

Border (Customs, Excise, and Tariff) Processing Bill

Government Bill

As reported from the Government
Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Border (Customs, Excise, and Tariff) Processing Bill and recommends that it be passed with the amendments shown. This commentary does not address the many minor, technical, and consequential amendments proposed by the bill.

Introduction

This omnibus bill amends the Customs and Excise Act 1996 and the Tariff Act 1988. The amendments seek to improve the cross-border processing and administration of goods and people under these inter-related Acts.

The bill includes three kinds of amendments to the Customs and Excise Act:

- amendments relating to automated electronic systems, such as the “Smartgate” automated passenger processing system
- amendments to clarify the Act

- amendments to address legislative gaps and uncertainties.

The bill also amends the Tariff Act, primarily to allow faster and more efficient implementation of tariff reductions arising from trade agreements, by allowing material usually set out in Tariff Amendment Orders to be incorporated by reference, and making the Working Tariff Document, which is maintained by the New Zealand Customs Service, the legal Tariff.

Tobacco indexation

We recommend an amendment to clause 9, which inserts new section 76B into the Customs and Excise Act 1996, to make certain that the certified copy of the Working Excise and Excise-equivalent Duties Document includes the Consumer Price Index-indexation of rates of duty on tobacco products, which takes effect on 1 January 2010.

Powers of arrest

Clause 19 of the bill would amend section 174 of the Customs and Excise Act to rationalise and extend slightly Customs officers' and constables' powers to arrest without a warrant suspected offenders. We scrutinised the proposed extension of powers of arrest for Customs officers very carefully. The current gaps in legislation make it difficult to carry out search and surveillance particularly on craft. The slight extensions are of three kinds.

The first extension relates to offences. We are assured that section 174 as amended would not give Customs officers inappropriate powers of arrest. They are consistent with the powers of arrest that a constable has under section 315(2)(b) of the Crimes Act 1961, which extends to any offence punishable by imprisonment. To make an arrest under section 174 as amended, a Customs officer must have reasonable cause to suspect that a customs-related offence punishable by imprisonment, or one for which a person may be arrested under existing section 174 without a warrant, has been committed.

The second extension removes a requirement that the person arrested must be found on a craft, but still enables the arrest of a person suspected of smuggling unauthorised migrants (an offence against section 98C(1) of the Crimes Act 1961) not only when, but also after, the suspected migrant smuggler is found on a craft.

The third extension would enable arrests not only when reasonable cause to suspect arose, but also while it continued until the end of the seventh day after the date it arose. This extension would give operational flexibility, but within strict parameters.

We were assured that these slight extensions would not create a loss of focus in Customs' tailored powers to arrest without a warrant. Under section 174(3) a Customs officer who arrests a person under section 174 must, unless the person is released sooner, as soon as practicable call a constable to his or her aid and deliver the arrested person into that constable's custody.

“Smartgate” automated passenger processing system

We discussed in detail the New Zealand Customs Service's introducing automated passenger processing systems at the border. We were advised that in overseas jurisdictions biometric systems have proved more reliable for facial recognition than visual checks by customs officers. We are satisfied that moving to a biometric system such as “Smartgate” will at the very least maintain the current degree of border security.

Alternative methods of border processing

We recommend amending clause 22 of the bill, which inserts new section 274A into the Customs and Excise Act by amending subsection (3), to require that at least one alternative method of processing involving a person be available alongside automated border processing. We were advised that the New Zealand Customs Service intends alternative methods of processing to be made available alongside automated systems, which are not expected to process appropriately all travellers in all circumstances.

Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

We recommend an amendment to clause 29, which inserts new section 9A into the Tariff Act 1988, to make certain that the certified copy of the Working Tariff Document includes the new duty rates for imports from countries that are party to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area. This

agreement comes into force on 1 January 2010, a commencement date that was not known at the time the bill was introduced.

Incorporation by reference

We are satisfied with the bill's provisions for incorporation by reference. However, we recommend that the Government ensure that agencies responsible for incorporating material by reference report to their Ministers on their compliance with Appendix 4 of the Legislation Advisory Committee's *Guidelines*; that documents to be incorporated by reference are clearly identified and in existence at the time of incorporation; and that each of the responsible agencies publish annually on the internet a list of the documents incorporated by reference for which they are responsible.

Appendix

Committee process

The Border (Customs, Excise, and Tariff) Processing Bill was referred to us on 15 October 2009. The closing date for submissions was 30 October 2009. We received and considered two submissions. We received advice from the New Zealand Customs Service and the Regulations Review Committee.

Committee membership

Hon David Parker (Chair)

Kanwaljit Singh Bakshi

Jacqui Dean

John Hayes

Chris Hipkins

Nikki Kaye

Grant Robertson

**Border (Customs, Excise, and Tariff)
Processing Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Maurice Williamson

Border (Customs, Excise, and Tariff) Processing Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Border (Customs, Excise, and Tariff) Processing Act **2009**.
- 2 Commencement**
- (1) **Section 12** comes into force on **1 October 2010**. 5
- (2) **Sections 10, 11, ~~28(1)~~, 30, and 31, Part 3 of Schedule 1, and Schedules 2 and 3** come into force on **1 January 2010**.
- (3) **Sections 26 and 27** come into force—
- (a) on the day after the date on which this Act receives the Royal assent if the Tariff (AANZFTA) Amendment Act 2009 is in force on that day; or 10
- (b) if the Tariff (AANZFTA) Amendment Act 2009 is not in force on that day, then immediately after the commencement of that Act.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 15

Part 1
Amendments to Customs and Excise Act 1996

- 3 Principal Act amended** 20
This **Part** amends the Customs and Excise Act 1996.

*Use of future technology***4 Interpretation**

- (1) Paragraph (a) of the definition of **Customs-approved secure exports scheme** in section 2(1) is amended by omitting “seal or markings” and substituting “seal, marking, substance, or device”. 5
- (2) The definition of **Customs seal** in section 2(1) is amended by—
- (a) inserting “, marking, substance, or device” after “a seal”; and 10
 - (b) omitting “application” and substituting “use in relation”; and
 - (c) omitting “section 53A)—” and substituting “section 53A), to fulfil either or both of the following purposes:”; and 15
 - (d) omitting “; and” and substituting “:”.
- (3) The principal Act is consequentially amended in the manner specified in **Part 1** of **Schedule 1**.

*Authorised persons***5 Authorised persons** 20

- (1) Section 6 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) A person who is authorised under this section must for the purposes of the provisions of this Act (other than section 2, this subsection, and sections 7, 38P, and 175) be treated as a Customs officer when performing or exercising a function or power in accordance with that person’s authorisation.” 25
- (2) The principal Act is consequentially amended in the manner specified in **Part 2** of **Schedule 1**.

Exportation of goods, and revocation of permission to export 30**6 Entry of goods for export**

- (1) Section 49(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) before the prescribed deadline (if any) or any later deadline the chief executive may allow.”
- (2) The Customs and Excise Regulations 1996 are consequentially amended by revoking regulation 28 and substituting the following regulation: 5
- “**28 Deadline prescribed for entry of goods for export**
The deadline before which an entry of goods to which section 49(1) of the Act applies must be made (unless the chief executive under section 49(1)(b) of the Act allows the entry to be made before a later deadline) is 48 hours before the goods are shipped for export.” 10
- (3) Section 49 is amended by adding the following subsection:
- “(6) Despite an entry being passed in accordance with subsection (5), the chief executive may revoke the goods’ permission to export if the chief executive has reasonable cause to suspect the goods endanger, or threaten to endanger,— 15
- “(a) border security; or
“(b) New Zealand’s trade interests or international obligations; or
“(c) the life, health, or safety of a person or group of persons; 20
or
“(d) the safety of the craft that will carry the goods, or of other goods to be carried on that craft.”
- (4) Section 210(1)(a) is amended by omitting “subsection (1) or subsection (5)” and substituting “subsection (1), (5), or (6)”. 25

*Exemption for alcohol manufactured for
personal use*

- 7 New section 68B inserted**
- (1) The following section is inserted after section 68A:
- “**68B Exemption for alcohol manufactured for personal use** 30
Section 68 does not apply to the manufacture of beer, wine, or spirits in an individual’s private house or dwelling place, but only if and as long as the beer, wine, or spirits are manufactured exclusively for the individual’s personal use and not for sale or other disposition to any other person.” 35

- (2) Section 10 is consequentially amended by omitting “sections 12(4) and 68A” and substituting “sections 12(4), 68A, and **68B**”.
- (3) Section 74(2)(c) is consequentially amended by adding “or **68B**”. 5
- (4) The Customs and Excise Regulations 1996 are consequentially amended by revoking regulation 7.

