

Customs and Excise Amendment Bill (No 4)

Government Bill

As reported from the Foreign Affairs, Defence and
Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Customs and Excise Amendment Bill (No 4) and recommends that it be passed with the amendments shown.

Introduction

The Customs and Excise Amendment Bill (No 4) (the bill) aims to reform the law relating to customs, excise, and other duties, and provides for the administration and enforcement of customs controls at the border. Most of the clauses are in Part 1 of the bill and are directed at making amendments to the Customs and Excise Act 1996 (the principal Act) to enhance the administration of the New Zealand Customs Service (the Service) and the effective enforcement of customs controls. Part 2 of the bill contains consequential amendments to the Tariff Act 1988.

We received 16 submissions primarily from organisations with direct interests in the import and export of goods. Submitters generally opposed the introduction of new fees. Their preference was that funding for import clearance services should continue to be paid directly from Crown revenue, similar to the funding of other “public good” activities. We are advised that it is the Government’s view that it is reasonable to expect importers to contribute to meeting some of the costs of maintaining current levels of facilitation of

border clearance services for goods as is the case in Australia, the United States and other countries.

Major issues considered by the committee

Basis for setting the new fee

We questioned whether the proposed new fee related solely to costs of import transactions, and not costs related to the movement of people. We are assured that no costs associated with processing the movement of people through New Zealand's borders are intended to be recovered under the proposed new fees for import clearance transactions.

We have been advised that the proposed fee is to be set at around \$16 for each transaction (plus GST). We note that although the costs of processing particular import consignments may vary depending on the goods involved, their origin and other factors, it is difficult to know which import clearances will require the most work and accrue the most costs. Due to the wide range of legislation that border transactions can be subject to, any import clearance could potentially require extensive work. Since not all of the processes used are revenue based, it would not be possible to base fees solely on the declared value of the goods in a particular transaction.

We asked how the level of the proposed fee had been calculated, in relation to the actual costs of processing transactions. We are advised that it was based on a Cabinet decision to recoup some of the costs incurred from processing import transactions. The fee of \$16 (plus GST) is derived by dividing the \$15 million the Government intends to recover of its total transaction costs in this area by the average number of transactions per year. As the total cost to the Customs Service for these activities is about \$21 million (for 2000/01), the rate of cost recovery is about 75 percent.

Importers will thus pay an "average" transaction fee. We note that since there is a considerable variety of costs that may occur for any import clearance, the average fee is somewhat arbitrary. However, most of us accept that there is probably no other more practical method of collecting the costs fairly. National Party members oppose the introduction of the new import clearance transaction fee (see minority view at end of the report).

The Government expects that the amount of revenue that will be raised from the fee will be around \$15 million. We are advised that

the Vote allocation for this part of the Customs Service's operations will be reduced by an equivalent amount for the 2002/03 fiscal year.

Compliance with General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO) obligations

A number of submitters considered that the introduction of the proposed import transaction fee would amount to a tax and as such would be in breach of GATT rules in this area. We are advised that as the transaction charge is only aimed at recovering some of the processing costs it is not tax for general revenue purposes. The need for cost recovery reflects the growth of work in this area and the development of electronic systems to facilitate trade in goods generally. We are advised that the Government had used a conservative cost recovery model compared to other countries.

Moreover, we are advised that the introduction of this fee will not breach any of New Zealand's GATT/WTO obligations. The proposed fee satisfies the rules of GATT in that:

- it is not taxation on imports for fiscal purposes
- only import clearance costs are being recovered by the fee
- the fee is below the cost of services rendered and it does not represent an indirect protection to domestic products, and
- it is not a barrier to trade as the amount is immaterial when compared with other costs associated with importing such as freight and brokerage fees.

Although the amendments in clause 4 to section 40 of the principal Act imply that fees could only apply to the extent of the cost of the services rendered, we agree with the proposal from the Customs Service to make this more explicit and to have clause 4 amended accordingly.

Consultation by the Customs Service

We note from the explanatory note to the bill as presented that the Customs Service had consulted widely with other Government departments in the preparation of the bill. However, many submitters who are, or who represent, importers and exporters did not feel they had been adequately consulted at all. We were advised that some limitations had been placed on the opportunity to consult the private sector because the fiscal aspects of the bill were "budget sensitive" until the Government made an official announcement

about its policy in this area. We are advised that when this was made all importers on the Custom Service's financial systems database were sent advice with the details of the announcement. Subsequently some concern was expressed by some organisations in the import/export community. The Customs Service then responded to all the Official Information Act requests, including some related to the transaction fee costings. The Service also initiated meetings with major parties.

Nevertheless, the Customs Service has noted the concerns of submitters and our committee in this regard. We expect that private sector organisations who conduct the business of importing and exporting goods will be part of the consultation process in the preparation of future legislation in the area of customs and excise fees. Some of the amendments suggested by submitters are accepted by the Customs Service. The Service has also suggested a number of technical amendments to the bill, which we recommend be adopted.

Amendments considered by the committee

Objectionable publications

Clause 5 of the bill is intended to address issues related to the importation of objectionable electronic publications, such as downloads of objectionable material from the Internet. Section 54(1) of the principal Act prohibits the importation into New Zealand of goods specified in the First Schedule of the principal Act. These goods include all publications within the meaning of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act. However, we are advised that section 54(1)(a) of the principal Act does not currently prohibit the importation (by transmission) of objectionable publications that are electronic publications, because these types of publications are not goods as defined in section 2(1) of the principal Act.

