



5 May 2015

Review Team
Customs & Excise Act Review
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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the ***Customs and Excise Act 1996 Review: Discussion Paper 2015***.

NZFGC does not require this submission to be kept confidential nor anonymous.

Yours sincerely

Katherine Rich
Chief Executive

New Zealand Customs Service
CUSTOMS AND EXCISE ACT 1996 REVIEW: DISCUSSION PAPER
2015
May 2015

The New Zealand Food & Grocery Council (the “NZFGC”) welcomes the opportunity to comment on the *Customs and Excise Act 1996 Review: Discussion Paper 2015*.

New Zealand Food & Grocery Council

NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$28 billion in export revenue from exports to 185 countries – some 61% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 46% of total manufacturing income and 34% of all manufacturing salaries and wages. Our members directly or indirectly employ 370,000 people – one in five of the workforce.

Overarching Comment

The review of the *Customs and Excise Act 1996* is recognised as a major undertaking by the Customs Service and NZFGC welcomes the opportunity for streamlining the system and reducing administrative and financial burden of the current system. Several areas stand out as particularly and unnecessarily complex, a feature of changes over time and the outdated approach recognised as now characterising the Act to some degree. These include the process of liability for excise, additional duty provisions, customs areas, the system of refunds and remissions, licensing, deferral of duty, appeals.

The opportunity to review subordinate legislation is also welcomed, and while the Discussion Paper does not refer to a review of Customs Rulings, it is the strong view of the NZFGC that these provisions should be overhauled to provide that all aspects of the Customs legislative regime can be the subject of a formal Customs Ruling. The current narrow focus of the Customs Ruling provisions (tariff classification, duty concessions and origin) does not reflect the myriad of issues faced by business today, where clarity and certainty should be able to be sought from the regulator.

Specific Comments

Approach to Legislation

Q 1: Are there provisions in the current legislation that you think are ambiguous or overly complex? If yes, please provide specific examples

Response: NZFGC is aware members find many provisions in the current legislation overly complex. Our responses to the questions identifies many of these areas.

Q 2: What is your view on principles-based legislation, where the detail is in delegated legislation (Regulations, Orders in Council or Customs Rules)? Please give your reasons.

Response: NZFGC supports principles-based legislation but it is important that the protections of consultation and review continue through the secondary and tertiary levels. We are concerned that the detail which is proposed be contained in the delegated legislation. While

this may be critical to the operation of the primary legislation, it may not have the same transparency or oversight as is accorded to the provisions of the statute.

It is noted that consideration is being given to consultation requirements for the secondary legislation that we understand will be enacted simultaneously with the new Act. It is imperative that such consultation occurs, as under the current statutory regime much of the information is contained in the delegated legislation, and the implementation of it is obscure and not easily accessible to the commercial community. We would also be strongly supportive of more general public consultation on such legislation rather than the closed workshops that have been a feature of the primary legislation. As well, clear parameters around the scope of each level of legislation is important to ensure that a proliferation of rules does not undermine the intent of easy to use legislation.

This development and consultation process should commence immediately, with the preparation of the amending Customs and Excise Regulations and Customs Rules being carried out at the same time as the amending Bill. In our view, this is the only way to allow adequate opportunity for comment and discussion. Alternatively we would strongly support a delay in commencement of the amended Act to allow adequate time for development of the regulations. This is common and appropriate practice in such circumstances.

Q 3: What would be the impact on you or your business as a result of moving administrative detail from the Act to delegated legislation (Regulations, Orders in Council or Customs Rules)? If you think the impacts would be negative, how could Customs manage those negative impacts?

Response: NZFGC understands that so long as there are very clear parameters around regulation making at the secondary and tertiary level, moving administrative detail to these levels of legislation would be considered generally positive. It very much depends on how this goes in practice.

Q 4: Should Customs prescribe consultation requirements for delegated legislation (Regulations, Orders in Council or Customs Rules) in the new Act? If so, what consultation requirements would you expect there to be?

