

Meat Industry Association of New Zealand (Inc)

Submission to Government Administration
Committee on

The Proposed 'Goods Cost Recovery'
amendment to Customs and Excise Act 1996,
not included in Border Security Bill as
introduced

30 January 2004

Meat Industry Association Submission on the ‘Goods Cost Recovery’ amendment to Customs and Excise Act 1996, not included in Border Security Bill as introduced.

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I: Background/Introduction

1. The Meat Industry Association of New Zealand (MIA) is a voluntary trade association representing New Zealand meat processors, marketers and exporters. It is an Incorporated Society (owned by members) that represents companies supplying 99% of all New Zealand sheepmeat exports and 100% of beef exports. Its member companies are responsible for approximately 21% of New Zealand's total exports by value, equating to approximately \$NZD 5 billion annually.
2. MIA member companies operate approximately 80 processing plants dispersed throughout the country. The plants slaughter and process approximately 25 million lambs, 3.8 million sheep and 2 million cattle per annum. Ninety percent of this production is processed into value-added products. Approximately 750,000 tonnes or 85% of the production is exported to overseas destinations. Its 19 affiliate companies add to the depth of expertise available from the membership, with representation throughout the meat supply chain, including road and rail transport, shipping lines, ports, packaging firms, specialist product exporters, research and technology.
3. The MIA advocates on behalf of its members and provides advice on economic, trade policy, market access, employment relations, business compliance costs and technical and regulatory issues facing the industry, with a particular focus on:
 - Food safety trends and developments in importing countries
 - Economic and trade aspects of market access to key overseas markets
 - Major public policy proposals that could impact on industry operations
4. The MIA is also the interface between the meat industry and government (i.e., it is the consultative body referred to in various New Zealand statutes, such as the Meat Board Act, Meat Act 1981, Animal Products Act 1999).
5. The Association's mission is to:
 - Provide a forum for consideration of industry-wide commercial, human resource, marketing, and sanitary and zoosanitary issues; and
 - Provide the means of formulating a collective view on issues of industry wide interest, and of conveying that position to government, departments of state, trade bodies, and other appropriate external agencies and organisations.
6. The Association's goal is to improve profitability in the industry by helping its members achieve marketing and operational excellence.

II: MIA Submissions to Date

7. Previous submissions on the Border Security Bill set out the NZ Meat Industry position. These include:
 - Recognition of the importance of border protection and supply chain security in the post September 2001 period;
 - Supporting the primary objective underpinning the Bill of providing assurance that all goods imported into, or exported from, New Zealand present a low security risk;
 - The need for appropriate recognition of the high public benefit of a secure border when the Government considers funding for new border security initiatives;

- Concerns over compliance cost that appear to go further than required. MIA's support for the Bill was (and remains) **contingent** on effective arrangements being in place to ensure that the responsible government agencies **work together to eliminate duplication and contradictory requirements and to ensure that business compliance costs are minimised**.
- In principle support for the proposal that exporters be encouraged to form secure export partnerships with the Customs Service. We supported this approach in our submission to the Select Committee in August 2003, on the proviso that such partnerships took a "whole of government" approach, taking into account and building on the Government mandated export product security arrangements that already exist. In the case of meat exports, food safety and integrity is assured through audited systems required by the Ministry of Agriculture and Forestry and the New Zealand Food Safety Authority. We submitted that existing regulatory regimes should be used as the starting point for secure export partnerships.

III: The Proposed Border Security Fee

8. On 5 November 2003, the Minister of Customs, Hon Rick Barker, announced that the Government intended to collect \$20 million per annum from 1 July 2004 to recover additional costs for the New Zealand Customs Service (NZCS) to increase goods security. These costs relate to 130 extra Customs officers and the operating costs of new x-ray equipment.
9. The Minister stated that the \$20 million cost would be apportioned as follows:
 - \$8 million for trans-shipped goods.
 - \$8 million for exports.
 - \$4 million for imports.
10. The amounts are likely to be recovered from trans-shipments and exports through a \$450-\$650 fee per departing cargo ship or aircraft carrying cargo, and from imports through increasing the existing Import Transaction Fee from \$18 to \$22.
11. This announcement came as a complete surprise to the meat export sector.

IV: Process following the Cost-Recovery Announcement on 5 November 2003

12. Following the 5 November 2003 announcement by the Minister of Customs of the proposal to apply 'cost recovery' of \$20 million per annum from 1 July 2004, the MIA put forward its views in a letter to the Minister dated 13 November 2003 (attached) and 17 November 2003 (attached).
13. We also attended a briefing session with the Minister of Customs on 24 November 2003 where he set out the background to the cost-recovery proposal and proposed next steps for consultation with stakeholders – regrettably, given the 30 January 2004 deadline for submissions to select committee – the consultation process with stakeholders did not commence until 27 January 2004. At the 24 November 2004 meeting, the Minister also undertook to provide participants with full information, including on the actual services to be provided, the charging policies applied and all cost data. This information has not, as yet, been made available to us.
14. It is not possible to fairly assess any proposal that seeks to recover costs for monopoly services without also being provided with sufficient information to allow industry to: assess the business case considered by Government; be convinced that it satisfied all the criteria set out in the Treasury's "*Guidelines for Setting Charges in the Public Sector*", December 2002, (or any other

principles or criteria that may have been considered); confirm that assumptions (if any) are accurate; and that the case fairly reflected sector specific issues and risk profiles.

15. In a letter dated 9 December 2003, the Government Administration Committee Secretariat, invited the Meat Industry Association to consider the proposal to amend the Customs and Excise Act 1996 to enable regulations to be made that will allow the New Zealand Customs Service to recover the costs from those engaged in trade of the granting of a certificate of clearance to outbound craft, and to enable costs to be recovered in respect of exercising functions over exported goods. We thank you for this invitation.
16. In the same letter, the Government Administration Committee Secretariat notes “we understand that the Customs Service may have already consulted you over the issue of recovering the costs of exercising its goods clearance functions over exported and transshipped goods”. Apart from the high-level overview of the proposed regime, led by the Minister of Customs on 24 November 2004 the meat export sector (represented by the MIA), had not been consulted by the Customs Service over the issue of recovering costs.

V: Recommendations

17. It is recommended that the Select Committee:
 - Acknowledge that the process for consultation with industry on the proposed border security fee to date has not yet fulfilled the legal standard for consultation.
 - Acknowledge that it is the actions of trans-national criminals, not those of the commercial sector, that have made it necessary for the Government to be involved.
 - Acknowledge that it is in New Zealand’s national interest to ensure that its citizens are protected from acts of terrorism and that protecting New Zealand’s reputation as a safe and secure country into the future is a national asset.
 - Acknowledge that New Zealand has an obligation, as a member of the international community, to put in place measures to enhance supply chain security.
 - Acknowledge that New Zealand as a whole benefits from international trade.
 - Acknowledge that the meat export sector is already contributing to its security-related costs and is already subject to regulatory systems that ensure the integrity of the exported product. Enhancements, to address any identified security-specific issue, can and should be, considered within that regime.
 - Thoroughly assess the ‘Capital Economics Report’ and ensure that the identified deficiencies on the rationale for the government’s cost recovery proposals; the assessment of public, private and club good aspects of border clearance services; and the examination of issues relating to beneficiaries and forced payments are rectified.
 - Consider the points made within this submission on the inappropriateness of the proposed border security fee. In particular, that a convincing case for user-fees has yet to be made, and agree that until that has been established, it is not appropriate that so-called ‘beneficiaries’ should be charged – the Government should meet its own costs out of general taxation.
 - Ensure that effective arrangements are in place to ensure that the responsible government agencies work together to eliminate duplication and contradictory requirements and to ensure that business compliance costs are minimised.

