

# Regulatory Impact Statement

## Customs and Excise Act Review: Sanctions for Incorrect Payments

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## Regulatory Impact Statement

### Customs and Excise Act Review: Sanctions for incorrect payments

#### Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the New Zealand Customs Service (Customs). The analysis has been informed by advice from Inland Revenue and the New Zealand Institute of Economic Research.

It provides an analysis of high level options to sanction incorrect payments as part of a package of improvements to Customs' system of revenue collection. The current sanction applied is known as additional duty.

The following are constraints on the analysis due to a lack of data:

- Customs knows how much additional duty it collects. What it doesn't know is how much could be collected with an efficient system (e.g. an automated system similar to that run by Inland Revenue). Customs is also not clear how much additional duty is annually remitted (i.e. no longer due).
- Additional duty is automatically imposed by legislation, but is billed on a manual system which cannot respond promptly to all clients who have not paid all due revenue. This also means there is insufficient data produced to give a clear picture of the situation. For example, data has to be manually obtained from one system for late payment and another system for under-payment in order to calculate additional duty. Given these constraints on data, the figures within the RIS should be treated as estimates only.
- Prior to 2014, data relating to additional duty billed in the audit process was not separated into core duty<sup>1</sup> and additional duty.
- Separate data is not collected on over-paid refunds and other repayments due to inaccurate information. They are recorded as a revenue adjustment which groups together a number of other adjustments.
- There is no data to determine the extent to which the additional duty system as currently applied effectively deters late or under-payments.

The overall impact means that options in this RIS were not able to be quantifiably assessed due to a lack of data. The impacts discussed in this paper are primarily on domestic excise clients, deferred payment importers and the Crown.

*Signed by Michael Papesch on 9 March 2016*

Michael Papesch  
Group Manager Policy, Legal and Governance

9 March 2016

<sup>1</sup> The full amount of the duty originally owing on the goods, not including any financial sanctions.

## Executive summary

- 1 Customs' clients have an obligation to correctly self-assess and pay the right amount of duty on time. When duty owed to the Crown remains unpaid by the due date, a sanction called additional duty is imposed.
- 2 The existing additional duty regime under the Customs and Excise Act 1996 (the Act) both compensates the Crown and penalises clients for shortfall payments, late payments, and non-payments of duty.
- 3 Several problems and opportunities have been identified with the additional duty regime and system design, including that it does not cost-effectively encourage voluntary disclosure, it does not distinguish between some types of incorrect payments, and the application of additional duty can be seen as unduly punitive.
- 4 This RIS considers three high level options for a sanctions regime for incorrect payments as part of seeking the Government's agreement-in-principle to modernise Customs' sanctions regime for incorrect payments: the status quo, an amended additional duty regime and a compensation and penalty regime. The latter is preferred as it better meets the criteria; it is also supported by stakeholders.
- 5 This RIS also considers whether the timing of payments of core and additional duty should be affected by the client entering into a dispute. The three options considered were the status quo, postponing all payments pending dispute resolution, and postponing the payment of additional duty (but not core duty). The status quo, where the payment date is not affected by dispute, is preferred. It most effectively ensures that clients do not enter into disputes solely to postpone payment.

## Status quo

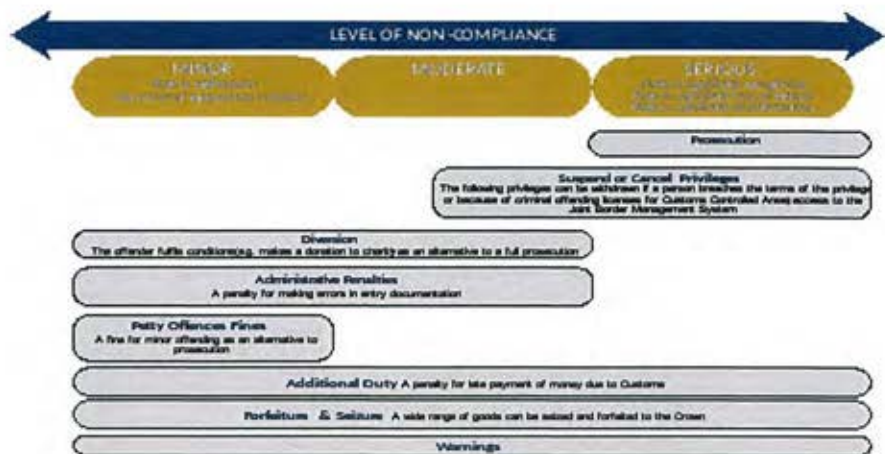
### Customs' revenue collection system

- 6 In 2014–2015, Customs collected \$12.486 billion of Crown revenue. Revenue is collected through GST on imports, excise and excise-equivalent duty, tariffs and other taxes, duties and levies (some of which are collected on behalf of other agencies).
  - GST comprises around two-thirds of Crown revenue collected by Customs.
  - Excise is collected on locally manufactured fuel, alcohol and tobacco (based on manufacturers' records) and an excise-equivalent duty is collected on imports of these goods.
- 7 Approximately 70 percent of domestic excise duty of \$2.6 billion is paid by the top 20 excise payers. This is received on time from financially stable, large companies. The other 30 percent is paid by over 450 companies, some of which are not financially stable, and it is these companies who are more likely to incur additional duty for late payment. These companies are all in the alcohol sector.

- 8 Customs has recently billed large amounts of additional duty to the fuel companies. This is an unusual situation and does not represent business as usual for Customs or the fuel companies. Recent litigation clarified the legal position regarding fuel blending at tank farms, and confirmed that the extra volume of fuel created should be subject to excise duty. Customs expects that, once resolved, this will not be an ongoing issue.
- 9 Customs' revenue collection is based on traders' correct self-assessment of duty liability and widespread voluntary compliance. The system is therefore dependent on accurate declaration of data and payment on time by importers, their customs brokers, and excise clients. Most brokers, courier companies and excise clients accurately declare the revenue owed and pay on time.
- 10 Customs' voluntary compliance model is backed up by a targeted post-entry audit system of importers and excise clients to provide assurance across the trade stream.
- 11 Most import revenue owing is assessed and transferred to Customs by professional brokers using automated processes. Payment is then made through deferred payment accounts operated by importers and customs brokers. Domestic excise clients self-assess and interact directly with Customs rather than using brokers.
- 12 There are 8,840 deferred importer account clients, approximately 600 customs brokers on deferred accounts and approximately 700 excise clients.<sup>2</sup>
- 13 Customs allocates its resources to targeted areas as part of its risk management plan. A major component of this risk management plan is encouraging voluntary compliance. It is important to encourage voluntary disclosure of an error or omission by offering more lenient treatment to those who do so.
- 14 Customs undertakes a wide range of initiatives to educate and encourage clients to comply, such as outreach programmes. Where these initiatives fail, appropriate powers and sanctions are needed.
- 15 The diagram below shows the range of sanctions Customs might apply at different levels of non-compliance:

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<sup>2</sup> Customs cannot cite a precise number of excise clients. As at 29 February 2016 Customs has 846 licensed excise Customs-controlled areas. However, some excise clients have multiple sites and some are not used for manufacture.



