

Regulatory Impact Statement - New Zealand Traveller Declaration Tranche 3 Enforcement

Coversheet

Purpose of Document	
Decision sought:	<i>Enforcement for Tranche 3 of the New Zealand Traveller Declaration</i>
Advising agencies:	<i>New Zealand Customs Service</i>
Proposing Ministers:	<i>Minister for Customs</i>
Date finalised:	<i>16/06/22</i>
Problem Definition	
<p>The public policy problem for this Regulatory Impact Statement (RIS) is to establish an appropriate enforcement regime for Tranche 3 of the New Zealand Traveller Declaration (NZTD)¹.</p> <p>The current enforcement options for ensuring a person provides an NZTD are in the COVID-19 Public Health Response (Air Border) Order 2021 (Air Border Order).</p> <p>This will be repealed before or at the same time as the COVID-19 Public Health Response Act 2020 (COVID-19 Response Act) meaning there will no longer be any enforcement provisions to provide information in the NZTD. Existing legislation such as in the Customs and Excise Act 2018 (C&E Act) can enforce where information in a New Zealand Customs Service (Customs) declaration has been provided that is erroneous or false, but does not address the failure to provide the required information.</p>	
Executive Summary	
<p>The NZTD is a cross-agency platform developed in three tranches and operated by Customs on behalf of other agencies. It is anticipated that a new offence is required to help ensure that travellers complete an NZTD. Customs will enforce these requirements at the border on behalf of other agencies because Customs is the first touch point at the primary line. Under the preferred option, if a traveller fails to comply with the requirement to provide information in a Customs NZTD, they could be issued with a warning letter or an</p>	

¹ The NZTD is being delivered in three tranches. Tranche 1 went live on 25 March 2022. The focus for each of the tranches is as follows:

- Tranche 1 – establishment of a digital system to enable travellers to share health information in advance of travel to support the opening up of the border
- Tranche 2 – expansion of the NZTD to the maritime space as well as system improvements such as integration with other systems such as e-gates
- Tranche 3 – scaling capacity to support pre-COVID passenger volumes and adding other declarations such as immigration and biosecurity declarations.

infringement fee of \$400. This infringement fee level aligns with current infringement fees in the Customs and Excise Regulations 1996 (C&E Regulations).

Tranche 3 will move New Zealand further towards a safer and smarter border through enabling both an improved customer experience, underpinned by better facilitation and border risk management; and, in the event of future pandemics or other border closures, smoother border management and better information to intending travellers and to carriers.

The NZTD is already in place. Under Tranche 1 travellers must provide information such as proof of vaccination or a COVID-19 pre-departure test before travelling to New Zealand. To further support the acceleration of our economic recovery in line with the Reconnecting New Zealanders framework (CAB-21-MIN-0305 refers) and to support the safer and smarter border initiative, additional declarations are being added to the NZTD. The NZTD will have ongoing value and use beyond COVID-19 as a digital arrival declaration system at our border, and is due to be completed by June 2023.

The public policy objective is to ensure compliance with the requirement to provide an NZTD, either online, or through an assisted channel. The NZTD is an administrative tool to help manage New Zealand's border requirements and responses to future pandemics or outbreaks of new COVID-19 variants. This Regulatory Impact Statement (RIS) addresses the enforcement of the requirement to provide information in a Customs NZTD through amendments to the C&E Act and the C&E Regulations.

Issue in this RIS to be addressed: What enforcement regime should be implemented for the NZTD:

- **option 1:** use sections 366 and 368 of the C&E Act as the primary enforcement regime
- **option 2:** a new offence and infringement regime for failing to provide information in a Customs NZTD when required with a \$400 penalty, continued use of existing enforcement regimes for erroneous and false information (preferred)
- **option 3:** a new offence and infringement regime for failing to provide information in a Customs NZTD when required with a \$1,000 penalty, continued use of existing enforcement regimes for erroneous and false information.

Limitations and Constraints on Analysis

This RIS builds on a previous RIS (Compliance and Enforcement of the Traveller Health Declaration System). There are little to no changes to regulated parties, and to the original policy approach of using an infringement system to enforce compliance with the requirement to provide information in the Customs NZTD remains.

