

21 December 2011

## Customs, Trade and Transport Law e-alert

# Customs issue two new important Notices regarding changes for 1 January 2012

Just when you thought it was safe to go into the ICS, the Australian Customs and Border Protection Service ("Customs") has issued two new urgent Notices regarding changes to law and practice to have effect from 1 January 2012 associated with the adoption of HS2012 and AHECC 2012.

Readers may well experience some level of frustration with the dates of publication of these Notices. Notice No. 2011/62 regarding the *"Interaction between HS2012 and Product-Specific Rules of Origin for Free Trade Agreements"* is dated 13 December 2011 but only appears to have been published on Customs' website in the last 24 hours. Further, the second Notice No. 2011/63 regarding *"Changes associated with AHECC with effect from 1 January 2012"* bears no date other than "December 2011" and, again, only appears to have been published on Customs' website in the last 24 hours.

I recommend that all readers of this e-alert, their clients and colleagues should read these Notices carefully. However, each is summarised below.

### Australian Customs and Border Protection Notice No. 2011/62

This Notice is entitled *"HS2012 Product-Specific Rules of Origin for Free Trade Agreements"*.

This Notice refers generally to changes to classifications associated with HS2012 changes. The Notice then refers to the fact that some of those changes will affect the Rules of Origin in a number of FTA including ANZCERTA, SAFTA, AUSFTA, TAFTA, ACFTA and the ASEAN-Australia-New Zealand Free Trade Agreement.

The Notice then makes the following commentary.

- TAFTA still employs Rules of Origin based on HS2002 and as a result, ACN 2006/66 remains unchanged as a guide to claim a preferential duty under TAFTA.
- Australian officials and officials from FTA partners are still discussing the finalisation and implementation of HS2012 to Product-Specific Rules of Origin ("PSR") for the FTA mentioned above after which further Notices will be issued advising when HS2012 PSR will be implemented for each FTA.

- Pending further advice, Certificates of Origin ("CoO") and self-certification of origin for goods imported into Australia under particular FTA may continue to be issued by exporters and producers in FTA countries under HS2007. However, even when CoO or certification has been issued overseas using HS2007, Import Declarations must be completed according to HS2012, which may well create some level of difficulty.

The Notice also indicates that Customs and DFAT have developed the following guidance for traders to determine whether a good qualifies for a preferential rate of customs duty.

- Start with the Tariff Concordance to determine if tariff classification of goods imported under HS2012 will change compared to HS2007.
- If there is no change in classification arising from HS2012, then current tariff classifications should be used.
- If there is a change to tariff classification under HS2012, importers must use HS2012 when completing Import Declarations.

Customs indicates it will issue a further Notice when HS2012 changes have been implemented for each of the FTA.

Customs also observes that Origin Advance Rulings issued under HS2007 remain unchanged.

### Australian Customs and Border Protection Notice No. 2011/63

This Notice is entitled *"Changes to the Australian Harmonized Export Commodity Classification ("AHECC") effective 1 January 2012"*.

This Notice, as with earlier Customs Notices, confirms that new AHECC for export goods are to take effect from 1 January 2012.

The Notice confirms that AHECC 2007 should be used for goods being exported before 1 January 2012 but that for exports departing after 1 January 2012, AHECC 2012 should be used. The Notice includes links to the 2012 version of AHECC from the ABS website. It also refers to an information paper having been issued by the ABS referring to background on the major update to AHECC as well as other correspondence including where Codes will change.



## Warning – The need to juggle old and new classifications

Unfortunately, the content of Notice No. 2011/62 may well create some issues for a number of importers and their service providers given that the overseas classification of FTA goods in CoO and based on self-classification may well differ to classification to be used on Australian Import Declarations. The Notice makes no reference to any moratorium or relief from penalty when errors may arise from the conflict between FTA tariff classification overseas and HS2012 classification in Australia. Accordingly, those associated with Import Declarations need to carefully read and implement Notice 2011/62 until further notice.

As always, we remain ready to assist where possible.

## Contact us

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