VERSION 1.0, 19 November 2014

16 This RIS addresses the issue of additional duty.

#### Application of additional duty

17 When duty owed to the Crown remains unpaid by the due date, section 87 of the Customs and Excise Act 1996 (the Act) imposes additional duty.<sup>3</sup>

18 Five percent of core duty is owed and a further two percent is imposed for each month after that on a compounding basis (five percent plus two percent compounding – see footnote 3). This is intended to be an effective incentive to pay duty on time, as continued non-compliance can lead to heavy penalties.

19 Additional duty applies to:

- **Importers and customs brokers** operating a deferred payment account and making a late payment.
- **Excise clients** making a shortfall or late payment.

<sup>3</sup> The Customs and Excise Act 1996, Section 87, states that

(1) Where any duty the payment of which has been deferred in accordance with in accordance with section 86(6), or which is due in accordance with section 76(4) remains unpaid by the due date for payment, there shall be imposed—

(a) additional duty of 5 percent of the amount of duty unpaid by the due date; and

(b) additional duty of 2 percent of the amount of duty, including additional duty, unpaid at the end of the period of 1 month after the due date; and

(c) additional duty of 2 percent of the amount of duty, including additional duty, unpaid at the end of each succeeding period of 1 month.

(2) Notwithstanding subsection (1), the chief executive may, in his or her discretion, remit or refund the whole or any part of any additional duty imposed by that subsection.

(3) Where, for any reason the amount of duty in respect of which additional duty has been imposed under subsection (1) is amended, the additional duty shall, where necessary, be adjusted accordingly.

(4) A person liable for the payment of the duty who is dissatisfied with a decision of the chief executive under subsection (2) may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.

20 The table below summarises what type of penalty applies to different clients making incorrect payments:

*Scope of additional duty*

	Shortfall Payment	Late Payment	Non-Payment
Excise client	Additional Duty		
Importers and customs brokers – deferred payment scheme	None	Additional Duty	None
Import – cash payment	None		

21 These payments can be defined as:

- **Shortfall payments** are under-payments made by clients due to an error in the entry.
- **Late payments** are where payment arrived after the due date; or there were insufficient funds in a client's deferred payment account on the due date.
- **Non-payments** are where no payment was made due to failure to make an entry.

22 **Excise clients** are not managed in the same manner as importers. <sup>4</sup> Excise clients with an estimated annual duty liability of less than \$50,000 make a single excise entry in January payable by the last working of January. Excise clients with an estimated annual duty liability of \$50,000 to \$100,000 pay Customs on a six monthly basis, making payments on the last working day of July and January. Other excise clients pay on the 15th working day of each month. Customs does not require excise clients to pay by direct debit or routinely take security from excise clients. The system works well for compliant excise clients. For those who are experiencing financial difficulties, or who are in dispute with Customs over the application of excise duty, the application of additional duty can be seen as unduly punitive.

23 Applying additional duty for late payment to **importers and customs brokers operating deferred payment accounts** is rare. When these accounts are set up, the importer or customs broker signs a direct debit authority allowing Customs to automatically receive payment on the due date. In many cases the clients have also provided Customs with security. The system works well and there are few instances of late payment. Importers paying excise-equivalent duty operate under this system.

24 Additional duty does not apply to **importers who are on cash payment schemes** because they operate on a 'no pay no go' basis. They do not get their goods until they pay the duty that is owed to Customs.

25 Assessment, billing and monitoring of additional duty by Customs is currently manual. All additional duty collected is paid to the Crown.

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<sup>4</sup> Excise clients currently send their excise entry to Customs who must then enter the data manually. This will change when excise clients will be required to complete electronic excise entries, as part of the future application of the Joint Border Management System.

Amount of additional duty assessed and collected by Customs

- 26 The tables below show the amount of additional duty that was assessed, remitted and collected in the financial years of 2012-2013, 2013-2014, 2014-2015 and 2015-2016 (to 31 January 2016). They differ from the scope of additional duty table as it is not known whether some late payments were on excise or imports (unknown).
- 27 The first table shows [REDACTED] atypical assessments on [REDACTED] companies. The late payment tables reflect increased enforcement under Customs' new debt management strategy.

**Additional duty on shortfall payments: domestic excise<sup>5</sup>**

	Additional Duty assessed	Additional Duty Remitted	Additional Duty Collected
2012 - 2013	Unable to separate additional duty from the total additional revenue assessed <sup>6</sup>	Manual process - Data not easily retrieved <sup>7</sup>	Manual process - Data not easily retrieved <sup>8</sup>
2013 - 2014	Unable to separate additional duty from the total additional revenue assessed	Manual process - Data not easily retrieved	Manual process - Data not easily retrieved
2014 - 2015	[REDACTED]	Manual process - Data not easily retrieved	Manual process - Data not easily retrieved
1 July 2015 - 31 Jan 2016	[REDACTED]	Manual process - Data not easily retrieved	Manual process - Data not easily retrieved

**Additional duty on late payments: domestic excise<sup>9</sup>**

	Additional Duty assessed	Additional Duty Remitted	Additional Duty Collected
2012 - 2013	\$185,298.79	None	\$159,096.21
2013 - 2014	\$92,793.66	None	\$78,646.90
2014 - 2015	\$459,554.98	\$5.22	\$327,412.22
1 July 2015 - 31 Jan 2016	\$1,415,338.36	\$22,031.66	\$738,300.24

**Additional duty on late payments: imports<sup>10</sup>**

	Additional Duty assessed	Additional Duty Remitted	Additional Duty Collected
2012 - 2013	\$36,527.04	None	\$33,258.60
2013 - 2014	\$25,634.48	None	\$23,738.16
2014 - 2015	\$11,261.66	None	\$11,261.66
1 July 2015 - 31 Jan 2016	\$199,380.56	\$26,646.75	\$156,338.01

5 Assessed, remitted and collected through the audit process.

6 Customs' field audit programme did not separate the additional duty data (imposed under section 87 of the Act) from field audit additional revenue (as per Output Class 5.5) for the years prior to 2014-2015.

7 Files are kept for individual cases of additional duty remitted but figures are not collated. Data not easily retrieved.