We support amendment of the principal Act to remedy this anomaly and make the importation of objectionable electronic publications subject to the same prohibitions as apply for the importation of "hard copy" objectionable publications. Clause 5 inserts a new paragraph into section 54(1) to prohibit the importation of such electronic publications. This clause also introduces a new definition of "importation" to the principal Act to make it clear that, in relation to electronic publications, the term includes the arrival of the goods in New Zealand by transmission by any means (other than broadcasting) from a point outside of New Zealand.

Some submitters questioned the provisions of clause 5 on the basis that it would mean a duplication of effort between the Customs Service and other agencies who have responsibilities for controlling objectionable publications, such as the Police and the Department of Internal Affairs. Other submitters argued that measures aimed at controlling prohibited publications should be contained to the Films, Videos, and Publications Classification Act 1993. We are advised that the Customs Service undertook extensive consultation with agencies such as the Police and the Department of Internal Affairs and consequently produced an inter-service agreement aimed at avoiding any duplication between agencies. Moreover, the Customs and Excise Act 1996 is the appropriate legislative mechanism to deal with importation and cross-border offences relating to objectionable publications, whereas the Films, Videos, and Publications Classification Act 1993 is the appropriate mechanism to deal with internal supply and dealing offences relating to objectionable publications. The amendments to the principal Act implemented by clause 5 will provide identical offence and penalty provisions for importation of electronic objectionable publications as those that apply to hard-copy objectionable material.

We received a letter from the Government Administration Committee with additional proposals. We did not recommend amending clause 3 of the bill in relation to the definition of “electronic publication”, as the Government Administration Committee proposed. Other proposals seeking amendments to the Films, Videos and Publications Classification Act 1993 are outside of the scope of this bill. However, as the Films, Videos and Publications Classification Act 1993 is administered by the Ministry of Justice, we believe that any proposals to amend this Act should be assessed by that ministry first.

Entry and search under warrant

The New Zealand Law Society’s submission proposed that some restriction be placed on the length of detention that a person might be subjected to when a search warrant is being executed by the Customs Service, under the provision of clause 15. Although we are advised that the provision is considered by the Ministry of Justice to be compliant with the Bill of Rights Act 1990, we recommend amending clause 15 so that the length of detention is not unreasonable.

Definition of “dangerous goods”

The New Zealand Dangerous Goods Air Transport Council’s submission supported the intent of clause 17 in dealing with dangerous goods. We agree with their proposal to amend this clause so that only “unauthorised” dangerous goods are prevented from being on-carried. This can be achieved by using clause 17 to amend section 175A(1).

Alcoholic ice blocks

A submission from the Distilled Spirits Association of New Zealand argued that the Customs Service’s classification of spirit-based ice blocks as a foodstuff allows these goods to circumvent relevant laws controlling the sale of liquor. We are advised that the Customs Service classification relates solely to the importation of these goods, made in accordance with the General Rules for the Interpretation of the Tariff that form part of the Tariff, which is itself in the First Schedule to the Tariff Act 1988. This is not relevant to the coverage of goods under the Sale of Liquor Act 1989. We note, however, that the Ministry of Justice has confirmed that spirit-based alcoholic ice blocks are covered the requirements of the Sale of Liquor Act 1989.

We recommend amending clause 27 and the Third Schedule of the principal Act in relation to alcoholic ice blocks. The amendment would align the rates of duty pertaining to alcoholic ice block products with the rates of other forms of alcohol that are due to be increased as part of the indexation process for tariff rates to come into effect on 1 June 2002.

Technical amendments

We also recommend a number of technical amendments that have been proposed to us. One amendment is required to section 286(1)(o) of the principal Act to align it with amendments made to the principal Act last year. The amendments made in 2001 were in relation to providing for the credit of excise-equivalent duty, paid on importation, where the licensee of a manufacturing area purchases imported material or goods for use in the manufacture of goods in the Third Schedule to the Act. The purpose of this amendment was to correct an anomaly and ensure consistency in revenue collection and reduce double taxation. A consequential amendment to section 286(1)(o) is required to make reference to excise-equivalent duty so

that the necessary changes to Customs and Excise Regulations 1996 can be made to effect the intent of the amendments made to the principal Act last year.

We also received a report from the Regulations Review Committee in relation to the amendments to section 40 of the principal Act contained in clause 4. The report proposes changes to clarify the terminology used in the regulation-making powers of section 40. We recommend these changes be adopted.

National Party minority view on the new import applications fee regime

National believes it was clear from advice and submissions that the fundamental reason for this bill and the rush in its processing is the decision to introduce a revenue raising measure. The department moved to a cost recovery regime on import processing to meet this requirement. In the view of the National Party, cost recovery regimes should be introduced on a rational comprehensive basis rather than as ad hoc demands of departments to produce additional revenue in government budget cycles.

