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Paper prepared by: Hon Meka Whaitiri, Minister of Customs

Date considered by Cabinet: 26 October 2021

Name of paper: Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021; Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021

Cabinet reference: CAB-21-MIN-0432 and LEG-21-MIN-0170

Purpose of the paper: On 27 September 2021, Cabinet agreed to resume full cost recovery of border processing services provided by the New Zealand Customs Service and the Ministry for Primary Industries, and to technical changes to improve the management of the border processing levies.

This paper seeks authorisation to submit two amendment orders to the Executive Council to give effect to Cabinet's decisions.

Redactions: No redaction was made.

Following Cabinet's decisions on this paper, the Customs and Excise (Border Processing Levy) Order 2015 and the Biosecurity (Border Processing Levy) Order 2015 were amended. These orders can be accessed on the New Zealand Legislation website:

[Customs and Excise \(Border Processing Levy\) Order 2015](#)

[Biosecurity \(Border Processing Levy\) Order 2015](#)



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Cabinet Legislation Committee

Minute of Decision

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Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021 and Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021

Portfolios **Biosecurity / Customs**

On 21 October 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 22 September 2021, the Cabinet Economic Development Committee:
 - 1.1 agreed to resume full cost recovery of border processing services and technical changes to improve the management of border processing levies;
 - 1.2 agreed to technical proposals that would support the operation of the levy regime:
 - 1.2.1 setting new Customs and Excise (Border Processing Levy) Order 2015 Biosecurity (Border Processing Levy) Order 2015 levy rates for a three-year period starting on 1 December 2021;
 - 1.2.2 setting the maximum levy rates (caps) in the Customs and Excise (Border Processing Levy) Order 2015 and Biosecurity (Border Processing Levy) Order 2015;
 - 1.2.3 specifying that the Director-General of MPI may set the duration of future levy periods, including the start and end date, up to a maximum of 36 months;
 - 1.2.4 specifying that the Chief Executive of Customs and the Director-General of MPI may start a new levy period when resetting levies under the Biosecurity (Border Processing Levy) Order 2015 and Customs and Excise (Border Processing Levy) Order 2015;
 - 1.3 authorised the Minister of Customs and the Minister for Biosecurity to make minor policy and technical decisions as drafting progresses, consistent with the decisions set out above;

[DEV-21-MIN-0185];

- 2 **noted** that the Minister for Biosecurity and the Minister of Customs are satisfied all statutory prerequisites have been met for making the required changes to the levy orders for border processing services;

- 3 **noted** that the following amendment orders will give effect to the decisions to make policy changes to border processing cost recovery:
- 3.1 Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021; and
- 3.2 Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021;
- 4 **noted** that the Minister of Customs and Minister for Biosecurity have clarified the policy intent that, in circumstances where it is appropriate to start a new levy period, all levy rates can be set to fully recover costs for that new levy period;
- 5 **noted** that the Biosecurity (Border Processing Levy) Order 2015 will be amended to end the current “special levy period” on 30 November 2021 to enable the Director-General of MPI to set the levy rates agreed by Cabinet for a three-year period starting on 1 December 2021;
- 6 **noted** that the Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021 and Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 come into force on 25 November 2021;
- 7 **noted** that after these amendment levy orders enter into force, the Chief Executive of Customs and Director-General of MPI will set the duration of the next levy period starting 1 December 2021 and set new levy rates at the amounts agreed by Cabinet, and notify them in the Gazette;
- 8 **authorised** the submission to the Executive Council of the
- 8.1 Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021 [PCO 24081/2.0];
- 8.2 Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 [PCO 24162/2.0].

Rebecca Davies
Committee Secretary

Present:

Hon Michael Wood (Chair)
Hon Carmel Sepuloni
Hon Nanaia Mahuta
Hon Poto Williams
Hon Kris Fafoi

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

In-Confidence **Unclassified**

Office of the Minister of Customs
Office of the Minister for Biosecurity

Chair, Cabinet Legislation Committee

Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021; Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021

Proposal

1. This paper seeks authorisation to submit two amendment orders to the Executive Council:
 - 1.1. Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021; and
 - 1.2. Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021.

