

Submission

By

Business|NZ

To

**Government Administration Select
Committee**

On the

Border Security Bill

22 August 2003

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**BORDER SECURITY BILL
SUBMISSION BY BUSINESS NEW ZEALAND
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1. Introduction

- 1.1 Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 52-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.
- 1.4 The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.
- 1.5 New Zealand merchandise exports for the year ended June 2003 were \$29.2 billion, with merchandise imports amounting to \$32.2 billion. New Zealand is a small, open economy and overseas trade is a significant contributor to economic growth and development.
- 1.6 However, the heightened international awareness of security issues since September 2001 means that the movement of goods and people is coming under increased scrutiny by many countries. Even countries with a history of perceived low-risk can no longer rely on such a reputation. It is therefore critical for New Zealand to have credible and robust systems in place to provide its trading partners with concrete assurances that it is low-risk and so minimise potential costs and delays to New Zealand exports and travellers.
- 1.7 Business New Zealand therefore supports the principle behind the Border Security Bill, the Government's legislative response to our trading partners' heightened security requirements. We also endorse the principle behind

related developments such as the Secure Exports Partnership, x-ray screening at ports, and the negotiation of a bilateral border security agreement with the United States.

- 1.8 Business New Zealand's support for the Bill is contingent on ensuring that the various government agencies work together to eliminate duplication and contradictory requirements and ensure that business compliance costs are minimised to the greatest extent possible. However, it is not clear whether this Bill will achieve these important outcomes and we have concerns about potential duplication between agencies and compliance cost implications.
- 1.9 There should also be appropriate recognition of the high public benefit of a secure border when the Government considers funding for border security initiatives.

2. Summary of Recommendations

- 2.1 Business New Zealand recommends that while the Border Security Bill should proceed, there are a number of issues that need to be addressed in order to ensure compliance costs are contained:
 - Government agencies, such as the New Zealand Customs Service, New Zealand Immigration Service, Ministry of Agriculture and Forestry, and the New Zealand Food Safety Authority must be required to communicate more effectively, share information, and better coordinate their operating procedures and standards.
 - The enabling nature of the Bill provides insufficient detail on how the legislation will work in practice and leaves too much of the implementation to the discretion of agencies.
 - The levels of 'risk' that are acceptable must be set at reasonable levels – if the thresholds are set too high the compliance costs will become too onerous for many exporters, particularly SMEs.
 - The high public benefit of a secure border should be recognised when funding decisions are made for border security initiatives.

3. Background – Need for Tighter Security Requirements

- 3.1 The Border Security Bill and related initiatives reflect the fact that since the September 2001 terrorist attacks international bodies have been advocating tighter border security controls and agreed standards. Much of this has been driven by the United States, which in response to fears of further terrorist attacks, has acted unilaterally to impose its security requirements on the rest of the world. While the United States has led the way, we also understand that Australia and Europe are moving to tighten border security.
- 3.2 The United States is New Zealand's second largest trading partner. New Zealand exports to the United States were \$4.4 billion for the year ended June 2003 (15% of total exports). It is therefore critical that access to the United States market is protected and not unduly restricted by any new security requirements.

- 3.3 While New Zealand has traditionally had a safe reputation, heightened sensitivity of security among overseas jurisdictions means that this reputation can no longer be taken for granted. Business New Zealand therefore accepts that New Zealand must ensure it has robust arrangements in place to maintain its good reputation and thereby protect access to key export markets.
- 3.4 We also accept that there should be additional benefits from increased security measures, including lower risk of pilfering and a greater likelihood of detecting illegal activities (e.g., drug smuggling and illegal immigration).
- 3.5 However, Business New Zealand considers that moves to improve security must be balanced by a requirement to ensure that the compliance burden (both in terms of delays and costs) is minimised, so protecting the competitiveness of New Zealand exporters. In line with this, it is important to ensure that the standards implemented to achieve this security are set at an appropriate level and do not impose onerous and impractical requirements which would undermine the ability of New Zealand exporters to engage in trade.

4. Border Security Bill – Comment

- 4.1 The Bill amends the Customs and Excise Act 1996 and the Immigration Act 1987.

