



Waste legislation: policy decisions for managing waste imports and exports

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Security level: Classification

MfE priority: Non-urgent

Actions sought from ministers		
Name and position	Action sought	Response by
To Hon Rachel BROOKING, Associate Minister for the Environment	Agree to the proposed enabling provisions outlined in this briefing.	28 August 2023
To Hon Jo LUXTON, Minister of Customs	Agree to the proposed enabling provisions outlined in this briefing.	28 August 2023

Actions for Minister's Office staff
Return the signed report to MfE

Appendices and attachments
<ol style="list-style-type: none"> 1. Certain waste exports from New Zealand by volume as a percentage of total exports 2. Certain waste imports to New Zealand by tonne 3. Summary of current Customs border processes 4. Summary of the three high level policy options considered against criteria 5. Summary of Agencies and their proposed roles

Key contacts at Ministry for the Environment			
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Minister's comments

Waste legislation: policy decisions for managing waste imports and exports

Key messages

1. In March 2023 Cabinet made decisions on new waste legislation which will replace the Waste Minimisation Act 2008 (WMA) and the Litter Act 1979.¹ Cabinet agreed to delegate authority to the Minister for the Environment and the Minister of Customs to make decisions regarding appropriate import and export regulation-making powers for the new waste legislation.²
2. This briefing seeks your decisions on enabling provisions to control the import and export of waste to promote resource circularity and ensure the effective management of waste. Your decisions are sought so drafting instructions can be issued for the Responsibility for Reducing Waste Bill (the Bill).
3. Currently the only controls on imports and exports of waste are through the Imports and Exports (Restrictions) Act 1988 (IERA). It only applies to a small fraction of waste consignments (broadly the most hazardous/problematic). There are no regulatory controls for most waste crossing the border.
4. Three high-level options were considered.
Option 1: Do nothing – continue to leave the import and export of the majority of ‘non-hazardous’ waste shipments unregulated (ie, waste not covered by the Basel Convention – ‘non-Basel’).
Option 2: Introduce enabling provisions to regulate all types of waste imports and exports. These could be housed within:
 - a. the new waste Bill; or
 - b. an amended IERA.**Option 3:** Ban the import and export of waste.
5. The preference of officials from the Ministry for the Environment (MfE), the New Zealand Customs Service (Customs) and the Environmental Protection Authority (EPA) is option 2(a), noting further engagement is required with the Ministry of Business, Innovation and Employment (MBIE) who administer the IERA. This approach will initially focus on regulating non-Basel waste types, currently an unmanaged waste stream, and means the regime can use the new, broader provisions (see below) that Cabinet has already agreed to. It is proposed that future regulations would be staged, with an initial focus on ‘non-hazardous’ (non-Basel) waste where no regulatory powers currently exist.

¹ Decision 4, ENV-23-MIN-0002.

² Decision 49, ENV-23-MIN-0005.

6. Under option 2(a), the proposed regime will use the enabling powers within the Bill that were previously agreed to by Cabinet. This includes using:
 - a. the national licensing regime³ to cover all importers and exporters of waste, including the ability to process one-off licences for infrequent shipments
 - b. the national standards⁴ mechanism to ensure waste/recycling materials that are imported or exported are well managed and are more likely to be disposed of or recycled/repurposed correctly in the recipient country
 - c. the record-keeping and reporting provisions⁵ to gather data on imports and exports and enable the effective monitoring and enforcement of waste shipments by the regulator and Customs
 - d. the enhanced compliance, monitoring and enforcement (CME) regime,⁶ including the:
 - i. effective monitoring and enforcement of the licensing regime
 - ii. ability to undertake inspection of consignments of waste prior to export from New Zealand and upon arrival in New Zealand
 - iii. ability to seize, detain or return consignments of waste within New Zealand if the consignment is intended to go for export by the EPA and by Customs
 - iv. ability to ensure the environmentally sound disposal of any goods seized under the Bill.
7. It is anticipated that the vast majority of the CME activity will be undertaken through the licensing scheme, so the proposed ability of the EPA to also seize, detain and dispose of goods will be a backstop element, rather than routinely used.
8. Further work is required to consider the interactions with the new legislation and the IERA. There may be benefits from a legislative, compliance and enforcement perspective if the Basel-related obligations on the import and export of waste are moved into the new waste legislation. Further analysis is required to ascertain what the full implications will be, including with the Ministry of Business, Innovation and Employment (MBIE) as administrator of the IERA. This decision will not, however, impact on the ability to establish an effective regulatory regime. Once the implications have been fully assessed, a briefing will be provided later this year.
9. A detailed cost/benefit analysis (including the decision on funding sources and cost-recovery mechanisms) will be undertaken at the regulation-making stage, to ensure the future regime is fit for purpose and proportionate to the risks faced. This is covered by recent Cabinet decisions.⁷

³ Decision 21, ENV-23-MIN-0005.

⁴ Decisions 33-39, ENV-23-MIN-0005.

⁵ Decision 13, ENV-23-MIN-0006.

⁶ Decisions 16-28, ENV-23-MIN-0006.

⁷ The CRIS was attached to ENV-23-SUB-0006.

Recommendations

We recommend that you:

- a. **note** that Cabinet agreed to delegate authority to the Minister for the Environment and the Minister of Customs to make policy decisions regarding import and export regulation-making powers for the new waste legislation and to issue drafting instructions⁸
 - b. **note** that currently there are no regulatory controls on the import and export of waste outside of those in the Imports and Exports (Restrictions) Act 1988 (IERA) and Imports and Exports (Restrictions) Prohibition Order (No 2) 2004. This means the majority of exports and imports of waste are unregulated
 - c. **note** that current waste legislation does not provide the necessary mandate and funding to collect, maintain and analyse data on all waste imports and exports
 - d. **note** that Cabinet has already agreed that a national waste licensing scheme will be introduced to place obligations on a specified list of operators that includes exporters and export brokers and importers and import brokers⁹
 - e. **note** the development of provisions to set national standards through regulations has already been agreed by Cabinet¹⁰ and can cover how waste may be imported and exported
 - f. **note** that Cabinet has agreed on compliance monitoring and enforcement provisions enabling the development of provisions allowing compliance enforcement of the new waste legislation¹¹
 - g. **note** that Cabinet has agreed to record-keeping and reporting provisions¹² for any class of person regulated under the new legislation to assist with monitoring of obligations
 - h. **agree** to the development of enabling provisions to regulate all types of waste imports and exports within the new Responsibility for Reducing Waste Bill
- Yes | No | Discuss
- i. **agree** to the development of provisions enabling the collection, storage and sharing of necessary data on the exports and imports of waste, including individual

⁸ Decision 49, ENV-23-MIN-0005.

