

Border (Customs, Excise, and Tariff) Processing Bill

Government Bill

Explanatory note

General policy statement

Overview

This omnibus Bill amends the following Acts concerned with New Zealand's border:

- Customs and Excise Act 1996:
- Tariff Act 1988.

The amendments are to make improvements in the processing and administration of goods and people required under these interrelated Acts. The majority of amendments relate to border processing and administration by facilitating New Zealand's international commitments or the use of new technology, while the other amendments improve border processing or administration generally.

Amendments to Customs and Excise Act 1996

This Bill contains 3 sets of amendments to improve the effectiveness of the Customs and Excise Act 1996 (the **Act**) and to meet Government policy goals—

- amendments relating to the automated passenger processing system “Smartgate”:
- amendments to clarify and enhance the Act:

- amendments to address legislative gaps and uncertainties.

In reviewing the Act to take account of Smartgate, Customs officials have identified potential amendments relating to passenger interaction with the clearance process. These amendments are relatively minor; their focus is to ensure that automated systems can be used in place of Customs officers. The effect of these amendments is to allow the use of automated processing systems at the border, something that will benefit the travelling public and contribute to the Government's objectives to improve the border crossing experience for trans-Tasman travellers.

Six amendments are included in the Bill to clarify and enhance the Act, especially in relation to strengthening Customs' law enforcement capability. The amendments—

- enable Customs officers to search a vehicle, whether it is being operated or is unattended, and to use reasonable force to gain entry to effect the search of the vehicle:
- create a power to arrest any person committing an offence punishable by imprisonment under the Act, whether or not that person is on a craft or not:
- provide that duty on goods manufactured other than in a manufacturing area becomes due immediately upon the manufacture of the goods:
- create a new offence of consciously making a false allegation or report to Customs that an offence has been committed, or knowingly making statements with the intention of wasting or diverting personnel or resources:
- enable Customs to utilise future technology in those provisions that relate to the detection of tampering or interference with goods containers or packages:
- provide Customs with the ability to require payment of debts within the 20-day time period if Customs receives advance warning that payment by the due date is unlikely.

The Bill also includes 9 minor amendments to the Act aimed at addressing legislative gaps and uncertainties, including amendments to—

- clarify the provisions in the Act relating to “authorised persons”:

- allow for the revocation of a Customs Export Delivery Order in certain circumstances:
- replace Schedule 3 with an Excise and Excise-equivalent Duties Table available on the Internet and in hard copy:
- allow material usually set out in the schedules of the Customs and Excise Regulations 1996 to be incorporated by reference:
- move the alcohol personal use exemption from those regulations to the Act:
- allow the chief executive to nominate non-Customs officer employees to lay informations:
- allow for the suspension of a registered user's registration:
- clarify that the chief executive can, in appropriate cases, grant further time for lodgement of an entry of goods for export:
- allow for the imposition of administrative penalties for entries containing an error or omission.

Amendments to Tariff Act 1988

To make changes to the Tariff quicker and more efficient, the Bill alters the Tariff Act 1988 to allow Orders in Council to incorporate by reference reductions in tariff rates negotiated in international trade agreements (for example, free trade agreements) rather than setting out all of the negotiated tariff reductions in the order itself. It also allows other changes to the Tariff, such as those required to ensure that the Tariff conforms to the International Convention on the Harmonised Commodity Description and Coding System, to be made by incorporation by reference. The Bill also alters the Tariff Act to make the Working Tariff Document the legal Tariff to eliminate the need to produce both a Working Tariff Document and the current legal Tariff. To ensure information continues to be publicly available, the Bill requires provisions incorporated by reference to be publicly available free of charge on Internet sites, and available for purchase in hard copy form at a reasonable charge. Orders in Council that amend the Tariff will continue to require express confirmation by Act of Parliament and, if not confirmed by Act of Parliament, will expire.

The changes do not alter fundamentally the way in which changes to the Tariff are made, and are designed to make these changes quicker and more efficient, particularly in relation to the implementation of tariff changes resulting from free trade agreements, consistent with

the Government's goal of delivering better and less regulation to improve the business environment.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this Act comes into force on the day after the date of Royal assent, except for—

- *clause 12*, which comes into force on **1 October 2010**; and
- *clauses 10, 11, 30, and 31, Part 3 of Schedule 1, and Schedules 2 and 3*, which come into force on **1 January 2010**; and
- *clauses 26 and 27*, which come into force—
 - 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
 - if that Act is not in force on that day, then immediately after the commencement of that Act.

Part 1

Amendments to Customs and Excise Act 1996

Clause 3 states that *Part 1* amends the Customs and Excise Act 1996 (the **principal Act** in this Part). It is intended that the Bill be divided at the committee of the whole House stage into 2 separate amendment Bills, with *Part 1* becoming a Customs and Excise Amendment Bill.

Use of future technology

Clause 4 amends the definition of Customs-approved secure exports scheme and the definition of Customs seal in section 2. The amendments have the effect of allowing for future technology to be used instead of the traditional seal that was envisaged at the time those definitions were drafted. Future technology may include “smart” packages that are able to detect interference with their contents (for example, through changes in temperature). Consequential changes to allow for such technology elsewhere in the Act are made in *Part 1* of *Schedule 1*.

