

NEWSLETTER 2008/5

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DUTY RECOVERY AND PAYMENT UNDER PROTEST

The Customs Act has been amended to modernise provisions relating to customs duty recovery and payments under protest and to allow refunds to be applied against unpaid duty in some circumstances. The amendments commenced on 9 August 2008.

Duty recovery

Duty recovery provisions in the new section 165 of the Customs Act provide that an amount of duty that is due and payable in respect of goods, is a debt due to the Commonwealth and is payable by the owner of the goods and that an amount of a drawback, refund or rebate of duty that is overpaid to a person is a debt due to the Commonwealth and is payable by the person.

Demand for duty

The Chief Executive Officer (CEO) may make a written demand for the payment of an amount of duty that is a debt due to the Commonwealth. The demand must specify the amount of the duty or overpayment being demanded and must include an explanation of how the amount has been calculated.

Time limit for recovery of duty

New section 165 limits the time for recovery of customs duty to four years, except in the case of fraud or evasion where no time limit will apply. For an amount of duty that is due and payable in respect of goods, a demand must be made within four years of the date the amount was to be paid. For example, in the case of goods entered for home consumption duty is payable at the time of the entry of goods. Therefore, in this situation, a demand must be made within four years of the date of entry for home consumption. For an amount of a drawback, refund or rebate of duty that is overpaid to a person, a

demand must be made within four years of the date the amount was paid. New section 165 brings the recovery of customs duties in line with the recovery of GST and other indirect taxes.

Legal proceedings to recover duty

Customs may undertake legal proceedings to recover duty if the CEO has made a demand for payment under new section 165 or the CEO is satisfied that the debt arose as a result of fraud or evasion. This means that if a valid demand is not made within four years from the relevant time, the debt is not recoverable. The exception to this is where the CEO is satisfied that the debt arose as a result of fraud or evasion.

Application of drawback, refund or rebate against duty

A new provision has been inserted to allow the CEO to apply the amount of a drawback, refund or rebate in respect of goods, against the duty payable on the same goods. If the amount of drawback, – (Continued on Page 2)

JET FUEL DOWN 20 PERCENT

Jet fuel prices recently fell to their lowest level in nearly six months, giving beleaguered airlines some relief after record high prices in July. The daily price of jet fuel reached \$3.171 a gallon on Aug. 8 on the U.S. Gulf Coast and \$3.196 in Los Angeles. That was nearly 50 cents below where prices ended just two weeks before and the first time jet fuel has been below \$3.20 a gallon since March. The Los Angeles price was 70 cents, or 20 percent, below the average price in July. The decline means the falling price of oil is starting to be felt in earnest in the airline world, and with oil prices falling to around \$113 a barrel air carriers can expect an even sharper pullback. Jet fuel prices had reached historic highs in June and July, peaking at close to \$4.40 a gallon on some markets before retreating below the \$4 mark.

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(Continued from Page 1) – refund or rebate of duty on the goods is less than the amount of duty payable on the goods, the balance of the duty payable will still be a debt due to the Commonwealth.

Payment under protest

The amending Act also introduces new provisions relating to payment under protest. Under the new provisions, a payment is taken to be made under protest where:

- an owner of the goods or the agent of the owner gives Customs notice, by document or electronically, that the payment is being made under protest; and
- Customs receives the notice no later than seven days after the day on which the payment is made.

When making a payment under protest, the notice to Customs must:

- contain the words ‘paid under protest’;
- identify the import declaration that covers the goods to which the protest relates;
- if the protest does not relate to all goods covered by an import declaration, describe the goods to which the protest relates;
- include a statement of the grounds on which the protest is made; and
- be signed by the owner or the agent of the owner.

