

Regulatory Impact Statement

Customs and Excise Act Review: Timeframes for Import Entries

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Regulatory Impact Statement

Customs and Excise Act Review: Timeframes for Import Entries

Agency Disclosure Statement

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

It provides an analysis of options to address various issues regarding the setting of timeframes for the submission of import entries.

The following are constraints on the analysis:

- public consultation was undertaken on the proposal considered in this RIS to require import entries to be submitted prior to the arrival of goods in New Zealand. Eleven submissions were received on the proposal and views were mixed. Customs has had further discussions with some businesses that would be affected (eg importers, brokers, shipping agents). Some businesses are concerned that they do not always have all of the information needed to complete the import entry prior to goods arriving in New Zealand. Those concerns have been taken into account in the measures proposed to mitigate the impact of this change.
- there is a lack of quantitative information in some areas and quantitative information was not provided by businesses through the consultation process. This RIS therefore makes assumptions and uses anecdotal evidence and comparative information in some areas where data is not yet available. For example, Customs has not been able to produce figures on the number of import entries submitted after goods arrival by traders who are not part of Customs' deferred payment scheme. In addition, Customs does not have data about the reasons why some import entries are submitted after goods arrive.
- the impacts, including the financial impacts, of some options in this RIS are estimated based on assumptions about the proportion of imported goods or importers that may be affected by the change.

The impacts discussed in this paper are primarily on importers and their agents including customs brokers, and Customs in its role of managing risks and revenue collection at the border while facilitating trade.

Signed by Michael Papesch on 14 September 2015

Michael Papesch
Group Manager Policy, Legal and Governance

14 September 2015

Executive Summary

1. Customs proposes that importers be required to submit information (in a form known as an import entry) about goods they are importing into New Zealand prior to the arrival of goods into New Zealand. Currently legislation allows import entries to be lodged before the date on which goods are to be imported or within 20 working days after the date of importation of goods.
2. The purpose of this change is to ensure that Customs and the Ministry for Primary Industries (MPI) have the information they need to undertake risk assessment prior to the arrival of goods into New Zealand. This avoids a situation where goods that may pose a biosecurity or other risk can be moving around New Zealand before Customs and MPI have sufficient information to determine if the goods are high or low risk, and take appropriate action to protect New Zealand. This change is consistent with Australia and the United States.
3. This change may pose some challenges for importers, who are concerned they do not always have the information they need to complete the import entry prior to the goods arriving in New Zealand. Customs also proposes that measures to assist importers to comply, and to avoid unnecessarily penalising those who try to comply, are introduced. Not all of the changes proposed require legislative change.

Background

4. On 13 November 2013 Cabinet approved a review of the Customs and Excise Act [EGI Min (13) 27/13 refers]. Ministers noted that a review is required due to the Act's increasing inability to efficiently respond to changes in technology, business practices and government policy. Ministers noted that the Act is overly prescriptive and is becoming increasingly unworkable in an environment designed to enhance facilitation of low risk passengers, goods and craft through border processes.

Status Quo

5. Customs and MPI are responsible for managing risk at the border. The border provides a brief, one-off opportunity to intervene to ensure that goods that could be harmful to New Zealand and New Zealanders do not enter the country. The significant, and growing, volumes of imports mean that efficient risk assessment is based on timely, accurate information in a codified format as the basis of risk assessment.

Existing legislative framework

6. The Customs and Excise Act 1996 establishes the responsibilities of importers to supply information to Customs which is then used by Customs for risk management, revenue collection, and statistical purposes.
7. Information about imported goods is required to be declared to Customs and MPI in the form of an 'import entry'. An import entry is an electronic message submitted

by an importer or their agent (eg a broker) through the Trade Single Window which enables importers to submit information once to both agencies. Import entries provide full details of goods, including the value, origin, and tariff classification of the goods, and are required to be submitted for goods valued at NZ\$1,000 or more.