*Excise duty on certain goods manufactured
outside manufacturing area*

- 8 New section 76 substituted** 10
- (1) Section 76 is repealed and the following section substituted:
“76 Excise duty a Crown debt
- “(1) Excise duty is a debt due to the Crown and is recoverable by action at the suit of the chief executive on behalf of the Crown,— 15
- “(a) in relation to goods specified in Part A of the Excise and Excise-equivalent Duties Table that are manufactured in a manufacturing area, immediately on removal of the goods for home consumption in accordance with section 72: 20
- “(b) in relation to goods specified in Part A of the Excise and Excise-equivalent Duties Table that are, except as provided in section 74(2), manufactured outside a manufacturing area, immediately on manufacture.
- “(2) Excise duty owed under **subsection (1)** is owed by— 25
- “(a) the occupier of the place where the goods have been or are manufactured; and
- “(b) every person who is or who becomes the owner of the goods before the excise duty has been fully paid.
- “(3) The liability of the persons referred to in **subsection (2)** is joint and several. 30
- “(4) For the purposes of this section, excise duty owed under **subsection (1)** must be paid to the Customs within the time required by or prescribed under this Act.”
- (2) The heading to section 74 is consequentially amended by omitting “**otherwise than in a manufacturing area**” and substituting “**outside manufacturing area**”. 35

*Excise and Excise-equivalent Duties Table
replaces Schedule 3*

9 New sections 76A to 76B inserted

The following sections are inserted after section 76:

“76A Interpretation

5

In this section and in **sections 76B to 76G**, unless the context otherwise requires,—

“2010 Excise and Excise-equivalent Duties Document means the document certified under **section 76B(1)**

“Excise and Excise-equivalent Duties Table—

10

“(a) means the table of excise and excise-equivalent duties as set out in the 2010 Excise and Excise-equivalent Duties Document; but

“(b) if, and in so far as, the table specified in **paragraph (a)** is on or after **1 January 2010** from time to time amended, modified, or revoked and replaced, then despite **paragraph (a)** means that table as from time to time amended, modified, or revoked and replaced

15

“Working Excise and Excise-equivalent Duties Document means the document maintained by the chief executive that sets out the excise and excise-equivalent duties.

20

“76B Certification of 2010 Excise and Excise-equivalent Duties Document

“(1) The chief executive must, by the close of **31 December 2009**,—

25

“(a) certify a copy of the Working Excise and Excise-equivalent Duties Document; and

“(b) retain that copy.

“(2) ~~Before certifying a copy of the Working Excise and Excise-equivalent Duties Document under **subsection (1)**, the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 3 as in force at the close of **31 December 2009**.~~

30

“(2) Before certifying a copy of the Working Excise and Excise-equivalent Duties Document under **subsection (1)**, the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 3—

35

- “(a) as in force at the close of **31 December 2009**; but
“(b) as amended by any order made under section 79 and that comes into force on 1 January 2010.
- “(3) The chief executive must ensure that—
- “(a) references in the certified copy to Schedule 1 of the Tar- 5
iff Act 1988 are replaced with references to the Tariff (as
defined in section 2(1) of the Tariff Act 1988); and
- “(b) the certified copy indicates clearly that any information
in it that is not the contents of Schedule 3 as described
in **paragraphs (a) and (b) of subsection (2)** does not 10
form part of, or have legal effect as part of, the Excise
and Excise-equivalent Duties Table.
- “(3) The certified copy must indicate clearly that any information
in it that is not the contents of Schedule 3 as in force at the
close of **31 December 2009** does not form part of, or have 15
legal effect as part of, the Excise and Excise-equivalent Duties
Table.”
- 10 New sections 76C to 76H inserted**
The following sections are inserted after section 76B:
- “**76C Access to Excise and Excise-equivalent Duties Document** 20
Table
- “(1) The chief executive must—
- “(a) ensure that copies of the documents referred to in **sub-**
section (2) are published on an Internet site that is, so
far as practicable, publicly available free of charge; and 25
- “(b) ensure that copies of the documents referred to in **sub-**
section (2) are available for purchase at a reasonable
price at the places designated under section 9 of the Acts
and Regulations Publication Act 1989.
- “(2) The documents are— 30
- “(a) the Excise and Excise-equivalent Duties Table as from
time to time amended, modified, or revoked and re-
placed on or after **1 January 2010**; and
- “(b) the 2010 Excise and Excise-equivalent Duties Docu-
ment; and 35
- “(c) Orders in Council amending or modifying the Excise
and Excise-equivalent Duties Table and made under
section 77, 78, 79, or 79A on or after **1 January 2010**.

- “(3) Every version of the Excise and Excise-equivalent Duties Table referred to in **subsection (2)(b) (2)(a)** and published or made available under **subsection (1)** must—
- “(a) indicate that it is that Table as in force at the beginning of a stated date; and 5
 - “(b) list all Acts and Orders in Council that are enacted on or after **1 January 2010** and before the stated date and that amend, modify, revoke, or revoke and replace some or all of that Table.
- “(4) Nothing in **section 76B** or this section prevents the chief executive from ensuring that other information is published or made available with the Excise and Excise-equivalent Duties Table, so long as in doing so the chief executive ensures that it is indicated clearly that the other information does not form part of, or have legal effect as part of, that table. 15
- “**76D Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989**
Orders in Council amending or modifying the Excise and Excise-equivalent Duties Table and made under section 77, 78, 79, or 79A on or after **1 January 2010**— 20
- “(a) are regulations for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives not later than 16 sitting days after the day on which they are made; but
 - “(b) are not regulations for the purposes of the Acts and Regulations Publication Act 1989. 25
- “**76E Judicial notice of ~~Excise and Excise-equivalent Duties Table~~**
Judicial notice must be taken by all courts and persons acting judicially of the Excise and Excise-equivalent Duties Table. 30
“Compare: 1989 No 142 ss 16A, 16B(1)
- “**76F Evidence of ~~2010 Excise and Excise-equivalent Duties Document, Excise and Excise-equivalent Duties Table,~~**

and amendments to Excise and Excise-equivalent Duties Table

Every copy of the documents referred to in **section 76C(2)** purporting to be published or made available under the authority of the chief executive is, unless the contrary is shown, 5 deemed—

- “(a) to be a correct copy of the document; and
- “(b) to have been so published or made available.

“Compare: 1989 No 142 s 16C

“76G Excise and Excise-equivalent Duties Table may be amended, and must be interpreted, as if it were an enactment 10

“(1) The Excise and Excise-equivalent Duties Table may be amended, revoked, or revoked and replaced by an Act of Parliament as if it were an Act of Parliament. 15

“(2) The Excise and Excise-equivalent Duties Table may be altered or amended by an Order in Council made under section 77, 78, 79, or 79A as if it were a regulation.

“(3) The Interpretation Act 1999 applies to the Excise and Excise-equivalent Duties Table as if it were an enactment. 20

“(4) Nothing in this Act limits or affects the application of—
 “(a) the Acts and Regulations Publication Act 1989 and the Interpretation Act 1999 to an Act amending, revoking, or revoking and replacing the Excise and Excise-equivalent Duties Table, this Act (either alone or with other enactments), or both; or 25
 “(b) the Interpretation Act 1999 to an Order in Council made under section 77, 78, 79, or 79A.

“76H Excise and Excise-equivalent Duties Table referencesReferences to Schedule 3 30

Every reference in the following to Schedule 3 of this Act must be read as if it were a reference to the Excise and Excise-equivalent Duties Table (as defined by **section 76A** of this Act):

- “(a) an enactment not added, amended, inserted, or substituted by the **Border (Customs, Excise, and Tariff)** 35

Processing Act 2009 and in force at the commencement of this section:

“(b) a document in operation at that commencement.”

11 Schedule 3 consequentially repealed

- (1) Schedule 3 is consequentially repealed. 5
- (2) Section 2(1) is consequentially amended by inserting the following definition in its appropriate alphabetical order:
“**excise item number**—
“(a) means excise items that appear in the Excise and Excise-equivalent Duties Table and are identified by 6 digits and 1 alphabetical check letter; and 10
“(b) includes the heading to those excise items that appear in that Table and are identified in that way”.
- (3) The principal Act is consequentially amended in the manner specified in **Part 3** of **Schedule 1**. 15
- (4) The enactments specified in **Schedule 2** are consequentially amended in the manner indicated in that schedule.

