by the manufacturer. In this section, we talk about refunds, remissions and drawbacks in other circumstances.

At this stage, we have identified two possible issues, in relation to refunds and drawbacks:

- in some cases people who import goods into New Zealand (private importers) cannot claim a refund of duty when they return the goods
- when imported goods on which duty has been paid ("duty-paid goods") are sold duty free to incoming passengers, there is currently no entitlement to a drawback.

We would also like your views on where we can make the legislative provisions on refunds, remissions and drawbacks easier to use. There may also be situations where a drawback, refund or remission does not currently apply and you believe that it should.

Private importers cannot claim a refund in some cases

Refund

An example of when a refund may be paid is when a line of clothing has been imported but once in the New Zealand market is found to be faulty. In this case, the importer who paid duty (including tariff duty) on the goods can apply to Customs for a refund.

The refund is paid to the person or business that paid the duty in the first place.

We have been approached by a number of people who have bought goods and brought them into New Zealand but who have then returned the goods because they do not meet their requirements. In these cases, the person has asked Customs for a refund of the duty and GST they paid on the goods when they arrived. However, the Customs and Excise Act only allows for a refund if the imported goods are faulty, damaged, destroyed, "pillaged" (stolen) or lost. If the goods are still in a good condition, then the drawback provisions may apply, but in that case the person would also be liable for an export entry transaction fee under the Act's cost-recovery provisions.

Examples of where we cannot give a refund

Jane buys clothing over the internet, and pays duty of $100 when the goods arrive in the country. However, the clothing does not fit as Jane was expecting, so she returns the goods to the supplier and gets a full refund. She approaches Customs for a refund of the $100 duty.

Chris buys a model aircraft kit over the internet and pays $60 duty when the kit arrives. Chris finds the kit has the wrong specifications and returns it. He approaches Customs for a refund of the $60 duty that he paid.

We would like your views on whether the status quo should be retained or whether the refund provision should be extended beyond where goods are faulty, damaged, destroyed, pillaged or lost.

Retaining the status quo would be consistent with the Goods and Services Tax Act 1985 (GST Act). It would mean that the drawback provisions would apply; these can be complicated for people and an export entry transaction fee is payable.

The return of duty and GST for reasons other than those specified in the Customs and Excise Act is governed by the GST Act. If goods are returned because they are faulty or do not fit the specifications of what was ordered, the GST Act (section 12) specifies that the drawback provision in the Customs and Excise Act (section 117) will apply for any refund of duty.

Extending the refund provision would align the refunding of GST for private imports with the refunding of GST for private purchases domestically, and it would be consistent with the broader GST policy of only taxing final consumption in New Zealand. However, extending the refund provision would be difficult to administer because the private importer would have to approach Customs directly for a refund of tax paid (in a domestic context these refunds happen as a matter of course when the customer receives a refund for the returned goods). Amendments to the GST Act may also be necessary.

Transaction fees may need to be considered if the refund provision is extended.

Who would be affected by change

People who import goods into the country in their private capacity (usually through buying online) and pay duty to Customs would benefit from change to the refund provisions. It is difficult to estimate how many people approach Customs each year asking for a refund, but we can expect numbers to increase as more and more people shop online.

Drawback does not apply when duty-paid goods are sold duty free

Drawback applies to goods that have had duty paid on them and that are later exported.

Example of drawback

An example of drawback paid out is where an exporter of craft beer buys the beer from a local craft brewer and the excise duty has already been paid on the product. When the beer is exported, the exporter can claim back the amount of excise duty paid in drawback.

The criteria for a drawback are in accordance with an international customs agreement to which New Zealand is a signatory: the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

Currently, drawback does not apply where goods have been imported duty-paid and are then sold through duty-free stores to incoming passengers, or to departing passengers for them to collect when they return to New Zealand.

This has been identified as an issue for businesses that want to claim a drawback of the duty on goods that they sell to international travellers.

The Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures restricts drawback to goods that are physically exported and requires drawback to be paid to the person exporting the goods. Our current legislation is consistent with the Convention in those two respects.

There is no way to guarantee whether goods sold to international travellers are taken out of New Zealand or consumed here. Permitting drawbacks on duty-paid goods that are then sold duty free would not align with our commitments under the Revised Kyoto Convention, and therefore we do not suggest making amendments in this area.

Who would be affected by change

Businesses that operate duty-free stores would benefit from a change to the drawback provisions. We are interested in your views if you believe your business would be affected if the status quo is retained.

REFUNDS, REMISSIONS AND DRAWBACKS: WHAT DO YOU THINK?

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

Goods and services tax (GST) is a tax on most goods and services in New Zealand, most imported goods, and certain imported services. GST is added to the price of taxable goods and services at a rate of 15 percent.

Customs is responsible for collecting GST on most imported goods at the border (under section 86 of the Customs and Excise Act). Imposing GST at the border allows the Crown to collect this tax at the earliest point in the supply chain, which reduces opportunities for avoidance.

> “In the year to 30 June 2014, we collected $7.8 billion of GST on imported goods on behalf of the Crown”

People who import goods and are registered for GST must work with both Customs and Inland Revenue when satisfying their GST obligations. They must pay GST to Customs and then claim a refund or input tax credit from Inland Revenue.

Importers can either pay their GST to Customs immediately by cash account, through a broker (with payment deferred up to 21 days), or through Customs’ Deferred Payment Scheme for approved importers registered for GST (with payment deferred until the 20th of the following month).

For GST-registered businesses, GST on imports is largely tax-neutral, as it can be offset with input tax credits that are claimed in a GST return. This means that an importer needs to pay the GST to Customs at the time goods are imported and if they are registered for GST they claim the GST back from Inland Revenue through their standard GST return.

Example: Importer’s cash-flow concerns

The importer of a large capital item recently asked Customs to defer payment of the $30 million GST due. The deferred payment scheme requires a bank guarantee or written undertaking for the amount of the deferred payment, and in this case the importer could not secure the guarantee.

The Customs and Excise Act and Customs’ procedures currently do not provide for a one-off cash deferment.

Managing GST between Customs and Inland Revenue

Some businesses have indicated to Customs that the reporting times and payment dates for Customs and Inland Revenue may not align or coincide, and that this can create cash-flow difficulties 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.

The data that Customs holds does not provide enough information to identify the impact of GST timing on individual businesses. Based on our data, we know that approximately 85 percent of importers are on a deferred payment scheme. We believe that these importers are less likely to experience cash-flow difficulties because of the different GST reporting and payment dates for Customs and Inland Revenue.

We also do not have a clear picture of the possible compliance burden and costs for businesses associated with managing GST across both Customs and Inland Revenue.

Before we undertake further work on this issue, we would like information from businesses on the nature and extent of any difficulties they face.

Temporary imports

Temporary admission of imported goods is a widely used international Customs mechanism that is covered by a range of conventions. The Convention on Temporary Admission (the Istanbul Convention 1993) is a single international instrument that combines all the existing Conventions on temporary admission. It is aimed at simplifying and harmonising temporary admission procedures.

Temporary admission without payment of customs duties is a means of minimising the costs of border crossings and provides an important incentive for the development of economic activity.

“Temporary goods” in this context are non-consumable goods entering New Zealand for less than 12 months for later re-export.

What is a temporary import?

A temporary import is when goods are imported into New Zealand for a temporary period only before being exported. An example is a luxury yacht that is brought into the country to be refurbished by specialist yacht outfitters in Whangārei. The yacht’s owners intend to export the yacht after the work is finished in nine months’ time.

Bond and security arrangements for temporary imports

The Customs chief executive can require a bond to be paid on temporary imports (section 116 of the Act). There are three types of temporary import entry, each with a different type of bond:

- **Temporary Import Security** – a type of temporary admission approval where the security is a financial deposit (cash, cheque, bond or guarantee)
- **Carnet** – a type of temporary admission approval where the security is an international guarantee. These are governed by World Customs Organisation conventions. International carnets are typically used by businesses and professionals temporarily importing commercial samples, professional equipment, and goods for use at trade shows, concerts and events
- **Temporary Import Agreement and Undertaking** – a type of temporary admission approval where the security is an agreement (provided as a procedure statement).

A temporary import entry approval number is assigned to each approval granted under any of those three categories.

Any bond or security payment is later refunded when Customs is provided with evidence that the goods have in fact been re-exported.

Customs ordinarily requires a bond for temporary imports because they are often high in value compared to other import types. This helps to reduce the potential fiscal risk to the Crown if GST and duty are not paid and the goods are not later exported.

Possible issues with bond and security arrangements

Businesses that temporarily import items and do not have access to the deferred payment scheme have reported that they can have difficulty in providing a bond or cash security for the GST and duty on the item. Businesses also find the process costly and time-consuming.

We understand that in particular this can create problems for businesses in the oil exploration, luxury yacht and aviation sectors.

We would like feedback from businesses that have been required to provide a security or bond to Customs when temporarily importing an item – particularly about any problems associated with providing a security or other problems in dealing with Customs.

GST AT THE BORDER: WHAT DO YOU THINK?

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

Anyone who imports goods into New Zealand is required to declare the "Customs value" of the goods. The Customs value is then used to calculate the amount of any tariff duty and GST owing on the goods (and other relevant levies). The Tariff Act 1988 provides for Customs to enforce and collect tariff duties.

The Customs value is determined according to Schedule 2 of the Customs and Excise Act. This is done in accordance with the rules and principles for valuing goods, established under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the World Trade Organization Customs Valuation Agreement).

The Agreement's principles promote uniformity, certainty, fairness, neutrality and transparency in customs valuation among trading nations.

In the year to 30 June 2014, we collected $170 million of tariff duty on imported goods on behalf of the Crown"

How is the Customs value of an imported good determined?

Schedule 2 of the Act sets out the methods for determining the Customs value of an imported good.

The "transaction value" method is the valuation method that is used for most goods imported into New Zealand. The transaction value is the price paid or payable for the goods when sold for export to New Zealand, subject to specific adjustments (such as excluding international freight and insurance costs).

If the Customs value cannot be determined using the transaction value method, Schedule 2 lists five alternative valuation methods that must be applied.

We considered three issues when looking at Schedule 2 of the Customs and Excise Act:

- whether the Customs value of an imported good should include or exclude the costs of international freight and insurance
- whether the Act should define "sold for export" to clarify which sale in a supply chain determines the Customs value of an imported good
- whether the provision about the use of the transaction value method when the buyer and seller of the goods are "related parties" could be made clearer.

Whether to include or exclude international freight and insurance costs

New Zealand currently excludes international freight and insurance costs when determining the Customs value of an imported good. This could also be referred to as the "Free on Board" (FOB) value of the good. Other countries that exclude international freight and insurance costs when valuing imports include Australia, the United States and Canada.

We are aware that some New Zealand importers and businesses encounter problems when they are complying with Customs requirements. Valuation of imported goods is required to determine revenue obligations, conduct risk assessment and for statistical purposes.

Two different values are needed to determine tariff duty and GST,[11] which means that two different calculations are required. This can be confusing and create extra compliance burden for importers.

New Zealand has two different values for determining tariff duty and GST

Tariff duty is determined using the "Free on Board" value: importers have to calculate the cost of the goods plus the cost of the freight within the country of export.

GST is determined using the "Cost, Insurance, Freight" (CIF) value: importers have to calculate the cost of the goods plus the cost of the freight within the country of export **plus** the cost of international freight and insurance.

Most goods are subject to GST only. Free trade agreements are reducing the rates of tariff duty, so the number of goods imported that are subject to tariff duty will decrease over time.

A business submits an import entry to Customs for imported goods in order to obtain Customs' clearance for the goods and for Customs to assess risk and duty liability. When submitting the entry the business must declare the following figures: the Free on Board value (that is, the

[11] The method for calculating GST is determined according to section 12 of the Goods and Services Tax Act 1985. The Cost, Insurance, Freight value is part of that calculation but the Act also requires that the Customs value be calculated.

Customs value), and separately declare the cost of international freight and the cost of insurance.

Some importers face difficulties obtaining the **actual** costs of international freight and insurance for the goods. For example, an exporter may view actual freight costs as commercially sensitive information and not provide freight costs to an importer (or their broker).

Possible solutions

At this time, we consider that the costs of international freight and insurance should continue to be excluded when determining the Customs value of imported goods, and therefore determining tariff duty – that is, the status quo should be retained. This means businesses would continue to declare the Customs value as the Free on Board value, and calculate GST separately using the Cost, Insurance, Freight value.

Continuing this approach is consistent with New Zealand's commitment, as a World Trade Organization member, to promoting trade liberalisation. If New Zealand were to include the costs of international freight and insurance for determining tariff duty, importers would pay more tariff duty (because tariff duty would be levied on a higher base). Tariff duty could potentially increase by $7 million in the first year if the Cost, Insurance, Freight value were used as the Customs value from 2017.

Customs has issued guidelines to assist importers who experience difficulty in obtaining freight and insurance costs. These guidelines are available on our website.

Whether to define "sale for export"

Most goods imported into New Zealand are valued using the transaction value method: the price paid or payable for the goods when sold for export to New Zealand. Currently, New Zealand does not define what is meant by "sold for export to New Zealand".

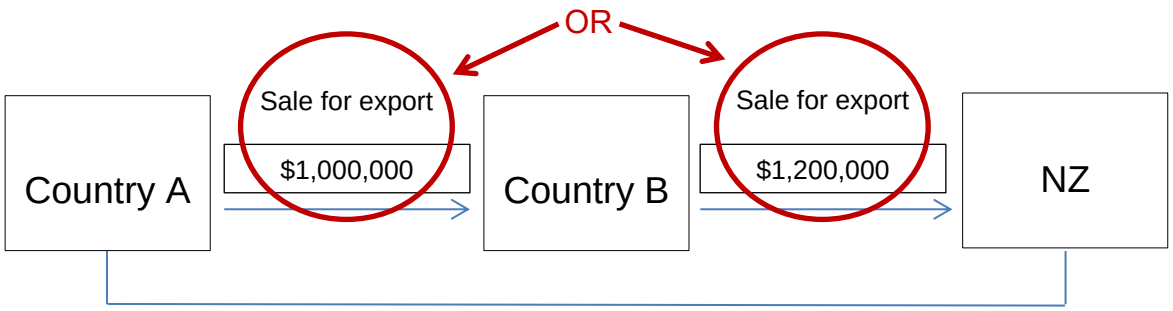
This can be straightforward when there is only one transaction between a seller outside New Zealand and a buyer in New Zealand. However, this can often be complicated when there are multiple sales, particularly those between related parties. Where there are a series of sales, an importer can choose the sale for export for valuation purposes, as long as the sale can be evidenced.

An importer can choose the sale for export

When there is a series of sales in the supply chain, an importer can choose which sale is the sale for export, so long as they can provide evidence of the sale. The choice is more likely to be available to related multinational companies. They can generally access relevant documents of related entities to evidence the sale.

Using an earlier sale is more likely to result in a lower Customs value for the goods, and therefore lower tariff duties. We believe this can be unfair to some importers: multinational companies are generally able to choose an earlier sale, as there are related entities in the goods' supply chain, whereas unrelated entities usually do not have the same ability to evidence earlier sales.

The diagram below shows an example of where there are two possible sales for export.



For earlier sales between **related parties**, importers need to show that the relationship between the buyer and seller did not influence the price. Supplying evidence to Customs can be complex when earlier sales involve entities located outside New Zealand.

Other countries, such as Australia and Canada, have prescribed in legislation which sale must be used in situations where there is potentially more than one sale for export occurring. The definitions can differ and have different outcomes in practice.

Guidance from the World Customs Organization supports prescribing that the **last sale** is the sale for export:

> **"…in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement [the WTO Agreement on Customs Valuation]."[12]**

[12] World Customs Organization (2007). Meaning of the expression "sold for export to the country of importation" in a series of sales. Commentary 22.1 amending supplement no.6.