8. Regulation is used to specify the timeframe for the submission of import entries. Currently regulation allows import entries to be lodged before the date on which goods are to be imported or within 20 working days after the date of importation of goods. The current timeframe for the lodgement of import entries was originally designed for a primarily paper-based system, with lower volumes of imports, and when Customs had limited capacity to apply advanced targeting for risk assessment and therefore less of a need to receive information in advance.
9. The data in import entries is required to be in line with World Customs Organization standards for three reasons:
 - To quickly and systematically assess risk (this would not be possible if information was provided in a variety of formats);
 - To enable Customs to calculate what revenue is due and when it is due;
 - To provide a documentary basis for prosecution in the event of unlawful activity being discovered.
10. Import entries are the primary instrument used by government to assess risk posed by incoming cargo. Data contained within import entries is analysed against other information held by these agencies. Cargo that may be a risk is automatically identified, so an appropriate response can be made.
11. The Customs and Excise Act also enables goods that have arrived in New Zealand and not yet been cleared by Customs, to be moved between Customs Controlled Areas¹. This enables importers, and transport and logistics companies to move cargo from ports to their own facilities, which may be closer to market, and avoid storage charges that would otherwise be applied by the port or airport company.
12. The Customs and Excise Act includes an administrative penalties regime that penalises the declarant of the import entry if any data is inaccurate. Penalties range from a minimum of \$200 for an error that has no revenue impact for the Crown, to \$50,000. Penalties increase based on the revenue impact and the level of culpability. A separate proposal is seeking minor changes to this regime (largely to lower the level of penalties). Penalties are not applied where the declarant voluntarily discloses an error to Customs. As the proposal on administrative penalties discusses, this regime has been very effective in encouraging voluntary disclosure of penalties and lifting the quality of import information provided to Customs and MPI.

¹

Customs Controlled Areas (CCAs) are licenced areas to enable Customs to control and facilitate the movement of goods, people and craft to and from New Zealand, and provide controls over the manufacture and import of excisable goods. Examples of CCAs include processing areas within airports and seaports, and areas where excisable goods are manufactured (eg, licensed manufacturing areas for alcohol and tobacco). There were approximately 1,087 CCAs as at December 2014.

Problem definition

The current framework is problematic for risk assessment

13. The primary problem is that the current timeframe for provision of information for goods arriving by sea and air means goods can be in New Zealand, and moving between Customs-controlled areas and biosecurity transitional facilities, for up to 20 working days before being risk assessed by Customs and MPI. This is particularly a risk for goods that are not imported in full container loads, where partial containers need to be unpacked and handled. This creates an opportunity for items to be added or removed from shipments. A recent case that Customs is currently dealing with exploited this opportunity.
14. This gap makes it very difficult for Customs and MPI to provide assurance to the Government that risk items are not entering New Zealand.
15. Customs' data shows that most import entries are made in advance of goods arriving in New Zealand. In 2014 77.33 percent of import entries were submitted on or before arrival². In addition to this, almost all import entries are made within three days of the arrival of goods in New Zealand. See the table in Appendix A for more detail.
16. For the majority of traders the 20 working day period for the submission of import entries after importation does not align with standard business practice which seeks to have goods cleared and available as soon as possible after arrival.
17. Customs has investigated the 20 to 25 percent of entries that are lodged after importation to determine if there were specific conditions preventing the submission of entries prior to arrival. The analysis did not show any specific factors, such as importing a specific type of goods, or particular importers being consistently late. The only identifiable pattern was a high proportion of goods classified as 'personal effects' being submitted late.
18. Customs has discussed the possible reasons for late submission with industry members. Based on their feedback, we believe that late submission is driven by a combination of the following set of factors:
 - the supplier of the goods can be slow in providing the information required to lodge an entry;
 - inexperienced or irregular importers not understanding the requirements of the system;
 - the system incentivises provision of all information at once rather than early provision of some information. Administrative penalties are applied where information is inaccurate so there is an incentive to not provide information until the declarant is confident all of the information is correct
 - the current 20 working day timeframe provides scope for traders to delay paying duty by delaying entry submission.

² This figure represents a combined total for sea and air cargo entries. In 2014 81.75 percent of sea cargo entries and 74.95 percent of air cargo entries were submitted on or before arrival.