8 Calculation of additional duty collected would be a manual process and not easily retrieved. However, anecdotally most additional duty is collected.

9 Assessed, remitted and collected through the management of late payment process.

*Additional duty on late payment process: unknown<sup>10</sup>*

	Additional Duty assessed	Additional Duty Remitted	Additional Duty Collected
2012 - 2013	\$3,244.22	\$53,693.65	\$1,010.54
2013 - 2014	None	\$16,624.11	None
2014 - 2015	\$5,939.89	\$87,244.01	\$5,939.89
1 July 2015 - 31 Jan 2016	\$210,685.37	\$773,012.50	\$36,535.89

Remissions policy for additional duty

- 28 Customs can remit additional duty. Customs' remissions policy is narrow in scope; e.g. remission may be granted where an excise client failed to transfer sufficient funds for payment into their bank account and they have not transgressed on payments to date. The policy is not currently published.
- 29 The Chief Executive may proactively remit additional duty before any assessment is made, but it is more common for an assessment to be made and time given for the affected taxpayer to apply for remission or refund.

Disputes

- 30 Clients are able to challenge the application of additional duty by appealing to the Customs Appeal Authority. The appeal must be within 20 working days after the date on which notice of Customs' assessment is given. There is a filing fee of \$410 (inclusive of GST). The appeal can be a lengthy process. In 2013 and 2014, there were three and seven duty assessment-related appeals respectively.
- 31 Under section 92 of the Act, the obligation to pay and the right to receive and recover duty is not suspended by appeal. If the appellant is successful, the amount of any duty paid in excess of the amount determined on appeal, must be refunded. The Chief Executive is required to pay interest on duty refunded on appeal according to the formula set out in section 93 of the Act.

Any regulatory change would only be part of modernising Customs' response to incorrect payments

- 32 Customs has taken, and will continue to take, a range of non-regulatory actions to better respond to inaccurate payments:
  - Customs has implemented a new debt management strategy to support excise clients with large debt problems. The strategy has reduced the number of problem debts from 90 to 30 in 2015.
  - The planned implementation of electronic submission of excise entries and payments will also assist in monitoring late payments.
  - An Excise Governance Group within Customs is revising operational instructions to ensure sanctions are applied consistently.

<sup>10</sup> This includes excise and import figures that cannot be separated due to data issues.



- The remissions policy will be updated with a view to rewarding voluntary compliance, including an explicit grace period for late payments and a de minimis so that sanctions are not applied inefficiently.
  - Customs is looking to be more transparent in its application of sanctions.
- 33 In addition Customs can and will continue to prosecute for fraud and other revenue-related offences where it considers that to be the most appropriate option. Customs can also recover debts through civil court proceedings. Both options can be slow and costly and civil debt recovery would not deter non-compliance. Customs can also cancel licenses to manufacture excisable goods but this can be a disproportionate response.
- 34 An automated system will be needed, regardless of which legislative sanction option is chosen. Non-compliance needs to be dealt with promptly and comprehensively if business is not to be disadvantaged. This cannot be sustainably resourced using a manual system given the increased number of clients. Customs will explore the functionality requirements and funding options for an automated system.
- 35 These changes will address some of the administrative challenges with the current system but cannot address problems with the legislation.

## Problems

- 36 The additional duty regime and system was designed for a much smaller number of clients. There were fewer excise clients and they were more likely to be large companies that were financially stable. There has been a large increase in importer deferred payment accounts since the Act was introduced. There are now over 700 excise clients and 8,840 importers on deferred payment accounts. The system now has a greater number of small excise payers who are more likely to have cash-flow issues. The additional duty regime and system design has resulted in the following legislative problems and administrative challenges for clients and Customs.

### Legislative problems

#### Additional duty compounds

- 37 Stakeholders see the current regime as punitive with its compounding nature quickly resulting in debts for some businesses that seem disproportionate to the offending. When combined with Customs' manual system discussed later, this can have a disproportionate impact.

#### Legislation combines compensation and penalty

- 38 Additional duty (five percent plus two percent compounding) does not distinguish between compensation and penalty. Because additional duty combines both compensation and penalty, there is no clear rationale for the level and it cannot be benchmarked to any other regime or cost such as borrowing rates. This results in clients not understanding the rationale for the level of Customs' additional duty as it is both compensation and penalty.

### **The regime does not explicitly recognise voluntary disclosure**

- 39 The legislation allows voluntary disclosure to be taken into account through the remissions policy by providing discretion for the chief executive to remit additional duty. It does not explicitly require voluntary disclosure to be taken into account.
- 40 The legislation does not explicitly provide for a cost-effective voluntary disclosure regime that encourages excise clients to voluntarily disclose errors and correct the information. It is difficult for Customs to discover all incorrect payments that may occur. Since voluntary disclosure is not explicitly provided for in the additional duty regime, it is more likely these incorrect payments will not be identified in a timely manner. For example, excise clients may still be charged the full additional duty penalty even if they make a voluntary disclosure. This means there is no incentive for them to voluntarily disclose any non-compliant behaviour, which discourages voluntary compliance overall. In 2014-2015, there were no excise clients that voluntarily disclosed an error.
- 41 Voluntary disclosure is key to maximising core duty collected and is a key feature of the administrative penalties regime. In 2014-2015 Customs collected an additional \$15,321,612.97 of core duty on imports (as opposed to \$7,505,579.83 in 2012-2013) due to voluntary disclosures.<sup>11</sup>

### **The scope of the additional duty regime is patchy**

- 42 The scope of the legislation is not comprehensive. Comparable clients are treated inconsistently and the regime does not adequately address compensation.
- 43 It is not clear what the legislation was intended to achieve. For example, excise clients are treated differently to importers of competing goods (excise-equivalent) when they demonstrate the same type of non-compliant behaviour. Additional duty applies to domestic excise clients for all types of non-compliant behaviour: shortfall, late and non-payment. However it only applies to late payment for importers on the Deferred Payment Scheme.
- 44 The legislation does not appear to allow for the imposition of additional duty where an importer has failed to make an entry or has inaccurately entered goods. This seems to have been due to ambiguity in how the Act is worded rather than a clear decision to prevent additional duty from applying in these circumstances. The importer would only be liable for the duty that they owed and prosecution under section 203 of the Act for failure to make an entry. Prosecution may be a disproportionate response particularly where a client is normally compliant. Prosecution is costly and is rarely used.

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<sup>11</sup> An administrative penalty may be applied to a person ('declarant') who submits information on imports (an 'entry') to Customs to gain clearance of their goods, and where the information contains an error. If the declarant voluntarily discloses to Customs an error, they are not liable to an administrative penalty if the information is corrected.