Possible solutions

We think that it is worth considering whether the legislation should define the sale for export to be used in determining the value of an imported good. We would like your views on:

- whether the legislation should define "sale for export"
- what a possible definition of "sale for export" could be
- what the effect of defining "sale for export" would be on you or your business.

Possible definitions of "sale for export"

- the last sale before the goods are introduced into New Zealand
- the sale for export to New Zealand, to a buyer in New Zealand (this sale may not be the last sale prior to the goods entering New Zealand)
- the sale which is entered into last (that is, the most recent contract for sale and purchase)

We do not currently have a preferred option.

We note that defining the sale for export as the last sale would be consistent with guidance issued by the World Customs Organization, of which New Zealand Customs is a member. We are aware however that tariff duty and GST could be higher under this definition as the last sale would normally mean a higher Customs value for the imported goods.

Minor amendments to improve related parties provisions

Multinational companies as "related" parties or businesses, can reduce the duty they need to pay by under-pricing the sale of goods for import where they are sold between non-resident and resident branches.

To avoid under-taxing and to help maintain competitiveness between importers, Clause 2 of Schedule 2 of the Act governs the valuation methods of goods bought and sold between related parties.

We recognise that there is some ambiguity in the current wording and structure of Clause 2. We propose to address this by better aligning this section of the Act with the World Trade Organization's Customs Valuation Agreement.

VALUATION OF IMPORTED GOODS: WHAT DO YOU THINK?

Valuation method

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?

Sale for export

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.

Related parties provisions

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

The Customs chief executive (the Comptroller of Customs) is regularly required to make decisions under the Customs and Excise Act on the appropriate collection of revenue. These decisions may involve, for example, determining whether to pursue an amount of revenue that is owing, or reviewing a penalty notice.

The current Act does not specifically give the Comptroller a discretion to make management decisions around the collection of revenue. We think that explicitly allowing the Comptroller to use his or her discretion in specified circumstances would increase efficiency and customer satisfaction by allowing decisions to be tailored to individual cases, and it would ensure that we target resources in the most appropriate way. More generally, an explicit discretion would ensure that the wider customs and border systems operate in a practical and efficient way.

Comparison: Discretion in the Tax Administration Act

These are the provisions in the Tax Administration Act 1994 that cover the similar position:

Section 6(1):

Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.

Subsections 6A(2) and (3):

(2) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

(3) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—

(a) the resources available to the Commissioner; and

(b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and

(c) the compliance costs incurred by taxpayer

In deciding how to act under subsections 6A(2) and (3) of the Tax Administration Act, the Commissioner of Inland Revenue must take into account the extent to which the available courses of action might undermine, or support, the integrity of the tax system, as defined in section 6. This includes considering public perceptions of the tax system and the importance of voluntary compliance, among other factors.

We think that the discretion in the Tax Administration Act already extends to the Comptroller of Customs in his or her role in collecting taxes. However, we think that explicitly including a similar provision in the Customs and Excise Act will increase clarity and avoid ambiguity.

We recognise that we would need to include strict controls, similar to the combination of sections 6 and 6A of the Tax Administration Act, to ensure that factors such as public perceptions of the tax system and voluntary compliance are not compromised.

COMPTROLLER'S DISCRETION: WHAT DO YOU THINK?

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

When people want to dispute an assessment made by Customs under the Customs and Excise Act there should be appropriate processes available to them. Appropriate access to dispute resolution is an important part of any regulatory regime. We want to ensure those who engage with Customs have access to dispute resolution that is fair, accessible, transparent, effective and efficient.

The previous sections of this paper on revenue discussed how revenue is assessed. We now want to discuss and get your views on re-assessment and appeal.

The disputes process as it stands

If you dispute a duty assessment made by Customs, you can appeal to the Customs Appeal Authority. The Authority is established under the Customs and Excise Act 1996 as a judicial authority to hear and decide appeals that are provided for under the Act. This includes direct appeals to the Authority to dispute an assessment.

If Customs has issued a new assessment, or amended an existing assessment, an importer has 20 working days to start the appeals process. An applicant can apply for an extension of the time to appeal, so long as the application for the extension is received within 20 working days (section 256).

An appeal application must be in the required form and include the required fee (currently $410). The form and fee are prescribed by Regulations.

Currently, lodging an appeal with the Authority does not alter the requirement to pay the relevant amount, or the due date for payment. If the duty is not paid by the due date, an additional duty is charged on the outstanding amount – this is initially five percent of the unpaid duty, compounding at two percent for each subsequent month that the amount of duty remains unpaid.

REVIEW OF DUTY ASSESSMENTS: WHAT DO YOU THINK?

Q 68 Does the 20 working day 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 assessment and appeals 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

AT A GLANCE

Customs' goal is to ensure that our Act gives us the powers we need to adequately protect the border and manage the collection of Crown revenue.

Most of our powers remain fit for purpose despite New Zealand's borders having seen technological changes and new security concerns over the last 20 years. However, we believe that a small number of our powers in the Act either need to be amended to allow us to adapt to these changes, or are not set out clearly enough.

Getting your feedback

We are interested in your views on the following issues or proposals:

- clarifying arrival and departure obligations for marine craft:
    - removing certain exemptions for arriving craft
    - explicitly providing a power to stop and direct departing craft
- explicitly confirming Customs' powers exercised in the contiguous zone
- recognising Defence Force officers and Police officers as Customs officers in certain situations
- allowing Customs to perform certain functions outside New Zealand
- extending Customs' powers to carry out controlled deliveries of certain goods (currently this power applies only to illegal drugs and precursor substances)
- whether to clarify in the Act the obligation for a person to present accompanying baggage when requested by a Customs officer
- whether to place a new obligation on passengers to empty their pockets during a routine baggage search
- confirming Customs' ability to examine electronic devices as part of a routine baggage search
- requiring a person to provide a password or encryption key for their electronic device when requested by a Customs officer.

The border is an important point for protecting New Zealand from security threats and from the introduction of prohibited and harmful goods, and for collecting revenue. Recent terrorism events internationally and other cross-border safety concerns have increased the importance of border security worldwide.

> The Customs and Excise Act contains over 140 powers"

However, the short period of time when people and goods are passing through the border means that critical decisions need to be made quickly. Once people or goods enter into the country, it can be difficult to trace them.

> **"Customs processing provides a brief and one-off opportunity to identify risk or criminal activity. If there is delay, and the opportunity is not taken, the person or goods will leave the jurisdiction and probably become unreachable."[13]**

Customs is therefore provided with strong powers in relation to people, goods and craft in order to protect our border. Worldwide, Governments commonly accept that border-related powers need to be more intrusive than domestic powers.

Our powers also recognise that intentionally non-compliant people at the border hide in plain sight and try to appear legitimate. New Zealand Customs, like other border agencies worldwide, relies on the ability to randomly select people, goods and craft for further risk assessment. This means that significant discoveries of criminal offending can often be made even when there has been little or no suspicion of wrongdoing.

Carrying out functions on behalf of other agencies

Because of our unique position at the border, Customs also performs functions on behalf of other New Zealand government agencies, and we are given powers under other legislation to fulfil these wider government functions. As a result, there is an expectation that we perform functions that extend beyond traditional customs functions. We also think that performing functions on behalf of other agencies is a Customs function itself because of our unique position at the border.

Examples of other legislation enforced by Customs at the border:

- Arms Act 1983
- Biosecurity Act 1993
- Climate Change Response Act 2002
- Immigration Act 2009
- Misuse of Drugs Act 1975
- Passports Act 1992
- Terrorism Suppression Act 2002
- Wine Act 2003

However, many of the functions we perform on behalf of other agencies are also necessary for Customs' purposes. For example, some of our screening of people, goods and craft is undertaken both for Customs' purposes and on behalf of other agencies for

[13] Ladley, A and White, N, Conceptualising the Border, Institute of Policy Studies, Wellington, 2006, p 46-47.

their specific purposes. The burden on people, goods and craft crossing the border is reduced because they are able to meet different border agencies' requirements at the same time.

> "Customs has roles or functions under 50 current Acts"

Meeting New Zealand's international obligations

Some of our powers also enable New Zealand to meet its international obligations in relation to controlling the border.

Example of an international obligation

New Zealand is a signatory to the International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention). This means that our powers and actions must be consistent with the requirements and practices provided for under this convention.

An example of those requirements is that all goods, including vehicles and other craft, that enter or leave the particular territory must be subject to Customs control, whether or not they are liable to duties and taxes (Article 6.1).

New developments and higher security expectations

The advances in technology, new risks at the border and evolving international priorities mean that Customs is required to meet higher expectations around security than ever before. For example, it is now easier to conceal prohibited material and evidence of offending on small electronic devices while crossing the border. It is important that border agencies have the appropriate enforcement powers to address these new developments and to meet the growing expectations of protection and security.

However, it is also important that our border powers maintain a balance between on the one hand protecting national sovereignty, revenue and public safety and, on the other, the rights of individuals:

> **"The controls and powers that are inherent in border control activity will inevitably involve some limit on the ability of individuals to exercise the rights set out in the Bill of Rights Act. The question is not whether the general rights are being limited, but whether the rights and freedoms are prescribed by law and "subject only to such reasonable limits as can be demonstrably justified in a free and democratic society" (section 5)."[14]**

[14] Ladley, A and White, N, Conceptualising the Border, Institute of Policy Studies, Wellington, 2006, p 57.

Powers: The law as it stands

The Customs and Excise Act provides a wide range of powers that gives Customs the ability to:

- assist people, goods and craft with their obligations, and enforce those obligations, in order to facilitate travel and trade and ensure the security of the border
- search and examine goods and craft
- detain and seize certain types of goods in certain situations
- question people, require them to provide documents and otherwise gather relevant information
- detain, search and arrest people
- carry out investigations.

Our powers help to achieve rapid movement of legitimate travel and trade by allowing Customs to focus on the illegitimate travel and trade. Our powers also allow us to identify and assess risk, and to then respond to risks appropriately and efficiently.

Powers: Our goal

GOAL	WHICH WILL RESULT IN THE FOLLOWING BENEFITS
To ensure that our Act gives us the powers we need to adequately protect the border and manage the collection of Crown revenue. We also recognise that Customs has an obligation to protect people's freedoms and rights at the border to the appropriate extent.	• Customs has comprehensive knowledge about who and what is crossing the border • Customs has the ability to control and intervene with border activity as appropriate • Customs can better contribute to government objectives and collaborate with other border and law-enforcement agencies to improve the border experience for traders and travellers • the New Zealand public is protected from high-risk events,[15] such as terrorism and criminal activities.

[15] By "high-risk events" we mean those that could potentially damage New Zealand's international reputation, endanger people or the environment, or involve a large-scale breach of the border. Examples include terrorism events, pandemics, mass illegal migration, and cross-border drug operations.

Powers: Key issues and opportunities

Customs believes that our powers are largely fit for purpose. Amendments to our legislation have ensured that our powers remain relevant for enforcing modern border controls. The specific issues or problems we have identified (see the boxes below) are those resulting from recent advances in technology and border security, or resulting from "ad hoc" amendments to the Act made as necessary for specific, immediate purposes.

Arrival and departure powers for marine craft

- Customs has limited powers in relation to departing marine craft
- exemptions from Customs requirements for some arriving marine craft are no longer appropriate given increased border risks.

Powers exercised in the contiguous zone and in other countries

The range of powers that Customs can exercise beyond New Zealand's territorial water are inconsistent and do not support our contribution to wider government operations, such as responding to the arrival of mass illegal immigrant vessels and pre-clearance.

Controlled deliveries

We have no specific authority under the Act to carry out controlled deliveries of goods other than illegal drugs.

Baggage searches

- there is no explicit obligation on passengers to comply with a Customs officer's request to empty their pockets during a baggage search
- there is some confusion over what is "accompanying baggage" for the purposes of a baggage search.

Electronic devices

Customs believes that our general power to examine and search goods that are in our control (for example during a baggage search) includes electronic devices such as laptops, smartphones and portable hard drives. We would like this to be made explicit in the Act.

We also want the Act to make it clear that a person must provide access to their electronic devices if Customs requests this.

Arrival and departure powers for marine craft

Customs has extensive powers at the border in relation to marine craft to ensure that we can adequately protect New Zealand from illegal entry, prohibited goods, illegal drugs, and other criminal activity. These powers need to be more extensive than those for aircraft because of the ability of marine craft to meet other craft or people within New Zealand waters, and between New Zealand and overseas ports, and transfer people or goods from one craft to another. The same threats do not exist for aircraft, which must of course operate in a much more controlled and restrictive way.

Customs' powers in relation to arriving and departing craft include:

- questioning people on a craft
- boarding a craft
- searching a craft and any goods or baggage on board
- securing or removing goods from the craft
- chasing a craft (and firing at the craft as a last resort)
- seizing and detaining a craft.

We have identified several gaps in our powers that could be exploited by criminal syndicates, illegal immigrant vessels, and other non-compliant travellers or traders. Our focus has traditionally been on arriving people and craft, and on import goods, but Customs is increasingly expected to provide assurance also of export goods and departing people and craft. As a result, the gaps relate to both departing and arriving marine craft.

Risks presented by exemptions from some requirements for arriving marine craft

People who arrive on a craft in New Zealand or depart on a craft are exempt from some Customs requirements if they did not, or do not intend to:

- travel beyond the Exclusive Economic Zone of 200 nautical miles out from the territorial sea baseline
- meet with any other craft or person that came from outside the Exclusive Economic Zone.

The requirements they are currently exempt from are: complying with any Customs direction concerning disembarkation; going to a Customs Controlled Area; making accompanying baggage available for examination; and complying with any directions about the movement of that baggage. These exemptions do not remove the requirement for the person to report to a Customs officer on arrival.

We believe the risk posed by these exemptions is more significant for arriving craft than departing craft. This is because arriving craft have the ability to bring people and prohibited

and dangerous goods into New Zealand and there is a risk that the exemptions can be used to escape Customs' attention. It is important that Customs can provide assurance that the entry of people, goods and craft into New Zealand is monitored and controlled, particularly to keep out undesirable goods.

While most arriving marine craft from outside the Exclusive Economic Zone comply with Customs requirements, just one case of non-compliance could bring a significant threat to the border and the safety of New Zealanders.

Example of an information gap that could pose a threat

A vessel that had departed New Zealand arrived back in New Zealand's waters under customs arrival exemptions. Another vessel reported to government agencies that the arriving vessel had been dredging black coral within New Zealand's Exclusive Economic Zone. Black coral is a protected species under the Wildlife Act 1953.

If Customs had not been informed of the illegal activity, we would not have selected the craft for further risk assessment, unless we had evidence that an offence had been committed.

No explicit Customs powers to stop and direct departing craft

Currently, Customs officers have the power to stop, direct and search **arriving** marine craft. We also have an explicit search power for **departing** marine craft, and the Act does not prevent Customs from stopping and directing departing craft for this purpose. But we want it to be made absolutely clear that Customs officers have the power to stop and direct departing craft, as with arriving craft. This current lack of consistency means that the Act is not transparent about Customs' powers at the border.

The number of non-complying marine craft departing New Zealand is low. But a single non-complying craft could pose a significant threat to New Zealand's security and reputation, and it is important that our powers reflect this.

It is much easier to sneak into or out of the country on a yacht than on a commercial aircraft. Doing this on aircraft is becoming even more difficult because of the information that airlines and Customs have access to and the strict aircraft security requirements.

Our current powers in relation to **departing** marine craft do not support our expanding role in providing assurance to our international partners for goods exported from New Zealand, and for departing people and craft.

Our preferred solutions

Removing certain exemptions for arriving craft

This preferred solution would address our inability to enforce certain requirements when arrival exemptions apply. We do not believe that more craft would necessarily be subject to searches or directions by a Customs officer under this option, as we will usually have no concerns with a craft in this category and will not enforce all arrival requirements. However, it is important that the necessary powers do exist if Customs is concerned that a craft has not complied with

The following exemptions would be removed

- the requirement to comply with any Customs direction concerning disembarkation
- making accompanying baggage available for examination, and complying with any directions about the movement of that baggage.

obligations, has committed an offence, or is carrying illegal or dutiable goods.