⁹ Decision 21, ENV-23-MIN-0005.

¹⁰ Decisions 33-39, ENV-23-MIN-0005.

¹¹ Decisions 16-28, ENV-23-MIN-0006.

¹² Decision 13, ENV-23-MIN-0006.

consignments by importers and exporters with the EPA, Customs and MfE as responsible agencies

Yes | No | Discuss

- j. **agree** to the development of provisions enabling compliance, monitoring and enforcement of waste consignments by the EPA as regulator

Yes | No | Discuss

- k. **agree** to the development of provisions enabling the ability to inspect, detain, seize and return consignments of waste prior to export from New Zealand by the EPA (prior to the border) and in addition to existing powers held by Customs (at the border)

Yes | No | Discuss

- l. **agree** to the development of provisions enabling the disposal of seized consignment of goods intended for export by the EPA (onshore) and Customs (at the border).

Yes | No | Discuss

- m. **agree** to the issuing of drafting instructions for this section of the proposed Responsibility for Reducing Waste Bill

Yes | No | Discuss

Signatures

Glenn Wigley

Director - Policy and Regulatory

**Waste and Resource Efficiency
Ministry for the Environment**

**10
August
2023**



Kathryn Maclver

Group Manager

Policy and Strategy

New Zealand Customs Service

**10
August
2023**



Hon Rachel Brooking

**Associate Minister for the
Environment**

**August
2023**

Hon Jo Luxton

Minister of Customs

**August
2023**

Purpose

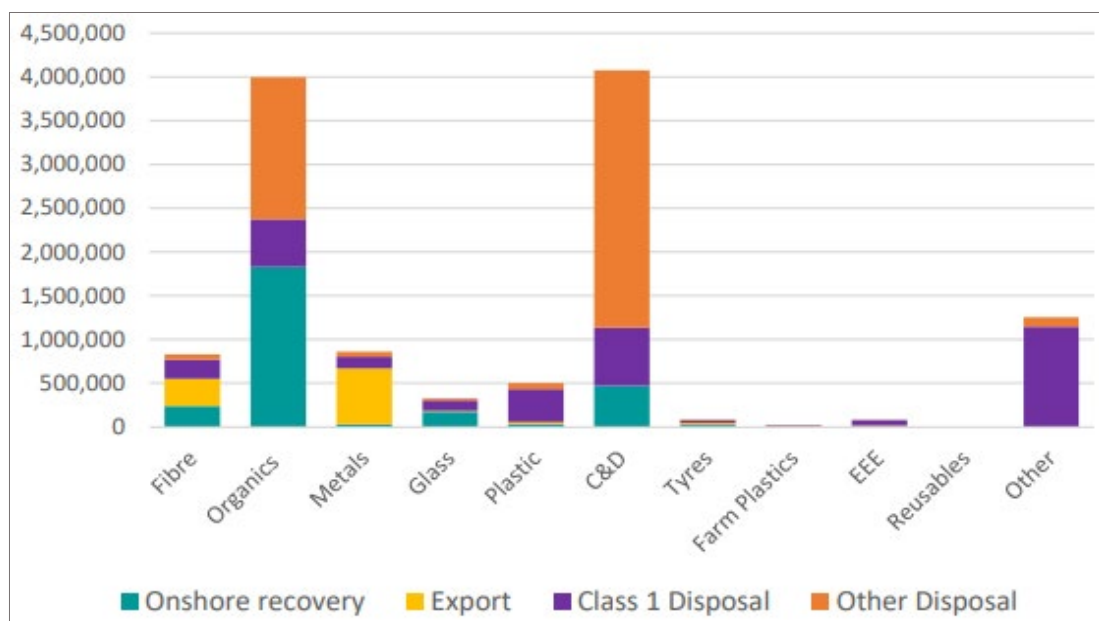
10. To seek your decisions on enabling powers to manage the import and export of waste, so that drafting instructions can be issued on this section of the proposed Responsibility for Reducing Waste Bill (the Bill).

Background

Waste exports estimates, destinations and risks

11. Work is under way to improve waste and recycling infrastructure within New Zealand, including through the MfE-led Action and Investment Plan for waste.¹³ New Zealand will not, however, have capacity to process or recycle all forms of waste domestically for some time, and for some forms of waste it may never be viable to do so.
12. Figure 1 below shows the waste types and estimated annual volumes produced in New Zealand and their destination (based on a 2020-21 stocktake project). It is estimated that domestic recovery accounts for 23 per cent (2.8 million tonnes) of waste material managed in New Zealand, with another 9 per cent of material (c.1 million tonnes) exported overseas for recovery.¹⁴

Figure 1: Overall estimated waste tonnages recovered onshore in New Zealand, exported, or disposed of to Class 1 landfills or other disposal.¹⁵



¹³ Decision 6, ENV-23-SUB-0004.

¹⁴ Wilson D, Eve L, Middleton B, Yates S, Blumhardt H, van Gool E. 2021. *Waste and Resource Recovery Infrastructure and Services Stocktake: Summary Report*. Prepared for the Ministry for the Environment by Eunomia Research & Consulting Ltd. <https://environment.govt.nz/assets/publications/Waste-and-resource-recovery-infrastructure-and-services-stocktake.pdf>

¹⁵ Ibid.