In this example of non-payment, an importer imported a bulk shipment in November 2014. No import entry was made. This company is normally compliant. An import entry was made in March 2015 when the importer was issued an assessment notice by Customs. Customs could have prosecuted under section 203 of the Act, but the costs associated with this outweighed the benefits. However, until an entry had been made, Customs could not issue any penalty because importers are not subject to any additional duty under the Act for non-payment. Therefore the importer was only liable to pay the duty that they owed. This has the potential to financially benefit the importer. This effectively means that the Crown subsidises their non-compliant behaviour, which also disadvantages compliant businesses. However, in this example, the importer gained no benefit as only GST was involved.

#### **The regime does not adequately address compensation**

- 45 The legislation does not enable clients to be compensated for a Customs' error resulting in an overpayment of duty without needing to appeal to the Customs Appeal Authority. There is also no penalty or compensation to the Crown where Customs overpays a refund or grants a remission of duty due to incorrect information supplied by clients.

#### **The legislation does not distinguish and recognise the different nature of shortfall and late payments**

- 46 An entry error resulting in a shortfall of duty is often a one-off mistake, usually unintentional, whereas late payment and non-payments can be ongoing and are more likely to be intentional. Stakeholders note the additional duty regime does not take account of the different behaviours leading to shortfall and late payments.

#### **The lack of an explicit de minimis, or grace period<sup>12</sup>**

- 47 The legislation only enables a de minimis or grace period effected through a remissions policy. This can result in costs to Customs and clients.

#### **The current Act doesn't specify under what circumstances the remission of additional duty should be approved**

- 48 Remission is at the Chief Executive's discretion. This can result in a lack of national consistency in relation to issuing remissions and make the process inefficient and costly for clients and Customs. Lack of transparency in the legislation creates the potential for fraud and corruption and potential for the perception by clients of favouritism.

#### **Stakeholders consider unfair, their obligation to pay on the due date regardless of any appeal or legal proceedings**

- 49 This stance reflects the presumption in section 91 of the Act that Customs' assessments of duty shall be taken to be correct and that consequently duty shall

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12 Period in which late payments are accepted without imposing sanctions.

be payable accordingly unless (and until) overturned or amended by the Customs Appeal Authority.

50 Stakeholders advised Customs:

- It is unfair that the due date for paying disputed duty and additional duty is not postponed if they enter into a dispute.
- Genuine disputes over interpretation are not recognised. Businesses dislike the implication that they are 'guilty' and payment dates are not postponed pending the resolution of the dispute.
- If a client is unsuccessful in a dispute, it is fair that the client then pays compensation to the Crown.

Administrative challenges

**Resource-intensive to administer**

- 51 Even if shortfalls, late payments and non-payments are discovered, the enforcement process is difficult to administer due to Customs' current manual and resource-intensive systems for assessment.<sup>13</sup> The effect is that prompt enforcement of non-compliance is inhibited as assessments and follow-ups of incorrect or late payments are not always conducted in a consistent and timely manner. This means assessment notices are only issued to some clients, usually when requested by Customs' District Ports, or when the duty owing exceeds a certain amount. Due to the compounding nature of additional duty, clients can incur large debts if original debts are unprocessed for long periods of time. This contrasts greatly with Inland Revenue's automated system for late payments where an automated notice is sent to the taxpayer the day after the due date.

For example, one excise client has paid 30 of their last 37 monthly excise entries late (average of 62 days late) and has not yet been billed additional duty for any of them. This behaviour may have changed had they automatically received an assessment notice for additional duty each month. They are now subject to audit to manually assess the additional duty they now owe, which is currently at \$260,000. They already have a core debt with Customs of over \$500,000. If the amount calculated in the manual assessment is not paid in full on the due date, additional duty will continue to accrue until another manual assessment is undertaken.

- 52 To resolve examples like the above, Customs implemented a debt management strategy in September 2014 to support excise clients with large debt problems. The Debt Management Strategy is designed to deliver assurance that all due revenue is collected. The number of debtors on this program reduced from 90 to 30 in 2014–2015. Nonetheless, having a debt management strategy does not fully address the issues resulting from having a manual and non-automated system. Although most clients pay the right amount on time, situations where clients are particularly under financial pressure, can lead to large amounts of additional duty being owed by the

<sup>13</sup> Customs use 0.5 of an FTE to manually produce additional duty claims (as part of this process, it takes one staff member about 30 minutes to issue/calculate one additional duty notice).

client. For example, the compounding interest means that a client will effectively face a 33 percent penalty interest on their original unpaid duty over the first year when additional duty is imposed.

**Compliant businesses are disadvantaged**

- 53 Compliant businesses are disadvantaged when non-compliant businesses pay late without having to compensate the Crown. Situations can arise where Customs is effectively subsidising the late-payer.

**Lack of transparency around remission**

- 54 The remission of additional duty is a discretionary tool and criteria for remission are not published. This means that its application is not transparent or consistent. It is therefore difficult to predict Customs' response to non-compliant behaviour, as well as undermining incentives for compliant behaviour.

**Objective**

- 55 The objective of the sanctions discussed in this RIS is to incentivise clients to pay duty accurately and on time so as to maximise the core duty collected. Achieving this objective will require a sanctions regime which is fair and transparent. The sanctions should provide appropriate penalties but are not intended to raise additional revenue.

**Criteria**

- 56 We have developed the following criteria against which to assess the options:

Criterion	Description
Complies with principles of administrative law and international obligations	<ul style="list-style-type: none"> <li>• Easily understood and predictable</li> <li>• The sanction is proportional to the impact of the non-compliance</li> <li>• Sanctions have legislative authority and are not discretionary</li> <li>• Disputes are speedily and justly determined</li> <li>• No double taxation or double-penalties</li> <li>• Any reforms are not retrospective</li> </ul>
Administratively efficient	<ul style="list-style-type: none"> <li>• Can be sustainably resourced</li> <li>• Customs does not incur unnecessary administrative costs</li> </ul>
Effectively encourages voluntary compliance and discourages non-compliance	<ul style="list-style-type: none"> <li>• Encourages payment of the right amount of duty, on time</li> <li>• Encourages voluntary disclosure of any errors</li> <li>• Penalties for non-compliance should increase with the degree of culpability</li> <li>• Non-compliance does not result in financial advantage</li> </ul>
Comprehensive and consistent	<ul style="list-style-type: none"> <li>• Clients are not treated inconsistently based on type of revenue, method of payment or location</li> <li>• Consistency with Inland Revenue sanctions where relevant</li> <li>• Duty-payers in like circumstances are treated the same</li> </ul>
The Crown is not financially disadvantaged	<ul style="list-style-type: none"> <li>• Prompt payment</li> <li>• Not only is all core duty paid but also compensation for the Crown not having the use of the full duty from the due date</li> <li>• The Crown is not effectively subsidising the late-payer</li> </ul>

- 57 Stakeholders wish greater consistency with Inland Revenue's processes which they understand well. Consistency with Inland Revenue is desirable, but may not always

be appropriate as Customs operates in a different environment, collecting duty on goods on a transactional basis.