Response: NZFGC strongly supports consultation requirements for delegated legislation. This should comprise mandatory notification of intent in a medium in addition to the Gazette. This need not necessarily be print mediums but at the least publication should be mandated on the relevant Government website(s) and by way of email advisories to interested persons who have registered interest with the Customs Service.

Q 5: What publication requirements would you expect there to be for delegated legislation (Regulations, Orders in Council or Customs Rules)?

Response: NZFGC supports the standard legislated processes for publication but in the current environment, notification of delegated legislation made can be effected where the user might be expected to find it. This is not the New Zealand Legislation website but rather the Customs Service website. Linking notifications would ensure all bases are covered. The Discussion Paper proposes such action for rules but there seems no reason that this be extended to regulations even though these are the responsibility of the Parliamentary Counsel Office. A good model can be found in the Food Standards Australia New Zealand process where Gazetted legislation is notified to interested parties (who have registered their interest i.e. signed up to receive notifications), notified on its website and linked to the Gazette and to the Australian legislation website.

Q 6: Should a new Act include a purpose statement?

Response: Yes. NZFGC notes other recently reviewed Acts have included purpose statements such as the Food Act 2014.

Q 7: Should a new Act include a set of principles?

Response: Inclusion of principles could be helpful but this would depend on the principles proposed.

Information

Customs' information framework and goals

Q 8: What are your views on Customs' principles for how we collect, use, store, share and dispose of information? Is anything missing? Should anything be added?

Response: NZFGC supports the principles set out in relation to information.

Q 9: What are your views on our goal for our information framework?

Response: NZFGC supports the goals for the Customs information framework but notes that the cost of developing such a framework does not feature. NZFGC would not support such a framework at any cost and emphasises that the framework must be cost effective.

Q 10: What are your views on how we should ensure that our information framework aligns with broader government frameworks and initiatives for managing and sharing information?

Response: N/A.

Information sharing

NZFGC urges caution with the proposals contained in the Discussion Paper. While respecting the Government's right to protect our borders, commercially sensitive information is sacrosanct, and must not be released without the express approval of the company or organisation to which it belongs. We submit that consideration of this proposal should be undertaken in conjunction with the provisions "protecting commercially sensitive information".

Q 11: What are your views on how our legislative framework for information works now? Do you see any tensions or uncertainty in how we deal with information in general, or, more specifically, with the information that you provide to us?

Response: NZFGC understands that information sharing has in the past focussed more on personal information than information relating to non-personal information. We would therefore like to see controls around the sharing of non-personal information to protect commercially sensitive information and also to ensure controls around sharing such information internationally.

NZFGC suggests that arrangements to share information with other government agencies should be transparent (published) as to purpose, time period and use by the requesting agency.

NZFGC would, however, support some broadening of the supply of information (not access) within New Zealand that would meet the goal of maximising the value to New Zealand such as by assisting industry groups better appreciate their sector. A closer relationship between Customs and Statistics New Zealand might improve the supply of such information but so too could direct supply of further information.

Q 12: What are your views on how we could improve our legislation or our administrative processes to achieve our goal for information sharing?

Response: A framework for sharing information appears to be a logical approach.

Q 13: Should Customs allow specified government agencies to directly access our information for the purposes of law enforcement, national security, and border protection? Are our principles for how we collect, use, store, share and dispose of information robust enough to address the risks associated with direct access? Are there other protections we should consider for direct access specifically?

Response: NZFGC would suggest that expanding the direct access facility would need to be assessed against issues that have arisen to date with the access currently permitted to ensure the protections are adequate and appropriate for expansion.

Q 14: Should Customs share information with government agencies for broader government purposes beyond border protection? Please give your reasons.

Response: NZFGC can see merit in sharing information with government agencies where the same information is otherwise required to be provided; that is to avoid the need to provide duplicate information.

Q 15: Should Customs share information about goods internationally and with a broader range of overseas agencies? Please give your reasons.

Response: NZFGC is cautious about sharing such information internationally and any such move should be assessed in terms of economic impact on the country and issues relating to potential commercial sensitivity.