13. It is worth noting that imports and exports valued at up to \$1,000 are not required to lodge an entry with Customs, so minimal data is held on these consignments, which are likely to include waste consignments.
14. As an illustrative example of the destination of waste exports, New Zealand exports clean sorted plastic waste to more than 21 countries. Indonesia and Malaysia are the largest export markets for plastic waste, receiving well over 50 per cent of the total. Appendix 1 provides more detailed data showing New Zealand's waste exports by volume and Appendix 2 covers waste imports by weight.
15. Many recipient countries have limited management infrastructure for waste recovery, environmental governance or legislative controls.¹⁶ The United Nations Environment Programme estimates approximately 4 million tonnes of plastic waste per year is exported from high-income countries to low- and middle-income countries.¹⁷ A recent International Pollutants Elimination Network¹⁸ (a network of public interest NGOs) report highlighted that many Association of Southeast Asian Nations are facing significant problems with waste, including due to the high levels of imported waste from other countries.
16. An ongoing risk with waste exports is the reliance on overseas markets continuing to accept waste consignments from New Zealand. A recent example of this was China's Operation National Sword policy which was introduced in 2017 to monitor and more stringently review recyclable waste imports. This was followed by subsequent closure of other markets.
17. In addition, in April 2023 Compagnie Maritime d'Affrètement and Compagnie Générale Maritime (CMA CGN), an international shipping line, announced that they had stopped transporting baled/scrap plastics.¹⁹ We understand this decision was taken to comply with international regulations and avoid the risk of being left with abandoned containers that are not accepted.²⁰

Regulatory landscape

18. The Imports and Exports (Restrictions) Act 1988 (IERA) regulates the transboundary movement of hazardous waste and other wastes for which New Zealand has obligations under the Basel Convention.²¹ These movements are regulated in the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (the Order). These types of waste movements make up only a small fraction of international waste consignments.

¹⁶ BRF-3444 refers.

¹⁷ UNEP. 2023. *Turning off the Tap How the world can end plastic pollution and create a circular economy*. [Plastic pollution.pdf \(unep.org\)](#)

¹⁸ IPEN et al. 2021. *Waste Trade in Southeast Asia Legal Justifications for Regional Action*. https://ipen.org/sites/default/files/documents/waste_trade_in_asean-final_revised.pdf.

¹⁹ See: <https://www.cma-cgm.com/news/4099/cma-cgm-stops-transporting-plastic-waste>.

²⁰ BRF-3444 refers.

²¹ The Basel Convention itself covers toxic, poisonous, explosive, corrosive, flammable, ecotoxic, infectious as well as some plastic wastes.

19. For all other types of waste ('non-hazardous'), there are no import or export restrictions or any regulatory framework in place. The import and export of waste system relies on self-assessment of consignments, whether or not they require a permit. This often means relying on the strength of any overseas market's regulations and enforcement to ensure there are no health or environmental impacts. We understand that in reality, few consignments are inspected by overseas authorities on arrival.
20. Customs has the power to stop and inspect goods prior to export. However, this power is only used if there is actionable information of a potential breach (eg, for enforcement purposes rather than compliance checking). There are currently limited means to determine if the goods are hazardous waste (requiring a permit under the Basel Convention) because no agency is responsible for providing technical expertise, there are no national standards and no independent compliance checking and quality assurance. Further details of how the current Customs processes work at the border are contained in Appendix 3.

Cabinet decisions on enabling provisions for waste legislation

21. In March 2023 Cabinet made decisions on new waste legislation to replace the Waste Minimisation Act 2008 (WMA) and the Litter Act 1979. Cabinet has agreed that the purpose of the new waste legislation will be to support the transition to a low emission, low waste society built upon a circular economy.²²
22. Cabinet has made the policy decisions that could enable the building blocks of a future imports and exports regulatory regime. We consider utilising appropriate components of the tools below will enable us to have an appropriate regulatory regime to regulate all types of waste imports and exports:
 - a. the proposed national licensing regime for the waste and resource recovery sector, which can apply to importers, import brokers, exporters, export brokers and transporters²³
 - b. the proposed national standards to regulate disposal and resource recovery²⁴
 - c. the proposed record-keeping and reporting obligations²⁵
 - d. a regulation-making power to control or prohibit the import, supply, sale and manufacture of specified products and materials²⁶
 - e. establishing a compliance, monitoring and enforcement regime²⁷
 - f. a duty of care to manage and dispose of waste appropriately.²⁸

²² Decision 10, ENV-23-MIN-0002.

²³ Decision 21, ENV-23-MIN-0005.

²⁴ Decisions 33-39, ENV-23-MIN-0005.

²⁵ Decision 13, ENV-23-MIN-0006.

²⁶ Decision 17, ENV-23-MIN-0004.

²⁷ Decisions 16-28, ENV-23-MIN-0006.

²⁸ Decision 4.1, ENV-23-MIN-0005.

Analysis and advice

Options to manage waste at the border

23. As Cabinet has delegated authority for you to make decisions about import and export regulatory powers, there are three high-level policy options to achieve this.

Option 1: Do nothing – continue to leave the import and export of the majority of ‘non-hazardous’ (essentially non-Basel) waste shipments unregulated.

Option 2: Introduce enabling provisions to regulate all types of waste imports and exports. This could be housed within:

- a. the new waste Bill; or
- b. an amended IERA.

Option 3: Ban the import and export of waste.

24. Option 1 would mean that the current risks outlined above would not be mitigated or managed in any way. It would mean, for most waste imports and exports, the government would have no oversight, or ability to manage or improve outcomes either domestically or overseas. For these reasons this option has been discounted.

25. Option 2 would allow for the creation of a new regulatory regime (under future regulations) to manage the import and export of the types of waste, not already covered by the Order. Option 2(a), housing the new regime in the Bill, would allow for the opportunity to use the new, broader enabling provisions that will be used for other parts of the waste sector (for example, the licensing regime and national standards). Further work is required to fully consider options for the interaction between the Bill and the Basel obligations within the IERA and Order (see below), including if the waste obligations should be moved into the new legislation.

26. The objective of option 2(b) would be to enable the IERA to regulate goods not covered by international obligations. The IERA currently only regulates the export of goods that are subject to an international convention. If this option was chosen, it would require amendment to the IERA and the Order, which is not currently in scope of the Cabinet approval to repeal and replace the Waste Minimisation Act and Litter Act. This option would also create parallel licensing, national standards and CME arrangements for the import and export of waste to those proposed under the Bill. For these reasons option 2(b) has also been discounted. It should be noted that further engagement is required with MBIE who administer the IERA.

27. Option 3 would pose significant challenges. As noted above, New Zealand does not currently have the domestic infrastructure to recycle, repurpose or dispose of all waste in an environmentally sound manner, and for some waste types, managing it domestically may never be viable. This option would lead to an increase in waste (that could be recycled or recovered offshore) going into landfill unnecessarily.

28. For some wastes, there is also genuine economic value and there are legitimate overseas markets. Additionally, to support a global circular economy, some waste may need to be exported to markets where products are manufactured to ensure they are repurposed or reused.
29. New Zealand also receives waste from some Pacific Island countries that are not able to process or dispose of it themselves. For all the above reasons, option 3 has been discounted. Note also that under option 2(a) there would be the ability to place strict standards or restrict imports and export of certain types of waste in the future (through the proposed regulatory tools to manage products and materials across their life cycle).²⁹
30. Appendix 4 provides a summary of the three high level policy options considered against criteria (to do nothing, introduce enabling provisions and ban imports and exports).

