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Paper prepared by: Hon Jenny Salesa, Minister of Customs

Date considered by Cabinet: 11 May 2020

Name of paper: Customs and Excise (Tobacco) Amendment Bill: Approval for Introduction

Cabinet Reference: LEG-20-MIN-0046

Purpose of the paper: The paper proposed that the Customs and Excise (Tobacco) Amendment Bill be approved for introduction to the House, and that the Bill be passed through all of its Parliamentary stages under urgency on Budget night 14 May 2020.

Part of this paper has been redacted under section 9(2)(h) of the Official Information Act 1982.

The Impact Summaries referred to in the paper can be accessed here:

<https://www.customs.govt.nz/globalassets/documents/cabinet-material/impact-summary---imposing-import-controls-over-tobacco-products-and-tobacco-leaf-and-refuse.pdf>

<https://www.customs.govt.nz/globalassets/documents/cabinet-material/impact-summary---process-to-seize-store-and-dispose-of-tobacco-imported-illegally.pdf>



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Cabinet Legislation Committee

Minute of Decision

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Customs and Excise (Tobacco) Amendment Bill: Approval for Introduction

Portfolio **Customs**

On 5 May 2020, the Cabinet Legislation Committee:

- 1 **noted** that in January 2020, the Cabinet Business Committee took a series of decisions to impose import controls over tobacco products, and tobacco leaf and refuse in order to combat tobacco smuggling and to secure Crown revenue from taxes on tobacco [CBC-20-MIN-0005];
- 2 **noted** that the Customs and Excise (Tobacco) Amendment Bill gives effect to the above decisions;
- 3 **noted** that the purpose of the Bill is to combat tobacco smuggling and to secure the Crown revenue from tobacco excise of about \$2 billion in 2019/2020 through imposing import controls over tobacco products, and tobacco leaf and refuse through requiring a permit to import these goods and creating an expedited seizure and disposal process for illegally imported tobacco products;
- 4 **approved** for introduction the Customs and Excise (Tobacco) Amendment Bill [PCO 22629/2.6], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 5 **agreed** that the Bill be introduced on 14 May 2020;
- 6 **agreed** that the government propose that the Bill be passed through all stages under urgency on Budget night 2020 and commence on 1 July 2020.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracy Martin
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Office of the Minister of Customs
Chair, Cabinet Legislation Committee

Customs and Excise (Tobacco) Amendment Bill: Approval for Introduction

Proposal

1. I propose that the Customs and Excise (Tobacco) Amendment Bill be approved for introduction to the House. I intend that the Bill be passed through all of its Parliamentary stages under urgency on Budget Night 2020 (14 May 2020).

Policy

2. On 28 January 2020 the Cabinet Business Committee [CBC-20-Min-0005 refers]:

noted that the smuggling of tobacco products and the importation of tobacco leaf to evade tax has grown rapidly in the last 12 to 18 months off an historically low base and is on an upwards trajectory;

noted that this is putting at risk the collection of Crown revenue from excise taxes along with Goods and Services tax;

agreed to place import controls on tobacco products by making them a conditionally prohibited import through an Order in Council made under section 96 of the Customs and Excise Act 2018;

agreed that a condition of the import prohibition be that tobacco products may be imported under a permit issued by the Chief Executive of Customs and that all permits issued will contain a condition that tobacco products cannot be imported through international mail;

agreed to place import controls on tobacco leaf and tobacco refuse by making leaf and refuse conditionally prohibited imports through an Order in Council made under section 96 of the Customs and Excise Act 2018;

agreed that a condition of the import prohibition be that tobacco leaf and refuse may be imported into a Customs-controlled area licensed for the manufacture of tobacco products under a permit issued by the Chief Executive of Customs and that all permits issued will contain a condition that tobacco leaf and refuse not be imported through international mail;

agreed to enact the features of the prohibition orders (including penalties) by amending the Customs and Excise Act 2018 to restrict the importation of tobacco unless a permit has been issued by the Chief Executive of Customs;

agreed that the Customs and Excise Act 2018 be amended to create an expedited seizure and disposal process for illegally imported tobacco products that requires a written notice to the importer that the goods have been seized and destroyed with a right of appeal for the importer to seek compensation for the customs value of the tobacco products in the event that Customs seized and destroyed the goods in error;

invited the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions above; and

noted that the Minister of Customs has submitted a legislative bid for a Customs and Excise Amendment Bill to be included on the 2020 Legislation Programme and for it to be introduced and passed under Budget night legislation or as soon as possible thereafter.