Customs' ability to randomly select craft for full processing deters non-compliance and promotes the integrity of our border. Removing these particular exemptions will ensure Customs can protect New Zealand from threats.

An explicit power to stop and direct departing craft

This preferred solution would address the lack of transparency identified with Customs' powers for departing marine craft, and would confirm the comprehensive and flexible set of powers that allow us to respond effectively to most likely scenarios.

This option would explicitly align all Customs' powers for departing marine craft with those we have for arriving marine craft, so that our power to stop and direct departing craft was not merely implied. This power is not used often – approximately only once a year – as it is only needed when we suspect a departing craft has not met departure requirements or intends to commit an offence.

To the extent a departing craft is exercising its right to innocent passage, we believe this option remains consistent with this right affirmed in the United Nations Convention on the Law of the Sea. Passage is not innocent if it is prejudicial to the peace, good order or security of New Zealand. For example, the right of innocent passage would probably not apply if a craft fails to meet its departure requirements and attempts to unload or load people, goods or currency in breach of customs laws.

Other solutions we are considering

Status quo

Retaining the status quo in both of the areas discussed above would continue to leave a gap in the border that could be exploited by criminal syndicates or other non-compliant parties. This gap would also become more concerning as border risks become more varied and complex. Compliant craft will also continue to be affected as Customs focuses unnecessary effort on all marine craft.

The status quo also involves a lack of transparency around the extent of Customs' powers. We are not able to fully assure the New Zealand public that we can respond appropriately in high-risk situations, despite our range of powers that imply this.

Who would be affected by change

A very small number of commercial and private craft would be affected – we estimate between one and three craft each year. We also believe there would be minimal additional compliance costs for those craft.

ARRIVAL AND DEPARTURE POWERS FOR MARINE CRAFT: WHAT DO YOU THINK?

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

The Customs and Excise Act allows Customs to exercise certain powers beyond the territorial waters and up to the outer limits of New Zealand's contiguous zone.

It is common worldwide for border agencies' powers to extend to the outer limits of the contiguous zone, and in some cases beyond this zone. This is because border agencies may need to respond to situations in the outer limits of their country to protect the border itself.

Example of a country with customs powers in, or beyond, the contiguous zone

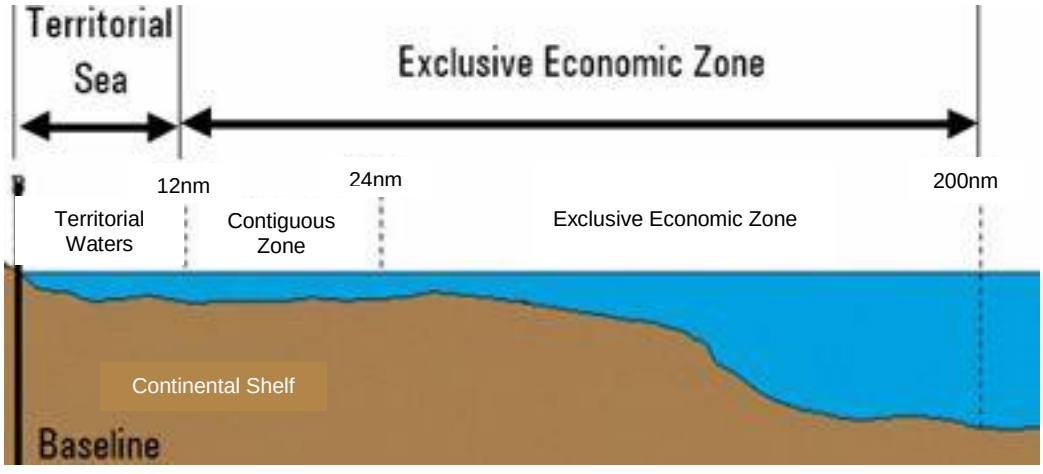
Australia's Border Protection Command is a taskforce made up of officers from the Australian Customs and Border Protection Service and the Australian Defence Force.

This taskforce coordinates and controls operations in Australia's Exclusive Economic Zone, contiguous zone, and territorial sea. This includes performing customs functions, such as responding to threats posed by prohibited imports and exports.

What is the contiguous zone?

The territorial limits of New Zealand are the outer limit of the territorial sea (which extends to 12 nautical miles from the coast).[16] The contiguous zone then extends from the outer limit of the territorial sea (12 nautical miles from the coast) to 24 nautical miles from the coast.

New Zealand's Exclusive Economic Zone extends to 200 nautical miles from the coast, and includes the contiguous zone.



[16] See Part 1 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 for more information.

When and how we currently exercise powers in the contiguous zone

We do not exercise powers in the contiguous zone very often as they are usually only required for high-risk situations. The mere existence of the powers acts as a deterrent for illegal activity in this zone.

Example where we might use powers in the contiguous zone

Customs might use powers in this zone if a boat that we suspected of trying to smuggle people or prohibited goods was trying to enter New Zealand. Here, there is not only a threat to New Zealand's border from illegal activity, but there are safety concerns for the people on board the boat, or for the safety of the first responders.

Given the types of high-risk situations where these powers would be exercised, it is common for government agencies to carry out joint operations to ensure the safest and most effective response – for example, Customs would work alongside our Navy or Police.

Examples of Customs' powers in the contiguous zone

- questioning people on certain craft in relation to the craft, its voyage, and any people or goods that have been carried by the craft
- boarding and searching a craft
- searching a person on board a craft
- chasing any craft that refuses to stop, and as a last resort firing on it to make it stop
- detaining a craft so that we can investigate criminal offences
- seizing and detaining goods if we have good cause to suspect they are an instrument of crime or tainted property and we are satisfied they are being, or are intended to be, exported or imported.

We want to increase transparency

Most of the powers that we exercise in the contiguous zone are ones that the Act explicitly says apply in that zone. Some of the powers are implied as they naturally follow from the powers that the Act explicitly refers to. We want to make the Act more transparent for these situations, so that it is clear how Customs operates.

Our preferred solution

Explicitly confirm the powers Customs can exercise in the contiguous zone in the new Act

Our preferred option would ensure that the Act is clear and consistent on the powers that Customs needs in order to respond adequately to any high-risk situations in the contiguous zone.

Under this option, those powers that currently apply in the contiguous zone only by implication would be explicitly referred to in the Act as applying in that zone. This would allow us to continue enforcing compliance effectively in the contiguous zone and would provide greater transparency around which powers apply. For example, the Act could explicitly provide that the requirement to present baggage on arrival to New Zealand is a power that applies in the contiguous zone; currently that power is implied by the ability to search craft in that zone.

Other solutions we are considering

Extending Customs' powers in the contiguous zone to all powers in the Act

Under this option the Act would explicitly state that all powers given to Customs under the Act can be exercised by Customs officers in the contiguous zone.

We do not think this is a viable option: it may be inconsistent with the UN Convention on the Law of the Sea because some of our powers go beyond enforcing customs and revenue laws within New Zealand. We believe that this potential breach of New Zealand's international obligations would outweigh any benefits that may be achieved under this option.

We also do not believe it is necessary for all Customs' powers to be available in the contiguous zone in order for us to protect the border.

Status quo

Customs would continue to be explicitly authorised to exercise some powers in the contiguous zone, mainly powers relating to boarding and searching craft. Retaining the status quo would mean continuing some unnecessary confusion and lack of transparency.

Who would be affected by change

Customs does not use its powers in the contiguous zone very often. When they are used, the people affected are likely to be those acting unlawfully in the contiguous zone, including people attempting to enter New Zealand illegally.

POWERS AVAILABLE IN THE CONTIGUOUS ZONE: WHAT DO YOU THINK?

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

There are times when Customs needs to call on the expertise of the Police and Defence Force. These are rare but high-risk emergency situations – for example, when a criminal syndicate-owned vessel with a large amount of illegal drugs is attempting to arrive in, or leave, New Zealand. Police and Defence Force staff can currently be authorised to exercise the powers of a Customs officer, including in these high-risk situations.

Under the current Act, this requires written authorisation from the Customs chief executive: the chief executive has the power to authorise a suitably qualified and trained person who is not a Customs officer to exercise any function or power that may be performed or exercised by a Customs officer. This can also apply in the contiguous zone where these people may not normally have jurisdiction. For example, a Police officer does not have jurisdiction to enforce the law in the contiguous zone, except when authorised by another agency that does have jurisdiction there.

The current written authorisation process works well for most situations, but it is not suitable for emergencies, where a fast response is required. Other legislation has more practical authorisation processes – see the Fisheries Act example below:

Example: Fisheries Act

The Fisheries Act 1996 provides that officers in command of any Defence Force vessel or aircraft, and all Police constables, are fishery officers for the purpose of exercising powers conferred on fishery officers. This applies in New Zealand's contiguous zone and Exclusive Economic Zone, as well as within New Zealand itself.

Our preferred solution

Recognise Defence Force and Police officers as Customs officers in certain situations

Under this option, the new Act would recognise New Zealand Defence Force officers and New Zealand Police officers to be Customs officers for the purposes of responding to emergencies or situations requiring a multi-agency response. In routine or planned situations, however, the current written authorisation process would still apply.

This option would create efficiencies for Customs, the Police and the Defence Force. By providing agencies with the necessary powers, it would allow them to better prepare, respond and coordinate in high-risk emergencies. These responses are likely to require multi-agency teams and may also involve dangerous weapons. They are particularly likely to apply in the contiguous zone, where Customs has wide-ranging powers.

Example: multi-agency response

If an illegal immigrant vessel was attempting to enter New Zealand, staff from several agencies would be required to respond – for example Customs, Immigration New Zealand, the Police and the Navy.

As Customs is one of the few agencies that has the necessary powers in the contiguous zone, we would lead the response team in that zone.

It is more practical and efficient if each agency present has the necessary powers required to enforce the law and protect New Zealand from the threats that an illegal vessel may present.

Allowing multi-agency responses also ensures that New Zealand government agencies can work collaboratively to protect our border in the most effective and efficient way.

It is unclear at this stage whether the liability associated with Customs powers exercised by Police and Defence personnel falls with Customs or with the other agency. We will do further work to determine whether there are liability implications for Customs, Police and Defence, particularly under the Health and Safety in Employment Act 1992.

We are also considering whether it is appropriate for Defence Force and Police officers to be permitted to carry their weapons (if authorised to carry them in their ordinary work) when acting as Customs officers. Carrying weapons could be justified to ensure the government can respond appropriately to high-risk and dangerous situations, but it may also be inappropriate given that Customs officers do not carry weapons. We will continue to do further work with these other agencies on this question.

Other solutions we are considering

Status quo

Retaining the status quo would maintain the current written authorisation process, which would continue to be unworkable in situations requiring a fast response.

Who would be affected by change

Customs' preferred option for authorising Police and Defence staff as Customs officers would not, however, apply to all Police and Defence staff because not all staff operate in the contiguous zone. It would only apply to specialist response units – that is, to the Police Special Tactics Group and to equivalently trained Defence Force staff.

AUTHORISED CUSTOMS OFFICERS: WHAT DO YOU THINK?

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

Border agencies worldwide are looking at new ways of better managing the risks to their borders, while allowing legitimate travellers and goods to be quickly cleared. One method is to "push the border out" by collecting information as early as possible and responding to threats before they reach the border. Some countries are also working together to develop collaborative approaches to managing border flows in some situations.

Example: United States Container Security Initiative

"United States Customs and Border Protection has stationed teams of officers in foreign locations to work together with host foreign government counterparts.

Their mission is to target and prescreen containers and to develop additional investigative leads related to the terrorist threat to cargo destined to the United States."[7]

New Zealand Customs will work more collaboratively with other countries and international organisations as we all attempt to develop more efficient and secure borders. A possible future example is the pre-clearance of people, goods and craft in other countries, such as Australia, Canada and the US, before they depart for New Zealand.

New Zealand Customs officers cannot perform their Customs functions or make decisions outside New Zealand (although some powers can be exercised out to 24 nautical miles). We think this is a barrier to us collaborating internationally and working towards regional and global initiatives for border management.

However, although Customs' powers do not apply in other countries or on the high seas, we do currently perform some Customs functions in these areas, relying on people voluntarily complying with our requirements.

Example of where Customs performs off-shore border clearance

Customs processes many cruise ship passengers on-board the ship before they arrive in New Zealand.

This allows us to process a large number of passengers – sometimes the equivalent of seven 747 airplane loads.

Processing off-shore is becoming a much larger part of our work, particularly as the cruise industry expands.

[17] United States Customs and Border Protection, CSI: Container Security Initiative, www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief.

Our preferred solution

Allow certain functions to be performed outside New Zealand

Our preferred option increases our ability to facilitate legitimate traders and travellers and to create a more efficient and customer-friendly border experience. It retains some limitations around the functions that can be performed offshore, and this would protect the rights of individuals. Only certain administrative functions would be authorised and only with the permission of the host country.

An enabling provision would be included in the new Act rather than an all-inclusive mandate. This provision would allow for Regulations or Rules to be made that would specify certain functions under the Act that could be performed in other countries (with the consent of the host country) or on the high seas. This would allow people, goods and craft to satisfy customs arrival obligations before they arrive in New Zealand. It would only apply to Customs' functions and would not encroach on those of other New Zealand border agencies.

This option would also recognise certain obligations that could be placed on people so that Customs can successfully fulfil the relevant functions. The enabling provision would not be wide enough to allow more intrusive powers to be exercised in other jurisdictions, such as personal search and detention powers, as these would probably conflict with the domestic laws of the host country. The enabling provision could also be used to delegate our functions to equivalent border officers overseas.

If Customs contributes to new pre-clearance initiatives in the future, which is highly likely due to the global shift in this direction, we would not need to amend the Act again to cater for these opportunities. Instead, the new functions could simply be specified in Customs Regulations or Rules, using the authority of the enabling provision. This would be a quicker and more flexible process than making changes to the Act.

This option is similar to arrangements in other countries. Customs agencies in Australia, Canada, the United States, and the United Kingdom are able to exercise certain customs powers in other jurisdictions with the agreement of the other country.

Other solutions we are considering

Status quo

Retaining the status quo would not change the territorial reach of Customs' powers. We would continue to perform some administrative functions offshore but this would rely on the voluntary compliance of travellers and traders.

It is likely that future changes to the Act would be required to allow Customs to contribute to worldwide border initiatives, such as pre-clearance of people, goods and craft.

Who would be affected by change

Under our preferred option, the most common use of the new powers would be for the pre-clearance of cruise ship passengers while they are on the way to a New Zealand port. In future, pre-clearance could become more common for other craft, as well as people and goods.

PERFORMING CUSTOMS FUNCTIONS OUTSIDE NEW ZEALAND: WHAT DO YOU THINK?

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

Customs (usually together with the New Zealand Police) sometimes carries out deliveries of controlled drugs and precursor substances when these have been detected on importation into New Zealand. These controlled deliveries are a highly effective method that has been used for many years in investigating drug offences.

What is a controlled delivery?

When illegal drugs have been detected arriving in New Zealand in a package or inside goods, Customs may release the package or goods and track them to their destination so that the true importer can be identified.

Controlled deliveries of drugs are authorised under the Misuse of Drugs Amendment Act 1978.

Controlled deliveries have often been successful in breaking the chain in a string of illegal drugs coming into our community and in exposing the criminal syndicates that are involved. They are especially useful for investigating illegal drug imports when the origin and destination of a package are disguised.

The Search and Surveillance Act 2012 also permits a Customs officer to exercise further powers during the course of a controlled delivery, such as searching a person, place or vehicle.

