

Impact Summary: Time limit for Customs valuation rulings

Section 1: General information

Purpose
<p>The New Zealand Customs Service (Customs) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement (RIS), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing decisions to be taken by Cabinet.</p> <p>This RIS provides an analysis of options for a maximum time limit for Customs to make valuation rulings. Valuation rulings are a new service provided for under the Customs and Excise Bill.</p> <p>The impacts discussed in this paper are primarily on the small number of importers that seek rulings from Customs about the appropriate method to value goods they are importing, and Customs in its role of providing the valuation rulings service.</p>

Key Limitations or Constraints on Analysis
<p>The following are constraints on the analysis:</p> <ul style="list-style-type: none">• There is a lack of available quantitative information in some areas because valuation rulings will be a new service for Customs. Information is not available on the length of time it will take Customs to provide valuation rulings. Customs has estimated the length of time valuation rulings may take, based on its experience providing non-binding valuation advice to importers, and comparing the complexity of valuation rulings with other rulings Customs already provides.• The consequences and implications of different options are risk-based and therefore have been difficult to quantify and measure.
Responsible Manager (signature and date):
<p>Anna Cook [date] Director, Policy New Zealand Customs Service</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Status Quo

Legislation

1. Customs provides binding rulings on the tariff classification, excise classification, and origin of goods, and whether goods are subject to a duty concession.¹ The Customs and Excise (the Bill) introduces a new service, for Customs to make rulings on the appropriate method to value imported goods, including how to interpret provisions about valuing imports. Customs currently provides advice on valuation issues, but this advice is not binding.
2. The Bill requires Customs to make rulings within a prescribed time limit, which must not exceed 150 calendar days after Customs has received all of the relevant information from an applicant. The Customs and Excise Regulations 1996 already prescribe time limits for making origin rulings (150 days) and all other types of rulings must be made within 40 calendar days (tariff and excise classification rulings, and rulings on duty concessions).²
3. If Customs takes longer than the time limit an applicant can make a complaint to the Ombudsman or seek Judicial Review. If an applicant disagrees with the outcome of a ruling they have a right of appeal to the Customs Appeal Authority.

Current practice

4. Customs provides advice on valuation issues, but the advice is not legally binding. The advice can range from being standard to complex. Advice on complex valuation issues is usually in response to questions from Customs' operational staff following an audit of information an importer has declared. A small number of requests for complex valuation advice are made by business.

Comparison between valuation rulings and other Customs rulings

5. The nature and complexity of valuation rulings can be compared in a general way with the other types of rulings Customs provides. Origin rulings are the most complex rulings currently made by Customs, and must be made within 150 calendar days. To make a ruling on the origin of goods, Customs must identify and understand the supply chain and interpret the requirements in the relevant Free Trade Agreement. Some valuation rulings are likely to be more complex than origin rulings because they will involve analysing a much larger amount of information.

Valuation rulings may range in complexity

6. Valuation rulings may range in complexity, but it is difficult to determine definitive categories of standard compared to complex valuation rulings. Valuation rulings about the sale of goods between a related buyer and seller are generally likely to be complex

¹ Section 119 of the Customs and Excise Act 1996

² Regulation 73 of the Customs and Excise Regulations 1996.

due to the amount of analysis involved. These rulings may include analysis of:

- relevant legislation (the application of Schedule 4 of the Bill, which sets out rules for valuing goods as required by the World Trade Organization Customs Valuation Agreement³)
- the supply chain for the goods
- the importing company's structure
- any transfer pricing arrangements that are in place
- commercial costings, such as distribution expenses, profit margins, or marketing expenses
- case studies and international law.

7. Rulings on goods sold between unrelated parties may be less complex, depending on the facts and circumstances involved. An example is whether an importer can use the Transaction Value Method if the importer has an invoice showing the price payable for the goods. The Transaction Value Method is the main method for valuing goods, determined by the price paid or payable for the goods.

