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PROTECTING NEW ZEALAND'S BORDER

Mr Steven Bailey
Inquiry Director
Inquiry into Regulatory Institutions and Practices
New Zealand Productivity Commission
PO Box 8036
WELLINGTON 6143

25 October 2013

Dear Mr Bailey

New Zealand Customs Service Submission on the Inquiry into Regulatory Institutions and Practices

The New Zealand Customs Service (Customs) thanks the Productivity Commission for the opportunity to comment on your issues paper for the Regulatory Institutions and Practices inquiry. Customs has a particular interest in your inquiry as we are in the process of seeking Cabinet approval to commence a review of the Customs and Excise Act 1996.

Customs' Regulatory Instruments

Customs is only responsible for a single piece of primary legislation (and the associated regulations) and a small number of secondary and tertiary instruments. However, Customs is also impacted by a wide range of regulation at the border as an enforcer for provisions in statutes of other agencies. As a recent example, Customs has a significant enforcement role in respect of the implementation of the Psychoactive Substances Act 2013 which involves many different regulators.

The Customs and Excise Act 1996 (the Act) has been subject to continued amendment and, while it generally works well, it is considered that the Act needs to be reviewed to ensure it meets modern and anticipated border requirements. Customs is interested in possibly redrafting its Act with a more enabling framework that can more easily adapt to modern requirements.

Establishing a common framework for the development of New Zealand regulation would provide a helpful platform for regulators. However, any common framework would need to incorporate principles that allow for future proofing of regulation. A framework that encourages regulators to assess the validity and necessity of primary regulation and which can complement the Legislation Advisory Committee Guidelines would assist regulators.

Responses to Questions from the Issues Paper

The questions posed in the issues paper are valuable mechanisms to engage agencies and the public in consultation. Customs has addressed some of the questions below from our experience with the Customs regulatory regime.

- 1. The Commission has been asked to produce guidelines to assist in the design of regulatory regimes. What type of guidelines would be helpful (Question 2 in the Issues Paper)?**
 - 1.1. Guidelines for regulatory regimes that help prevent unnecessarily prescriptive and confusing regulatory provisions would assist in future proofing New Zealand regulation. The Legislation Advisory Committee (LAC) Guidelines provide a very comprehensive and helpful basis for considering the development and implementation of legislation and delegated legislation in New Zealand. To complement the LAC Guidelines, additional regulatory guidelines on more detailed matters such as consistency of provisions and provisions for future proofing, to the extent possible, of regulation would be of assistance to regulators.
 - 1.2. It would also be helpful if there were more guidelines on addressing and rationalising overlapping regulation. For example, air passengers in New Zealand are simultaneously regulated by Customs, the Ministry for Primary Industries (re biosecurity), the Ministry of Business, Innovation and Employment (re immigration) and aviation security. All passenger and craft arrivals must satisfy the regulations for each of these agencies, which can often be very similar. Customs does see value in the respective roles and the necessity for separate regulation, however guidelines that assist in rationalising this would be helpful for regulators.
- 2. What influence has New Zealand's specific characteristics had on the way regulation is designed and operated in New Zealand (Question 4 in the Issues Paper)?**
 - 2.1. As identified in the issues paper, New Zealand is in a unique position given its geographic isolation from other OECD countries and the absence of any land borders. Customs has a role in facilitating trade and travel across our border and the Act and the Customs and Excise Regulations 1996 must reflect and facilitate New Zealand's unique position. New Zealand Customs regulates a border markedly different from other countries and our regulation must accommodate this.
 - 2.2. Our regulatory frameworks need to allow for adjustments to meet changing international obligations and efficiencies in trade and travel that facilitate international competitiveness.
 - 2.3. Customs is often required to introduce regulation to meet international standards and obligations that New Zealand has signed up to, that otherwise would not be considered in the New Zealand context. This can result in a more prescriptive approach being carried into domestic regulation than would otherwise be designed in New Zealand.
- 3. Can you provide examples of where the mix of funding sources contributed to the effectiveness or ineffectiveness of a regulatory regime (Question 30 of the Issues Paper)?**
 - 3.1. The Act plays a vital role in the collection of duties (GST, tariff duty, excise and excise equivalent duty) at the border. Customs also collects transaction fees on each import declaration where duties amounting to \$60 or more are collectable. The Customs transaction fees form a user-pays cost recovery mechanism for the funding of border management, along with Crown funding.
 - 3.2. Customs' cost recovery system was introduced in 2002, following extensive consultation with stakeholders. We have found that users are willing to pay for improved services. For example, Customs and the Ministry for Primary Industries

have recently introduced a new computerised system to improve the efficiency of trade management and to simplify business interaction with border agencies. The Joint Border Management System (JBMS) is a joint initiative to replace the existing legacy information systems and modernise and integrate border clearance processes for persons, goods and craft.

3.3. The mix of funding has not appeared to have caused any issues with the effectiveness of the Customs regulatory regime.

4. Can you provide examples of strengths and challenges in the way regulators monitor and enforce regulations? What are the consequences (Question 39 in the Issues Paper)?

4.1. Customs has a range of effective options and tools for monitoring and enforcing its regulations. A strong risk management approach allows us to manage volumes of trade and travel in an environment of changing risks, with minimal disruption. At the same time, other agencies periodically request Customs to manage their interests at the border.

4.2. Customs has an Integrated Targeting and Operations Centre which has the capability of extensive monitoring of potential breaches of some regulation. Many other regulations, such as import and export prohibition orders, are monitored for compliance through our computerised processing systems. Due to our close relationship with industry, anecdotal accounts of enforcement and effectiveness of our regulations also assist in the monitoring of the Customs regime.

4.3. Customs also has a Trade Assurance team who undertake post entry audits to ensure that export, import and other trade-related activities in New Zealand comply with government regulations and revenue requirements.

We hope that this submission will be of assistance to your inquiry. The outcomes of your inquiry will also assist us if we undertake a review of the Customs and Excise Act. If you have any questions on the information provided in this submission, please contact Amanda Stirling, Policy Analyst, on 04 901 4931 or amanda.stirling@customs.govt.nz.

We look forward to reading the final report for this inquiry and are happy to engage with you throughout the remainder of the inquiry.

Yours sincerely



Michael Papesch
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