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Message from National Manager, Compliance Assurance Branch

I'm pleased that Compliance has received some excellent feedback from Industry as a result of our September Update and was encouraged that the publication is considered by Industry as offering assistance in meeting border requirements.

This edition focuses on the new Administrative Arrangements for Excise Equivalent Goods, changes to the Infringement Notice Scheme, increased focus on 'Delivery Without Authority' breaches in 2010, ASEAN-Australia-New Zealand Free Trade Agreement, update and issues of interest from the National Refunds Centre, update on the Compliance Monitoring Program and the Compliance Statistics for the 2009-10 financial year.

The major news for Compliance this quarter is the new Administrative Arrangements for Excise Equivalent Goods. In brief, from 1 July 2010, the Tax Office will administer legislation applying to Excise Equivalent Goods which are warehoused in licensed section 79 warehouses. This will be a major change for Customs and Border Protection and will result in the transfer of staff and resources to the Tax Office. We will be working with the Tax Office to ensure that administration of the new arrangements is seamless, the impact on Industry is minimal, and importantly, that we keep impacted clients informed.

I would like to take this opportunity to wish you all a very happy and safe Christmas.

Craig Sommerville
National Manager
Compliance Assurance



New Administrative Arrangements for Excise Equivalent Goods

In September 2008 the Productivity Commission (PC) issued its *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades*. In response to the Review, the Government directed the Australian Taxation Office (Tax Office) and Customs and Border Protection to jointly develop options to minimise duplication of revenue administration and compliance costs for importers of Excise Equivalent Goods (EEGs). EEGs are imported alcohol, tobacco and fuel products.

A project team was formed and consulted extensively with stakeholders and industry to determine the level of support for the PC's recommendation, identify irritants with the current arrangements and determine options for the administration of EEGs. The industry consultation determined that in general industry supported a single administrator for EEGs.

On conclusion of the project, the Chief Executive Officer (CEO) of Customs and Border Protection and the Commissioner of Taxation agreed that, from 1 July 2010, the Tax Office will administer, under delegation, Customs and Border Protection legislation applying to EEGs which are warehoused in a licensed section 79 warehouse.

The Minister for Finance and Deregulation, Assistant Treasurer and Minister for Home Affairs announced this change on 30 November 2009.

WHAT ARE THE BENEFITS OF THE NEW ARRANGEMENTS?

A single administrator will reduce compliance costs for these businesses. It will also streamline the process by reducing duplication across the two agencies and will allow the Tax Office to develop a complete picture of industry activities associated with both customs and excise duties on excise equivalent goods.

HOW WILL THE NEW ARRANGEMENTS WORK?

From 1 July 2010, Customs warehouse license holders who store EEGs will deal only with the Tax Office in relation to all aspects of their licence. Businesses that operate duty free stores, supply the international shipping or airline industries (providores and catering bonds) will not be affected and their current arrangements regarding the administration of EEGs will continue.

Importers of EEGs that are warehoused will continue to use the Integrated Cargo System (ICS) to report and enter the goods for warehousing and pay the duty. From 1 July 2010 they will deal with the Tax Office for any authorisations or permissions relating to EEGs.



Customs and Border Protection will continue to be responsible for all border protection activities related to the importation and exportation of EEGs as well as EEGs that are imported and not warehoused (that is, EEGs that are entered directly for home consumption).

WHEN WILL THE NEW ARRANGEMENTS COME INTO EFFECT?

The new arrangements will be phased in over 18 months beginning on 1 January 2010, with up to 22 full-time positions to be transferred from Customs and Border Protection to the Tax Office to take up this new role.

HOW WILL INDUSTRY BE KEPT INFORMED OF THE CHANGES?

High level Ministerial oversight of this reform will be maintained through a Better Regulation Partnership, involving the Minister for Finance and Deregulation, Assistant Treasurer and Minister for Home Affairs. Ministers have requested Customs and Border Protection and the Tax Office to monitor the implementation of these arrangements and include industry feedback in the six monthly updates provided to them.