International standards and practice in other customs administrations

8. The World Trade Organization Trade Facilitation Agreement (WTO TFA) contains provisions for expediting the movement, release and clearance of goods, and best practice for customs administrations. The WTO TFA requires members to provide rulings on tariff classification and origin. It encourages members to provide rulings on the valuation of goods. The WTO TFA does not set explicit time limits for the making of customs rulings. It requires rulings to be issued in a 'time-bound manner', and requires members to publish the time period by which they will issue rulings.
9. Time limits set by other customs administrations are varied. In the United States binding valuation rulings are issued within 90 days. Singapore aims to make valuation rulings in 30 days. Canada does not provide valuation rulings, but aims to make origin and tariff classification rulings within 120 days. Australia does not provide binding valuation rulings, but aims to provide valuation advice within 30 days. Valuation advice is different to a valuation ruling because advice is not binding on the customs administration.
10. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership text states that each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requestor has submitted all relevant information.

Standards and practice of other government agencies

11. Inland Revenue (IR) provides binding rulings on how a tax law applies to a particular arrangement. Importers using transfer pricing may seek a special binding ruling from IR, an Advance Pricing Agreement (APA), which outlines methods to determine an importer's profit. APAs ensure profit is determined at an arms-length, to prevent or reduce transfer of profits offshore.
12. The timeframe for IR to provide a draft ruling is within three months (90 days) of

³ Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

receiving a complete application. That timeframe becomes six months (180 days) if the ruling is a draft APA. These timeframes exclude the time taken by an applicant to provide any additional information about their application. There is no regulatory time limit for the making of IR's rulings.

13. IR's survey responses showed customers were generally very happy with the service IR are providing, in terms of both the timing and quality of their rulings.

Problem

14. The Customs and Excise Regulations 1996⁴ set the default time limit for Customs to make rulings at 40 calendar days. Customs considers this timeframe insufficient for making valuation rulings given the potential complexity. If the regulations are not amended to allow for Customs to take a longer time to make a valuation ruling, the following risks arise:
 - rulings are not robust, which undermines the objective of the rulings service (to provide certainty to applicants)
 - greater likelihood of appeal by applicants
 - a high administrative burden on Customs, which may impact the quality of other services Customs provides (other rulings and advice)
 - risk of judicial review and adverse comment from the Ombudsman.

Likelihood and consequences

15. The likelihood that some or all of these issues and risks would eventuate is high, given that the time taken to provide complex valuation advice is more than NZ Customs' current default 40 day limit for rulings.
16. Rulings made in limited timeframes may lead to appeals because rulings are not fit for purpose or robust. This may create legal costs for both industry and Customs. The consequences of the risks eventuating are difficult to predict. Adverse consequences would be limited to applicants for rulings, not all importers, because valuation rulings will generally contain private and commercially sensitive information and only the applicant will be relying on the ruling.
17. Consultation with industry stakeholders indicated that in the first year of implementation there may be approximately 50 standard valuation rulings and two complex valuation rulings. This means that rulings would only apply to, and affect a small number of importers.

⁴ Regulation 73

2.2 Who is affected and how?

18. The purpose of the time limit is to set a maximum time period for Customs to make rulings, so that an applicant can hold Customs accountable if it fails to meet the required standard. The Bill sets a maximum time that may be prescribed by regulations (150 days).
19. The regulatory time limit is one of several factors that will determine the length of time it takes Customs to make valuation rulings. The time limit is not the determining factor. Other relevant factors include:
 - reputational risks for Customs if it does not provide a prompt rulings service, particularly if applicants are paying a fee for this service based on an hourly charge
 - the complexity of applications
 - whether an applicant has provided a view, and supporting analysis, as part of their application
 - whether there are any performance standards in place
 - the volume of applications for rulings
 - Customs' other work programme priorities.
20. Some importers want the time limit to be in the range of 90-120 days. Other importers are more comfortable with a time limit of 150 days if Customs reports publicly against performance standards.