- Agree that government should fund its anti-terrorist activities from general taxation.
- Agree that costs associated with any obligations resulting from New Zealand's agreement to an international standard or commitment should be met from general taxation.
- **Separate out of the report back on the Border Security Bill any legislative provisions that would enable cost-recovery processes to be commenced. The Meat Industry Association is opposed to those provisions proceeding at this time.**
- Ensure that if, after considering all the evidence presented to it, further work on cost-recovery is to be pursued, suggested improvements to the current process are considered, such as:
 - Commissioning a new policy paper to ensure that all affected parties are satisfied that the guidance provided by the Treasury in its "*Guidelines for Setting Charges in the Public Sector*" has been adequately addressed;
 - Commissioning a new regulatory impact statement and business compliance cost statement to address the identified deficiencies in the current document and make this available to affected parties for assessment;
 - Converting the Goods Cost Recovery Consultative Group (GCRCG) process into a forum for a meaningful debate on the principles of cost recovery, including the choice of funding sources. This forum should also provide an opportunity to properly consider detailed information relevant to the criteria contained in the Treasury *Guidelines*; and
 - Requiring that the outcome of the GCRCG consultation process be reported to Ministers to ensure that any decision on cost-recovery has the benefit of stakeholder input.
- Ensure that if, after considering all the evidence presented to it, it is decided that some form of cost-recovery provisions must be included in the Bill at this time, such cost-recovery provisions be more closely aligned to those set out in the Animal Products Act 1999 and its attendant regulations. A critical inclusion would be a 'switch-on' mechanism; perhaps by Order in Council, thus enabling affected parties and Government to be satisfied that proper consultation processes had been concluded before any provisions took effect.
- Ensure that industry is provided with information on the role and mandate of the Ministerial Committee on Border-Related Cost-Recovery Issues, including its role in ensuring that a consistent policy framework for decisions on funding for border protection and supply chain security is in place.
- Ensure that all cost-recovery initiatives applying at the border are articulated to the meat export sector in a manner that enables accurate determination of the proposal's contribution to border-related strategic objectives.

VI: Scope of the Submission

18. As the focus of our industry is on the export supply chain, we have addressed the Government's cost recovery proposals from an exporter's perspective. We are aware that others in the "supply chain", such as those importing or trans-shipping goods, would also be affected by the cost recovery proposals. We have not addressed the proposal from that perspective.

VII: Border Security Bill

19. The proposed amendments to the Border Security Bill (the Bill), as introduced, were stated as being to enhance border security. The explanatory note setting out the general policy statement for the introduction version of the Bill, states:

“The Bill makes a number of amendments to the Customs and Excise Act 1996 (the Act) to strengthen border control security measures against terrorism and other suspicious activities relating to cross-border crime organisations. These amendments reflect the fact that, since September 2001, international bodies have been advocating tighter border control measures and agreed standards. The changes will improve the security of global trading and travel environments, enhance closer security relationships within the supply or travel chain, strengthen intelligence resource capability, and help to ensure better use of information to assess risk.

Some of the amendments to the Act will improve the information process of the New Zealand Customs Service and the New Zealand Immigration Service, which will allow targeted intervention based on risk analysis. International carriers will be required to lodge advance information on passengers and crew electronically with the Customs, which in turn will link electronically with travel operators' and cargo managers' databases. This will allow the Customs to access data speedily. Although there will be increased compliance costs for business, these will not be significant.

The Bill establishes a regulatory environment that will set standards for supply chain security and allow low-risk exports to be certified by an approved Customs seal with the status of a Customs declaration. Other goods will be subject to risk assessment and pre-shipment inspection where appropriate.

The Bill also makes a number of amendments to the Act to strengthen controls in respect of persons unlawfully entering or exiting New Zealand in remote locations (which may enable potential terrorists to avoid border security).”

No Mention of Cost-Recovery in the Bill as Introduced

20. There was no mention of any cost-recovery initiative in the introduction version of the Bill. It strikes us as somewhat unusual, if some form of cost-recovery was always the intention that the concept of user-fees was not included at that time, and is only being considered now. This being the case, it could be contended that the border security enhancements included in the Bill were originally intended to be funded from general taxation or through the imposition of new regulatory requirements (funded by the parties to whom the requirements apply) and it was only after the financial implications were assessed that the 5 November ‘flat-fee’ cost recovery proposal was considered and announced.
21. Further, the 2003 Budget allocated capital expenditure for the purchase of x-ray machines and provided additional operational funding for the Customs Service for 2003/04. The Bill’s Regulatory Impact and Business Compliance Cost Statement gave no indication that the Government would not be continuing this funding arrangement in out-years.
22. Notwithstanding, the Meat Industry Association had indicated in our earlier submission to the Committee that there should be appropriate recognition of the high public benefit of a secure border when the Government considers funding for border security initiatives

New Compliance Costs

23. A number of new compliance costs were foreshadowed in the introduction version of the Bill. Based on the pilot trial and other feedback (see section XV) it is clear that those costs are more substantive than may originally have been foreseen. This is an additional cost burden on an

already heavily regulated sector that is well recognized as operating on extremely low profit margins¹.

Changing Global Security Environment

24. The Meat Industry Association recognises that heightened international awareness of security issues since September 2001 means that the movement of goods and people has come under increased scrutiny by many countries. We accept that even countries with a demonstrated history of being a low security risk can no longer rely on such a reputation. We agree that additional export security measures are needed to safeguard New Zealand's reputation as a safe and secure country, to protect against terrorist related sabotage, tampering or smuggling" and to ensure that New Zealand does not become (or be perceived as) a viable "launch pad" for terrorist attacks into other countries.
25. We also accept that New Zealand has a strong desire to play its part in the fight against global terrorism. The proposed border security enhancements are equivalent to what we would expect other nations to implement if New Zealand were the target of terrorist threats. The question is whether the costs associated with meeting requirements considered necessary for the NZ Customs Service to protect New Zealand from identified security risks should be imposed on New Zealand exporters. This is a matter that requires further reflection and the provision of robust information upon which genuine engagement and assessment can be made.

"Traders Directly Benefit"

26. The Government's position, stated only as recently as 5 November 2003 by the Minister of Customs, is that "*traders will receive a direct commercial benefit from the security strategy and that increasingly, security costs are recognised internationally as a cost of trading*". The Minister also said "*our objective is to put our traders in the 'greenlane'. If we did nothing they would be in the 'redlane' and would be delayed*".
27. It is interesting that this view of the so-called "benefits" for exporters was not articulated when introducing the Bill. As noted in paragraph 18 above, the purpose of the proposed enhancements to New Zealand's border security regime is to: (a) strengthen border control security measures against terrorism and other suspicious activities relating to cross-border crime organisations; (b) fulfill any obligations or commitments New Zealand may have entered into as a result of international bodies advocating tighter border control measures and agreed standards; (c) improve the security of global trading and travel environments; (d) enhance closer security relationships within the supply or travel chain; (e) strengthen intelligence resource capability; and (f) ensure better use of information to assess risk. These are admirable national objectives intended to ensure that our citizens are protected from acts of terrorism and that New Zealand contributes to the global fight against terrorism.
28. Customs defines security as "*protecting legitimate cargo against tampering, sabotage, smuggling and other transnational crime*".² Terrorist activities involving smuggling, tampering with or sabotaging export products, are almost certainly "illegal". Existing regulatory requirements should be capable of ensuring that offenders are brought to justice. Whilst we have some empathy for the articulated view that it may not be possible to seek financial reparation from such offenders, we submit that it is appropriate that Government should continue to fund its anti-terrorist services, such as those currently proposed in the Border Security Bill. In so doing, it would give tangible recognition to the fact that (insofar as this is achievable) it is in New Zealand's national interest to ensure that its citizens are protected from harm and that protecting New Zealand's reputation, as a safe and secure country into the future, is a national asset.

