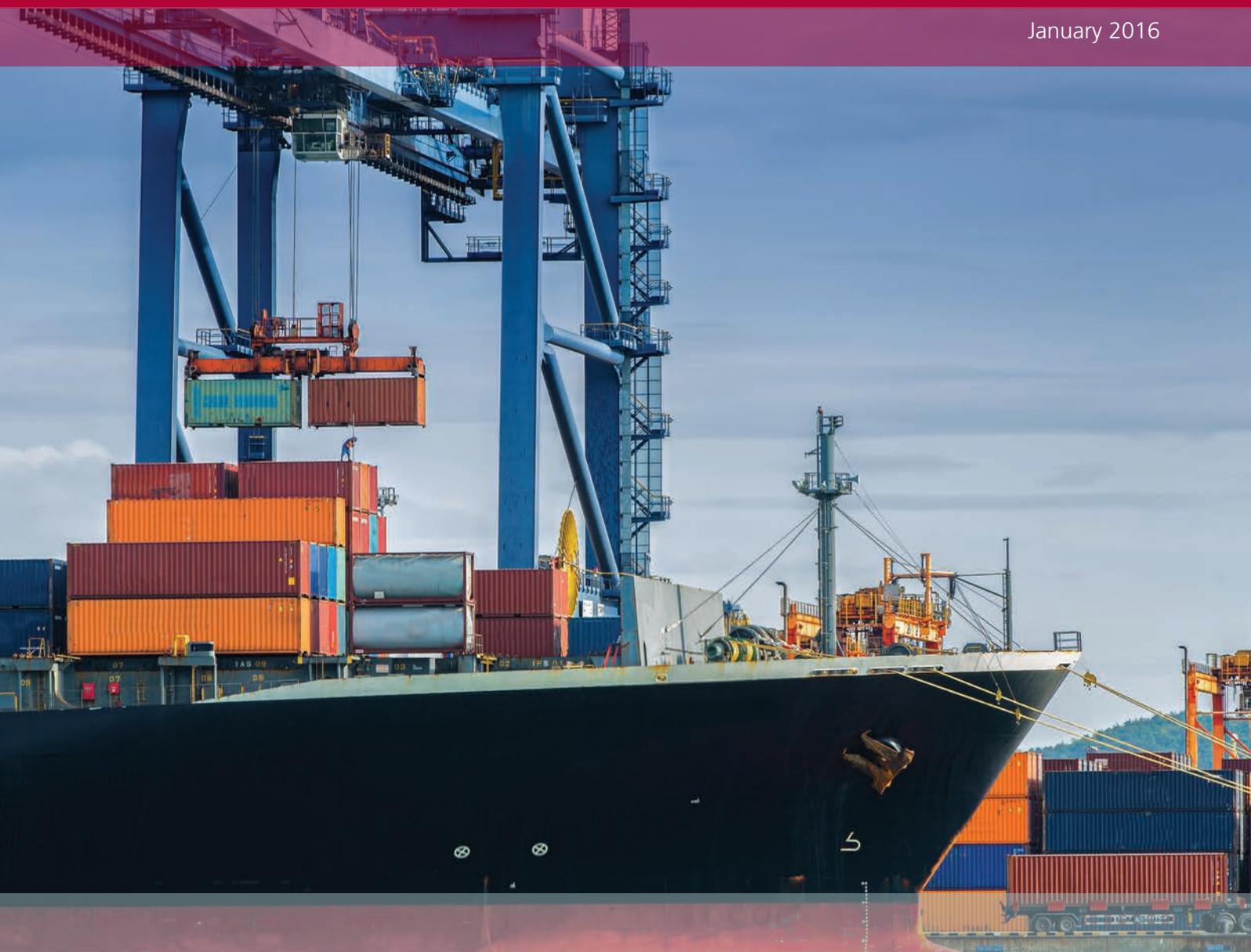


# Customs and Global Trade

Export compliance capability

January 2016



With the increase in free trade agreements Australian exporters are experiencing more liberalised trade terms and greater export opportunities than ever before. However, freer trade does not equal risk free trade.

To take full advantage of export opportunities it is vital that exporters are aware of, and proactively manage, export compliance.

In this document we identify some key risks exporters commonly face, and how our dedicated Customs and Global trade team has the expertise to guide exporters through the overlapping regulatory and commercial challenges of international trade.



**Russell Wiese**

Head of Customs and Global Trade



FTAs DO NOT REDUCE RISK – THEY  
INCREASE THE NEED FOR HIGH LEVELS  
OF CUSTOMS COMPLIANCE

# Our expertise

## CONTROLLED AND PROHIBITED EXPORTS

There are a number of controls over exported goods. Some exports are banned completely, others are banned only to certain countries, and others can be exported with Government approval. The penalties that apply to prohibited exports are significant and relate to the fact that many prohibitions are based on national security concerns.