As criminal syndicates develop more advanced and complex ways of importing illegal goods, Customs will need to adapt. We think there will be a need in the future to carry out controlled deliveries of illegal goods other than drugs, but currently we have no legislative authority to do this.

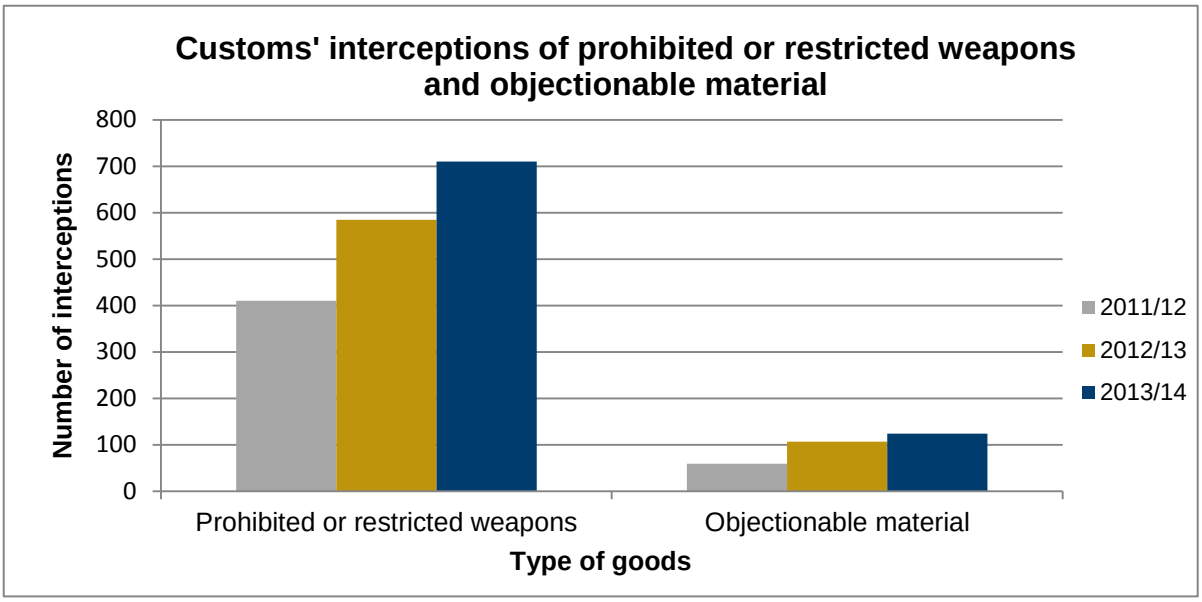
Example of where a controlled delivery could have been used

A package arrived in New Zealand from Hong Kong containing 12 stun guns (a restricted weapon).

Previous seizures of prohibited goods destined for the same address had alerted Customs to ongoing importing of prohibited goods, many of which were dangerous weapons intended for gang-related activity.

If a controlled delivery had been used, Customs would have been able to carry out a more thorough investigation and obtain evidence of the actual importer.

Customs' interceptions of prohibited or restricted weapons and objectionable material have been increasing in recent years. These types of imports cannot currently be subject to a controlled delivery. The graph below shows the increase in interceptions of these goods over the last three years.



Our preferred solution

Allow Customs to undertake controlled deliveries of certain goods

Under this option, our Act would include a controlled delivery power for certain goods, one that is very similar to the current power in the Misuse of Drugs Amendment Act 1978. We expect that this option would enable Customs to adequately protect the border from harm. We would like your views on this option and on which goods could be subject to controlled deliveries.

We think these other controlled deliveries should be limited to a specific range of goods, such as prohibited or restricted weapons and objectionable publications. The types of goods could be prescribed in Regulations or Rules.

Goods that could be subject to controlled deliveries

- restricted weapons, such as pepper sprays or stun guns
- objectionable publications, such as objectionable DVDs or books
- ATM and credit card skimming devices
- counterfeit money.

As with the power in the Misuse of Drugs Amendment Act 1978, the new power would also allow for controlled deliveries within New Zealand after overseas customs agencies have discovered the attempted importing of the prohibited goods into New Zealand. The power would also link to the Search and Surveillance Act 2012 so that Customs officers could search people, places or vehicles, as is currently permitted during controlled deliveries of drugs or precursor substances.

The new power would also exclude any criminal or civil liability for Customs officers and freight and mail carriers who are involved in a controlled delivery, in the same way as for controlled deliveries for drugs.

The Misuse of Drugs Amendment Act 1978, not our customs legislation, would continue to govern controlled deliveries of drugs and substances used to manufacture drugs (precursor substances).

The Ministry for Primary Industries has indicated that goods of interest as potential biosecurity threats should not be subject to controlled deliveries. Customs recognises the importance of biosecurity protection for New Zealand, and we would take into account any biosecurity impacts when we identify a specific list of goods to be included in the legislation.

Other solutions we are considering

Status quo

Retaining the status quo would prevent Customs from undertaking controlled deliveries for prohibited goods other than drugs. This will hinder our future ability to fully investigate prohibited imports as new technologies are used to evade border controls.

Customs would continue to use other investigative methods for these types of goods where appropriate. But often a controlled delivery will be the most effective mechanism for identifying the true importer and getting the evidence needed for a prosecution.

Who would be affected by change

Controlled deliveries of goods other than drugs could provide benefits to the community by preventing harm from these goods.

However, controlled deliveries are an expensive exercise for Customs, and it is likely that controlled deliveries of other goods would be infrequent – probably less than 20 a year – and would be used only for ongoing investigations. The investigation of illegal drug imports would remain the priority over investigation of other goods.

Legitimate trade would not be affected by any new controlled delivery power.

CONTROLLED DELIVERIES: WHAT DO YOU THINK?

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

The Customs and Excise Act specifically requires arriving and departing passengers to allow their accompanying baggage to be examined by Customs officers. Passengers who refuse can, if convicted, be fined up to $1,000.

The purpose of this power is to ensure that we can detect prohibited, restricted, forfeited and dutiable goods crossing the border. Customs must be able to assure the public that these goods are being controlled and that revenue is collected when it is due. This contributes to our overarching function of protecting New Zealand's sovereignty by controlling who and what enters New Zealand.

What is "accompanying baggage"?

The Customs and Excise Act does not define what is meant by "accompanying baggage". This review provides an opportunity to clarify exactly what items a Customs officer's baggage examination power applies to. We understand that accompanying baggage is distinct from goods that are on or about a person (that is, attached to them). For example, a passenger's suitcase is considered to be accompanying baggage, but the line becomes blurred when baggage is attached to a person by straps, such as a backpack, handbag or computer bag, or when a person is carrying clothing, such as a large jacket.

"Customs undertakes over 10,000 baggage searches every year"

A Customs officer would usually ask a person to present their suitcase for examination as part of a baggage search. But to examine any item on or attached to a person, a Customs officer must have reasonable cause to suspect that the passenger is hiding certain types of goods on their person.

There can sometimes be confusion and inconsistency both for passengers and for Customs officers when it is not clear if the passenger is required to present some items to be examined.

Example where there could be confusion over accompanying baggage

A passenger presents their suitcase for examination when asked by a Customs officer. They are also carrying a handbag.

Currently, it is unclear whether a handbag carried by a person is accompanying baggage or whether it is an item on or attached to the person. It is therefore unclear whether a Customs officer is entitled to examine the handbag and its contents in the same way as suitcases.

It is also very easy for a passenger to move an item outside the scope of a routine baggage search and require a threshold to be met before the item can be examined. For example, a passenger could remove a prohibited item from their main suitcase and place the item in a small bag strapped to their body.

Customs officers will usually err on the side of not examining the item if there is doubt about whether it is accompanying baggage. If we have cause to suspect that the person is carrying certain goods, such as dutiable or prohibited goods, then we can carry out a personal search, which will include any small bags. We think the lack of clear distinction between types of baggage could potentially pose threats to the border and create inconsistencies for passengers.

Solutions we are considering

We are considering two options to address this inconsistency and possible lack of transparency. We do not currently have a preferred option.

We intend to talk further with those interested in this issue, including our government agency partners, as any changes could be relevant to their own interests in having effective examinations of accompanying baggage at the border.

Status quo

Currently, Customs officers use their discretion to decide not to examine items if there is doubt about whether the item falls within the definition of “accompanying baggage”. However, this use of discretion may not allow the public to clearly understand what their obligations are.

If we retained the legislative status quo, we could expand and improve the training of Customs officers in using their discretion and explaining passengers’ rights during a baggage search. This would include giving our officers further guidance on what is “accompanying baggage” and what is not.

Clarify the obligation to present accompanying baggage

Under this option, a person’s obligation to present accompanying baggage to a Customs officer for examination would be clarified in the Act, providing greater transparency for passengers. It would also ensure that Customs can clearly examine baggage of interest to us.

Clarifying this obligation in the Act would take account of passengers’ rights to be free from unreasonable search, and ensure that the distinction between what is and what is not a personal search is not blurred.

Who would be affected by change

The issue and the options we have presented would apply to air passengers and marine ship passengers arriving in or departing from New Zealand. Currently Customs searches the accompanying baggage of only a small percentage of travellers – less than 0.2% of arriving passengers, or roughly 10,000 people.

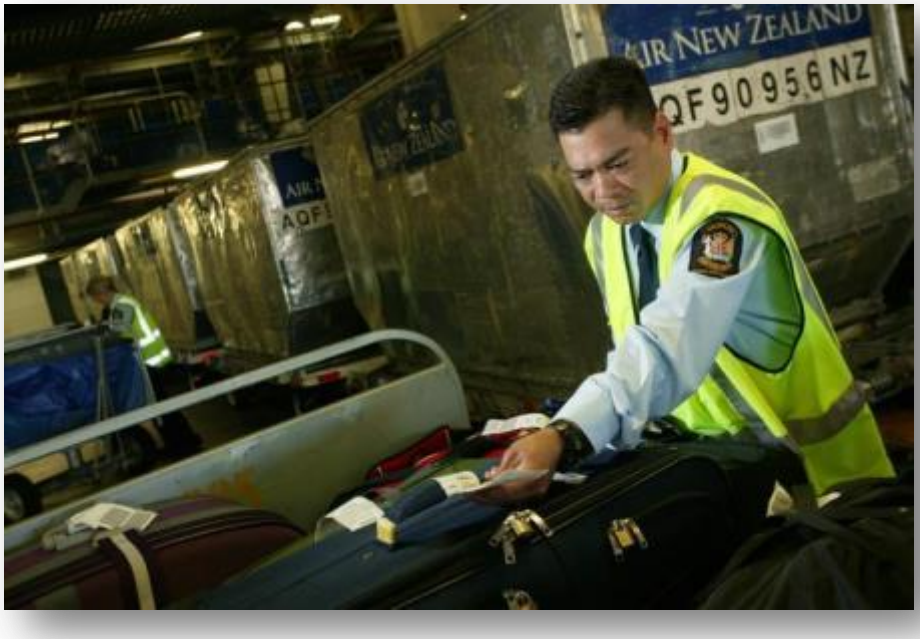
The issue affects only those passengers who are required to have their baggage searched by Customs – it does not apply to baggage searches carried out by, for example, the Ministry for Primary Industries for biosecurity purposes.

BAGGAGE ACCOMPANYING PASSENGERS: WHAT DO YOU THINK?

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

Currently, a person can be asked by a Customs officer to empty their pockets of any items, but our legislation does not require them to comply. Customs has powers to search baggage to ensure that we can prevent illegal and dangerous goods from entering (or in some cases, leaving) New Zealand, but this power does not extend to items carried on or about a person, such as items in pockets. Instead Customs relies on a person agreeing to empty their pockets when we ask them to do so.

At the moment Customs can only search a person's pockets as part of a personal search, and these can only take place if a Customs officer has reasonable cause to suspect the person has hidden certain items on or about their person. Refusing to empty your pockets is not enough on its own to establish this required level of suspicion. Personal searches are very infrequent, with only 365 searches carried out in 2013/14, representing a negligible proportion (0.006%) of all arriving passengers.

It is rare for people to refuse to empty their pockets when asked. However, even a small proportion of people refusing to do so can present a significant threat to New Zealand.

We think that there is a risk that people crossing the border could bring illegal or dangerous goods into New Zealand in the pockets of their clothing, or attempt to depart with prohibited goods (such as illegal drugs) in their pockets.

Example where we might want to require a person to empty their pockets

A person arriving into New Zealand could carry illegal drugs in the pockets of their coat. Customs has no power to require the person to empty their pockets unless a Customs officer has reasonable cause to suspect the person is carrying dutiable, uncustomed, prohibited or forfeited goods hidden on or about his or her person. This is despite the fact that we have the power to examine the entire contents of the person's accompanying baggage as part of a routine baggage search.

A further example is a person carrying a small flash drive with objectionable material or evidence of terrorist activity on it.

Solutions we are considering

We are considering three options, and do not currently have a preferred option. We intend to talk more with parties who have an interest in this issue, as well as getting public feedback, to determine the most appropriate and effective option.

Status quo

Retaining the status quo would continue to leave gaps in our ability to fully assess whether a person is carrying illegal or dangerous goods, or goods that are liable for duty. A person could potentially carry these items into the country undetected in the pockets of their clothing.

We would continue to ask passengers to empty their pockets when undergoing a baggage search, but the person would be under no legal obligation to do so.

Require passengers to empty their pockets – no threshold

This option would provide a new power for Customs to require a passenger to empty their pockets. It would only apply to passengers arriving in or departing from New Zealand and would align with the current requirement for these people to present their accompanying baggage for examination.

Customs estimates this option is likely to affect only those passengers who are currently subjected to a baggage search, which is a small number of passengers (about 0.2% of all arriving passengers, or 10,000 passengers per year).

Under this option, a search threshold (that is, a reasonable suspicion that a person is carrying certain goods, or a similar threshold) would not have to be met for the person to be required to empty their pockets. Instead, the contents of a person's pockets would be examined as part of a routine baggage search. The obligation to empty pockets already exists if the personal search threshold is met, and we believe the risk is presented by passengers where the reasonable suspicion threshold is not reached.

Resorting to a personal search merely to identify the contents of a passenger's pockets seems to be an unnecessary escalation. We think it would be more appropriate to have a separate power in the Act to require any passenger to empty their pockets. This could in fact reduce the likelihood of a personal search if the officer can immediately identify that the contents of their pockets are not prohibited.

This option would also require an accompanying offence and penalty for failing to empty your pockets. The penalty would need to align with those for equivalent offences in the Act, such as failing to present your accompanying baggage.

Other comparable countries, including Australia and Canada, include the emptying of a person's pockets within powers relating to general baggage and goods examination. This option would align with these countries' legislation.

Require passengers to empty their pockets if a threshold is met

This option would provide a new power for a Customs officer to require a passenger to empty their pockets but only when a certain threshold is met. We think that any threshold should be lower than for a personal search, as we can currently examine the contents of pockets as part of a personal search. However, as there is no precedent in New Zealand for this lower level of threshold, we are unsure what the appropriate threshold would be.

Customs estimates this option would affect fewer passengers than under the previous option (less than 0.2% of arriving passengers, but possibly more than 0.006%, which is the percentage for personal searches).

The requirement for a threshold to be met would provide travellers with some protection, while also enabling Customs to better assess whether passengers are carrying risk goods. However, this option may not be as effective as the previous option in enabling us to detect prohibited, dangerous and dutiable goods, because people who are carrying those goods may fail to satisfy the applicable threshold.

Like the previous option, this option would require an accompanying offence and penalty for failing to empty your pockets when required under this power.

Who would be affected by change

This issue and the options we have presented would apply to passengers arriving in or departing from New Zealand. Under the second option, these will be air passengers and cruise ship passengers who are subject to a baggage search by Customs (this does not include baggage searches conducted by the Ministry for Primary Industries for biosecurity purposes). Under the third option fewer people would be affected, because a threshold would have to be met.