¹ *Contribution of the Land-based Primary Industries to New Zealand's Economic Growth*, 2003, Ministry of Agriculture and Forestry, page 30

² NZ Customs Service (December 2003) - *Secure Exports Partnership*, December 2003

VIII: Need for a Consistent and Principled Approach to Border Funding

29. An undated discussion paper prepared for the Ministerial Committee on Border-Related Cost Recovery Issues and entitled "Customs' Supply Chain Security Initiative: Funding Issues" notes at paragraph 16 that "...Cabinet agreed that a Ministerial Committee be established to oversee progress on cost recovery for border management activities (CAB Min (03) 20/4B refers). An officials committee has been convened to co-ordinate advice to the Committee and subsequently Cabinet."
30. The MIA has not been provided with in-depth information on the role and mandate of this Ministerial Committee. Nor has a complete list of agencies, whose proposals will be subject to scrutiny by this Committee, been provided to us. It would be advantageous if information could be provided on these points. Notwithstanding, we expect that with the number of agencies having responsibilities at the border, a key role would be to give effect to the guidance from the Office of the Auditor General in its report from the Controller and Auditor General on "*Key Success Factors for Effective Co-ordination and Collaboration between Public Sector Agencies*"³.
31. In August 2003 the New Zealand Government responded to the Biosecurity Council's strategy and in doing so acknowledged that funding decisions for biosecurity costs have in the past been fragmented and ad hoc. The Government indicated that future decision-making would be taken within a principled and consistent framework and identified the 2004/5-year for this process to take place. At that time border control activities were singled out as a priority area for review.
32. Similar comments were made in the paper to the Cabinet Policy Committee entitled "Cost Recovery: Customs Border and Trade Security". These comments were "*to provide a consistent framework for considering funding issues across the range of border security related proposals under development by border agencies*".
33. We are also aware that the Maritime Security Bill, introduced into the House on 2 September 2003, includes regulation making powers to enable, *inter alia*, fees and charges to be fixed to recover the cost of regulatory functions or security services. It is not clear to us whether or not the cost-recovery provisions proposed in this Bill are subject to assessment by the Ministerial Committee on Border-Related Cost Recovery Issues or the degree to which overlap or duplication of regulatory or cost recovery regimes (potential or real) has been considered within an overarching framework.
34. The MIA submits that to proceed with the proposed 'Goods Cost Recovery' fees and charges clauses at this time will continue with the fragmented and ad hoc approach which have existed in the past towards "cost recovery at the border". Further, on the basis of the limited information provided to us, appears to be in direct conflict with the Government's expressed intention to develop a consistent policy framework for decisions on funding for border protection and supply chain security.
35. The MIA is concerned that another one-off proposal on the recovery of border related costs is continued in this proposal, which, on the basis of the information supplied to us, does not appear to be the product of an over-arching framework within which all cost-recovery initiatives applying at the border has been considered. We recommend that if such an over-arching framework exists, that its nature and scope be communicated to industry, and that all cost-recovery initiatives applying at the border are articulated to the meat export sector in a manner that enables accurate determination of the proposal's contribution to border-related strategic objectives.

³ http://www.oag.govt.nz/HomePageFolders/Publications/KeySuccessFactors/HTML/Key_Success_Factors.htm

IX: Inadequacies of the Consultation Process on the Cost-Recovery Proposal

36. On 7th April 2003 Cabinet agreed to Crown fund Vote Customs an additional \$8.9m in the 2003/04-year, to deliver increased border and trade security over goods. It directed NZ Customs to report back by 1 August 2003 with recommendations on funding options. A Ministerial Committee was established to oversee the cost recovery issues in the context of the Treasury Guidelines and make recommendations to Cabinet. At no point in this four-month period did government engage in consultation with the meat industry or the wider export sector on the principle of cost recovery or the rationale underpinning the choice of funding mechanisms.
37. Cabinet and NZ Customs appear to have progressed additional initiatives in the Border Security area on the basis that cost recovery will be applied, with no debate involving stakeholders representing the meat export supply chain on the justification for applying cost recovery principles in this situation.
38. The Meat Industry Association considers that the belated consultation process and limited information sharing (to date) on this particular issue has not been adequate, and that it has not satisfied the consultation and other criteria described in the Treasury *Guidelines for Setting Charges in the Public Sector*.
39. The Meat Industry Association acknowledges that the Government Administration Committee is seeking comments on the proposal to include cost-recovery provisions applicable to the meat export sector in the 'Goods Cost Recovery' amendment to Customs and Excise Act 1996, however, this does not constitute an informed consultation process with affected stakeholders on the framework for any cost-recovery initiative or the principles that might apply.

Legal Standard for Consultation

40. The Treasury *Guidelines for Setting Charges in the Public Sector* refer to Wellington International Airport Ltd v Air New Zealand [1993] 1NZLR 671 as an example of the legal standards for what constitutes adequate consultation. The key elements of consultation, as defined in that case, include:
 - The statement of a proposal not yet finally decided upon;
 - Listening to what others have to say and considering the responses;
 - Allowing sufficient time for consultation;
 - Making a genuine effort to consult;
 - Conducting the process in mutual good faith;
 - Providing enough information to enable the party being consulted to make intelligent and useful responses;
 - Keeping an open mind and being ready to change the proposal or even start afresh, although it is allowable to have a working plan;
 - Holding meetings, providing relevant and further information on request; and
 - Waiting until those being consulted have had a say before making a decision.
41. The MIA submits that to date these elements have not been fulfilled. As stated in the Wellington International Airport Ltd v Air New Zealand case, "consultation requires more than mere prior notification".
42. We consider that meaningful industry consultation must start with a first-principles discussion of cost recovery, including the rationale for the choice of funding source. Only after that process has been completed should there be any discussion on the quantum of any such fee and how cost-recovery should be implemented. Legislation to enable cost recovery (if that is indeed the final

decision) should not be introduced until the entire consultative process has been completed (including any required Cabinet report back).

Lack of Meaningful Information

43. The MIA has been provided with the Cabinet Policy Committee minute of decision (POL Min (03) 24/14) confirming the in-principle decision in favour of a border security fee. However, there is insufficient detail in that paper (or the others supplied thus far) on the costs to be recovered, the relationship between services and costs, the basis for the proposed cost recovery, the rationale for the almost arbitrary split between public and private good (the papers acknowledge that there is a public good component), and any externalities arising from the charges, to make any intelligent or informed comment. These, and other issues identified in the Treasury's *Guidelines for Setting Charges in the Public Sector* are required to be worked through when setting (or reviewing) charges, and apply whether or not charges are set below or at cost-recovery levels. Any meaningful consultation requires adequate information so that those persons being consulted may assess charges against these criteria.
44. If consultation on a border security fee is to proceed then all relevant information must be urgently supplied. The lack of detailed information is most unsatisfactory particularly considering the time-bound nature of the proposed consultation.

Time-Bound Parallel Cost Recovery Consultation Processes

45. In a letter dated 18 December 2003, the Customs Service invited the MIA to participate in a subgroup of the Customs Joint Industry Consulting Group, referred to as the "Goods Cost Recovery Consulting Group (GCRCG), we welcome the opportunity to participate and will do so in good faith.
46. The letter noted that the Minister of Customs had set out a two-part consultation process. Both processes are to be concluded in time for the recovery of costs to commence from 1 July 2004.
47. Discussion on the principle of who should pay was to be dealt with in submissions to select committee, with the GCRCG to develop a fee structure that is fair, effective and efficient.
48. Whilst we appreciate the opportunity provided by the GCRCG, it is difficult to provide meaningful input if interactive discussion on the cost-recovery framework and rationale for decision-making on the choice of funding sources cannot be explored.
49. The GCRCG first met on 27 January 2004. This was largely an exploratory meeting that set the scene for future discussions and identified some of the information industry urgently needs to be provided with in order to properly assess the proposals. There was little discussion on the cost-recovery proposal itself.
50. The GCRCG may meet twice in February to progress how best to implement the border security fee. It is highly likely that this will be not be an adequate period of time within which to engage in a consultation process that would satisfy the minimum criteria for consultation set out in the various guidelines to officials on consultation processes.

X: Border Security is a 'Public Good'

51. The Meat Industry Association considers Border Security to be a public good and is therefore opposed to the amendments to the Customs and Excise Act 1996 that allow for 'Cost Recovery' for so-called 'export services' supplied under the Border Security Bill.

