

Regulatory Impact Statement

Customs and Excise Act Review: Regulations: Provisional Values Time Limit

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Customs Service (Customs).

It provides an analysis of options to set a time limit for importers to enter a final value for imported goods, after entering a provisional value, for the purpose of assessment of duty and GST.

The analysis was based on consultation with stakeholders and Customs' operational experience with the Uplift Programme. The Uplift Programme allows some importers to enter a provisional value of goods and finalise the value at a later date agreed with Customs.

Information available on the use of provisional values and the type of circumstances under which a provisional value would likely be used was based on the Uplift Programme. Information about comparable statutory time limits was researched and information on binding rulings came from Inland Revenue. Stakeholders also provided information on how long it might take an importer to reach a final value and under what circumstances.

Customs' view of the achievable time limit and stakeholders' views differed. The time limit recommended favours stakeholders more than Customs or the timely collection of duty. A review of the time limit, once the Provisional Values Scheme (the Scheme) has operated for three years, will indicate any problems with the time limit.

Signed by Anna Cook on 31 July 2017

Anna Cook
Director Policy

31 July 2017

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Executive summary

1. The Customs and Excise Bill provides for importers to enter a provisional value for imported goods that must be updated to a final value within a certain time limit. Imported goods are subject to GST and may be subject to tariff or excise duty.
2. The Bill requires regulations to be made setting a time limit to enter a final value of imported goods after an importer has entered a provisional value. This Regulatory Impact Statement analyses options for setting the time limit.
3. A time limit set in regulations will ensure duty is paid on time, provide certainty for importers and Customs officials and prevent importers prolonging the time to enter the final value.
4. Four options were considered,
 - **Option 1:** end of an importer's financial year
 - **Option 2:** 12 months after the end of an importer's financial year
 - **Option 3:** Six months after the end of the importer's financial year for all importers except those who have Customs' agreement for an extension to 12 months
 - **Option 4:** Six months after the end of the importer's financial year for all importers but 12 months for those with Advance Pricing Agreements (APAs)¹.
5. No option fully meets requirements. Option 2 is the preferred option. Option 2 is long enough for Scheme participants to finalise values but does affect the timeliness of duty collection. It also reduces time available for Customs to audit these importers, compared with the other options. However, Option 2 is more administratively simple than the other options. It would also have lower compliance and administrative costs, which offsets the disadvantages to Customs to some extent.

¹ See paragraph 22.

Status quo and problem definition

Status quo

Customs and Excise Bill

6. On 23 September 2015, the Cabinet Economic Growth and Infrastructure Committee agreed to allow importers to declare a provisional value for imported goods to Customs, and require a final assessment of the value of goods within a prescribed time limit.
7. Customs operates an informal programme (the 'Uplift Programme'), which enables some importers to provide regular updates, usually on an annual basis, about the value of goods they are importing.
8. The Bill formalises the Uplift Programme and allows importers to use provisional values in three situations when they:
 - make adjustments due to transfer pricing and have a binding ruling from Inland Revenue (clause 102(1)(a))
 - make royalty payments or are owed further proceeds of sale (clause 102((1)(b))
 - have approval from the Chief Executive of Customs to declare a provisional value (clause 102(1)(c)).
9. The Bill also provides for a time limit, to be set in regulations, for importers to enter final values.

Uplift Programme information

10. The number of importers approved to use the Uplift Programme was 142 in 2016/17. Most importers using the Uplift Programme (98 percent), enter a final value within 12 months of the provisional entry (i.e. 12 months from time of import, not aligned with either company or government financial year).
 11. Almost all final entries are higher in value than the provisional entry. The percentage increase in the value of duty and GST following the final entry has varied between 1.3 percent and 58 percent. In the two years where final figures are available, the total value of the duty and GST as a result of the uplift was \$8.5 to \$13.8 million (the bulk of which was GST which is claimed back by importers).
 12. The reasons for uptake of the Uplift Programme by percentage of participants is shown in Table 1.
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Table 1: Reasons for importers using the Uplift programme by percentage

Transfer pricing ²	Royalties	Additional fees ³	Commission	Valuation	Unknown
16%	60%	6%	4%	8%	6%

13. The above information was used to assess the options.

Problem definition and objective

Problem definition

14. The Customs and Excise Bill requires regulations to be made setting a time limit to enter a final value of imported goods after an importer has entered a provisional value.
15. The Customs and Excise Bill provides for importers to enter a provisional value for imported goods that must be updated to a final value within a certain time limit. Imported goods are subject to GST and may be subject to tariff or excise duty.