Q 16: Should our Act provide an explicit process for Customs to share information with non-government bodies? Please give your reasons.

Response: NZFGC would support the Act providing an explicit process for Customs to share information with non-government bodies where such provision would not jeopardise any business or the country. However, it depends on what the body is and how the information might be used and safeguards on this might be considered.

Q 17: How should Customs protect non-personal, commercially sensitive information? Should protection be through our legislative framework or through other means?

Response: NZFGC suggests that non-personal, commercially sensitive information should be protected through the legislative framework.

Q 18: What concerns do you have about allowing more sharing of the information that Customs holds? How could those issues be managed?

Response: NZFGC considers issues around sharing Customs held information should be manageable through legislation, guidance, audit and reporting. An additional concern is that information potentially might be sought from Customs by non-government bodies for competitive or activist reasons not public good ones. Commercial sensitivity and privacy must be protected as much as possible.

Q 19: What benefits do you see in greater information sharing? In particular, do you see any opportunities for you or your business or organisation?

Response: See above.

Receiving and accessing information

Timeframes for providing information

Q 20: Do you agree that the current process of setting timeframes by Regulation is fit for purpose and flexible enough to accommodate future developments? Please give your reasons. What other processes could we consider, and why?

Response: Since timeframes are generally applied on the supplier of information rather than the recipient (the Customs Service) the question should be asked 'to whose benefit should timeframes change' before asking about the method of setting them.

Q 21: Are all the indicated options for changes to timeframes practical? (Please see the column "Indicative options" in the table on page 49).

Response: See response to Question 20.

Q 22: Are there other timeframes that we have not considered that you think need to change?

Q 23: How would changes to timeframes for providing information affect you or your business?

Q 24: Would your compliance costs be higher or lower if timeframes were changed? If so, what would your costs be, and how significant would the increase or reduction be for you?

Q 25: What protections do you think should be required for Passenger Name Record information?

Q 26: What are your views on our preferred option to remove from the Customs and Excise Act the 28-day window for accessing Passenger Name Record information?

Q 27: How would you be affected if the 28-day window were removed or changed?

Q 28: Do you think the requirement to obtain a District Court warrant would still be a necessary protection under the new “push” system described above? In what situations, if any, should a warrant be required? Are there other measures Customs should be considering to protect Passenger Name Record information?

Response: N/A.

Technology and digital goods

Biometric information

Q 29: Do you agree with Customs’ proposal that our legislation should explicitly recognise that Customs needs to access, collect, use, and share biometric information to carry out our functions? Please give your reasons.

Q 30: If you do agree with that proposal, do you have a view on how long biometric information should be stored so that it can be used and shared for law enforcement purposes? Please give your reasons.

Q 31: Do you think Customs’ access to, and collection, use, and sharing of biometric information requires additional protections above those in place for other types of personal information? If so, what further protections do you think there should be?

Response: N/A.

Virtual and digital goods

Q 32: Would you be affected by legislative change to Customs’ powers in relation to digital files? If so, how?

Q 33: What do you think is the best option to address the gaps that have been identified? What are your reasons?

Q 34: Are there other issues around the cross-border transfer of digital files (other than revenue issues) that are not considered in this section and that you believe should be considered?

Response: N/A.

Business records

Q 35: How would maintaining the status quo (that is, requiring business records to be kept in New Zealand) affect you or your business? If possible, please provide examples that show the scale of any obstacles or issues that this would present for you or your business.

Response: NZFGC supports allowing businesses to store their records off-shore with the prior approval of Customs. The flexibility allowed by this proposal reflects the current technology available, and enables more cost-effective compliance by business.

Q 36: If you were to store your business records offshore, what benefits would this have for your business?

Response: New Zealand manufacturers are increasingly headquartered off shore, in Australia and beyond. Storing business records offshore is therefore a practical and sensible option.

Q 37: Which option do you prefer? Please give your reasons.

Response: See response to Question 36.