52. The NZ meat export sector is already subject to regulatory systems that ensure the integrity of the exported product. Enhancements, to address any identified security-specific issue, can and should be considered within that regime.
53. The NZ Customs publication *'Secure Export Partnerships – Important Information for Applicants'* (December 2003) states on page 8 under the heading 'Advantages for exporters' that "*Trade is the lifeblood of the New Zealand economy*". The MIA supports this statement. Given the impact and significance of the export sector to the wider NZ economy the MIA considers that border security measures as proposed in the Bill are undeniably 'Public Good'.
54. The *Treasury Guidelines for Setting Charges in the Public Sector* define 'Public Good' under S3.2.1 as follows: "*A good is considered public when excluding people from its benefits is either difficult or costly, and its use by one person does not detract from its use by another.*" In this instance, we surmise that the good is 'fast lane access to the US market for NZ exports'. Currently the US is the only market applying the measures; however there is the potential that in time, other regions will adopt similar requirements. The Meat Industry Association contends that excluding people from the benefit of this **is** both difficult and costly and the use by one exporter does not detract from its use by another. Segregating same type cargo on vessels or at US ports according to whether or not they present a risk is costly. Use of the 'fast lane' by one exporter would not prevent its use by another exporter who has met the market access requirements. The benefits of a safe and secure environment are a benefit to all New Zealanders.
55. The scenario analysis conducted by the Reserve Bank of New Zealand⁴ on the macroeconomic effects of a relatively minor outbreak of foot-and-mouth disease confirms the interdependency of the New Zealand economy and our ability to trade. So dependent is the New Zealand economy on exports and tourism and so affected are almost all sectors of New Zealand society by the state of the economy at any one time that genuinely excluding anyone from the benefits of export trade would be problematic. Clearly also the "use" of the security and protection measures by one person (be they transport operator or trader) does not detract from its "use" by others.
56. Border Security activities do not fall within the definitions of club or private good because parties cannot be excluded. They are compulsory. Provided the nature and level of these measures are appropriate, the citizens of New Zealand and the New Zealand economy benefits from border protection and supply chain security. This point is also made in the discussion paper (undated) entitled "Customs' Supply Chain Security Initiative: Funding Issues" prepared for the Ministerial Committee on Border-Related Cost Recovery Issues, "*...the primary purpose of Customs' security-related functions is to protect NZ's national interest on the grounds that all NZ'ers benefit from maintaining a secure trading environment, and all would suffer through loss of opportunity, income and employment if security were not maintained.*"
57. S 3.2.1 goes on to state that "*The second of these features implies that exclusion is not only difficult, but also undesirable*". The MIA contends that excluding companies within a sector or excluding sectors from the good is indeed undesirable, from a 'whole of economy' perspective. To place an economic advantage in the hands of one exporter at the expense of another creates an uneven playing field.
58. The Cabinet papers on the issue state the proposed cost recovery fees were assessed against the *Treasury Guidelines for Setting Charges in the Public Sector*. The argument put forward by the Minister (without prior consultation involving the meat export sector) was that the services to be supplied by NZ Customs would be 'private good'. The MIA disputes this reasoning. The economic impacts from exporting, or equally, the status of New Zealand as a safe and secure country, flow

⁴ *The macroeconomic impacts of a foot-and-mouth disease outbreak: an information paper for Department of the Prime Minister and Cabinet, Reserve Bank of New Zealand, 14 February 2003*

through to the whole economy (e.g., the recent strength of the NZ currency is impacting on investment, purchasing, profitability (and therefore the Government's future tax revenue)).

59. The MIA is a member of the Shipper's Council and Business NZ. We endorse the statements made by both parties in setting out the rationale for the public good aspects of supply chain security. Such costs should be met from general taxation. We understand that both parties will be attaching copies of two independent reports produced for the Travel and Trade Industry Coalition by the 'NZ Institute of Economic Research (NZIER)'⁵ and 'Capital Economics'⁶.

The NZIER report states:

"..the intended outcomes of improved security for the public in New Zealand and overseas, and the enhanced reputation for security of New Zealand are clearly public goods".

The Capital Economics report states:

"The overall conclusion is that it is not credible either in principle or on the basis of the government's actions to date that the additional border clearance services are being purchased for the benefit of the groups the government is proposing to levy. We have found no identifiable need for the government to mandate the purchase of these goods for private or club good purposes, and many of the government's stated purposes point to a broad public good justification for its spending decisions".

60. The Capital Economics report also identifies deficiencies in the rationale for the government's cost recovery proposals; the assessment of public, private and club good aspects of border clearance services; and examines issues relating to beneficiaries and forced payments. The MIA recommends that the Government Administration Committee thoroughly assess this Report and the NZIER report and ensures that the identified deficiencies are rectified.
61. Further, a paper by the World Customs Organisation⁷ considers each country's level of supply chain security as contributing to a 'global public good'. We have not been provided with any rationale explaining why New Zealand's view differs from the World Customs Organisation (WCO) acknowledgement (for reasons of public safety and security reputation) of the public good characteristics of supply chain security. The WCO view appears to be echoed by the Office of the Auditor General⁸. The report from the Controller and Auditor General states that New Zealand has an obligation, as a member of the international community, to put in place measures to enhance supply chain security.
62. The MIA also submits that there is an inconsistency in opting for a 'whole of economy' perspective when promoting the importance of the Secure Export Partnership (SEP) programme (for example, *"the investment is part of a supply chain security strategy designed to maintain New Zealand's reputation as a safe and secure trading partner"*⁹) yet when determining how increased security should be paid for, Government singles out so called 'sector beneficiaries' to pay for and administer its cost recovery measures.

⁵ *Supply Chain Security – Is Cost Recovery Justified?* NZ Institute of Economic Research, December 2003

⁶ *Assessment of Beneficiaries and Public Good Issues Relating to Cost Recovery for Supply Chain Security and Border Security*, Bryce Wilkinson, Capital Economics, January 2004

⁷ *How to Finance the Security of the International Supply Chain? A Global Public Good Approach*. World Customs Organisation, April 2003

⁸ *Managing Threats to Domestic Security*, Controller and Auditor General, October 2003

⁹ *Clean Green and Secure – Detailed information on NZ Customs Goods Security Cost Recovery Proposal*, November 2003

Who Benefits?

63. The Cabinet papers take the position that because it is impractical to recover its costs from 'exacerbators' (i.e., terrorists, criminals, etc), 'beneficiaries' should pay. The rationale for this decision is not clear. We contend that a convincing case for user-fees has yet to be made, and until that has happened, it is not appropriate that so-called 'beneficiaries' should be charged – the Government should meet its own costs out of general taxation.
64. However, even if a 'beneficiary pays' argument could be sustained, the Meat Industry Association considers that the beneficiaries of international trade are far wider than just the meat processors, exporters, transport operators, port companies and shipping lines. We submit that all New Zealanders benefit from international trade, for example through increased incomes, employment opportunities and tax revenues for the Government.
65. The Government recognises that New Zealand as a whole benefits from international trade and as a result it dedicates significant resources to trade negotiations and export promotion. While individual businesses certainly receive benefits from these activities the Government undertakes them to benefit the country as a whole. The MIA submits that the same argument also holds for border/supply chain security.

A User-Charge or a Tax?

66. The Treasury guidelines state that any charges should relate to the cost of the service provided and that charges for services provided by Crown agencies that are in excess of the costs of provision could be interpreted as a tax. However, the proposed border security fee has been announced as being a flat amount regardless of the:
 - Mode of transport. The fee will be the same whether the shipment is by aircraft or ship.
 - Volume of cargo in a shipment. The fee will be the same whether the shipment is one tonne or 20,000 tonnes.
 - Nature of the cargo. The fee will be the same whether the cargo is transported by pallet, container, or in bulk.
 - Source of the cargo. The fee will be the same even for cargo from those exporters in the Secure Export Partnership (SEP), even though the SEP is designed to reduce the need for end-point inspections or having containers routinely x-rayed at ports.
 - Regulatory regime applied. The fee will be the same whether or not government controls over the production and export process exists.
 - Risk profile. The same fee will apply to low-risk cargo and high-risk cargo.
 - Destination of the cargo – the enhanced security initiatives are designed to meet the needs of the United States, but exports to all trading partners (including those that have made no pronouncements about border security) will be subject to the same flat fee.
67. All of these factors should impact significantly upon the amount of resources the Customs Service would require to undertake its responsibilities for any given shipment of cargo from the meat sector. Further, the flat fee approach does not account for the level of service actually provided by the Customs Service and will therefore over-recover costs from the meat sector. When charges are set at greater than cost-recovery, the Treasury guidelines note that there is a danger that a user charge becomes a tax. We therefore submit that the fee is actually equivalent to a tax on export trade.
68. WTO requirements state that a charge can only be applied if there is clear identification of a "service" being provided to an individual importer or exporter, and a demonstration that the charge being levied does not exceed the cost of that service. The WTO requires that fees on services not amount to a tax on exports or imports. As stated above, a clear identification of the services being

provided to an individual exporter has not been established, neither has it been established that the charge does not exceed the cost of providing that exporter with the service.