Preferred option

31. The preference of MfE, Customs and EPA officials is option 2(a). This approach will focus action on regulating waste that poses the biggest unmanaged risk and means the regime can use the new, broader provisions that Cabinet has already agreed to (see below). It is proposed that future regulations would be staged, with an initial focus on 'non-hazardous' (non-Basel Convention) waste where no regulatory powers currently exist.
32. Under option 2(a), the proposed regime will use the enabling powers that were previously agreed to by Cabinet. This includes using:
 - a. the national licensing regime³⁰
 - b. the national standards³¹
 - c. the record-keeping and reporting provisions³²
 - d. the compliance, monitoring and enforcement (CME) regime.³³
33. Under future regulations, it is envisaged that all importers and exporters of waste would require a licence to operate. This could be either an ongoing licence for those who routinely import or export, or one-off licences for those who do infrequent shipments.
34. We propose the Bill includes functions for a regulator to assess and certify applications for both imports and exports of waste to ensure that importers and exporters are meeting their obligations as determined under the licensing scheme.

²⁹ Decisions 10, 11, 22, 24 ENV-23-MIN-0004.

³⁰ Decision 21, ENV-23-MIN-0005.

³¹ Decisions 33-39, ENV-23-MIN-0005.

³² Decision 13, ENV-23-MIN-0006.

³³ Decisions 16-28, ENV-23-MIN-0006.

35. It is proposed that, as part of the licensing regime, all shipments would be notified to the regulator (the EPA) and that data will be shared with Customs and MfE. This is to enable effective CME activities as the shipments cross the border and data collection to inform future policy decisions. Further work is required to scope the type of data that will be required, but it is likely to include waste type, quality and destination facility.
36. Upcoming briefing note BRF-3682 on data provisions also includes proposed provisions for information sharing between Customs, MfE and the EPA.
37. National standards will be used to ensure the waste that is exported is of a high quality and it is well managed. This will help increase the likelihood of the waste being recovered or recycled at the destination facility. High-priority wastes could be prioritised (such as plastics not covered by international agreements) to tackle the most problematic wastes first.
38. It is anticipated that most of the CME activity will be undertaken through the licensing process. This could include routine audits or inspections of licensed operators at their facilities. The detail on how the licensing and national standards will operate and interact with imports and exports will be worked through with the Technical Advisory Group³⁴ at the licensing system design stage. The ability of the EPA to seize, detain and dispose of goods will be a backstop or deterrent element, rather than a routinely used aspect of the regime.
39. Under the future regime, Customs will maintain the power to seize and inspect waste at the border, with the EPA providing technical expertise and determinations on any identified non-compliant shipments to Customs. A summary of Agencies and their proposed roles are in Appendix 5.

Interaction with the IERA

40. From a practical perspective, the intention is that all importers and exporters of all waste types would be required to hold a licence to operate (including those who import or export goods covered by the Order) and abide by the same national standards. The same CME regime would apply to all participants in the waste system, ensuring a consistent level of obligation and regulatory oversight. Should the licensed operator then choose to import or export waste subject to the Order (ie, "Basel waste"), the operator will then require a Basel permit from the EPA.
41. Further work is required to consider the interactions with the new legislation and the IERA. There may be benefits from a legislative, compliance and enforcement perspective if the Basel-related obligations on the import and export of waste are moved into the new waste legislation. Further analysis is required to ascertain what the full implications will be, including with the Ministry of Business, Innovation and Employment (MBIE) as administrator of the IERA. This decision will not, however,

³⁴ Decision 28, ENV-23-MIN-0005.

impact on the ability to establish an effective regulatory regime. Once the implications have been fully assessed, a briefing will be provided later this year.

International trade obligations

42. The Ministry of Foreign Affairs and Trade (MFAT) Legal Team advised that New Zealand's international trade obligations are likely to be engaged by any proposals to regulate the import and export of waste not subject to international obligations. MfE will ensure MFAT is consulted in the design, implementation and communication of the regulations to ensure New Zealand's international trade obligations are considered.

Consultation and collaboration

43. The EPA, MFAT, MBIE and Customs have been consulted on these proposals. The Treasury and the Department of the Prime Minister and Cabinet have been informed of these proposals.

Te Tiriti analysis

44. Officials have not had any specific engagement with iwi/Māori on the detail of the delegated decisions outlined in this paper. Consequently, officials recognise that the interests of iwi/Māori may not have been fully considered as part of the development of these proposals.
45. It is considered that the proposals will support the view we received from iwi/Māori during consultation on the New Zealand Waste Strategy and high-level legislative proposals, which recognised that the proposed concepts for better environmental outcomes in the vision and principles were well aligned with te ao Māori. There will be the opportunity for input from iwi/Māori at the select committee stage of the Bill's development.

Other considerations

Legal issues

46. The MfE Legal Team support the further consideration of the interaction between the new Bill and the IERA, to ensure that the opportunity to consolidate and streamline the two regimes is properly considered before a final decision on whether to integrate them is made.
47. As these proposals relate to new powers and functions that are very similar in nature to those already held by Customs and the EPA for other regimes, the MfE Legal Team recommend ongoing engagement with these agencies during the drafting process. This will ensure that efficiencies in the compliance monitoring

and enforcement provisions can be achieved and conflicts or complexities in the enforcement regime can be avoided wherever possible.

Financial, regulatory and legislative implications

48. The Environmental Protection Authority Act 2011 will require consequential amendments to assign additional functions for the EPA. Further consideration of the interaction between the new Bill and the IERA and Order is also required.
49. Officials are developing enabling components only at this stage and further analysis on this will occur during the regulation-making process. Funding mechanisms and implications are discussed in detail in the Cabinet paper *Waste legislation 7: outstanding policy decisions*.³⁵ This included that the costs:
 - a. of establishing the national licensing scheme and waste tracking system (for activities such as policy development, initial communications, consultation and initial engagement) will be met from existing agency baselines
 - b. incurred in the ongoing running of the national licensing scheme, the waste tracking system and CME activities will be cost recovered (such as suspending and revoking a licence). Some compliance activities may have a wider public benefit and it may not be appropriate to use cost recovery frameworks; in those cases, it may be appropriate to use Crown funding such as agency baselines or the waste levy.
50. Article XI of the World Trade Organization General Agreement on Tariffs and Trade 1947 states that any prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.³⁶
51. This is subject to some exceptions (including one relating to the conservation of exhaustible natural resources, in certain circumstances), but it is unclear if we could successfully rely on such an exception if challenged. The appropriate time to fully consider international trade obligations (including notification of trading partners) will be at the regulation-making stages.