2.3 Are there any constraints on the scope for decision making?

Constraints

21. The Customs and Excise Bill restricts the time limit that may be prescribed to no longer than 150 days. The Bill also limits the nature of the time limit that can be prescribed. The time limit must be an absolute maximum, not a target for best endeavours. The Bill does not give the chief executive discretion to extend the time limit, so a regulatory time limit cannot be set and then extended on a case-by-case basis (eg for more complex rulings). There are no other constraints on the scope for decision making.

Interdependencies

22. The Bill enables an application fee and hourly charge for rulings to be set by regulations. The time taken by Customs to provide a valuation ruling will affect the overall cost of the ruling. The more time taken by Customs to make the ruling, the higher the cost. However as stated above, the regulatory time limit is not the sole factor that determines how long Customs will take to make a ruling. This point is also considered in the options analysis below (see 3.2 'Prompt rulings for importers').
23. Options for a partially cost recovered fee for valuation rulings are set out in the Cost Recovery Impact Statement: Customs valuation rulings: Regulations for cost recovery charge.

Section 3: Options identification

3.1 What options have been considered?

Estimates about future practice

24. Customs estimates that following the receipt of all relevant information from an applicant, valuation rulings will take approximately 90 to 150 days to complete. Customs took this estimate into consideration when developing the time limit options.

Options

25. Customs considered the following options to address the risks:
- **Option One (Status Quo):** 40 days
 - **Option Two:** Between 90 and 120 days, in line with practice by some other customs administrations (eg the United States)
 - **Option Three:** 150 days
 - **Option Four:** 150 days for complex valuation rulings, 90 days for standard valuation rulings.

Criteria

26. Customs used the following criteria to assess the options. Options that meet these criteria are likely to address the risks that have been identified. The criteria are:
- **Low risk of legal review due to exceeding the time limit:** Most rulings can be provided within the time limit, which means that legal review by the Ombudsman, or judicial review occurs infrequently.
 - **Supports Customs to make robust rulings:** Allows Customs to undertake the research, analysis and consultation necessary to make informed decisions on technically complex issues, which reduces the risk of legal review and to Customs subsequently changing its position.
 - **Prompt rulings for importers:** Importers receive prompt rulings about how to meet their valuation requirements prior to importing goods.

Advantages and Disadvantages of Options

27. Detailed analysis of Options One to Three is set out in Appendix One. Option Three (150 days) is the preferred option (see 3.2 below).
28. Customs did not assess Option Four using the criteria because there is no fixed definition of 'standard' or 'complex' valuation rulings, and no objective test which determines the maximum amount of time required for rulings based on complexity. Also, it is not clear that the Bill allows for the chief executive to have discretion over the time limit to make a ruling. Two different time limits based on complexity would require the chief executive to exercise discretion about which time limit should apply. In addition, what may appear to be a standard valuation ruling could still take a considerable amount of time if there is a lot of information to analyse.

Option One (status quo): 40 days

29. The advantage of this option is that importers will receive prompt rulings. The disadvantage is that this timeframe does not enable Customs to undertake robust analysis, particularly for standard to complex valuation rulings. It is very likely there would be appeals, or that Customs would exceed the timeframe and be subject to review.

Options Two: Between 90 and 120 days

30. This option provides more time for Customs to undertake robust analysis of standard valuation rulings than Option One. However, this option is unlikely to allow enough time for complex rulings, therefore there is still risk of appeal or Customs exceeding the timeframe, leading to review.