Objective

16. The objective is to support Customs' ability to ensure correct values are entered while balancing the compliance burden on business and the administrative burden for Customs.
17. A time limit needs to be set to:
- ensure duty is paid on time
 - provide certainty for importers
 - prevent importers prolonging the time to enter a final value
 - give Customs certainty on when to take action against an importer who fails to enter a final value (and pay the correct duties owing) and
 - balance the needs of administration and timeliness for Customs and importers.

Options and impact analysis

18. A number of factors have been considered in the analysis which are described below.

Customs processes

19. Under the Scheme Customs will need to, for instance:
- approve importers to make provisional entries

² Transfer pricing is the setting of prices for the transfer of goods, services and intangibles between associated parties often overseas companies.

³ Additional fees are additional expenses that may be incurred by an importer after import, e.g. marketing fees and freight costs

- check that final entries have been made
- follow up with the importer if the final entries are not made
- if applicable (option 3 only), approve extensions to the time limit in certain circumstances
- audit final entries for accuracy.

Audit

20. Under the Bill Customs is able to amend incorrect assessments within four years after the day on which the original assessment was made. The provisional value entry is considered to be the original assessment under the Bill.
21. The time limit set for finalising provisional values will therefore reduce the time available for Customs' to undertake audits.

Reasons for using provisional values

22. The Bill sets the criteria for importers to enter the Scheme based on the situations in which they will most likely not know a final value. A complex binding ruling such as an Advance Pricing Agreement (APA)⁴ may affect an importer's ability to enter a final value. Inland Revenue has advised that most APAs cover a five-year period but that companies do a reconciliation of the price and profit level each financial year when they do their tax return.

Sanctions

23. If an importer in the Scheme fails to finalise the goods value within the prescribed time limit they may be subject to compensatory interest, and a late payment penalty if the outstanding duty is not then paid on time. A fine of \$5,000 for a company could be imposed if the importer failed to finalise the goods value in time, and was convicted.

Statutory requirements

24. Some statutory requirements may affect an importer's ability to provide a final value such as when they have to finalise their annual accounts or complete a tax return. The final date for tax returns is 12 months after a 31 March balance date. Statutory accounts, when required, should be completed five months after the company's balance date.

Options

25. Customs considered the following timelines:
 - **Option 1:** at the end of the importer's financial year
 - **Option 2:** 12 months after the end of the importer's financial year

⁴ An APA is a type of binding ruling for a transfer pricing agreement. A binding ruling is Inland Revenue's interpretation of how a tax law applies to a particular arrangement. Companies with an APA are likely to rely on associate companies overseas to provide information to calculate the final value.

- **Option 3:** Six months after the end of the importer's financial year, with an extension to 12 months if the importer can prove to the chief executive they cannot provide the final value earlier
 - **Option 4:** Six months after the end of the importer's financial year other than those with APAs, and 12 months after the end of the importer's financial year for importers with APAs.
26. Importers will need to provide details of their financial year to Customs when they register for the Scheme.

Criteria

27. Customs used the following criteria, in order of importance, to assess the options:
- ***Effective and low cost for Customs*** – Final values are known within a reasonable time limit to allow collection of duty and audit activities. The time limit reflects other appropriate statutory time limits. Administrative costs are not increased unnecessarily.
 - ***Realistic and low cost for importers*** – The time limit is reasonable. Importers are able to complete final values in sufficient time without the risk of incurring compensatory interest or a fine. Compliance is easy.
28. A time limit must be set for finalising the provisional value that takes into account the needs of importers but ensures that any additional revenue is collected within a reasonable time. Some information is available on a possible time limit because Customs' existing operational process (the Uplift Programme) allows importers to use provisional values for entries.

Options analysis

29. Table 2 sets out the analysis of the regulatory options according to the criteria.

Table 2: Options analysis

Key: ✓ partially meets the criteria ✓✗ partially meets the criteria but less than ✓✗ meets the criteria ✗✗ doesn't meet the criteria