- 58 While important, compliance costs have not been selected as a criterion as they are not a major factor under any of the options.
- 59 This RIS also considers whether entering into a dispute should affect the due payment date.

## Options for a sanctions regime for incorrect payments

- 60 This RIS compares three high level options for a sanctions regime for incorrect payments as part of seeking the Government's agreement-in-principle to modernise Customs' sanctions regime for incorrect payments. The options are described below and subsequently compared in tables.

### Description of options for sanctions

#### Option 1: status quo – no legislative change

- 61 While this option makes no legislative change to the additional duty regime, it takes account of the non-regulatory improvements discussed in the status quo, other than the (as yet unfunded) automated system.
- 62 Additional duty is applicable to all late payments and to shortfall and non-payments of excise. It is not applicable to incorrect repayments<sup>14</sup>.
- 63 Customs has discretion to remit or refund additional duty but its current remissions policy is not published. Nor does the policy encourage voluntary disclosure and compliance or provide an explicit grace period or de minimis.
- 64 Where an error or omission occurs in an import entry, Customs can impose an administrative penalty on the declarant. The severity of the penalty increases with the declarant's culpability. Customs will apply the administrative penalty regime to excise, concurrent with a future requirement for excise clients to complete electronic excise entries as part of applying the Joint Border Management System (JBMS).
- 65 The table below illustrates how these sanctions apply. It differs from the scope of additional duty table in the status quo in order to take account of other relevant penalties and to facilitate comparison with other options where sanctions could also be applied to incorrect repayments:

	Shortfall payment	Late payment	Non-payment	Incorrect repayments
Excise client	Administrative penalty*			
	Additional duty			none
Import declarant	Administrative penalty*			

<sup>14</sup> Incorrect repayments are refunds, remissions, and drawbacks where a client has financially gained due to providing incorrect data.

Importer	none	Additional duty	none	none
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\*Administrative penalties are not imposed where a client voluntarily discloses.

†To be applied concurrent with requiring electronic excise entries.

**Option 2: amended additional duty**

66 This option is the same as option 1 except that the additional duty sanction would:

- Not compound.
- Be subject to an explicit de minimis and grace period.

It could also be applied to incorrect repayments.

67 If this option were favoured, a decision on whether to extend additional duty to shortfalls and non-payments on imports and incorrect repayments would be taken as part of further work (phase two). This decision would need to be made in parallel with decisions on how to respond to voluntary disclosure as applying any sanction could affect disclosure levels under the administrative penalty regime.

68 The table below illustrates the scope of sanctions under this option:

	Shortfall payment	Late payment	Non-payment	Incorrect Repayments
Excise client	Administrative penalty <sup>‡</sup>			
	Additional duty			Additional duty <sup>⊘</sup>
Import declarant	Administrative penalty*			
Importer	Additional duty <sup>⊘</sup>	Additional duty	Additional duty <sup>⊘</sup>	Additional duty <sup>⊘</sup>

<sup>‡</sup> To be applied concurrent with requiring electronic excise entries.

\*Administrative penalties are not imposed where a client voluntarily discloses.

<sup>⊘</sup> Yet to be determined.

**Option 3: compensation and penalty**

69 This option would replace additional duty with a two part sanction comprised of compensation and a penalty.

*Compensation*

70 Customs would:

- Charge excise clients compensatory interest on the duty the Crown could not use as a result of shortfall or late payments.
- Charge importers compensatory interest on late payments.
- Pay compensatory interest to clients disadvantaged by Customs' errors in assessing core or additional duty or making a repayment, without requiring the client to appeal to the Customs Appeal Authority. This change would benefit clients where Customs acknowledges an error and there would be no other reason for a dispute. This could result in more clients claiming compensation.

### *Penalties*

- 71 Penalties could also be imposed; these would distinguish between shortfall errors and late payments.
- 72 Both the compensatory interest and the penalties would be subject to an explicit de minimis and grace period provided for in Customs' remission policy.
- 73 Administrative penalties would continue to apply. They will be applied to excise clients concurrent with the future requirement for excise clients to complete electronic entries (part of applying JBMS).

### *Further work: phase two*

- 74 The details of this compensation and penalty approach would be developed in phase two and will be informed by Inland Revenue's review of business tax.<sup>15</sup> These details could include:
  - The scope of this two part sanction - whether importers would be charged interest and penalties on shortfall and non-payment of imports, and whether they would apply to incorrect repayments.
  - The formula for the compensatory interest rate, along with its rate, review process and administrative details such as the period for which it would be applied. While the formula for the compensatory interest would be developed in phase two, it is clear that it would need to be set at a rate slightly higher than clients' likely bank rate. This would incentivise clients to pay promptly and not treat Customs as an involuntary lender.
  - The nature and level of the penalties (although they could distinguish between shortfalls and late payments to recognise their different nature).
  - The interface with administrative penalties and other sanctions.
  - How the new incorrect payment sanctions regime could best encourage voluntary disclosure.
  - The appropriate extent, in the Customs context, to align with Inland Revenue's review of business tax.
  - Whether Customs remissions policy, de minimis and grace period should be in regulations and/or published.
  - The impact on Crown revenue.