In this case the business community felt that there was inadequate consultation. In addition, the basis for cost recovery is on a unique basis as compared to regimes in other countries. In our view, it has more of the features of a "tax" than that applying to other countries. It is merely an average of the cost spread equally over all import applications regardless of any concept of their individual size or complexity (and therefore the actual cost of supplying the service). It was not clear from departmental advice that those importers who make simple or straightforward import applications would not end up paying a higher fee than the cost of supplying the service. In our view this issue should be revisited to ensure that the fee represents as much as is practicable recovery of the actual cost involved.

Appendix

Committee process

The Customs and Excise Amendment Bill (No 4) was referred to the committee on 19 February 2002. The closing date for submissions was 22 March 2002. We received and considered 16 submissions from interested groups and individuals. Hearing of evidence took 58 minutes and consideration took a further 2 hours and 58 minutes.

We received advice from the New Zealand Customs Service. The Regulations Review Committee reported to the committee on the powers contained in clause 4 of the bill.

Committee membership

Graham Kelly (Chairperson)

Hon Max Bradford

Chris Carter (Deputy Chairperson)

Harry Duynhoven

Rt Hon Wyatt Creech

Keith Locke

Rt Hon Winston Peters

HV Ross Robertson

Rt Hon Jenny Shipley

David Benson-Pope and Gavin Herlihy were replacement members for this item of business.

Committee staff

David Sanders, Clerk of Committee

Steve Cutting, Parliamentary Officer

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (majority)

Subject to this Act,

Text inserted by a majority

New (unanimous)

Subject to this Act,

Text inserted unanimously

<Subject to this Act,>

Words struck out by a majority

(Subject to this Act,)

Words struck out unanimously

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Words inserted by a majority

Subject to this Act,

Words inserted unanimously

Hon Jim Anderton

Customs and Excise Amendment Bill (No 4)

Government Bill

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Schedule 1
Amendments to Third Schedule of principal Act

Schedule 2
Further amendments to Third Schedule of principal Act

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Customs and Excise Amendment Act (**No 4**) **2001**.

(2) In this Act, the Customs and Excise Act 1996¹ is called “the principal Act”.

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¹ 1996 No 27

2 Commencement

(1) **Sections 6, 7, 14, 15, 16, and 19** come into force 3 months after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

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Part 1

Amendments to principal Act

3 Interpretation

(1) Section 2(1) of the principal Act is amended by inserting, after the definition of **duty**, the following definition:

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“**electronic publication** means any thing in which is recorded or stored any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any word, statement, sign, <image,> or representation”.

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(2) Section 2(1) of the principal Act is amended by repealing the definition of **importation**, and substituting the following definition:

“**importation**,—

“(a) in relation to any goods, means the arrival of the goods in New Zealand in any manner, whether lawfully or unlawfully, from a point outside New Zealand; and

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“(b) in relation to electronic publications referred to in **section 54(1)(aa)**, includes the arrival of the electronic publication in New Zealand by transmission by any means (other than by broadcasting) from a point outside New Zealand”.

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(3) Section 2(1) of the principal Act is amended by repealing the definition of **manufacture**, and substituting the following definition:

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“**manufacture**, in relation to goods specified in the Third Schedule, means,—

- “(a) if the goods are tobacco, the process of cutting, pressing, grinding, crushing, or rubbing raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty-paid tobacco, and of putting up for use or consumption scraps, waste, chippings, stems, or deposits of tobacco resulting from processing tobacco: 5
- “(b) if the goods are a fuel, any operation, or process, involved in the production of the goods: 10
- “(c) if the goods are neither tobacco nor a fuel,—
 - “(i) any operation, or process, involved in the production of the goods; and
 - “(ii) any ancillary process (as defined in **subsection (3)**) that takes place on premises that are not licensed, or required to be licensed, under the Sale of Liquor Act 1989”. 15
- (4) Section 2 of the principal Act is amended by adding the following subsection:
- “(3) For the purposes of **paragraph (c)(ii)** of the definition of the term **manufacture** in **subsection (1)**, the term **ancillary process**, in relation to the manufacture of goods specified in the Third Schedule that are neither tobacco nor a fuel, means any 1 or more of the following processes: 20
 - “(a) filtering the goods, diluting the goods, or blending the goods with other goods (whether the other goods are the same as, similar to, or different from, the goods): 25
 - “(b) putting the goods for the first time into a container (for example, a bag, barrel, bottle, can, cask, drum, or keg) in which they might be presented, or from which they might be dispensed, for sale to the public or any member of the public: 30
 - “(c) labelling or marking, for the first time, containers filled with the goods.”

Struck out (majority)

- 4 Regulations relating to entry of imported goods** 35

(1) The heading to section 40 of the principal Act is amended by adding the words “**and related activities**”.