The current framework links revenue and risk assessment processes

19. Currently, the import entry also creates the revenue liability for an importer. Under the Customs and Excise Act, duty (including GST) and Customs charges on all imported goods constitutes, immediately on importation of the goods, a debt due to the Crown.
20. 70 percent of revenue owing is assessed and transferred to Customs by professional brokers using automated processes through deferred payment accounts. The deferred payment scheme operated by Customs is enabled by the current Act which empowers the Chief Executive of Customs to allow deferred payment of duty for traders or classes of traders. Customs currently allows deferred payment for traders that meet Customs' approval criteria.
21. Customs' deferred payment scheme benefits both Customs and its clients. It allows approved importers who are registered for GST to defer payment of duty (including GST) and Customs charges accounted for on import entries to the month following the importation of the goods. Clients gain flexibility, which assists their revenue compliance, while the scheme also minimises the transaction cost of revenue collection for Customs.
22. Some importers - who are not members of the deferred payment scheme - may be deferring lodgement of an import entry based on commercial cash flow considerations, utilising the period provided by the current 20 working day timeframe to delay payment of charges and duties. We believe this design feature of the current Act provides a disincentive for some traders to lodge entries in a timely manner, thus slowing down Customs' and the Ministry for Primary Industries' ability to assess risk.
23. Extracting data on the specific number of traders deferring import entry lodgement to manage the timing of payments to Customs would be difficult and costly. Given that three quarters of import entries are lodged before arrival, and 70 percent of revenue is paid through deferred payment, the number of traders deferring lodgement of an import entry based on commercial cash flow considerations will be small. Customs does not have available data on the relationship between those on the deferred payment scheme and the submission of late entries.

Early submission of entries

24. The current framework does not currently specify a timeframe for entries to be made prior to date of import. Importers can, and some do, submit entries weeks or even longer, prior to the actual importation of the goods (see Appendix A for more detail).
25. Delays in submitting entries, and in Customs has examples of importers who have made an early entry, triggering their liability to pay GST. They then hold off paying the GST to Customs, as the delivery order is not yet required. GST registered traders can apply to Inland Revenue for an input credit on their projected duty liability. The risk arises where an importer cancels an import entry having received a tax credit, but has not yet paid the GST to Customs. Customs does not chase

the GST because the entry has been cancelled, but Inland Revenue has paid the refund. The only way this type of activity could be picked up is in an audit.

26. In addition to this more serious revenue risk, importers may use early submission of the import entry to enable them to claim their input credit well in advance of payment of GST. Traders on the deferred payment scheme do not need to pay Customs until the month following the importation of the goods. Submitting an import entry well in advance of the goods' arrival may be a way to temporarily increase cashflow at the Crown's expense. Customs has established some occurrences where this has happened with multi-million dollar capital items. The cash flow can be considerable.
27. Criminal groups may use the early lodgement of an entry to test if Customs intends to inspect their shipment. If the goods are cleared quickly, prohibited goods may be packed in a shipment after the entry has been made, before the goods have left for New Zealand.
28. The early submission of import entries is a significantly smaller problem than the late submission of entries. It is, however, included here as the whole process for import entries has been considered.

The status quo is out of step with comparable jurisdictions

29. In Australia and the United States information for cargo risk assessment is required ahead of the arrival of goods based on a view that risks are best managed as early in the supply chain as possible. It is highly likely that Canada will shortly move towards a similar arrangement based on the objectives outlined in the joint Canada-United States Integrated Cargo Security Strategy (ICSS).
30. New Zealand's reputation for managing the border to high security standards has gained the confidence of key partners, such as the United States. Maintaining New Zealand's positive reputation is essential for the free flow of secure trade through the ports of partner countries. Alignment in risk assessment is important in maintaining the confidence of key partners.

Objectives

31. To identify options Customs formulated the following objectives for import entries:
 - Ensure that Customs and MPI can undertake risk assessment prior to the arrival of goods in order to protect New Zealand
 - Ensure that revenue due to the Crown is paid in a timely way, and risks to revenue avoidance are managed
 - Ensure that the penalty framework incentivises compliance and voluntary disclosure
 - Avoid unnecessary compliance costs for business and costs for Customs

Options

32. Three options were developed for the timeframe for entries. The status quo was considered to be an option, with the addition of further outreach and education by Customs to encourage earlier submission of import entries. Two additional options were developed. Both options require entries to be submitted no earlier than a set number of days in advance of goods arriving in New Zealand. The exact number of days will need to be determined by Customs and the Ministry for Primary Industries in consultation with business. The objective is to reduce the opportunity for gaming the revenue system, and allow sufficient time for risk assessment to be undertaken.
33. Option one requires entries to be submitted no later than 72 after arrival on the basis that the vast majority of import entries are already submitted in this timeframe. Option two requires all entries to be submitted no later than the arrival of the goods in New Zealand.

Status quo with additional outreach and education.	Option one – Entries lodged a set number of days before arrival and 72 hours after arrival.	Option two – Entries lodged a set number of days before and no later than arrival.
<ul style="list-style-type: none"> • Entry lodged any time in advance. • Entry lodged up to 20 working days after arrival. • Customs undertake additional outreach to encourage entries to be made before arrival, and investigate entries made significantly in advance. 	<ul style="list-style-type: none"> • Entry lodged no more than a set number of days in advance of arrival. • Entry lodged within 72 hours of arrival. 	<ul style="list-style-type: none"> • Entry lodged no more than a set number of days in advance of arrival. • Entry lodged no later than the arrival of goods into New Zealand.