Options	Option 1: At the end of the importer's financial year	Option 2: 12 months after end of importer's financial year	Option 3: 6 months after end of importer's financial year with a possible extension to 12 months	Option 4: 6 months after end of importer's financial years for all importers except 12 months for those with an APA
Effective and low cost for Customs	<p>✓✗ This option ensures that final values are entered and duty is paid within a reasonable time.</p> <p>This option ensures that Customs has a longer time than other options for audit activities and amendment of assessments for duty within the four-year period.</p> <p>Administrative costs for Customs may increase because Customs will have to follow-up more importers who fail to enter the final value within a shorter time limit.</p> <p>This option does not align to any statutory financial requirements for business.</p>	<p>✓✗ This option delays entry of final values and payment of revised duty more than other options.</p> <p>The option allows the least time of all the options for Customs' audit activities (including any amendment of assessments for duty) within the four-year period.</p> <p>This option may add to costs for Customs in terms of resource allocation over a shortened audit timeframe, or may reduce the number of audits undertaken with a small risk of under-collection of duty.</p> <p>Follow-up costs are likely to be much less than for other options because more time</p>	<p>✓✗✗ This option delays entry of final values and duty payments for a period but not as much as Option 2.</p> <p>The option allows more time for audit activities than amendment of assessments compared to Option 1.</p> <p>Follow-up costs are likely to be less than for Option 1 but greater than Options 2 or 4.</p> <p>This option aligns to regulated dates for completing duty returns and statutory accounts.</p> <p>This option will be more difficult to implement as Customs will need a process for checking Scheme participants' requests for an extended time limit. The process may occur each year but may be</p>	<p>✓✗ This option delays entry of final values and duty payments for a period but not as much as Option 2 or 3.</p> <p>The option allows more time for audit activities than Option 2 and 3 but still reduces the time for audit and amendment of assessments compared to Option 1.</p> <p>Follow-up costs are likely to be less than for Options 1 or 3 but greater than Option 2.</p> <p>This option aligns to regulated dates for completing duty returns and statutory accounts.</p> <p>This option will be easy to administer and more</p>

Options	Option 1: At the end of the importer's financial year	Option 2: 12 months after end of importer's financial year	Option 3: 6 months after end of importer's financial year with a possible extension to 12 months	Option 4: 6 months after end of importer's financial years for all importers except 12 months for those with an APA
		is available to the importer to complete final entries. This option aligns with the final time limit for filing of duty returns, which is 31 March of the year following a 31 March balance date.	an on-going agreement with the relevant importers. Customs will need more resources. More importers could take advantage of the extension than those with APAs, perhaps up to all Scheme participants at least initially. Extensions would need to be approved on a case-by-case basis, with attendant lack of certainty, equity and resource impacts.	transparent than Option 3 as Customs will know (through the registration process) which importers have an APA. This option will be more difficult to administer than Option 2.
Realistic and low cost for importers	✖✖ This option as a regulated maximum time limit may not be realistic for Scheme participants. Operationally most importers (98%) meet a deadline of 12 months after the provisional value is entered. This is not the same as the end of the financial year. Customs' operations team has advised that the end of the financial year is not feasible for importers. Scheme participants	✓✓ This option is very good for importers as most importers using the Scheme will have time to enter the final value without incurring compensatory interest or a fine. For this option Scheme participants will benefit from delayed payment of duty (cost of money) to a greater extent than other options although the difference in	✓✓ This option is similar to Option 2 as most importers will have time to enter final values and not risk incurring compensatory interest or a fine. Scheme participants will benefit from delayed payment of duty to a greater extent than Option 1 but less than Option 2 or possibly Option 3. This option is more equitable than Option 4 as all Scheme participants would be able to apply for an	✓✓ This option is similar to Option 2 and 3 as most importers will have time to enter final values and not incur compensatory interest or a fine. Scheme participants will benefit from delayed payment of duty to a greater extent than Option 1 but less than Option 2 or possibly Option 3. This option is clear about

Options	Option 1: At the end of the importer's financial year	Option 2: 12 months after end of importer's financial year	Option 3: 6 months after end of importer's financial year with a possible extension to 12 months	Option 4: 6 months after end of importer's financial years for all importers except 12 months for those with an APA
	will have difficulty finalising provisional values entered near the end of their financial year because they are unlikely to know the final value by then. Importers are more likely to incur compensatory interest and a fine compared to other options due to hasty final assessments, or failure to comply on time.	values is not expected to be significant in most cases. This option is clear about who the time limit applies to and will have lower compliance costs than other options.	extension. This option has higher compliance costs than other options and participants in the Scheme will not be sure they can get an extension if needed.	which time limit applies and would have lower compliance costs than Option 3 but higher than Option 2.
Summary	Partially meets the first criteria, but does not meet the second.	Partially meets the first criteria. Meets the second.	Partially meets the first criteria. Meets the second criteria.	Partially meets the first criteria. Meets the second.

Conclusions and recommendations

30. No option fully meets requirements. Option 2 is the recommended option because it provides sufficient time for Scheme participants to enter a final value. It will however, affect the timeliness of duty collection and reduce the time available to Customs to audit these importers more than other options. It will be easier to administer (it is uniform and encourages accurate final entries), is equitable (all participants have the same timeline) and has fewer compliance costs, which offsets the disadvantage to Customs.

