

# Customs Trade and Transport Update

December 2011



## DANGER, DANGER - New Customs Notice a warning to properly report the movement of cargo

The release of Australian Customs and Border Protection Notice number 2011/58 ("**Notice**") serves to emphasise, once again, the importance which the Australian Customs and Border Protection Service ("**Customs**") places on timely and accurate reporting of cargo. It also represents a timely warning that Customs will be undertaking additional activities to closely monitor cargo that has not been reported within legislated timeframes with the clear implication that Customs will be increasing compliance and enforcement action including the issue of Infringement Notices, penalties and prosecutions.

The title of the Notice also gives an indication as to one of the significant concerns from failure to observe cargo reporting obligations – that goods under Customs' control are not being reported properly. Of course this raises the possibility that those goods could have entered home consumption having improperly avoided required risk assessment and payment of revenue. Ultimately, Customs would prefer that the movement of all goods is reported according to legislative timeframes – and earlier if possible.

Readers would recall that many of these reporting deadlines were introduced with the Trade Modernization legislation and the Integrated Cargo System and were part of the "cascade reporting" concept which was intended to ensure that Customs and other border agencies would have advance warning of goods and their means of arrival as well as their movement through the supply chain and ultimate release to the recipients.

That was intended to allow Customs to properly conduct risk assessment activities, collect revenues and permit the movement and release of goods in a timely manner.

To encourage compliance, Customs is able to penalise failure to comply as well as restrain the movement of goods under its control. At the same time, Customs has identified the benefits of early and accurate reporting in terms of the timely release of goods (as referred to in its various time release studies).

The need for such early and accurate reporting has been a regular compliance focus for Customs through its audits, public seminars, Compliance Updates and other compliance action.

More recently, the focus has increased with a perceived increase in the failure to comply with reporting requirements. The Notice refers to a reduction in reporting performance being shown in Customs' Time Release Study for 2010.

Relevantly, the most recent Compliance Update from Customs (September 2011) refers to the following items which sets an agenda for this issue.

- » A continued focus on cargo reporting;
- » An increase in priority to review outturn reporting by CTO's and depot operators;
- » Penalties for failure to lodge outturn reports;

- » The issue of significant numbers of Infringement Notices for the movement altering or interference of goods under Customs' control without authority or the underpayment of correct duty on goods; and
- » The prosecution of a Sydney freight forwarder for intentionally removing, altering or interfering with goods under Customs' control without authority. This reportedly arose when the freight forwarder used "underbond movement permissions" to collect containers and deliver them to consignees before they received "clear" status from Customs as a means to save costs for that freight forwarder.

The Notice points to another area of potential focus – the need to report Import Entries (being Importer and Warehouse Declarations) by the end of the next Customs' working day of Customs following the day on which goods were imported. Anecdotally, there seems to have only been infrequent action in respect of such failure to report.

The Notice has been amended since its original publication to set out the legislative deadlines for the reporting and movement of cargo.

The Notice serves as a reminder to those reporting cargo at any stage of the supply chain. It also serves as a warning (if needed) that the movement of goods through the supply

chain needs to be reported properly. Those in industry often refer to difficulties in timely reporting arising from inaccurate information provided by others in the supply chain overseas or the failure by clients to provide relevant information or pay import duties or other charges as required. There are also increasing reports that client demands for the early release of goods (without approval) and the fear of container detention and storage charges as being reasons for the failure to report cargo properly or to move goods without Customs' approval.

We would suggest that the Notice be circulated to staff, overseas agents, shippers and clients to remind them of your reporting obligations. At the same time, overseas agents, shippers and clients should be advised that their assistance is required to ensure compliance with Customs' requirements and that if they fail to assist as required, they will be responsible for any delays and you will be seeking indemnity from them for any liability to which they contribute.

Ultimately, those reporting cargo should treat the Notice as clear warning that Customs will be increasing focus on cargo reporters who Customs perceives as not meeting reporting obligations and that increasing levels of enforcement action will be taken against those reporters.

As always, action now is required.

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## Contact us

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