REGULATORY IMPACT STATEMENT

Customs and Excise Amendment Bill 2010

AGENCY DISCLOSURE STATEMENT

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

It provides an analysis of the impacts of statutory changes to address emerging Customs and border management issues.

The analysis focuses on five specific areas, in which there are regulatory and compliance impacts. These are:

- to strengthen the administrative penalty scheme
- to expand the petty offences regime
- to provide for exemptions from licensing and excise requirements for small scale producers of biofuels and biofuel blends
- to clarify the treatment of split shipments for the purposes of import classification

There are several other proposals of a minor nature which are designed to clarify the application of some provisions of the Customs and Excise Act 1996 (the Act) which Customs considers will have minimal impacts on compliance costs.

I have reviewed the RIS prepared by Customs and associated supporting material, and consider that the information and analysis summarised in the RIS meets the quality assurance criteria.

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EXECUTIVE SUMMARY

Legislation is required to implement proposals to address emerging Customs and border management issues.

The proposed amendments to the Customs and Excise Act 1996 through the Customs and Excise Amendment Bill 2010 (the Bill) can be divided into three categories.

1. Minor amendments with no regulatory and compliance impacts

The first category are amendments which are minor or machinery in nature and do not substantially alter existing arrangements. We have not done any Regulatory Impact Analysis on these. These amendments:

- clarify the point at which an export entry is deemed to have been made
- define the point of entry into New Zealand of postal articles for the purposes of the Act
- define the method for calculating the value of temporarily imported goods at time of exportation.

2. Amendments with regulatory impacts

The second category are amendments with regulatory impacts on either the public or business. These amendments are the subject of substantive analysis in regard to regulatory impacts in this RIS. The amendments:

- strengthen the administrative penalty scheme
- expand the petty offences regime
- provide for exemptions from licensing and excise requirements for small scale producers of biofuels and biofuel blends
- clarify the treatment of split shipments for the purposes of import classification.

3. Amendments with minimal regulatory impacts

The third category are proposed amendments required to address emerging border management issues. The intent of the existing legislation is not changed and there are no substantive regulatory impacts on either the public or business. The regulatory impacts are discussed in this paper. These amendments are to:

- allow access to a Customs' agents records
- enable goods to be forfeited on import that have been designed, manufactured or adapted to facilitate a "crime involving dishonesty" as defined in section 2(1) of the Crimes Act 1961
- create an offence for injuring or killing a Customs dog
- allow Customs to use reasonable force to compel unauthorised persons to leave a Customs Controlled Area.

REGULATORY IMPACT ASSESSMENT

OBJECTIVES

The amendments proposed in the Bill have the objectives of:

- ensuring the orderly administration of the law

- enhancing law enforcement effectiveness
- improving trade facilitation
- enhancing risk management
- clarifying existing legislation.

AMENDMENTS WITH REGULATORY IMPACTS

STRENGTHENING THE ADMINISTRATIVE PENALTY REGULATORY SCHEME
Status Quo: The Act establishes an administrative penalty scheme which allows Customs' Chief Executive to impose a penalty on importers who make erroneous import or export entries. The purpose of the scheme is to create an incentive for importers and their agents to accurately declare and value goods entering New Zealand. Customs' assessment of risk relies heavily on the quality and accuracy of the information provided by importers.
Problem: The current administrative penalty levels do not provide sufficient incentives for voluntary compliance by the importing community, therefore the accuracy of the data that Customs relies on cannot be assured.
Preferred Option: The preferred option is to amend the administrative penalties regime to: • increase the minimum penalty to $200 • introduce a simple graded penalty scheme • include Goods and Services Tax in the calculation of the penalty • increase the maximum penalty to $50,000 • eliminate the pre-penalty notice from the statutory process.
Options Considered: The minimum – two options were considered for the minimum penalty level. The first option was to increase the minimum from $50 to $400 using the Ministry of Justice's guidelines for infringement penalties as a guide. Customs considered this increase to be too substantial and although it would be an effective deterrent, significant opposition from industry and brokers would be expected. Because the administrative penalty scheme is not an infringement scheme, it is not appropriate to directly apply the guidelines for infringement penalties. The second option, and the option recommended, is to set the level to recover the cost of administering the scheme. Given that the scheme is a regulatory scheme, setting the penalty at $200 reflects the cost of administering the scheme and is consistent with the approach taken in other regulatory regimes. Customs compared two models (one from the United States of America and one operated by Inland Revenue) for setting the general penalty level – both were graded scales applying differential penalties depending on whether any duty had been lost due to the error made. Customs proposed adopting a simple penalty scheme which allows for a sliding scale of penalty for differing levels of culpability in errors, consistent with the scheme operated by Inland Revenue. This model would take into account whether false information provided to Customs was through simply error, or though intentional dishonesty.
Impact Upon Business: The implementation of this proposal will have impacts on business and Customs. The status quo is not achieving its objective to effectively achieve voluntary compliance. The amendment is needed to increase the incentive for importers to

provide accurate information. This will allow Customs to effectively target resources to protect New Zealand's borders and focus on more serious offending.

