

Regulatory Impact Statement

Customs and Excise Act Review: Review of Duty Assessments

Agency Disclosure Statement

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

The scope of this Regulatory Impact Statement (RIS) is limited to a proposal to enable people to appeal directly to Customs for review of duty assessments. There is one constraint on the analysis which has been identified:

- Customs has estimated the demand for an internal review of duty assessments and the cost of running an internal review system based on indicative figures. Customs will monitor the number of review cases to better understand the demand and cost.

Signed by Michael Papesch on 14 September 2015

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14 September 2015

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Status quo and problem definition

1. Importers and manufacturers of goods subject to Customs duties¹ make a self-assessment of duty they owe to the Crown and pay accordingly. Customs often reassesses some of those assessments (eg, via audits) to ensure that the correct amount of duty is paid. In some cases, Customs and importers/excise payers may disagree on the amount of duty that is owed to the Crown.
2. Under the Customs and Excise Act (the Act), individuals can appeal to the Customs Appeal Authority (CAA) against duty assessments made by Customs. In 2014 and 2013, there were seven and three duty assessment related appeals respectively. Although businesses have informed Customs that there are some barriers to starting the CAA review process (due to the formality and cost involved), they did not have issues with the review process itself.
3. An article on Customs' dispute process for duty assessments was recently produced by Ernst and Young.² There was a comparison of Customs' dispute process to Inland Revenue's dispute process. Of particular note was the fact that there is no internal review process by Customs. The article further outlined the benefits of Inland Revenue's internal review process, such as the ability for the taxpayer and Inland Revenue to reach agreement on the facts and to potentially settle, rather proceeding straight to a judicial process. The article argued that "businesses may find Customs officers are overly eager to issue amended assessments. Because the odds are so firmly staked in Customs' favour when it comes to dispute..." The article noted that this was an area where greater fairness should be given.
4. Customs' current process of duty assessments involves engagement with importers and manufacturers. Both their views and explanations are reflected in the process of assessments. However, once the assessment is made by Customs, it is a final assessment and the only way for importers and manufacturers to appeal the assessment is via the CAA appeal process.
5. Customs' current appeal process does not formally meet the World Customs Organisation standard 10.4 in the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures (also known as the revised Kyoto Convention), whereby there should be the right of an initial appeal to Customs.³ Not formally meeting this standard is an issue as New Zealand is a signatory to this Convention.

¹ Customs duties include GST, import duty, excise, and excise-equivalent duty.

² EY, "Customs disputes – urgent change needed", <http://www.ey.com/NZ/en/Services/Tax/EY-customs-disputes-urgent-change-needed>

³ The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. The revised Convention also contains new and obligatory rules for its application which all Contracting Parties must accept without reservation.

Relevant standards are:

CHAPTER 10 APPEALS IN CUSTOMS MATTERS: A. RIGHT OF APPEAL

6. In short, barriers to the CAA process such as cost and formality discourage individuals from appealing against Customs decisions on duty assessments. The current Customs process for duty assessments is seen as unfair to importers and manufacturers. Furthermore, it means that New Zealand has not met its obligations under the revised International Convention on the Simplification and Harmonization of Customs Procedures, despite being a signatory.

Objective

7. The key objectives of addressing this problem are to:
 - ensure that anyone who engages with Customs on duty assessment matters has access to a review process that is fair, transparent, effective and accessible; and
 - ensure that the review process meets New Zealand’s international obligations.

Options and impact analysis

8. We have considered maintaining the status quo and two alternative options:
 - *Option one* (regulatory): enable customers to appeal directly to Customs on duty assessment matters. This will require Customs to establish an internal review process. This internal review process will be optional and customers can still appeal to the CAA without having to first appeal to Customs. This option will have impacts on importers and manufacturers who decide to appeal to Customs.
 - *Option two* (non-regulatory): make changes to Customs’ current process of duty assessment. These changes will involve more engagement with importers and manufacturers in the process of assessing duty, and enable them to review a draft duty assessment before it is finalised. This option will impact on all importers and manufacturers who are subject to Customs duty assessments.
9. Despite the barrier to entering the CAA appeal process, no issues have been raised in submissions, indicating that the CAA process itself is working well. The complexity and cost aspects are due to the judicial nature of the process and

10.4. Standard

National legislation* shall provide for the right of an initial appeal to the Customs.