Struck out (majority)

- (2) Section 40 of the principal Act is amended by adding to paragraph (d) the word “; and”, and also by adding the following paragraph:
- “(e) prescribing fees or charges, or both, payable to the Customs, in respect of functions or activities of the Customs under this Act relating to the importation of goods.” 5
- (3) Section 40 of the principal Act is amended by adding, as subsection (2), the following subsection:
- “(2) Fees and charges prescribed by regulations made under **subsection (1)(e)** are deemed to be a duty for the purposes of this Act.” 10

New (majority)

- 4 New section 40A inserted**
- The principal Act is amended by inserting, after section 40, the following section: 15
- “40A Fees and charges relating to importation of goods**
- “(1) Without limiting the power to make regulations under section 287, the Governor-General may, on the recommendation of the Minister, make regulations under section 287(1)(a) prescribing fees or charges, or both, that are payable to the Customs to meet or assist in meeting costs and expenses incurred by the Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the importation of goods. 20
- “(2) The provisions of Part VIII that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described in **subsection (1)**, as if those fees and charges were a duty. 25
- “(3) Before making a recommendation under **subsection (1)** in relation to any proposed regulations, the Minister must be satisfied that the persons that the Minister considers are representative of interests likely to be substantially affected by the proposed regulations have been consulted about the proposed 30

New (majority)

regulations to the extent that is reasonably practicable having regard to the circumstances of the case.

- “(4) For the purposes of **subsection (3)**, the Minister may take into account any relevant consultation undertaken by or on behalf of the Minister before this section comes into force. 5
- “(5) A failure to comply with **subsection (3)** does not affect the validity of any regulations of the kind described in **subsection (1)**.”

5 Prohibited imports

- (1) Section 54(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 10

“(aa) any electronic publication that is objectionable within the meaning of the Films, Videos, and Publications Classification Act 1993; or”

- (2) Section 54 of the principal Act is amended by inserting, after subsection (1), the following subsection: 15

“(1A) Electronic publications the importation of which is prohibited by **subsection (1)(aa)** must be treated as if they were goods for the purposes of this Act (except for section 12 of the Goods and Services Tax Act 1985 which is deemed by section 1(3) of that Act to be part of this Act).” 20

6 Entry of excisable goods

Section 70(1A)(b) of the principal Act is amended by omitting the word “manufacturer”, and substituting the word “owner”.

7 Regulations relating to entry of excisable goods 25

Section 71(aa) of the principal Act is amended by omitting the word “manufacturer”, and substituting the word “owner”.

8 Indexation of rates of excise duty and excise-equivalent duty on alcoholic beverages and tobacco products

The definition of **alcoholic beverages** in section 79(4) of the principal Act is amended— 30

- (a) by inserting, before the expression “21.06”, the expression “21.05,”; and

- (b) by inserting, before the expression “99.35,”, the expression “99.05, 99.06,”.
- 9 Imposition of penalty** 5
 Section 128 of the principal Act is amended by inserting, before subsection (1), the following section:
- “(1AA) In this Part, **entry**, 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), includes 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.” 10
- 10 Questioning persons**
 Section 145 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
- “(2) A Customs officer may question a person to whom this section applies as to any 1 or more of the following matters: 15
- “(a) whether or not that person has or has had in that person’s possession any dutiable, prohibited, uncustomed, or forfeited goods:
- “(b) the nature, origin, value, ownership, or intended destination of any goods of that kind: 20
- “(c) whether, under this Act, any debt (for example, in respect of any duty, duty refunded in error, recovery of the drawback of any duty, or penalty) is due to the Crown and payable by the person, or by a company, trust, partnership, or other enterprise of which that person is or was a director, manager, secretary, officer, or agent: 25
- “(d) the nature and extent of the debt (if any) of that kind.”
- 11 New sections 149 to 149D substituted** 30
 The principal Act is amended by repealing section 149, and substituting the following sections:
- “149 **Persons to whom sections 149A and 149B(1) apply**
Sections 149A and 149B(1) apply to—
- “(a) a person on board a craft that has arrived in, or is departing from, New Zealand; or 35
- “(b) a person in the process of disembarking from, or embarking on to, a craft described in **paragraph (a)**; or

“(c) a person who, having entered into New Zealand at a Customs place, remains in that Customs place.

“149A **Preliminary search of persons by use of aids**

“(1) A Customs officer or member of the police may conduct a preliminary search of a person to whom this section applies, and may detain that person for the purposes of conducting that preliminary search. 5

“(2) A **preliminary search** is a search that—

“(a) involves little or no physical contact between the person conducting the search and the person being searched; and 10

“(b) is conducted by using an aid or aids such as a dog, or a chemical substance, or a mechanical, electrical, x-ray, imaging, or electronic device, or other similar aid, but not by any more invasive means. 15

“(3) If, after a preliminary search under **subsection (1)**, a Customs officer or member of the police has reasonable cause to suspect that a person has hidden on or about his or her person any thing described in **section 149B(1)(a), (b) or (c), sections 149B to 149D** apply. 20

“149B **Searching of persons if reasonable cause to suspect items hidden**

“(1) A Customs officer or a member of the police may cause to be detained and searched a person to whom this subsection applies if the officer or member has reasonable cause to suspect that the person has hidden on or about his or her person— 25

“(a) any dutiable, uncustomed, prohibited, or forfeited goods; or

“(b) evidence relating to any such goods; or

“(c) any thing that is or might be evidence of the contravention or possible contravention of this Act. 30

“(2) A Customs officer or a member of the police may also cause a person to be detained and searched if the officer or member has reasonable cause to believe that the person—

“(a) either— 35

“(i) has, within the preceding 24 hours, arrived in New Zealand at a place other than a Customs place; or