Authorised persons

Clause 5 amends section 6, which relates to authorised persons, by repealing subsection (4), and substituting a *new subsection (4)*. This amendment, along with the related consequential amendments in *Part 2* of *Schedule 1*, makes it clear that an authorised person may be authorised by the chief executive to perform or exercise any function or power that may be performed or exercised by a Customs officer under the principal Act. As amended by *clause 5* and *Part 2* of *Schedule 1*, a reference in a provision of the principal Act (other than section 2, *new section 6(4)*, and sections 7, 38P, and 175) to a Customs officer or officer will include a reference to an authorised person who—

- is performing or exercising a function or power in accordance with that person’s authorisation; and
- is therefore required by *new section 6(4)* to be treated for the purposes of that provision as a Customs officer.

This extension will not apply to an enactment (for example, regulation 3 of the United Nations Sanctions (Kimberley Process) Regulations 2004) that is not all or a portion of the principal Act, but uses the definition of Customs officer in section 2(1) of that Act.

Exportation of goods, and revocation of permission to export

Clause 6(1) amends section 49(1), which requires goods that are exported or that are to be exported to be entered by the exporter in the prescribed form and manner and within any prescribed time or such further time as the chief executive may allow. Doubt has arisen as to whether the “time” prescribed is a deadline (for example, “not less than 48 hours before goods are shipped for export”) or a period (for example, “not more than 96, and not less than 48, hours before goods are shipped for export”). Doubt has also arisen as to whether the chief executive’s discretion is to allow entries earlier or later than the prescribed time (deadline or period). *New section 49(1)(b)* therefore makes it clear that—

- the prescribed time (if any) is a deadline, not a period; and
- the chief executive may allow entries before a deadline later than any prescribed deadline.

The Customs and Excise Regulations 1996 are consequentially amended; a *new regulation 28* is substituted.

Clause 6(3) inserts a *new section 49(6)*. *New section 49(6)* provides that the chief executive may revoke the permission to export goods that have already been passed if he or she has reasonable cause to suspect the goods are a danger or threat to border security; New Zealand's trade interests or international obligations; people's lives, health, or safety; or the safety of the craft that will carry the goods or the safety of other goods on that craft. *Clause 6(4)* consequentially amends section 210 so that contraventions of *new section 49(6)* are an offence punishable by a fine not exceeding \$5,000.

*Exemption for alcohol manufactured for
personal use*

Clause 7(1) inserts a *new section 68B*. *New section 68B* creates an exemption from the requirement in section 68 to manufacture alcohol in a licensed manufacturing area. The exemption applies to alcohol manufactured for personal use (and not for sale or other disposition) in a private house or dwelling place. Currently, the equivalent exemption is provided for in delegated legislation. Related consequential amendments are made in *clause 7(2) to (4)*.

This amendment mirrors the amendment relating to tobacco made in the Customs and Excise Amendment Act (No 3) 2008. That amendment was made to bring the tobacco exemption out of delegated legislation (where it then existed) and include it in the Act. The policy relating to that amendment was that all offences, and their related exemptions, punishable by a term of imprisonment should be contained in primary legislation rather than delegated legislation. The amendment in *clause 7(1)* removes the inconsistency in the treatment of the 2 exemptions.

*Excise duty on certain goods manufactured
outside manufacturing area*

Clause 8(1) replaces section 76, with a change to address the illegal situation of manufacturing excisable goods (except in certain permitted cases) outside a licensed manufacturing area. The change means that duty on such goods is due to the Crown immediately on their manufacture. Currently, the duty is due on such goods' re-

removal from the unlicensed area (by analogy with the situation for removal of goods from a licensed area, an analogy required by section 74(1)). This current position is potentially difficult to enforce, and so the change is seen as desirable to prevent the evasion of excise duty and applicable penalties. A consequential amendment is made in *clause 8(2)*.

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

Clauses 9 to 11 provide for a similar change to the change in *clauses 28 to 31*. *Clauses 9 to 11* make the document maintained by the chief executive of the New Zealand Customs Service that sets out the excise and excise-equivalent duties into the Excise and Excise-equivalent Duties Table, which will have legal force and replace Schedule 3. The changes in relation to excise and excise-equivalent duties are related to and predicated on the changes in *clauses 28 to 31* relating to the Working Tariff Document and the reasons for those changes are more fully described below in relation to *clauses 28 to 31*.

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

Clause 12, which comes into force on **1 October 2010**, amends the Excise and Excise-equivalent Duties Table (see the analysis above of *clauses 9 to 11*) to increase excise and excise-equivalent duties on motor spirits by 3 cents per litre.

Definition of financial year in section 79A(2)

Clause 13 amends section 79A, which ensures an Order in Council changing rates of excise duty and excise-equivalent duty on motor spirits may be made only during the second financial year, or the third financial year, that follows the financial year in which the current rates came into force. Section 79A(2) currently defines a financial year for the purposes of that section as the 12 months ending on the close of 30 June or any other date determined for the entity by the Minister of Finance. The amendment ensures any such determination by the Minister of Finance need not be “for the entity”, but must be notified in the *Gazette*.

*Amendment consequential on Land Transport
Management Amendment Act 2008*

Clause 14 substitutes a new section 80(4), which relates to the effect of repealing an Act that, pursuant to section 80(1A), expressly confirms certain orders. The amendment is consequential on section 80(1) and (1A) as substituted on 1 August 2008 by section 49(3) of the Land Transport Management Amendment Act 2008. It corrects an erroneous cross-reference. It also re-enacts section 80(4) in a form that is more up-to-date and consistent with section 80(1A).