Next steps

52. If you agree to the proposals, officials will provide drafting instructions to the Parliamentary Council Office to commence drafting of this section of the Bill.

³⁵ DEV-23-SUB-0165 - Waste legislation 7: outstanding policy decisions.

³⁶ The General Agreement on Tariffs and Trade (GATT 1947), Article XI*: General Elimination of Quantitative Restrictions. https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleXI

53. In addition, MfE will consult with the EPA and Customs to confirm responsibilities and commence a cost assessment for the proposed functions. Officials will also undertake further analysis on the interaction between the new Bill and the IERA and Order and provide a briefing on this later this year.
54. Officials can also meet with you to discuss the contents of this briefing if required.

Appendix 1: Certain waste exports of New Zealand by volume as a percentage of total exports

Noting all raw data was supplied by the New Zealand Custom Service.

Table 1: Exports of plastic waste (volume as a percentage) by year and recipient country.

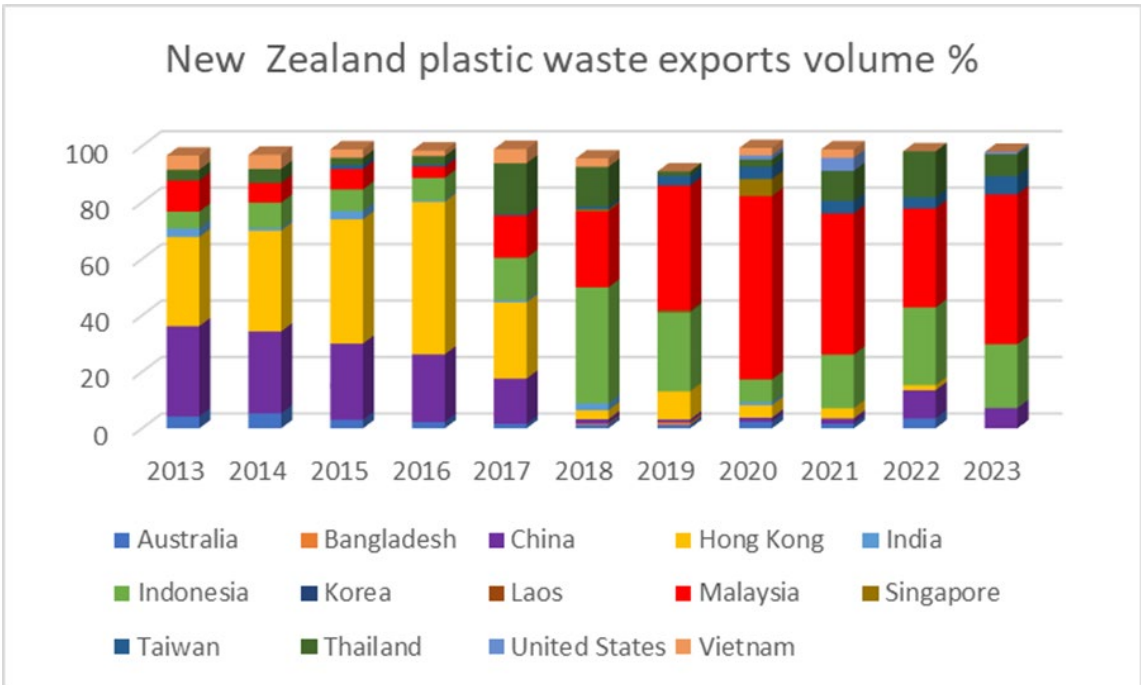


Table 2: Exports of rubber waste (volume as a percentage) by year and recipient country.