Q 38: Are there other parts of the Customs and Excise Act that you think need to be updated because they do not support the use of digital technology or other technological changes in your operating environment?

Response: NZFGC has not had time to assess this area.

Revenue

Excise and excise-equivalent duty

NZFGC considers that the current liability for excise provisions, which is intended to arise at the point of entry for domestic consumption, is skewed for the some parts of the alcohol sector. For example, the liability for excise provisions currently arise at the point of partial or complete fermentation in the beer industry. This is in part due to the ambiguity of the liability provisions. If the rules and regulations were amended such that liability was to arise when goods left a licensed Customs Controlled Area and were entered for domestic consumption, then the point of liability would be much clearer administratively and would remove the need for remission to be regularly sought. Removing the need to seek remissions would remove an enormous administrative burden for both industry and the Customs Service.

System design

NZFGC acknowledges that this section of the Act requires a significant overhaul, and we are encouraged by the thorough review envisaged by the Discussion Paper. We have made general comments about the proposals, but the Review Team will benefit from hearing directly from our members involved in the excise-paying industries who have made submissions.

Q 39: What do you see as the major issues with the collection and administration of excise generally (on alcohol, transport fuels and tobacco)? What impact, if any, have these had on your industry or business?

Response: NZFGC members identify liability, remissions and refunds, and unaccounted stock gains/losses as the major issues with the collection and administration of excise generally.

Q 40: Are there specific issues in excise collection processes that affect small and medium-scale businesses more than others? If so, what are these?

Response: The issues identified in response to Question 39 are of particular concern to small to medium enterprises.

Q 41: Should other alcohol manufacturers be able to be granted permanent licences for offsite storage of product? Should location of the off-site storage matter? What impact if any, does the location of off-site storage have on your business?

Response: NZFGC is strongly supportive of greater flexibility in the licensing of offsite storage of product. With technological advances and rapid changes in supply chain logistics, lack of flexibility is a real cost and barrier to the industry. The ability to licence permanent industry storage facilities would present as a consistent approach. This could be greatly enhanced by aligning the approach in New Zealand with approaches in other countries such as Australia.

Q 42: Are applications (permits) to move goods between Customs Controlled Areas necessary? Do you have a view on what would be a less administratively burdensome process?

Response: NZFGC considers that traceability of goods movement warrants greater flexibility in goods movements and applications to move goods could easily be replaced with electronic tracking methodologies.

Q 43: Should the approach to defining a Licensed Manufacturing Area or off-site storage be standardised? Could Land Information New Zealand boundary data be used? Could local council resource consent approval be used?

Response: NZFGC believes all options are worthy of consideration and that each should be considered and assessed in terms of costs to industry and the Customs Service versus the benefits accruing to each. As noted in response to Question 41, consistency across industry and alignment with other country's practices would greatly reduce administrative and financial costs and enhance the efficiency of the New Zealand system.

Q 44: How can the excise audit system be designed to reduce risk and cost? Should third-party audits be compulsory under certain conditions? What parts of your business are currently subject to third-party audits?

Response: The food industry is familiar with third party audits and most food manufacturers would be subject to such audits for food safety purposes and from some retailers (domestic and export). There are several aspects to third party audit that are critical to secure: very clear audit parameters, training and accreditation of auditors, consistency of audit decisions (very clear guidance), frequency of audit (scaled for performance), expectations of non-compliance, scaling of non-compliance, etc. Should this be pursued, NZFGC and selected members would be pleased to discuss this further.

Definitions

Q 45: Do the definitions of “manufacture” need reviewing to better reflect changing industry practices? How detailed or broad should they be? Should the current definition of manufacture of tobacco be extended to include the curing of tobacco leaf? Please give your reasons.

Response: NZFGC has not had feedback from members on this Question.

Q 46: Should the excise return and payment deferral periods be reduced to one, two and six months? What impact would this have on your business?

Response: NZFGC considers that any changes to the deferral periods should be aligned for domestic and imported product. Beyond that NZFGC would direct the Review Team to individual member submissions.