Due date for payment of duty

Clause 15 amends section 90, which currently provides that duty under certain provisions is due 20 working days after the date of written notice from the chief executive. The amendment provides that if the chief executive has reasonable cause to believe that a person will be unable to pay the duty by that date, the chief executive may, by notice in writing, require that person to pay the duty by an earlier date. This is to cater for situations where the chief executive becomes aware, perhaps through Customs' auditors, that a person may be unable to pay duty by the due date (for example, because the person may be going into liquidation).

Administrative penalties

Clause 16 amends section 128, which relates to administrative penalties. The amendment extends the administrative penalty regime in Part 10 to entries other than entries of imported goods. An entry is broadly defined. For example, in relation to any goods or class of goods deemed by regulations made under section 50(b) to have been entered for export under section 49(1), an entry 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. Export or other entries that are materially incorrect will be able to be the subject of an administrative penalty. An entry that is not an entry of imported goods will be materially incorrect if it contains a material error or omission in relation to a matter that the entry is required by or under the principal Act to address.

Customs computerised entry processing systems

Clause 17 amends section 135, which empowers the chief executive, on grounds that include failing to comply with conditions of registration or being convicted of a crime involving dishonesty, to cancel the registration of a registered user of a Customs computerised entry processing system. *New subsection (1A)* enables the chief executive, by written notice to a registered user (which must state grounds for the suspension) to 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—

- has failed to comply with a condition imposed by the chief executive under section 132(3) or section 133(3) (which relate to conditions imposed on the granting of an application for registration, and to conditions imposed by written notice and about use and security of unique user identifiers); or
- has failed to comply with a condition imposed by the chief executive under section 134A(1) within the time frame specified in that section (which relates to other conditions imposed by written notice).

New subsection (1B) makes it clear that the date or event specified in the suspension notice may, but need not, be the user's compliance with a condition imposed by the chief executive under section 132(3), 133(3), or 134A(1).

A consequential amendment to section 135(2) ensures that the person whose registration is suspended may, if dissatisfied with the chief executive's decision to suspend the person's registration, appeal to a Customs Appeal Authority against that decision.

Searching vehicles

Clause 18 amends section 144, which relates to searching vehicles. *New subsection (5)* makes it clear that the powers given by another subsection of section 144 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.

Arrest of suspected offenders

Clause 19 amends section 174, which relates to the arrest of suspected offenders, by repealing subsections (1) and (2), and substituting *new subsections (1), (1A), and (2)*. The amendments rationalise and extend Customs officers' and constables' powers under section 174(1) and (2) to arrest without warrant suspected offenders. *New subsection (1)* empowers 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 the principal Act that is punishable by imprisonment, or an offence against section 209, to 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. A Customs officer has power to arrest without warrant in respect of offences of that kind under section 174(2)(a), but only in respect of a person found on a craft, and only if and when the Customs officer believes on reasonable grounds that the person has committed, is committing, or is concerned in the commission of an offence of that kind. *New subsection (1)* will enable a Customs officer to arrest without warrant a person suspected of committing any offence specified in section 174(1).

New subsection (1A) re-enacts a Customs officer's power under section 174(2)(b) to arrest without warrant a person who the Customs officer has reasonable cause to suspect has carried some other person into New Zealand on a craft, in contravention of section 98C(1) (which makes it an offence to smuggle unauthorised migrants) of the Crimes Act 1961. *New subsection (1A)* also extends that power of warrantless arrest, however, so that it is exercisable—

- not only when, but also after, the suspected migrant smuggler is found on that craft; and
- not only when that cause to suspect arises, but also while it continues and at any later time before the end of the seventh day after the date on which it arose.

New subsection (2) re-enacts a constable's power under section 174(1) to arrest without warrant a person who the constable has reasonable cause to suspect 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 of the principal Act. As under section 174(1), this re-enacted power of arrest is

exercisable while that cause to suspect continues and before the end of the seventh day after the date on which it arose.

Section 168 is consequentially amended; a *new subsection (3C)* is substituted.

False allegation or report to Customs officer

Clause 20 inserts a *new section 177A*, which is a new offence provision. The new offence penalises people who, with false intent, allege to the Customs that an offence has been committed or that the safety of people or goods is jeopardised. This new offence is based on section 24 of the Summary Offences Act 1981, which relates to the Police.

The new offence is seen as required because it is not unusual for the Customs to receive false information that identified individuals are involved in unlawful activity, such as smuggling drugs. The resulting enforcement activity is not only inconvenient and embarrassing to the affected traveller, but consumes the Customs' time and resources.

Laying of information

Clause 21 substitutes a *new section 221*. The amendment enables an information under the Summary Proceedings Act 1957 for any offence against the principal Act (other than one for an offence against section 216) to be laid by any person who is not a Customs officer but is an agent or employee of the Customs nominated by the chief executive. (Informations for offences against section 216, in relation to a Customs Appeal Authority, will continue to be required to be laid by the Registrar of the Customs Appeal Authority.)