10.5. Standard

Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.

10.6. Standard

In the final instance, the appellant shall have the right of appeal to a judicial authority.

*note: 'national legislation' is not to be read literally. It need not be by legislation but can be by policy, procedure, administrative means, etc.

Customs has limited influence in the setting of these constraints. Therefore an option of making changes to the CAA process itself has been excluded.

10. The table on the next page assesses the projected outcomes of maintaining the status quo as well as the alternative options against the following criteria:
- **Effectiveness:** Desired outcomes are achieved (ie, ensuring that anyone who engages with Customs on duty assessment matters has access to a review process that is fair, transparent, effective and accessible)
 - **Legitimacy:** Legislation is consistent with international standards and New Zealand’s international obligations
 - **Efficiency:** A low-cost system for Customs duty payers including businesses
 - **Implementation feasibility:** Administratively feasible to implement
 - **Implementation cost:** Minimises the implementation cost for Customs.
11. Ticks and crosses are used to indicate how well the projected outcomes of the alternative options meet the criteria, compared to the projected outcomes of maintaining the status quo. The analysis table below demonstrates that alternative option one is the preferred option.

✓	Projected outcome partially meets the criteria
✓ ✓	Projected outcome meets the criteria
✗	Projected outcome fails to meet the criteria in some aspects
✗ ✗	Projected outcomes fails to meet the criteria in all aspects

Options	Status quo	Option one	Option two
Criteria			
Effectiveness	The current process does not meet the criterion. Improvement is necessary.	✓✓ An internal review process will allow individuals to appeal against Customs duty assessments at a lower cost and with less complexity, compared with the CAA review process. This will therefore enhance customers access to justice.	✓ More engagement by importers and manufacturers during the assessment process may increase fairness, transparency, and effectiveness of the duty assessment process. This could reduce the number of disagreements between Customs and Customs duty payers.

<p>Legitimacy</p>	<p>Customs' current review process does not formally meet New Zealand's obligations under the revised Kyoto Convention standards.</p>	<p>✓</p> <p>An internal review process will partially meet international standards. This option will not fully meet international standards and New Zealand's obligations under the Kyoto Convention, as it is limited to appeals on duty assessments.</p>	<p>The same projected outcome as the option of maintaining the status quo.</p>
<p>Efficiency</p>	<p>The CAA review process is costly for some duty payers as there is a \$410 fee to appeal to the CAA. Furthermore, additional legal costs may incur if legal services are engaged.</p>	<p>✓</p> <p>An internal review process would potentially allow for more efficient processing of disputes and at a lower cost to duty payers. However, if the duty payer does not receive a favourable outcome, they may decide to appeal to the CAA. This would therefore prolong the review process overall.</p>	<p>✓</p> <p>All duty payers that are subject to Customs duty assessments may incur additional costs, as they will need to engage more actively in the assessment process. However, this could reduce the number of appeals that go to the CAA. Given the small number of CAA appeals in general, the efficiency gained from a reduction in the number of appeals that go to the CAA will most likely be insignificant.</p>
<p>Implementation feasibility</p>	<p>Not applicable.</p>	<p>✓</p> <p>Implementation is administratively feasible (Customs already has an internal review system for administrative penalties and seizure).</p>	<p>✓</p> <p>Implementation is administratively feasible.</p>
<p>Implementation cost</p>	<p>Not applicable.</p>	<p>× ×</p> <p>Putting in place an internal review process will be costly for Customs.</p>	<p>×</p> <p>Additional steps will be added to the current duty assessment process. This will incur costs for Customs (but the costs of implementation will not be as high as for alternative option one).</p>
<p>Conclusion</p>	<p>Retaining the status quo will not sufficiently address the problem.</p>	<p>✓✓✓✓✓××</p> <p>This option will be costly for Customs to implement, but will best achieve the desired outcome. This is our preferred option.</p>	<p>✓✓✓×</p> <p>This option will address the problem but not as effectively as alternative option one.</p>

Consultation

- During the public consultation period of the Act review, relevant stakeholders and the public were consulted on the issues and options presented in this RIS. The discussion document of the Act review sought feedback on how the current review process could be improved. Fourteen submissions commented on this point (there were 89 submissions in total). Most of the submissions commented about the barriers to the CAA review process – many regarded it as being too formal and complex (due to the judicial nature of the process), as well as being costly. Nine submissions mentioned that there should be the ability for people to appeal to Customs directly before having to go through the CAA review process.