It is important to note that not all passengers subjected to a routine baggage search would also be required to empty their pockets. Therefore the passengers affected would be less than the 0.2% of passengers currently subject to routine baggage searches.

We need to have a better understanding of the impacts for passengers of any potential change to the legislation – for example, in relation to protections against unreasonable searches.

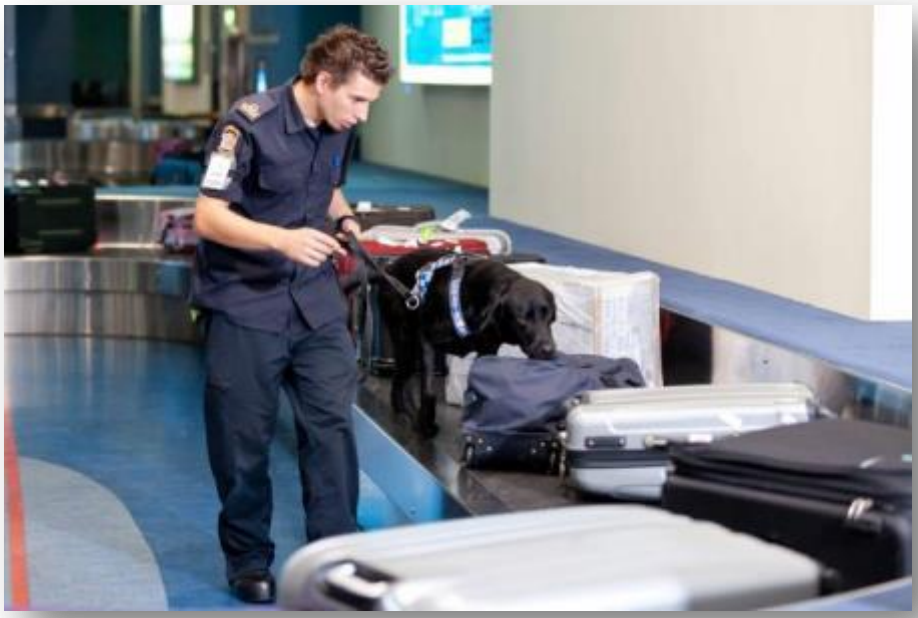
EXAMINING GOODS IN POCKETS: WHAT DO YOU THINK?

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

When the Customs and Excise Act 1996 was introduced there was a key focus on protecting New Zealand's borders from threats posed by people, craft and physical goods.

The common use of electronic devices, such as laptops, smartphones and portable hard drives, was not anticipated in 1996. Today, these goods can be used to carry material that used to be in paper form, such as travel documents and objectionable images, as well as carrying, for example, objectionable images or software that can be used in criminal activity.

In a previous chapter (see from page 63), we addressed Customs' role in managing virtual and digital goods at the border as part of exercising controls over restricted or prohibited imports. This current section addresses Customs' examination of electronic devices, and the content on an electronic device, which can include virtual and digital goods.

Customs' current search powers for electronic devices

The current Act gives Customs the power to search electronic devices at the border as part of our routine examination powers. This helps us detect objectionable material and evidence of offending, such as evidence of illegal drugs being brought over the border. Many travellers are now also carrying travel documents – such as tickets and booking details – on their electronic devices. The examination of travel documents on these devices may be necessary to verify travel information provided to Customs, the identity of passengers, and the validity of travel documents, or to detect evidence of offending against the Act.

Customs only examines a person's electronic devices if the owner is subject to a routine baggage search, and then not in all cases. Most people will normally not be subject to a baggage search – currently these searches cover only about 0.2% of arriving passengers.

We have identified two issues relating to Customs' powers to access and examine electronic devices at the border, discussed below.

Examining electronic devices

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

Our view is that the content of electronic devices is currently within the scope of our general goods examination power. This is because electronic documents are movable personal property and are "goods" for the purposes of the Act. It would also be inconsistent if we were able to carry out searches of hard-copy documents but not electronic documents held on a device being moved across the border.

This review provides an opportunity to make it clear that our routine goods examination powers extend to the content of electronic devices. This is currently not transparent for the public.

Why might Customs want to search an electronic device?

- to verify travel documentation, such as how a ticket was paid for, where the ticket was booked and issued, the class of travel, or any unusual travel routes
- to detect objectionable images
- to detect evidence of offending against the Customs and Excise Act (such as importing prohibited items)
- to verify the value of dutiable goods through electronic receipts or invoices.

Customs can detain and search electronic devices in other areas of our business as well – for example when we exercise a search warrant. Our exercise of search warrants is governed by the Search and Surveillance Act 2012, which specifically refers to electronic forms of information.

How does Customs search an electronic device?

To search an electronic device – such as a smartphone, tablet, laptop or flash drive – found during a baggage search at the airport, Customs usually connects the device to a terminal designed to pick up certain material. Sometimes a Customs officer may carry out a manual scan of the device if a terminal is not available.

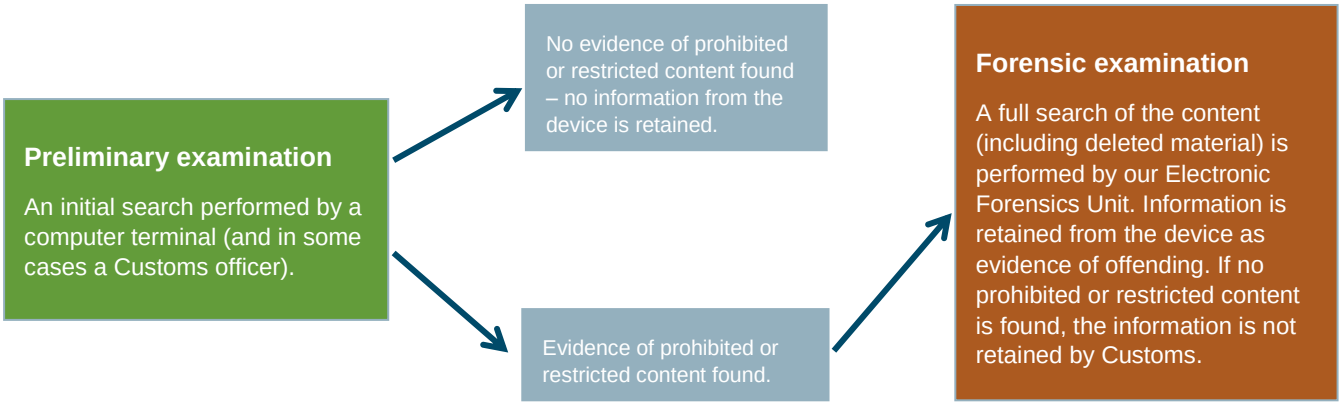
If the terminal (or the Customs officer) does not detect any indications of prohibited items or illegal activities in this initial search, the device is returned to the owner immediately. The terminal does not retain any copied information from the device.

If the terminal (or the Customs officer) does detect an indication of prohibited items or illegal activities, Customs will detain the device for a full forensic analysis by our Electronic Forensics Unit.

Customs performs only very limited searches of a device at the border: this protects the owner's privacy while also ensuring that we can still fulfil our control functions for goods crossing the border. We do not unnecessarily look at personal information on electronic devices, such as family photos and personal messages; instead we scan the device for a particular range of information (see the examples above under "Why might Customs want to search an electronic device?").

Despite no threshold applying in the Act for when Customs can search an electronic device, we only perform more extensive searches of a device, such as forensic analysis and copying of the information, if we suspect that the device contains prohibited or restricted material, or evidence of Customs-related offending. This material or evidence is usually uncovered during the initial scan of the device at the border. However, that initial scan does not retain or copy any information.

The escalation of examinations of electronic devices at the border



Information collected from electronic devices is also governed by our own principles for dealing with information (see page 30 for these principles).

Passwords and encryption

When Customs does examine a person's electronic device, the owner is not legally obliged to provide us with a password or encryption key to access the device. We have found that it is relatively uncommon for someone to refuse to provide this, but if they do refuse it can mean we have no way of uncovering evidence of criminal offending even when we know the device does hold this evidence.

If a person refuses to provide access, it is likely that Customs will seize the device for forensic examination and not return it immediately to the owner (unless there is nothing to suggest the device contains prohibited material). However, some devices cannot be accessed and examined by our Electronic Forensics Unit without password or encryption access. If Customs cannot require access to an electronic device, it is not possible to treat the device in the same way that we treat the examination of accompanying baggage. This undermines the purpose of examining electronic devices and is a barrier to us effectively investigating and prosecuting criminal offending.

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 empowers us to require a person to provide access (such as passwords, codes and encryption keys) to an electronic device in relation to the movement of cash in breach of that Act. The Search and Surveillance Act also imposes this obligation on owners of devices where a search is performed under that Act; however, searches under that Act usually take place only if criminal offending is suspected.

Summary of possible solutions

We are considering three options for increasing transparency around Customs' ability to examine electronic devices, and three options for ensuring Customs can effectively access these devices. These options are summarised in the table below:

Options for examining electronic devices	Options for access to electronic devices
Customs can examine electronic devices without meeting a threshold (but our power to do so would be explicit in the Act) – this is our preferred option.	A person has a legal obligation to provide Customs with access to their electronic device if required by Customs (an explicit power in the Customs and Excise Act) – our preferred option.
Customs can examine electronic devices if a threshold is met (and our power to do so would be explicit in the Act).	A person has a legal obligation to provide Customs with access to their electronic device if required by Customs (the current power in the Search and Surveillance Act would apply to Customs).
Status quo: Customs can examine electronic devices without meeting a threshold (but our power to do so would not be explicit in the Act).	Status quo: Customs cannot require a person to provide access to their electronic device.

These options are discussed in more detail below.

Our preferred solutions

Examining electronic devices:
Explicitly include electronic devices in the scope of routine baggage searches

This option would include an explicit reference to electronic devices in the new Act. Customs officers would continue to be able to examine electronic devices as part of a routine baggage search (if required), but there would be greater transparency for the public.

This option would continue the practice of performing an initial examination on electronic devices without a threshold having to be met. This would confirm that Customs treats electronic devices and their content in the same way as physical goods accompanying a person across the border. In our view, this would allow us to adapt to changing technology and new methods of concealing prohibited material, such as objectionable material.

This option would also continue the practice of only performing full forensic examinations of electronic devices and copying the material when evidence of prohibited material or illegal activities is discovered on the device. The search is then escalated to a full forensic search of the device (see the diagram on page 133 for the current escalation process). This aligns with our personal search powers, where there may be an escalation from a routine baggage search to a personal search.

Customs does not examine the content of electronic devices outside of a routine baggage or personal search, and this would not change under this option.

This option is consistent with similar powers available to customs agencies in Australia, Canada, the United States and the United Kingdom. However, developing law in other countries is beginning to place greater weight on the privacy implications associated with information contained on electronic devices, including at the border.

Example of where Customs could find material of interest on a cellphone

A passenger is stopped for a routine baggage examination when they arrive in New Zealand. Customs discovers evidence on their cellphone suggesting that the passenger is part of a group attempting to smuggle cocaine into New Zealand.

Content on the cellphone informs Customs that other members of the group are arriving in New Zealand in the following days. Customs is able to detain these associates when they arrive and we discover cocaine inside their baggage.

Passwords and encryption:
Require a person to provide a password or encryption key on request

Under this option, a new power would be included in the new Act to authorise Customs officers to require access to an electronic device in order to examine that device effectively. Access is likely to be in the form of a password, encryption key, or identification access.

A new offence and penalty would be included for failing to provide the relevant access when required to do so.

This option is consistent with the powers that Customs has under the Search and Surveillance Act 2012, and also the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, to require people to provide access to an electronic device. It also aligns with comparable countries, such as Australia, the United States, Canada and the United Kingdom.

Other solutions we are considering

Examining electronic devices:
Allow for the examination of electronic devices but with a threshold

This option would include an explicit reference to electronic devices in the new Act, as with our preferred option for examining electronic devices. But it would only allow Customs officers to examine electronic devices once a threshold has been met (rather than as part of a routine baggage search).

It is likely that this threshold would be similar to that currently provided for invoking our personal search powers, which is a reasonable suspicion that a person is hiding certain

material on or about their person. In this case the threshold could instead be reasonable suspicion that an electronic device holds certain material.

We believe that having a threshold that must be met before we can examine an electronic device does not allow us to meet the changing risks that electronic goods pose at the border. Under this option, electronic devices would not be treated in the same way as physical goods accompanying a person across the border; instead they would be treated in the same way as people suspected of hiding prohibited goods on their person.

A more practical alternative may be to limit a threshold to escalated searches. For example, a preliminary or cursory search of a device could be conducted as part of a routine baggage search, but any further search, such as cloning, forensic analysis, and copying of the content on the device, could be subject to a threshold. This threshold would probably be based on what material is found on the device during the preliminary examination.

Passwords and encryption:
Apply the Search and Surveillance Act to Customs' powers to examine electronic devices

This option would extend the scope of section 130 of the Search and Surveillance Act 2012 to apply to Customs' examinations of electronic devices at the border. That particular section places a duty on a person to assist with access to an electronic device when required to do so by an officer exercising a search power that relates to data held on the device. This section does not currently apply to Customs' examination of goods powers.

This option would extend section 130 to cover whichever option is adopted for the examination of electronic devices. This would enable Customs to require a person to provide the relevant access to the electronic device without the need for a separate provision in the Customs and Excise Act.

The offence for failing to comply with this obligation without reasonable excuse would also apply, and, if convicted, the person would be liable to a maximum prison term of three months.

Reporting requirements also accompany the search powers in the Search and Surveillance Act: any person who exercises a warrantless search power (such as searching an electronic device) must report in writing on the search as soon as practicable. Customs' chief executive would also be required by that Act to report on the exercise of these powers in every annual report to Parliament under this option.

However, these reporting requirements would create unrealistic obligations for Customs, as there could potentially be electronic device examinations a number of times each day. When the Search and Surveillance Act was passed, Parliament deliberately did not extend that Act to all of Customs' powers because the border environment is unique. If this option is adopted it may be possible to exclude the reporting requirements from Customs' use of this power.

Status quo

Retaining the status quo would mean that Customs would be hampered in responding to changing risks related to technology. Because the Customs and Excise Act does not explicitly refer to electronic devices, it can be difficult for the public to identify when Customs can search these devices.

This option would not restrict Customs from continuing to examine electronic devices as part of routine baggage searches at the border. But we would not have the power to require a person to provide access to that device, and there could be a lack of transparency for the public.

Currently, there are costs and other impacts associated with us not being able to require access to electronic devices, both for Customs and for the device's owner. These include: prolonged questioning by Customs officers; devices being seized for extended periods; and Customs being unable to examine the devices efficiently to identify evidence of criminal offending. In some cases, searches may be escalated unnecessarily because a person has refused to provide a password.

Who would be affected by change

The issue of access to electronic devices mainly affects international air passengers.

Most people voluntarily give Customs access to their electronic device when requested, and options involving legislative change would target the handful of people who refuse to provide access. However, the number who refuse may increase as technology continues to develop.

Customs recognises that accessing a person's smartphone or laptop can be a sensitive and personal matter, as many people will have personal items such as family photos or emails on their devices. The options we have identified raise issues of individual privacy and the need for protection against unreasonable search, and those considerations need to be balanced against the need to protect the community from harm.

Whichever option is adopted, the power to examine electronic devices will continue to be constrained by the protection in the New Zealand Bill of Rights Act 1990 against unreasonable search. The collection or use of any personal information will also continue to be governed by the Privacy Act 1993. Specifically, personal information collected from electronic devices will be used only for the purposes for which it was collected. This is achieved by limiting any initial examination to a cursory screening, rather than a full forensic analysis.

ELECTRONIC DEVICES: WHAT DO YOU THINK?

Q 93 Do you think that 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

AT A GLANCE

Our goal is to have sanctions that are consistent and fair, and that deter non-compliance and provide appropriate penalties.