Automated electronic systems

Clause 22 inserts *new sections 274A to 274D*, which relate to use of automated electronic systems (such as the proposed "Smartgate" entry or departure systems) by the Customs to make decisions, exercise powers, comply with obligations, and take related actions. *New sections 274A and 274C* are in certain respects similar to—

- section 125AB(5) (inserted in 2004) of the Immigration Act 1987 (a section similar in certain respects to clauses 27 and 28 of the Immigration Bill (132—2)); and

- sections 495A and 495B (inserted in 2001) of the Migration Act 1958 (Australia); and
 - section 48 of the Australian Citizenship Act 2007 (Australia).
- New section 274A* provides for the chief executive to arrange for the use, under the chief 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 processing law,—
- make a decision; or
 - exercise a power, or comply with an obligation; or
 - do anything else related to making a decision, exercising a power, or complying with an obligation.

An arrangement under *new section 274A* may, but need not, 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.

The chief executive must not under *new section 274A* 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. Before concluding for the first time, varying significantly, or revoking and replacing an arrangement for use of an automated electronic system, the chief executive must consult with the Privacy Commissioner.

A decision made, power exercised, obligation complied with, or related action taken using an automated electronic system in accordance with an arrangement under *new section 274A* 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 processing law to make that decision, exercise that power, comply with that obligation, or take that related action.

For the purposes of *new sections 274A to 274C*, the following provisions (and any regulations made under them, or made under the

principal Act and made for their purposes) are the **designated border processing law**:

- Parts 3 (arrival and departure of goods, persons, and craft) and 3A (border-crossing goods, persons, and craft):
- Part 12 (powers of Customs officers):
- Parts 13 to 15 and 17 (offences, forfeiture and seizure, evidence, and miscellaneous provisions):
- any other provisions of the principal Act that are declared by regulations to be for those purposes part of the designated border processing law.

New section 274B requires the chief executive to ensure prompt publication (in the *Gazette*, and so far as practicable on an Internet site that is publicly available free of charge) of details of—

- arrangements under *new section 274A* for use of automated electronic systems; and
- variations to, revocations of, or revocations and replacements of, arrangements of that kind.

New section 274C applies to a decision—

- 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
- that is made by an automated electronic system in accordance with an arrangement under *new section 274A*.

New section 274C enables the chief executive, the Customs, or a Customs officer (as the case may be), despite *new section 274A* or any other law to the contrary, to—

- vary or add to terms or conditions of, or imposed in or in relation to, the decision; or
- 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.

New section 274D ensures that *new 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 (initial or substituted), power, obligation, or other action under or specified in those new sections.

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

Clause 23 inserts *new sections 287A to 287F* into the principal Act to allow provisions contained in, or prepared under, international trade agreements to be incorporated by reference in regulations made under the Act. This means that instead of repeating the provisions, the regulations can simply refer to them. The provisions would be given legal force by the regulations but would not be set out in the regulations themselves. The provisions would be available on the Internet. Hard copy versions of the provisions would be available for inspection, free of charge, and would be able to be purchased at a reasonable price at specified places. This change has the advantage of avoiding discrepancies between the regulations and the provisions, and prevents duplication of effort. In addition, it is desirable in the interests of international uniformity to adopt verbatim the rules in these types of international agreements. The rules concerned are both detailed and technical.

In recent years, regulations implementing free trade agreements have had to set out voluminous schedules of requirements based on the Tariff. The schedules are of limited value to general users of the Statutory Regulations (SR) series, and people who need to consult the schedules will be better served by consulting a searchable electronic document. Although free trade agreements have not been common for New Zealand (occurring on average about every 3 years over the last 13 years), they will become increasingly common in the current global environment. New Zealand can expect at least 2 or 3 a year for the foreseeable future.

The changes in *new sections 287A to 287F* will enable the faster implementation by New Zealand of amendments giving effect to the preferential rates agreed in a free trade agreement. Faster implementation of free trade agreement preferential rates is also achieved by the changes to the Tariff Act 1988 made in *clauses 26 and 27*.

Updating of terms relating to Police

Clause 24 and *Part 4* of *Schedule 1* amend the principal Act to update terms relating to the Police. References in the principal Act to members of the Police are, in accordance with section 116(a) of the Policing Act 2008, replaced with references to constables.

Part 2**Amendments to Tariff Act 1988**

Clause 25 states that this Part amends the Tariff Act 1988 (called the **principal Act** in this Part). It is intended that the Bill be divided at the committee of the whole House stage into 2 separate amendment Bills, with *Part 2* becoming a Tariff Amendment Bill.

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

Clause 26 inserts *new sections 7C to 7H* to allow provisions contained in, or prepared under, international trade agreements to be incorporated by reference in regulations made under the Act. This mirrors the changes to the Customs and Excise Act 1996 made in *clause 23*, and is seen as desirable for the same reasons. Regulations under the Tariff Act 1988 set the rates agreed under international trade agreements, and it would be inconsistent and anomalous if the rules about the rates (that is, regulations under the Customs and Excise Act 1996) were able to incorporate provisions contained in, or prepared under, international trade agreements by reference, but regulations setting the rates could not.

As with the changes made in *clause 23*, the changes in *new sections 7C to 7H* will enable the faster implementation by New Zealand of amendments giving effect to the preferential rates agreed in an international trade agreement.

Clause 27 consequentially amends section 7 so that preferential rates may be specified in a agreement or document incorporated into an Order in Council in reliance on *new section 7C*.