69. The proposed "security fee" will be applied to all exports and will also be applied regardless of the risk that an export consignment genuinely poses. This is not acceptable.
70. It was contended in the supporting Cabinet-briefing papers that a key consideration in deciding that cost-recovery would apply to border security services was to reduce reliance on funding from general taxation. It is recognised that any charge will have this effect. However, the contribution that the proposed charge makes to 'reducing reliance on funding from general taxation' means that the proposal might also be considered a selective tax.
71. The fact that the proposed border security measures are to be compulsory (as compared to setting the standards and allowing a choice of providers to which market disciplines would apply) also points to the fact that at this time there is no clear net benefit for exporters that would encourage them to use the "service" if it was voluntary and if a fee for service applied.
72. The Treasury guidelines state in section 8 on Cost Control, "*For most goods and services, market mechanisms determine critical issues such as who decides on standards or levels of service, and how far the costs are reflected in charges. When outputs are supplied by a monopoly provider, however, other mechanisms become important. The issue then becomes whether users/payers are able to influence the quality, quantity and cost of outputs*". The 'flat-fee' proposal means that users will not be able to influence the quality, quantity and cost of outputs, nor is there any ability for the user to reduce the risks being addressed by the Customs Service and thereby reduce the quantum of any monetary contribution.

XI: International Obligations/Commitments

73. The World Trade Organisation (WTO) requires that if a fee or charge is to be imposed on imports or exports that it must be commensurate with the cost of services rendered and not amount to indirect protection to domestic products or a tax on imports or exports¹⁰. As noted above, with no clear identification of the service being provided or its actual cost, it is highly likely that the 'flat fee' does indeed amount to a tax on imports and exports and we submit therefore that the border security fee may be inconsistent with New Zealand's WTO obligations. We note that the supporting Cabinet papers indicate that setting charges at a rate less than full cost-recovery reduces the probability of challenge. We contend that simply stating that the rates to be charged will be less than the costs of providing the service abdicates from the responsibility to clearly establish the actual cost of the service rendered in any given situation.
74. The New Zealand Government is also obligated by its international commitments such as the United Nations Security Council's Resolution 1373 and membership to international organisations such as the World Customs Organization and the International Maritime Organization to set up effective border controls to prevent the movement of terrorists and terrorist group and to enhance supply chain security. These obligations include identifying and examining high-risk containers.
75. As set out in Appendix 1 of the NZ Customs Service publication "Securing New Zealand's Exports", a number of international organisations have adopted measures to counter terrorism:
 - United Nations Security Council Resolution 1373 commits member states to prevent and suppress the financing of terrorist acts while taking steps to stop terrorist activities. It also calls

¹⁰ See Articles II.2(c) and VIII of the General Agreement on Trade and Tariffs 1994.

on member states to intensify and accelerate the exchange of information regarding the actions or movements of terrorists.

- The G-8 has committed itself to a series of measures to strengthen security and fight terrorism including export controls and the sharing of information. Other states are also urged to commit to the measures.
- The World Customs Organisation (WCO) has agreed to a series of steps to protect the international supply chain from acts of terrorism or other criminal activity, while ensuring continued improvements in trade facilitation.
- APEC leaders have committed their economies to a number of steps to strengthen security while maintaining the smooth flow of goods, capital and people.
- The International Maritime Organisation has agreed to work with the WCO to develop an international plan to secure containerised cargo.
- The International Civil Aviation Organisation is working on air cargo security initiatives.
- The United States Customs and Border Protection has introduced a number of measures including the Container Security Initiative, Customs Trade Partnership Against Terrorism (C-TPAT) and the 24-hour rule.

76. The MIA submits that costs associated with any obligations or commitments resulting from New Zealand's agreement to an international standard or commitment should be met from general taxation.

XII: Economic Implications

77. It is important to fully explore issues of public policy around whether border/supply chain security is a public or a private good, or some mixture of both, including who benefits from international trade and therefore border/supply chain security, whether the border security fee would actually be a tax, and whether it would be consistent with our international obligations. We have submitted above that on the basis of the information supplied so far that the proposed border security fee fails to meet any of these tests.

78. The wider economic implications of the proposed Border Security Fee should also be considered, particularly in light of the Government's goal of returning New Zealand to the top half of the OECD. In particular, the Government's Growth and Innovation Framework¹¹ makes a strong case that New Zealand must produce and export more high value products.

79. In order for this to happen New Zealand must maintain a business-friendly macro and micro economic policy environment that is conducive to growth and innovation. This includes ensuring that New Zealand's international competitiveness is protected and enhanced wherever possible.

80. The MIA submits that the border security fee is inconsistent with the Government's goals for growth and innovation and will harm New Zealand's international competitiveness. We accept that the \$8 million to be recovered would be a very small proportion of total export merchandise trade, but the fee would nevertheless erode overall competitive advantage and it would impact on some exporters far more than it would on others. The fee would be particularly damaging to exporters of products relying on airfreight for distribution (see section XIII below also).

¹¹ *Growing an Innovative New Zealand*, New Zealand Government, February 2002.

XIII: Fee will Disproportionately Impact Airfreight

81. The Customs Service estimated that there would be approximately 25,000 annual transactions over which costs were to be distributed. 25,000 craft departures annually equate to approximately 500 craft departures weekly. This figure includes all departing aircraft carrying cargo, as well as all departing surface vessels. Of the approximately 500 departures weekly, more than 90% are aircraft, and would be a very high proportion of the total cargo revenue for the aircraft commonly used for Trans-Tasman and Pacific services. Less than 10% of the departing craft weekly (both air and surface) are destined for the USA. A flat fee on all departing craft will result in the airfreight export sector paying more than 90% of the cost recovery and the fees being recovered in the main from craft departing for destinations other than the USA. The airfreight cargo rates would have to rise dramatically to cover the cost increase or carriers will simply refuse to carry cargo. Exporters using airfreight to get their cargo to destination will therefore subsidise sea-freighted exports.

XIV: NZ Customs Over-Recovery?

82. Based on the limited cost data supplied, a fee of \$450-\$650 is proposed for each cargo report clearance certificate. As noted above, Customs estimated 25,000 annual transactions. At \$450/certificate this amounts to \$11.25 million – some \$3.5 million more than the \$8 million proposed to be recovered from the export sector.
83. NZ Customs have stated publicly (and in Cabinet papers) the need for 130 additional staff. The basis for these estimates is unclear and the MIA questions their accuracy now that NZ Customs is more aware of the regulatory controls that apply within the meat export sector. We request that the original cost estimates be reviewed.
84. The meat export sector has not been provided with any justification for, or information on, the activities these additional people will be employed to undertake and how the tasks that will be carried out will directly benefit the meat industry compared to other sectors. As a NZ Customs acknowledged low-risk export sector, the actual costs of services provided to meat industry should be lower than for exports from less regulated sectors. The flat-fee approach means that the meat sector will subsidise exports from sectors that are not already subject to cost-recovered regulatory regimes. We will also incur additional costs for services that are not directly related to the level of service delivered. This is not acceptable.