Excise and excise-equivalent duties on motor spirits increased by 3 cents per litre on 1 October 2010 20

12 Excise and Excise-equivalent Duties Table amended

Each of the items relating to the following excise item numbers and Tariff item numbers in the Excise and Excise-equivalent Duties Table is amended by omitting “45.524¢” and substituting “48.524¢”:

- (a) 99.75.05F: 25
(b) 99.75.23D:
(c) 99.75.29C:
(d) 99.75.37D:
(e) 99.75.51K: 30
(f) 99.75.59E:
(g) 99.75.73L:
(h) 99.75.81A:
(i) 99.75.93E:
(j) 2207.20.23 or 2207.20.35: 35
(k) 2710.19.13 or 2710.19.25:

- (l) 2710.19.15 or 2710.19.27:
- (m) 2710.19.21 or 2710.19.39 (item relating to motor spirit with a Research Octane No. (RON) less than 95 (regular grade) which, if manufactured in New Zealand, would be classified within excise item number 99.75.05F or 99.75.23D): 5
- (n) 2710.19.21 or 2710.19.39 (item relating to motor spirit with a Research Octane No. (RON) 95 or greater (premium grade) which, if manufactured in New Zealand, would be classified within excise item number 99.75.29C or 99.75.37D): 10
- (o) 2710.19.64:
- (p) 2710.19.70:
- (q) 3824.90.87 or 3824.90.93:
- (r) 3824.90.97. 15

Definition of financial year in section 79A(2)

13 Power to alter rates of excise duty and excise-equivalent duty on motor spirits by Order in Council

The definition of financial year in section 79A(2) is amended by omitting “determined for the entity by the Minister of Finance” and substituting “determined for the purposes of this section by the Minister of Finance and notified in the *Gazette*”. 20

Amendment consequential on Land Transport Management Amendment Act 2008

14 Certain Orders in Council subject to confirmation 25

Section 80 is amended by repealing subsection (4) and substituting the following subsection:

- “(4) The repeal of any Act of Parliament that expressly confirms pursuant to subsection (1A) any Orders in Council does not, unless there is any express provision to the contrary, affect the validity or confirmation of those Orders in Council.” 30

Due date for payment of duty

15 Due date for payment of duty

Section 90 is amended by inserting the following subsections after subsection (1): 35

- “(1A) However, if the chief executive has reasonable cause to believe that a person will be unable to pay the duty by the due date required by subsection (1), the chief executive may, by notice in writing, require that person to pay the duty by an earlier date. 5
- “(1B) A notice issued under **subsection (1A)** is a demand for payment, and the duty becomes due and payable on the date fixed by the chief executive.
- “(1C) A person liable for the payment of the duty who is dissatisfied with a decision of the chief executive under **subsection (1A)** 10 may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.”

Administrative penalties

- 16 Imposition of penalty** 15
- (1) Section 128 is amended by repealing subsection (1AA) and substituting the following subsection:
- “(1AA) In this Part, **entry** means an entry required under this Act, including, without limitation,—
- “(a) every declaration, invoice, certificate, written statement, or other document required or authorised by or under this Act to be made or produced by a person making the entry; and 20
- “(b) every amendment of the entry; and
- “(c) in relation to any goods or class of goods deemed by regulations made under section 40(d) to have been entered under section 39(1), a document that, under those regulations, the chief executive requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered; and 25 30
- “(d) in relation to any goods or class of goods deemed by regulations made under section 50(b) to have been entered under section 49(1), a document that, under those regulations, the chief executive requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered.” 35

- (2) Section 128(1) is amended by omitting “pursuant to section 39 of this Act”.
- (3) Section 128(6) is amended by inserting “or exportation” after “importation”.
- (4) Section 128(7) is amended by inserting “, in relation to an entry pursuant to section 39,” after “**materially incorrect**”. 5
- (5) Section 128 is amended by inserting the following subsection after subsection (7):
- “(7A) For the purposes of this section, **materially incorrect**, in relation to an entry that is not an entry pursuant to section 39, means that the entry contains a material error or omission in relation to a matter that the entry is required by or under this Act to address.” 10
- (6) Section 128(10) is amended by inserting “and entered pursuant to section 39” after “subsection (1) of this section”. 15
- (7) Section 130(c) is consequentially amended by inserting “, exporter,” after “importer”.

Customs computerised entry processing systems

17 Cancellation of registration of registered user

- (1) The heading to section 135 is amended by omitting “**Cancellation**” and substituting “**Suspension or cancellation**”. 20
- (2) Section 135 is amended by inserting the following subsections after subsection (1):
- “(1A) Despite subsection (1), the chief executive may by written notice to a registered user (which must state grounds for the suspension) suspend that user’s registration until a date or event specified in the notice if satisfied that the user’s registration should not be cancelled, but should instead be suspended until that date or event, because the user— 25
- “(a) has failed to comply with a condition imposed by the chief executive under section 132(3) or 133(3); or 30
- “(b) has failed to comply with a condition imposed by the chief executive under section 134A(1) within the time frame specified in that section.
- “(1B) The date or event specified in the notice under **subsection (1A)** may, but need not, be the user’s compliance with a con- 35

dition imposed by the chief executive under section 132(3), 133(3), or 134A(1).”

- (3) Section 135(2) is consequentially amended by inserting “suspended or” before “cancelled”.

Searching vehicles

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18 Searching vehicles

Section 144 is amended by adding the following subsection:

- “(5) Powers given by any other subsection of this section apply even if the vehicle need not be stopped because it is not moving, and whether or not it is attended, and include the power to use reasonable force, if necessary, to stop, detain, enter in or on, and search the vehicle (or for any of those purposes) as authorised by that other subsection.”

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Arrest of suspected offenders

19 Arrest of offenders

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- (1) The heading to section 174 is amended by inserting “**suspected**” before “**offenders**”.

- (2) Section 174 is amended by repealing subsections (1) and (2) and substituting the following subsections:

- “(1) A Customs officer who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this Act punishable by imprisonment, or an offence against section 209, may, while that cause to suspect continues and before the end of the seventh day after the date on which it arose, arrest that person without warrant.

25

- “(1A) A Customs officer who has reasonable cause to suspect that a person has carried some other person into New Zealand on a craft, and that the carriage of the other person into New Zealand on the craft constituted an offence against section 98C(1) (which makes it an offence to smuggle unauthorised migrants) of the Crimes Act 1961 may, while that cause to suspect continues and before the end of the seventh day after the date on which it arose, and on the craft or elsewhere, arrest the person without warrant.

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- “(2) A constable who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against section 176, 188A, 209, or 211 may, while that cause to suspect continues and before the end of the seventh day after the date on which it arose, arrest that person without warrant.” 5
- (3) Section 168 is consequentially amended by repealing subsection (3C) and substituting the following subsection:
- “(3C) A Customs officer or constable who has reasonable cause to suspect that a person has by failing to comply with subsection (3A) or (3B) committed an offence against section 188A may under **section 174(1) or (2)** arrest that person without warrant while that cause to suspect continues and before the end of the seventh day after the date on which it arose.” 10
- False allegation or report to Customs officer* 15
- 20 New section 177A inserted**
The following section is inserted after section 177:
- “177A False allegation or report to Customs officer**
- “(1) Every person commits an offence who,—
- “(a) contrary to the fact and without a belief in the truth of the statement, makes or causes to be made to a Customs officer a written or verbal statement alleging that an offence has been committed; or 20
- “(b) with the intention of causing wasteful deployment, or of diverting deployment, of the Customs personnel or resources, or being reckless as to that result,— 25
- “(i) makes a statement to any person that gives rise to serious apprehension for the person’s own safety or the safety of any person or property, knowing that the statement is false; or 30
- “(ii) behaves in a manner that is likely to give rise to such apprehension, knowing that such apprehension would be groundless.
- “(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 35 3 months or to a fine not exceeding \$2,000.
“Compare: 1981 No 113 s 24”.

Laying of information

21 New section 221 substituted

Section 221 is repealed and the following section substituted:

“221 Laying of information

- “(1) Every information under the Summary Proceedings Act 1957 5
for any offence against this Act (other than one for an offence
against section 216 of this Act) must be laid by—
“(a) the chief executive; or
“(b) any Customs officer nominated by the chief executive; 10
or
“(c) any person who is not a Customs officer but is an agent
or employee of the Customs nominated by the chief ex-
ecutive.
“(2) Any Customs officer or agent or employee of the Customs pur- 15
porting to act pursuant to a nomination of the chief executive
under **subsection (1)(b) or (c)** is, in the absence of proof to
the contrary, presumed to have been so nominated.
“(3) An information under the Summary Proceedings Act 1957 for 20
an offence against section 216 of this Act must be laid by the
Registrar of a Customs Appeal Authority.
“(4) Any information for an offence against this Act may, despite 25
anything to the contrary in the Summary Proceedings Act
1957, be laid at any time within 5 years after the date of the
offence.
“Compare: 1966 No 19 ss 259, 260”.