For example, a major category of controlled goods are those goods which have a military end use, or goods that have both a domestic and potential military use. Many of these goods may seem benign and are destined for an allied country, such as New Zealand or the US; however, Australian law strictly requires approval from the Defence Export Controls Office within the Department of Defence (DECO). Exporters should be aware that Australia's requirements are stricter than other countries who allow exports without permits to certain countries.

We have assisted clients with:

- Identifying non-compliance with export controls
- Making voluntary disclosure to Australian Customs and DECO of past non-compliance
- Obtaining export approval from DECO
- Drafting internal export procedures around controlled goods
- Working with foreign Government departments to provide greater comfort to Australian authorities regarding the intended use of controlled goods.

## USE OF EXPORT CONCESSIONS

Duty is often paid on imported goods that are later exported or used in the manufacture of exported goods. Where this is the case, there are opportunities to reduce the customs duty payable on the imported goods. The two most common ways are the **Tradex Scheme** and the use of **duty drawbacks**.

Under the **Tradex Scheme**, importers obtain a credit at the time of import on the duty and GST that would otherwise be payable. This credit should be equal to expected levels of exports of the relevant product.

Use of Tradex Credits can, however, be difficult and requires close monitoring. A downturn in exports may result in an exporter over-claiming Tradex Credits. This is a common problem as Tradex Credits are applied at the time of import, however, a downturn in exports may not be known until some-time later.

We have assisted clients with:

- Applications to AusIndustry for a Tradex Order allowing the claiming of Tradex Credits
- Compliance reviews of the use of a Tradex Order
- Voluntary disclosure of the incorrect use of a Tradex Order.

An alternative to the **Tradex Scheme** is obtaining a duty drawback. A duty drawback is payable to the exporter of goods where those goods were subject to duty on import into Australia. There are strict requirements around what can be done with the goods in Australia and strict documentation requirements and timeframes apply.

We have assisted clients with:

- Identifying drawback opportunities
- Reviewing compliance around historic drawback claims
- Obtaining commercial documents and duty information from the original importer of the goods where this entity is different from the exporter.

## EXPORT DECLARATIONS

An export declaration contains information used by Australian Customs for security screening and statistical purposes. Providing incorrect information in an export declaration is a strict liability offence.

The provision of false information can be quite unintentional. For instance, an exporter of goods that makes a retrospective transfer pricing adjustment may have incorrectly stated the value of the goods on the export declaration. Liability for incorrect information in an export declaration can be managed by making a voluntary written disclosure to Australian Customs. We assist clients to identify potentially incorrect information, make voluntary disclosure to Australian Customs and implement procedures to limit the risk of future non-compliance.

## FREE TRADE AGREEMENTS

Not all exports from Australia will qualify for preferential treatment under a free trade agreement (FTA). Each FTA contains rules regarding which goods will be treated as being of Australian origin. In most cases, an Australian exporter will need to certify whether its goods meet the relevant rules of origin. Incorrect claiming of Australian origin may not create issues with Australian Customs; however, it could have the following consequences:

- Your foreign customer will have to pay duty and possibly penalties in respect of your goods
- Future imports of your goods may be treated sceptically by the foreign customs authority
- You may be liable to your customer for any losses they have suffered (such as duty and penalties).

We have assisted clients with:

- Assessing whether goods meet the relevant rules of origin
- Comparing rules of origin under different FTAs
- Obtaining origin rulings from Australian Customs
- Drafting internal origin policies
- Drafting supply contracts to provide protection should a claim of origin be denied.

## DISPUTES WITH FOREIGN CUSTOMS AUTHORITIES

While it is normally the case that imports into foreign countries will be by your customers, on some occasions you, your agent or your related company may be the importer. Australian suppliers importing into foreign countries have found that some customs authorities are not as trade facilitative as Australian Customs.

In conjunction with local affiliates, our team has assisted exporters obtain valuation rulings from foreign Customs authorities, managed audits by foreign customs authorities and obtained permits required for the import of goods.

While local knowledge is always important, all WTO countries adopt the same customs principles.

We have found that the best results are achieved by surrounding yourself with the right combination of lawyers who know your circumstances and customs profile, and local lawyers who understand the attitude and approach of the foreign customs authority.

We have successfully assisted Australian clients and their related parties with disputes involving New Zealand, Asian, European and African customs authorities.

EXPORTERS NEED A COMBINATION OF AUSTRALIAN LAWYERS WHO UNDERSTAND THEIR GLOBAL CUSTOMS PROFILE AND FOREIGN LAWYERS THAT KNOW THE ATTITUDE OF THE LOCAL CUSTOMS AUTHORITY

## CONTRACTUAL TERMS

As an exporter you will often not be in control of many potential breaches in respect of the goods. For instance, you will not know what information is provided to the foreign customs authority in the country of import.

