

# Customs Trade and Transport Update

1 March 2011

## Sad SAC's low-value imports and the future of Australian retailing

### Introduction

On 18 December 2010, the Assistant Treasurer, the Minister for Broadband, Communications and the Digital Economy, the Minister for Home Affairs & Justice and the Minister for Small Business issued a joint media statement ("**Statement**") entitled "*The Future of Australian Retail*". The introduction to the Statement recorded that:

*"The Government has today announced an inquiry into the future of Australian retail by the Productivity Commission, the release of new research into online shopping in Australia and a compliance campaign to crack down on people or businesses rorting the \$1,000 low-value threshold".*

The purpose of this commentary is to briefly consider the rationale for the threshold and the issues associated with the adoption of the threshold and the associated use of Self Assessed Clearance Declarations ("**SAC**").



### Background

Once upon a time, a long time ago, Australia had a concept of "low value/high volume" import transactions for documenting less expensive imports.

As many readers would be aware, the *Trade Modernisation Legislation of 2001* then introduced the concept of an "SAC" as a document to evidence certain importations of goods where the Customs value of the consignment was \$250 or less. Goods covered by such SACs would not require payment of customs duty or GST and required completion of a less comprehensive document. SACs could also be lodged by parties other than a licensed customs broker. However, SACs could not be used in all circumstances. For example, if goods required examination by other border authorities or the grant of a licence or a permit by a Government authority then a SAC could not be used. Subsequently, the threshold below which there did not need to be payment of customs duty or GST and for which a SAC could be used was increased to \$1,000 in 2005.

The creation of such a process was consistent to the concept of "de minimis". This concept provides that collection of duty and other taxes should not be required for negligible amounts of revenue where the cost of collection exceeds the revenue returned to the Government. The aim is to facilitate the importation of low-value cargo. Ironically, the NZ Customs Service is currently undertaking a review the "de minimis" approach to goods being imported into NZ.

Over time, the use of SACs has increased as consumers have increasingly resorted to purchasing items by online means from overseas vendors where the value falls below the threshold. During the latter part of 2010, various retailers launched a campaign against the processes associated with securing such duty and GST free entry for goods. The campaign suggested that the provisions were being "rorted" by parties who were subsequently on-selling those goods to consumers. It was also suggested that the presence of such a mechanism for consumers gave overseas vendors an unfair advantage over Australian retailers. Concerns were also expressed that the threshold meant a significant leakage in Government revenue.

It is fair to note that many of these possible "adverse" consequences were raised at the time that the "low value threshold" process was introduced. They were also raised at the time that the threshold was raised to \$1,000 in 2005.

In addition to the potential adverse commercial consequences, it was also recognised that the adoption of the process could create compliance issues. For these purposes, it should be noted that there are, already, penalties under the Customs Act 1901 in the event that there is an incorrect use of a SAC leading to underpayment of customs duty or whether there is an error in a SAC (regardless of the effect on customs duty). This latter penalty extends to those who made, or caused to be made the incorrect report.

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## The referral to the Productivity Commission

By way of summary, the Productivity Commission has been requested to report on the;

- current structure, performance and efficiency of the retail sector;
- drivers of structural change in the retail industry;
- broader issues contributing to an increase in online purchasing by Australian consumers;
- sustainability and appropriateness of the current indirect tax arrangements and the extent to which technology could reduce the administrative costs of tax collection;
- other regulatory or policy issues which impact on the structural change in the sector; and

The Productivity Commission has invited submissions from interested parties and has been requested to report to Government later this year.

## The Customs compliance focus

As contemplated by the Statement, there was to be a “crackdown” on the misuse of the \$1,000 low-value threshold which allows goods to be imported free of customs duty and GST. Early in 2011, the Australian Customs and Border Protection Service (“**Customs**”) issued Australian Customs Cargo Advice number 2011/01 (“**ACCA**”) entitled “*Preparation of documents for Self Assessed Clearances*”.