- “(ii) is about to depart from New Zealand from any place other than a Customs place; and
“(b) has hidden on or about his or her person any thing described in **subsection(1)(a), (b), or (c)**.
- “(3) A Customs officer or member of the police may also cause a person to be detained and searched if the officer or member has reasonable cause to believe that the person—
“(a) is not a person described in **subsection (2) or section 149**; and
“(b) is in a Customs place; and
“(c) has hidden on or about his or her person any thing described in **subsection (1)(a), (b), or (c)**.
- “(4) Reasonable force may be used if it is necessary for either or both of the following purposes:
“(a) to detain the person;
“(b) to search the person.
- “(5) If a person is detained under **subsection (1) or subsection (2) or subsection (3)**, and there is no suitable searcher available at the place where the search is to take place, the person detained may be taken to another place to be searched.
- “(6) Any Customs officer or member of the police who searches a person under this section may require any person that the officer or member (*of the police*) thinks necessary to assist him or her.
- “(7) A search of a person may be conducted under this section whether or not that person has earlier been the subject of a preliminary search under **section 149A**.
- “149C Seizure of items found**
- “(1) A Customs officer or member of the police may seize any thing found on or about a person when carrying out a search under **section 149B(1), (2), or (3)** that the officer or member has reasonable cause to suspect is a thing described in **section 149B(1)(a), (b), or (c)**.
- “(2) Reasonable force may be used if it is necessary to seize the thing.
- “149D Rights of persons detained under section 149B**
- “(1) A person detained under **section 149B(1), (2), or (3)** must be informed of his or her right to be taken, before being searched,

- before an officer nominated for that purpose by the Chief Executive, or before a Justice of the Peace or Community Magistrate (a **reviewer**).
- “(2) If a person detained under **section 149B(1), (2), or (3)** asks to be taken before a reviewer, in accordance with **subsection (1)**, the Customs officer, or member of the police, as the case may be, must immediately take the person before *(that)* the reviewer. 5
- “(3) The reviewer before whom the person is taken may,—
- “(a) in the case of a person detained under **section 149B(1)**,—
- “(i) if it appears to the reviewer that there is reasonable cause to suspect that the person has hidden on or about his or her person any thing described in **section 149B(1)(a), (b), or (c)**, direct that the person be searched; or 10
- “(ii) if it does not appear to the reviewer that there is reasonable cause to suspect that the person has hidden on or about his or her person any thing described in **section 149B(1)(a), (b), or (c)**, direct that the person be released; or 15
- “(b) in the case of a person detained under **section 149B(2) or (3)**,— 20
- “(i) if it appears to the reviewer that there is reasonable cause to believe that the person has hidden on or about his or her person any thing described in **section 149B(1)(a), (b), or (c)**, direct that the person be searched; or 25
- “(ii) if it does not appear to the reviewer that there is reasonable cause to believe that the person has hidden on or about his or her person any thing described in **section 149B(1)(a), (b), or (c)**, direct that the person be released.” 30

12 New section 152 substituted

The principal Act is amended by repealing section 152, and substituting the following section:

“152 **Examination of goods no longer subject to control of Customs** 35

- “(1) This section applies to goods that have ceased to be subject to the control of the Customs but that the Chief Executive has reasonable grounds to suspect are—

- “(a) goods in respect of which an offence against this Act has been committed; or
- “(b) goods that are forfeited to the Crown under section 225.
- “(2) The Chief Executive may require a person who has, or who the Chief Executive believes has, possession or control of the goods to produce them for inspection by a Customs officer. 5
- “(3) A Customs officer may exercise in respect of the goods all the powers given by section 151.
- “(4) A Customs officer may take and retain possession of goods produced under **subsection (2)** for the purposes of exercising the powers given by **subsection (3)**, and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods— 10
- “(a) are goods in respect of which an offence against this Act has been committed; or 15
- “(b) *(have been)* are goods that are forfeited to the Crown under section 225.

Compare: 1966 No 19 s 204(1), (2)”.

13 New section 161 substituted

The principal Act is amended by repealing section 161, and substituting the following section: 20

“161 Further powers in relation to documents

- “(1) The Chief Executive may, by notice in writing, require a person, as and when specified in the notice,—
- “(a) to produce for inspection by a specified Customs officer documents or records that the Chief Executive considers necessary or relevant to— 25
- “(i) an investigation under this Act; or
- “(ii) an audit under this Act; or
- “(iii) the recovery of a debt due and payable to the Crown under this Act: 30
- “(b) to allow the specified Customs officer to take extracts from, or make copies of, documents or records of the kind referred to in **paragraph (a)**:
- “(c) to appear before a specified Customs officer and answer all questions put to the person concerning— 35
- “(i) goods, or transactions relating to those goods, that are the subject of the investigation or audit, or that are relevant to the recovery of the debt, referred to in **paragraph (a)**; or 40

“(ii) documents or records of the kind referred to in paragraph (a).

“(2) In this section, **person** includes an officer employed in, or in connection with, a government department, corporation, or local authority or, despite section 47B or section 47C of the Evidence Act 1908, an officer employed in, or in connection with, a bank. 5

Compare: 1966 No 19 s 218(2)”.

