

Regulatory Impact Statement

Proposed Amendments to the Customs and Excise Act 1996 and Biosecurity Act 1993

Agency disclosure statement

- 1 This Regulatory Impact Statement (RIS) has been prepared by the New Zealand Customs Service (Customs).
- 2 Budget 2010 provided the capital funding for Tranche 1 of the Joint Border Management System (JBMS), which includes the Trade Single Window (TSW) [CAB Min (10) 13/4 (13) refers]. A regulatory impact statement was completed to support the decision to invest in Tranche 1, noting the wider benefits to the economy from its implementation.
- 3 This RIS provides an analysis of legislative amendments to the Customs and Excise Act 1996 (the Act) to support the delivery of TSW and amending the method of valuation for the de minimis. The legislative amendments align with the Government Statement on Regulation, and significant effort has gone into improving the consistency of the Act.
- 4 The analysis undertaken for this RIS focuses on the impacts of legislative and non-legislative change for:
 - the registration of JBMS users so they can interact with the system
 - the supply and receipt of information through TSW for goods and craft arriving or departing New Zealand
 - consequential changes to offence provisions
 - regulations to be made to prescribe the valuation method and value for an import consignment below which duty and GST need not be collected.
- 5 TSW is limited to requirements for goods and craft crossing New Zealand's border. The proposed amendments represent an improvement and tidy up of existing requirements administered by Customs and the Ministry for Primary Industries (MPI). This includes changes to the form and manner in which information must be provided, and additional information requirements.
- 6 JBMS users must register online to interact with the system, which is an existing condition for businesses interacting with Customs' systems. Clients and industry will continue to receive assistance with registration and information at Customs' service counters.
- 7 There is some uncertainty around the level of compliance costs for individual companies, particularly around the costs to update existing industry software to interact with TSW. Industry consultation and Customs' encouraging existing users of Customs systems to migrate to JBMS will seek to reduce these compliance costs.
- 8 An amendment to allow regulations to be made to prescribe the valuation method and low value threshold for import consignments would have no regulatory impacts. A regulatory impact assessment would be developed for any future regulations to change the valuation method and threshold.

Denise Hing

Group Manager Policy
New Zealand Customs Service

Status quo and problem definition

- 9 The opportunity for improved efficiencies in border management and lower compliance costs for industry is potentially impeded by existing legislation.
- 10 The flows of people, goods and craft arriving in New Zealand create significant risks. New Zealand needs a border system capable of facilitating trade and travel, while managing risk and collecting Government revenue of over \$10.5¹ billion a year. Management of the border is undertaken by a number of agencies, including Customs and MPI.
- 11 The management of the border for customs and biosecurity purposes relies on computer systems that are over 15 years old and lack the flexibility to respond to the increasing needs, of border management. Delays in the supply chain are created as border agencies computer systems are not integrated, causing higher compliance costs for industry through duplication of effort.
- 12 The JBMS system has been approved to address these issues and will be delivered in two tranches. Cabinet agreed to proceed with JBMS Tranche 1 in November 2009 [CAB Min (09) 39/22 refers]. Tranche 1 of JBMS is planned to be available by 1 April 2013, after pilot-testing.²
- 13 Tranche 1 of JBMS includes:
 - replacing unreliable and unsupported components of legacy systems
 - improving risk assessment and intelligence development
 - introducing MPI's passenger processes into CusMod (the existing Customs system) to enable initiatives for facilitating trans-Tasman passengers
 - implementing transactional components of TSW.
- 14 TSW is a single electronic gateway that will allow traders (importers and exporters, carriers, and/or their nominated agents) to meet all border requirements for goods and craft. JBMS is consistent with the Government's direction to enable New Zealanders to complete all of their government transactions online and for New Zealand businesses to have a one stop shop online for all government advice and support to run and grow their business [CAB Min (12) 4/1 refers].
- 15 On 5 April 2012, amendments to the Act and to the Biosecurity Act 1993 were passed into law to enable the sharing of information between Customs and MPI to allow for the earlier implementation of MPI passenger processes into CusMod. The proposed changes in this Bill are needed to support the implementation of TSW.