The amendment reduces the compliance costs to Customs. Removing the pre-penalty notice reduces the time spent on the administering the scheme, whilst there is no significant compliance impact on industry as they still have ample opportunity to dispute the penalty. The steps available are: complaint to the Ombudsman, appeal through the Customs Appeal Authority, complaint to a Member of Parliament, or a complaint to the Minister. The cost to business and industry for the penalty dispute process would remain the same.

Increasing the penalty level encourages higher levels of compliance across industry. Over time this should reduce the compliance cost to Customs and to the industry as a whole. It will also lead to increased accuracy of information provided by industry and hence will result in fewer penalties issued.

EXPANSION OF THE PETTY OFFENCES REGIME

Status Quo: Section 223 of the Act provides that at any time before an information has been laid in respect of certain offences, the Chief Executive of Customs may accept from a person payment of any sum, not exceeding $500, that the Chief Executive thinks just in the circumstances of the case in full satisfaction of any fine or penalty to which the person would otherwise be liable under the Act.

The payment cannot be imposed on the individual. The person can deny the offending and choose to defend the matter in court. The petty offence regime simply gives them an option for resolving the matter without having to incur the expense of a court hearing, the risk of conviction and a substantially higher penalty.

Problem: Section 223 of the Act can only be applied in relation to a limited range of offences and in constrained circumstances.

Preferred Option: The preferred option is to expand the petty offences regime. The proposed amendments will enable:

- the existing petty offence regime to be extended to all minor (non imprisonable) offences under the Act
- the value cap be replaced with a requirement that the Chief Executive be satisfied that the offending is minor
- the current $500 maximum penalty to be replaced with a maximum amount which is one third of the maximum fine a court could impose on conviction.

Options Considered: The options are to either retain the status quo or to change some parts of the petty offences section of the Act. Changing any single component alone, will not deliver the package of initiatives necessary to delivery the tools required to achieve Customs compliance and enforcement outcomes.

Impact Upon Business: Increasing the penalty level encourages higher levels of compliance across industry. Over time this reduces the compliance cost to Customs and the industry as a whole as fewer instances of non-compliance result in fewer penalties issued. The provision for application of the minor offences regime to additional offences within the Act will reduce compliance costs, as it avoids the need for prosecutions in some cases. This will reduce business compliance costs and Customs' costs of achieving compliance. It will also reduce pressure on the Court system. This amendment will enable significantly more minor offences to be dealt with by frontline staff and allows Customs investigators and prosecutors to focus on the investigation and prosecution of more serious offences.

BIOFUEL/BIOFUEL BLENDS: PROVISIONS FOR LICENSING AND EXCISE REQUIREMENTS
Problem/Status Quo: The current provisions in the Act for liability to pay Customs revenue for biofuels and biofuel blends are designed for large scale producers. This results in unnecessary requirements on low volume producers and individuals producing for their own use.
Preferred Option: It is proposed that the Act be amended so that: • individuals manufacturing biofuel/biofuel blends for personal use are exempt from the requirement to apply for a licence, and exempt from excise subject to conditions • a deeming provision be included in the Act to make the supplier of the biofuel liable for the resulting blended product of a fuelling facility that is not for the time being licensed or has not been exempted under the Act.
Implementation and Review: Customs will monitor and review the effectiveness of the policy for 12 months following commencement. The number of personal and low volume producers at present is low. The effectiveness of the policy will need evaluating if the number of personal and low volume producers increases.
Impact Upon Business: This amendment does not create an increase in compliance costs business. The amendment will enable low volume producers and individuals producing for their own use the option to lodge entries monthly, six monthly or annually. This option minimises compliance costs on producers and reduces the time spent reviewing entries by Customs. Giving personal manufacturers an exemption from the requirement to apply for a licence and pay excise removes significant compliance costs to the individual. Over all, reducing the requirements for low volume manufacture enables Customs to more cost-effectively collect due revenue.

ENABLING SPLIT SHIPMENTS
Problem/Status Quo: A split shipment refers to the importation of goods, such as a complete plant or factory, which cannot be sent to New Zealand in one shipment due to the size or nature of the goods. Shipments of this nature result in hundreds of import line entries for each shipment under the current legislation. This increases business compliance costs for importers. Currently, the need for split shipments is managed on a case-by-case basis.
Preferred Option: The preferred option is to enable the Chief Executive discretion to allow for goods to be imported in multiple shipments and entered under the same tariff classification as they would have been if they had been imported into New Zealand in a single shipment. The amendment will provide for criteria to be applied at the Chief Executive's discretion, and any conditions to such approvals. This is the preferred option because it is similar to the policy that managed split shipments prior to 1996. That policy was not carried over with the implementation of the Act.
Implementation and Review: Customs is not intending to implement any review requirements beyond those it employs to monitor its current procedures. It is anticipated that the number of split shipments will be very low and Customs will be able to monitor the implementation of the policy through the applications process.
Impact Upon Business: The policy is a dispensation from what is normally required of importers. There is an additional compliance impact for business from the

requirement to make an application and meet specified criteria for a split shipment. However, the requirement for prior approval is not expected to create delays for importers as such importations have long lead in times.