Working Tariff Document replaces Schedule 1

Clause 28 changes the definition of Tariff and adds in a new definition of 2010 Tariff Document and Working Tariff Document so that the

Working Tariff Document published by the Customs becomes the legal Tariff as at **1 January 2010**. That document then replaces Schedule 1. These changes contrast with the current position, which is that the legal Tariff currently in force reflects the effects of a large number of separate (and non-compiled) amendment Acts and Orders in Council (often 3 or more each year) passed or made since the Tariff was enacted in 1988. The Working Tariff Document has therefore been provided by the Customs in order that interested people can access all the rates, including amended rates, and other up-to-date information, in 1 place.

Clause 29 inserts *new section 9A*, and *clause 30* inserts *new section 9B to 9G*.

New section 9A requires the chief executive of the Ministry of Economic Development to certify a copy of the Working Tariff Document as being the Working Tariff Document in existence on **1 January 2010**. Before doing so, the chief executive must be satisfied that the copy is or includes a full and accurate copy of the current contents of Schedule 1.

New section 9B requires the certified document, which will henceforth be the Tariff, along with any subsequent amendments made under section 9 or 10, to be available to the public via the Internet and in hard copy (*new section 9B(1)*). The amendment Orders must also be published in order that the public can see the nature of any amendments. Each new version of the new legal Tariff must indicate that it is the Tariff as in force at a stated date (*new section 9B(3)(a)*). It must include a list of all legislation amending or modifying it (*new section 9B(3)(b)*). *New section 9B(4)* provides that nothing in the new provisions prevents other information from being published or made available with the Tariff, provided it is clear that the other information does not form part of the Tariff or have legal effect.

New section 9C provides that Orders in Council amending or modifying the Tariff are disallowable by the House of Representatives and are not required to be published in the SR series.

New sections 9D and 9E mirror, in relation to the new legal Tariff, the rules about evidential status and judicial notice relating to the publication of Acts and regulations under the Acts and Regulations Publication Act 1989.

New section 9F provides that the new legal Tariff may be amended by Act or regulations.

Clause 31(1) consequentially repeals Schedule 1, which is the current legal Tariff. *Clause 31(2)* consequentially repeals and replaces section 3. *Clause 31(3), (4), (5), and (6)* and *Schedule 3* make other consequential amendments. Some other references in other enactments will be amended indirectly. That is because those other enactments refer to “the Tariff” and define that term by reference to the Tariff Act 1988. Examples include the following enactments:

- section 3(1) of the Dumping and Countervailing Duties Act 1988;
- section 2 of the Heavy Engineering Research Levy Act 1978;
- regulation 3 of the Climate Change (Liquid Fossil Fuels) Regulations 2008;
- section 2 of the Temporary Safeguard Authorities Act 1987.

References to the Standard Tariff will be similarly indirectly amended. The Standard Tariff is referred to in provisions including—

- the definitions in section 2 of the principal Act of the terms statistical key, Tariff heading or heading, and Tariff subheading or subheading; and
- paragraph (b) of the definition of rough diamonds in regulation 3 of the United Nations Sanctions (Kimberley Process) Regulations 2004.

The separate publication of the Tariff outside the SR series is seen as appropriate because it is technical and relevant to a particular group. It does not impose obligations that are of general application or interest to the public. Publication in the SR series is undesirable because of the size and complexity of the material and the fact that it has not been compiled for 21 years and that compilation is not technically possible at this time. In addition, it is not technically possible to have the SR series version of the Tariff or of amendments to the Tariff on the Internet with other New Zealand legislation at www.legislation.govt.nz.

The benefits of separate publication are seen as outweighing any disadvantages. The changes provide that the material is available to the public on the Internet and in hard copy, and is in a form that is more accessible than it would be if published in the SR series. In rela-

tion to free trade agreements, tools such as the “Tariff finder” will be available through www.mfat.govt.nz in addition to the agreement itself, and the applicable preferential rates will be set out in the fully searchable Tariff available on the Internet via www.customs.govt.nz.

Regulatory impact statement

A copy of the regulatory impact statement relating to some of the policy behind this Bill is available at www.customs.govt.nz/library/Legislation/Customs+Bills/default.htm.

Hon Maurice Williamson

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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, 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
 - (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** 5
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”. 10
- (2) The definition of **Customs seal** in section 2(1) is amended by—
- (a) inserting “, marking, substance, or device” after “a seal”; and 15
- (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 20
- (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** 25
- (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.” 30
- (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*

6 Entry of goods for export

- (1) Section 49(1) is amended by repealing paragraph (b) and substituting the following paragraph: 5
“(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: 10
“**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.” 15
- (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,— 20
“(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; 25
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)”. 30

*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** 35
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."

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

*Excise duty on certain goods manufactured
outside manufacturing area*

8 New section 76 substituted

- (1) Section 76 is repealed and the following section substituted:

"76 Excise duty a Crown debt 15

- "(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,—

"(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. 25

- "(2) Excise duty owed under **subsection (1)** is owed by—

"(a) the occupier of the place where the goods have been or are manufactured; and 30

"(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.

- "(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." 35

- (2) The heading to section 74 is consequentially amended by omitting “**otherwise than in a manufacturing area**” and substituting “**outside manufacturing area**”.