Automated electronic systems

22 New sections 274A to 274D inserted

The following sections are inserted before section 275:

**“274A Use of automated electronic systems by Customs to 30
make decisions, exercise powers, comply with obligations,
and take related actions**

- “(1) The chief executive may arrange for the use, under the chief 35
executive’s control, of automated electronic systems for any
purposes for which the chief executive, the Customs, or a Customs officer may, or must, under the designated border pro-
cessing law,—
“(a) make a decision; or

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Processing Bill**

Part 1 cl 22

- “(b) exercise a power, or comply with an obligation; or
“(c) do anything else related to making a decision, exercising a power, or complying with an obligation.
- “(2) An arrangement under **subsection (1)(a)** may (without limitation) involve use of an automated electronic system to make a decision by analysing the information (if any) about a person that is held by the chief executive, or to which the chief executive has access, using criteria predetermined by the chief executive. 5
- ~~“(3) The chief executive must not under **subsection (1)** arrange for use of an automated electronic system in relation to a decision, power, obligation, or related action unless satisfied that the system has the capacity with reasonable reliability to make the decision, exercise the power, perform the obligation, or take the related action. 10~~
- “(3) The chief executive must not under **subsection (1)** arrange for use of an automated electronic system in relation to a decision, power, obligation, or related action unless satisfied that—
- “(a) the system has the capacity with reasonable reliability to make the decision, exercise the power, comply with the obligation, or take the related action; and 20
- “(b) there are also available for the person affected 1 or more alternative ways of making the decision, exercising the power, complying with the obligation, or taking the related action, and each of those alternative ways involves a person. 25
- “(4) Before concluding for the first time, varying significantly, or revoking and replacing an arrangement under **subsection (1)**, the chief executive must consult with the Privacy Commissioner on the terms, and any privacy implications, of the proposed initial arrangement, significant variation, or replacement arrangement. 30
- “(5) A decision made, power exercised, obligation complied with, or related action taken using an automated electronic system in accordance with an arrangement under **subsection (1)** must for all purposes be treated as a decision made, power exercised, obligation complied with, or related action taken by the chief executive, the Customs, or a Customs officer (as the case may be) who or that is authorised by the designated border pro- 35

- cessing law to make that decision, exercise that power, comply with that obligation, or take that related action.
- “(6) An automated electronic system used in accordance with an arrangement under **subsection (1)** may include components outside New Zealand, and may also be used— 5
- “(a) for making decisions, exercising powers, complying with obligations, or taking related actions under other enactments; and
- “(b) in accordance with provisions of those other enactments on use of automated electronic systems. 10
- “(7) For the purposes of this section and **sections 274B and 274C**, the following provisions (and any regulations made under them, or made under this Act and made for their purposes) are the **designated border processing law**:
- “(a) Parts 3 (arrival and departure of goods, persons, and craft) and 3A (border-crossing goods, persons, and craft): 15
- “(b) Part 12 (powers of Customs officers):
- “(c) Parts 13 to 15 and 17 (offences, forfeiture and seizure, evidence, and miscellaneous provisions): 20
- “(d) any other provisions of this Act that are declared by regulations under section 286(1)(ii) to be for those purposes part of the designated border processing law.
- “Compare: 1987 No 74 s 125AB(5); Australian Citizenship Act 2007 (Aust) s 48; Migration Act 1958 (Aust) s 495A
- “**274B Publication of details of arrangements for use of automated electronic systems** 25
- “(1) The chief executive must ensure that details of arrangements under **section 274A(1)**, and variations, revocations, or revocations and replacements of details of that kind, are published promptly—
- “(a) in the *Gazette*; and 30
- “(b) (so far as practicable) on an Internet site that is maintained by, or on behalf of, the chief executive, and that is publicly available free of charge.
- “(2) Those details must include, for every arrangement under **section 274A(1)**, and for every variation, revocation, or revocation and replacement of such an arrangement, information 35

- identifying the relevant decision, power, obligation, or related action under the designated border processing law, and information identifying the automated electronic system that is to make, exercise, comply with, or take that decision, power, obligation, or related action. 5
- “(3) No arrangement, variation, revocation, or revocation and replacement is made invalid by reason only of a failure to publish details of it promptly in accordance with **subsection (1)**.
- “**274C Variation and substitution of decisions made by automated electronic systems** 10
- “(1) This section applies to a decision—
- “(a) that, under the designated border processing law, may or must be made by the chief executive, the Customs, or a Customs officer (as the case may be); and
- “(b) that is made by an automated electronic system in accordance with an arrangement under **section 274A(1)**. 15
- “(2) The chief executive, the Customs, or a Customs officer (as the case may be) may, despite **section 274A** or any other enactment or other law to the contrary,—
- “(a) vary or add to terms or conditions of, or imposed in or in relation to, the decision; or 20
- “(b) substitute a decision (the **substituted decision**) for the decision (the **initial decision**) if satisfied that the substituted decision could have been made under the same provision of the designated border processing law as the initial decision and that the substituted decision is more favourable to the person affected. 25
- “(3) The chief executive, the Customs, or the Customs officer (as the case may be) does not have a duty to consider whether to exercise all or any of the powers in **subsection (2)** in respect of a decision, whether or not he or she is asked to do so by the person affected or in any other circumstances. 30
- “Compare: Migration Act 1958 (Aust) s 495B
- “**274D Appeals and reviews unaffected** 35
- Sections 274A to 274C** do not limit or affect any rights to appeal against, or to apply, in accordance with law, for administrative or judicial review of, any arrangement, decision (ini-

tial or substituted), power, obligation, or other action under or specified in those sections.

“Compare: 2002 No 34 s 33; 2004 No 115 s 21(d); 2005 No 39 s 61(6)”.

Incorporation of provisions contained in, or prepared under, international trade agreements by reference in Customs and Excise Regulations 5

23 New sections 287A to 287F inserted

The following sections are inserted after section 287:

“287A Incorporation of provisions by reference in regulations

“(1) Regulations made under this Act (for example, regulations made under section 65) may incorporate by reference any provisions set out in— 10

“(a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or

“(b) another document made to give effect to such an agreement. 15

“(2) The provisions may be incorporated in the regulations—

“(a) in whole or in part; and

“(b) with modifications, additions, or variations specified in the regulations. 20

“(3) The incorporated provisions—

“(a) are the provisions as they exist at the time that the regulations are made; and

“(b) form part of the regulations for all purposes and have legal effect accordingly. 25

“287B Effect of amendments to, or replacement of, provisions incorporated by reference

An amendment to, or replacement of, provisions incorporated under **section 287A** has legal effect as part of the regulations only if regulations are made that state that the particular amendment or replacement has that effect. 30

“287C Proof of provisions incorporated by reference

“(1) A copy of the provisions incorporated under **section 287A**, including any amendment to, or replacement of, the provisions, must be— 35

- “(a) certified as a correct copy of the provisions by the chief executive; and
- “(b) retained by the chief executive.
- “(2) The production in proceedings of a certified copy of the provisions is, in the absence of proof to the contrary, sufficient evidence of the incorporation in the regulations of the provisions. 5

“**287D Access to provisions incorporated by reference**

- “(1) The chief executive must—
 - “(a) ensure that copies of any provisions incorporated under **section 287A** are available for inspection during working hours, free of charge, at places specified in a notice given under **paragraph (d)**; and 10
 - “(b) ensure that copies of the provisions are published on an Internet site that is, so far as practicable, publicly available free of charge; and 15
 - “(c) ensure that copies of the provisions are available for purchase at a reasonable price at places specified in a notice given under **paragraph (d)**; and
 - “(d) give notice in the *Gazette* stating that— 20
 - “(i) the provisions are incorporated in particular regulations and the date on which the regulations were made; and
 - “(ii) copies of the provisions are available (at all reasonable times) for inspection during working hours, free of charge, at specified places; and 25
 - “(iii) copies of the provisions are available on a specified Internet site; and
 - “(iv) copies of the provisions can be purchased at specified places. 30
- “(2) A failure to comply with this section does not invalidate regulations that incorporate provisions under **section 287A**.

“**287E Acts and Regulations Publication Act 1989 not applicable to provisions incorporated by reference**

The Acts and Regulations Publication Act 1989 does not apply to provisions incorporated under **section 287A** or to an amendment to, or replacement of, those provisions. 35

“287F Application of Regulations (Disallowance) Act 1989 to provisions incorporated by reference

“(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires provisions incorporated under **section 287A** to be laid before the House of Representatives. 5

“(2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by **subsection (1)** of this section, applies to regulations that incorporate provisions under **section 287A.**”

Updating of terms relating to Police 10

24 References to members of Police replaced with references to constables

The principal Act is amended in the manner specified in **Part 4** of **Schedule 1**.

Part 2 15

Amendments to Tariff Act 1988

25 Principal Act amended

This **Part** amends the Tariff Act 1988.

Incorporation of provisions contained in, or prepared under, international trade agreements by reference in Tariff Amendment Orders 20

26 New sections 7C to 7H inserted into Tariff Act 1988

The following sections are inserted after section 7B:

“7C Incorporation of provisions by reference in regulations

“(1) An Order in Council made under section 9 or 10 may incorporate by reference any provisions set out in— 25

“(a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or

“(b) another document made to give effect to such an agreement. 30

“(2) The provisions may be incorporated in the Order in Council—

“(a) in whole or in part; and

“(b) with modifications, additions, or variations specified in the regulations.