Q 47: Would it be useful to have the excise return timing aligned with the filer’s GST filing periods? What impact would this have on your business?

Response: NZFGC would direct the Review Team to individual member submissions on this point.

Q 48: Should Customs have the ability to shorten the return and payment period for excise payers who fall behind in their filing and/or payment?

Response: NZFGC considers there are other options to address issues with filing and payment and shortening the period would not be one that would seem to address reasons for such issues.

Refunds, remissions and drawback

The NZFGC would encourage the Review Team to allow as much flexibility as possible in these provisions of the Act, and where possible, provide in the delegated legislation for a more user friendly regime. Anecdotal evidence from members suggests that the mechanics of applying for refunds and remissions, or operating a drawback system, can be time-consuming and expensive. This often means that companies decide to forego opportunities to obtain refunds, and thereby reduce costs, which are legitimately available.

Remission of excise duty is a separate matter, and we are aware of a lack of flexibility in the current legislation to address certain situations. NZFGC notes that under the current system, unaccounted losses attract an excise liability but that unaccounted gains do not attract excise remissions. In effect, gains and losses can only be offset in very limited circumstances. NZFGC suggests that the existing rules could be applied so as to address this situation. Alignment with the interpretation applied by the Australian Taxation authorities in areas such as the ability to offset stock shortages with stock surpluses across all excisable alcoholic goods and the ability to report stock gains and losses on a quarterly basis allowing timing issues to be addressed. As well, excisable alcoholic goods should be on a dollar duty basis rather than a quantity basis.

Such an approach would reduce complexity and administrative burden and better align with commercial practice than is currently the case. Quarterly reporting should not impact on the level or timing of revenue due to Customs.

Q 49: What changes to processes (applications and physical evidence), if any, are needed for remissions and refunds for excise duty? If changes were made to the current processes, what impact would this have on your business?

Response: NZFGC considers this whole area needs revising as it is not automatic and is clumsy and inflexible. The lack of flexibility can lead to unfair outcomes for companies where excise duties are paid for product that is never consumed. A consistent approach across all products and across both domestic and imported product would create a much fairer, simpler and easier to administer system.

Q 50: Should goods recalled from sale by the manufacturer and exported for destruction generate drawback? Please give your reasons.

Response: Yes. If the product is not consumed, is not fit for sale or is destroyed there should be some drawback. This is a fair outcome. NZFGC also directs the Review Team to individual member submissions on this point.

General

Q 51: Is there anything else we could consider in relation to how Customs administers excise on alcohol, transport fuels and tobacco? In particular, are there amendments that could be made to reduce costs and simplify the system for excise payers without involving fundamental change?

Response: See response to Question 49.

Refunds, remissions and drawbacks

Q 52: Have you experienced issues with refunds, remissions or drawbacks of duty and, if so, what were they?

Response: NZFGC members have experienced a range of issues with refunds, remissions or drawbacks of duty including issues with the system not being automatic, excessively burdensome application of the rules in relation to options for addressing issues before granting remission when this should be the manufacturer's decision, and the narrowly defined circumstances for approval of refunds and remissions.

Q 53: What might be the impact on your business or industry of expanding the refund provision for imports? Can you estimate how big this impact would be?

Response: NZFGC considers that expanding the refund provision for imports would potentially enhance New Zealand manufacturing processes reliant on imports but more important would be the alignment of the refund provisions for both domestic and import products.

Q 54: What is your view on extending the current drawback provisions for duty-paid goods sold to incoming passengers or to departing passengers for collection on return to New Zealand? What effect would this have on you or your business?

Response: N/A.

GST at the border

Managing GST between Customs and Inland Revenue

Q 55: Is accounting for GST separately to Customs and Inland Revenue a significant issue for your business or industry? If so, in what way?

Q 56: Are there areas of GST collection that you think require better legislative provisions in the Act?

Q 57: Are there areas of GST collection where you think Customs and Inland Revenue need to work together better to provide benefits for businesses?