Excise and Excise-equivalent Duties Table 5
replaces Schedule 3

9 New sections 76A to 76B inserted

The following sections are inserted after section 76:

“76A Interpretation

In this section and in **sections 76B to 76G**, unless the context otherwise requires,— 10

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

“Excise and Excise-equivalent Duties Table—

“(a) means the table of excise and excise-equivalent duties as set out in the 2010 Excise and Excise-equivalent Du- 15
ties 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 de- 20
spite **paragraph (a)** means that table as from time to time amended, modified, or revoked and replaced

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

“76B Certification of 2010 Excise and Excise-equivalent Duties Document 25

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

“(a) certify a copy of the Working Excise and Excise-equiva- 30
lent 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 35
the close of **31 December 2009**.

“(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 legal effect as part of, the Excise and Excise-equivalent Duties Table.”

5

10 New sections 76C to 76H inserted

The following sections are inserted after section 76B:

“76C Access to Excise and Excise-equivalent Duties Document

“(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

10

“(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.

15

“(2) The documents are—

“(a) the Excise and Excise-equivalent Duties Table as from time to time amended, modified, or revoked and replaced on or after **1 January 2010**; and

20

“(b) the 2010 Excise and Excise-equivalent Duties Document; and

“(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**.

25

“(3) Every version of the Excise and Excise-equivalent Duties Table referred to in **subsection (2)(b)** 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

30

“(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

35

it is indicated clearly that the other information does not form part of, or have legal effect as part of, that table.

“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**—

- “(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.

“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.

“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, 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

- “(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.

- “(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. 5
- “(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 10
 - “(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 references** 15
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) Processing Act 2009** and in force at the commencement of this section: 20
 - “(b) a document in operation at that commencement.”
- 11 Schedule 3 consequentially repealed**
- (1) Schedule 3 is consequentially repealed. 25
 - (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 30
“(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**. 35

- (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* 5

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¢”: 10

- (a) 99.75.05F:
- (b) 99.75.23D:
- (c) 99.75.29C:
- (d) 99.75.37D:
- (e) 99.75.51K: 15
- (f) 99.75.59E:
- (g) 99.75.73L:
- (h) 99.75.81A:
- (i) 99.75.93E:
- (j) 2207.20.23 or 2207.20.35: 20
- (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): 25
- (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): 30
- (o) 2710.19.64:
- (p) 2710.19.70:
- (q) 3824.90.87 or 3824.90.93: 35
- (r) 3824.90.97.

*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*”.

*Amendment consequential on Land Transport Management Amendment Act 2008***14 Certain Orders in Council subject to confirmation**

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.”

*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):

- “(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.
- “(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)** 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

- (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,— 5

“(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 10

“(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 15

“(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.” 20

- (2) Section 128(1) is amended by omitting “pursuant to section 39 of this Act”. 25

- (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) Section 128 is amended by inserting the following subsection after subsection (7): 30

“(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.” 35

- (6) Section 128(10) is amended by inserting “and entered pursuant to section 39” after “subsection (1) of this section”.

- (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**”. 5
- (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— 10
- “(a) has failed to comply with a condition imposed by the chief executive under section 132(3) or 133(3); or 15
- “(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 condition imposed by the chief executive under section 132(3), 133(3), or 134A(1).” 20
- (3) Section 135(2) is consequentially amended by inserting “suspended or” before “cancelled”. 25

Searching vehicles

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.” 30

Arrest of suspected offenders

19 Arrest of offenders

- (1) The heading to section 174 is amended by inserting “**suspected**” before “**offenders**”.
- (2) Section 174 is amended by repealing subsections (1) and (2) 5
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 10
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.
- “(1A) A Customs officer who has reasonable cause to suspect that
a person has carried some other person into New Zealand on 15
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 20
the date on which it arose, and on the craft or elsewhere, arrest
the person without warrant.
- “(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 25
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.”
- (3) Section 168 is consequentially amended by repealing subsec-
tion (3C) and substituting the following subsection: 30
- “(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 war-
rant while that cause to suspect continues and before the end 35
of the seventh day after the date on which it arose.”

*False allegation or report to Customs officer***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,— 5
- “(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
- “(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,— 10
- “(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 15
- “(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 20
- liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000.
- “Compare: 1981 No 113 s 24”.

*Laying of information***21 New section 221 substituted** 25

Section 221 is repealed and the following section substituted:

“221 Laying of information

- “(1) Every information under the Summary Proceedings Act 1957 for any offence against this Act (other than one for an offence against section 216 of this Act) must be laid by— 30
- “(a) the chief executive; or
- “(b) any Customs officer nominated by the chief executive; or
- “(c) any person who is not a Customs officer but is an agent or employee of the Customs nominated by the chief executive. 35

- “(2) Any Customs officer or agent or employee of the Customs purporting 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 an offence against section 216 of this Act must be laid by the Registrar of a Customs Appeal Authority. 5
- “(4) Any information for an offence against this Act may, despite anything to the contrary in the Summary Proceedings Act 1957, be laid at any time within 5 years after the date of the offence. 10
- “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: 15

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

- “(1) The chief executive may arrange for the use, under the chief 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 processing law,— 20
- “(a) make a decision; or
- “(b) exercise a power, or comply with an obligation; or 25
- “(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. 30
- “(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 35

the decision, exercise the power, perform the obligation, or take the related action.