XV: Security-Related Costs already incurred by Meat Processors and Exporters

85. Meat processors and exporters have always paid a significant cost for securing their consignments. Because of the present heightened concern about terrorist threat, these costs are increasing. Some examples are set out below.
86. Certain meat exporters to the USA are required to comply with a new range of measures implemented (in December 2003) by the US Food and Drug Administration. Certain meat exporters also have to comply with the security-related requirements imposed by the US Homeland Security Department. Some meat exporters have to comply with both. Compliance with either, or both, regimes incurs costs. Further, whilst both import regimes seek to address broadly similar outcomes, having to comply with two different sets of security-related import rules creates additional cost. In addition, if the US government is not itself able to x-ray a container

selected for inspection, it directs that the container be subject to x-ray inspection by an accredited third party – costs associated with this service are then recovered from the meat exporter (who was unfortunate enough to have their container selected for inspection at a time that the US government could not itself carry out the inspection).

87. Participation in the proposed “Voluntary Secure Export Partnership Scheme” will also require additional security measures even for meat exporting establishments that already have high levels of security. Cartage companies that offer heightened “security assurance” are likely to increase prices as will port companies that are being required to meet higher security standards. Insurance premiums are increasing and there are very real costs associated with extended times for processing documentation for exports from New Zealand and for their importation at destination. These costs are additional to the proposed ‘flat-fee’ tax.
88. It is likely that most meat processors and exporters will wish to form secure export partnerships and thus provide assurance to New Zealand and importing country authorities that the goods pose minimal security risk. Such goods would be identified by the Customs Service as low risk and we anticipate would be cleared for export with little or no further intervention by the Customs Service as the goods moved across the border. Secure Export Partnerships are likely to mean additional costs for exporters, as they will have to develop and manage the new security systems that will be required.
89. Transport operators (including shipping companies) and facilities operators (such as ports) already face significant cost burdens in meeting the requirements of the various border agencies – including frequently having to provide space to these agencies free of charge.
90. Meat processors, exporters and shipping lines are already being notified of additional charges from port companies as the latter seek to implement the requirements of the International Code for the Security of Ships and of Port Facilities (the ISPS Code). Costs will vary from port to port, but it is likely that a new charge of approximately \$2.75 per full container and a \$175.00 charge per port call for bulk vessels (excluding container vessels) will apply. Other charges relating to ISPS implementation are foreshadowed but are not known at this time.
91. All of these costs (and others) are being incurred by legitimate traders to help protect against a perceived risk (no matter how miniscule) that terrorists could infiltrate their premises / shipping containers for the purpose of smuggling or could tamper with or sabotage their product.

Richmond Pilot Programme

92. Using the experience of Richmond Ltd in the NZ Customs pilot programme as a guideline, some of these direct new security-related costs will take the form of:
 - Computer systems and programming upgrades to conform to the data capture and transfer requirements of the electronic export certification system. In Richmond’s case this has amounted to approximately \$40,000 – applying this across the industry could add a further \$200,000 in direct costs.
 - Costs in terms of time/resources required in producing a company security plan.
 - Additional staff/staff training/over-time payments to meet export documentation deadlines.
 - Additional days for refrigerated containers plugged in to port facilities. Delivery and clearance timeframes will be extended resulting in containers for export arriving at ports earlier. An average increase of 1 extra day per refrigerated container is expected to add approximately \$600,000 - \$650,000 in annual refrigeration costs for the industry.
 - Increased port security charges being passed on by ports to exporters.
 - Container seals – NZ Customs have stated they are looking to introduce “intelligent” or “smart” container seals in the near future. Any obligated seal that costs more than those currently used to secure containers will be a further cost impost on containerised exports.

Cost of Doing Business

93. The cost areas outlined in the under the Richmond Pilot Programme above – while not welcomed or accepted, are broadly acknowledged by exporters as '*costs of doing business*' in the international market place, in the same way that over \$62 million in costs are incurred annually by the meat industry to acquire government inspection and verification services to satisfy customers that our meat exports meet the requirements of the importing country.
94. The costs set out above are sector/company specific and will be additional to the 'flat-fee' border security charge Government is looking to apply to the meat export sector.

Increased Compliance Costs cannot be recovered from the International Market Place

95. It should be noted that increased compliance costs cannot realistically be recovered from the international market place where consumers are increasingly price conscious and are presented with an ever-increasing range of protein options. It is likely, therefore, that such additional costs would have to be absorbed domestically.

XVI: Disincentive to join the Secure Export Partnership (SEP) Programme

96. The flat-fee on exports, irrespective of whether exporters have SEP status or not, provide a disincentive for companies to incur the costs associated with or sign up to the SEP programme. It also takes no account of the risk profile for that particular sector and what other regulatory systems the consignment may have been subjected to prior to export. This is clearly in conflict with the NZ Customs objective of encouraging exporters to sign up to the SEP programme.
97. The proposition by the Customs Service to increase its staff numbers and invest in x-ray technology etc., should, amongst other things, be seen largely as an investment to manage the risks associated with goods produced and exported by companies that choose to stay outside the secure export partnership system. It therefore follows that the costs incurred by the Customs Service to increase its border security capability, if not to be met from general taxation, should be recovered the "high risk" sector of the export business community where confidence over security issues may not be able to be as readily ascertained.
98. A flat fee on craft leaving New Zealand has no connection to management of security risks. The craft operators who will pay the charges in the first instance will simply pass the costs back to exporters through increased transport costs. Companies that invest in Secure Export Partnerships will receive no benefit from those relationships by way of avoiding or reducing the costs that the Customs Service will seek to recover indirectly from them. As noted earlier in this submission, the flat-fee approach will result in cross-subsidisation issues that also need to be reconciled.
99. In short, the benefits from the SEP scheme are not clear in the context of the mandatory 'flat-fee' scheme, and in particular, what the voluntary scheme is offering that compensates for its costs.

XVII: Overlapping Regulatory and Cost-Recovery Regimes

100. As noted in section VIII above, there are a number of agencies operating at the border. The responsibilities of each border agency appear to overlap. Importantly, from a cost-effective and cost-efficiency point of view, often the overlap appears to be in the areas of regulatory and cost-recovery regimes. It is not clear to us how duplication of services and any attendant cost implications are avoided. Neither is it apparent that services provided by another government agency are genuinely taken into account when formulating proposed interventions. This information gap needs to be rectified.

XVIII:Regulatory Impact Statement

101. Amongst other things, the Cabinet Manual¹² and its supporting “Step-by-Step Guide” requires “*that all policy proposals submitted to Cabinet that result in government Bills or statutory regulations must be accompanied by a regulatory impact statement (RIS). Where a proposal has business compliance cost implications, a business compliance cost statement (BCCS) should be incorporated into the RIS. This requirement is intended to improve the quality of regulation making and to ensure that regulatory proposals are cost-effective and justified.*”
102. The Meat Industry Association notes that a RIS has been prepared and confirms that an undated copy was supplied to industry following the 5 November 2003 announcement of the cost-recovery proposal.
103. The “Step-by-Step Guide”, section 3.26, sets out the minimum information to be provided in a RIS. This information includes:

- **Statement of the nature and magnitude of the problem and the need for government action**

This section should clarify that there is a clear need for policy action. Information should be provided on the nature and magnitude of the problem and should identify the likely risks associated with both intervention and non-intervention. Care should also be taken to clearly identify the root cause of a particular problem, rather than focus on the symptoms.

- **Statement of the public policy objective(s)**

The objective of the regulatory initiative should be specified. The objective should not be specified so as to align with (and thus pre-justify) the particular effects of the proposed regulation. Rather, it should be specified in relation to the underlying problem. Also, where there is more than one public policy objective, they should be ranked in order of priority.

This section should identify the pre-existing policy authority (if any) for the regulatory proposal - for example, a relevant Cabinet decision or governmental policy announcement.

- **Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)**

This section should set out the various options (including the preferred option) that could wholly or partly achieve the policy objective(s). Alternative options may rely on the market in conjunction with existing law, information and education campaigns, market-based instruments (including taxes, subsidies, performance bonds and tradable property rights) and self-regulation.

- **Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options**

A fundamental purpose of the RIS is to demonstrate that the benefits of the regulatory proposal exceed the cost and that the net benefits to society are maximised. A cost/benefit analysis is simply a systematic approach to judge whether this requirement is met.