Costs and benefits

31. The following tables assess the costs and benefits of **Option 2 as the preferred option**.

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Regulated parties (Importers approved to use the Scheme)	On-going, compliance cost of entering Scheme and finalising values, possibly compensatory interest or a fine	Low	High
Regulators (Customs)	On-going, audit risks, administration costs	Medium	High
Wider government	Loss of use of money for longer period	Interest on \$8 - 13.8 million per annum over a longer period	Medium
Other parties	N/A		
Total Monetised Cost		Interest on \$8 - 13.8 million per annum over a longer period	Medium
Non-monetised costs		Low-medium	High

Affected parties (identify)	Comment: <i>nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty (High, medium or low)
Expected benefits of proposed approach, compared to taking no action			
Regulated parties (Importers approved to use the Scheme)	On-going – benefit of delay in paying duty and sufficient time for entering accurate values.	Low	High
Regulators (Customs)	On-going – benefit of accurate values for duty and statistics purposes, lower administration costs, better legal basis	Low - medium	High
Wider government	On-going – accurate values for duty and statistics purposes	No additional benefit	High
Other parties	N/A		
Total Monetised Benefit		No additional benefit	High
Non-monetised benefits		Low - medium	High

Consultation

32. Customs held a workshop targeted at a group of stakeholders who had shown an interest in valuation rulings and provisional values during the passage of the Bill. Attendees were: Fonterra, KPMG, Ernst and Young, Deloitte, Chartered Accountants Australia New Zealand and Blackburn Croft and Co. Customs also sought comments on the draft Regulatory Impact Statements from the above firms and PWC, New Zealand Food and Grocery Council, Customs Brokers and Freight Forwarders Federation Inc New Zealand, Gull New Zealand Limited, Russell McVeagh and Imperial Tobacco.
33. The workshop considered two options in relation to the time limit for finalising values where a provisional value has been entered:
 - Option 1 – At the end of the importer's financial year
 - Option 2 - Four or five months after the end of the importer's year.
34. Stakeholders were concerned that the time limits in both options were too short and would not allow enough time for importers in all cases to enter a final value. They advised that for royalties a period of six months after the end of an importer's financial year should be sufficient, but for importers with a binding ruling 12 months would be better. The group also discussed whether Customs and the importer could agree a different time limit where appropriate.
35. Feedback on the draft Regulatory Impact Statement was that six months may be too short for some importers other than those with APAs and that either 12 months

after the end of an importer's financial year or six months with an extension would be preferred.

Comment

36. Providing for Customs officials to agree to a different time limit operationally was not envisaged in the Bill and cannot be provided for in regulation. Reflecting stakeholder feedback, this Regulatory Impact Statement considers four options which address the concerns raised at the workshop. The second option consulted on has been discarded because it was covered by the new Options 3 and 4.
37. The following agencies were consulted and concur with the contents of this paper: The Treasury, Ministry of Business, Innovation and Employment, Ministry of Justice, Statistics New Zealand, and Inland Revenue. The Department of the Prime Minister and Cabinet has been informed. Statistics New Zealand has advised that they are considering reviewing import statistics after 12 months, which would take into account any change in values resulting from the provisional values scheme.

Implementation plan

38. The Scheme will need an amendment to Customs' import entry rules, where the person completing the entry will indicate that a provisional value is being used. Each importer will have a unique code so that Customs can set up validation tables in Customs' IT system to ensure only those entitled to, can use a provisional value. Any entry that doesn't meet the validation requirements but has indicated a provisional value will be verified by Customs prior to delivery of the goods.
39. In the short term updated values will continue to be provided to Customs in a non-electronic format similar to the current practice of a letter from the importer. Longer term Customs intends that the importer or their agent would undertake multiple entry adjustments themselves to provide the final value for a series of entries – this will require an IT change and may not be available at "go live".
40. A process will be developed to transfer current users of the Uplift Programme into this Scheme. A process will be developed to assess and accept any new applicants for the Scheme.
41. Operational procedures will be developed to guide consistent application of the new policy by Customs officials. Officials will be trained in new procedures. Guidelines will be developed for external users to clearly explain the process and what they are entitled to and required to do to comply.

Monitoring, evaluation and review

42. Customs proposes to conduct a review of this policy three years after implementation.
43. For this policy, the purpose of the review will be to assess whether importers or Customs are experiencing any difficulties with the time limits and if the policy needs to be altered. The following information would help to monitor and evaluate the outcomes of the recommendations in this RIS:
 - the number of Scheme participants who do not enter final values within the regulated time frame and the reasons for this

- why importers are using provisional values and how many in each group
- any evidence that Scheme participants are delaying final entry more than under the current Uplift Programme
- the length of time it takes for most Scheme participants to enter the final value
- the amount of tariff duty and GST collected after the final values are entered
- the effect of the regulated time limit on Customs' audit activities
- the impact the time limit has had on Customs staff and any problems they have experienced, including feedback on possible solutions or improvements
- the impact the time limit has had on Scheme participants and any problems they have experienced, including feedback on possible solutions or improvements.