Future decisions

- 16 Cost recovery to meet industry's share of direct costs for Tranche 1 is subject to a separate regulatory impact analysis and Cabinet decision. A further business case will also be needed for Tranche 2 of JBMS to add further functions to JBMS, allowing the retirement of the existing outdated systems.
- 17 Further enhancements to JBMS will extend functionality over time to other border-related activity now administered by MPI, including food-related compliance

¹ As per New Zealand Customs Service Annual Report 2010/2011

²The start date of TSW functionality is a dependency in relation to the accrual of costs and benefits. A pilot of JBMS will begin in late 2012, with a formal launch on 1 April 2013. An 18-month transition will occur prior to the new information requirements of TSW becoming fully mandatory.

requirements for exports previously administered by the New Zealand Food Safety Authority.

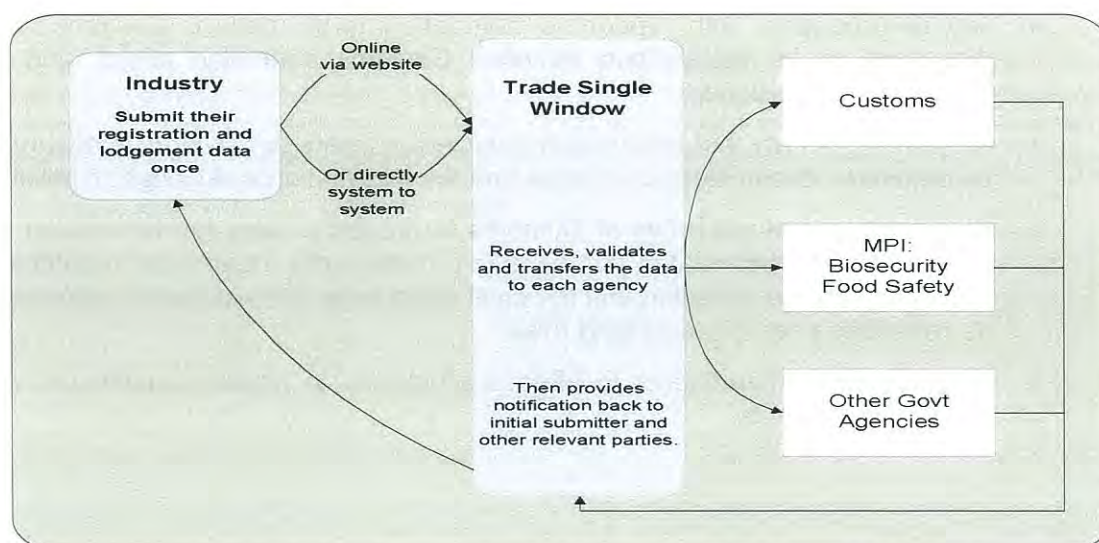
Amending the method of valuation for the de minimis

- 18 Section 118 of the Act provides for regulations to be made which set the amount of duty and GST below which Customs need not collect. Currently regulations made under the provisions of section 118 specify that if the duty and GST value is less than \$60, it need not be collected (the 'de minimis' or low value threshold).
- 19 This provision was put in place in the late 1980s when duty rates were as high as 45 percent on some goods, and a de minimis ensured that appropriate imports were required to pay revenue. Since then, duty rates have fallen to a maximum of 10 percent and for many categories of imports, are zero.
- 20 The current de minimis mechanism is very difficult for irregular importers to understand. Applying the mechanism requires calculating the original purchase price (excluding freight and insurance) on which duty is payable, plus the duty and freight paid price – on which total GST is then calculated.
- 21 In practice, many people get the calculations wrong and are asked by Customs to pay duty and GST for goods that they believed would be below the de minimis.
- 22 Most of our trading partners, including Australia, Canada and the United States, have a de minimis that is a specified dollar value of the import consignment. This approach is easier for people to understand, and is easier for Customs to administer.

Objectives

- 23 The policy objective is to maximise net benefits for industry and border agencies following the Cabinet decision to deliver JBMS Tranche 1. TSW will achieve substantial benefits for industry and government through using a single, streamlined process to provide information covering all border requirements.
- 24 The policy objective of allowing regulations to be made to prescribe the valuation method and low value threshold for import consignments is to facilitate voluntary compliance.