- “(3) The incorporated provisions—
- “(a) are the provisions as they exist at the time that the Order in Council is made; and
 - “(b) form part of the Order in Council for all purposes and have legal effect accordingly. 5
- “7D **Effect of amendments to, or replacement of, provisions incorporated by reference**
- An amendment to, or replacement of, provisions incorporated under **section 7C** has legal effect as part of the Order in Council only if an Order in Council is made that states that the particular amendment or replacement has that effect. 10
- “7E **Proof of provisions incorporated by reference**
- “(1) A copy of the provisions incorporated under **section 7C**, including any amendment to, or replacement of, the provisions, must be— 15
- “(a) certified as a correct copy of the provisions by the chief executive; and
 - “(b) retained by the chief executive.
- “(2) The production in proceedings of a certified copy of the provisions is, in the absence of proof to the contrary, sufficient evidence of the incorporation in the Order in Council of the provisions. 20
- “7F **Access to provisions incorporated by reference**
- “(1) The chief executive must—
- “(a) ensure that copies of any provisions incorporated under **section 7C** are available for inspection during working hours, free of charge, at places specified in a notice given under **paragraph (d)**; and 25
 - “(b) ensure that copies of the provisions are published on an Internet site that is, so far as practicable, publicly available free of charge; and 30
 - “(c) ensure that copies of the provisions are available for purchase at a reasonable price at places specified in a notice given under **paragraph (d)**; and
 - “(d) give notice in the *Gazette* stating that— 35

- “(i) the provisions are incorporated in a particular Order in Council and the date on which the Order in Council was made; and
- “(ii) copies of the provisions are available (at all reasonable times) for inspection during working hours, free of charge, at specified places; and 5
- “(iii) copies of the provisions are available on a specified Internet site; and
- “(iv) copies of the provisions can be purchased at specified places. 10
- “(2) A failure to comply with this section does not invalidate an Order in Council that incorporates provisions under **section 7C**.
- “**7G Acts and Regulations Publication Act 1989 not applicable to provisions incorporated by reference** 15
The Acts and Regulations Publication Act 1989 does not apply to provisions incorporated under **section 7C** or to an amendment to, or replacement of, those provisions.
- “**7H Application of Regulations (Disallowance) Act 1989 to provisions incorporated by reference** 20
- “(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires provisions incorporated under **section 7C** to be laid before the House of Representatives.
- “(2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by **subsection (1)** of this section, applies to an Order in Council that incorporates provisions under **section 7C**.” 25
- 27 Application of Tariff**
Section 7(1) is consequentially amended by adding the following paragraph: 30
- “(c) specified in an agreement or document incorporated into an Order in Council in reliance on **section 7C** by reference to the preferential abbreviation or to the preferential country.”

*Working Tariff Document replaces Schedule 1***28 Interpretation**

- (1) The definition of **Tariff** in section 2(1) is repealed and the following definition substituted:

“**Tariff**—

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“(a) means the Tariff of New Zealand as set out in the 2010 Tariff Document; but

“(b) if, and in so far as, the Tariff referred to in **paragraph (a)** is on or after **1 January 2010** from time to time amended, modified, or revoked and replaced, then despite **paragraph (a)** means that Tariff as from time to time amended, modified, or revoked and replaced”.

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- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**2010 Tariff Document** means the document certified under **section 9A(1)**

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“**Working Tariff Document** means the document maintained under that name by the person holding office under the State Sector Act 1988 as the Chief Executive of the New Zealand Customs Service”.

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29 New section 9A inserted

The following section is inserted after section 9:

“9A Certification of 2010 Tariff Document

- “(1) The chief executive must, by the close of **31 December 2009**,—

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“(a) certify a copy of the Working Tariff Document; and

“(b) retain that copy.

- “(2) ~~Before certifying a copy of the Working Tariff Document under **subsection (1)**, the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 1 as in force at the close of **31 December 2009**.~~

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- “(2) Before certifying a copy of the Working Tariff Document under **subsection (1)**, the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 1—

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“(a) as in force at the close of **31 December 2009**; but

- “(b) as amended by any order made under section 9 and that comes into force on 1 January 2010.
- “(3) The chief executive must ensure that—
- “(a) references in the certified copy to Schedule 3 of the Customs and Excise Act 1996 are replaced with references to the Excise and Excise-equivalent Duties Table; and 5
- “(b) the certified copy indicates clearly that any information in it that is not the contents of Schedule 1 as described in **paragraphs (a) and (b) of subsection (2)** does not form part of, or have legal effect as part of, the Tariff (as defined after **31 December 2009**). 10
- “(3) The certified copy must indicate clearly that any information in it that is not the contents of Schedule 1 as in force at the close of **31 December 2009** does not form part of, or have legal effect as part of, the Tariff.” 15
- 30 New sections 9B to 9G inserted**
The following sections are inserted after section 9A:
- “9B Access to Tariff**
- “(1) The chief executive must—
- “(a) ensure that copies of the documents referred to in **subsection (2)** are published on an Internet site that is, so far as practicable, publicly available free of charge; and 20
- “(b) ensure that copies of the documents referred to in **subsection (2)** are available for purchase at a reasonable price at the places designated under section 9 of the Acts and Regulations Publication Act 1989. 25
- “(2) The documents are—
- “(a) the Tariff as from time to time amended, modified, or revoked and replaced on or after **1 January 2010**; and
- “(b) the 2010 Tariff Document; and 30
- “(c) Orders in Council amending or modifying the Tariff and made under section 9 or 10 on or after **1 January 2010**.
- “(3) Every version of the Tariff referred to in **subsection (2)(b) (2)(a)** and published or made available under **subsection (1)** must— 35
- “(a) indicate that it is the Tariff as in force at the beginning of a stated date; and

- “(b) list all Acts and Orders in Council that are enacted on or after **1 January 2010** and before the stated date and that amend, modify, revoke, or revoke and replace some or all of the Tariff.
- “(4) Nothing in **section 9A** or this section prevents the chief executive from ensuring that other information is published or made available with the Tariff, so long as in doing so the chief executive ensures that it is indicated clearly that the other information does not form part of, or have legal effect as part of, the Tariff. 5
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-
- Example**
Examples of other information are—
- the Excise and Excise-equivalent Duties Table (as that term is defined in the Customs and Excise Act 1996):
 - details of prohibited imports: 15
 - tables explaining the correlation between former and current Tariff items.
-
- “**9C Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989**
Orders in Council amending or modifying the Tariff made under section 9 or 10 on or after **1 January 2010**— 20
- “(a) are regulations for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives not later than 16 sitting days after the day on which they are made; but 25
- “(b) are not regulations for the purposes of the Acts and Regulations Publication Act 1989.
- “**9D Judicial notice of Tariff**
Judicial notice must be taken by all courts and persons acting judicially of the Tariff. 30
“Compare: 1989 No 142 ss 16A, 16B(1)
- “**9E Evidence of 2010 Tariff Document, Tariff, and amendments to Tariff**
Every copy of the documents referred to in **section 9B(2)** purporting to be published or made available under the au- 35

thority of the chief executive is, unless the contrary is shown, deemed—

“(a) to be a correct copy of the document; and

“(b) to have been so published or made available.

“Compare: 1989 No 142 s 16C

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“9F Tariff may be amended, and must be interpreted, as if it were an enactment

“(1) The Tariff may be amended, revoked, or revoked and replaced by an Act of Parliament as if it were an Act of Parliament.

“(2) The Tariff may be altered or amended by an Order in Council made under section 9 or 10 as if it were a regulation. 10

“(3) The Interpretation Act 1999 applies to the Tariff as if it were an enactment.

“(4) Nothing in this Act limits or affects the application of—

“(a) the Acts and Regulations Publication Act 1989 and the Interpretation Act 1999 to an Act amending, revoking, or revoking and replacing the Tariff, this Act (either alone or with other enactments), or both; or 15

“(b) the Interpretation Act 1999 to an Order in Council made under section 9 or 10. 20

“9G Tariff referencesReferences to Schedule 1

Every reference in the following to the Tariff or to Schedule 1 of the Tariff Act 1988 must be read as if it were a reference to the Tariff (as defined by section 2 of the Tariff Act 1988 as amended by **section 28(1)** of the **Border (Customs, Excise, and Tariff) Processing Act 2009**): 25

“(a) an enactment not added, amended, inserted, or substituted by the **Border (Customs, Excise, and Tariff) Processing Act 2009** and in force at the commencement of this section: 30

“(b) a document in operation at that commencement.

31 Schedule 1 consequentially repealed

(1) Schedule 1 is consequentially repealed.