- “(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. 5
- “(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 processing law to make that decision, exercise that power, comply with that obligation, or take that related action. 10 15
- “(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— 20
- “(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. 25
- “(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**: 30
- “(a) Parts 3 (arrival and departure of goods, persons, and craft) and 3A (border-crossing goods, persons, and craft):
- “(b) Part 12 (powers of Customs officers):
- “(c) Parts 13 to 15 and 17 (offences, forfeiture and seizure, evidence, and miscellaneous provisions): 35
- “(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

- “(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— 5
- “(a) in the *Gazette*; and
- “(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. 10
- “(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 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. 15
- “(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)**. 20

“274C Variation and substitution of decisions made by automated electronic systems

- “(1) This section applies to a decision— 25
- “(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)**.
- “(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,— 30
- “(a) vary or add to terms or conditions of, or imposed in or in relation to, the decision; or
- “(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 35

initial decision and that the substituted decision is more favourable to the person affected.

- “(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. 5

“Compare: Migration Act 1958 (Aust) s 495B

“**274D Appeals and reviews unaffected**

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 (initial or substituted), power, obligation, or other action under or specified in those sections. 10

“Compare: 2002 No 34 s 33; 2004 No 115 s 21(d); 2005 No 39 s 61(6)”. 15

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

23 New sections 287A to 287F inserted

The following sections are inserted after section 287: 20

“**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—

“(a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or 25

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

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

“(a) in whole or in part; and 30

“(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 regulations are made; and 35

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

“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. 5

“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— 10
- “(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. 15

“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 20
 - “(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 25
 - “(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— 30
 - “(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 35

- “(iii) copies of the provisions are available on a specified Internet site; and
- “(iv) copies of the provisions can be purchased at specified places.
- “(2) A failure to comply with this section does not invalidate regulations that incorporate provisions under **section 287A**. 5

“**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. 10

“**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. 15
- “(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**.” 20

Updating of terms relating to Police

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**. 25

Part 2

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

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

The following sections are inserted after section 7B: 5

“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—

“(a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or 10

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

“(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. 15

“(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. 20

“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. 25

“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— 30

“(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 35

evidence of the incorporation in the Order in Council of the provisions.

“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 5
 - “(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 10
 - “(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— 15
 - “(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 20
 - “(iii) copies of the provisions are available on a specified Internet site; and
 - “(iv) copies of the provisions can be purchased at specified places. 25
- “(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

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. 30

- “7H 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 7C** 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 an Order in Council that incorporates provisions under **section 7C**.”
- 27 Application of Tariff** 10
- Section 7(1) is consequentially amended by adding the following paragraph:
- “(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.” 15
- Working Tariff Document replaces Schedule 1*
- 28 Interpretation**
- (1) The definition of **Tariff** in section 2(1) is repealed and the following definition substituted: 20
- “**Tariff**—
- “(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” 25
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 30
- “**2010 Tariff Document** means the document certified under **section 9A(1)**
- “**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” 35

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**,— 5

“(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**. 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— 20

“(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

“(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 30

“(b) the 2010 Tariff Document; and

“(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)** 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
10

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**—

- “(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

5

“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 references

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”.
- (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”. 25
- (5)** The enactments specified in **Schedule 3** are consequentially amended in the manner indicated in that schedule. 30
- (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 Tar- 35

iff Act 1988” and substituting “the Tariff (as defined in **section 2(1)** of the Tariff Act 1988)”.

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

Part 1 5

Consequential amendments relating to use
of future technology

Section 20(1)(ab)

Insert “in relation” after “a package”.

Omit “has been applied” and substitute “has been used”. 10

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

Heading to section 53A

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

Section 53A

Subsection (1): omit “apply” and substitute “use”. 15

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

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”. 20

Subsection (3): repeal and substitute:

“(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— 25

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

“(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.” 30

Part 1—*continued*

Section 53A—*continued*

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

Heading to section 53B

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

Section 53B

5

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”.

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

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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.

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

15

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”.

Heading to 53H

20

Omit “Application” and substitute “Use”.

Insert “in relation” after “Customs seals”.

Section 53H

Subsection (1): repeal and substitute:

“(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

25

Part 1—*continued*

Section 53H—*continued*

to in section 53E(1)(b) has been used in relation to the package in accordance with the relevant Customs-approved secure exports scheme.”

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

Section 144(4)

5

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”.

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”.

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”.

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

Section 151(7)(b)

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”.

Part 1—*continued*

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**”. 5

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”.

Section 210A

10

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”.

Subsection (1)(c): insert “in relation” after “section 53E(1)(b)”. 15

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”.

Heading to section 278

20

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

Section 278

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

Part 2

Consequential amendments relating to
authorised persons**Section 2(1)**

Definition of authorised person: omit “for the time being” and “of this Act.”. 5

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— 10

“(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 to be a Customs officer for the purpose of this Act; and 15

“(b) in a provision of this Act (other than this section, and sections **6(4)**, 7, 38P, and 175) includes an authorised person who— 20

“(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”. 25

Section 23

Subsection (2): omit “or other authorised persons shall” and substitute “must”. 30

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

Section 137

Omit “and any authorised person assisting the officer”.

Section 139(1)

Omit “and any authorised person assisting the officer”. 35

Part 2—*continued*

Section 140

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

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

5

Section 141

Omit “and an authorised person assisting the officer”.

Section 165(1)

Omit “or an authorised person”.