Due to the limited timeframe and the requirement to have primary legislation changes made by March 2023, there has been no public consultation on the contents of this RIS. Engagement is happening with the public through the wider NZTD programme communications work and through the Māori engagement strategy. The public will also have the opportunity to comment as part of the select committee process.

There is some enforcement data from the implementation of Tranche 1. However, enforcement has primarily focused on travellers not having a COVID-19 pre-departure test or vaccine certificate because the current operational approach is to educate travellers about not completing the NZTD rather than infringing them. As a result, there are no infringements to date for non-completion of the NZTD, but this should not be considered representative of future compliance rates for the NZTD.

Responsible Manager(s) (completed by relevant manager)

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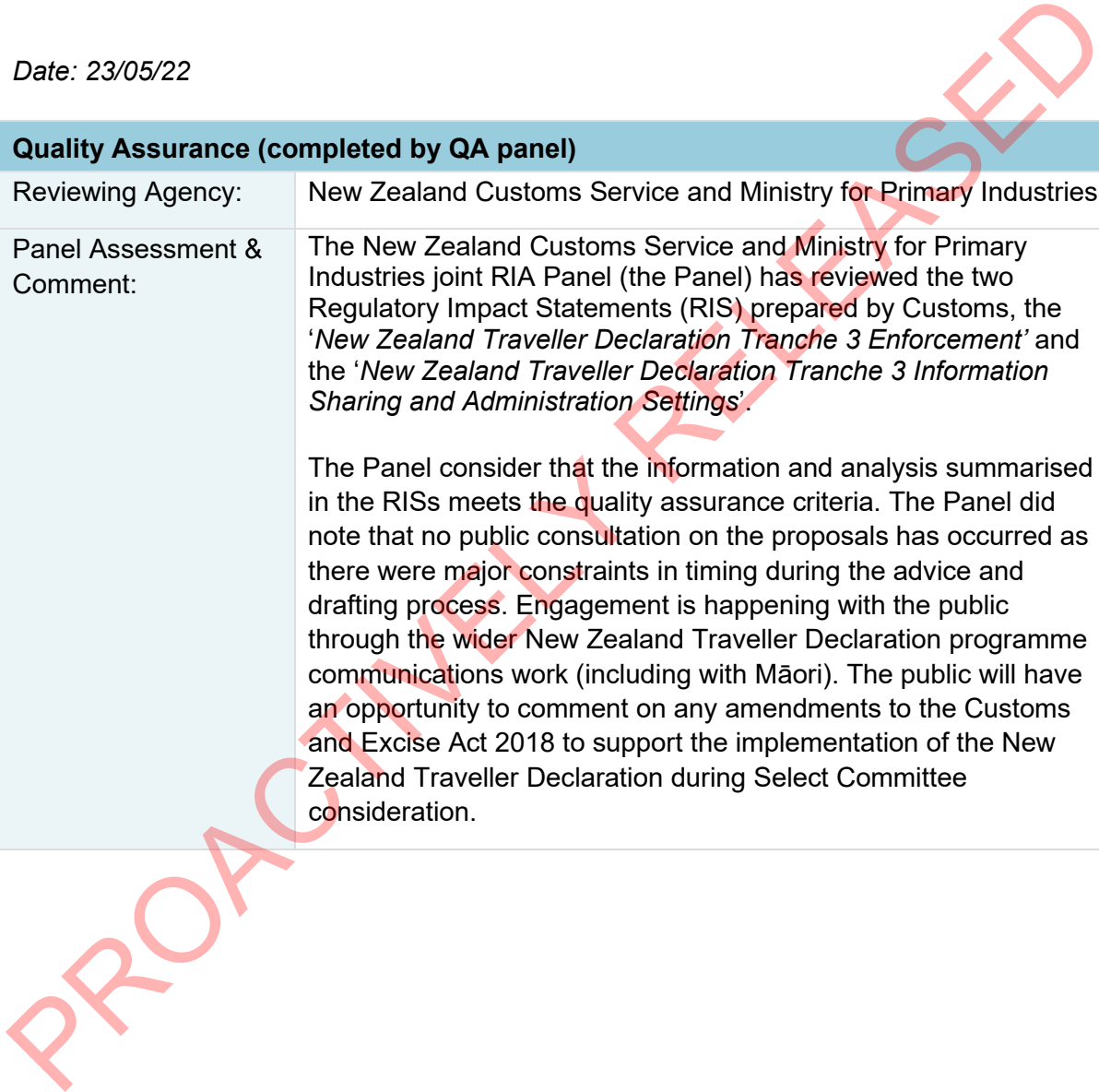
Date: 23/05/22