(2) Section 3 is consequentially repealed and the following section substituted: 35

- “3 The Tariff**
- “(1) Duties must be levied, collected, and paid in accordance with the Tariff, or with a transitional safeguard measure or a provisional transitional safeguard measure, as the case may require, on goods to which this subsection applies. 5
- “(2) **Subsection (1)** applies to goods that, after the commencement on 1 December 1988 of this Act, are—
- “(a) imported into New Zealand; or
 - “(b) entered therein for home consumption; or
 - “(c) entered therein for delivery to a manufacturing area. 10
- “(3) **Subsection (1)** is subject to the provisions of this Act.”
- (3) If this section commences before the commencement of the Tariff (AANZFTA) Amendment Act 2009 (the **AANZFTA Act**),—
- (a) section 7(3) of the principal Act (as to be substituted by section 6 of the AANZFTA Act) is amended by omitting “Schedule 1” in each place where it appears and substituting in each case “the Tariff”; and 15
 - (b) section 10(1) and (2) of the AANZFTA Act (which amend Schedule 1) are amended by omitting “Schedule 1” and substituting “the Tariff”; and 20
 - (c) section 10(3) of the AANZFTA Act (which amends Schedule 1) is amended by omitting “Schedule 1” and substituting “The Tariff”.
- (3A) If section 6 of the AANZFTA Act commences on **1 January 2010**, section 7(3) of the principal Act (as to be substituted by section 6 of the AANZFTA Act) is amended immediately after its commencement by omitting “Schedule 1” in each place where it appears and substituting in each case “the Tariff”. 25 30
- (4) If this section commences after the commencement of the AANZFTA Act, section 7(3) of the principal Act (as substituted by section 6 of the AANZFTA Act) is amended by omitting “Schedule 1” wherever it appears and substituting in each case “the Tariff”. 35
- (5) The enactments specified in **Schedule 3** are consequentially amended in the manner indicated in that schedule.
- (6) ~~Note 1 to the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996)~~

is consequentially amended immediately after the commencement of **sections 10 and 11, Part 3 of Schedule 1, and Schedule 2** of the **Border (Customs, Excise, and Tariff) Processing Act 2009** by omitting “Schedule 1 to the Tariff Act 1988” and substituting “the Tariff (as defined in **section 2(1)** of the Tariff Act 1988)”. 5

Schedule 1 **ss 4, 5, 11(3), 24**
**Consequential and updating amendments
to principal Act**

Part 1

Consequential amendments relating to use 5
of future technology

Section 20(1)(ab)

Insert “in relation” after “a package”.

Omit “has been applied” and substitute “has been used”.

Omit “first applied to the package” and substitute “first used”. 10

Heading to section 53A

Omit “**applied**” and substitute “**used in relation**”.

Section 53A

Subsection (1): omit “apply” and substitute “use”.

Subsection (1): omit “re-apply” and substitute “reuse”. 15

Subsection (1): insert “in relation” after “Customs seals”.

Subsection (2): omit “apply a Customs seal” and substitute “use a Customs seal in relation”.

Subsection (2): omit “applying” and substitute “using”.

Subsection (3): repeal and substitute: 20

“(3) Without limiting the generality of subsection (2), the notice must specify that the officer or other person may use a Customs seal in relation to a package of goods that has not had a Customs seal used in relation to it only if—

“(a) the exporter concerned (or his or her agent or employee) consents to the seal being used; or 25

“(b) the seal is used incidental to, and immediately after, the exercise by any person of a power under this Act to examine or search for goods of any kind.”

Subsection (4): omit “applied” and substitute “used in relation”. 30

Heading to section 53B

Omit “**to which seal applied**” and substitute “**in relation to which seal used**”.

Part 1—*continued*

Section 53B

Omit “applying a Customs seal” and substitute “using a Customs seal in relation”.

Paragraph (a): omit “applied” and substitute “used in relation”.

Paragraph (b)(ii): insert “in relation” after “package”. 5

Paragraph (b)(ii): omit “applied” and substitute “used”.

Paragraph (c): insert “in relation” after “package” in each place where it appears.

Paragraph (c): omit “applied” and substitute “used” in each place where it appears. 10

Paragraph (d)(ii): insert “in relation” after “package”.

Paragraph (d)(ii): omit “applied” and substitute “used”.

Section 53E(1)(b)

Omit “seal or markings to be applied” and substitute “seal, marking, substance, or device to be used in relation”. 15

Heading to 53H

Omit “**Application**” and substitute “**Use**”.

Insert “**in relation**” after “**Customs seals**”.

Section 53H

Subsection (1): repeal and substitute: 20

“(1) Nothing in this Act prevents a Customs seal from being used in relation to a Customs-approved secure package after an approved seal, marking, substance, or device of the kind referred to in section 53E(1)(b) has been used in relation to the package in accordance with the relevant Customs-approved secure exports scheme.” 25

Subsection (2): omit “applied” and substitute “used in relation”.

Section 144(4)

Omit “or in a package to which a Customs seal has been applied” and substitute “or in a package in relation to which a Customs seal has been used”. 30

Part 1—*continued*

Section 146

Subsection (2): omit “or in a package to which a Customs seal has been applied” in each place where it appears and substitute in each case “or in a package in relation to which a Customs seal has been used”. 5

Subsection (3)(a): omit “a package to which a Customs seal was applied or in a Customs-approved secure package to which a seal or marking of the kind referred to in section 53E(1)(b) was applied” and substitute “a package in relation to which a Customs seal was used or in a Customs-approved secure package in relation to which a seal, marking, substance, or device of the kind referred to in section 53E(1)(b) was used”. 10

Subsection (3)(c): omit “seal or marking” and substitute “seal, marking, substance, or device”.

Section 151(7)(b) 15

Omit “a package to which a Customs seal has been applied” and substitute “a package in relation to which a Customs seal has been used”.

Heading to section 179

Omit “**seals or marks**” and substitute “**seals, stamps, markings, substances, or devices**”. 20

Section 179(1)

Omit “stamp, or mark” in each place where it appears and substitute in each case “stamp, marking, substance, or device”.

Heading to section 197

Omit “**and fastenings**” and substitute “, **etc**”. 25

Section 197(1)

Omit “or seal that has been placed by a Customs officer on any goods” and substitute “seal, marking, substance, or device that has been used by a Customs officer in relation to any goods”.

Part 1—*continued*

Section 210A

Subsection (1)(a): omit “applies a Customs seal to” and substitute “uses a Customs seal in relation to”.

Subsection (1)(b): omit “applied” and substitute “used in relation”.

Subsection (1)(c): omit “applies” and substitute “uses”. 5

Subsection (1)(c): insert “in relation” after “section 53E(1)(b)”.

Subsection (2)(a): insert “in relation” after “a package”.

Subsection (2)(a): omit “applied” and substitute “used”.

Subsection (2)(b): insert “in relation” after “package”.

Subsection (2)(b): omit “applied” and substitute “used”. 10

Heading to section 278

Omit “**stamps, and marks**” and substitute “**etc**”.

Section 278

Omit “or mark” and insert “mark, marking, substance, or device”.

Part 2

15

Consequential amendments relating to
authorised persons

Section 2(1)

Definition of authorised person: omit “for the time being” and “of this Act.”. 20

Definition of Customs officer or officer: repeal and substitute:

“**Customs officer or officer**,—

“(a) in any provision of this Act, and in any enactment that is not this Act or a portion of it but that uses the definition in this subsection of both or either of those terms, means a person who is— 25

“(i) a person appointed by the chief executive as a Customs officer for the purpose of this Act; or

“(ii) any other person employed by the chief executive and who is declared, whether at the time of appointment or otherwise, by the chief executive 30

Part 2—*continued*

Section 2(1)—*continued*

to be a Customs officer for the purpose of this Act; and

- “(b) in a provision of this Act (other than this section, and sections **6(4)**, 7, 38P, and 175) includes an authorised person who— 5
- “(i) is performing or exercising a function or power in accordance with that person’s authorisation; and
- “(ii) is therefore required by **section 6(4)** to be treated for the purposes of that provision as a Customs officer”. 10

Section 23

Subsection (2): omit “or other authorised persons shall” and substitute “must”.

Subsection (3): omit “or authorised persons”.

Section 137

15

Omit “and any authorised person assisting the officer”.

Section 139(1)

Omit “and any authorised person assisting the officer”.

Section 140

Subsection (1): omit “and any authorised person assisting the officer”. 20

Subsection (2): omit “and any authorised person assisting the officer,”.

Section 141

Omit “and an authorised person assisting the officer”. 25

Section 165(1)

Omit “or an authorised person”.

Part 2—*continued*

Section 166

Subsections (1), (2), and (4): omit “or authorised person” in each place where it appears.

Subsection (4)(b): omit “or an authorised person”.

Section 166A

5

Omit “or authorised person”.

Section 166C(3)

Omit “or authorised person”.

Section 177(1)(a)

10

Omit “or authorised person”.

Section 178(1)(a)

Omit “or authorised person” in each place where it appears.

Omit “or an authorised person”.

Section 191(1)(e)

15

Omit “or authorised person”.

Section 205B(2)

Omit “an authorised person,”.

Part 3

Consequential amendments relating to
Excise and Excise-equivalent Duties Table
replacing Schedule 3

20

Section 2

Subsection (1): insert in their appropriate alphabetical order:

“**2010 Excise and Excise-equivalent Document** has the meaning given in **section 76A**”

25

“**Excise and Excise-equivalent Duties Table** has the meaning given in **section 76A**”.

