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## Customs, Trade & Transport Ealert

### Item 50A – not gone and not forgotten

Some time ago, there was some controversy with Customs failure to administer the (old) Item 50A provision which had the effect that where there was a TCO for certain consumption goods (directed by the UN) then there should be no duty collected, rather than the 3% duty which then applied to goods subject to a TCO.

The result was that Customs had collected 3% duty on goods where that should not have been collected. A number of importers of those items moved to collect refunds which were duly paid but only for a period of 12 months which was then the period to recover refunds.

Customs then issued demands to recover duty from importers who had secured duty free entry for goods when they should have paid 3% duty, even though their payment at zero duty had been due to Customs not having administered the provisions properly. We acted for a number of importers in resisting that recovery action which was ultimately withdrawn by Customs.

At the time a number of importers expressed frustration that the refund provisions only allowed refunds for a 12 month period. Many of those same importers were unwilling to invest the time and money in investigating other potential actions against Customs to recover refunds of duty beyond the 12 month period. However, there is now anecdotal evidence to suggest that some importers are actually pressing action against Customs seeking damages equivalent to the duty overpaid based on the negligence/breach of statutory duty/maladministration by Customs.

Unfortunately, the evidence at this stage is only anecdotal. While Customs has an obligation to collect duty owing to the Government, it should have a corresponding obligation to repay to importers duty it had collected to which the Government is not entitled (as in the case of these importers). It also seems unfair that Customs is negotiating with some importers to provide additional payments on any basis while it does not make the availability of the additional payments known to all.

For further information please contact Andrew Hudson.

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