Quality Assurance (completed by QA panel)

Reviewing Agency: New Zealand Customs Service and Ministry for Primary Industries

Panel Assessment & Comment: The New Zealand Customs Service and Ministry for Primary Industries joint RIA Panel (the Panel) has reviewed the two Regulatory Impact Statements (RIS) prepared by Customs, the 'New Zealand Traveller Declaration Tranche 3 Enforcement' and the 'New Zealand Traveller Declaration Tranche 3 Information Sharing and Administration Settings'.

The Panel consider that the information and analysis summarised in the RISs meets the quality assurance criteria. The Panel did note that no public consultation on the proposals has occurred as there were major constraints in timing during the advice and drafting process. Engagement is happening with the public through the wider New Zealand Traveller Declaration programme communications work (including with Māori). The public will have an opportunity to comment on any amendments to the Customs and Excise Act 2018 to support the implementation of the New Zealand Traveller Declaration during Select Committee consideration.



Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Previous decisions

1. In September 2021 Cabinet agreed to fund the development of the NZTD (previously referred to as the traveller health declaration system) to operationalise the medium risk pathway into New Zealand [CAB-MIN-0305 refers].
2. The policy and administrative settings for Tranche 1 of the NZTD were agreed to by Cabinet in November 2021 (CBC-21-MIN-0178 refers).
3. Funding and development of the remaining functionality and enhancements for Tranche 2 and Tranche 3 of the NZTD were agreed in March 2022 [SWC-22-MIN-0050 refers].
4. The policy, legal, and privacy decisions now need to be sought from Cabinet to implement Tranche 2 and Tranche 3 of the NZTD (the enduring framework post-COVID-19 legislation).
5. The NZTD, developed in Tranche 1, has been available for air passengers since 25 March 2022 to submit traveller health information and receive a traveller pass.² The current legislative basis for the NZTD is via the COVID-19 Public Health Response (Air Border) Order 2021 (Air Border Order).

Development of the status quo

6. The NZTD was developed to keep New Zealanders safe from COVID-19 by providing a robust and adaptable approach to risk assessment. It does this by providing the capability to quickly change the health risk assessment rules in response to changing public health requirements as COVID-19 continues to evolve.
7. However, the NZTD will have ongoing value and use beyond COVID-19 as a digital arrival declaration system at our border, due to be completed by June 2023. The platform will in the future provide a single place for all travellers to make their complete travel declaration, with the intention being to remove the need for a physical arrival card. It will provide utility beyond the COVID-19 response and have the capability to be sufficiently flexible to enable additional health-related questions or requirements to be added in the future for managing any health threats as or when required (or other border risks).
8. Following agreement from Cabinet and as provided in the previous Compliance and Enforcement of the Traveller Health Declaration System RIS, clause 12 of the Air Border Order currently makes it a low-risk infringement offence for not having a traveller pass. This infringement level means an infringement fee of \$400 for not completing the NZTD.
9. Depending on the option chosen, the enforcement regime will be a new provision that replaces the existing infringement in the Air Border Order, meaning that there will

² The traveller pass is evidence that a traveller has completed the NZTD for Tranche 1.

continue to be an enforcement option for travellers who do not complete the NZTD. This will be possible in the C&E Act because, in line with previous decisions on Tranche 1 of the NZTD, it is proposed that there will be changes to the C&E Act and other legislative instruments to identify when travellers are required to complete an NZTD declaration.