Part 3—*continued***Section 2**—*continued*

Subsection (1): definition of **excisable goods**: repeal and substitute:
 “**excisable goods** means goods on which excise duty is payable in accordance with Part A of the Excise and Excise-equivalent Duties Table”.

Subsection (1): definition of **manufacture**: omit the words before 5
 paragraph (a) and substitute “**manufacture**, in relation to goods specified in the Excise and Excise-equivalent Duties Table, means,—”.

Subsection (2)(d) and (e): repeal and substitute:

“(d) the term **per litre**, in respect of the levying of excise 10
 duty, for all excise items under the heading **Fuels** in Part A of the Excise and Excise-equivalent Duties Table, means the quantity of product expressed in litres at a temperature of 15°C:

“(e) the term **per litre**, in respect of the levying of excise- 15
 equivalent duty, for all Tariff items under the heading **Fuels** in Part B of the Excise and Excise-equivalent Duties Table, means the quantity of product expressed in litres at a temperature of 15°C.”

Subsection (3): omit the words before paragraph (a) and substitute 20
 “For the purposes of paragraph (c)(ii) of the definition of manufacture in subsection (1), the term **ancillary process**, in relation to the manufacture of goods specified in the Excise and Excise-equivalent Duties Table that are neither tobacco nor a fuel, means 1 or more of the following processes:”.

Section 10(a)

25

Repeal and substitute:

“(a) the manufacture of goods specified in Part A of the Excise and Excise-equivalent Duties Table; or”.

Part 3—*continued*

Section 68

Repeal and substitute:

“68 Manufacture of excisable goods

“(1) No person may manufacture goods specified in Part A of the Excise and Excise-equivalent Duties Table except in a manufacturing area that is licensed under this Act. 5

“(2) **Subsection (1)** is subject to any exceptions provided for under this Act.

“Compare: 1966 No 19 s 108; 1986 No 44 s 11”.

Section 70(1)

10

Omit the words before paragraph (a) and substitute “Subject to any regulations made under section 71, all goods that are specified in Part A of the Excise and Excise-equivalent Duties Table must, on removal from a Customs controlled area, be entered—”.

Section 73

15

Subsection (1): repeal and substitute:

“(1) In respect of all goods that are manufactured in a manufacturing area and that are specified in Part A of the Excise and Excise-equivalent Duties Table there must be levied, collected, and paid excise duties, if any, at the appropriate rates set out in Part A of the Excise and Excise-equivalent Duties Table.” 20

Subsection (5): repeal and substitute:

“(5) For the purposes of this section, **wine** means the goods referred to in any of excise item numbers 99.20.20L, 99.25.20B, 99.30.21D, 99.30.26E, 99.30.32K, and 99.30.47H of Part A of the Excise and Excise-equivalent Duties Table.” 25

Section 74(1)

Repeal and substitute:

“(1) Subject to subsection (2), where goods specified in Part A of the Excise and Excise-equivalent Duties Table are manufactured in an area that is not licensed pursuant to section 12, the provisions of this Part and Part 8 apply as if the area were licensed as a manufacturing area under this Act.” 30

Part 3—*continued***Section 75(1)**

Repeal and substitute:

“(1) Subject to this Act, and in addition to any other duties or levies payable on imported goods, excise-equivalent duty at the appropriate rate specified in Part B of the Excise and Excise-equivalent Duties Table must be levied, collected, and paid on all goods specified in Part B of the Excise and Excise-equivalent Duties Table that are imported.” 5

Section 77(1) and (2)

Repeal and substitute: 10

“(1) The Governor-General may from time to time, by Order in Council, suspend the Excise and Excise-equivalent Duties Table in whole or in part, and by the same or a subsequent Order in Council, and in its place, impose on any goods specified in that table such excise duties and excise-equivalent duties as the Governor-General thinks fit. 15

“(1A) **Subsection (1)** is subject to **subsection (2)**.

“(2) Excise duties and excise-equivalent duties imposed on goods pursuant to **subsection (1)** must not exceed the rate of excise duty or excise-equivalent duty on those goods set out in the Excise and Excise-equivalent Duties Table.” 20

Section 78

Repeal and substitute:

“**78 Power to amend Excise and Excise-equivalent Duties Table for certain purposes** 25

“(1) The Governor-General may from time to time, by Order in Council, amend the Excise and Excise-equivalent Duties Table by—

“(a) revoking, inserting, or amending any heading, heading number, subheading, item, or item number or the title of any Part, section, chapter, or subchapter of the Tariff referred to in the Excise and Excise-equivalent Duties Table in any manner necessary to ensure that that Table conforms to the Tariff; or 30

Part 3—*continued*

Section 78—*continued*

- “(b) revoking, suspending, or amending a provision of the notes forming part of the Excise and Excise-equivalent Duties Table, or by inserting a new provision in the notes, for the purpose of ensuring the proper operation of the Excise and Excise-equivalent Duties Table; or 5
- “(c) revoking, suspending, inserting, or amending a statistical unit in the Excise and Excise-equivalent Duties Table.
- “(2) Despite **subsection (1)(c)**, the chief executive may, by notice in the *Gazette*, revoke, suspend, insert, or amend a statistical unit in the Excise and Excise-equivalent Duties Table. 10
- “(3) No amendment made pursuant to this section may alter the duties or exemptions from duty under this Act applicable to goods classified under an item or heading so amended. 15
- “Compare: 1966 No 19 s 118CA; 1987 No 128 s 4”.

Section 79

Subsection (1): repeal and substitute:

- “(1) The Governor-General may from time to time, by Order in Council, amend the Excise and Excise-equivalent Duties Table to impose such rates of excise duty and excise-equivalent duty as the Governor-General thinks fit on all or any of the alcoholic beverages and tobacco products as defined in **subsection (4)**. 20
- “(1A) **Subsection (1)** is subject to subsections (2) to **(4)**.”

Subsection (4): repeal and substitute:

- “(4) In this section,— 25
- “**alcoholic beverages** means goods that are—
- “(a) goods specified in headings 22.03, 22.04, 22.05, 22.06, 22.08, 99.10, 99.20, 99.25, 99.30, 99.45, and 99.50 of the Excise and Excise-equivalent Duties Table, not being goods that are exempt from excise duty and excise-equivalent duty; or 30
- “(b) undenatured ethyl alcohol and other goods specified in headings 21.05, 21.06, 22.07, 33.02, 99.05, 99.06, 99.35, 99.42, and 99.43 of that table (also not being

Part 3—*continued***Section 79**—*continued*

goods exempt from excise duty and excise-equivalent duty)

“**tobacco products** means goods specified in headings 24.02, 24.03, 99.60, and 99.65 of the Excise and Excise-equivalent Duties Table.”

5

Section 79A

Subsection (1): repeal and substitute:

“(1) At any time during the second financial year, or the third financial year, that follows the financial year in which the current rates of excise duty and excise-equivalent duty on motor spirits came into force, the Governor-General may, by Order in Council, reduce or increase any or all of those rates of excise duty and excise-equivalent duty by amending the Excise and Excise-equivalent Duties Table.”

10

Definition of motor spirits in subsection (2): repeal and substitute: 15

“**motor spirits** means motor spirit and fuels containing motor spirit specified in excise item numbers 99.75.05F, 99.75.23D, 99.75.29C, 99.75.37D, 99.75.51K, 99.75.59E, 99.75.73L, 99.75.81A, and 99.75.93E and Tariff items 2207.20.23, 2207.20.35, 2710.19.13, 2710.19.15, 2710.19.21, 2710.19.25, 2710.19.27, 2710.19.39, 2710.19.64, 2710.19.70, 3824.90.87, 3824.90.93, and 3824.90.97 set out in the Excise and Excise-equivalent Duties Table.”

20

Section 83(2)

Repeal and substitute: 25

“(2) Subsection (1) applies to an approval granted under any of the following:

“(a) excise item number 99.35.30E in Part A of the Excise and Excise-equivalent Duties Table:

“(b) excise item number 99.55.00D in Part A of the Excise and Excise-equivalent Duties Table: 30

“(c) tariff item number 2207.10.29 in Part B of the Excise and Excise-equivalent Duties Table.”

Part 3—*continued*

Section 119(1)(b)

Repeal and substitute:

“(b) the excise classification of those goods under the Excise and Excise-equivalent Duties Table:”.

Section 122(1)(b)

5

Repeal and substitute:

“(b) have a particular excise classification under the Excise and Excise-equivalent Duties Table; or”.

Section 125(1)(c)

Repeal and substitute:

10

“(c) the date of a material change to the Tariff Act 1988, or to the Excise and Excise-equivalent Duties Table, or to any applicable regulations made under this Act or the Tariff Act 1988, if that date occurs prior to importation or manufacture of the relevant goods, as the case may be; or”.