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*Scope*

75 The table below illustrates the possible scope of the sanction:

	Shortfall payment	Late payment	Non-payment	Incorrect Repayments
Excise client	Administrative penalty*	Penalty		Yet to be determined
	Compensatory interest			
Import declarant Importer	Administrative penalty* Whether interest and/or penalty would be applied to importers has yet to be determined	Penalty Compensatory interest	Whether interest and/or a penalty would be applied to non-payment on imports has yet to be determined	

\*Administrative penalties are not imposed where a client voluntarily discloses

Comparison of options for sanctions

76 The following table compares options two and three to the status quo. The comparison assumes the options would be fully resourced (all options would require a new automated system). It also recognises that, subject to future design work (phase two), options two and three could extend the scope of the sanctions and reward voluntary disclosure. Key:  partially meets the criteria  meets the criteria  doesn't meet the criteria

Option	Complies with principles of administrative law and international obligations	Administratively efficient	Effectively encourages voluntary disclosure, discourages non-compliance	Comprehensive and consistent	The Crown is not financially disadvantaged
<p><b>Status quo - additional duty:</b> Additional duty is incurred by importers and excise clients at 5% of core (original) duty + 2% + 2% of core and additional duty compounding.</p>	<p><input type="checkbox"/> Has legislative sanction, meets international obligations. <b>Rationale of compensation is not transparent.</b> May be disproportionate to the non-compliance where a shortfall is large and not discovered for several years. Does not recognise the different nature of shortfall from late and non-payment for excise clients (an entry error can be a one-off mistake, usually unintentional, whereas late payment and non-payment can be on-going.)</p>	<p><input type="checkbox"/> Incentive to prompt payment. <b>High cost as it cannot efficiently reward voluntary disclosure or manage high volumes.</b></p>	<p><input type="checkbox"/> Additional duty effectively deters clients from intentionally making incorrect payments but stakeholders are concerned that Customs' application of it does not recognise that shortfalls can be accidental. This option cannot cost-effectively reward voluntary disclosure for excise clients.</p>	<p><input type="checkbox"/> Inconsistent across clients, disadvantaging compliant clients relative to competitors. Not consistent with Inland Revenue's distinction between compensation + penalty.</p>	<p><input type="checkbox"/> Additional duty fully compensates the Crown but isn't collected for shortfall and non-payments on imports.</p>
<p><b>Option two - Amended additional duty:</b> Status quo but would:</p> <ul style="list-style-type: none"> <li>• Not compound</li> <li>• Be subject to an explicit de minimis and grace period.</li> </ul> <p><i>Application to importers and incorrect repayments yet to be determined</i></p>	<p><input type="checkbox"/> Has legislative sanction, meets international obligations. Less likely to be disproportionate to the non-compliance as does not compound. <b>Rationale of compensation is not transparent.</b> Does not recognise the difference between shortfall, late and non-payments for excise clients.</p>	<p><input type="checkbox"/> Incentive to prompt payment. Administrative costs would be reduced by using an explicit cost-based de minimis below which additional duty is not applied and applying a grace period. Administrative costs could be reduced further if it were decided, in phase two, not to apply additional duty where clients voluntarily disclose.</p>	<p><input type="checkbox"/> Could discourage non-compliance in some circumstances. Could recognise that shortfalls can be accidental Could reward voluntary disclosure and compliance for all clients; rewarding voluntarily disclosure could effectively maximise core duty collected.</p>	<p><input type="checkbox"/> Could be consistent across all clients, depending on future decisions around scope and voluntary disclosure. <b>Not consistent with Inland Revenue's distinction between compensation + penalty.</b></p>	<p><input type="checkbox"/> Provides compensation. Could be extended to shortfall payments on imports and non-payments for imports and incorrect repayments.</p>

**In-Confidence – Preliminary Regulatory Impact Analysis**

**Unclassified**

Option	Complies with principles of administrative law and international obligations	Administratively efficient	Effectively encourages voluntary disclosure, discourages non-compliance	Comprehensive and consistent	The Crown is not financially disadvantaged
<p><b>Option three - Compensation + penalty.</b>  <u>Payment shortfall.</u>                      Declarant and excise client may incur administrative penalty. Excise clients incur interest and a penalty. <u>Late and non-payment.</u>                      Excise payer and maybe importer incur interest and a penalty. <u>Application to importers and incorrect repayments.</u>                      yet to be determined</p>	<p>☐☐ Has legislative sanction, meets international obligations. Rationale of compensation is transparent. Compensation would be proportionate and distinguished from penalty. Recognises the difference between shortfall and late payments for all clients.</p>	<p>☐☐ Incentive to prompt payment. Could reduce administrative costs depending on further design decisions.</p>	<p>☐☐ Could discourage non-compliance. Could reward voluntary disclosure for all clients.</p>	<p>☐☐ Could be consistent across all clients. Consistent with Inland Revenue's distinction between compensation + penalty.</p>	<p>☐☐ Fully compensates the Crown. Could be extended to shortfall and non-payments for imports and incorrect repayments.</p>
	<p>Much better than status quo☐☐</p>	<p>Better than status quo☐</p>	<p>Better than status quo☐</p>	<p>Better than status quo☐</p>	<p>Better than status quo☐</p>

**In-Confidence – Preliminary Regulatory Impact Analysis**

**Unclassified**

**In Confidence - Preliminary Regulatory Impact Analysis**  
Unclassified

Summary of impacts

77 The tables below compare the financial impacts of options one and two, based on three scenarios. They exclude core duty and the shortfall payments assume a non-disclosed entry error and a lack of reasonable care:

**Option one: status quo**

	Scenario 1: shortfall payment \$50,000, 5 months overdue	Scenario 2: shortfall payment \$10,000, 36 months overdue	Scenario 3: late payment \$1,000, 5 months overdue
Excise client	\$7,964	\$11,418	\$159
Declarant: deferred payment import	\$10,000	\$2,000	none
Importer: deferred payment	none	none	\$159

**Option two: amended additional duty**

	Scenario 1: shortfall payment \$50,000, 5 months overdue	Scenario 2: shortfall payment \$10,000, 36 months overdue	Scenario 3: late payment \$1,000, 5 months overdue
Excise client	\$7,500	\$7,700	\$150
Declarant: deferred payment import	\$10,000	\$2,000	n/a
Importer: deferred payment	Application of this sanction to shortfall payments on imports will be determined in phase two		\$150

78 The difference between options one and two would be small.

**Option three: compensation and penalties**

79 As part of phase two, further design work needs to be done before the wider impacts of option three on different parties can be identified. The Crown could incur additional costs if clients were able to seek compensation when Customs makes an error in assessing duty, without first having to appeal to the Customs Appeal Authority. Scenario modelling work needs to be done to assess the likelihood and amount of payments that may be required. Customs estimates that an additional \$2 million to \$4 million of annual non-departmental appropriation may be required by Customs for this purpose.

Conclusion and recommendations on options for sanctions

80 Option three is the preferred option. It would improve transparency, be proportionate and recognise the different nature of shortfall and late payments. It also meets stakeholders' wish for Customs to adopt a compensation and penalty regime similar to Inland Revenue's.

**Recommended option:**

Agreement in principle is sought to a modern, transparent, sanctions regime for incorrect payments which:

- Provides for and distinguishes between compensation for the time value of money and penalties to deter and punish.
- Distinguishes between payment shortfalls and late payment.
- Could cost-effectively encourage voluntary disclosure.
- Requires non-compliant clients to pay the Crown interest to compensate it for not having the use of duty.