We believe that the current range of Customs sanctions is effective.

Getting your feedback

We are interested in your views on the following issues and proposals:

- reviewing the level of penalties across the Act
- replacing the current “petty offences” regime with an infringement notice scheme for minor offending
- administrative penalties:
    - the minimum and maximum amounts for administrative penalties
    - imposing administrative penalties for errors in export entries
    - whether to allow Customs to recover our costs for adjustments to entries
- extending additional duty to:
    - all payments to Customs
    - refunds and drawbacks paid to businesses by Customs and later found to be in error.

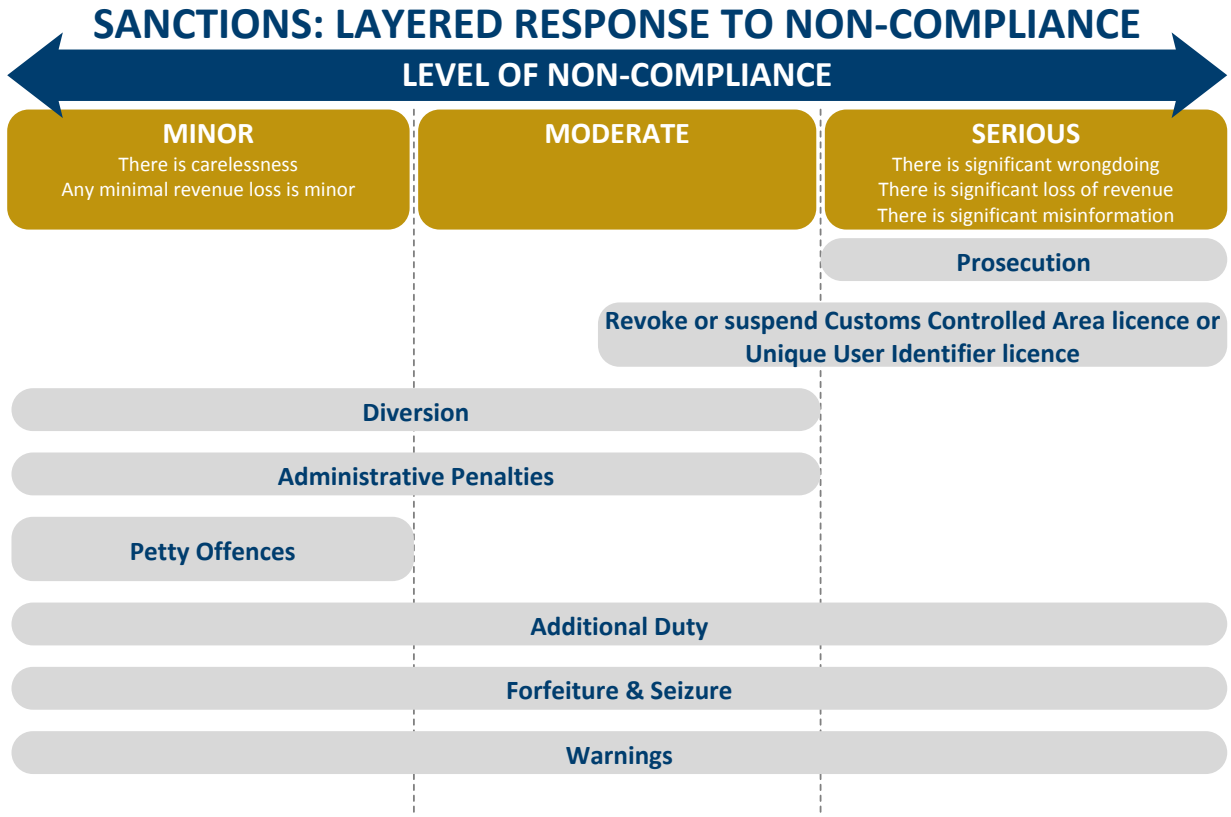
Our challenge is to make compliance easy to do and hard to avoid, and a range of sanctions support this goal. We believe that the key to encouraging compliance is to strike the right balance in applying these different sanctions and their associated penalties.

Sanctions are put in place to denounce and hold accountable those who do not comply with their obligations and to provide a deterrent. Customs also undertakes outreach programmes and education initiatives with people and businesses to encourage voluntary compliance.

Sanctions: The law as it stands

The Act employs a wide range of potential sanctions and we can also respond to non-compliance with non-legislated sanctions, such as warnings. For example, if a traveller or importer makes a minor, unintentional error that has minimal effect, we can encourage compliance by issuing a verbal or written warning instead of imposing a more serious sanction.

The diagram below shows the range of sanctions we might apply at different levels of non-compliance.



Petty offences

If Customs discovers offending at the lower end of the scale, the petty offences regime allows us to consider an alternative sanction to a full prosecution.

Under the petty offences regime, offenders can make a written admission of their offending and request that they be dealt with summarily by the Customs chief executive. The chief executive can then accept from the offender, as full satisfaction of a penalty, an amount not exceeding one third of the maximum penalty that could have applied if they had been prosecuted and convicted. The average petty offences fine is about $300.

> “The average petty offences fine is about $300”

Customs cannot impose a penalty unilaterally – the person must ask to be dealt with in this way. If the person does not want to pay the penalty then the matter may still proceed to prosecution. If the person does pay, then there is a statutory bar to formal prosecution.

Revenue collected under the penalty offences regime is paid to the Crown.

The penalty offences regime has benefits for both sides:

- the offender does not have the potential costs of a full court hearing and avoids a criminal conviction
- the Crown is able to free up court time by not burdening it with a prosecution for a minor matter, while at the same time the harm done by the offender is still recognised.

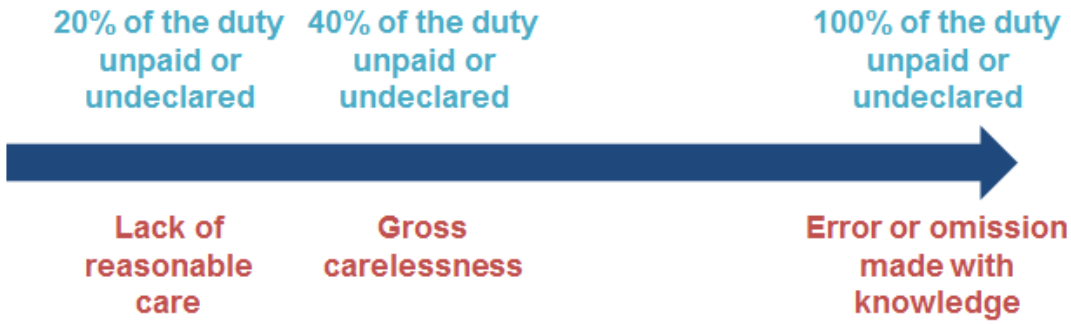
Administrative penalties

Administrative penalties are applied solely for errors in the entry of goods. Accurate entries are essential for Customs to quickly clear compliant goods, identify risk goods, and collect the right amount of revenue. The information contained in entries is also used to compile a range of trade data used in national statistics.

> “In the year to 30 June 2014, Customs issued 745 administrative penalties. Most of these were for $200”

An administrative penalty is not applied when a person voluntarily discloses an error or omission in an entry.

The amount of an administrative penalty is imposed on a sliding scale according to the level of culpability for any errors or omissions that lead to duty, including GST, going unpaid. This is the scale:



The minimum penalty that can be imposed is $200, and the maximum is $50,000. Material errors that do not result in a duty shortfall attract a flat-fee penalty of $200 per entry.

Revenue collected as a result of administrative penalties imposed is paid to the Crown.

A person who receives an administrative penalty notice must pay the amount within 20 working days after the date on which the notice is deemed to have been given. Within the same timeframe they can also ask Customs to review the decision to issue the penalty, at no cost to the person. If they are not satisfied with Customs’ review decision, they have

20 working days after the date of that review decision to appeal to the Customs Appeal Authority.[18]

If the person who made the entry can show they took all reasonable precautions in making the entry, or if there are compelling circumstances supported by the legislation, then Customs will not issue a penalty (or will cancel the penalty if we have already issued it). An example is where the person took all reasonable steps to make an accurate entry and queried the importer about the accuracy of the information they used to compile the entry.

Additional duty

When duty owed to the Crown remains unpaid by the due date, additional duty of five percent is imposed and a further two percent is imposed for each month after that on a compounding basis. This is an effective incentive to pay duty as soon as possible, as continued non-compliance can lead to heavy penalties.

Additional duty currently only applies to payments on Customs' Deferred Payment Scheme and to excise duty payments on locally manufactured goods. It does not apply to other types of payments to Customs. Revenue collected in the form of additional duty is paid to the Crown.

Revoking or suspending privileges

The chief executive of Customs can withdraw privileges granted to our clients if they breach the terms under which they were given the privilege or because of criminal offending.

Licensees for Customs Controlled Areas may have their licence suspended or revoked for a breach of the licence terms and conditions. Customs brokers may have their access to Customs' computer system for lodging entries suspended or revoked either if they breach the relevant conditions or if they are convicted of certain offences.[19]

Revoking privileges is an effective way of encouraging compliance as it directly affects the client's ability to do business.

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[18] The Customs Appeal Authority is a judicial body that is independent of Customs and administered by the Ministry of Justice. The fee for applying to the Authority is $410 (including GST).

[19] Namely, any offence against the Customs and Excise Act or the Misuse of Drugs Act 1975; or a crime involving dishonesty, as defined in the Crimes Act 1961.

Forfeiture

Forfeiture regimes are common internationally as a way of enforcing customs controls at the border. Forfeiture has been a feature of Customs law in this country for over a century.

> “Forfeiture has been a feature of Customs law in this country for over a century”

The Customs and Excise Act provides for a wide range of goods to be automatically seized and forfeited to the Crown, such as goods that have not been declared, prohibited goods, and even craft used to conceal goods. The forfeiture regime does not depend on Customs obtaining a successful conviction, rather it is targeted at the offending goods themselves.

Automatic forfeiture provides an effective way of making compliance hard to avoid, as it is often a significant deterrent.

Criminal prosecutions

Criminal offences are the most powerful of the sanctions in our compliance framework. They carry the stigma of a conviction, as well as the potential for loss of personal freedom or severe financial costs. Prosecutions by Customs are typically for offending relating to:

- illegal drugs and weapons
- objectionable material
- money laundering
- revenue fraud and evasion
- other regulatory offences such as the importing of hazardous waste, or manufacturing tobacco without a Customs controlled licence.

Sanctions: Our goal

Our goal is for Customs to have a range of sanctions that are consistent and fair and that deter non-compliance and provide appropriate penalties. Sanctions should be easily understandable and transparent to people and businesses.

Sanctions: Key issues and opportunities

The key issues we have identified are:

Low penalty levels and poor relativity between penalty provisions

The petty offences regime for minor offending is resource-intensive and lacks certainty

Additional duty on duty unpaid does not apply to all types of payments

For administrative penalties:

- concern about the minimum and maximum amounts that can be imposed
- administrative penalties do not apply to all export goods, but do apply to imported goods
- Customs bears the cost of adjusting or cancelling information submitted to us when this results from an error by a person or business.

Low penalty levels and poor relativity

Offence provisions and related penalties (both financial and imprisonment penalties) in the Act have not had an overall review since the Act was introduced in 1996. This has led to penalties decreasing in real terms, and several fines are now quite low by 2015 standards.

Some offences that tend to undermine Customs controls at the border carry maximum fines of around $1,000. In the example below, we compare the offence of a person making a false declaration to Customs with other offences in border legislation.

Customs and Excise Act 1996	A person who makes a false declaration under the Customs and Excise Act knowing it to be false is liable on conviction, in the case of an individual, to a maximum imprisonment term of **six months** or a maximum fine of **$10,000**. In the case of a corporation, a maximum fine of **$50,000** (sections 204(4) and 204(5)).
Biosecurity Act 1993	A person knowingly makes a declaration that the person is required by law to make that is false or misleading in a material particular is liable on conviction, in the case of an individual, to a maximum imprisonment term of **five years**, a maximum fine of **$100,000**, or both. In the case of a corporation, a maximum fine of **$200,000**. (sections 154O(7)(b) and 157(1)).
Immigration Act 2009	A person produces or surrenders any document or supplies any information to an immigration officer or a refugee and protection officer knowing that it is false or misleading in any material respect is liable on conviction to a maximum imprisonment term of **seven years**, a maximum fine of **$100,000** or both (sections 342(1)(b) and 355(1).

Low penalties bring risks for Customs

There are risks for Customs when a maximum penalty in the Act does not appropriately reflect more serious offending, in that the lower-level penalties do not meet sentencing needs of punishing and deterring offending.

For serious offending, Customs often has to rely on bringing charges under other Acts that may more adequately reflect the seriousness of the offending and provide more appropriate penalties. However, this may not always appropriately reflect the specific offending. We believe that the decision whether to charge under the Customs and Excise Act or another Act should be driven by the appropriateness of the charge for the type of offending, not by the level of the penalty.

Multiple amendments have led to poor relativity

Multiple amendments to the Act over the years have meant there can be a lack of relativity between similar provisions within the Act. One area of particular concern for us is inconsistency of the maximum fines and prison terms within the criminal offence provisions.

Examples of poor relativity

The recently added offence of killing or injuring a Customs dog carries a maximum prison term that is twice that for physically assaulting a Customs officer.

For offences in relation to entries (under section 203(1)), the maximum fine imposed after a criminal conviction is $1,000 for an individual and $5,000 for a body corporate, while the maximum administrative penalty for entry errors is $50,000.

There are also inconsistencies in the Act between different types of sanctions.

Our preferred solution

Review the financial and imprisonment penalties in the Act, including relativity within the Act

Our preferred option would provide penalty levels that reflect the seriousness of the offending. Under this option, we would talk with interested parties and make recommendations on appropriate penalties. If adopted, some of those recommendations may require legislative change.

We are interested in your views on the current penalty levels.

Other solutions we are considering

Status quo: Make no legislative changes

Under this option, there would be no changes to the maximum penalties in the Customs and Excise Act. Retaining the status quo carries risks that penalty levels under the Act are categorised as low level by the courts and that the courts deal with this offending accordingly.

While prosecutions under other Acts can be appropriate and send strong messages, other Acts may not appropriately address the specific offending.

Who is affected by change

Changes to penalties in the Customs and Excise Act could affect a wide range of people and businesses.

Customs also intends to talk to the Ministry of Justice and other government agencies throughout the process of reviewing penalties.

LOW PENALTIES AND POOR RELATIVITY: WHAT DO YOU THINK?

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

While the petty offence regime provides a useful compliance tool for minor offending, we believe it is time-consuming and lacks transparency. Offenders can typically spend several hours being interviewed and processed by a Customs officer, and this large amount of time does not always appropriately reflect the minor nature of the offending involved.

We are also aware of concerns from some people that the current provision lacks key safeguards that exist in infringement notice schemes.

The petty offence provisions are more commonly used by Customs at international airports. A typical case will be an air passenger who, to avoid paying duty, does not declare tobacco over the concession amount.

Example of a petty offence

A passenger arriving into New Zealand is found to have 800 cigarettes in his baggage, which was picked up by a biosecurity X-ray machine. He admits he owns the cigarettes and did not declare the goods to avoid paying excise duty and GST.

The passenger chooses to make a payment under the petty offences regime for making a false declaration on his arrival card relating to the cigarettes. Customs sets the amount at $300. The passenger also pays the excise duty and GST owing on the cigarettes.

Other New Zealand government agencies have infringement notice schemes for minor offending. The agencies we spoke to have found these schemes to be very effective in dealing with minor offending and encouraging people to comply voluntarily. A familiar example is the biosecurity fee operated by the Ministry for Primary Industries at airports.