The ACCA referred to Customs undertaking:

*“A three month campaign to ensure that existing exemptions to pay GST and customs duty on certain imported goods under \$1,000 are not being abused or exploited. The campaign commenced from the beginning of 2011”.*

However, based on previous experiences in relation to the review of the use of SACs by importers by Customs, it could be argued that the ACCA only reflects the type of compliance approach previously taken by Customs augmented by additional resources. For these purposes, it is worth noting that there have been a number of ongoing compliance issues associated with the “low-value” threshold and use of SACs. These have included:

- the definition of the terms “consignor” and “consignee”;
- the definition of the term “consignment”;
- the completion of the SACs by persons other than the importer of the goods (i.e. the overseas vendor); and
- the inappropriate use of SACs where an Import Declaration should have been used (for example, where the real customs value exceeded \$1,000 or where a permit was required).

These ongoing compliance issues have been the subject of specific attention by Customs Compliance Division and Customs’ views have been expressed in many documents issued by Customs. For example, see Customs Practice Statement 2009/23 and the associated “*Instructions and Guidelines concerning the definition of “consignment” for the purposes of section 68 of the Act*” (March 2010) and Australian Customs Notices 2006/59 and 2009/47. There has been regular consultation between Customs and industry regarding these issues.

In addition to general compliance issues, these have been seen to wider risk assessment issues associated with the “low-value” and “low document” transactions as they provide less information to border authorities.



Notwithstanding, these existing issues, it is the terminology used in the Statement and in the ACCA which is of interest. The Statement refers to people “rorting” the low-value threshold while the ACCA refers to the concessional provisions not being “abused or exploited”. The use of such language almost reflects a value judgment as to the way in which the provisions are being used as much as a campaign against the incorrect or illegal use of the provisions. One would question whether this means that parties could be legally using the provisions but being deemed to have “rorted” the system. Hopefully, the attention raised by the current inquiries will lead to a resolution of the compliance issues as much as the commercial issues.

## Related issues

There are a number of other related issues here, some of which are as follows.

- The main issue here seems to be one of Government policy – whether to adjust the threshold or otherwise make changes to limit the use of the process, the cost of its use or the documents required. Customs compliance work only operates based on legislation and policy. Presumably there has been at least one review (if not more) of the effect of the concession since the threshold was increased in 2005. That review would encompass such areas as revenue foregone, the cost of the SAC system (subsidised by the fees charges on other transactions by Government departments) and instances of non-compliance.
- What will be the level of Customs scrutiny of SACs given existing budget restraints. In light of budget cuts for Customs, how is it supposed to increase inspections? A short term increase in funding for inspection of SAC's may not necessarily have any long-term effects.
- The fact that there is no processing fee for lodging a SAC, meaning that the fee for processing Import Declarations has to be increased, effectively to subsidise that "free" processing for SACs.
- The fact that a party does not need to use a licensed customs broker when preparing and lodging a SAC – relying on self-assessment by others.
- The Productivity Commission has previously suggested that there should be less complexity in importing. Changing current practices may create more complexity.

- The concern that any reduction to the threshold could be construed as imposing a new duty or increasing existing levels of duty. That could be contrary to the general principle that duties should be decreased not increased and commitments under various Free Trade Agreements that levels of duties will not be increased.
- International Customs agreements reflect that there should be a "de minimis" approach. Having established its "de minimis" level it would seem difficult for Australia to now resile on that approach and increase the threshold – especially if it is seen as an attempt to "protect" Australian retailers.
- Neither the Productivity Commission review nor the Customs review will necessarily address some other significant issues such as concerns for AQIS and other Government departments from the improper use of SACs.
- That these reviews are occurring at the same time that other sectors are mounting their own campaigns against "unfairly cheap" imports. For example, Australian primary producers have been warning against imports of "cheap" food from China. In another example, certain Australian Trade Unions are complaining that the Australian anti-dumping system does not properly protect against unfairly cheap imports and has called for reform on the adoption of other measures to stop those imports – regardless of compliance with WTO commitments.
- That any changes are likely to increase costs to consumers.

Ultimately, the product of the current reviews would probably need to disclose significant revenue losses and serious instances of non-compliance before Government could justify adjusting the process.

## Summary

In many ways, some of the current "problems" were foreseen some time ago and the associated compliance issues have proved to be a challenge for Customs for a number of years. Regardless of the outcome of the inquiry by the Productivity Commission and any political decisions, it can only be hoped that the current increased level of attention survives and extends to providing additional resources to Customs to increase its review of SACs and resolve the current compliance issues.

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