

Presentation to the CBAFF Conference

THE CUSTOMS AND EXCISE ACT: OVERVIEW AND
HOW THE CHANGES WILL AFFECT LOGISTICS
INDUSTRY STAKEHOLDERS

QUEENSTOWN
19 MAY 2016



gadens

Gadens profile

A nationally-represented, full-service legal services provider, with over 150 years experience in providing legal and advisory services to companies in many sectors across Australia.

- Across our legal network we have over 145 partners.
- Offices in Adelaide, Brisbane, Melbourne, Perth and Sydney.
- Strong alliances with firms in other Australian States and Territories.
- Specialised expertise in the Asia Pacific region, with offices in Port Moresby (PNG) and Singapore.
- Expected to launch in 2016, Global firm Dentons, Singapore's Rodyk and Gadens have united to create a dominant global law firm in the Pacific Rim
- Winner of 'highly commended' in the Lloyd's List Maritime Service Awards 2015

Andrew Hudson profile

- Past Chair, Customs and International Transactions Committee of the Law Council of Australia
- Past Chair of the International Law Section of the Law Institute of Victoria
- CBFCA retained counsel
- Member of CBFCA Victorian Advisory Committee
- Member of Committee of Management of Food and Beverage Importers Association (www.fbia.org.au)
- Member of the IAG for the TTP, the CWG for the OTS, the Working Group on Transfer Pricing for the ATO, the ADC ITRF, the DAWR DCCC, the DIBP NCTF and related working groups.
- Director of Export Council of Australia (www.aiex.com.au) or (www.export.org.au/eca/homepage)
- Past Director – Australian Services Round Table (www.servicesaustralia.org.au)
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- Register for updates
- Not far away!

Customs Review Process

- Compliment NZ Customs approach to reform
- Can be distinguished to the Australian legislation which is “bursting at the seams”
- Has been an extensive consultation process
- A number of questions raised in a Discussion Paper and subsequent engagement
- Have been working with CBAFF drawing on own experiences in Australia to provide responses
- Now the release of the Government position has been clarified

Specific areas of interest

- Many raised in presentation at the last CBAFF conference
- Use of Delegated Legislation (Regulations, Orders in Council or Customs Rules)
- Retention of business records
- Revenue
 - Valuation of imported goods
 - Comptroller's discretion
 - Review of duty assessments
- Administrative penalties
- Retention of business records
- Additional duty
- Access to JBMS

Use of Delegated Legislation - 2015 position

- Regulations, Orders in Council, Customs Rules
- Understand the need but not always loved!
- Concerns on consultation and notice
- Not for prescribed basic areas
 - Classification
 - Valuation
 - Removal of rights (refunds)
 - New duties/charges
- Otherwise require
 - Consultation/engagement
 - Warning
 - Time to adopt
 - Not penalise for breach before a moratorium period
- Like idea of a “Statement of Principles” (ALRC recommendations)

Outcomes – 2016 position

- Principles based approach
 - Details in Regulations or Rules
- Purpose statement
- Consultation requirements to be required by the Act
- Publication of delegated legislation to be required by the Act

Retention of business records – 2015 position

- Option to leave status quo, require prior approval to hold anywhere or just allow to be held anywhere
- Customs concerned that electronic retention acceptable but need originals in NZ
- Have seen no problems with Australian experience that can
 - Have electronic documents
 - Hold overseas
 - Require production when needed
 - Recognise international practice

Outcomes – 2016 position

- Authorised parties will be allowed to store offshore and in the cloud
- Customs to authorise/disallow such storage and set conditions
- Penalties for non compliance

Revenue – 2015 position

- Prefer to leave “as is” by excluding international freight and insurance costs from customs value
- Prefer the idea of defining “sale for export”
- Like the inclusion of “managerial discretion” in revenue recovery

Outcomes – 2016 position

- Imported goods to be valued by current method to exclude international freight and insurance costs
- Legislation to include definition of “sale for export” consistent to WCO practice
 - *“Last sale prior to goods being introduced to importing country”*
- CEO of Customs to be granted explicit statutory discretion in making and correcting assessments and collecting duty
- Allow declaration of provisional value
 - If regular changes to value after import
 - Subject to APA and transfer pricing amendments being made
 - At CEO discretion
- No interpretive rulings but more non statutory guidelines published
- Publications of Rulings as required internationally and criteria for publication if not so required

Administrative penalties – 2015 position

- Resist the temptation to extend
- If do so, subject to legislation proper guidelines and review and defences
- Upper limit on penalties below \$50K

Outcomes – 2016 position

- 26 changes to offences and penalties
 - 21 increases to maximum
 - 4 introduced a differential between individuals and corporations
 - One increased term of imprisonment for defrauding revenue from six months to five years
- New INS to replace Petty Offences
 - Determine which are appropriate for INS
 - To align with 2008 guidelines for New Infringement Schemes
 - Details in Regulations
- Minimum administrative penalty retained

Outcomes – 2016 position

- Maximums for administrative penalties reduced for lower level offending
 - Lack of reasonable care reduced from \$50K to \$25K
 - Gross carelessness reduced from \$50K to \$25K
 - Errors or omissions with knowledge kept at \$50K
- Penalties expanded to exports
 - All subject to procedure for issue and review

Additional duty – 2015 position

- Not keen on additional duty concept
 - Assumes that Government correct
 - Add to grant of refund?
- Not keen to extend further
- Not apply to inadvertent, innocent, informed error or where voluntary disclosure
- Not require to pay duty all additional duty before review appeal
 - Australian PUP regime

Outcomes – 2016 position

- Agreement in principle to replace with modern sanctions approach
 - Distinguish between compensation and penalties
 - Distinguish between shortfall payment and late payment
 - Cost effective voluntary disclosure
 - Interest on unpaid amounts
 - Compensation for disadvantage due to Customs error
- Fines to be determined after discussions with Internal Revenue

Access to the JBMS

- Not in Discussion Paper but subsequent engagement
- Competency to be included in legislation for registration
 - Set standards and measures
- Lack of competency in updating JBMS information grounds for suspension or cancellation
 - Can be immediate
- Subject to appeal

Impacts for Industry

- Congratulate on responses as largely consistent to submissions
- Significant improvement both in NZ and compared to Australia
- Need to communicate to clients, prepare and amend procedures
- Continue to engage in development by Customs
- Review terms and conditions for additional warranties and indemnities from clients and other service providers
- Increased vigilance on JBMS use and competencies
- Use of Rulings
- Use of voluntary disclosure
- More training
- More and different communication to clients
- Changes to reporting procedures and software
- More and difference insurance

Need from Government, Customs

- Continued engagement in new Act and procedures
- Engagement on delegated legislation
- Co-operation in communication to clients and others in supply chain
- Moratorium on changes

Questions



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