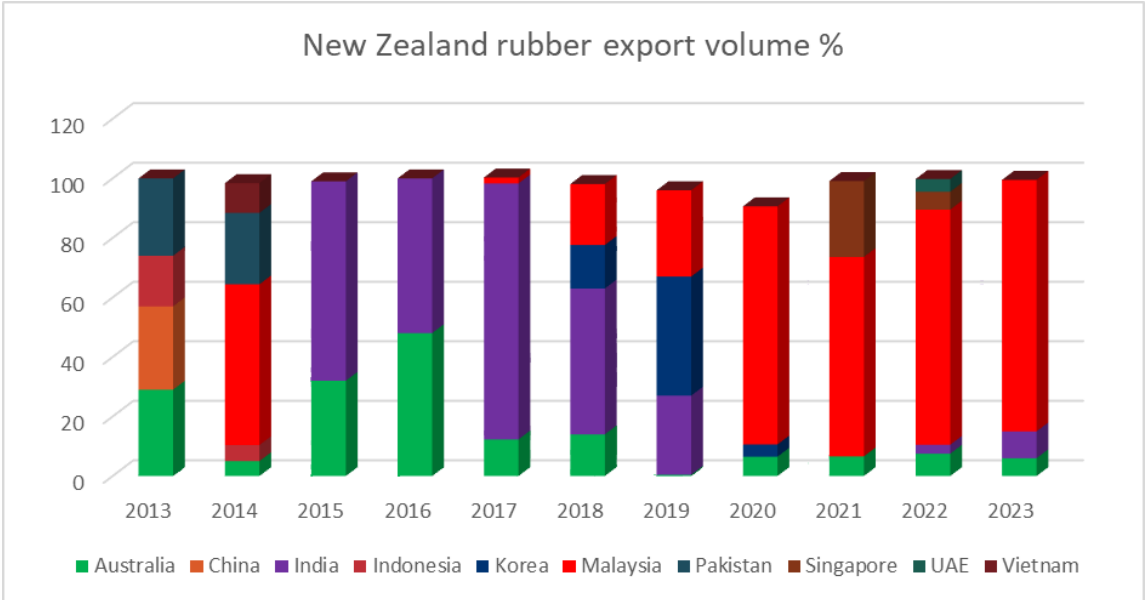
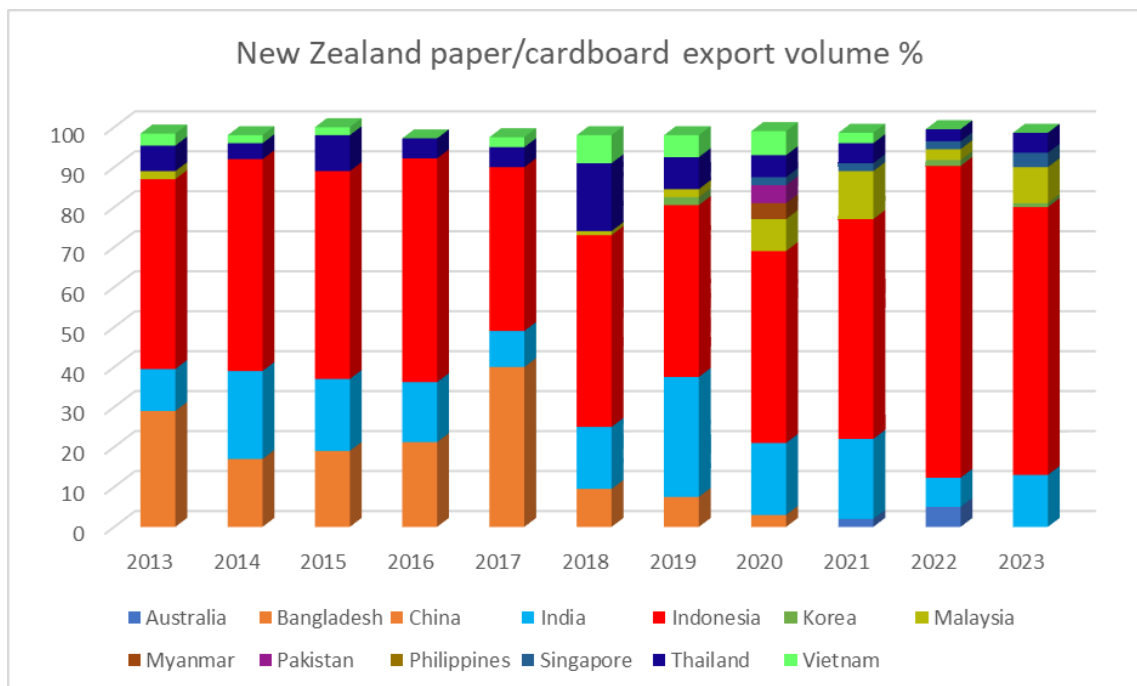
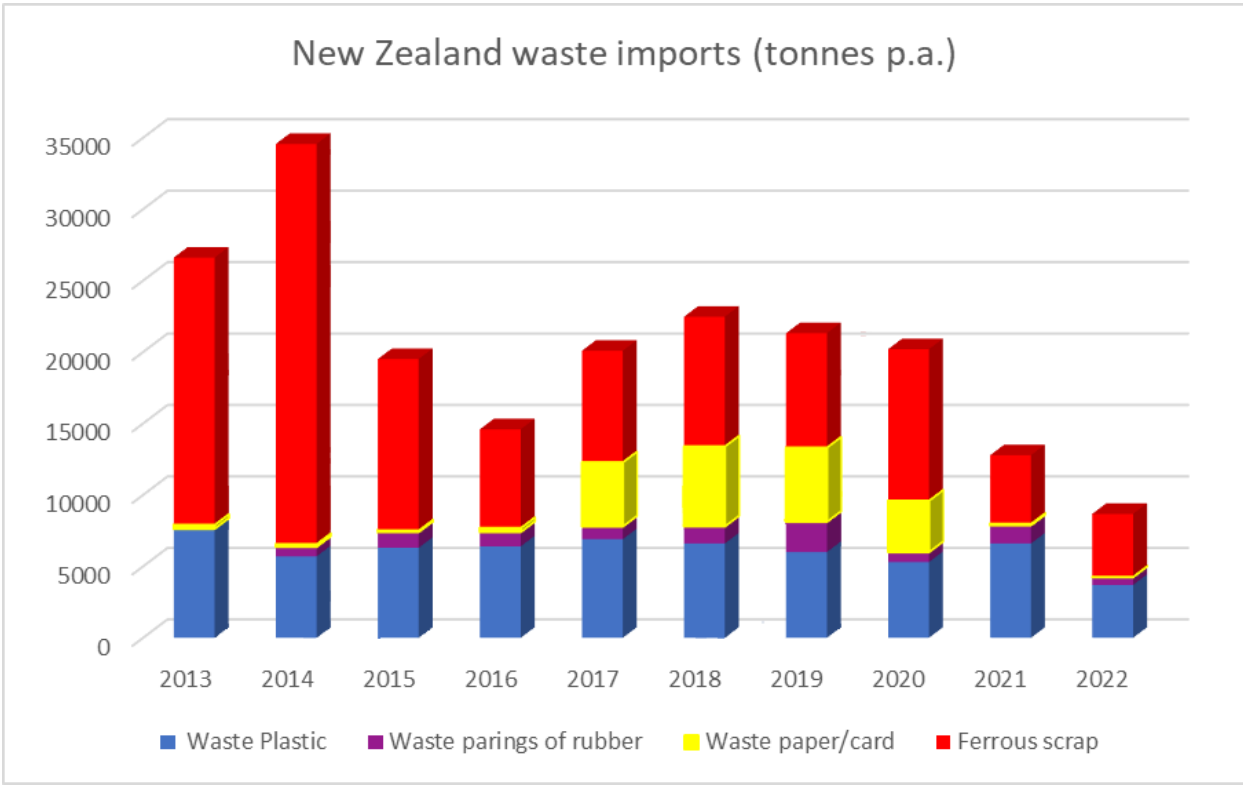


Table 3: Exports of paper/cardboard waste (volume as a percentage) by year and recipient country.



Appendix 2: Certain waste imports to New Zealand by tonne

Table 1: Imports of waste by waste-type and year (all data in tonnes).