Amendments to the Customs and Excise Act 1996

- 4.2 Business New Zealand agrees in principle with the amendments to improve information processes of the New Zealand Customs Service (NZCS) and the New Zealand Immigration Service (NZIS), allowing targeted intervention based on analysis of risk. We support the adoption of the United Nations Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT) standard. New Zealand's adoption of EDIFACT, a universal electronic system for communicating such information, will be important for facilitating trade.
- 4.3 Business New Zealand also supports the principle behind the provisions that provide a framework to support the application of NZCS seals to export containers, which will be a key aspect of the Secure Export Partnership. However, some exporters have expressed concerns to us about poor communication, the lack of information sharing and a lack of coordination of operating procedures and standards between NZCS and other government agencies such as the Ministry of Agriculture and Forestry (MAF) and the New Zealand Food Safety Authority (NZFSA).
- 4.4 We also note that in the aviation sector, the Civil Aviation Authority is developing a Rule (Part 109), which is aimed at meeting international requirements regarding security of airfreight. It is essential that border agencies take this development into account when considering their own procedures and standards.

- 4.5 While NZCS has assured us that it has been and will be working with other border agencies to minimise duplication and compliance costs, there appears to be nothing in this Bill that will hold them to this. Part of the problem is the enabling nature of the legislation that, while providing flexibility to agencies such as NZCS, provides little detail on how the regime will operate in practice and gives the potential for significant changes to be made by regulation rather than through the higher level of public scrutiny provided by legislative amendments.
- 4.6 We have been advised that the Partnership will be ‘voluntary’ in that those participating will find their goods certified ‘low risk’ and will face fewer delays and disruptions than other goods which will be subject to risk assessment and pre-shipment inspection where appropriate. However, while the principle is welcome, the practice would not appear to take account of concerns expressed by some exporters where some US agencies (e.g., the US Food and Drug Administration) require prior notice of shipments and do not share information with US Customs – so meaning that holdups at New Zealand ports are still likely even for those exporters that meet customs requirements.
- 4.7 Regarding airfreight, there is a distinct absence of detailed information on exactly what information will be required and the extent of advance information required. It is therefore difficult to state with any certainty what impact these requirements will have on airline operations and costs. It is imperative in developing these requirements that NZCS does not seek to impose measures in excess of those being adopted in other jurisdictions and that it works closely with industry to ensure that those measures and timeframes for implementation are practical and realistic.
- 4.8 The road transport industry has also expressed reservations to us about the various processes for managing containers. The Road Transport Forum of New Zealand (RTFNZ) has advised us that transport operators are particularly exposed to the costs and time delays imposed on both exporters and importers, and are very concerned about the ability of government agencies to work cooperatively on developing consistent policies and procedures, with different processes resulting in often contradictory and duplicative requirements – all adding to time and cost. RFTNZ has also observed that the yet-to-be introduced Maritime Security Bill could add to the problems. It has suggested to us that both Bills should require border control agencies to take a ‘whole of government approach’.
- 4.9 Business New Zealand is also aware of specific concerns shared by a number of major exporters in the meat, dairy, seafood, and horticultural industries around the need for consistent policies, procedures and standards. We understand that their concerns have been set out in individual submissions highlighting both general concerns and specific issues of importance to them.

Amendments to the Immigration Act 1987

- 4.10 The amendments to the Immigration Act will require commercial carriers to use an electronic system for carrying out automated pre-boarding checks of passengers and crew intending to travel to New Zealand. This is justified on

the grounds of improving the ability to manage security and immigration risk and that a similar system is already used for flights to Australia.

4.11 There will be additional business compliance costs, particularly for airlines, in establishing and operating the new systems. There are also likely to be extended check-in times. However, we understand that by providing an enhanced level of risk management there will be fewer inadmissible people seeking entry to New Zealand, so reducing costs for airlines that currently have to carry out those people refused entry to New Zealand.