In recent times we have seen an increase in foreign customs authorities pursuing the supplier of goods for underpayment of duty caused by the importing customer. Exporters can obtain some measure of protection by ensuring their contracts include warranties regarding key information, indemnities for any losses suffered due to the acts of the importer, and critically, the right to review the information provided by the importer to the foreign customs authority.

We have a drafted supply and distribution contracts for many Australian exporters using various supply models.

## ANTI-BRIBERY AND CORRUPTION

Balancing common practices in one country against strict anti-bribery and corruption laws has never been easy. In recent times, however, the environment has become increasingly difficult as many western countries seek to impose their enforcement regimes globally.

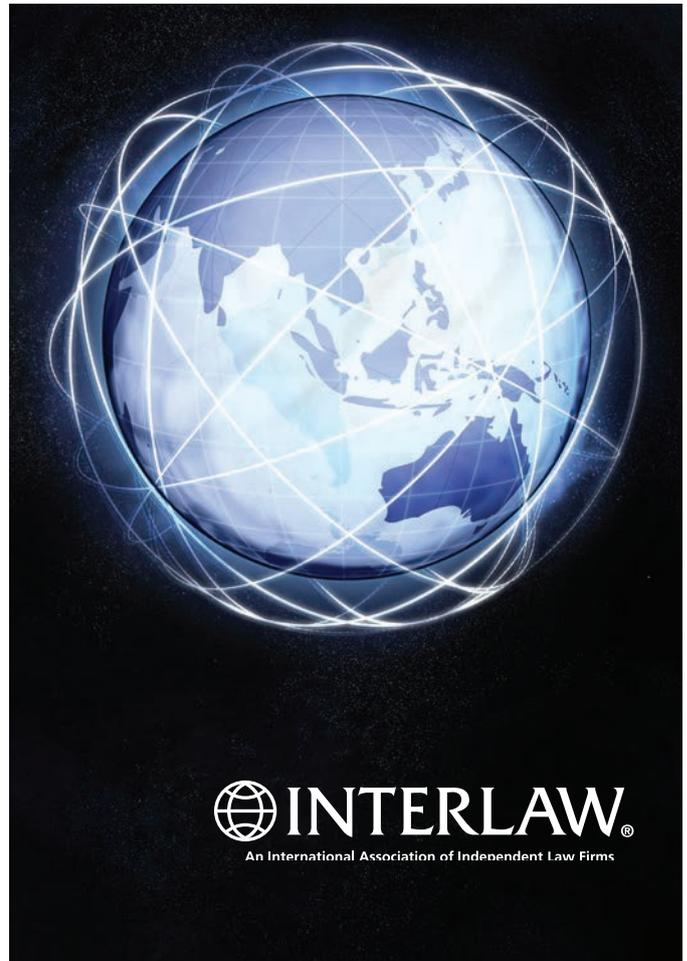
We have recently seen a string of US prosecutions of non-US resident companies for activities outside of the US. Australia is one of the few countries that still does not have an absolute prohibition on facilitation payments to foreign officials. However, the requirements around making such payments are very strict.

In this environment it is crucially important that you understand your anti-bribery and corruption obligations and have clear policies which support a compliant culture within your organisation.

We have assisted clients by providing training around anti-bribery and corruption laws and drafting procedures for companies to enforce. We also ensure that clients are contractually protected against any corrupt practices of their customers.

## OUR GLOBAL REACH

While exporters may face issues with Australian Customs it is often the case that issues arise at the destination country. If this occurs you need advisors who understand the local laws and attitudes and practices of the local authorities. In addition to our office in China, Hunt & Hunt is the only Australian member of Interlaw, an established association of 66 independent law firms with 5000 practitioners across 125 cities worldwide. Through this relationship we have strategically aligned ourselves with commercial lawyers across the globe to ensure our clients receive advice no matter where they need us.



# Our team



## RUSSELL WIESE

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Russell is a dedicated customs and global trade lawyer. His ten years' experience in the area includes three in a global advisory firm building on Russell's commercial and proactive outlook. Russell's significant customs and trade law experience includes advising multinational companies, customs brokers and freight forwarders on both Australian and international customs valuation issues, duty concessions, import and export compliance, anti-dumping investigations and customs duty effective supply chains.



## LYNNE GRANT

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Lynne has more than ten years' experience including customs and global trade related work such as valuation and classification of imported goods and anti-dumping investigations. Lynne also brings to the team a broad range of corporate and commercial experience, including complex contractual negotiation and drafting and domestic / international mergers and acquisitions.

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## OTHER HUNT & HUNT SERVICE AREAS:

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