Figure 1: Diagram showing the proposed future state with Trade Single Window



Regulatory Impact Analysis

Part 1: Amendments to support TSW implementation

Specific TSW changes related to legislation

- 25 Full implementation of TSW requires changes to processes and requirements that are prescribed in legislation. The changes include registration for JBMS purposes, specifying the information provided to or received via TSW, and consequential amendments to offence provisions.
- 26 TSW will use the new World Customs Organization (WCO) international data model for lodgement messages. The data model will allow for internationally compatible data, and this will support access for exporters and reduce compliance costs.
- 27 Together these changes will align systems and processes administered at Customs and MPI, and a number of services provided on behalf of other agencies, including Maritime New Zealand. Some of these processes will differ from those currently stated in the Act and in the Biosecurity Act 1993.
- 28 Specific TSW changes related to the Act are:
 - requiring users (individuals and companies) to register for TSW in order to interact with JBMS, including providing some further information to assist in authentication and access (via a range of defined permissions to access data held in TSW)
 - providing Customs with greater clarity and control over the registration process, including providing a consistent and defined approach around declining applications for registration
 - prescribing revised information requirements and supporting information requirements for users who provide advance notice of craft arrivals
 - replacing provisions relating to the notification of an 'outward report' with an advance notice of departure by revising the information users must provide, and specifying who can provide the information on behalf of the person in charge of a craft
 - clarifying that parties responsible for goods arriving in or departing from New Zealand must make inward cargo reports and outward cargo reports, with supporting information, to Customs (the amendment for inward cargo reports will be mirrored in the Biosecurity Act 1993)
 - requiring requests, with supporting information, to be made to Customs for goods that need to be transhipped between Customs controlled areas, and (where applicable) for re-export
 - establishing a duty that information provided by users to Customs in advance must be updated if circumstances change and the information is no longer correct
 - allowing the chief executive of Customs to prescribe rules for information lawfully required for border-related purposes (e.g. biosecurity, health and maritime safety purposes), on the condition that the chief executives of those border agencies must be consulted prior to prescribing rules
 - consequential amendments to offence provisions to ensure compliance with the above amendments.

Option 1: No changes to the Act and Biosecurity Act 1993 to fully enable TSW

- 29 Under this option, the existing provisions in the Act remain unchanged. The focus would be on supporting TSW through regulatory and tertiary changes as far as possible, supplemented with voluntary compliance.
- 30 Customs and MPI would rely, to an extent, on stakeholders choosing to work under TSW because of the benefits they receive, or complying in order to facilitate the processing of their goods.
- 31 This option would mean:
- the opportunity to streamline legislative requirements and lower costs for compliant traders may be foregone, jeopardising the supply chain efficiencies of up to \$40 million per annum estimated in the JBMS Stage 2 Business Case
 - Customs and MPI would, in part, need to “overlook” how information is provided to TSW where this runs counter to the legally defined processes (particularly where the Act has prescriptive elements)
 - Customs may be hindered in improving outcomes related to border security due to a lack of control over who can register to use JBMS
 - the capture of high quality, timely information for purposes related to trade data and risk management across all parties may not be supported
 - potential compliance difficulties with the provision of inward and outward cargo reports
 - existing, disparate offence provisions would continue and some activities required for the effective operation of TSW would be unenforceable.

Option 2: Amend the Act and Biosecurity Act to fully enable TSW

- 32 Under this option, all parties would be required to register as users for TSW purposes and to provide information in the new form and manner required. Customs would be able to refuse an application for registration within defined parameters and enforce provisions as necessary and impose penalties for non-compliance. From November 2014, the capability to improve compliance will increase following the end of a voluntary transition period.
- 33 This option would have potential impacts.
- Parties who are refused registration for JBMS as they do not meet the “fit and proper person” criteria may be unable to be employed by traders or in the supply chain if there is a requirement for them to interact with TSW as part of their employment. The impact is partially mitigated by not requiring all traders and their employees to register on TSW (as other employees or agents will be able to interact with TSW on their behalf).
 - The revised obligations for information provided to TSW have associated changes to offence penalties. Successful prosecutions will place costs on affected parties.

Preferred option – option 2 legislative change

- 34 Option 2 is the preferred option. In the absence of these changes, parties have no statutory obligation to provide up-to-date, correct and complete information in the form and manner needed to implement TSW.
- 35 Customs and MPI cannot rely on voluntary compliance alone to ensure the provision of quality information to facilitate trade flows and reduce border risks. The outcome from

leaving the current provisions unchanged are considered undesirable as high quality, timely information is crucial to minimising delays at the border for industry, and for border agencies to achieve improved outcomes for border protection.

