



6 September 2019

Fees Review Team
Consultation: Goods Clearance Cost Recovery
New Zealand Customs Service
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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on *Recovering the costs of Customs' goods clearance activities: discussion document August 2019*. We appreciate the opportunity to have had an extended time to make this submission.

Yours sincerely

Katherine Rich
Chief Executive



***RECOVERING THE COSTS OF CUSTOMS'
GOODS CLEARANCE ACTIVITIES:
DISCUSSION DOCUMENT***

**Submission by the New Zealand Food & Grocery
Council**

September 2019

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on ***Recovering the costs of Customs’ goods clearance activities: discussion document August 2019*** (the Discussion document).
2. 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 \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

OVERARCHING COMMENTS

1. NZFGC considers that investigation of illegal activities, once such activities are identified, and the seizure of goods undertaken with reasonable cause, are part of the enforcement activity that could lead to prosecution and should therefore be Crown funded. Such activities are not compliance monitoring which is not predicated on reasonable cause to be undertaken.
2. Monitoring for non-compliance is understood to be assessing risks and investigating the prospect of non-compliances. If, in the course of investigation, illegal activity is identified, the activity at that point or in subsequent investigation should be able to be attributable to persons/groups connected with the activity and therefore a matter of public good. It is not the collective industry that has generated the identifiable illegal activity but an individual or group of exporters/importers etc. It is inequitable to attribute that cost to all for such activity.
3. Similarly, the seizure of goods is a significant step in securing a prosecution and can be attributed to a responsible (or irresponsible) group. To do otherwise is lazy regulation that does not deliver efficiency and justifiability to the group nor does it deliver incentives to comply or recognise sectors that may be far less prone to such illegal activity. From this perspective it does not meet several of the principles of the cost recovery framework.
4. The key omission in the setting of fees is the absence of efficiency criteria on corporate services costs and business sustaining costs to ensure these activities operate efficiently as well as effectively.

DETAILED COMMENTS

Section 5 Who should pay: Recovering the costs of investigations and seizures

5. Customs proposes that, in considering non-compliance a range of activities is undertaken that includes “assessing risks, seizing prohibited goods, investigating and prosecuting offenders and stopping prohibited and illegal goods entering New Zealand” (p19, Discussion document). According to the Discussion document, goods-related investigations are carried out when Customs identifies illegal activities and under-valued goods.
6. Further, Customs proposes that where an individual cannot be charged, the next best option is to spread the fee across the next group directly related to the activity, that is all importer, exporters etc.

Q1. Do you have a comment on the recovery of costs of goods-related investigations?

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7. If illegal activities are identified, the investigation that follows would more properly be part of an enforcement action, not monitoring for non-compliance. Monitoring for non-compliance is understood to be assessing risks and investigating the prospect of non-compliances. If, in the course of investigation, illegal activity is identified, the activity at that point or in subsequent investigation should be able to be attributable to persons/groups connected with the activity and therefore a matter of public good. It is not the collective industry that has generated the identifiable illegal activity but an individual or group of exporters/importers etc. It is inequitable to attribute the cost of such activity to all.
 8. Similarly, the seizure of goods is a significant step in securing a prosecution and can be attributed to a responsible (or irresponsible) group. To do otherwise is lazy regulation that does not deliver efficiency or justifiability to the group nor does it deliver incentives to comply or recognise sectors that may be far less prone to such illegal activity. From this perspective it does not meet several of the principles of the cost recovery framework.
 9. We consider that assessment of risks and monitoring and investigating compliance meet the principles for a cost recovery framework (p15, Discussion Document) and to therefore be appropriate for industry cost recovery.

Q2. Do you have a comment on the recovery of costs of seizing forfeited goods?

10. If forfeited goods are seized, the investigation that follows would be part of identifying the persons/group involved and not monitoring for non-compliance. All handling of seized goods should be able to be attributable to persons/groups connected with the goods and therefore be a matter of public good. It is not the collective industry that has resulted in the seizure of goods but the person/groups operating outside the system. It is inequitable to attribute that cost of seizing forfeited goods to all industry operators.
11. As noted above, the seizure of goods is a significant step in securing a prosecution and investigation following seizure generally focuses on attributing the seized goods to a responsible (or irresponsible) group. This is an entirely different activity to broad industry compliance activity and should be crown funded. To do otherwise does not deliver efficiency and justifiability to the group nor does it deliver incentives to comply or recognise certain sectors within the importing/exporting population which may be far less prone to such illegal activity. From this perspective it does not meet several of the principles of the cost recovery framework.
12. We consider that assessment of risks and monitoring and investigating compliance meet the principles for a cost recovery framework (p15, Discussion Document) and to therefore be appropriate for industry cost recovery.

Q3. Are there other options we have not considered?

13. As noted above, compliance monitoring is expected to comprise activities that are undertaken across industry to ensure an equitable and risk-based approach to the activity. We would expect the food and grocery sector to be one of the sectors though perhaps a minor sector. It is very easy to group an entire population to apply cost recovery to but it is not risk-based to do so. It is far more difficult, although equitable, to segment that population to ensure those that generate the greatest risks are targeted with greater costs.

Recovering costs of clearing goods valued at and under \$1,000 transported by air cargo

14. NZFGC has no particular view on the recovery of costs related to goods clearance valued at \$1,000 or less other than to say if this is where the growth in activity is this should be the target for fees.

Differentiated rates for the Outward Cargo Transaction Fee

15. Customs cost modelling has resulted in the identification of activity levels associated with processing the Cargo Report Export (CRE) and the Outward Cargo Report (OCR). Based on this, Customs proposes to apply differential rates to the two groups generating the CREs and OCRs. NZFGC considers this would be an area of specific attention in terms of review in the future.

Crown-funded activities

16. As noted in the foregoing, at the time goods are seized and subsequent investigations, this is generally related to a prospective prosecution. For example, in defining 'Examinations, inspections and seizures' (p10 Discussion document) Customs 'generally seize goods that are forfeit to the Crown or where there is reasonable cause to suspect that an offence has been committed' (NZFGC underlining). In both cases, the perpetrator can be reasonably expected to be identified and prosecuted and therefore subject to Crown funding. Similarly, an investigation is triggered "if an inspection identifies potentially illegal activity" which could then lead to prosecution. Again, investigation should be a Crown funded activity.
17. NZFGC submits that Table 5, describing the activities to be funded by the Crown should include 'Investigations and seizures' described perhaps as 'Activities generally undertaken when a prosecution is prospective'. The rationale is that it is contrary to natural justice to recover these costs from all trans-border operators.

Section 6: How we set the proposed fees

18. The key omission in the setting of fees is the absence of efficiency criteria on corporate services costs and business sustaining costs to ensure these activities operate efficiently as well as effectively.

Allocating activities and their costs to fees

19. The concerns identified by NZFGC in the foregoing concerning investigations and seizures also applies to this section.

Section 7: Changes to Intellectual Property Rights Services

Section 8: Increasing the hourly rate for after-hours services

20. NZFGC has no comments to make on these sections in the Discussion document.

Section 9: Monitoring, Reporting on and Reviewing our fees

21. NZFGC considers that in light of the significance of changes, the data collection that will result, the reliance on forecast data to determine proposed fees and the proposal to establish memorandum accounts for the proposed fees, two years may be too long a period to wait to adjust fees if the memorandum accounts show that revenue collection is excessive or there are unexpected business impacts resulting from the changes.