3.2 Which of these options is the proposed approach?

Option Three: 150 days

31. This is the preferred option because it meets the most criteria. The option that meets the most criteria will best address the problem.
- **Low risk of legal review:** Option Three meets this criterion. There is the lowest risk of legal review under this option.
 - **Supports Customs to make robust rulings:** Option Three meets this criterion. It best enables Customs to undertake research, analysis and consultation when making rulings on complex valuation issues. Complex valuation rulings include determining the value of goods when they are sold between related parties, or when the price of the goods is determined through transfer pricing. This option is consistent with Inland Revenue's performance standard for making Advance Pricing Agreements (6 months/180 days).
 - **Prompt rulings for importers:** This option does not meet this criterion, as it does not encourage Customs to provide timely rulings. However this does not mean that Customs will not make prompt rulings. As well as other factors that may influence Customs' behaviour, there is a reputational risk for Customs if rulings are not provided in a timely manner, particularly if valuation rulings are cost recovered.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Importers that apply for a valuation ruling	<p>Under the proposed option the maximum time limit will be 150 days.</p> <p>Applying for a ruling is voluntary. Importers will only seek a ruling if the benefits outweigh the costs. An importer will know the time limit for making rulings in advance and be able to conduct their business planning accordingly.</p> <p>The benefit is certainty that the importer's approach to determining the value of goods will be considered accurate by Customs.</p> <p>The estimated costs of a 150 day time limit is low. If an importer needs to import goods before a ruling is received, the importer may declare information to Customs they are uncertain is correct. A new business in this situation is more likely to experience uncertainty than an existing business, due to being unable to rely on previous experience determining and declaring values to Customs.</p> <p>There are negligible flow on consequences for importers in this situation because:</p> <ul style="list-style-type: none"> • Customs will generally not audit importers about valuation issues being considered under a ruling • an importer has the opportunity to amend previous information declared to Customs once a ruling comes through, by making a voluntary disclosure • the importer will not be liable to an administrative penalty if they can show that they formed a view that was reasonable having regard to information available at the time. <p>In addition, only a small number of importers are likely to seek rulings</p>	Low
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	(approximately 52 in the first year of implementation). New Zealand has comparatively low tariff rates, so any difference in tariff duty resulting from a change in value is unlikely to be significant. Importers will be liable to pay compensatory interest on the difference of duty owing if the value of goods increases following a ruling. ⁵ The interest is set according to Inland Revenue's Use of Money Interest rate. Importers may be eligible for partial or full remission of the interest.	
Customs	None	None
Wider government	Not applicable	Not applicable
Other parties	Not applicable	Not applicable
Total Monetised Cost	Not applicable	Not applicable
Non-monetised costs	Uncertainty for importers that declare information about the value of goods to Customs, without a ruling to validate the information.	Low

Expected benefits of proposed approach, compared to taking no action		
Importers that apply for a valuation ruling	Importers are more likely to receive robust rulings about how to value imported goods. Less likely to need to seek a review.	Low
Customs	Lower risk of legal review, either due to an appeal of the ruling itself, or due to review by the Ombudsman or judicial review due to exceeding the regulatory time limit.	Low
Wider government	Not applicable	Not applicable
Other parties	Not applicable	Not applicable
Total Monetised Benefit	Not applicable	Not applicable
Non-monetised benefits	Robust rulings for importers, giving them greater certainty about how to comply with Customs requirements. Lower costs for Customs due to fewer disputes. Less likelihood of review.	Low

⁵ Unless the importer declared a provisional value for the goods, in which no interest is payable on the difference between the provisional value and the final value.