Executive Summary

2. On 27 September 2021, Cabinet agreed to resume full cost recovery of border processing services provided by the New Zealand Customs Service (Customs) and the Ministry for Primary Industries (MPI), and technical changes to improve the management of border processing levies [CAB-21-MIN-0388 refers].
3. The decisions that require amendment to the current levy orders are to:
 - 3.1. set the maximum rates (caps) the Chief Executive of Customs and the Director-General of MPI can reset levy rates to in future;
 - 3.2. allow the Director-General of MPI to set start and end dates when setting levy periods; and
 - 3.3. allow the Chief Executive of Customs and the Director-General of MPI to start a new levy period when resetting levy rates.
4. Cabinet also agreed to set new levy rates for a three-year period starting on 1 December 2021 at the amounts referred to in Appendix 1.
5. Minor technical changes needed to implement Cabinet's policy decisions include:
 - 5.1. the Chief Executive of Customs and the Director-General of MPI will set the rates described in paragraph 4 and notify them in the Gazette, once the levy orders have been amended as described in paragraph 3; and
 - 5.2. the Biosecurity (Border Processing Levy) Amendment Order will end the current "special levy period" on 30 November 2021.

6. We made a minor policy decision to clarify that, when starting a new levy period under paragraph 3.3, all rates would be set to fully recover costs for that new levy period.
7. We now seek authorisation to submit the attached amendment orders to the Executive Council. The amendment orders will enter into force on 25 November 2021, allowing time for the Chief Executive of Customs and Director-General of MPI to set the levy rates that will apply 1 December 2021.

Policy

8. Border processing services are of vital importance to New Zealand. Customs and MPI provide border processing services to mitigate biosecurity threats and other risks posed by travellers such as prohibited goods and health risks, while also facilitating secure and efficient travel.
9. Since 1 January 2016, Customs and MPI have recovered the costs of these services through border processing levies, based on the legislated principle that travellers should fund the costs of managing the risks associated with their travel. The Customs levies were last changed on 1 July 2018, and the MPI levies on 1 July 2019.
10. In March 2020, in response to the initial impact of COVID-19, the Government agreed to an aviation relief package [CVD-20-MIN-0010]. This package included suspending funding reviews of all aviation and border agencies for 12 months, including scheduled reviews of the border processing levies.
11. In March 2021, Cabinet agreed to eliminate the estimated \$186 million in deficits that had accumulated in memorandum accounts for border processing services through to 30 June 2021, by using previously agreed capital injections and capital tagged contingencies funded under the COVID-19 Response and Recovery Fund [DEV-21-MIN-0011]. Cabinet also invited public consultation on resuming full cost recovery of border processing services over three years from December 2021 [DEV-21-MIN-0012].
12. On 27 September 2021, Cabinet agreed to:
 - 12.1. resume full cost recovery for border processing services from 1 December 2021 over a three-year period; and
 - 12.2. a number of technical changes to the orders to improve management of the levies for border processing services [CAB-21-MIN-0388 refers].
13. The decisions that require amendment to the current levy orders are to:
 - 13.1. set the maximum rates (caps) at the amounts referred to in Appendix 1;
 - 13.2. allow the Director-General of MPI to set start and end dates when setting levy periods; and
 - 13.3. allow the Chief Executive of Customs and the Director-General of MPI to start a new levy period when resetting levy rates.

14. Cabinet also agreed new levy rates for a three-year period starting on 1 December 2021 at the amounts referred to in Appendix 1. The Chief Executive of Customs and the Director-General of MPI will set these rates and notify them in the Gazette once the levy orders have been amended as described in paragraph 13.
15. The Biosecurity (Border Processing Levy) Amendment Order will end the current “special levy period”¹ on 30 November 2021, to enable the new levy period to commence on 1 December 2021.
16. Allowing the Chief Executive of Customs and the Director-General of MPI to set the levy rates from 1 December 2021 will give them the ability to adjust those rates if necessary, during the levy period, and to start a new levy period. This ability achieves the policy intent of the Cabinet paper.
17. Cabinet authorised the Minister of Customs and Minister for Biosecurity to make minor policy and technical decisions, consistent with the proposals outlined in the Cabinet paper [DEV-21-SUB-0185].
18. The policy intent of Cabinet’s decision in paragraph 13.3 is to enable levy rates to be adjusted, if necessary, to fully recover estimated border processing costs in the new levy period. As a minor policy decision, we have clarified that, in circumstances where it is appropriate to start a new levy period, all levy rates can be set to fully recover estimated costs for that new levy period. Even if the circumstances directly affected only one levy rate, it would likely be necessary to set all levy rates in order to fully recover estimated costs over the new levy period.

Timing and 28-day rule

19. We propose that the amendment orders enter into force on 25 November 2021, so the Chief Executive of Customs and the Director-General of MPI can set the new levy rates that will apply from 1 December 2021 and notify them in the Gazette. A waiver of the 28-day rule is not required.