- 36 Over time, TSW will provide a reduction in net compliance costs for industry, including costs avoided from having to increase frontline staff as trade volumes increase.

Parties impacted by TSW

- 37 Industry stakeholders impacted by the proposal include importers, exporters, freight forwarders who move goods via sea or air, customs brokers who clear import and export goods through border agencies, shipping and airline agents who ensure border requirements are met on behalf of shipping and airline companies, seaport companies, and airport companies.
- 38 Table 1 lists the clients impacted by changes to registration requirements. Existing border system clients will be automatically migrated across to JBMS. The number of new registrations will include clients who have multiple codes, typically in larger companies.

Table 1: Clients by Client type

Type of Client	Existing client numbers	New registrations in 2010/11
Broker	419	27
Carrier	29	0
Customs controlled Area	1,622	76
Declarant	5,454	215
Diplomatic (e.g. embassies)	85	0
Excise	1,322	54
Exporter only	13,125	416
General	168,235	753
Importer only	87,324	3,350
Importer/exporter	48,274	14,488
Total	325,886	19,339

- 39 Table 2 outlines the types and volume of information that will be provided to TSW. During the course of normal business, approximately 10 percent of information will be resubmitted due to changed circumstances requiring update, and around 5 percent rejected due to incomplete or incorrect information.

Table 2: Types of information on TSW

Type of lodgement	Volume of cargo/craft per annum (estimate)
Advanced notice of arrival Provided by person in charge of craft or their agent for craft intending to arrive in New Zealand	5,000 commercial craft
Inward cargo report To process the inwards border arrival of goods and craft and identify arriving cargo of interest (e.g. dangerous goods). Each report may include hundreds of cargo consignments	63,000 (cargo arriving by air) 4,000 (cargo arriving by sea)
Import declarations Provided by importer or their agent for individual consignments that need customs and biosecurity processing/clearance for entry into New Zealand	1.27 million consignments valued greater than \$400
Transshipment requests Request for cargo to move between locations prior to clearance	130,000 requests
Advanced notice of departure Provided by person in charge of craft or their agent for craft intending to depart from New Zealand	5,000 commercial craft
Outward cargo information To process commercial cargo and craft departing from New Zealand	145,000 (cargo departing by air) 42,000 (cargo departing by sea)
Export entries Provided by exporter or their agent for individual consignments that need customs clearance to leave New Zealand	520,000 consignments

- 40 There will be a cost imposed on many industry members from TSW implementation as a software upgrade is generally required to meet the new WCO international data model for lodgement messages. Software upgrade costs arise from replacing existing message types with the latest international model and establishing the new transshipment requests and cargo reports. These costs vary depending on several factors.
- 41 The first factor impacting upgrade costs is the particular commercial or in-house software used by a company. Multiple software providers in New Zealand (including the largest) are not charging their clients for the software upgrade as it forms part of existing license fees. A second factor is the size, complexity and nature of company operations. Larger companies will potentially incur larger costs. To mitigate costs JBMS clearly signalled the adoption of the new WCO data model at the outset of the JBMS project, and
- 41.1 provided draft versions of the new messages
- 41.2 established the 18 month transition period
- 41.3 is accommodating existing industry data holdings and processes as much as possible.

Industry benefits from TSW

Industry will secure the following benefits from streamlined processes, less complexity, and a more efficient and competitive supply chain, as follows:

- Industry will submit, via TSW a single electronic message containing all necessary information for border management to Customs and MPI

- Industry will have better management information as they will be able to check the status of goods clearances, apply for importer and supplier codes online, and maintain their own system user details
- Compliant and low risk industry members face less intervention from border agencies and faster clearance through better risk targeting
- Industry will have the option to connect directly to TSW rather than through the current mandated intermediary message carrier, potentially reducing costs
- More information can be shared electronically with industry parties such as ports and transporters to help with logistics planning. This will improve logistics planning for those stakeholders
- TSW provides the foundations for better facilitation of trade through country-to-country data sharing as this concept evolves internationally.