4.12 However, we have been advised that there are a number of issues of detail of concern to airlines that will need to be addressed. For example:

- Airlines have been working with NZCS and the New Zealand Immigration Service (NZIS) on technical and systems issues relating to the electronic provision of information. Airlines have expressed a clear preference for a single link only (through the NZIS APP system) so that they would not have to establish a separate link to NZCS to deal with its advance information requirements (which should in any event be satisfied through the NZCS receiving its required data from the NZIS system). We understand that NZCS are now advising that it will hold airlines responsible for the provision of data. Airlines should not be held responsible for the efficacy of the link between the two departments. This adds weight to our generic concerns about agency duplication due to an inability or unwillingness to communicate, share information and coordinate their operating procedures and standards.
- Airlines are concerned that some provisions appear to envisage retention by airlines of passenger data up to 14 days after carriage, despite the fact that they do not retain easy access to this information for such a period of time.
- Airlines are concerned that provisions could be interpreted as requiring them to gather information from agents, which would be inappropriate. Similarly some of the elements specified in the Bill are wider than information currently held, collected, or used by airlines. It is not sufficiently clear to airlines whether the Bill is seeking to mandate collection of all elements specified or is simply providing for access to this information only if it is held.
- While presumably complying with New Zealand privacy laws, airlines are unclear whether the Bill's provisions comply with privacy requirements applicable in other jurisdictions. An illustration of the importance of this issue is that airlines are required to provide information to US Customs but under EU law are limited in their ability to do so. This can cause significant problems. Where such conflicting requirements arise it should be the responsibility of the Government to seek a satisfactory resolution of the conflict.

4.13 We understand that the Board of Airline Representatives in New Zealand (BARNZ) will be discussing these issues in detail in its submission.

5. Comments on Related Initiatives

Possible Border Security Agreement with the United States

- 5.1 Under the United States' Container Security Initiative (CSI), the United States inspects and certifies individual ports as being compliant with its security requirements (including having x-ray facilities). To date, it has certified fewer than 20 of the world's largest ports as meeting its security requirements.
- 5.2 For New Zealand, the CSI model is less than desirable as only Ports of Auckland (at number 78) is on the United States' list of 100 top priority ports and the vast majority of New Zealand ports will never be a priority for certification. Those containers sourced from ports that are not certified as being CSI compliant will face the risk of significant delays and disruption when they reach the United States. This could have serious implications for provincial economies and internal transport.
- 5.3 The provisions contained in the Border Security Bill and initiatives such as the Secure Exports Partnership and x-ray screening will help New Zealand's case for a bilateral agreement with the United States and so ensure that all cargo leaving New Zealand, regardless of the port of departure, will meet its security requirements, thereby avoiding delay and disruption.
- 5.4 Business New Zealand therefore supports the efforts to negotiate a bilateral agreement with the United States, although to be effective it must be more than just a bilateral customs agency agreement – its benefits will be negated if other US government agencies, such as the Food and Drug Administration, are not party to the agreement.

Secure Exports Partnership

- 5.5 The Border Security Bill will put in place the legislative framework that will enable implementation of the NZCS Secure Exports Partnership. Rather than focus the attention solely on individual ports, the Secure Exports Partnership seeks to adopt a supply chain strategy. Business New Zealand supports the principle behind the Partnership, as it will be a cornerstone of the Government's efforts to assure the United States that New Zealand is a low-risk trading partner.
- 5.6 We have been advised by NZCS that the Partnership will be a voluntary scheme based around an agreement between NZCS and an individual exporter that seeks to secure that exporter's supply chain. Elements of security over people, premises, procedures, packing, and transport will form part of the agreement. It will enable NZCS to recognise the reduced risk posed by secure export partners' cargo and give official assurance to trading partners. We understand that NZCS is currently piloting the scheme with Richmond Meats, Port of Napier, and Argent Metal Technologies.
- 5.7 This sounds acceptable in principle, but in practice it will be critical that the Partnership builds upon existing arrangements to contain compliance costs

(e.g., the operating procedures and standards administered by MAF and the NZFSA must be recognised) – indeed, there must be an ongoing focus on reducing and containing compliance costs. As discussed (paragraph 4.3) some exporters have considerable apprehensions about potential duplication by agencies and associated compliance cost implications, which have yet to be fully allayed by NZCS and are not specifically addressed in this Bill.