- Provides for Customs to compensate clients disadvantaged by a Customs' error, without the client needing to appeal to the Customs Appeal Authority.
- Provides for a de minimis and grace period in Customs' remissions policy.

**Phase two:**

Given agreement to the new regime above, Customs will undertake further design work in phase two, including determining:

- The scope of the sanction - whether it would apply to importers making shortfall payments or failing to pay and whether it would apply to incorrect repayments.
- The design and operation of the compensatory interest rate.
- The nature and level of the penalties.
- The interface with administrative penalties and other sanctions.
- How the new incorrect payment sanctions regime can best encourage voluntary disclosure.
- The appropriate extent, in the Customs context, to align with Inland Revenue's review of business tax.
- Whether Customs remissions policy, de minimis and grace period should be in regulations and/or published.
- The impact on Crown revenue.

## Options: When should duty be collected in case of dispute?

- 81 The following analysis applies to the situation where a client enters into a dispute<sup>16</sup> over Customs' assessment of duty or application of additional duty. None of the options would affect the operation of the administrative penalties regime.

Status quo: payment due date is not affected by appeal

### Description

- 82 With shortfall or late payments, Customs notifies clients of the amount of core and additional duty owing and the new due date for payment. A client's obligation to pay on that date is not suspended by any appeal or legal proceedings. If payment is not made by that date the client will incur further additional duty.
- 83 This option reflects the presumption in section 92 of the Act that Customs' assessments of duty shall be taken to be correct and that consequently duty shall be payable accordingly unless (and until) overturned or amended by the Customs Appeal Authority.

<sup>16</sup> This includes disputes to the Customs Appeal Authority and the Courts.

## Analysis

- 84 Stakeholders view the status quo as unfair, failing to recognise genuine disputes over the interpretation of the law. They view section 92 as contrary to the criminal law premise that a person should be presumed innocent until proven guilty. Disputes over duty are civil, not criminal, law matters.
- 85 This option is clear and predictable. In terms of administrative law principles, there are comparable provisions in other legislation:
- The payment date for levies to the Accident Compensation Commission is similarly unaffected by disputes.
  - If a taxpayer takes a dispute to the Taxation Review Authority or to Court, the obligation to pay the tax in dispute is deferred. Despite deferral, use-of-money interest generally continues to accrue on any unpaid tax until it is paid.
- 86 The status quo, whereby payment dates are unaffected by disputes, ensures that clients have no incentive to enter into dispute solely to postpone payment. Disputes incur administrative costs for both Customs and the Customs Appeal Authority. Early payment also financially benefits the Crown.

Option two: payment of core and additional duty is postponed pending appeal decision

## Description

- 87 Under this option the payment date for all core duty and any additional duty or other financial sanction for incorrect payments would be postponed pending resolution of the dispute. If a decision favoured Customs, additional duty or compensatory interest would be backdated.

## Analysis

- 88 This option was considered fair by stakeholders. However, this option has a number of disadvantages. It would:
- Enable clients to enter into disputes for the purpose of postponing payment. Disputes can last for a year or more. This option would incur significant administrative costs for Customs and the Customs Appeal Authority if the number of disputes were to increase.
  - Financially disadvantage the Crown as it could result in Inland Revenue providing clients with input credits for GST on imports when the GST has yet to be paid to Customs.<sup>17</sup>

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<sup>17</sup> If GST is invoiced, but not paid to Customs prior to a dispute, a GST-registered importer on invoice basis will still be able to claim an input tax deduction and will have the benefit of the Customs GST until it is eventually paid on finalisation of the dispute.

- Introduce further administrative complexity, requiring a system to track and trace postponed payments and reconcile particular instances of non-compliance with particular payments of core and additional duty.

Option 3: due payment date for 100 percent of core duty unaffected by dispute but payment of additional duty, compensation and penalties postponed pending dispute resolution

### Description

89 Under this option all core duty would need to be paid by the due date to avoid further additional duty or compensatory interest. However, the payment date for additional duty or compensation and penalties for incorrect payments would be postponed pending dispute resolution. If a decision favoured Customs, compensatory interest would be backdated.

### Analysis

90 This option would be clear, predictable and align with administrative principles. Whilst stakeholders were not consulted on this option, as it was developed post-consultation, they are likely to prefer this option to option one.

91 The timing of GST input credits would cease to be a problem and postponing the payment of the financial sanctions would not disadvantage the Crown as if Customs' assessment were upheld, additional duty or compensatory interest would be back-dated.

92 Compared to option two it would reduce the incentive to enter into disputes and consequently administrative costs. However, an incentive would still exist where the sum disputed was large and Customs was applying additional duty or compensatory interest over a long period. To that extent, it would still increase administrative costs.

93 Payment complexity would be even greater than in option two.

Comparison of options: When should duty be collected in case of dispute?

94 The table below compares the options. The criterion of "effectively encourages voluntary compliance and discourages non-compliance" was not included as it is not relevant to the timing of disputed payments. The comprehensive and consistent criterion is relevant but has not been included as all options would apply consistently across all clients.

Key:  partially meets the criteria     meets the criteria     doesn't meet the criteria

Option	Complies with principles of administrative law and international obligations	Administratively efficient	The Crown is not financially disadvantaged
<b>Status quo:</b> Due payment date for core + additional duty unaffected by dispute.	<input checked="" type="checkbox"/> Has legislative authority. Stakeholders do not consider this option recognises genuine disputes over the intention and application of the law.	<input checked="" type="checkbox"/> Discourages clients from entering into disputes to postpone payment, avoiding costs for Customs.	<input checked="" type="checkbox"/> No problem with GST input credits. Crown benefits from earlier collection of core duty.
<b>Option two:</b> Payment due date for core duty and financial sanctions for incorrect payments postponed.	<input checked="" type="checkbox"/> Has legislative authority. Stakeholders may consider this option recognises genuine disputes over the intention and application of the law,  Better than status quo <input type="checkbox"/>	<input type="checkbox"/> Enables clients to enter into disputes in order to postpone payment, creating costs for Customs. Complex to track and reconcile payments. Worse than status quo <input type="checkbox"/>	<input type="checkbox"/> Can result in clients receiving GST input credits prior to paying GST.  Worse than status quo <input type="checkbox"/>
<b>Option three:</b> Due payment date for 100% of core duty unaffected by dispute; Payment date for financial sanctions postponed.	<input checked="" type="checkbox"/> Has legislative authority. Stakeholders may consider this option recognises genuine disputes over the intention and application of the law,  Better than status quo <input type="checkbox"/>	<input type="checkbox"/> Enables clients to enter into disputes in order to postpone payment of financial sanctions but incentive to do so would exist only where additional duty or other financial sanctions are high. Complex to track and reconcile payments. Worse than status quo <input type="checkbox"/>	<input checked="" type="checkbox"/> No problem with GST input credits. Crown benefits from earlier collection of core duty.  As good as status quo <input type="checkbox"/>

### Impacts of options

95 As the status quo best meets the criteria, no change is proposed.

### Conclusion and recommendation on when should duty be collected in case of dispute

96 The best option is the status quo, whereby the new due date for payment is not affected by clients entering into dispute. This option most effectively ensures that clients do not enter into disputes solely to postpone payment.