10. Previously, an offshore requirement in the Air Border Order was used to ensure compliance with NZTD requirements as airlines were required to not board travellers that did not have a traveller pass. However, this do-not-fly option is no longer in scope because the Air Border Order will be repealed, the border is no longer closed, and travellers are not required to have a managed isolation and quarantine room allocated to them before travelling to New Zealand. As a result, enforcement will have to be onshore.
11. There are a number of existing enforcement provisions for the declarations on the arrival card. For example, the C&E Act, the Biosecurity Act 1993, and the Immigration Act 2009 have provisions making it an offence if travellers provide false or misleading information in a declaration³. The current enforcement environment is complex in some areas because there are several agencies requiring declarations from travellers with a different enforcement regime for each agency.
12. For Customs, section 27 of the C&E Act compels the provision of arrival information, however, it does not have any provisions for when a traveller fails to make a declaration. This leaves a potential enforcement gap where Customs, as the first point of contact with travellers at the airport, is not able to compel travellers to complete the NZTD because the existing Customs offence provisions are for the provision of incorrect information not for the provision of information.
13. Sections 366 and 368 of the C&E Act provide an enforcement option where a traveller has provided false or erroneous information. Because these provisions apply to any information provided to a Customs officer in a declaration or document, these sections would be used in the NZTD context. However, where applicable, these sections may be updated to be clear that these current offence provisions will apply in an NZTD context.
14. By creating an offence for not providing information in the Customs NZTD, Customs will be able to ensure that all travellers who have passed the immigration line have completed the NZTD and will not potentially be infringed at different points through the airport for not providing information to other agencies. They may still be infringed by other agencies if the information is found to be incorrect.

Implications for travellers of enforcing the completion of the NZTD

15. The NZTD does not change current regulatory requirements of travellers entering New Zealand and remains a purely administrative requirement.
16. The new enforcement regime would be in the C&E Act because this is where the NZTD is being enabled for Tranche 3 once the COVID-19 response Act is repealed.

Impacted groups

³ There are also consequences for many foreign nationals (arrest, detention, and turnaround) if they fail, for example, to apply for entry permission.

17. Nearly all travellers will be affected by the requirement to make a digital declaration, however, the expected impact of enforcement actions is minor as this does not entail any changes to the obligations on travellers from Tranche 1 of the NZTD due to the infringement regime currently in the Air Border Order.⁴
18. Enforcement for the NZTD is intended for the very small number of travellers who are wilfully non-compliant. Where travellers were unaware of the requirement to complete the NZTD, they will first be asked, and potentially assisted, to complete the NZTD.

What is the policy problem or opportunity?

19. The COVID-19 Public Health Response Act 2020 which empowers the Air Border Order will be automatically repealed by 13 May 2023 if it is not extended by Parliament. The health rationale for COVID-19 measures is changing because the public health risk from the border is now low relative to the domestic risk from COVID-19. This means that the Air Border Order will likely be repealed in the future.
20. Once the COVID-19 Response Act is repealed there will no longer be enforcement provisions when a traveller does not complete the NZTD. This RIS considers the creation of an offence in the C&E Act to not complete the NZTD with an appropriate infringement offence being enabled in the C&E Regulations.
21. The public policy problem for this RIS is; what enforcement should be implemented for Tranche 3 of the NZTD?

What objectives are sought in relation to the policy problem?

22. The public policy objective for this RIS is to ensure compliance with the requirement to provide an NZTD, either online, or through an assisted channel.
23. Delivering on this objective will help New Zealand to:
 - a. keep risk offshore and identify risks as early as possible
 - b. ensure the safe and efficient operation of the border
 - c. incentivise compliance
 - d. enable a response where:
 - i. travellers have not made a declaration
 - ii. document fraud or gaming of the system has occurred.
24. Non-compliance can result in harm to New Zealand because the declarations on the NZTD are important for risk assessment and because of the health requirements that help to reduce health risks to New Zealand.

⁴ Exemptions will be limited and only applied to travellers who are subject to an unplanned event (eg, rescued at sea).