CUSTOMS BROKERS

The Customs Act has been amended to update the brokers licensing provisions to recognise the changing nature of employment in the broker community. These amendments commenced on 13 July 2008. The amendments repeal the conditions that a nominee of a customs broker:

- cannot be the nominee of another customs broker (paragraph 183CD(1)(f)); and
- cannot be a customs broker at a place other than a place where the first-mentioned customs broker is a customs broker (paragraph 183CD(1)(j)).

The repeal of these conditions means that a freelance or locum customs broker may be a nominee of more than one corporate customs broker at any one time. The amendments to the broker licensing provisions do not change the responsibility of a corporate customs broker to:

- always have at least one nominee broker associated with the brokerage; and
- advise Customs in writing within 30 days of any change in circumstances including (but not limited to) changes in the nominees employed by the brokerage (either commencing or ceasing). Customs must also be advised by the nominee, in writing, of the commencement of employment with a corporate customs brokerage.

The lodgement of import or warehouse declarations in the Integrated Cargo System (ICS) by a nominee of a corporate customs broker is subject to a check that the nominee is recorded as being employed by the corporate brokerage. Failure to advise Customs of any changes in the nominees employed by the corporate customs broker

will result in the nominee being unable to lodge the declaration.

CHANGE OF TARIFF CLASSIFICATION PRACTICE - ACN 2008/34

This ACN clarifies the provisions that apply when an advised change of administrative practice occurs in regard to the classification of particular goods. Where such a change of practice occurs, Customs will not apply the new practice retrospectively. Where the change results in a higher rate of duty applying to particular goods, Customs will not seek to recover further duties for:

- goods imported prior to advice of the change of practice; or
- on goods in transit at the time of the advised change provided that such goods were entered in accordance with the advised practice applicable prior to the change. Where the change of practice results in a lower rate of duty applying to particular goods there will be no entitlement (as a result of the change to practice) to refunds of any duty paid before the alteration of the practice.

CHANGES TO TARIFF ADVICE AND TARIFF CONCESSION ORDER APPLICATIONS

Tariff Advice Applications

In response to an increased demand for Tariff Advices, Customs will be screening all future Tariff Advice applications to ensure that supporting evidence is supplied. This is expected to assist Customs’ capacity to meet service standards. Customs expects all Tariff Advice applications to at least meet a minimum standard of supplied information. The information requirements for future Tariff Advice applications may be summarised as follows:

- detailed identification and description of the goods to be imported;
- detailed reasons for the claimed heading and subheading (as well as for the tariff headings considered and rejected); and
- Illustrative Descriptive Material (IDM), other supporting evidence and/or sample (as appropriate) to be provided to Customs when lodging a manual application or within five days of entering the electronic Tariff Advice application.

Customs will not process a Tariff Advice application that does not include clear and legible IDM, other supporting evidence and/or a sample as required. Where a Tariff Advice application is accepted but further information is requested by Customs, applicants will have 14 days to respond with the requested material. Failure to respond at all within this period will mean the application is rejected. Customs will consider an extension of the 14 day period, on a case-by-case basis, where a response has been received but the applicant requires more time to provide the information.

Tariff Concession Order (TCO) Applications

As a result of a similar increase in the number of applications for Tariff Concession Orders, Customs will

require more information about the goods to be covered in future TCO applications as well as improved compliance in certain other aspects. Customs has accommodated deficient TCO applications in recent years by accepting the application at the screening period and then spending much effort and time pursuing more information from the applicants. Although this meant there were few rejections of applications, it has also affected Customs' ability to process all applications efficiently and effectively. Customs acknowledges that, in some cases, the date of operative effect is important in TCO applications, but this does not remove the requirement for valid and complete applications. Following consultation with industry representatives, Customs has agreed to only reject TCO applications at the time of lodgement where:

- the identified goods are goods for which a TCO should not be made or are on the Excluded Goods Schedule;
- there is no IDM or it is irrelevant or illegible;
- there is no supporting evidence for the classification of the goods (consistent with the requirements for Tariff Advice applications);
- there is no evidence of a local manufacturer search or that search is misleading or erroneous; or
- potential local manufacturers have not been given at least ten working days to respond to inquiries concerning local manufacture prior to the lodgement of a TCO application.