14 Search warrants

Section 167 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 10

“(1) A District Court Judge, Justice of the Peace, Community Magistrate, or Registrar (not being a constable) may issue a search warrant in the prescribed form if he or she is satisfied, on an application by a Customs officer in writing made on oath, that there are reasonable grounds to believe that there is, in or on any place or thing,— 15

“(a) any thing that there are reasonable grounds to believe may be evidence of—

“(i) the commission of an offence against this Act or regulations made under this Act; or 20

“(ii) the unlawful exportation or importation of goods; or

“(b) any thing that there are reasonable grounds to believe is intended to be used for the purpose of— 25

“(i) committing an offence against this Act or regulations made under this Act; or

“(ii) unlawfully exporting or importing goods; or

“(c) any thing that is liable to seizure under this Act.”

15 Entry and search under warrant 30

Section 168 of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3) Every search warrant authorises the officer executing it—

“(a) to detain every person who is at the place referred to in the warrant when the officer arrives at that place, from the time of that arrival until the officer is satisfied that the person is not connected with the thing referred to in the warrant; and 35

- “(b) to search a person who is at the place referred to in the warrant when the officer arrives at that place if, at any time while executing the warrant, the officer reasonably believes that the thing referred to in the warrant may be on that person’s body. 5
- “(3A) Every person who is at the place referred to in the warrant when the officer executing the warrant arrives at that place must remain at that place until the earlier of the following events:
- “(a) the search of that place is completed; or 10
- “(b) the officer, being satisfied that the person is not connected with the thing referred to in the warrant, permits the person to leave.
- “(3B) A person who is being searched under **subsection (3)(b)** must remain at the place where he or she is being searched until the search is completed. 15
- “(3C) A Customs officer or member of the police who has reasonable grounds to suspect that a person has refused or failed to comply with **subsection (3A) or subsection (3B)** may arrest that person without warrant under section 174(1). 20

New (unanimous)

“(3D) No person may be detained under **subsection 3(a) or (b)** for a period of time that is unreasonable.

- “(4) Reasonable force may be used if it is necessary for either or both of the following purposes:
- “(a) to detain a person under **subsection (3)(a)**: 25
- “(b) to search a person under **subsection (3)(b)**.”

16 Arrest of offenders

Section 174(1) of the principal Act is amended by inserting, after the expression “176”, the words “or **section 188A**”.

17 New section 175A inserted 30

The principal Act is amended by inserting, after section 175, the following section:

“175A Detention of dangerous goods

Struck out (unanimous)

“(1) A Customs officer who finds dangerous goods in the course of exercising any power of search or examination under this Act may, if he or she believes on reasonable grounds that the dangerous goods are proposed to be carried by an operator, detain the dangerous goods for the purpose of delivering them to the Aviation Security Service or to the operator.

5

New (unanimous)

“(1) A Customs officer may detain goods that he or she finds in the course of exercising any power of search or examination under this Act, if he or she believes on reasonable grounds that the goods—

“(a) are dangerous goods that may not be lawfully carried on an aircraft; and

“(b) are proposed to be carried by an operator.

10

“(2) If a Customs officer detains (*dangerous*) goods under **subsection (1)**, he or she must, as soon as practicable, deliver those (*dangerous*) goods into the custody of the Aviation Security Service or of the operator.

15

“(3) Once (*dangerous*) goods have been delivered under **subsection (2)**, responsibility for those (*dangerous*) goods passes from the Customs to the Aviation Security Service or to the operator, as the case may be.

20

“(4) In this section,—

“**Aviation Security Service** has the same meaning as in section 2 of the Civil Aviation Act 1990

25

Struck out (unanimous)

“**dangerous goods** means articles or substances that, when transported by air, are capable of posing a significant risk to health, safety, or property

New (unanimous)

“**dangerous goods** has the same meaning as in section 2 of the Civil Aviation Act 1990

“**operator** has the same meaning as in section 2 of the Civil Aviation Act 1990.”

- 18 Failure to produce or account for goods** 5
 Section 187(1) of the principal Act is amended—
 (a) by omitting the expression “152”, and substituting the expression “**152(2)**”; and
 (b) by omitting the words “of this Act”.
- 19 New section 188A inserted** 10
 The principal Act is amended by inserting, after section 188, the following section:
“188A Refusal or failure to remain at place
 “(1) A person commits an offence who—
 “(a) fails or refuses to remain at the place that is being searched under **section 168(3)(a)** until the earlier of the events specified in **section 168(3A)(a) and (b)**; or
 “(b) fails or refuses to remain at the place where that person is being searched under **section 168(3)(b)** until that search is completed. 15
 “(2) Every person who commits an offence against this section is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$1,000.
 Compare: 1998 No 110 s 59(1)(a)” 20
- 20 New section 209A inserted** 25
 The principal Act is amended by inserting, after section 209, the following section:
“209A Publications imported in course of official duties
 “(1) Nothing in section 209 makes it an offence for a New Zealand official to import a publication for the purposes of, and in the exercise or performance of, his or her official duties, functions, or powers (whether with the involvement of an overseas official or not). 30

“(2) In this section,—

“**New Zealand official** means a person referred to in any of paragraphs (a) to (l) of section 131(4) of the Films, Videos, and Publications Classification Act 1993

“**overseas official** means a person in a country other than New Zealand who holds an office in that country that corresponds to an office referred to in section 131(4) of the Films, Videos, and Publications Classification Act 1993, and who is exercising or performing the duties, functions, or powers of that office

“**publication** has the same meaning as in section 2 of the Films, Videos, and Publications Classification Act 1993.”