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

25. There are four criteria in this RIS:
26. **risk** – how does the option incentivise compliance (the presentation of valid and verifiable credentials)
27. **proportionality** – how does the option enable a proportionate response
28. **compatibility** – how is the option compatible with existing systems used by border agencies
29. **cost** – how does the option minimise costs to implement and administer.

What scope will options be considered within?

30. The scope of this RIS is limited to enforcement of non-compliance (ie, penalties and measures to drive compliance with the NZTD).

What options are being considered?

Option 1 – use sections 366 and 368 of the C&E Act as the primary enforcement regime and use an education approach to build compliance

31. Sections 366 and 368 of the C&E Act could provide the primary enforcement of the NZTD where a traveller has provided information that is erroneous or false. There is no requirement to provide an NZTD under this option.
32. The primary way to increase compliance with the requirement to provide information in a Customs NZTD would be through educating travellers.
33. There would be no changes to legislation under this option.

Option 2 – a new offence and infringement regime for failing to provide information in a Customs NZTD with a \$400 penalty, and the continued use of existing enforcement regimes for erroneous and false information

34. A new offence which would be prescribed as an infringement offence, could be created for where travellers fail to provide information in a Customs NZTD.
35. This would require amendments to the C&E Act and C&E Regulations to reflect the new enforcement options.
36. The maximum penalty will align with section 27 existing offence provisions relating to providing arrival information. An individual can be fined up to \$5,000. It is also proposed to make an amendment to the C&E Regulations to prescribe this new offence as an infringement offence with an infringement fee of \$400 for the individual and body corporate.
37. For minor, inadvertent errors, or where a traveller is unaware of the requirement, an enforcement officer may assist the traveller to complete their declaration correctly.
38. This option is aimed at addressing the fact that there are no enforcement options in the C&E Act where a traveller has not made a declaration.

Option 3 – a new offence and infringement regime for failing to provide information in a Customs NZTD with a \$1,000 penalty, and the continued use of existing enforcement regimes for erroneous and false information and higher

39. A new offence, which would be prescribed as an infringement offence could be created for where travellers fail to provide information in a Customs NZTD.
40. This would require amendments to the C&E Act and C&E Regulations to reflect the new enforcement options.
41. The maximum penalty will align with section 27 existing offence provisions relating to providing arrival information. An individual can be fined up to \$5,000. It is also proposed to make an amendment to the C&E Regulations to prescribe this new offence as an infringement offence with an infringement fee of \$1,000 for the individual and body corporate.
42. For minor, inadvertent errors, or where a traveller is unaware of the requirement, an enforcement officer may assist the traveller to complete their declaration correctly.
43. This option is aimed at addressing the fact that there are no enforcement options in the C&E Act where a traveller has not made a declaration and uses a large fine to help increase compliance.