- 5.8 Concerns have also been expressed about the potential for unreasonable interference in business operations, particularly around the security of premises, commercially sensitive information, and companies' employment policies and practices. Again, there is little or no detail in the Bill on how these important issues will be addressed in practice.
- 5.9 The Partnership agreement is likely to be viable only for larger exporters. For other exporters, their goods will be subject to risk assessment and pre-shipment inspection. This will include x-ray screening. New Zealand's small domestic market means that small to medium sized enterprises (SMEs) hit the export threshold far earlier than those in many other developed countries. Furthermore, the distance from major export markets makes exporting a challenging proposition at the best of times.
- 5.10 It will be critical therefore that risk assessment is rational and that compliance costs to SME exporters are kept as low as reasonably possible. Otherwise many SMEs could be deterred from exporting, which would be a severe blow to New Zealand's economic growth prospects, not to mention the goal of returning to the top ten of the OECD.

X-Ray Screening

- 5.11 In the May 2003 Budget the Government announced a boost in staffing and funding for the NZCS in order for it to provide capability to inspect and x-ray high-risk import and export shipments at all New Zealand sea ports. This involves an increase in operating expenditure of \$9 million and an allocation of \$15-25 million for capital investment in x-ray technology. Up to 130 additional staff will be employed. Business New Zealand agrees with the Government's decision to fund the investment and operation of x-ray screening, as taxpayer funding is consistent with the philosophy that border security is a public good.
- 5.12 The capital investment will be in mobile x-ray technology so that it can be used at all seaports. According to NZCS, high-risk cargo for screening will be identified by 'intelligence analysis of available information'. It will be important to ensure that there is a reasonable threshold for 'high risk' – we find it hard to think of many New Zealand companies that would fit a genuine definition of high risk. As discussed above, many SMEs could be deterred from exporting if they have to face unreasonable requirements and high compliance costs.

Containers in Transit

- 5.13 We understand that a significant proportion of containers leaving New Zealand are actually in transit from Asia, Australia, and the Pacific Islands. With New Zealand being a port of call, regardless of whether the containers leave the

ship, systems will need to be in place to ensure that even containers in transit are compliant with security requirements – otherwise it could have implications for New Zealand’s security reputation. Business New Zealand accepts that this will require more information from shippers and carriers on the content of these containers, more stringent inspections of high-risk cargo in transit, as well as capacity building particularly in Pacific Island customs services to ensure they have the ability to maintain a secure environment.

- 5.14 Business New Zealand agrees with moves to tighten security of containers in transit. We consider that this is where the highest security risk lies and where much of the increased effort should be made.

6. Biosecurity

- 6.1 The Border Security Bill and the related initiatives discussed above are mainly focused on goods and people *leaving* New Zealand and assuring our trading partners that New Zealand is a low-risk country of origin. While this is very important, it is also critical to ensure the integrity of goods and people *entering* New Zealand. Biosecurity is particularly important, especially when primary products (and their value-added derivatives) are such a critical contributor to exports and the economy. Business New Zealand therefore supports initiatives to strengthen New Zealand’s biosecurity at reasonable cost, and we recognise the importance of implementing the Government’s Biosecurity Strategy (yet to be released at the time of writing).

7. Conclusion

- 7.1 The post-September 2001 environment places obligations on New Zealand to tighten its security measures in order to protect its reputation and protect trade access. Business New Zealand therefore agrees that the Border Security Bill should proceed and we support, at least in principle, the related initiatives, such as a bilateral agreement with the United States, the Secure Exports Partnership, and x-ray screening. It is also appropriate that the taxpayer meets the costs of implementing and operating these initiatives on the grounds of border security being a public good.
- 7.2 However, Business New Zealand considers it critical to ensure that a focus is maintained on ensuring that compliance costs are kept to a reasonable minimum. It is particularly important that agencies such as NZCS, NZIS, MAF, and NZFSA communicate effectively, share information, and act together to reduce the potential for duplication and contradictory operating procedures and standards. The Bill would be much improved if it set in place a regime to improve inter-agency communication and coordination.