

24 March 2011

Customs, Trade and Transport Law e-alert

New Bills introduced will have an impact on industry

Industry needs to be aware of the progress of two new Bills introduced into Federal Parliament on 23 March 2011 which will have an impact on their operations.

New controls of exports and licensed premises

The first Bill is the *Customs Amendment (Export Controls and Other Measures) Bill 2011* ("**Customs Amendment Bill**"). An earlier version of the Customs Amendment Bill was the subject of an Exposure Draft which was released for industry comment and I provided commentary on the Exposure Draft including presentations at CBFA State Conventions. The Customs Amendment Bill is effectively identical to the Exposure Draft.

The Customs Amendment Bill will have an impact in a variety of areas including the following.

- Exporters and their service providers may have increased interruption to their supply chains. The Customs Amendment Bill gives the Australian Customs and Border Protection Service ("**Customs**") a wider right to ask questions and seek documents in relation to export goods and the ability to suspend any Authority To Deal given in relation to export goods pending resolution of issues raised by Customs.
- Those involved with licensed depots and warehouse premises may face additional conditions. These can be imposed unilaterally by Customs or be imposed arising out of an application for a variation to a licence. Any such additional conditions can be imposed for a variety of purposes relating to the *Customs Act 1901* or other Federal, State or local legislation as prescribed by Parliament. In addition, Customs has been granted powers to suspend or cancel licences where the CEO of Customs believes it is necessary or desirable to do so to protect the revenue or to ensure compliance with a variety of laws. Finally, there are a number of new strict liability offences to punish non-compliance with licence conditions with the option of the issue of Infringement Notices under the *Infringement Notice Scheme*.

As previously mentioned, exporters and service providers to exporters need to be aware that there could be increased intervention in export of certain goods. Further, those operating licensed premises need to be aware of the changes to be implemented by the Customs Amendment Bill and to take appropriate action to address and manage additional risks associated with the Bill.

HS 2012 changes to Tariff Classification

The second Bill is the *Customs Tariff Amendment (2012 Harmonized System Changes) Bill 2011* ("**HS 2012 Bill**").

The HS 2012 Bill contains amendments to the *Customs Tariff Act 1995* ("**CTA**") to implement changes resulting from the fourth review of the International Convention on the Harmonized Commodity Description and Code System (known with affection by all of us as the Harmonized System).

According to the Explanatory Memorandum to the HS 2012 Bill, the major amendments can be summarised as follows.

- Amendments concentrate particularly on environmental and social issues that are of global concern, including the use of the Harmonized System for identifying goods of specific importance to the Food Security Program of the Food and Agricultural Organisation of the United Nations.
- New subheadings for specific chemicals controlled under the Rotterdam Convention of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("**the Rotterdam Convention**") and for ozone-depleting substances controlled under the Montreal Protocol on Substances that Deplete the Ozone Layer ("**the Montreal Protocol**").
- To reflect changes to international trade patterns. This includes deleting more than 40 subheadings due to low volume of trade in particular products, separately identifying certain commodities in either existing or new headings and reflecting advances in technology where possible.
- A number of amendments aiming to clarify text to ensure uniform application of the Harmonized System terminology.
- Amendments to Schedule 5 of the CTA (dealing with preferential entry under various Free Trade Agreements) to ensure consistency to changes to the classification of those goods in Schedule 3 with effect from the Bill.

Again, according to the Explanatory Memorandum, the Bill gives effect to the HS 2012 changes while maintaining existing levels of tariff protection and margins of tariff preference.

All those involved in the importing of goods (including importers, freight forwarders, licensed customs brokers and the providers of software to industry to enable the reporting of imports) will be affected. It should be remembered that errors in the use of tariff classifications can be subject to penalty action by Customs whether or not there is underpayment of duty associated with the use of the incorrect tariff classification.

While industry will doubtlessly take time and effort to review the effect of the changes, hopefully Customs will adopt a position which will allow for a moratorium against penalties while parties work to ensure that they have properly adopted the new tariff classifications.

As you would be aware, Customs places a premium on informed compliance and that those who take steps to ensure that they comply with the new requirements will find a number of benefits from their efforts. It would be in the interest of service providers to take steps to ensure their clients are aware of any likely changes to tariff classification and to consider any existing Tariff Advices or other rulings from Customs which may be voided or may need amendment arising from the changes associated with the Bill.

As always, we would be happy to assist with changes to practices associated with the Bills and will keep you informed on progress of the Bills.

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