Consultation

- 42 During the development of the JBMS business case in 2009 and early 2010, Customs and MPI extensively consulted with industry, border agencies, and other government agencies.
- 43 Responses from industry indicate general support for the proposed JBMS, particularly the TSW component, but emphasised that any costs passed on to system users must be justified by tangible benefits. Benefits are maximised if a single, streamlined process is adopted by all parties.
- 44 Consultation with industry has been ongoing since the decision to invest in Tranche 1. A JBMS Stakeholder Liaison Group was established to facilitate discussions on business processes that support the proposed legislative change to ensure that the legislation is fit for purpose and can be complied with without unnecessary costs being imposed.

Conclusions and recommendations

- 45 The preferred option is to amend border-related legislation in the Act and in the Biosecurity Act 1993 to fully enable Tranche 1 of JBMS, particularly TSW. The proposed amendments would maximise the net benefits of TSW for industry and border agencies. Mirroring provisions across the two Acts for the provisions for inward cargo reports will simplify the requirements and reduce ambiguity for industry.
- 46 In some cases, information requirements for goods and craft would either be streamlined or expanded. Where information requirements are greater, industry consultation has sought to minimise the associated compliance costs. Over time implementation of TSW will reduce net compliance costs for industry despite some short term transitional costs. Such costs include software changes.
- 47 Border security outcomes will also improve under the preferred option. Clarifying those that must register and prescribing clear grounds for refusal of an application for registration would provide greater control over who can access border systems. Changes to information requirements and offences provisions for goods and craft would promote the collection of high quality, timely border information for risk management purposes.

Implementation

- 48 Implementing the preferred option requires amendments to the Act and the Biosecurity Act 1993. Changes to the Customs and Excise Regulations 1996 and to some of the chief executive's rules made under section 288 of the Act would also be required.

- 49 Implementation risks will be mitigated through ongoing communications and support provided to stakeholders. This includes the 18-month transition period where individuals and companies adopt the new requirements.
- 50 Communications about the changes would be directly to industry stakeholders and through Customs' business publications. Enforcement will likely focus on repeat offenders who provide incorrect and misleading information to Customs. Enforcement will most likely be undertaken after the completion of the transitional period.

Monitoring, Evaluation and Review

- 51 Processes for monitoring the impact of JBMS are currently under development and will include a Benefit Realisation Plan for the entire project. The rate of compliance can be monitored during the transition phase and beyond.

Part 2: Amendment to amend the method of valuation for the de minimis

Amending the method of valuation for the de minimis

- 52 The proposal is to amend the Act to allow for regulations to prescribe a valuation method and low value threshold below which duty and GST need not be collected. The existing power to specify through regulations a de minimis defined in terms of revenue payable would continue.
- 53 The benefits of the proposal are that future regulations could be made specifying a low value threshold and valuation methodology which is consistent with Customs procedures, and is set at a level which achieves a balance between revenue collection costs, compliance and transactions costs. It would also be set at a level that supports border risk management objectives.
- 54 The proposed approach would allow the Government to set a more easily understandable valuation method and low value threshold for the substantial number of irregular importers and those purchasing goods over the internet, businesses, and the fast freight industry. It would also be much easier for Customs to administer.
- 55 The proposed approach was strongly supported by all business groups consulted during a review of the de minimis undertaken in February 2011. These groups include the New Zealand Retailers Association, Conference of Asia Pacific Express Carriers, and Customs Brokers and Fast Freight Operators.
- 56 Industry groups have a range of views about the appropriate low value consignment threshold, with some proposing an effective increase, compared to the current threshold (de minimis). Regulations would need to be developed to change the current threshold and valuation method.³
- 57 The New Zealand Retailers Association strongly supports a reduction in the current threshold. Industry groups would be consulted on any future proposed changes to the threshold and valuation method via regulations. A regulatory impact assessment would also be developed for any proposed changes.

Conclusions and recommendations

- 58 The proposed amendment is an empowering provision, has no regulatory impacts. Any future regulations made under the amended legislation would specify the valuation methodology and the low value threshold. Both of these elements have potentially

³ Low value threshold means the consignment value threshold and de minimis threshold means the point at above which revenue collection occurs.

substantive regulatory impacts and would be subject to a separate regulatory impact assessment.

ENDS