15

Section 294(5)

Repeal and substitute:

“(5) Every reference in any enactment in force immediately before the commencement, on 1 October 1996, of this Act to Schedule 3 of the Customs Act 1966 must, on and after that commencement, be read as a reference to (as the case may be)—

20

“(a) Schedule 3 of this Act; or

“(b) the Excise and Excise-equivalent Duties Table.”

Section 306

25

Repeal.

Part 4
Amendments updating terms
relating to Police

Section 7(1)

Omit “member of the Police” and substitute “constable”. 5

Section 25(2)(a)

Omit “member of the Police” and substitute “constable”.

Section 32C(5)

Paragraph (a) of the definition of **another officer**: omit “member of the police” and substitute “constable”. 10

Section 144(2)

Omit “member of the Police” and substitute “constable”.

Section 148B(1), (2), (4), (6), and (8)

Omit “member of the police” wherever it appears and substitute in each case “constable”. 15

Section 148C(7)

Paragraph (a) of definition of **another officer**: omit “member of the police” and substitute “constable”.

Definition of **detention**: omit “member of the police” and substitute “constable”. 20

Section 149A(1) and (3)

Omit “member of the police” and substitute “constable”.

Section 149B

Subsections (1), (2), (3), and (6): omit “member of the police” and substitute “constable”. 25

Subsections (1), (2), and (3): omit “or member has” and substitute “or constable has”.

Subsection (6): omit “or member thinks” and substitute “or constable thinks”.

Part 4—*continued*

Section 149BA(1) and (5)

Omit “member of the police” wherever it appears and substitute in each case “constable”.

Section 149C(1) and (1A)

Omit “member of the police” wherever it appears and substitute in each case “constable”. 5

Section 149D(2)

Omit “member of the police” and substitute “constable”.

Section 168(6) and (9)

Omit “member of the Police” wherever it appears and substitute in each case “constable”. 10

Section 172(1)

Omit “member of the Police” and substitute “constable”.

Section 174(3)

Omit “member of the Police” wherever it appears and substitute in each case “constable”. 15

Section 175

Omit “member of the Police” wherever it appears and substitute in each case “constable”.

Section 175C(4)(a)

Omit “member of the police” and substitute “constable”. 20

Section 226(1) and (5)

Omit “member of the Police” and substitute “constable”.

Part 4—*continued*

Section 280C

Paragraph (b) of the definition of **authorised officer**: omit “any sworn member of the police” and substitute “a constable”.

Schedule 2

s 11(4)

**Consequential amendments to other
enactments relating to Excise and
Excise-equivalent Duties Table replacing
Schedule 3 of Customs and Excise Act
1996**

5

Part 1

Amendments to Acts

Alcohol Advisory Council Act 1976 (1976 No 143)

Section 39(2)(a): repeal and substitute:

10

- “(a) for the purpose of aligning the rates for classes of liquor under this Act with the classification system applied to alcoholic beverages under Part B of the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996); and”.

15

Energy (Fuels, Levies, and References) Act 1989 (1989 No 140)

Definition of **engine fuel** in section 1B: repeal and substitute:

- “**engine fuel** means any gaseous or liquid fuel that can be used as a fuel for engines, and includes biofuel, diesel, petrol (which is called motor spirit in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996)), synthetic fuel, and blends of these”.

20

Section 24(1)(a) and (b): repeal and substitute:

- “(a) if no Order in Council is in force under **paragraph (b)**, specified in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) as a type of—

25

“(i) motor spirit; or

“(ii) diesel; or

“(iii) biodiesel; or

30

“(iv) ethyl alcohol specified under the heading **Fuels** in Part A or B of the Excise and Excise-equivalent Duties Table (as so defined); or

- “(b) specified in the Excise and Excise-equivalent Duties Table (as so defined) and prescribed by an Order in Council made on the recommendation of the Minister.”

35

Part 1—*continued***Injury Prevention, Rehabilitation, and Compensation Act 2001
(2001 No 49)**

Section 213(3)(a): repeal and substitute:

- “(a) on any fuel (or any category of fuel) specified in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) that is prescribed by regulations made under this Act; or”.

Land Transport Management Act 2003 (2003 No 118)Definition of **motor spirits** in section 5(1): repeal and substitute: 10

- “**motor spirits** does not include aviation spirits of a kind specified in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) as aviation fuel”.

Local Government Act 1974 (1974 No 66)

15

Paragraph (a) of definition of **specified engine fuel** in section 181(1):
repeal and substitute:

- “(a) means,—
- “(i) if no Order in Council is in force under **subparagraph (ii)**, engine fuel specified in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) as a type of—
- “(A) motor spirit; or
- “(B) diesel (including blends of diesel and kerosene); or
- “(C) biodiesel; or
- “(D) ethyl alcohol specified under the heading **Fuels** in Part A or B of the Excise and Excise-equivalent Duties Table (as so defined); or
- “(ii) that part of engine fuel specified in the Excise and Excise-equivalent Duties Table (as so de-

Part 1—*continued*

Local Government Act 1974 (1974 No 66)—*continued*

fined) and prescribed by an Order in Council made under section 199A; but”.

Section 199A(1)(a): repeal and substitute:

- “(a) specify the engine fuels set out in the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) to be specified engine fuel for the purposes of this Act; and”.

Part 2

Amendments to regulations

Climate Change (Liquid Fossil Fuels) Regulations 2008 (SR 2008/356) 10

Regulation 3: insert in its appropriate alphabetical order:

- “**Excise and Excise-equivalent Duties Table** has the same meaning as in **section 76A** of the Customs and Excise Act 1996”.

Regulation 4(1)(a)(i): repeal and substitute:

- “(i) excise item number 99.75.15C or 99.75.18H of Part A of the Excise and Excise-equivalent Duties Table; or”.

Regulation 4(1)(b)(i): repeal and substitute: 20

- “(i) excise item number 99.75.18H of Part A of the Excise and Excise-equivalent Duties Table; or”.

Regulation 4(1)(c)(i): repeal and substitute:

- “(i) excise item number 99.75.35H of Part A of the Excise and Excise-equivalent Duties Table; or”.

Regulation 4(2)(a)(i): repeal and substitute:

- “(i) excise item number 99.75.60J of Part A of the Excise and Excise-equivalent Duties Table; or”.

Injury Prevention, Rehabilitation, and Compensation (Motor Vehicles Levies) Regulations 2009 (SR 2009/60) 30

Regulation 5(2): omit the words before paragraph (a) and substitute “The rate of fuel levy is 9.90 cents per litre of motor spirit described in

Part 2—*continued*

**Injury Prevention, Rehabilitation, and Compensation (Motor
Vehicles Levies) Regulations 2009 (SR 2009/60)—*continued***

the Excise and Excise-equivalent Duties Table (as defined in **section 76A** of the Customs and Excise Act 1996) by any of the following numbers:”.

Schedule 3

s 31(5)

**Consequential amendments to other
enactments relating to Working Tariff
replacing Schedule 1 of Tariff Act 1988**

Customs and Excise Act 1996 (1996 No 27)	5
Section 119(1)(a): repeal and substitute: “(a) the Tariff classification of those goods under Part 1 of the Tariff.”	
Section 119(1)(d): repeal and substitute: “(d) whether or not those goods are subject to a specified duty concession under Part 2 of the Tariff referred to in the application.”	10
Section 122(1)(a): repeal and substitute: “(a) have a particular Tariff classification under Part 1 of the Tariff; or”	15
Section 122(1)(d): repeal and substitute: “(d) are or are not, as the case may be, subject to a specified duty concession under Part 2 of the Tariff.”	
Section 128(10): repeal and substitute: “(10) Where the goods referred to in subsection (1) and entered pur- suant to section 39 become free of duty or subject to a lower rate of duty under Part 1 or Part 2 of the Tariff after the entry is made, then the penalty must be calculated according to sub- section (2)(a) as if the duty liability had not so changed.”	20
Heading above section 308: repeal.	25
Section 308: repeal.	
Section 309: repeal.	
Schedules 9 and 10: repeal.	
Finance Act (No 2) 1993 (1993 No 83)	
Repeal.	30
Finance Act (No 2) 1995 (1995 No 63)	
Repeal.	

**Border (Customs, Excise, and Tariff)
Processing Bill**

Goods and Services Tax Act 1985 (1985 No 141)

Section 12(4)(e): repeal and substitute:

- “(e) reference numbers 40, 45, 70, 75, 80, 81 and 82 of Part 2 of the Tariff (as defined in **section 2(1)** of the Tariff Act 1988) if— 5
- “(i) the goods are entitled to be entered under any of these reference numbers; or
- “(ii) the goods are entitled to be entered duty free under Part 1 of the Tariff (as so defined), but would have been entitled to be entered under 10 any of these reference numbers if the goods had been dutiable under Part 1 of the Tariff (as so defined).”

Legislative history

15 October 2009
15 October 2009

Introduction (Bill 83–1)
First reading and referral to Government
Administration Committee