4.2 What other impacts is this approach likely to have?

32. There are no other impacts of this approach.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

33. In June 2017 Customs held a workshop with industry stakeholders to better understand the impact of the options. Attendees included Fonterra, KPMG, Ernst & Young, Deloitte, and Chartered Accountants Australia & New Zealand.
34. Some stakeholders said that certainty about compliance was the driving reason for businesses to seek valuation rulings in New Zealand. Rulings give businesses certainty about Customs' view. This is compared with other countries where the driving reason is for importers to be certain about the amount of duty an importer is liable to pay. This is because New Zealand's tariff duty rates are comparably low.
35. Stakeholders were of the opinion that implementation processes will have a bigger impact on how quickly a ruling is made than the setting of a regulatory time limit. Important implementation processes include creating a transparent and straightforward application process with templates for applicants to use, and having an opportunity to have a pre-application meeting with Customs. Importers requested guidance on the information Customs will request when making valuation rulings.
36. Some stakeholders indicated support for public reporting on Customs' performance against set standards, as well as a regulatory time limit, to help measure success and to create a level of transparency, particularly if the regulatory time limit is 150 days. One stakeholder did not agree that a performance standard would have benefits.
37. In February 2018 Customs sought comment on the draft Impact Summary from Fonterra, KPMG, Ernst & Young, Deloitte, Chartered Accountants Australia & New Zealand, PwC, Customs Brokers and Freight Forwarders Federation of New Zealand Inc, and Blackburn Croft & Co Limited:
 - Generally stakeholders appreciated the rationale for a 150 day time limit, to allow for robust rulings on complex valuation issues, and acknowledged that Customs would aim to make rulings in a shorter timeframe.
 - One stakeholder questioned why Customs would take 150 days to produce a ruling when some overseas customs administrations take less than 150 days.
 - One stakeholder was concerned that 150 days has the appearance of being too long and therefore being too expensive.
 - Stakeholders want to be involved when Customs develops performance standards for completing rulings.
 - A request was made for Customs to provide applicants with an estimate about how long a ruling is likely to take.
 - Some stakeholders were concerned the timeframe could have negative

impacts on new and small to medium sized businesses.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

38. An amendment to regulation 73 of the Customs and Excise Regulations 1996 will be required to give the new time limit effect.
39. Customs will be responsible for providing valuation rulings. Customs has a dedicated team in place that already provides other types of rulings, valuation rulings will be a new service provided by that team.
40. Customs has operational processes in place for providing other rulings. Customs has also developed new material and procedures to specifically support implementation of the new valuation rulings service, and has consulted business on these documents. These include:
 - process maps for Customs staff assessing an application for a valuation ruling, and making a valuation ruling
 - guidelines for external stakeholders on how to apply for valuation rulings, and what to expect from the valuation ruling process
 - an application form for importers to apply for valuation rulings
 - a report ruling template for Customs' use.
41. Process maps will be supported by operational policy material and detailed procedure documents for Customs staff. These documents will guide Customs staff to consider legislative requirements, such as the steps that need to be taken by an applicant before Customs can make a ruling (such as providing all relevant information and paying the prescribed application fee).
42. Customs will develop internal standards on the time taken to make valuation rulings and test these standards with industry. Customs will report publicly against these standards. Customs may adjust these standards over time as Customs becomes more experienced with providing valuation rulings.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

43. The following information will be used to monitor and evaluate the outcomes of the recommendation in this RIS:
- the number of Customs rulings that are not made within the regulatory time limit, and why
 - the proportion of applications where Customs have to request additional information in order to make a ruling
 - asking Customs staff how well the time limit is working, if they have experienced any problems and if so, to describe the problems and make suggestions for resolving the problems
 - asking importers for feedback about the quality of the rulings they have received, whether the time frame is working for them, and if they have experienced any problems with the valuation rulings service and why.

7.2 When and how will the new arrangements be reviewed?

44. Customs will complete a review of the timeframe two years following implementation.
45. For this policy, the purpose of the review will be to assess whether importers or Customs are experiencing difficulties with the time limit, and whether the time limit is meeting the policy objective. As part of this review Customs will consider whether the time limit has any particular impacts for small or new businesses.