Response: NZFGC would direct the Review Team to individual member submissions on these points.

Temporary imports

Q 58: Have you experienced issues working with Customs around temporary imports or in providing a security for temporary imported items? If so, how?

Q 59: In what ways do you think Customs could make the temporary importing of goods easier for businesses?

Response: N/A.

Valuation of imported goods

Q 60: What would be the impact of changing the valuation method for the Customs value of imported goods?

Response: NZFGC agrees with the suggestion in the Discussion Paper to retain the FOB value of the goods as the basis for Customs valuation. This is consistent with New Zealand's WTO obligations, and as noted in the Discussion Paper, maintains commitments we have made to trading partners under various Free Trade Agreements.

Q 61: What are the financial costs to you of having to do two calculations using different values to determine tariff duty and GST?

Response: N/A.

Q 62: Do you think the legislation should define the sale for export to be used for customs valuation purposes? Please give your reasons.

Response: With respect to the proposal to define "sale for export", NZFGC believes this would add certainty to the provision, but also we would defer to views held by some of our members in their specific circumstances.

Q 63: If you think the legislation should define the sale for export, what is your preferred definition? Please give your reasons.

Response: Of the three possible definitions of "sale for export" offered in the Discussion Paper, NZFGC prefers the following:

- The sale for export to New Zealand, to a buyer in New Zealand (this sale may not be the last sale prior to the goods entering New Zealand).

Q 64: What would be the impact on you or your business if sale for export were defined?

Response: N/A.

Q 65: Do you currently encounter difficulties with interpreting the "related party" provisions in clause 2 of Schedule 2?

Response: The Discussion Paper refers to "some ambiguity" in the current wording and structure of Clause 2 regarding "related parties or businesses". While NZFGC agrees with the proposal to better align this section of the Act with the WTO's Customs Valuation Agreement, we do not see where there is a current lack of harmonisation.

Q 66: Would clearer wording in clause 2 of Schedule 2 help you or your business? Please give your reasons.

Response: See response to Question 65.

Comptroller's discretion in collecting revenue

Q 67: Do you think managerial discretion should be explicitly added to the Customs and Excise Act, similar to that provided for in the Tax Administration Act 1994? Please give your reasons.

Response: NZFGC would direct the Review Team to individual member submissions on this point.

Review of duty assessments

Q 68: Does the 20 day working period set out in the Act allow enough time to prepare and lodge an appeal?

Response: NZFGC considers that the appeal provisions in the Act are rigid and costly. Appealing directly to a judicial authority in the first instance is a barrier to appeal. As the discussion paper states, when people want to dispute an assessment made by Customs there should be appropriate processes available. A judicial process as the principal avenue is not the most appropriate for individuals and small to medium businesses. NZFGC would favour an appeal process that provided for an internal review by the Customs Service prior to reference to the judicial avenue. An internal review could still be subject to a fee (lesser than the judicial fee) and a form. There are several models in current legislation available as reference for such a system.

Q 69: Have you ever decided not to appeal a Customs assessment because you thought the Customs Appeal Authority process was too difficult or complex? If yes please give details of why you came to that conclusion.

Response: N/A.

Q 70: Do you have any views on whether and how the review of duty process could be improved? Please specify what you think should be different and why.

Response: See response to Question 68.

Q 71: Should due duty be required to be paid before a dispute is settled? Please give your reasons.

Response: NZFGC understands that this provision is intended to remove the prospect of appeal simply being used to defer duty payment. Should an appeal be upheld, interest on the use of the duty paid should be paid.

Q 72: What are your views on the application of additional duties while an assessment is under dispute?

Response: See response to Question 71.

Powers

Arrival and departure powers for marine craft

Q 73: Do you think the arrival exemptions discussed above for marine craft should be removed? Please give your reasons.

Q 74: Do you think the Act should make it explicit that Customs can stop and direct departing marine craft? Please give your reasons.

Q 75: Can you think of other ways in which Customs could manage the risks posed by marine craft within New Zealand waters?