This section should provide an outline of the costs and benefits of the proposal and alternative ways of achieving the public policy objective(s). This should include economic and social costs

¹² <http://www.dPMC.govt.nz/cabinet/manual/index.html>

and benefits, whether direct or indirect. It is important that benefits and costs not be restricted to tangible or monetary items (that is, non-monetary outcomes should be included). There should also be brief analysis of distinct alternatives (including the status quo) to the proposed regulation.

The groups likely to be significantly affected by the regulatory proposal should also be separately identified in this section. Where the proposal will have different effects on different sub-groups, each sub-group should be identified.

- **Statement of consultation undertaken**

The RIS should outline who has been consulted in developing the regulatory proposal. On a case by case basis, this may involve consultation between departments and other levels of government, stakeholder groups and the community generally.

104. The Meat Industry Association submits that the RIS supplied to us does not adequately address these considerations. We concur with the analysis of the RIS conducted by Bryce Wilkinson, Capital Economics Limited, "Assessment of Beneficiaries and Public Good Issues Relating to Cost Recovery for Supply Chain Security and Border Protection", dated 21 January 2004 (in particular, but not limited to, sections 2, 3, 4 and Appendix 2). The MIA recommends that the Government Administration Committee review the RIS and the BCCS in light of the Wilkinson analysis. We also recommend that a new RIS and BCCS be commissioned to address the identified deficiencies and that this take place before any decisions to incorporate border security supply chain cost-recovery provisions in the Customs and Excise Act 1996 are taken.

XIX: Treasury "Guidelines for Setting Charges in the Public Sector"

105. The Treasury *Guidelines for Setting Charges in the Public Sector* notes:

"Where an agency seeks to recover some or all of the costs of service provision from the users or direct beneficiaries of that service, the Government and the public want to be assured that the charges set:

- *take proper account of efficiency, equity and fiscal concerns; and*
- *are not excessive in relation to the costs incurred."*

106. As noted throughout this submission, the MIA submits that there are gaps in the analysis that has resulted in the 'Goods Cost Recovery' amendment to the Border Security Bill being proposed. We also contend that the analysis does not substantively satisfy the criteria identified by the Treasury in its guidelines, as being necessary to ensure that the public (in this case, a trade association, representing certain members of the public), is assured that the charges have taken proper account of efficiency, equity and fiscal concerns; or that the charges are not excessive in relation to the costs incurred. For example (not an exhaustive list), we have not been provided with, nor have we been able to locate in the papers supplied to us:

- an analysis of options for the future provision of the proposed outputs (section 2);
- a description of the outcomes and outputs at a level of detail that is suitable for the analysis of the economic characteristics (section 3);
- a thoroughgoing analysis of feasible charging options (section 4);
- evidence that the proposed charge would fall on those able to influence volumes, standards or costs, and be able to do so more effectively than the Government; or that the charge will fall

on those who can effectively monitor standards, exert countervailing pressure on costs and find alternatives to public provision (section 5);

- information that provides clear definition of the actual outputs supplied (section 6);
- evidence that the options for structuring charges have been tested against the objectives set out in section 5 of the *Guidelines* (section 7);
- evidence that the proposed charge is not a ‘gold-plated’ investment simply determined by internal requirements (section 8);
- evidence of a consultation process that genuinely strives for feedback on costs and charges and on service standards and levels (section 9); and on the charging policies and the cost data from which they have been formulated – the *Guidelines* note that “ *Users should have ready access to actual and prospective cost data and a say in setting standards and output levels.*”

107. The MIA recommends that a policy paper be commissioned to ensure that all affected parties are satisfied that the guidance provided by the Treasury has been adequately addressed before any decision to incorporate border security supply chain cost-recovery provisions in the Customs and Excise Act 1996 is taken. The MIA has a long and demonstrable history of working constructively and collaboratively with a wide range of government departments to determine robust, defensible, cost-effective and cost-efficient solutions to outcomes sought by government. We reiterate our willingness, as the representative body for one of New Zealand’s largest export sectors, to assist in such a process.

XX: The Proposed ‘Goods Cost Recovery’ Amendment to the Bill

108. The proposed ‘Goods Cost Recovery’ amendment to the Customs and Excise Act will enable the Customs Service to recover costs through fees and charges relating to granting “*certificates of clearance*” and “*exportation of goods*”. The amendments enable the Governor General to make regulations on recommendation from the Minister and require the Minister to be satisfied the “*persons that the Minister considers are representative of the interests likely to be substantially affected by the proposed regulations have been consulted...*”

109. The amendments are enabling rather than prescriptive of the nature and extent of the charges, other than to identify that they will be collected “*as if those fees and charges were a duty*”.

110. In a background document prepared by the Customs Service in November 2003, it states its preferred recovery option as an increase in the Import Transaction Fee for clearing imported goods and establishing a processing fee attached to a Certificate of Clearance payable by operators of outbound craft for the clearance of export goods, including trans-shipped and in-transit goods.

111. We note that in the past, most government supplied products and services were provided free of charge. More recently the underlying approach to funding and the role of government has changed and there is now a philosophy of “user-pays” unless there is a sufficient justification (with the burden of proof falling on the proposer) for taxpayer funding. Treasury issued guidelines to assist government departments to develop and apply cost recovery provisions. In addition, there are Audit Office guidelines on costing and charging for public sector goods and services and there are constitutional principles outlined in the various reports of the Regulations Review Committee. The application of cost recovery policies and resultant charging regimes when determining such matters as the extent of government funding relative to government activities, the activities not to

be government funded, and the determination of cost recovery mechanisms, is required to be undertaken in an open and transparent way. Successive governments have deployed this approach when introducing legislation to enable cost recovery for services provided. The cost recovery has been based on government guidelines and appropriate consultation mechanisms with affected parties. This is not the case in this situation.

112. We note that the proposed “Goods Cost Recovery” amendment proposed for incorporation into the Bill is an empowering provision for making regulations. Although it is being introduced for consideration under the Border Security Bill, it has much wider implications. It empowers the Government of the day, by regulation, to *“prescribe fees or charges, or both, to meet or assist in meeting costs and expenses incurred by the Customs in exercising functions or powers, in performing duties, or providing services, under the Act that relate to the exportation of goods”*.
113. The Government has already announced, without prior consultation with affected parties, that it intends to recover the additional costs of the enhanced supply chain security strategy. There is a genuine risk that new or other border-related cost-recovery initiatives might also be announced in a similar manner. This is not acceptable. In addition, the present government or any future government may be able to increase or extend its cost recovery regime for exported cargo without any further reference to the parliamentary process. Such an approach circumvents normal parliamentary disciplines and would not be consistent with the Cabinet Office guidance on proposals that require Cabinet agreement.
114. Although the proposed amendment does provide for consultation with affected parties, who these parties are and the extent of consultation is left almost entirely to the Minister’s discretion. Also, failure to consult – *“does not affect the validity of any regulations”*. Under such circumstances consultation could easily become a charade. Certainly, we draw little comfort from the recent experience surrounding the proposed security fee. Consultation with affected parties seems to have been an afterthought.
115. The “Goods Cost Recovery” amendment gives the government the power to expand border security services, to whatever level it deems necessary or desirable, with the sure knowledge that the full cost can be recovered by levying fees and charges. The only “control” appears to be “consultation” and it seems that this could be readily circumvented.
116. To empower the Customs Service to recover proposed fees or charges, as if these were a duty, is an unusual power to provide for in the recovery of costs, particularly for so-called “fees for service”. Such a determination appears to point to the fees and charges actually constituting a tax on exports. We also submit that some of the powers for debt collection in the Customs and Excise Act are structured around imports and are quite inappropriate when applied to exports. For example, duty continues to be a *“charge on goods”* and the Chief Executive can take possession of the goods, whether or not the property in the goods has passed to a third party (but not a purchaser). That the Customs Service would be permitted to contemplate seizure of goods, in the possession of a third party in another country and in another legal jurisdiction, if the ‘security fee’ had not been paid, appears to be a misuse of such stringent debt-recovery provisions.
117. Further, as we understand the Customs and Excise Act, it gives the Customs a priority ranking for the collection of duty in the event of liquidation of a company, bankruptcy or receivership. If the proposed fees and charges are not in fact a tax there can be no justification for Government affording itself priority in terms of debt collection.
118. The MIA also submits that collecting fees and charges *“as if those fees and charges were a duty”* would require flat charges, regardless of risk management or exacerbation by those faced with

paying the charges. It is not appropriate that the recovery mechanism be “as if those fees and charges were a duty”.