Cabinet guidelines for infringement notice schemes

In 2008, Cabinet issued guidelines that set out its expectations for infringement notice schemes. These include the following:

- the offences covered are strict or absolute liability offences only. There must be no requirement for the government agency to prove any mental elements of the alleged offence (“mens rea”) – that is, negligence, recklessness or intentional conduct
- fees should generally be less than $1,000. The penalty should be specified in the legislation and cannot be varied. All fees are paid to the Crown
- there is no conviction or criminal record for the person involved, even if the person decides to challenge the infringement notice in the courts
- there should be a range of payment options available, including around time to pay and means of payment

- there is to be annual reporting. The government agency should collate an annual set of key statistics on the use of infringement notices and file them with the Ministry of Justice.

Our preferred solution

Replace the petty offences regime with an infringement notice scheme

Under this option, changes to the legislation would establish an infringement notice scheme. The new legislation could also specify higher penalties for second and subsequent cases of the same offending.

We believe this option is more likely to achieve Customs' goal of having sanctions that are consistent and fair and that provide a deterrent and appropriate penalties.

An infringement notice scheme would be established under the following legal framework:

- the **Customs and Excise Act** would provide the authority to establish the scheme and set the maximum penalty amount that can be imposed
- the **Customs and Excise Regulations** would provide the detail of which offences are subject to infringement notices, the penalty levels, and the forms to be used
- the **Summary Proceedings Act 1957** would provide a common framework for when the District Court is asked to review or enforce an infringement notice.

We would also intend to align an infringement notice scheme with Cabinet's guidelines (see above), although these do give room for movement in some areas. For example, the guideline that a person should have 28 days to pay an infringement fee may not be realistic where fees are issued at airports, as most fees under the current petty offences regime are issued to short-term visitors.

We would need to do further work and consult more with interested parties to determine which offences could be included under an infringement notice scheme and what the fee levels should be. The following are examples of offences that could be part of an infringement notice scheme when the offending is minor:

- a person or business removes goods from a Customs Controlled Area before the goods have been cleared for removal by Customs. (section 200(1)(a) to (d))
- to avoid paying duty a passenger fails to declare on their arrival card that they have tobacco over the duty concession amount. (section 204(1)).

Other solutions we are considering

Status quo: make no legislative changes

Under this option, the current petty offences regime would continue. Retaining the status quo would mean continuing a regime that is not always easy to understand or administer. The regime will not always be used by Customs officers because it can be time-consuming and costly.

Who would be affected by change

We believe an infringement notice scheme would be particularly effective in dealing with minor offending committed at airports, such as when air passengers fail to declare on arrival that they have excess goods so as to avoid paying duty.

It is too early to say who else could be covered by an infringement notice scheme. We are interested in your views on the types of minor offending against Customs' legislation that could be managed effectively and efficiently under this type of scheme.

PETTY OFFENCES: WHAT DO YOU THINK?

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

We believe that the administrative penalty regime has performed well in encouraging people to take reasonable care when making entries and to voluntarily disclose any errors or omissions they have made.

Many customs brokers have improved their quality assurance processes and systems, and this had reduced the rate of errors over the past year. The number of voluntary disclosures of errors made to Customs has also increased. In 2013/14 there were 6,964 voluntary disclosures to Customs, compared to 2,365 in the previous year.

Example of an administrative penalty

A customs broker made import entries for building materials regularly imported into New Zealand. As a result of the tariff classification used on each entry, Customs data showed that asbestos-based materials were being imported in large numbers, raising concerns about harm to the community. The materials were in fact found to be asbestos-free: the customs broker had used the wrong tariff classification for the goods.

The information was later corrected and there was no shortfall in duty to be paid. The customs broker was issued with an administrative penalty of $200 for each entry in which they had used the wrong tariff classification.

In the previous section on low penalties and poor relativity, we mentioned the poor relativity between administrative penalties and prosecution. We have also identified three other issues:

- the minimum and maximum administrative penalties may be inappropriate
- export entries are excluded from the regime
- Customs is fixing errors at its own cost.

Minimum and maximum administrative penalties

Some industry groups have told Customs that the minimum administrative penalty of $200 may not be an effective deterrent and that businesses may be treating the amount as a “cost of doing business”.

Some industry groups also think the maximum administrative penalty of $50,000 is too high. We found it difficult to compare the minimum and maximum amounts to those in other penalty schemes in New Zealand or overseas. Penalty schemes for misleading statements relating to imported and exported goods and for shortfall in duty are common in other countries, but these can be quite different in how they are designed and who they are targeted at.

> “As at 1 January 2015, Customs has issued two administrative penalty notices for the maximum of $50,000”

The minimum and maximum amounts were last updated in 2012 (from $50 and $10,000 respectively). Over time, inflation will erode the impact of the amounts.

We do not know enough yet about the impacts of the minimum and maximum amounts. We are interested in your views on this and how this issue may affect your business.

You may also think there are other factors or measures we should consider. For example, some countries reduce or cancel penalties if the business has a good compliance record. We do need to make sure that any provisions in the legislation are clear and transparent to everyone.

Administrative penalties do not apply to exports

Export entries do not involve shortfall in duty so any administrative penalty will be the current amount of $200”

Administrative penalties apply to import entries and to export entries in relation to applications for drawback of duty.

Other export entries are not included in the regime. This is because of a drafting error in changes to the Customs and Excise Act in 2012. Before 2012, administrative penalties included all export entries. Other countries apply penalties to both import and export entries.

Our preferred solution

Apply administrative penalties to all export entries

Our view is that administrative penalties should apply to all export entries.

Having accurate data provides assurance to our trading partners for the goods they are receiving from New Zealand. The data is also used to compile a range of trade data used in national statistics. Accurate data also enables us to intervene to protect New Zealand’s sovereignty or reputation – for example, stopping the illegal exporting of pounamu. Administrative penalties are one method of encouraging accuracy.

This option is consistent with Parliament’s intention in 2012 to apply administrative penalties to all export entries, and is consistent with penalty schemes in other countries.

Other solutions we are considering

Status quo: Make no legislative changes

Retaining the status quo would mean that there would continue to be inconsistent treatment between imports and exports. For the vast majority of export entries Customs would have no ability to issue an administrative penalty for errors.

Who would be affected by change

We recognise that a legislative change could affect the export sector, as it is likely it will be the exporter who will be making the entry to Customs. We would need to work with exporters to make it easy for them to understand and comply with their obligations.

It is difficult to estimate numbers, but we expect that under the preferred option we would issue approximately 400 to 1,000 administrative penalties in the first year to people making export entries.

Customs does not recover costs for fixing errors

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. If an adjustment or cancellation is required, Customs reviews the correct documents submitted by the person and decides whether to approve the adjustment or cancellation.

These adjustments or cancellations are common. The time taken depends on how complex the task is. We estimate that Customs spends approximately $300,000 a year on entry adjustments and cancellations as a result of errors voluntarily disclosed by people making entries. However, the cost is likely to be less under the new Joint Border Management System.

Example of an error resulting in adjustment by Customs

A customs broker makes an import entry based on initial documentation (a shipping order) from their customer. This enables their customer's goods to be cleared by Customs the same day.

Two days later the broker receives full documentation from the customer and voluntarily discloses to Customs that there was an error in the tariff classification in the initial documentation. Customs reviews the full documentation and approves the adjustment.

Solutions we are considering

We have considered two options. We do not currently have a preferred option.

Status quo: Make no legislative changes

Retaining the status quo would mean that Customs will continue to be unable to recover Crown costs for the processing and approval of adjustments or cancellations by people who make entries. Although the Joint Border Management System will streamline the process for brokers and Customs, there will still be costs to Customs for processing and approving adjustments.

Allow Customs the ability to introduce a processing/administration fee to recover our costs for entry adjustments

Under this option, the legislation would need to be changed to allow Customs to set a fee to recover Crown costs. The fee would probably be small. We would need to consult with interested parties on the level of the fee.

In setting the fee level we would need to balance the goal of recovering Crown costs with the need to encourage voluntary disclosures of errors.

ADMINISTRATIVE PENALTIES: WHAT DO YOU THINK?

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

Currently, additional duty can be imposed on some, but not all, duty payments owed to Customs that remain unpaid by the due date. We think this creates an anomaly in the Customs and Excise Act.

> “Additional duty of five percent is imposed on payments unpaid after the due date. A further two percent is imposed for each month after that”

Specific situations where additional duty cannot be imposed include the following:

- payments to Customs other than those by businesses on Customs’ Deferred Payment Scheme or by excise manufacturers – for example, late cash payments are not liable for additional duty
- businesses that undergo a Customs audit and have been found to have underpaid duty. They must pay the amount owing but are not liable for additional duty. If the business had overpaid duty, Customs would refund the amount
- where a refund or drawback is paid to a business by Customs but it is later found that the amount was paid out in error. The business must pay back the amount, but Customs cannot impose additional duty to account for the Crown’s loss of that money and the use of that money.

Example of a drawback paid to a business in error

A retailing business received a drawback of approximately $50,000 from Customs for previously paid import duty.

One year after receiving the drawback, they voluntarily disclosed to Customs that, because they had mistakenly submitted inaccurate information, they received the drawback in error. They repaid the $50,000.

The Crown had no ability to recover interest on the loss of that money, which the business had the use of for a year.

We are aware that Inland Revenue can charge interest under its legislation for late payments of tax. This includes interest provisions for tax refunds that are paid out by Inland Revenue but subsequently found to be in error – that is, the taxpayer must pay back the refund plus interest.

We do recognise that most importing businesses that pay by cash must pay Customs before their goods are released from a Customs Controlled Area – that is, “no pay, no go”. If a business does not pay, Customs can take possession of the goods and sell them, or any part of them, to satisfy the debt in full or part.

There will be situations where clients already have use of the imported goods, so in those cases Customs cannot hold the goods – for example, goods that were originally imported as a "temporary import" but that are now staying in New Zealand permanently.

Our preferred solution

Extend additional duty to all payments to Customs, and to refunds and drawbacks paid to businesses and later found to be in error

We believe this option would provide incentives to businesses to pay the right amount to Customs and to claim the right amount of refund or drawback. Legislative change would be required to apply additional duty to:

- all payments to Customs, including cash payments
- refund and drawbacks paid to businesses by Customs and later found to be in error
- payments for a shortfall in duty as a result of a Customs audit.

It is difficult to estimate how much extra revenue we would collect under this option, given there might be cases where the additional duty is remitted or refunded after an application from a payer.

Other solutions we are considering

Status quo: Make no legislative changes

Under this option, additional duty would continue to apply only to deferred payments and excise duty payments to Customs. Customs would not be able to impose additional duty in other situations, including when we find a shortfall in duty during an audit.

Who would be affected by change

Our preferred option would affect all people and businesses that make payments to Customs. Those businesses that do not currently make deferred payments or excise payments to Customs would be liable for additional duty on late payments.

All businesses would be liable for additional duty where they have received a refund or drawback from Customs but it is found to have been paid to them in error. Additional duty would have to be paid on top of the amount of the refund or drawback paid by Customs in error.

All businesses would also be liable for additional duty where a Customs audit finds that the business has underpaid duty. Additional duty would be due to the Crown as well as the shortfall in duty.

ADDITIONAL DUTY: WHAT DO YOU THINK?

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

AT A GLANCE

Customs designates and licenses certain areas so we can perform the duties required to keep the border secure, as well as ensuring that revenue is collected in the most effective way. These areas are called Customs places, Customs Controlled Areas and Customs-approved Areas for Storing Exports.

Customs wants to make sure the legislative provisions for those areas are designed and operated in ways that support effective Customs operations without interfering with efficient business practices.

Getting your feedback

We would like to get your views and gather information on the following issues:

- the absence of a clear framework for designating or revoking Customs places
- the purposes of Customs Controlled Areas and a separate provision for Customs-approved Areas for Storing Exports.
- whether to review the current 24-hour grace period before storage charges are imposed
- possibly aligning the controlled areas operated by different border agencies.

Terms used in this chapter

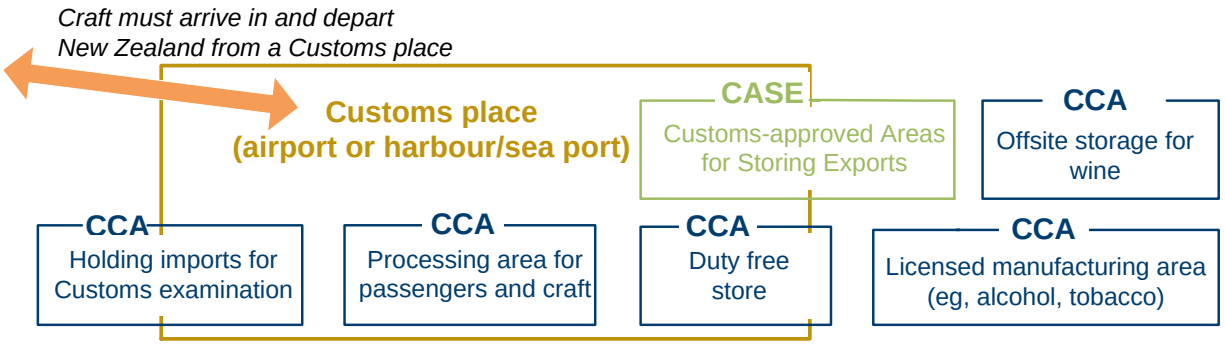
Customs places: officially designated and authorised areas where passengers, goods and marine craft must enter and leave the country. Examples are Auckland Harbour and Auckland Airport. Customs places currently include 16 harbours/sea ports and 10 airports.

Customs Controlled Areas (CCAs): specific areas licensed for purposes relating to Customs' border and excise functions. Examples include processing areas within airports and seaports, and areas where excisable goods are manufactured. There were approximately 1,087 Customs Controlled Areas as at December 2014 – 345 of these were in Auckland.

Customs-approved Areas for Storing Exports: licensed areas for storing goods for export under the control of Customs to ensure that the goods are secure. There is currently only one licensed Customs-approved Area for Storing Exports.

Customs control: measures applied by Customs to ensure compliance with processes and requirements as defined by law.

The diagram below shows how these three types of areas relate to each other:



Some Customs Controlled Areas are always within a Customs place – for example, Customs Controlled Areas for processing passengers and craft. Some Customs Controlled Areas can exist within or outside of a Customs place – for example, duty-free stores and Customs Controlled Areas for Customs examination purposes.

Other areas are generally outside of a Customs place – for example, licensed manufacturing areas for goods subject to excise.

> “There were approximately 1,087 Customs Controlled Areas as at December 2014 – 345 of these were in Auckland”

Customs areas: The law as it stands

The provision for Customs places in the Customs and Excise Act states that they are designated by the Customs chief executive by a notice in the *New Zealand Gazette*. The provision gives the chief executive the power to impose conditions or restrictions, and revoke designations.

The provisions for Customs Controlled Areas and Customs-approved Areas for Storing Exports include processes for applying for licences, the purpose of licensed areas, and when a licence can be varied, revoked or suspended. The legislation gives our chief executive the power to specify terms and conditions that will be applied when licensing Customs Controlled Areas and Customs-approved Areas for Storing Exports.

Customs areas: Our goal

Our goal is to make sure the legislative provisions for Customs places, Customs Controlled Areas, and Customs-approved Areas for Storing Exports are designed and operated in ways that support effective Customs operations without interfering with efficient business practices.

WHAT A FRAMEWORK FOR CUSTOMS AREAS MUST DO	WHICH WILL RESULT IN THE FOLLOWING BENEFITS
• provide a clear and transparent process for designation and licensing • ensure that Customs control is exercised effectively • ensure that Customs can manage its resources efficiently • support flexibility in the way that Customs and its customers work • balance the needs of businesses and Customs • ensure that Customs decisions about delivery of our services are co-ordinated with other border agencies.	• all parties can plan and make decisions • better border security and protection • revenue is collected effectively • future changes in business processes are supported • greater collaboration with other government agencies to reduce compliance costs for businesses.