Compliance

20. The amendment orders comply with:
 - 20.1. the principles of the Treaty of Waitangi;
 - 20.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 20.3. the principles and guidelines set out in the Privacy Act 1993;
 - 20.4. relevant international standards and obligations;

¹ Under clause 3 of the Biosecurity (Border Processing Levy) Order 2015, “special levy period” means the period beginning on 16 April 2021 and ending on 30 June 2022.

- 20.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee;
- 20.6. section 413(4) of the Customs and Excise Act 2018, which requires the Minister of Customs to consult the persons, representative groups, government departments, and Crown agencies that he or she considers reasonable and appropriate to consult in the circumstances, and before recommending that a levy order be made; and
- 20.7. section 140AA of the Biosecurity Act 1993, which requires the Minister for Biosecurity to consult with persons that he or she believes are representative of interests likely to be affected substantially by the order.

Regulations Review Committee

21. The amendment orders contain no grounds for the Regulations Review Committee to draw them to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

22. The draft amendment orders have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

23. A Cost Recovery Impact Statement (CRIS) was prepared in accordance with Cabinet Office requirements. This was submitted at the time policy approval for these changes was sought [CAB-21-MIN-0388 refers].

Publicity

24. Following the Cabinet decision on 27 September 2021, Customs informed industry of the changes to the levy rates and the technical amendments via newsletters, email and through information placed on Customs' and MPI's websites.

Proactive release

25. A copy of the 27 September 2021 Cabinet paper *Policy proposals for resuming full cost recovery for border processing services* and the associated Cabinet minute [CAB-21-MIN-0388] along with this paper and the associated minute, are planned for proactive release.
26. Customs and MPI will proactively release this paper on their websites.

Consultation

27. The following agencies were consulted on this paper: The Treasury and the Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.
28. The changes to levy rates are consistent with the Controller and Auditor General's good practice guide, *Charging fees for public sector goods and services*.

Recommendations

We recommend that the Cabinet Legislation Committee:

1. **note** that on 27 September 2021 Cabinet agreed to resume full cost recovery of border processing services and technical changes to improve the management of border processing levies [CAB-21-MIN-0388 refers];
2. **note** we are satisfied all statutory prerequisites have been met for making the required changes to the levy orders for border processing services;
3. **note** that the following amendment orders will give effect to Cabinet policy decisions to make policy changes to border processing cost recovery:
 - 3.1. Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021; and
 - 3.2. Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021;
4. **note** that Cabinet authorised the Minister of Customs and Minister for Biosecurity to make minor policy and technical decisions, consistent with the proposals outlined in the Cabinet paper [DEV-21-SUB-0185];
5. **note** that the Minister of Customs and Minister for Biosecurity have clarified the policy intent that, in circumstances where it is appropriate to start a new levy period, all levy rates can be set to fully recover costs for that new levy period;
6. **note** that the Biosecurity (Border Processing Levy) Order 2015 will be amended to end the current "special levy period" on 30 November 2021 to enable the Director-General of MPI to set the levy rates agreed by Cabinet for a three-year period starting on 1 December 2021;
7. **note** that the Customs and Excise (Border Processing Levy) Amendment Order (No 2) 2021 and Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 will enter into force on 25 November 2021;
8. **note** that after these amendment levy orders enter into force, the Chief Executive of Customs and Director-General of MPI will set the duration of the next levy period starting 1 December 2021 and set new levy rates at the amounts agreed by Cabinet, and notify them in the Gazette; and

9. **authorise** the submission of the amendment orders giving effect to the Cabinet approved changes to cost recovery for border processing services to the Executive Council.

Authorised for lodgement

Hon Meka Whaitiri

Minister of Customs

Hon Meka Whaitiri

Acting Minister for Biosecurity

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Appendix 1 – Proposed levy rates, and proposed maximum rates

	Levy rates			Maximum rates		
	Current (\$ excl GST)	Proposed (\$ excl GST)	Change	Current (\$ excl GST)	Proposed (\$ excl GST)	Change
Non-cruise						
Arrival - Customs	6.43	16.59	+158%	7.80	17.42	+123%
Arrival - MPI	8.5	16.92	+99%	8.80	17.77	+102%
Departure - Customs	2.56	4.52	+77%	3.10	4.75	+53%
Total - non-cruise	17.49	38.03	+117%	19.70	39.94	+103%
Cruise						
Arrival - Customs	10.4	15.66	+51%	10.40	16.44	+58%
Arrival - MPI	3.81	10.58	+178%	17.90	11.11	-38%
Departure - Customs	4.1	5.69	+39%	4.10	5.97	+46%
Total - cruise	18.31	31.93	+74%	32.40	33.52	+3%

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