21 New section 223 substituted

The principal Act is amended by repealing section 223, and substituting the following section:

“223 Power of Chief Executive to deal with petty offences

“(1) **Subsection (2)** applies to the following offences:

- “(a) an offence against this Act that is committed in relation to goods—
 - “(i) the Customs value of which does not exceed \$1,000; or
 - “(ii) on which duty payable under this Act does not exceed \$1,000; or
 - “(iii) on which the duty evaded or attempted to be evaded does not exceed \$1,000:

“(b) an offence against any of sections 180, 181, and 186.

“(2) If a person admits in writing that he or she has committed an offence to which this subsection applies and requests that the offence be dealt with summarily by the Chief Executive, the Chief Executive may, at any time before an information has been laid in respect of the offence, accept from that person payment of any sum, not exceeding \$500, that the Chief Executive thinks just in the circumstances of the case in full satisfaction of any fine or other penalty to which the person would otherwise be liable under this Act.

“(3) If the Chief Executive accepts any sum under **subsection (2)**, the offender is not liable to be prosecuted for the offence in respect of which the payment was made.

- “(4) If the Chief Executive declines to exercise his or her power under **subsection (2)**, the admission in writing made by the offender is not admissible as evidence in any prosecution for that offence.
Compare: 1966 No 19 s 266”. 5
- 22 Goods forfeited**
- (1) Section 225(1)(l) of the principal Act is amended by omitting the expression “section 2”, and substituting the expression “section 2(1)”. 10
- (2) Section 225(1) of the principal Act is amended by inserting, after paragraph (l), the following paragraph: 15
- “(la) goods exported, or in respect of which an attempt to export has been made, that have been acquired in New Zealand, whether by the exporter or some other person, by an act that amounts to a crime involving dishonesty within the meaning of section 2(1) of the Crimes Act 1961:”.
- 23 Application for order disallowing seizure where notice not received**
- Section 233(1) of the principal Act is amended by inserting, after the expression “232”, the words “or **section 234A**”. 20
- 24 New section 234A inserted**
- The principal Act is amended by inserting, after section 234, the following section:
- “**234A Condemnation if application discontinued** 25
- If an application under section 231(1) or section 233(1) is discontinued, the goods are condemned to the Crown as if that application had been dismissed.”
- 25 Waiver of forfeiture**
- Section 235(5) of the principal Act is amended by omitting the words “the power to waive forfeiture exercisable under this section”, and substituting the words “any of the Minister’s powers under this section, except this power of delegation”. 30

New (unanimous)

25A Regulations

Section 286(1)(o) of the principal Act is amended by inserting, after the words “excise duty”, the words “or excise-equivalent duty”.

26 Chief Executive may make rules for certain purposes 5

Section 288(1) of the principal Act is amended by adding the following paragraph:

- “(i) prescribing the form and manner in which the following goods must be reported to the Customs:
 - “(i) goods exempted from the requirements of section 39(1) by regulations made under section 40(c): 10
 - “(ii) goods deemed to be entered for the purposes of section 39(1) by regulations made under section 40(d):
 - “(iii) goods exempted from the requirements of section 49(1) by regulations made under section 50(a): 15
 - “(iv) goods deemed to be entered for the purposes of section 49(1) by regulations made under section 50(b).”

27 Third Schedule amended 20

- (1) Part A of the Third Schedule of the principal Act is amended—
 - (a) by inserting, before the items relating to Excise item 99.10, the Excise item numbers and rates of duty set out in **Part A of <the> Schedule <1>**; and 25
 - (b) by omitting from Excise item number 99.75.22F the expression “3606.10.19”, and substituting the expression “3606.10.09”.
- (2) Part B of the Third Schedule of the principal Act is amended by inserting, after Tariff item number 2106.90.89, the Tariff items and rates of duty set out in **Part B of <the> Schedule <1>**. 30

New (majority)

- (3) Part A of the Third Schedule of the principal Act is amended by revoking so much of the Schedule as relates to Excise item

New (majority)

- numbers 99.05.10D, 99.05.20A, 99.05.30J, 99.05.40F, 99.05.50C, and 99.05.60L, and substituting the Excise item numbers and rates of duty specified in **Part A of Schedule 2**.
- (4) Part B of the Third Schedule of the principal Act is amended by revoking so much of the Schedule as relates to Tariff items 2105.00.21, 2105.00.29, 2105.00.31, 2105.00.39, 2105.00.41, and 2105.00.49, and substituting the Tariff items and rates of duty specified in **Part B of Schedule 2**.