Q 76: Would Customs' preferred solutions proposed above result in additional compliance costs for you or your business?

Response: N/A.

Powers available in the contiguous zone

Q 77: Do you think there should be greater transparency in the Act about the range of powers Customs can exercise in the contiguous zone? Please give your reasons.

Response: N/A.

Other agencies' staff as authorised Customs officers

Q 78: Do you think new legislation should recognise Police officers and Defence Force officers as Customs officers in certain emergency or high-risk situations? Please give your reasons.

Q 79: Do you think Police officers and Defence Force officers should be armed (if authorised to be armed in their ordinary work) when acting as Customs officers?

Q 80: Can you think of other improvements that would allow government to operate more efficiently in responding to high-risk and emergency situations, particularly in the contiguous zone?

Response: N/A.

Performing Customs' functions outside New Zealand

Q 81 Do you think that Customs officers should be authorised to perform certain functions outside New Zealand? Please give your reasons.

Response: NZFGC considers that pre-clearance of imports might in the future warrant Customs officers being authorised to perform certain functions outside New Zealand but currently this does not seem necessary.

Q 82 What types of functions do you think Customs should be able to perform overseas? What functions should we not be able to perform overseas?

Response: N/A.

Q 83: Do you think Customs should play a greater role overseas to enable us to best facilitate the movement of people, goods, and craft into New Zealand? Please give your reasons.

Response: NZFGC is concerned at the cost of locating officers offshore and this should always be assessed against benefits before any such undertaking.

Controlled deliveries

Q 84: Do you think Customs should be allowed to carry out controlled deliveries of prohibited goods? Please give your reasons.

Q 85: If you support the option of expanding the range of goods that can be subject to a controlled delivery, then what prohibited goods do you think should be included? What prohibited goods should not be included?

Response: N/A.

Baggage accompanying passengers

Q 86: Which of the two options do you support, and why?

Q 87: Do you support Customs officers having discretion to determine what constitutes accompanying baggage for the purposes of a baggage search?

Q 88: Do you understand what baggage you are required to make available for examination by Customs officers when travelling? If not, what would make this clearer for you?

Response: N/A.

Examining goods in the pockets of a person's clothing

Q 89: Which of the three options do you support and why?

Q 90: Do you understand your current obligations and rights in relation to items carried across the border in the pockets of your clothing? If not, what could make this clearer?

Q 91: Would you be opposed to presenting the contents of your pockets for examination by a Customs officer who is already searching your baggage? Please give your reasons.

Q 92: If you support the third option – a power to require passengers to empty their pockets if a particular threshold is met – what do you think the applicable threshold should be?

Response: N/A.

Electronic devices

Q 93: Do you think the new Act should explicitly include electronic devices in the scope of Customs' routine baggage search powers at the border? Please give your reasons.

Q 94: Do you think there should be a threshold that must be met before Customs can examine an electronic device? If yes, what should that threshold be?

Q 95: Do you think Customs should have the power to require travellers to provide access to their electronic devices? Please give your reasons.

Q 96: Can you think of other ways for Customs to respond when new technology provides new ways of concealing offending at the border?

Response: N/A.

Sanctions

Low penalty levels and poor relativity

Q 97: Do you have any comments on relativities between penalties in the current Customs sanctions system and the effect of available sanctions on compliance levels?

Response: NZFGC notes that the rationale for the level of sanctions in other legislation looks to the impact of the relative offences on individuals, companies and the New Zealand environment and economy in order to arrive at appropriateness. It is therefore not appropriate to simply compare numbers. However, a review across the board could address relativities both within the Act and across other recent legislation.

Q 98: Do you have any concerns with the current penalty levels in the Act?

Q 99: What do you think we need to consider as we review the financial and imprisonment penalties in the Act?

Response: See response to Question 97.

Petty offences

Q 100: Do you have any concerns about the current petty offences regime? If so, what are these?

Response: N/A.

Q 101: Do you think the petty offences regime should be replaced by an infringement notice scheme? Please give your reasons.