Appendix 3: Summary of current Customs border processes

1. All consignments imported or exported and valued at over \$1,000 require the electronic submission to Customs of prescribed information which make up “entries”, including the classification of these goods under the HS Tariff³⁷. “Low value” consignments may have full entries lodged. Providing all mandated fields are completed and there are no “stops” against any of the fields, the entry then clears with no further Customs interaction. Over half a million full export entries and over four million ‘low value’ exports (excluding mail items) are processed per annum by Customs. Over 1.5 million full import entries and over 17 million ‘low value’ importations (excluding mail items) are processed.
2. Customs has some level of enforcement or compliance responsibilities in respect of goods regulated by other agencies. Over 40 separate legislative tools establish a variety of importer/exporter obligations. Where the goods regulated reasonably align with the HS Tariff, automated checks (eg, permit or licence validation) or stops can be put in place.
3. While Customs operate an assurance programme for import and export entries, this generally focuses on classification and valuation. The information related to whether a type of waste is hazardous or otherwise requires a permit is currently drawn from the annexes of the Basel Convention, with the onus solely on the exporter/importer to make this determination.
4. While Customs requires the usage of HS Tariff Codes, which define the goods in accordance with international Customs rules, these do not align with the level of granularity required to assess whether consignments have hazardous characteristics in accordance with the Basel Convention. Importers and exporters therefore are responsible for self-declaring whether their consignment requires a permit. Customs then checks the permit of those importers and exporters declaring they require a permit. Determining whether or not a consignment requires a permit requires technical expertise, and knowledge in respect of the composition of the consignment. No government agency in New Zealand is resourced or responsible for providing detailed guidance or compliance checks on such assessments.³⁸
5. “Low value goods” for which no full entry has been lodged are not classified in accordance with the HS Tariff. With these imports and exports no self-declaration is made in respect of whether, in the view of the exporter/importer, the consignment requires a permit.^{39,40}
6. Customs’ initial interaction with goods intended for export occurs when the entry is electronically lodged on the Customs’ computer system, generally several days prior to departure. By this time, the goods will likely have been sold, and will have been containerised, with shipping booked. They may well be enroute to the port of

³⁷ Harmonised System (HS) codes are internationally agreed method of classifying traded products, administered by the World Customs Organisation.

³⁸ The EPA has confirmed that it is the exporter’s/importer’s responsibility to know if the waste is hazardous under the Order and self-declare accordingly.

³⁹ When Customs first becomes aware of an intended export, there is insufficient time to interact in any detail with the export of waste.

⁴⁰ It is possible container loads of waste have very low nominal values (eg, there have been 60 tonnes of plastic waste consignments with a declared value of less than \$1000).

loading for departure from New Zealand. The exporter will have declared the consignment as not requiring a permit.

7. While Customs has the power to stop and inspect goods prior to clearing the export entry, this power would only be used if there was reliable actionable information of a potential breach, ie, for enforcement purposes rather than compliance checking. There are limited means to determine in such circumstances if the goods are hazardous waste that requires a permit under the Basel Convention, with no agency responsible for providing the technical expertise and making determinations and no national standards.
8. Any interaction with the goods, particularly inspection, is likely to result in the goods not being released from Customs control in time to meet their booked placement on the vessel. Such costs would be unrecoverable, and unnecessarily burdensome on legitimate exporters.



Appendix 4: Summary of three high level policy options considered against criteria

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
<p>Option 1: Do nothing – continue to leave the import and export of non-hazardous (essentially no permit required) waste unregulated.</p>	<p>Weaknesses: Leaving the trade of non-hazardous waste unregulated potentially hampers the development of a circular economy. The circular economy approach is the central focus of the new waste legislation and regulating what happens at the border for the import and export of non-hazardous wastes is key to creating such an economy, especially with New Zealand, being a society of small scale and limited manufacture or processing capability on shore, being reliant on the export of wastes for their environmentally sound management for the foreseeable future.</p> <p>Valuable recyclables are lost from the material flow as a resource.</p> <p>Lack of oversight of what happens to New Zealand’s waste.</p> <p>The problem of a lack of waste management persists but is exported to countries overseas.</p>	<p>Strengths: Easy to set up as no change of policy required.</p>	<p>Strengths: Less regulation prevents creating too many barriers or restrictions, which may increase costs.</p> <p>Weaknesses: Waste is exported to countries with lower or no standards of waste management, potentially impacting environmental and human health for residents of the importing countries.</p>	<p>The Basel Convention requires oversight of import and export of the wastes controlled by the Convention.</p>	<p>No further cost associated with this option.</p>	<p>NO</p>

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
	Increasing cost of landfilling will incentivise those exporting waste to avoid the levy.					
Option 2: Introduce enabling provisions in the new legislation to allow for regulation of all types of waste imports and exports. The initial focus would be on waste that does not fall under the Order. It is proposed that any regulations made would therefore be	<p>Strengths: The movement of all waste across the border becomes controllable, quantifiable and transparent.</p> <p>Sub-standard waste brokers and importers/exporters possibly leave the business or improve their understanding of their obligations and become compliant with the National Standards.</p> <p>Hazardous or otherwise controlled waste which has been erroneously self-declared as non-hazardous more likely to be detected.</p> <p>A phased approach to implementation will ensure the stable evolution of better waste import/export practices, trader knowledge and compliance. A “light touch” partnership approach will generally apply, to</p>	<p>Strengths: There is the potential ability for the system to be implemented in a staged approach over a longer period, starting with non-hazardous wastes, which are easier to identify and manage (and where public awareness already built up), such as plastic waste.</p> <p>Weaknesses: Compliance control will be more efficient as all non-hazardous wastes will have to be labelled properly (including any allowed mixtures of such wastes). This includes that everyone managing waste will</p>	<p>Strengths: Including labelling, tracking and compliance requirements will allow more people to access information about products’ quality, disposal and life cycle.</p> <p>Strengths: Consumers will know that their non-hazardous waste will indeed feed into a circular economy as it is managed in a traceable and trustworthy system (which is essential and reinforcing for the required behavioral change, both at consumer and commercial level).</p> <p>Weaknesses: Regulating information</p>	Can work complementary to existing Multilateral Environmental Agreements (MEA’s) such as the Rotterdam Convention and the Basel Convention.	<p>Weaknesses: Potentially high start-up costs for any platform or business to implement requirements.</p> <p>Weaknesses: Waste brokers, importers and exporters – as well as the responsible government agency will need to train staff on how to identify non-hazardous waste types.⁴²</p>	YES

⁴² Note, a number of the consignments are already being self-declared as non-hazardous, so presumably the skillset is already there.