Appendix One: Options analysis for a time limit for valuation rulings

Key:

✓✗ partially meets the criteria ✓✓ meets the criteria ✗✗ doesn't meet the criteria

Criteria	Option One (Status Quo): 40 days	Option Two: Between 90 and 120 days	Option Three: 150 days
<p>Low risk of legal review:</p> <p>Most rulings can be provided within the time limit, which means that review by the Ombudsman, or judicial review, occurs infrequently.</p>	<p>✗✗</p> <p>This option does not set a timeframe that would allow for Customs to make robust valuation rulings.</p> <p>Appeals on substantive matters in a ruling are most likely under this option, due to Customs having insufficient time to fully consider issues.</p> <p>It is very likely that Customs will take longer than the regulatory time limit to make valuation rulings. This may lead to an applicant seeking review by the Ombudsman or judicial review.</p>	<p>✓✗</p> <p>This option does not set a timeframe that would allow for Customs to make robust valuation rulings in all cases.</p> <p>There is a risk of appeal on substantive matters in a ruling, particularly for complex rulings, due to Customs having insufficient time to fully consider issues.</p> <p>It is likely that Customs will take longer than the regulatory time limit for rulings. This may lead to an applicant seeking review by the Ombudsman or judicial review.</p>	<p>✓✓</p> <p>There is the lowest risk of legal review under this option.</p>
<p>Supports Customs to make robust rulings:</p> <p>Allows Customs to undertake the research, analysis and consultation necessary to make decisions on technically complex issues.</p>	<p>✗✗</p> <p>This option does not enable Customs to undertake the steps necessary to make robust valuation rulings.</p> <p>This time limit is not consistent with practice by other customs administrations (United States and Canada) and does not align with international trends (the Trans-Pacific Partnership Agreement text requires rulings within 150 days).</p> <p>It is very likely that time constraints will reduce the quality of analysis.</p>	<p>✓✗</p> <p>This option does not enable Customs to undertake the steps necessary to make robust valuation rulings on complex valuation issues.</p> <p>It is likely that time constraints will reduce the quality of analysis, particularly for rulings on complex valuation issues.</p> <p>This timeframe risks rulings being made on complex valuation issues which set inappropriate precedent which Customs would be legally required to follow. This may lead to an incorrect amount of duty being collected on</p>	<p>✓✓</p> <p>This option best enables Customs to undertake research, analysis and consultation when making rulings on complex valuation issues. Complex valuation rulings include determining the value of goods when they are sold between related parties, or when the price of the goods is determined through transfer pricing.</p> <p>This option is the most consistent with Inland Revenue's performance standard for making Advance Pricing Agreements (6 months/180 days).</p>

	<p>This timeframe risks rulings being made which set inappropriate precedent which Customs would be legally required to follow. This may lead to an incorrect amount of duty being collected on imported goods.</p> <p>It is unlikely that the setting of a fee which enables cost recovery will address issues associated with time constraints, given that making a ruling is a linear process.</p>	<p>imported goods.</p> <p>It is unlikely that the setting of a fee which enables cost recovery will address issues associated with time constraints, given that making a ruling is a linear process.</p> <p>This option is the most consistent with Inland Revenue's performance standard for making private rulings (3 months/90 days).</p>	
<p>Prompt rulings for importers:</p> <p>Importers receive prompt rulings about how to meet their valuation requirements prior to importing goods.</p>	<p>✓✓</p> <p>Importers will receive prompt rulings under this option.</p>	<p>✓✗</p> <p>There is no evidence to suggest that overall valuation rulings will be provided in a more timely manner if the maximum time limit is 90 instead of 120 days.</p> <p>In some cases under this option rulings may be provided more quickly than under Option Three.</p> <p>The time limits in this category are consistent with some other customs administrations. The United States provides valuation rulings in 90 days. Canada provides rulings within 120 days, but does not provide valuation rulings, which are generally more complex than classification rulings.</p>	<p>✗✗</p> <p>This option does not encourage Customs to provide timely rulings.</p> <p>This does not mean that Customs will not make prompt rulings. There is a reputational risk for Customs if rulings are not provided in a timely manner, particularly if valuation rulings are cost recovered.</p>
<p>Conclusion</p>	<p>This option does not meet two criteria.</p>	<p>This option partially meets the criteria.</p>	<p>This option meets two of the criteria. This is the preferred option.</p>