Where a TCO application is accepted but further information is requested by Customs during the processing phase, applicants will have five calendar days to respond. Customs has only a limited period to screen TCO applications under the legislation and therefore the opportunity for applicants to redress deficient applications must be similarly constrained.

AIRLINES FACE HEAVY LOSSES

The global airline industry faces losses of approximately \$5.2 billion in 2008, according to a revised forecast from the International Air Transport Association. Soaring fuel costs are largely responsible for the change in outlook. Fuel was once 13 percent of operating costs but has become a 36 percent chunk of costs for most airlines. The revised estimate is based on an average crude oil price of \$113 per barrel, which translates to approximately \$140 per barrel for jet fuel. The total bill for fuel for the airline industry is expected to be \$186 billion this year. "The situation remains bleak. The toxic combination of high oil prices and falling demand continues to poison the industry's profitability," said Giovanni Bisignani, IATA's director general and CEO. North American carriers are expected to be hardest hit, absorbing \$5 billion of the projected losses. European airlines will likely make a profit but it will tumble from \$2.1 billion in 2007 to \$300 million in 2008. Asia Pacific profits are expected to shrink from \$900 million in 2007 to \$300 million this year. Middle Eastern profits will drop from \$300 million to \$200 million. Losses will

deepen as Latin American carriers lose \$300 million and African carriers go into the red by \$700 million, IATA predicts. IATA expects the difficult business environment to continue into 2009. Most economies are expected to deliver even weaker economic growth next year, which will negatively impact air travel and freight, the organization said. With an expected oil price of \$110 per barrel and continued weak growth, industry losses are expected to continue at \$4.1 billion. The 2009 fuel bill is expected to rise, as hedging offers less protection, to US\$223 billion comprising 40 percent of operating expenses.

NZ BIO FUEL TRIAL ON TRACK

Air New Zealand says it is a step closer to its bio-fuel test flight using a B747-400 aircraft, with the refining of the sustainable fuel under way in the US. The airline's General Manager – Airline Operations, Captain David Morgan, says the refined fuel, which is sourced from the jatropha curcas plant, will then be sent to engine manufacturer Rolls Royce for testing and approvals. "We are on track to meet our goal of operating the world's first test flight on a large passenger aircraft using fuel sourced from jatropha in the last quarter of this year," said Morgan. "Once testing is complete we will be able to identify a date for the test flight, which will operate subject to regulatory approvals from the Civil Aviation Authority." In the test flight, which will depart from and return to Auckland Airport, one of the B747 aircraft's four engines will be powered by a mix of jatropha and Jet A1. The fuel that is being refined for the test flight comes from South East Africa and India and has been sourced from seeds grown on environmentally sustainable plantations. Jatropha is a plant that grows approximately three metres high, has high water efficiency, and produces seed that contain inedible lipid oil that is used to produce fuel. Each seed produces between 30 and 40 per cent of its mass in oil. Jatropha can be grown in a range of difficult conditions, including arid and non-arable areas. By 2013, Air New Zealand expects to use at least one million barrels of environmentally sustainable fuel annually, meeting at least 10 per cent of its total annual needs.

HONG KONG OVERTAKES MEMPHIS

Hong Kong International Airport became the world's largest cargo airport in June, overtaking Memphis as the FedEx Express hub suffered a steep decline in summer traffic. Hong Kong, long the world's largest international gateway, handled 312,000 tonnes of cargo in June. The tonnage was 2.4 percent better than the same month a year ago, extending a relatively stagnant year for HKG. Memphis, meanwhile, saw cargo traffic fall 13 percent in June, to 289,715 tonnes. The decline in Memphis came largely from falling cargo traffic at Delta Air Lines and reduced business from DHL.