Customs areas: Key issues and opportunities

Customs has identified three issues, and a specific opportunity, that need further investigation. We are interested in gathering more information on these issues and how they affect businesses.

The key issues Customs has identified are:

- designation of Customs places
- purposes for Customs Controlled Areas, including whether a separate provision for Customs-approved Areas for Storing Exports is needed
- storage charges.

We have also identified an opportunity to possibly align Customs areas with controlled areas operated by other border agencies.

Designation of Customs places

The Customs and Excise Act provides us with limited guidance for setting up a framework with clear procedures and processes around designating or revoking a Customs place. The absence of a clear framework carries the following risks:

- uncertainty for businesses and Customs
- our arrangements not being aligned with those of other border agencies
- lack of clarity around when Customs places stop having this status because the original needs are no longer relevant

- uncertainty for seaport and airport operators because:
  - they do not know the criteria they have to meet to be designated as a Customs place
  - they have to rely on ad hoc arrival processes when they are not operating in a Customs place.

We would like to hear how the absence of a clear framework affects your business and what benefits there would be if our approach to designating and revoking Customs places were clarified.

Purposes of Customs Controlled Areas, and a separate provision for Customs-approved Areas for Storing Exports

Purposes of Customs Controlled Areas

The Customs and Excise Act sets out the purposes of Customs Controlled Areas as follows, specifying the activities that can only be undertaken in these areas:

> "No area shall be used for—
>
> (a) the manufacture of goods specified in Part A of the Excise and Excise-equivalent Duties Table; or
>
> (b) the deposit, keeping, or securing of imported or excisable goods, without payment of duty on the goods, pending the export of those goods; or
>
> (c) the temporary holding of imported goods for the purposes of the examination of those goods under section 151(including the holding of the goods while they are awaiting examination); or
>
> (d) the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or
>
> (e) the processing of craft arriving in or departing from New Zealand or the loading or unloading of goods onto or from such craft; or
>
> (f) any other prescribed purpose,—
>
> unless that area is licensed as a Customs controlled area."

While that provision does not itself prevent other activities taking place in Customs Controlled Areas, the licences are also subject to terms, conditions and restrictions set by the chief executive (under section 12(1)) that are designed to ensure that Customs' control is maintained.

This has created the potential for ambiguity, particularly for businesses looking for greater flexibility in using warehouse space that is licensed as a Customs Controlled Area. This includes, for example, ambiguity around whether cargo can be taken out of a container and deconsolidated in a Customs Controlled Area.

We think it is useful to consider whether the current descriptions of the purposes of Customs Controlled Areas are still adequate, and whether current arrangements, both in the legislation and under conditions imposed by Customs, limit your ability to use Customs areas for a wider range of activities.

Separate provision for Customs-approved Areas for Storing Exports

In addition, the Customs and Excise Act includes a provision for Customs-approved Areas for Storing Exports. As the name indicates, these areas can be used only for storing goods for export, not imported or excisable goods. This provision was introduced to support the Secure Export Scheme .[20]

Currently, only one company operates a Customs-approved Area for Storing Exports – all other exporters using the same facilities for exports as those used for imports. Having the separate provision for exports does not reflect the fact that many exporters are also importers.

We think it is timely to question whether the provisions for Customs Controlled Areas and for Customs-approved Areas for Storing Exports should continue to distinguish between imports and exports, or whether the legislation should be amended to provide for both imports and exports in a more coherent way.

We would like to hear your views on how the current legislative provisions affect your business.

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. The principle behind this grace period is that the goods should not be subject to storage charges while they are waiting for Customs clearance or examination.

Although this principle is still valid, we think that there may be a need to review this current arrangement given most goods arriving in New Zealand are now pre-cleared.

Customs would like your views on whether the current arrangement for a 24-hour grace period for both cleared and uncleared goods arriving in a Customs Controlled Area is appropriate, or whether cleared and uncleared goods should be treated differently.

[20] The Secure Export Scheme is a voluntary arrangement between exporters and Customs, designed to protect the exporters' international supply chain against tampering, sabotage, smuggling and other trans-national crime.

Possible alignment with other border agencies

There are also potential opportunities for aligning controlled areas across border agencies. Customs currently licenses a number of areas that are also certified or licensed areas for other government agencies – for example the Ministry for Primary Industries' transitional or containment facilities and Immigration New Zealand's immigration control areas.

Aligning these designated areas across government agencies may reduce compliance costs for businesses by reducing overlapping requirements. We are interested in your suggestions on how we could potentially increase the alignment of controlled areas between Customs and other border agencies.

CUSTOMS AREAS: WHAT DO YOU THINK?

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 have 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: WHAT DO YOU THINK?

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.

APPENDIX 1
KEY TERMS AND ABBREVIATIONS

Glossary

3D Printing	The process of making a three-dimensional solid object from a digital model contained in a data file.
Administrative penalty	A monetary penalty imposed for making errors in entry documentation.
Alerts	A recording within Customs' computer system that a particular person or goods are of interest to Customs or to an external agency that is authorised to place alerts in Customs' system.
Anti-dumping duty	A duty imposed to offset the amount or margin of dumping. Dumping is where the export price of goods imported into New Zealand is less than the normal value of the goods in the exporting country.
Better Public Services	Delivering better public services within tight financial constraints is one of the Government's four priorities for this term. Achieving results that make a difference to New Zealanders is at the heart of that. Ten specific results have been identified to achieve better public services. See http://www.ssc.govt.nz/better-public-services.
Biometric information	Information about an individual's physical or behavioural characteristics that can be scientifically measured, most commonly including a facial image, fingerprints, iris scans, DNA profiles, and finger and palm prints.
Border sector agencies	New Zealand Customs Service, the Ministry for Primary Industries, Immigration New Zealand (as part of the Ministry of Business, Innovation, and Employment), the Civil Aviation Authority and Maritime New Zealand.
Broker	A person involved in the clearance of goods.
Business Growth Agenda	A programme of work that will support New Zealand businesses to grow, in order to create jobs and improve New Zealanders' standard of living. The Business Growth Agenda is delivering innovative initiatives and policy reforms that will help create a more productive and competitive economy. See http://www.mbie.govt.nz/what-we-do/business-growth-agenda.
Clearance	Completion of the Customs formalities necessary for people, goods and craft to enter or leave New Zealand.

Closed circuit television (CCTV)	The use of video cameras to transmit a signal to a specific place, on a limited set of monitors.
Commercial information	Information that represents the general functions or commercial position of the supplier of the information, and that is not about a person.
Consignment	A batch of goods destined for delivery.
Cost Insurance Freight (CIF)	Valuation figure that includes the cost of the goods, the cost of insurance, and the cost of the freight for delivering the goods to its destination.
Countervailing duty	A duty imposed on imported goods that have been subsidised by a foreign government in order to counteract the effect of the subsidy and protect local manufacturers of the same type of goods.
Craft	Any aircraft, ship, boat or vessel capable of transporting people or goods, by either land or sea.
Customs-approved Areas for Storing Exports (CASE)	Licensed areas for storing goods for export under the control of Customs to ensure that the goods are secure.
Customs Appeal Authority	Sits as a judicial authority for hearing and deciding appeals which are authorised by the Customs and Excise Act 1996 or any other Act against assessments, decisions, rulings, determinations, and directions of the chief executive of the New Zealand Customs Service. Every Authority is appointed by the Governor-General on the joint recommendation of the Minister of Justice and the Minister of Customs.
Customs Controlled Area (CCA)	Specific areas licensed for purposes relating to Customs' border and excise functions. Examples include processing areas within airports and seaports, and areas where excisable goods are manufactured.
Customs control	Measures applied by Customs to ensure compliance with processes and requirements as defined by law.
Customs place	Officially designated and authorised areas where passengers, goods and marine craft must enter and leave the country. Examples are Auckland Harbour and Auckland Airport.
Customs valuation	The value of goods as determined by valuation methods in Schedule 2 of the Act.
Digital/virtual goods	Also known as "digital files", these can include, for example, computer code, software, e-books, data files and video files.

Drawback	A refund of previously paid duty (and sometimes GST) when goods are exported.
Duty	A duty, additional duty, tax, fee, charge or levy imposed on goods under the Act, or another Act specified by the Customs and Excise Act.
Entry	Information provided to obtain Customs clearance of goods and for Customs to assess risk and liability for duty.
Excise and Excise-equivalent duty	A tax on certain locally manufactured goods. When these types of goods are imported, a rate of duty is levied on them that is equivalent to the excise liability that would apply if the goods had been manufactured in New Zealand (excise-equivalent duty).
Goods	All kinds of moveable personal property, including animals.
GST	A tax on most goods and services in New Zealand, most imported goods, and certain imported services. The rate of GST applied is 15 percent.
Information	We use this term to refer to raw data – for example, the elements of an import or export entry, as well as information which provides context to data (who, what, when, where); information makes data meaningful.
Input tax credit	When a registered person buys goods and services to use in a taxable activity, the GST portion of the price is called “input tax” and the person is credited with this amount.
Intelligence	Information that has been gathered and analysed and/or modelled.
Joint Border Management System (JBMS)	A joint computer system operated by Customs and the Ministry for Primary Industries to modernise and integrate border clearance processes for people, goods and craft.
The Revised Kyoto Convention	The International Convention on the Simplification and Harmonization of Customs Procedures.
Memorandum of Understanding (MOU)	A non-binding agreement between parties that sets out understandings between the parties.

National Maritime Coordination Centre (NMCC)	A joint co-ordination centre run by Customs and the New Zealand Defence Force that specifically co-ordinates civilian maritime activity. The core agencies of the NMCC include: Customs, the New Zealand Defence Force, the Ministry for Primary Industries, Maritime New Zealand, the Department of Conservation, the Ministry of Foreign Affairs and Trade, and the New Zealand Police.
New Zealand (border definition)	The land and waters enclosed by the outer limits of the territorial sea of New Zealand (12 nautical miles).
New Zealand Business Number	The New Zealand Business Number is a single identifying number for all businesses, government agencies and commercial entities in New Zealand.
Non-personal information	Information that is not about an identifiable individual. For example, import or export information provided to us by a business. This information may be commercially sensitive.
Objectionable material	Material that depicts, expresses or otherwise deals with matters such as sex, horror, crime, cruelty or violence in such a manner that the availability of the publication is likely to be injurious to the public good. Common examples include child sexual abuse, bestiality, and acts of torture or extreme cruelty.
Personal information	Information about an identifiable individual – for example, the name and address of a person. This includes biometric information.
Primary legislation	Acts of Parliament that usually deal with matters of high level and general policy – for example, the Customs and Excise Act 1996.
Purpose statement	A statement at the beginning of an Act of Parliament that sets out the Act's overarching purpose.
Refunds	A return of previously paid duty, available only to the importer or producer of the goods.
Regulations	Instruments made under the authority of primary legislation and approved by the Executive Council on the recommendation of Cabinet. Also known as "secondary legislation".
Remission	Where duty is no longer due because goods do not enter the New Zealand market, or do not enter in a usable state, or are considered sample goods, or are exempt under the Tariff Act, or exempted by the Customs chief executive.

Rules	Instruments that are made by Ministers, officials or organisations under an Act and that therefore must be complied with because they form part of New Zealand law. Failing to comply with Rules may be an offence under the primary legislation. Also known as “tertiary legislation”.
Secure Export Scheme	A voluntary scheme that provides assurance from exporters that they have secure systems and processes for the packing of containerised consignments, the sealing of shipping containers in secure areas, and secure transport to the port of loading.
SmartGate	An automated border-processing system that gives certain electronic passport holders the option to self-process through passport control when arriving at and departing from New Zealand international airports. SmartGate uses the electronic information held in an electronic passport and facial recognition technology to verify the identity of the passport holder for Customs and Immigration purposes.
Supply chain	The sequence of processes involved in the production and distribution of a commodity.
Supporting legislation	Subordinate legislation (such as Regulations and Rules) that usually provide the necessary detail for policies to be implemented and that are made under the authority of primary legislation (Acts).
Tariff duty	In New Zealand this is a tax on specific imports and is expressed usually as a percentage of a good’s value.
Trade Single Window (TSW)	An electronic system (part of the Joint Border Management System) through which importers and exporters can submit all information required for the clearance of goods.
World Customs Organization (WCO)	An international organisation for customs’ administrations, based in Brussels.
World Trade Organization (WTO)	An international organisation that deals with the global rules of trade between countries.

APPENDIX 2
RELEVANT LEGISLATION

Legislation applied by Customs:

Accident Compensation Act 2001
Alcoholic Advisory Council Act 1976
Anti-Personnel Mines Prohibition Act 1998
Arms Act 1983
Biosecurity Act 1993
Chemical Weapons (Prohibition) Act 1996
Children, Young Persons, and Their Families Act 1989
Climate Change Response Act 2002
Commerce Act 1986
Companies Act 1993
Consular Privileges and Immunities Act 1971
Copyright Act 1994
Crimes Act 1961
Customs and Excise Act 1996
Diplomatic Privileges and Immunities Act 1968
Dog Control Act 1996
Dumping and Countervailing Duties Act 1988
Energy (Fuels, Levies, and References) Act 1989
Evidence Act 2006
Fair Trading Act 1986
Films, Videos, and Publications Classification Act 1993
Financial Transactions Reporting Act 1996
Goods and Services Tax Act 1985
Hazardous Substances and New Organisms Act 1996
Heavy Engineering Research Levy Act 1978
Immigration Act 2009
Imports and Exports (Restrictions) Act 1988
Maritime Security Act 2004
Maritime Transport Act 1994
Medicines Act 1981
Mercantile Law Act 1908
Misuse of Drugs Act 1975
Misuse of Drugs Amendment Act 1978
New Zealand Bill of Rights Act 1990
Official Information Act 1982
Ozone Layer Protection Act 1996
Passports Act 1992
Postal Services Act 1998
Privacy Act 1993
Public Finance Act 1989
State Sector Act 1988
Statistics Act 1975
Summary Proceedings Act 1957
Tariff Act 1988
Telecommunications (Residual Provisions) Act 1987
Temporary Safeguard Authorities Act 1987
Terrorism Suppression Act 2002
Trade in Endangered Species Act 1989
Trade Marks Act 2002
Wine Act 2003

Other relevant legislation:

Aviation Crimes Act 1972
Civil Aviation Act 1990
Conservation Act 1987
Cook Islands Act 1915
Customs Law Act 1908
Food Act 1981
Forests Act 1949
Health Act 1956
Human Assisted Reproductive Technology Act 2004
International Finance Agreements Act 1961
Marine Mammals Protection Act 1978
Motor Vehicles Sales Act 2003
Niue Act 1966
Radiation Protection Act 1965
Ship Registration Act 1992
Smoke-free Environments Act 1990
Transit New Zealand Act 1989
Transport Act 1962
United Nations Act 1946
Wildlife Act 1953

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.

SUBMISSION FORM

Name: _____

Address: _____

_____

_____

Phone number: _____

Email: _____

Business name or organisation name: _____

Position in business or organisation: _____

Type of business: importer, exporter, supply chain support, transport, alcohol industry, transport fuels industry, other (specify):

_____

Type of submission: personal / business / organisation / other: _____

Confidentiality sought for:

- content: yes / no
- name of submitter: yes / no

Details of confidentiality requested: _____

_____

Please note

Customs intends to release all submissions publicly after we have done further policy work on the review. If you would like your submission to remain confidential, please provide detailed reasons for this. We will then assess whether to release your submission by applying the criteria specified in the Official Information Act 1982.

Please note in your submission which questions you are responding to.

Other comments or issues of concern

Are there any other areas relating to Customs current legislation, Regulations or operational practices, or areas in which future proofing is needed, that you believe could be considered in this review of the Customs and Excise Act? Please provide your feedback if so.

Question: _____

Response: _____

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Question: _____

Response: _____

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