Mitigations included in the options

34. In developing the options, Customs developed a package of mitigations to manage the impact on business of needing to submit import entries within 72 hours of goods arriving or prior to the arrival of goods in New Zealand. These mitigations are based around the four reasons identified for why importers may not submit entries before goods arrive, and are included in options one and two. Those reasons, and the mitigations, are set out below.

Reason one: the supplier of the goods is slow in providing the information required to lodge an entry

35. Importers and brokers have told us that they are reliant on the supplier of the goods for some of the information on the import entry. This can include information about the value, physical description or transport arrangements for the goods. If the supplier of the information doesn't provide this information to the importer or

their agent prior to arrival of goods in New Zealand, they are unable to complete the import entry. Customs understands that obtaining the value of the goods is particularly challenging as this can change while goods are en route to New Zealand. A separate Cabinet paper proposes that importers be able to include a provisional value in their import entry and update the value within a set timeframe after the goods arrive. Customs considers that this measure will mitigate the impact of the proposal to require import entries to be made before the arrival of goods.

36. Customs will also work with importers in the development of the regulations to determine if other information is consistently slow to be supplied, and could be managed in a similar way. Customs believes it would be possible to have flexibility for certain information contained on an import entry.

Reason two: inexperienced or irregular importers not understanding the requirements of the system

37. The additional outreach and education proposed in the status quo option would also be a feature of options one and two to address this issue. The only recognisable trend in the data analysis undertaken by Customs to understand why some import entries are made late was a high proportion of goods classified as 'personal effects'. This would indicate that Customs' outreach activities should, in the first instance, be directed at removal companies and include easily accessible information on the Customs website for people moving (back) to New Zealand.

Reason three: the penalty system incentivises provision of all information at once rather than early provision of some information

38. Administrative penalties are applied where information in import entries is inaccurate so there is an incentive to not provide information until the declarant is confident all of the information is correct. The measures outlined for Reason one will help to mitigate this risk. In addition, as long as importers voluntarily disclose that some information may not be correct, they will not be penalised.

Reason four: the current 20 working day timeframe provides scope for traders to delay paying duty by delaying entry submission

39. We have been told by industry that importers not on the deferred scheme delay submitting their entries to delay paying duty. We considered changing the trigger for payment of duty from the submission of the import entry to Customs issuing the delivery order. This would mean that duty wouldn't have to be paid before the goods arrive (ie when the entry is made) but would have to be paid before the goods could be released to the importer by Customs.
40. As noted earlier, Customs does not have complete data on the number of importers who submit entries late in order to delay paying duty, but it is likely that the numbers are small. Changing the trigger for payment would require substantial changes to Customs' finance system, including changes to IT systems. It also represents a different approach to that taken by Australia which requires payment at import unless traders are registered for GST deferral through the Australian Tax Office (ATO).

41. Changing the trigger could also dissuade some importers from joining the deferred payment scheme. Customs' preference is for regular importers to be on the deferred scheme as it reduces costs for them and for Customs. There is, however, scope for reviewing and expanding the scheme, as it has not been substantially altered since 2002. Instructive in the consideration of reform is the Australian deferment system which includes robust, but less restrictive criteria for scheme membership than the New Zealand scheme. No legislative change is required to change Customs' approach to the deferred payment scheme which would expand membership of the scheme, thereby providing greater payment flexibility.

Options analysis

42. The three options were assessed against a range of criteria based on the objectives identified above. The analysis is rated on the following scale:

✓	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

In-Confidence–Unclassified

	Status quo	Option One	Option Two
Enable Customs and MPI to undertake risk assessment before goods arrive in NZ	<p>✖✖</p> <p>Customs/MPI would continue to receive risk assessment info after goods arrival.</p> <p>Education/outreach may only have a marginal effect on improving submission times.</p>	<p>✖✖</p> <p>Customs/MPI would continue to receive risk assessment info after arrival of goods. Within 72 hours of arrival, goods may have been moved from their initial port of arrival, which creates biosecurity risk and risk that prohibited goods could be extracted from the shipment.</p>	<p>✔✔</p> <p>Customs/MPI would receive risk information ahead of arrival of goods.</p>
Ensure revenue is paid in a timely way and risks are managed	<p>✖</p> <p>Import entries may continue to be submitted too far in advance.</p>	<p>✔✔</p> <p>The vast majority of traders will not be impacted. The small number of importers who currently submit entries more than 3 days after arrival may experience difficulties in supplying information to Customs, although mitigations will address this.</p>	<p>✔✔</p> <p>The majority of traders will not be impacted. The 20-25% of importers who currently submit entries after arrival of the goods may experience difficulties in supplying information to Customs, although mitigations will address this. Revenue risk associated with early entries will be dramatically minimised.</p>
Ensure the penalty framework incentivises compliance	<p>✔✔</p> <p>No change</p>	<p>✔✔</p> <p>No change.</p>	<p>✔✔</p> <p>No change</p>
Avoid unnecessary costs for business and Customs	<p>✔✔</p> <p>No change</p>	<p>✔</p> <p>There may be some additional costs for a very small number of traders in getting information earlier than currently</p>	<p>✔</p> <p>There may be some additional costs for a small number of traders in getting information earlier than currently</p>

43. The following table sets out the impacts of each option:

	Status quo	Option 1: Entries lodged five days before arrival and 72 hours after arrival.	Option 2: Entries lodged 5 days before and no later than arrival.
Impact on importers	<p>No change</p> <p>Importers or their agents (brokers) have 20 working days to submit entries. Large window of time to provide the information on the entry and pay duty.</p>	<p>Minor change</p> <p>Importers or their agents (brokers) will have a shorter window of time to submit the entry. They may be penalised for submitting the entry late or if there is inaccurate information in the entry. Earlier receipt of information will allow Customs and MPI to process and clear entries with greater efficiency.</p>	<p>Negative</p> <p>Importers or their agents (brokers) will be required to submit entries before arrival of goods. They may not be able to provide all of the information needed on the import entry prior to the arrival of the goods in New Zealand. Earlier receipt of information will allow Customs and MPI to process and clear entries with greater efficiency.</p>
Impact on Customs/MPI	<p>No change</p> <p>Customs/MPI still cannot carry out risk assessment on all goods in advance of their arrival in New Zealand.</p>	<p>No change</p> <p>Some goods will still arrive in New Zealand before risk assessment can be undertaken.</p>	<p>Positive</p> <p>Customs/MPI will receive risk assessment information at a time most useful for assessing cargo risk.</p>

44. **The status quo** would prevent Customs and MPI from receiving risk assessment information in advance of all goods arriving in New Zealand. A programme of trader education and outreach may have an effect on improving submission times for entries; however such a programme would not guarantee uniform submission of entries before arrival.
45. **Option one** would reduce the size of the late tail of import entries by removing the 20 working day window for submission and replacing it with a shorter time frame of 72 hours. This option would be easier than option two for importers to comply with. A shortened timeframe for advanced lodgement would mitigate risks associated with early submission. However, from a risk assessment perspective this option is the same as the status quo. Customs and MPI would not receive risk assessment information before goods arrive in New Zealand.
46. **Option two** would ensure Customs and MPI receive risk information contained on an import entry before goods arrive in New Zealand. A shortened timeframe for advanced lodgement would mitigate risks associated with early submission. Option two may be more difficult for importers to achieve, but Customs believes that these

difficulties can be mitigated the ways identified above, meaning the overall impact would be minimal.

47. On balance, option two better meets the criteria than option one. Option two is supported by MPI.

Consultation

48. During the public consultation process Customs sought submissions on a range of timeframes, including the timeframe for import entry. Eleven submissions received by Customs directly referenced timeframes for import entries. Initial views were mixed with a number supportive of proposed changes, a number supporting further consultation with industry, and a number opposed on revenue and flexibility grounds. Customs incorporated feedback into subsequent proposal design.
49. An area of concern regarding the ability of importers or their agents (brokers) to gather required information from other parts of the supply chain has been expressed to Customs upon further consultation. Customs will continue to engage with stakeholders in the formulation of regulations and in broader implementation to mitigate concerns in this area. Customs believes that the proposals put forward allow flexibility to mitigate legitimate industry concerns.