CUT FLOWERS GET THEIR SEA LEGS

Changes in storage technologies are driving a change from air to sea freight for cut flowers, according to

Bangalore-based rose supplier Ramakrishna Karuturi, who is a major player in this US\$30 billion a year industry. Sea freight "has the potential to bring cargo costs down by at least 60 per cent - and 40 per cent of a rose's cost is freight," he said in an interview with the Australian newspaper. Until recently, he said, flowers died quickly after being cut and so air was the only viable transport method. Sea freight now has evolved to offer special refrigerated containers where temperature, humidity, and other factors can be remotely monitored, he said. Karuturi also believes lower prices in the shops in the US, Europe and elsewhere will drive up demand.

ASIA PACIFIC TOPS BOEING FORECAST

Boeing says replacement airplanes have taken a 43 per cent share of international demand, much higher than the 36 per cent forecast before the oil crisis hit. The aircraft manufacturer also says the global air cargo market will continue to exhibit strong growth over the next 20 years and that volumes will triple. Its Market Outlook 2008 report says there will be a 5.8 per cent annual cargo growth rate for the next 20 years with Asia Pacific the region with the greatest future market value and highest number of airplane deliveries, followed by North America and Europe in second and third place, respectively. The 2008-2027 global market value is estimated at US\$3,200 billion, 38 per cent of which will be Asia-Pacific with a market value of \$1,190 billion.

STUNNING SECURITY IDEA FROM U.S.

A US Department of Homeland Security official allegedly has requested a proposal from the inventor of a 'safety bracelet' that doubles as a stun device. According to a promotional video on Youtube, the bracelet would be worn by all airline passengers and would hold similar information to that carried on a boarding pass, personal information about the traveller and would monitor the whereabouts of each passenger and his/her luggage. It also would shock the wearer on command, completely immobilising him/her for several minutes. The Electronic ID Bracelet, as it's referred to, would be worn by every traveller "until they disembark the flight at their destination." In a letter to the inventor, the official said: "To make it clear, we [the federal government] are interested in . . . the immobilising security bracelet, and look forward to receiving a written proposal." It went on: "It is conceivable to envision a use to improve air security on passenger planes."

SOLAR POWER FOR CARGO SHIP

Two Japanese companies are building a new solar power system to run alongside the diesel engines on a cargo ship that transports motor vehicles to the USA, claiming it will cut fuel consumption by 6.5 per cent. The average cargo ship burns 120 gallons per mile and the fuel is commonly known as bunker fuel, which is claimed to be one of the 'dirtiest' fuels available. A study published in Environmental Science and Technology found emissions from bunker fuel cargo ships may have caused 60,000 deaths worldwide. Subsequent research found ship

exhaust contributed as much as 44 per cent of the sulphate found in fine particulate matter in the atmosphere of coastal California, USA.

CUSTOMS CONTAINER EXAMINATION FACILITIES

The Customs Brokers and Forwarders Council of Australia Inc (CBFCA) has reported a recent incident in which an original cargo report was provided in accordance with statutory provisions. However, it was withdrawn and re-reported in order to affect an amendment to voyage number data. The replacement cargo report was selected for Container Examination Facility (CEF) processing and was deemed by the Australian Customs Service (Customs) to be "late reported", despite the fact that the original was on time. As a result, Customs determined that the consignment did not meet the terms of extended stevedore / Customs storage periods. The CBFCA referred this back to Customs as part of an ongoing concern in relation to the Integrated Cargo System (ICS) design. As well as causing duplication in processes for both Customs and industry, in this case it had generated considerable angst between the affected forwarder, Customs broker and importer, leading to court action. Understandably, the importer was seeking compensation from someone. There were concerns that the court may well point the finger at the forwarder as being "guilty" as they most likely would have been guided by the formal Customs correspondence. As a result of the limitation in ICS design and contractual arrangements with stevedores, Customs subsequently agreed to pay the direct costs and to review their internal processes (and external communications) as a result of this case.