Part 2**Amendments to Tariff Act 1988**

- 28 Notes inserted in Chapters 22, 24, and 27 of Standard Tariff** 10
- (1) Part I of the First Schedule of the Tariff Act 1988 is consequentially amended by inserting in Chapter 22 of the Standard Tariff, after New Zealand note 2, the following note: 15
- “3. In this Chapter, the term **manufacture**, where it appears in the expressions ‘For manufacture in a licensed manufacturing area’ and ‘For further manufacture in a licensed manufacturing area’, has the same meaning as in section 2(1) of the Customs and Excise Act 1996.” 20
- (2) Part I of the First Schedule of the Tariff Act 1988 is consequentially amended by inserting in Chapter 24 of the Standard Tariff, after Note 1, the following heading and note:
- “NEW ZEALAND NOTE—
- “1. In this Chapter, the term **manufacture**, where it appears in the expressions ‘For manufacture in a licensed manufacturing area’ and ‘For further manufacture in a licensed manufacturing area’, has the same meaning as in section 2(1) of the Customs and Excise Act 1996.” 25
- (3) Part I of the First Schedule of the Tariff Act 1988 is consequentially amended by inserting in Chapter 27 of the Standard Tariff, after New Zealand note 3, the following note: 30

- “4. In this Chapter, the term **manufacture**, where it appears in the expression ‘For manufacture in a licensed manufacturing area’ has the same meaning as in section 2(1) of the Customs and Excise Act 1996.”
-

Schedule <1>
Amendments to Third Schedule of principal Act

s 27<(1) and (2)>

Part A
New Excise item numbers and rates of duty inserted

Excise item number	Goods	Unit	Rates of duty
99.06	Food preparations not elsewhere specified or included containing alcohol which, if imported, would be classified within Tariff item 2106.90.92, 2106.90.93, 2106.90.94, 2106.90.95, 2106.90.96, or 2106.90.97:		
99.06.10L	- Containing more than 1.15 % vol., but not more than 2.5 % vol.	per ℓ	<30.842¢> <31.639¢>
99.06.20H	- Containing more than 2.5 % vol., but not more than 6 % vol.	per l al	<\$20.565> <\$21.096>
99.06.30E	- Containing more than 6 % vol., but not more than 9 % vol.	per ℓ	<\$1.6451> <\$1.6876>
99.06.40B	- Containing more than 9 % vol., but not more than 14 % vol.	per ℓ	<\$2.0565> <\$2.1096>
99.06.50K	- Containing more than 14 % vol., but not more than 23 % vol.	per ℓ	<\$3.7020> <\$3.7976>
99.06.60G	- Containing more than 23 % vol.	per l al	<\$37.454> <\$38.422>

Part B
New Tariff items and rates of duty inserted

Tariff item number	Goods	Unit	Rates of duty
2106.90.92	<p>-- Containing alcohol, which if manufactured in New Zealand, would be classified within Excise item number 99.06.10L, 99.06.20H, 99.06.30E, 99.06.40B, 99.06.50K or 99.06.60G:</p> <p>-- Containing more than 1.15 % vol., but not more than 2.5 % vol.</p>	per l	<30.842¢> <31.639¢>
2106.90.93	<p>-- Containing more than 2.5 % vol., but not more than 6 % vol.</p>	per l al	<\$20.565> <\$21.096>
2106.90.94	<p>-- Containing more than 6 % vol., but not more than 9 % vol.</p>	per l	<\$1.6451> <\$1.6876>
2106.90.95	<p>-- Containing more than 9 % vol., but not more than 14 % vol.</p>	per l	<\$2.0565> <\$2.1096>
2106.90.96	<p>-- Containing more than 14 % vol., but not more than 23 % vol.</p>	per l	<\$3.7020> <\$3.7976>
2106.90.97	<p>-- Containing more than 23 % vol.</p>	per l al	<\$37.454> <\$38.422>

New (majority)

Schedule 2
Further amendments to Third Schedule of principal Act

s 27(3) and (4)

Part A

New Excise item numbers and rates of duty substituted

Excise item number	Goods	Unit	Rates of duty
99.05	Ice cream and other edible ice which, if imported, would be classified within Tariff item 2105.00.21, 2105.00.29, 2105.00.31, 2105.00.39, 2105.00.41, or 2105.00.49;		
99.05.10D	- Containing more than 1.15 % vol., but not more than 2.5 % vol.	per l	31.639¢
99.05.20A	- Containing more than 2.5 % vol., but not more than 6 % vol.	per l al	\$21.096
99.05.30J	- Containing more than 6 % vol., but not more than 9 % vol.	per l	\$1.6876
99.05.40F	- Containing more than 9 % vol., but not more than 14 % vol.	per l	\$2.1096
99.05.50C	- Containing more than 14 % vol., but not more than 23 % vol.	per l	\$3.7976
99.05.60L	- Containing more than 23 % vol.	per l al	\$38.422

New (majority)

**Part B
New Tariff items and rates of duty substituted**

Tariff item number	Goods	Unit	Rates of duty
21.05	Ice cream and other edible ice which, if manufactured in New Zealand, would be classified within Excise item number 99.05.10D, 99.05.20A, 99.05.30J, 99.05.40F, 99.05.50C or 99.05.60L:		
2105.00.21	- Containing more than 1.15 % vol., but not more than 2.5 % vol.	per l	31.639¢
2105.00.29	- Containing more than 2.5 % vol., but not more than 6 % vol.	per l al	\$21.096
2105.00.31	- Containing more than 6 % vol., but not more than 9 % vol.	per l	\$1.6876
2105.00.39	- Containing more than 9 % vol., but not more than 14 % vol.	per l	\$2.1096
2105.00.41	- Containing more than 14 % vol., but not more than 23 % vol.	per l	\$3.7976
2105.00.49	- Containing more than 23 % vol.	per l al	\$38.422

Legislative history

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