There is no additional compliance cost to the public or business. In fact, the amendment will reduce compliance costs associated with importing large shipments.

Industry was consulted on the development of the policy and generally supports the proposal.

AMENDMENTS WITH MINIMAL REGULATORY IMPACT FOR BUSINESS OR THE PUBLIC

ACCESS TO A CUSTOMS' AGENTS RECORDS

Problem/Status Quo: Many importers and exporters use Customs agents to handle transaction paperwork and business records. Consequently, the agents keep the records and are best placed to answer any questions Customs has in respect of them. Currently, the Act makes no provision for Customs to question agents and has to request the paper work from each individual client of that agent. Some importers using Customs agents are companies which do not have a presence in New Zealand. Customs has limited ability to require information disclosure from entities which do not have a presence in New Zealand. In such cases the information (documents and answers to questions) would need to be sought from New Zealand agents.

Preferred Option: The preferred option is to enable Customs to obtain documentation directly from an agent and to have the agent, as the party that has created the documentation, to answer questions in respect of it.

Regulatory Impact: Making this amendment will enable Customs to investigate and take action against the appropriate party where false or misleading information has been submitted in relation to import entries.

This proposed amendment will save time and cost for Customs by allowing direct access to a party which has submitted information on behalf of others.

There is no additional compliance cost to the public or business. In fact, it will save compliance costs by avoiding the need to request information from an importer, who then has to seek such information from an agent.

OFFENCE FOR GOODS INTENDED TO FACILITATE A CRIME OF DISHONESTY

Problem/Status Quo: Customs encounters goods on import that can only be used by a person to commit a crime of dishonesty. There is no provision in Customs' legislation that enables Customs or other law enforcement agencies to prevent such goods entering New Zealand. An example of such an item is a "card skimming device" intended to duplicate information on a bank card or credit card.

Preferred Option: The preferred option is to designate the following goods as prohibited goods under section 54 of the Act:

a. goods that are designed, manufactured or adapted with the intent to facilitate a "crime involving dishonesty", as that term is defined in section 2(1) of the Crimes act 1961.
b. goods that, in all the relevant circumstances, it is reasonable to believe are part of:
    i. an attempt (under section 72 of the Crimes Act) to commit a "crime involving dishonesty"; or
    ii. a conspiracy (under section 310 of the Crimes Act) to commit a "crime

involving dishonesty". These amendments will enable Customs to forfeit these goods on importation.
Regulatory Impact: The addition of this provision will mean that if Customs identifies goods which it believes can or are to be used by a person to commit a crime of dishonesty there will be a need for the importer of such goods to demonstrate that they are not being imported for a crime involving dishonesty. It is anticipated that the specific items which are detained under this provisions will be small, and the number of "false positives" (items which Customs identifies as only or primarily being able to be used for a crime of dishonesty but which are ultimately proven to be imported for a legitimate purpose) will be low.

OFFENCE FOR INJURING OR KILLING A CUSTOMS DOG
Problem/Status Quo: The current penalty for an offence regarding a Custom's dog does not reflect the considerable training and investment made in Customs dogs.
Preferred Option: The preferred option is to create a specific offence in the Act for injuring or killing a Customs Dog. This would be similar to the offence that exists in the Policing Act 2008 for killing or injuring a Police Dog.
Regulatory Impact: This amendment would ensure the penalty for injuring or killing a Customs dog reflects the value of the dog as a resource to Customs and aligns the penalty with the existing penalty for injuring or killing a Police Dog. There is no compliance impact from this legislative change to business or public. The number of anticipated offences is expected to be very low.

USE OF REASONABLE FORCE TO COMPEL AN UNAUTHORISED PERSON TO LEAVE
Problem/Status Quo: Currently, a Customs officer can direct a person to leave a Customs Controlled Area, but has no power to compel a person to leave, or remove that person using reasonable force should they refuse. Customs officers have no power to detain such a person should that be necessary, to either ascertain identity or the reason for that person to be present in the Customs Controlled Area. Customs officers who are designated immigration officers may have powers of detention, ejection and reasonable force powers under the Immigration Act 2009. This power is only for immigration purposes and does not extend to Customs purposes. While Customs officers have powers of arrest, these powers do not apply in the circumstances of a person simply remaining in a CCA when ordered to leave.
Preferred Option: The preferred option is to enable a Customs officer to detain a person to ascertain identity and purpose, or compel a person to leave who has remained in a Customs controlled area, when directed by a Customs officer to leave.
Regulatory Impact: There are only very minor additional compliance costs from this provision. It is a power which is likely to be used rarely. Currently, a Customs officer can arrest an individual in specific circumstances. However a Customs officer may need to seek assistance from the Police to detain an individual or compel them to leave a CCA. In either case – taking the step to arrest an individual merely because they will not provide identity information, or seeking the assistance of police – who may not be present and need to be called to attend, would create additional compliance costs upon the public. The provisions would only be applied when someone has proven themselves not prepared to cooperate with the instructions of a Customs officer, who is left with limited options to achieve compliance.