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Customs Trade and Transport

Cut-over to the ICS for imports on 12 October - a few last minute thoughts

Notwithstanding reservations raised by various industry associations and members of the customs broking and forwarding industry, Customs has resolved to proceed with the current plans for the final cut-over to the use of the ICS for reporting of imports on 12 October 2005. Clearly, Customs and the developers of software to report to the ICS are confident that their products will deliver appropriate service levels.

Key points are reiterated below.

- Whether transactions need to be reported into the ICS will be governed by the date of projected arrival of aircraft or ships into Australia, rather than their actual date of arrival. Customs has already commenced publication of those sea voyages which it believes will need to be reported into the ICS. As 12 October approaches, increasing numbers of sea and air voyages will need to be reported into the ICS. This will be the earliest real test for the ICS.
- Any early cargo report may not deliver ready clearance of goods. Cargo reports and import declaration (among others) will await a correct impending arrival report from the operator of the service bringing the goods here.
- Those who have not registered for EFT payments through the ICS are at risk of being unable to report and pay through the ICS.
- Customs indicates a number of bonded depots and warehouses have yet to register through the ICS. These will need to find alternative means to report into the ICS until the registration is complete.
- If you are reporting into the ICS on behalf of a client or another industry participant, you should only do so under cover of a proper agreement. This should cover warranties from your client as to observance of obligations together with indemnities from associated liabilities.
- The use of a third party to arrange reporting to Customs will not eliminate your liability. Both Sections 243T and 243U of the Customs Act penalise not only the person reporting to Customs but also those who cause the reporting to be made and also those who provide information knowing that it is to be reported to Customs.
- A number of parties may be taking some comfort from the moratorium periods against liability for penalties of infringement notices. As previously reported, parties should keep in mind that Customs will be monitoring compliance during this period.
- Customs has an obligation to maintain a system which allows for the ready reporting of transactions and to allow for goods to pass through the import and export process. You should keep a careful note of any official Customs outages or difficulties experienced in reporting to Customs during this period together with details of any delays or difficulties experienced through the use of the ICS. These records may defend against liability to Customs and to clients (if cargo is delayed). At this early stage of full usage of the ICS, it would be appropriate to keep a copy of the Customs Business Continuity Plan close at hand in case the ICS is unable to handle the early flood of additional information.
- Those who report to Customs, should ensure relevant software is tested and staff trained.
- Report any errors or problems experienced with the software to the ICS.

AAT rules on commencement of AUSFTA

Customs and the importing industry have been debating which persons are entitled to benefit from the preferential rates of duty under the AUSFTA.

Customs adopted the view (as set out in an ACN 2004/47) that the only goods which were entitled to the benefit of preferential rates under the AUSFTA were those goods which were imported (ie brought into Australian waters) after 1 January 2005.

In contrast, some importers considered the key issue was not importation, but the making of the entry for home consumption of the goods. On this basis, if the entry for home consumption of the goods was made after 1 January 2005 then, regardless of the date of importation, the goods would be entitled to preferential status.

In a decision of the Administrative Appeals Tribunal ("AAT") handed down this week, the AAT took the approach that the date of the entry for home consumption was the crucial trigger for the benefit of preferential status, not the date of importation for the goods. Accordingly, goods which were imported before 1 January 2005, but were subject to an entry for home consumption after 1 January 2005 were entitled to preferential duty rates under the AUSFTA. Affected importers may now wish to apply for refunds of customs duty.

Given the force with which Customs expressed its view regarding the commencement of benefits under the AUSFTA, it seems likely Customs will appeal the decision to the Federal Court.

ACN 2005/49 – the duty recovery party commences

Under ACN 2005/49, Customs revealed errors in its administration of Item 50A of the 4th Schedule to the Customs Tariff Act 1995. This has meant that a number of parties paid no customs duty on the importation of certain goods, when 3% duty should have been collected.

In the ACN, Customs has indicated that it will seek to recover customs duty which it believes to have been under levied, based on Section 165 of the Customs Act 1901. This requires a demand to be initiated within 12 months of the event leading to the underpayment of customs duty.

It is understood Customs is about to commence issuing demands. Clearly, each party who receives a demand will need to undertake a legal assessment of their liability to pay the duty, whether there are any other alternative defences available or other mechanisms in existence to manage these demands of liability. Even if the duty appears to be payable, there are means available in Commonwealth legislation to suggest to Customs that duty should not be recovered in the circumstances.

The origin of the goods which had received duty free entry must also be considered. If those goods were not, in fact, entitled to duty free entry but had come from a developing country then there may be other grounds to claim lower rates of duty.