3. The Customs and Excise (Tobacco) Amendment Bill (the Bill) gives effect to the above decisions and is necessary to combat tobacco smuggling and to secure the Crown revenue from tobacco excise of about \$2 billion in 2019/2020. The Bill holds a category 2 priority on the 2020 Legislation Programme: introduce and pass in May 2020.
4. The Bill will impose import controls over tobacco products and tobacco leaf and refuse through requiring a permit to import these goods. Cabinet had agreed that an Order in Council made under the Customs and Excise Act 2018 would be made to implement the permit regime ahead of the Bill coming into effect to manage revenue risk. Due to the impact of COVID-19 the Order in Council did not proceed as expected in late March 2020 due to the then difficulties we expected in advising legitimate trade of the new regulatory requirements. The reduced volumes through the International Mail Centre in recent weeks has reduced the immediate risk to Crown revenue. Trade is expected to recover, and I consider it necessary to pass the Bill as soon as practicable to ensure that as trade recovers, Crown revenue is not put at risk.
5. The permit regime implemented by the Bill will assist with managing evasion of excise and other taxes on tobacco products, tobacco leaf and tobacco refuse. Any importation of tobacco products, tobacco leaf and tobacco refuse without a permit will be seized by Customs. Customs will not need to consider matters such as whether the goods were packaged or described in ways to avoid the payment of excise, or use revenue recovery processes when it is likely the importer will not be able to be identified or be willing to pay, before the goods can be seized. The permit regime ensures Customs is aware of the identity of legitimate importers of tobacco products, tobacco leaf, and tobacco refuse before importation takes place, and can perform due diligence to manage the risk of non-payment of excise prior to granting a permit.
6. To reduce the costs of processing border seizures of illicit tobacco, the Bill will amend the Act to provide for a simplified seizure process that requires a written notice to the importer informing them that the goods have been seized and destroyed. Customs would destroy the goods as soon as possible. This approach will further disincentivise smuggling and reduce process and storage costs for dealing with smuggled tobacco products. It will free up resources to allow Customs to focus

on risk goods such as illicit drugs at the International Mail Centre, manage volume growth, and keep up a smooth flow of parcel processing for legitimate importers.

7. In the unlikely event of tobacco products being seized and destroyed in error (for example, when the person had a valid permit to import), the Bill provides that the importer is entitled to apply for compensation for the customs value of the goods.
8. The most contentious aspect of the Bill is expected to be that permits will not be granted to import tobacco products using the international mail service operated by NZ Post. This will shut this channel down as a means to import tobacco products (people will still be able to use NZ Post's courier service to import tobacco products provided they obtain a permit). This is justified because of the widespread use of international mail to smuggle tobacco products and because Customs does not receive information in advance of mail arriving in New Zealand to undertake risk assessment like it does through other import channels. A communications plan will be implemented to manage this issue when the Bill is passed and will ensure that legitimate importers are not inconvenienced.
9. Passengers bringing tobacco with them will not be required to have a permit. The current passenger duty free concession is unaffected.

Impact analysis

10. Regulatory Impact Assessments were prepared in accordance with requirements. The Impact Summaries Imposing import controls over tobacco products and tobacco leaf and refuse and Process to seize, store and dispose of tobacco imported illegally were submitted at the time Cabinet approval was sought for the policy [CBC-20-MIN-0005 refers].


Compliance

11. The Customs and Excise (Tobacco) Amendment Bill complies with:
 - 11.1. the principles of the Treaty of Waitangi;
 - 11.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. s9(2)(h) OIA

[REDACTED]

[REDACTED]

s9(2)(h) OIA



- 11.3. Disclosure statement requirements - a disclosure statement is attached to this paper;
- 11.4. relevant international standards and obligations;
- 11.5. the Legislation Guidelines maintained by the Legislation Design and Advisory Committee.

Consultation

- 12. The following agencies were consulted: the Treasury, Ministry of Health, Inland Revenue, Ministry for Primary Industries, Ministry of Justice, New Zealand Police and the Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet was informed.
- 13. The three largest importers of tobacco products and the one large manufacturer of tobacco products have been consulted on the proposals and are supportive of them. Other importers have not been consulted due to the risk of further exploitation of weaknesses in border controls by smugglers. I consider limited consultation is appropriate in the circumstances.
- 14. The government caucus and other parties represented in Parliament have been consulted.

Binding on the Crown

- 15. The Bill will be binding on the Crown [CBC-20-Min-0005 refers].

Allocation of decision making powers

- 16. The Bill will not affect the allocation of decision making powers between the executive, the courts, and tribunals.

Associated regulations

- 17. No regulations are required to bring the Bill into operation.

Other instruments

18. The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

19. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

20. The Bill will come into force on 1 July 2020.

Parliamentary stages

21. I intend that the Bill be passed through all of its Parliamentary stages under urgency on Budget Night 2020 (14 May 2020). This is justified to prevent any further increase in the smuggling of tobacco to evade tax.

Proactive Release

22. I propose to release this paper after Budget 2020 decisions have been finalised, within 30 days of the final decision being taken by Cabinet.

Recommendations

The Minister of Customs recommends that the Committee:

1. **note** that the Customs and Excise (Tobacco) Amendment Bill holds a category 2 priority on the 2020 Legislation Programme;
2. **note** that the purpose of the Bill is to combat tobacco smuggling and to secure the Crown revenue from tobacco excise of about \$2 billion in 2019/2020 through imposing import controls over tobacco products, and tobacco leaf and refuse through requiring a permit to import these goods and creating an expedited seizure and disposal process for illegally imported tobacco products;
3. **approve** the Customs and Excise (Tobacco) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **agree** that the Bill be introduced on 14 May 2020;
5. **agree** that the Government propose that the Bill be passed through all parliamentary stages under urgency on Budget night 2020 and commence on 1 July 2020.

Authorised for lodgement

Hon Jenny Salesa
Minister of Customs