Legislative changes

119. The MIA has no concerns with the proposed Clauses 7A, 7C, 8A and 8B. We support those amendments being incorporated in the Border Security Bill when it is reported back to the House. The MIA does not support clauses 7B (new section 34A inserted) and 8C (new Section 50A inserted).
120. New sections 34A(1) and 50A(1) enable regulations to made prescribing fees or charges or both. For reasons stated earlier in this submission, we oppose the enabling of regulations that will allow the proposed ‘security-fee’ to be imposed on those engaged in the meat export trade. Further reflection on the public good aspects of the proposed security measures and other matters is a necessary pre-requisite.
121. The proposed clause 8C inserting new section 50A (‘Fees and charges relating to exportation of goods’) provides a very wide ‘catch-all’ clause that, taken to its logical extreme, would enable the Government to reduce Crown funding to zero and recover from industry 100% of export-related costs incurred by Customs – not just those relating to the new x-ray machines and the additional Customs staff. This possibility is concerning and is not supported.
122. New sections 34A(2) and 50A(2) both state that the provisions of Part VIII that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described by subsection (1), as if those fees and charges were a duty. The MIA considers that this contributes to the evidence that the proposed security fee is in reality a duty/tax.
123. New sections 34A(3) and 50A(3) refer to consultation. The “consultation” to date has consisted of notification of the Minister’s intention to impose a security fee, provision of certain papers, and a request to attend the GCRCG. The MIA considers that consultation on the cost-recovery proposal has just commenced, and at this point in time, could not be described as meeting the legal standard for consultation.
124. New section 50A(4) provides for the Minister to consider consultation prior to the section coming into force – this could result in proper consultation processes being circumvented to allow the cost recovery provisions to be implemented without delay after the Border Security Bill is passed. This is not supported.
125. New sections 34A(5) and 50A(5) states, “*A failure to comply with subsection (3) does not affect the validity of any regulations of the kind described in subsection (1)*”. This section effectively removes the need for any consultation. This is not acceptable.

Legislative Provisions to Recover Substantiated Costs

126. There is an important distinction that can be made between the concept of “cost recovery” (the title of this amendment) and the usual governmental process of imposing fees or charges. It is our contention that if Government wishes to recover costs from so-called “beneficiaries” of particular monopoly services then it must be in a position to do this in a way that is fair and equitable. It needs to, at the very least:
 - Be able to identify very specifically the services for which it is cost recovering and the beneficiaries of those services.
 - If possible agree with beneficiaries the need for the service and the benefit that they will receive.

- Have in place appropriate systems to identify and ring-fence the costs that are to be recovered.
 - Devise systems to ensure that the amounts recovered from individual users are a reasonable reflection of the benefits received.
 - Have on-going review to ensure that the continuing fairness of the system, including adjustments for over / under recovery.
127. Precedent for this approach already exists and works reasonably successfully in the Animal Products Act (and previously in the Meat Act). That legislation enables the New Zealand Food Safety Authority and the MAF Verification Agency to fairly recover their costs of certifying that New Zealand meat and other products comply with food safety requirements imposed by other countries. The proposal for “border security” differs in that it has been devised on the basis of one system meeting all requirements. The present cost recovery proposals make no attempt to differentiate, on any basis, the costs that will be imposed.
128. The MIA submits that the proposals for cost recovery that have to date been advanced by government might be simple to administer but are unfair and inequitable. At the extreme, those who only export high-risk consignments / products into high-risk destinations (and who arguably could benefit most from Customs assured security) would be subsidised by those who only export low risk consignments / products into low risk destinations (and who arguably don't need the enhanced security systems).
129. The MIA considers that it is not appropriate to incorporate cost-recovery provisions in the Customs and Excise Act 1996 at this time. However, in the event that this is pursued, we recommend that the legislative provisions be based on those set out in the Animal Products Act 1999 and its attendant regulations. The Animal Products Act provides a useful model for a fairer and more equitable cost-recovery system. If genuine consultation with industry over any cost-recovery proposal is the intention, then a critical inclusion would be a ‘switch-on’ mechanism; perhaps by Order in Council, thus enabling affected parties and Government to be satisfied that proper consultation processes had been concluded before any provisions took effect.

XXI: A Possible Solution

130. The MIA remains concerned about rectifiable shortcomings of the process to date and we suggest in good faith the following approach to improve it:
- The Bill should be reported back to the House without the proposed clauses 7B (new section 34A inserted) and 8C (new Section 50A inserted) incorporated so that the Bill (which most submitters support in principle) may be passed as soon as possible.
 - A new policy paper should be commissioned to ensure that all affected parties are satisfied that the guidance provided by the Treasury in its “*Guidelines for Setting Charges in the Public Sector*” has been adequately addressed.
 - A new RIS and BCCS should be commissioned to address the identified deficiencies in the current document and make this available to affected parties for assessment.

Consultation Process

- The GCRCG process should be converted into a forum for a meaningful debate on the principles of cost recovery, including the issues around public versus private good. This forum

should also provide an opportunity to properly consider all the detailed information relevant to the criteria contained in the Treasury *Guidelines*.

- The outcome of the GCRCG consultation process should be reported to Ministers to ensure that any decision on cost-recovery has the benefit of stakeholder input.

Legislative Provisions

- If the process set out above determines that cost-recovery provisions should apply, new legislative provisions should be drafted, based on those set out in the Animal Products Act 1999 and its attendant regulations.

XXII: Concluding Remarks

131. The Meat Industry Association is opposed to the proposed border security fee for the reasons set out in this submission.
132. We request that the Bill be reported back to the House without the proposed clauses 7B (new section 34A inserted) and 8C (new Section 50A inserted) incorporated so that the Bill (which is supported in principle) may be passed as soon as possible.

XXIII: Appearance before the Select Committee

133. The Meat Industry Association requests the opportunity to be heard before the Select Committee to present this submission and submit further on the matters identified.
134. For any queries relating to this submission, please contact Caryll Shailer on (04) 472 5692 or email Caryll.Shailer@mia.co.nz

Caryll Shailer
Chief Executive Officer
Meat Industry Association of New Zealand (Inc)

XXIV: Appendix

Documents/attachments for information:

- Cost Recovery Workings
- 13 November 2003 letter to the Minister of Customs
- 17 November 2003 letter to the Minister of Customs

**Cost Recovery workings:
Border Security Costs**

NZ Customs Proposal for Cost Recovery

Expenditure estimates

Year	0	1	2	3	4	5	6	7	8	9	10
Total 10 year period											
Govt. Budget Year (y.e. June)	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Additional allocation to Vote Customs for accessing trade databases and managing export supply chain		8.98									
Capital injection for purchase of cargo x-ray equipment (tender process completed by March 04)		25.76									
Est. of full-year operating costs of additional capabilities			18.46	19.96	19.96	19.96	19.96	19.96	19.96	19.96	19.96
\$ 212.88		34.74	18.46	19.96	19.96	19.96	19.96	19.96	19.96	19.96	19.96

	Est. of annual transactions	\$m									
Additional Cost Recovered Revenue proposed											
Import transaction fees increasing by \$4 to \$22	1,000,000		4	4	4	4	4	4	4	4	4
Export: Cargo report certificate of clearance at \$450/certificate	25,000		11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25
Transit/Transhipped goods: Risk analysis and surveillance/inspection			8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00
\$ 209.25			\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25	\$ 23.25

% of Total Expenditure cost recovered			0%	126%	116%	116%	116%	116%	116%	116%	116%

All cost & revenue information is based on NZCustoms document of November 2003 titled 'Cost Recovery for Goods Clearance - Background from the NZ Customs Service'