13. The Senior Officials Advisory Group⁴ and the Stakeholder Reference Group⁵ of the Act review were consulted on the issues and options relating to review of duty assessments. Overall support was received for the preferred option. Customs has also carried out targeted consultation with industries paying excise, who are the most relevant stakeholders in this review of duty assessments. Again, there was support for our preferred option.

Conclusions and recommendations

14. It is recommended that the Bill provide the ability for people to appeal to Customs directly on duty assessment decisions. This internal review process will be optional and customers still have the option to appeal directly to the Customs Appeal Authority. This extended review process therefore enhances customers' access to justice. Customs will need to implement an internal review process for duty assessments, as well as making the relevant information on the process available to the public.

Implementation plan

15. The recommended proposals, if agreed to by Cabinet, will be given effect by legislation amending the Act. A Bill is intended to be introduced to Parliament in 2016.
16. Customs is setting up a team of officials specifically tasked with developing an implementation plan as part of this review of the Act. This team will identify in more detail the areas which require improvement, including designing internal review process for duty assessments.
17. In terms of designing the internal review process, consideration was given to setting up an internal review process similar to that of Inland Revenue. However, Inland Revenue's process is very resource intensive. Customs' internal process for duty assessments could borrow some positive aspects from Inland Revenue's process, but it will need to be simplified in order to be effective. Customs' existing internal process for administrative penalties and seizures can be considered as a model for this exercise.
18. There will be on-going costs for Customs to run an internal review system for duty assessments. Customs could consider adopting a cost-recovery approach if the system imposes significant costs on Customs. A decision will also need to be made in relation to the review processes for administrative penalties and seizure, (at the

⁴ Members of the Senior Officials Advisory Group include: the Ministry for Primary Industries, the Ministry of Business, Innovation, and Employment, New Zealand Police, the Ministry of Transport, Inland Revenue and the Department of the Prime Minister and Cabinet.

⁵ Members of the Stakeholder Reference Group include: the Importers Institute, NZ Shipper's Council Inc, Port CEO Forum, Airports Association, Export New Zealand, Board of Airline Representatives, International Container Lines Committee, Customs Brokers and Freight Forwarders Federation and the Conference of Asia Pacific Express Carriers.

moment, there is no fee incurred to utilise these review processes) but within certain boundaries so that the intention of the proposal (ie, enhancing access to justice) is not compromised.

19. In 2014, Customs received 34 complaints from private individuals relating to duty assessments. In the same year, there were 116 cases where Customs audits led to the collection of additional revenue. These figures indicate the potential number of review applications for Customs duty assessments. Based on the data above, the estimated number of review applications for duty assessments (per year) is likely to be less than 150.
20. In regards to the review of the administrative penalty, there were 26 applications for review of administrative penalties issued between September 2014 and May 2015 (nine months). Customs has 1 FTE dedicated to this process. Review of duty assessments is likely to be more resource-intensive due to the complexity and variety of issues involved in determining the amount of duty.
21. Considering the indicative figures available, a range of 3-5 FTE will be needed to process the internal review of duty assessments.
22. As part of the Act review, Customs is proposing to issue further guidelines to help traders meet their duty obligations, as well as informing them of binding rulings on duty assessments. These initiatives are expected to reduce the number of appeals received by Customs.

Monitoring, evaluation and review

23. As part of the implementation of the proposed changes, Customs will also put additional monitoring and evaluation mechanisms in place to ensure the benefits of the changes are realised.
24. Proposals made in this paper in relation to duty assessments will require appropriate review and evaluation processes. This will be established as part of the implementation programme for the Act review. Review and evaluation processes are likely to include a fixed review period.
25. To evaluate whether the recommendation has achieved its objectives, Customs will need to consider:
 - the number of internal review applications for duty assessments
 - the number of CAA appeal cases after going through the internal review process, and
 - quantifying the resources required by Customs that is necessary for the internal review of duty assessment.