PROACTIVELY RELEASED

How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual

	Option 1 – use sections 366 and 368 of the C&E Act as the primary enforcement regime (counterfactual)	Option 2 – new offence and infringement regime for failing to provide information in a Customs NZTD with a \$400 infringement	Option 2 – new offence and infringement regime for failing to provide information in a Customs NZTD with a \$1,000 infringement
risk - how does the option incentivise compliance and reduce risks	0 This option does not reduce risk because travellers are not incentivised to make a declaration	++ This reduces risks as it addresses the current gap and creates an incentive for travellers to complete the declarations with options for escalation from an infringement to an offence	++ This reduces risks as it addresses the current gap and creates an incentive for travellers to complete the declarations with options for escalation from an infringement to an offence
proportionality - how does the option enable a proportionate response	0 This approach is not proportionate because there is not a response where a declaration is not made	++ This approach makes use of a strict liability offence where a traveller has clearly not met requirements to enter New Zealand and has a low fee	0 This option is too severe for a simple administrative requirement and is not consistent with other infringement fees that Customs has prescribed
compatibility - how is the option compatible with existing systems used by border agencies	0 This option is compatible as it is the current approach	++ This option is well aligned with existing processes of using infringements at airports to enforce compliance and use of offences where offending is more severe and addresses the enforcement gap for where travellers have not provided information in the NZTD	++ This option is well aligned with existing processes of using infringements at airports to enforce compliance and use of offences where offending is more severe and addresses the enforcement gap for where travellers have not provided information in the NZTD
cost - how does the option minimise costs to implement and administer.	0 There are no additional costs for the status quo option	+ There will be no additional prosecution costs with an infringement option and will make use of existing processes which reduces implementation costs	+ There will be no additional prosecution costs with an infringement option and will make use of existing processes which reduces implementation costs
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 44. Option 1 would lead to the continuation of the current gap in enforcement where there are no enforcement options for not providing a declaration.
- 45. Option 2 addresses the enforcement gap with the creation of an infringement for not making a declaration. This option means that failing to provide information in a Customs NZTD is treated similarly to other Customs prescribed infringements.
- 46. Option 2 applies an appropriate infringement fee that is consistent with other infringements in the C&E Regulations at \$400. This level is appropriate because the NZTD is an administrative requirement, so the fee should not be prohibitive but should be high enough to discourage non-compliance.
- 47. Option 3 has a larger infringement fee of \$1,000 and diverges from the \$400 infringement fee in the C&E Regulations and from the current status quo of a \$400 infringement fee in the Air Border Order. An infringement fee larger than \$400 is disproportionate to the risk as the NZTD is an administrative requirement.
- 48. Officials’ advice is that option 2 is the preferred option because it addresses the enforcement gap with a low-risk infringement offence. It is unlikely that an offence for failing to provide information in a Customs NZTD would be prosecuted as an offence (instead of an infringement offence) because of the high cost of doing this. Prosecutions are more likely for offences where there is a mens rea element, such as false information.

What are the marginal costs and benefits of the option?

Proposal	Preferred option	Summary of costs and benefits
New specific offences to enforce the provision of information in the Customs NZTD.	New offence and infringement regime for failing to provide information in a Customs NZTD with a \$400 penalty, continued use of existing enforcement regimes for erroneous and false information.	<p>Costs</p> <p>There will be one off costs for training and the provision of guidance and procedures to Customs officers. Some costs as part of communications package for travellers.</p> <p>Benefits</p> <p>It is intended that seeking a \$400 penalty will provide an appropriate deterrent to non-compliance.</p>

Section 4: Delivering an option

How will the new arrangements be implemented?

- 49. Implementation of the preferred options in the C&E Act will make use of and build on Customs’ existing systems for administering infringement regimes.
- 50. Customs will enforce requirements to provide information in the Customs NZTD on arrival in New Zealand.

51. Customs is already utilising a suite of enforcement options at the border with warning letters, infringements, and enforcement of offences under the C&E Act.
52. Communication of compliance requirements will be undertaken as part of the wider communications project for the NZTD.
53. As the onshore enforcement agency, Customs will implement the enforcement regime and ensure processes are in place and guidance for Customs officers is updated.
54. It is expected that Tranche 3 of the NZTD will go live in the first quarter of 2023. There are likely to be impacts for all travellers.

How will the new arrangements be monitored, evaluated, and reviewed?

55. Following implementation, the amended legislation and new enforcement regime will be monitored and reviewed as part of the wider NZTD review process.
56. There will be an ongoing programme of improvement and development for the NZTD which will require reviewing the amended legislation for the NZTD.
57. Customs will monitor the compliance rates to ensure that the new enforcement regime is fit for purpose and to identify Customs needs to make improvements to the regime.

Section 5: Consultation

What level of consultation has there been?

58. Customs has consulted with agencies who are likely to be affected by the operationalising of Tranche 3 of the NZTD. No public consultation on the proposed amendments has occurred as there were major constraints in timing during the advice and drafting process. Consultation on the approach was undertaken with the following government agencies:
 - a. Department of the Prime Minister and Cabinet
 - b. Ministry of Health
 - c. Ministry of Business, Innovation and Employment (Immigration New Zealand)
 - d. Department of Internal Affairs
 - e. Ministry of Justice
 - f. Ministry for Primary Industries
 - g. Ministry of Foreign Affairs and Trade.
59. Agencies have commented that the approach taken and the \$400 infringement fee is appropriate.
60. The public will have an opportunity to comment on the amendments to the C&E Act during Select Committee consideration of the Amendment Bill.