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
<p>staged, with an initial focus on regulations for non-hazardous waste where no regulatory powers currently exist.</p>	<p>ensure appropriate imports and exports can continue, and opportunities for improvement and sector education are provided. The non-compliant will either be deterred or held accountable.</p> <p>International reputation of New Zealand as a country with high environmental standards is upheld. This work will support New Zealand's transition to a low emission circular economy.</p> <p>Weakness: The regulator will need to be established with the appropriate set of powers and functions, and the resources to effectively undertake their role. There will be costs associated with this.</p> <p>If infrastructure on shore is not sufficient and export barriers too high due to regulations, landfilling will increase, as seen in Australia after the introduction of comparable legislation.⁴¹</p>	<p>have to have a deeper knowledge of the wastes managed and processed.</p> <p>Such knowledge cannot be assumed to pre-exist and needs to be built up.</p>	<p>requirements may function as a deterrent and encourage illegal dumping of non-hazardous waste to avoid additional administrative costs. This may also result in a loss in income, particularly for the informal waste sector, for receiving countries.</p>			

⁴¹ See: <https://www.legislation.gov.au/Series/F2021L00625>

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
	<p>The compliance costs for importers and exporters may lead to higher processing fees at source – mostly local councils and landfills. These higher prices then have the potential to lead to higher costs for the disposer. It is arguable that those importers and exporters already managing waste in an environmentally sound manner, with robust assurance programmes in place, will have little to no cost increases.</p> <p>The import/export restrictions in respect of non-hazardous wastes (and hazardous wastes not covered under the Basel Convention) will be placed in the new waste legislation while the import/export restrictions in the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 will remain in place. This will potentially be confusing, and may lead to potential arbitrage behaviour, unless the compliance controls are carefully calibrated domestically. All waste must be</p>					

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
	subject to the National Standards, and the domestic controls in respect of licensing. Two separate systems at the point of export/import, with no reason for same, may lead to misunderstandings and confusion for the consumer, brokers and importers/exporters.					
Option 3: Ban the export and import of waste	<p>Strengths: No wastes can enter or leave New Zealand. As there is also no export of such wastes anymore, total oversight of the domestic circular economy, the recycling processes implemented, and the amount of waste produced is achieved. This approach might speed up innovation to reduce and reuse waste as no ability to export.</p> <p>Weaknesses: New Zealand importers currently receive wastes from overseas which are of value due to their recyclability, especially ferrous scrap (see Appendix 2). New Zealand cannot deal with all our waste onshore due to</p>	<p>Strengths: A blanket ban would require relatively simple legislation, based on a strict compliance regime fostered by the EPA (onshore) and Customs (at the border).</p> <p>Weaknesses: EPA and Customs still have to build up and train staff for a strong regime of controls to ensure no consignment of waste regulated under the Order crosses the border.</p>	<p>Strengths: Bureaucratic processes relatively simple with one streamlined ban preventing all wastes.</p> <p>Weaknesses: Waste to landfill will increase, putting increased pressure on existing landfill space. This may result in closure of existing sites sooner than currently anticipated, creating a need for new sites to be identified and consented earlier than projected.</p>	<p>Weaknesses: Extensive compliance and enforcement provisions for EPA and Customs would be needed to ensure the ban is successfully enforced.</p> <p>The likely increase in littering and dumping will require increased costs and CME expenditure for TAs and other public authorities with</p>	<p>Weaknesses: Any establishment cost will be high (hiring of enough staff by EPA to enforce the legislation) and maintenance costs will be growing with the amount of waste accumulating in the country due to a lack of processing and recycling infrastructure.</p>	NO

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
	<p>infrastructure constraints and because there are international markets for high-value wastes. Therefore, a ban on all waste exports could result in high-value wastes being landfilled in New Zealand and impacts on the export market and the global circular economy.</p> <p>Some negative outcomes have occurred after export bans have been put into effect overseas. In Australia, for example, since 1 July 2022 only waste plastic that has been sorted into single resin or polymer type and further processed (flaked or pelletised), or processed into engineered fuel, can be exported. Exporters must hold a licence to export waste plastics and operate in accordance with Australian national standards for plastic waste.</p> <p>However, this ban, along with high volumes of recyclables collected through container return schemes has resulted in</p>		<p>New landfills or extensions to existing landfills are very expensive and difficult to get approval and support for. This approach could also lead to more stockpiling of waste.</p>	<p>Litter Control Officers.</p>		

Criteria	Effectiveness	Ease of implementation	Equity	Compatibility with related regulatory systems	Fiscal/ administrative/ compliance cost	Preferred option
	Australia facing domestic recycling capacity issues and stockpiling of waste plastics. To mitigate this, a one-year exemption was granted in early 2023 to allow the export of clean and sorted PET #1. ⁴³					

⁴³ BRF-3444.



Appendix 5: Summary of agencies and their proposed roles

Agency	Current role	Proposed role
Ministry of Business, Innovation and Employment	Advises the Minister for Commerce and Consumer Affairs about the administration of the different parts of the trade regulatory system including waste exports.	Continue to provide policy advice to the Minister for Commerce and Consumer Affairs on tariffs and other aspects of New Zealand's trade system.
NZ Customs Service	<p>Inspects traded goods at the border, ensuring they are correctly classified and collecting duties and tariffs.</p> <p>Provides some compliance and enforcement services in respect of border regulated goods on behalf of the lead agency/regulator.</p>	<p>Inspect traded goods at the border, ensuring they are correctly classified and collecting duties and tariffs.</p> <p>Provide some compliance and enforcement services in respect of border regulated goods on behalf of the lead agency/regulator.</p>
Ministry for the Environment	<p>Negotiates Multilateral Environmental Agreements (MEAs).</p> <p>Reports on compliance on environmental MEAs.</p>	<p>Provide advice on waste import/export.</p> <p>Use Customs/EPA data to develop policy advice for licensing, tracking and standards.</p> <p>Set cost recovery and funding mechanisms for establishment and operation of the licensing and tracking scheme.</p>
Environmental Protection Authority	Issues permits.	<p>Issue licences for import/export operators.</p> <p>Monitor licence compliance.</p> <p>Inspect and makes determinations on waste within New Zealand.</p> <p>Monitor and enforce compliance with the National Standards.</p> <p>Suspend/revoke/amend licences.</p> <p>Maintain register of import/export operators.</p> <p>Run CME education and communication campaigns.</p> <p>Provide targeted actionable intelligence to Customs in respect of likely non-compliant consignments, should they be unable to action within NZ.</p> <p>Provide technical expertise and determinations in respect of requests, both from importers and exporters and other government agencies.</p>