



Hunt & Hunt
LAWYERS

e-news

13 October 2005

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Opposition mounts to customs' item 50A duty recovery – let's get together and defend!

Many in the importing community have been alarmed at Customs' recent demands for underpaid duty.

These demands arise from errors in the way in which Customs had administered an apparently obscure provision in the legislation that sets rates of customs duty. The relevant item stated that if certain goods fell within a particular classification of consumption goods according to regulations of the UN, no customs duty would be payable on those goods. On that basis, many categories of goods were imported on a duty free basis. However, over time, unbeknown to Customs, the UN had made a number of changes to the classification of goods that satisfied this criteria. Accordingly, many of the goods that had been imported without the payment of duty should have attracted customs duty at a rate of 3% as they were no longer qualifying goods.

The issue was alerted to Customs by importers who realised that they had unnecessarily paid 3% duty. However, when reviewing the matter, Customs realised that other imported goods should have attracted the duty.

As a result, Customs has been simultaneously paying refunds and issuing demands.

Due to a quirk in the relevant recovery provisions, Customs is only able to demand repayments for 12 months. Even so, many importers are now faced with hefty bills - in some cases, for millions of dollars.

Clearly, there are a number of problems for importers. For example, the demands from Customs do not actually provide details of the changes to the UN classifications. However, the larger problem is that many importers simply do not have the funds to pay the underpaid customs duty, or even to "pay under protest" and go to the AAT.

Customs appears determined to recover these amounts, based on financial management legislation to partially compensate for the refunds of customs duty which have been paid. It seems extraordinary that where a government authority has unwittingly allowed goods to be imported and levied with no customs duty, it is still able to recover underpaid customs duty, even though the importer has proceeded on the basis that all proper duty had been paid and committed the revenue to other expenditures.

Hunt & Hunt has been approached by a number of importers who are both confused and angry at the approach by Customs. A representative action is being considered to put pressure on the government to withdraw these demands and to defend any subsequent proceedings.