Response: NZFGC considers an infringement notice scheme, while administratively efficient, can be as easily abused and used as a revenue raiser. To this extent, NZFGC does not support such schemes without considered discussion and consultation on form, extent and exercise.

Q 102: What do you think we should consider if we were to replace the petty offences regime with an infringement notice scheme?

Q 103: What minor offences do you think would be suitable or not suitable for an infringement notice scheme?

Response: See response to Question 101.

Administrative penalties

Q 104: Do you think the current administrative penalty regime supports compliance by individuals and businesses? Please give your reasons.

Response: While NZFGC believes the current administrative penalty regime is intended to support compliance by individuals and businesses, the reality is it is a revenue raiser because very few operators are in the business of making deliberate errors. The question is whether the scheme is working and judging by the voluntary disclosures perhaps not. It would seem more fruitful to analyse the reason for the errors made over the past 2-3 years and design a multi-factorial system that addresses the non-compliances more effectively. This might include an administrative penalty regime but may well include or replace it with other more effective schemes.

Q 105: What are your views on the current minimum administrative penalty amount of \$200? Is it about right? Please give your reasons.

Q 106: What are your views on the current maximum administrative penalty amount of \$50,000? Is it about right? Please give your reasons.

Response: NZFGC notes the minimum is largely comparable with other penalty schemes but the maximum is significantly higher.

Q 107: Should administrative penalties be imposed for exports? What issues should Customs consider if this happens?

Response: A number of NZFGC members would be significantly impacted by re-introduction of the application of administrative penalties, primarily those with numerous export entries. In an environment of growing New Zealand exports, we question the logic of re-introducing a scheme that penalises the exporter particularly the larger exporter.

Q 108: Should Customs be able to recover its costs of processing and approving adjustments or cancellations of import and export entries? Please give your reasons.

Response: NZFGC considers this is one area of the area that should be considered in relation to steps to improve the provision of information.

Q 109: Do you have any other comments on any aspects of the current administrative penalty regime?

Response: NZFGC would refer the Review Team to members' individual submissions.

Additional duty

Q 110: Should additional duty be extended to all payments to Customs, and to refunds and drawbacks paid to businesses by Customs and later found to be paid in error? Please give your reasons.

Response: NZFGC does not consider additional duty should be extended. It is already broad ranging to the extent necessary. The business should especially not have to pay an additional duty to account for the Crown's loss of money and the use of that money when the Crown makes the error of refund or drawback.

Q 111: Do you have any other comments on any aspects of the current additional duty regime?

Response: If additional duties are pursued, NZFGC would want to see reciprocal provisions made for businesses where duties are paid prior to successful appeal and refunded with interest to account for the business's loss of the use of that money.

Customs Areas

Q 112: How is your business affected by the absence of clearly defined procedures and processes around designating and revoking Customs places?

Response: NZFGC understands that members are regularly frustrated by the uncertainty and inflexibility around the designation of 'designated customs areas'.

Q 113: What benefits could there be for you and your business if Customs' approach to designating and revoking Customs places were clarified?

Q 114: Should the legislation better prescribe the purposes of Customs Controlled Areas? Please give your reasons.

Q 115: Should the legislation continue to provide a separate provision for storage of exports under Customs control? Alternatively, is there value in aligning the export and import Regulations for goods subject to Customs control? Please give your reasons.

Q 116: How is your business affected by the current arrangement for a 24-hour grace period before storage charges are imposed on goods in Customs Controlled Areas? Should the current arrangement be reviewed? Please give your reasons.

Q 117: Do you have suggestions for ways to potentially increase the alignment of controlled areas between Customs and other border agencies?

Response: NZFGC would refer the Review Team to members' individual submissions.

Feedback on any other issues

Q 118: Are there any issues of concern to you that have not been identified in this paper? If yes, please set out each issue and explain how it affects you or your business

Response: NZFGC notes there are many areas where further detail and consultation is necessary. Broader general public consultation on these areas is supported in addition to the opportunity to meet one-on-one as necessary.