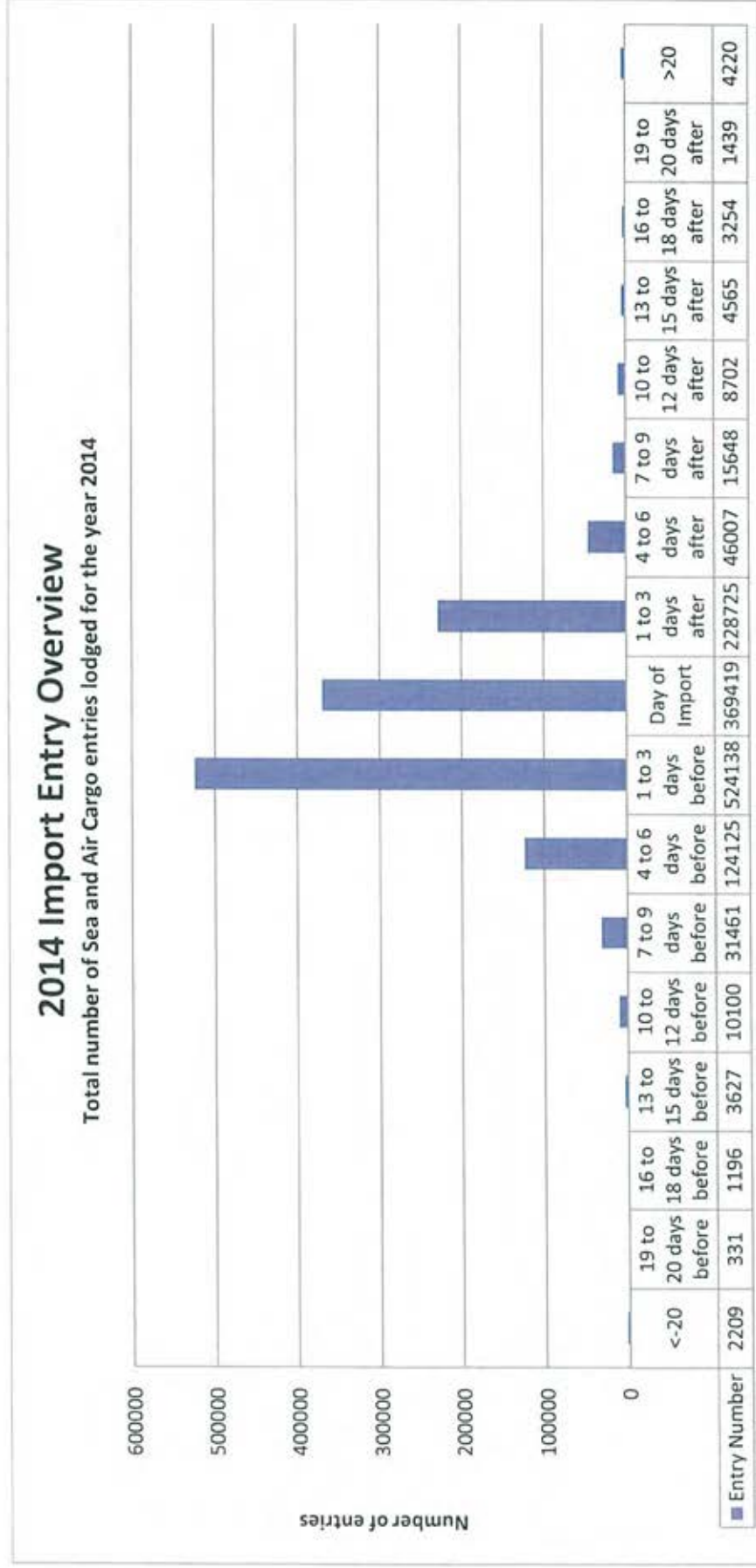
Implementation

50. The recommended proposals, if agreed to by Cabinet, will be given effect by legislation amending the Customs and Excise Act 1996. A Bill is intended to be introduced to Parliament in 2016.
51. The Customs and Excise Act will need to be amended to state that import entries are to be, in principle, lodged before arrival. Power to amend timeframes for certain classes of goods or traders will be retained. Customs will work with industry to ensure that legitimate concerns relating to the timing of the supply of information required to lodge an import entry are considered and mitigated where possible in the implementation phase.
52. Customs will undertake further consultation with industry in implementing the proposed changes and incorporate industry feedback where possible.

Monitoring, evaluation and review

53. Customs will implement monitoring and evaluation mechanisms to ensure the benefits anticipated from the preferred options indicated above are being realised. Such mechanisms will include performance data analysis and a seeking of industry feedback.

Appendix One – Entry Table



1,066,606 sea and air cargo entries were lodged for in 2014 either before or on the date of import. This represents 77.33% of all import entries for the year. 312,560 sea and air cargo entries were lodged after the date of import or 22.67% of all entries. 228,725 or 73.17% of entries lodged after the day of import were lodged within three days of import.