Section 166

10

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

Omit “or authorised person”.

15

Section 166C(3)

Omit “or authorised person”.

Section 177(1)(a)

Omit “or authorised person”.

Section 178(1)(a)

20

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

Omit “or an authorised person”.

Section 191(1)(e)

Omit “or authorised person”.

Part 2—*continued***Section 205B(2)**

Omit “an authorised person,”.

Part 3

Consequential amendments relating to
Excise and Excise-equivalent Duties Table 5
replacing Schedule 3

Section 2

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

“**2010 Excise and Excise-equivalent Document** has the meaning
given in **section 76A**” 10

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

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 Ex- 15
cise-equivalent Duties Table”.

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

Subsection (2)(d) and (e): repeal and substitute: 20

“(d) the term **per litre**, in respect of the levying of excise
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: 25

“(e) the term **per litre**, in respect of the levying of excise-
equivalent duty, for all Tariff items under the heading
Fuels in Part B of the Excise and Excise-equivalent Du-
ties Table, means the quantity of product expressed in
litres at a temperature of 15°C.” 30

Subsection (3): omit the words before paragraph (a) and substitute
“For the purposes of paragraph (c)(ii) of the definition of manufac-
ture in subsection (1), the term **ancillary process**, in relation to the
manufacture of goods specified in the Excise and Excise-equivalent

Part 3—*continued*

Section 2—*continued*

Duties Table that are neither tobacco nor a fuel, means 1 or more of the following processes:”.

Section 10(a)

Repeal and substitute:

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

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. 10

“(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)

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—”. 20

Section 73

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.” 25

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, 30

Part 3—*continued***Section 73**—*continued*

99.30.21D, 99.30.26E, 99.30.32K, and 99.30.47H of Part A of the Excise and Excise-equivalent Duties Table.”

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.” 5

Section 75(1)

10

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.” 15

Section 77(1) and (2)

Repeal and substitute:

“(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. 20 25

“(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.” 30

Part 3—*continued*

Section 78

Repeal and substitute:

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

- “(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
 - “(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
 - “(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.
- “(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.

“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)**.

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

“(1A) **Subsection (1)** is subject to subsections (2) to **(4)**.”

Subsection (4): repeal and substitute:

“(4) In this section,—

“**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

“(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 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.”

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.”

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

“**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,

Part 3—*continued*

Section 79A—*continued*

3824.90.93, and 3824.90.97 set out in the Excise and Excise-equivalent Duties Table.”

Section 83(2)

Repeal and substitute:

“(2) Subsection (1) applies to an approval granted under any of the following: 5

“(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: 10

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

Section 119(1)(b)

Repeal and substitute:

“(b) the excise classification of those goods under the Excise and Excise-equivalent Duties Table:” 15

Section 122(1)(b)

Repeal and substitute:

“(b) have a particular excise classification under the Excise and Excise-equivalent Duties Table; or” 20

Section 125(1)(c)

Repeal and substitute:

“(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” 25

Part 3—*continued*

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)—
- “(a) Schedule 3 of this Act; or
 - “(b) the Excise and Excise-equivalent Duties Table.”

Section 306

Repeal. 10

Part 4

Amendments updating terms
relating to Police

Section 7(1)

Omit “member of the Police” and substitute “constable”. 15

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”. 20

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”. 25

Part 4—*continued*

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”. 5

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”. 10

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”.

Section 149BA(1) and (5)

15

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”. 20

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”. 25

Section 172(1)

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

Part 4—*continued***Section 174(3)**

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

Section 175

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

Section 175C(4)(a)

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

Section 226(1) and (5)

Omit “member of the Police” and substitute “constable”. 10

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**

15

Part 1

Amendments to Acts

20

Alcohol Advisory Council Act 1976 (1976 No 143)

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

- “(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”. 25

Part 1—*continued*

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”.

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—

“(i) motor spirit; or

“(ii) diesel; or

“(iii) biodiesel; or

“(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.”

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:

“**motor spirits** does not include aviation spirits of a kind specified in the Excise and Excise-equivalent Duties Table (as de-

Part 1—*continued***Land Transport Management Act 2003 (2003 No 118)**—*continued*

fined in **section 76A** of the Customs and Excise Act 1996) as aviation fuel”.

Local Government Act 1974 (1974 No 66)

Paragraph (a) of definition of **specified engine fuel** in section 181(1):
repeal and substitute: 5

“(a) means,—

“(i) if no Order in Council is in force under **subpara-**
graph (ii), engine fuel specified in the Excise
and Excise-equivalent Duties Table (as defined
in **section 76A** of the Customs and Excise Act 10
1996) as a type of—

“(A) motor spirit; or

“(B) diesel (including blends of diesel and
kerosene); or

“(C) biodiesel; or 15

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

“(ii) that part of engine fuel specified in the Excise 20
and Excise-equivalent Duties Table (as so de-
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- 25
equivalent Duties Table (as defined in **section 76A** of
the Customs and Excise Act 1996) to be specified en-
gine fuel for the purposes of this Act; and”.

Part 2

Amendments to regulations

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

Regulation 3: insert in its appropriate alphabetical order: 5

“**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:

“(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)

Regulation 5(2): omit the words before paragraph (a) and substitute 25

“The rate of fuel levy is 9.90 cents per litre of motor spirit described in 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 pursuant 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 subsection (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.	

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).”