**Recommended option:**

That the due payment date for core and additional duty continue to be unaffected by dispute.

### Consultation

97 Public consultation on the proposals was undertaken from March to May 2015 with 16 of the 91 submissions received commenting on additional duty. Submissions from business indicated:



- Additional duty is seen by many as disproportionate to its purpose and unduly onerous.
- Support for Customs' penalties aligning with Inland Revenue's penalties where warranted.
- Additional duty should not apply where payment has been made on time but there is a shortfall. A form of 'use-of-money interest' should be used in these situations.
- Support for penalties should be waived in the case of voluntary disclosure or inadvertent under-payments.
- There should be a cap on penalties.
- 'Two-way' interest provisions that apply to both under-payments and over-payments by businesses.
- Business should not be penalised for receiving a refund or drawback from Customs in error. Some form of compensation to the Crown may be appropriate.
- Most submitters considered duty payment should be deferred before a dispute is settled. Submitters did not support applying additional duty while an assessment is under dispute.

98 In addition to the public consultation the following private sector organisations were consulted by email in January 2016 on high level options for modernising sanctions for incorrect payments: [REDACTED] [REDACTED] Lion, Ernst & Young, PriceWaterhouseCooper, KPMG, Deloitte, Gull/Terminals New Zealand, Chartered Accountants Australia New Zealand, New Zealand Food and Grocery Council and Blackburn Croft. Their comments can be summarised as:

- Support for a penalty and compensation model, replacing the current regime.
- Aligning with Inland Revenue's approach is preferred. It provides a whole of government approach and is broadly understood by business, recognising that there may be reasons for divergence.
- Support for compensation (interest) on under-payments and over-payments.
- Voluntary disclosure should be encouraged for shortfall payments; i.e. reducing or cancelling the penalty at least for lower levels of offending.
- Some businesses see the Inland Revenue interest rates as too high.
- Some caution around using compounding rates or additional penalties for continued late payment; e.g. additional penalties are not necessary as interest continues to accrue.
- Payment of core duty and penalties should be deferred where duty is disputed.

- Clients should be compensated for over-payments without having to go through a disputes process.
- 99 The options presented in this RIS have taken these views into account, or they will be taken into account in phase two of the work. The main divergence has been the recommendation that the payment due date for core duty and additional duty is unaffected by dispute (status quo). The status quo is preferred because this option effectively ensures that clients do not enter into dispute solely to postpone payment.
- 100 Customs established a Senior Officials Advisory Group and the Stakeholder Reference Group in early 2014. These Groups met regularly during the review and were consulted on the issues and recommendations in this paper.<sup>18</sup> Comments were received from the Customs Brokers and Freight Forwarders Association (CBAFF), Ministry of Justice and Inland Revenue.
- 101 CBAFF commented:
- There should be no interest or penalties where there are delays caused by Customs.
  - Customs should pay "additional duty" or "interest" on any overpayments or situations in which Customs proves to have incorrectly recovered duty.
  - Tools such as giving grace periods, or warnings to encourage voluntary disclosures and voluntary compliance should be in legislation, rather than in policies and procedures.
- 102 Ministry of Justice commented:
- The two-way approach to compensatory interest is important. On the interest rates set, clients should be discouraged from using the Crown as a borrowing facility.
  - There is a risk of judicial review if remissions policy is not set in legislation.
  - There is a need to consider how penalties for incorrect payments relate to existing offences and other penalties, and it should be explained why administrative penalties are needed.
- 103 In addition, the Treasury was consulted and noted the likely net financial outcome of a loss of Crown revenue (and the need for a new appropriation) arising out of Customs paying interest on overpayments more regularly. The need for an

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18 Members of the Senior Officials Advisory Group include: the Ministry of Justice, the Ministry for Primary Industries, the Ministry of Business, Innovation, and Employment, New Zealand Police, the Ministry of Transport, Inland Revenue, the Department of Internal Affairs and the Department of the Prime Minister and Cabinet. The Stakeholder Reference Group includes representatives from: the Importers' Institute, New Zealand Shippers' Council, Port CEO Forum, New Zealand Airports Association, Business New Zealand / Export New Zealand, Board of Airline Representatives New Zealand, International Container Lines Committee, Customs Brokers and Freight Forwarders Federation of New Zealand, the Conference of Asia Pacific Express Carriers, and Shipping New Zealand.

additional non-departmental appropriation has been noted in the analysis of the options and in the Cabinet paper.

## Implementation

- 104 A Bill is intended to be introduced to the House in 2016. Further work is to be undertaken on the detail of a new penalty and compensation regime.
- 105 From an operational perspective Customs will need to establish:
- Operational guidelines, including enforcement intervention guidelines, to help ensure that Customs officers issue penalties in a fair and consistent manner.
  - A training programme to ensure that Customs officers and other relevant staff are aware of the use and purpose of the changes and can competently issue penalties in accordance with the legislation and associated enforcement intervention guidelines.
  - A comprehensive plan for ensuring a seamless transition from current provisions to the new regime.
  - An automated system to ensure that clients have timely interaction with Customs for any shortfall or late payment.
  - An industry engagement plan to publicise the changes and ensure business understands the new requirements and knows how to comply.
- 106 Customs will also engage with industry to publicise the changes and ensure business understands the new requirements and knows how to comply.

## Monitoring, evaluation and review

- 107 An evaluation and review process for the sanctions regime for incorrect payments will be established by Customs after a period of implementation of the legislative amendments. This will include engaging with business to ensure ongoing evaluation and review of the efficiency and effectiveness of the system from a business and Customs perspective. Monitoring will be built into normal reporting and assurance (including audit) functions.
- 108 Customs will continue to meet regularly with key industry groups, which will assist in identifying problems as early as possible.
- 109 Performance measures will be established as part of a monitoring, evaluation and review plan to measure the effectiveness of the new regime. The planned introduction of electronic submitting of excise entries will enhance monitoring of excise clients and debt management. Customs will however need to collect additional data for monitoring and evaluation purposes.
- 110 The evaluation and review process will be part of the overall evaluation programme for the new legislation.