Customs and Border Protection and the Tax Office are working together to finalise a communication strategy which will ensure that parties are engaged throughout the implementation and transition process.

WHERE TO FIND MORE INFORMATION

Further information is available on our website www.customs.gov.au and the Australian Taxation Office website www.ato.gov.au/excise in the form of frequently asked questions and answers. These provide more detail about the change.

If you have any questions please contact:

Customs and Border Protection on 1300 759 677 or email EEGPT@customs.gov.au

- Tax Office on 1300 137 290, select Option 4, or www.ato.gov.au/excise.



New Guidelines for the Infringement Notice Scheme

On 22 May this year the *Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009* received royal assent. This legislation was introduced to formalise the undertaking to industry (ACN 2007/03) that when considering sanctions, Customs and Border Protection would base its calculations for Cargo Report timeliness on the Actual Arrival of a vessel or aircraft. Note that this refers to consideration for sanctions only and does not negate the legal requirement for Cargo Reporters to lodge their reports based on the estimated time of arrival.

NEW OFFENCES INTRODUCED

New offences were also introduced relating to accounting for and keeping safe goods that are subject to the control of Customs and Border Protection, including goods unloaded and stored at a Cargo Terminal Operator, and goods held in a section 77G depot or a section 79 warehouse.

Two new offences have been created under subsections 36(1) and (2) for failing to keep goods, which are subject to the control of Customs, safely.

Four new offences have been created under subsections 36(4), (5), (6) and (7) for failing, if required by a Collector, to account for goods which are subject to the control of Customs.

A new section 37 specifies how a person, if requested, is to account for goods to the satisfaction of a Collector.

CARGO REPORTING LEGISLATIVE CHANGES

The new legislation formalises the agreement made with industry that Customs and Border Protection would not prosecute or serve an Infringement Notice in relation to reports that are made at least 48 hours (for ships) or 2 hours (for aircraft) before the actual time of arrival of the ship or aircraft, rather than the estimated time of arrival of the ship or aircraft. This amendment gives legislative effect to that agreement.

THE INFRINGEMENT NOTICE SCHEME (INS)

Some of the new offences under this legislation are strict liability offences, and remedial action may be pursued through the Infringement Notice Scheme in lieu of prosecution.

The applicable penalty for the new subsections is 12 penalty units (\$1320.00).



ADMINISTRATIVE MORATORIUM APPLIES

Customs and Border Protection has allowed for a six month administrative moratorium for these new offences. In effect, there will be no prosecutions or Infringement Notices issued for these new offences committed before 22nd of May 2010.

For further information contact the Customs and Border Protection Depot or Warehouse Compliance team in your area, email: compliance1@customs.gov.au or call 1300 363 263.

Increased focus on ‘Delivery Without Authority’ breaches in 2010

The term “delivered without authority” or “delivery without authority” (DWA) is used by Customs and Border Protection and industry to refer to the movement, alteration or interference with goods subject to the control of Customs without authority by or under the *Customs Act 1901*.

A DWA is a specific instance where cargo has been moved out of Customs and Border Protection control (usually from a Cargo Terminal Operator (CTO), depot or warehouse) without an authorised movement status or an Authority to Deal (ATD). DWA's can also occur during the course of an authorised underbond movement.

The implications of goods being DWA range from a breach of legislation, to potential loss of Government revenue, and in the worst case scenario, Customs and Border Protection being unable to perform its community protection obligations for goods held for border processing or further intervention.



INCREASE IN BREACHES DETECTED

Customs and Border Protection has recently increased focus on instances of DWA in the cargo control industry in response to a marked increase in the number of DWA's being identified.

One of the primary concerns with the accounting of underbond cargo in the CTO, depot and warehouse environments revolves around the ability of Customs and Border Protection to perform its regulatory role in the control of goods at the border.

More specifically, depots and warehouses are licensed by Customs and Border Protection to hold, store and move underbond goods within legislative guidelines, and must also comply with licence-related restrictions designed to minimise the risk to government control and revenue.

The majority of DWA's that are identified by Customs and Border Protection are the result of mistake, error or carelessness. However, there are also recent cases that illustrate that some entities are deliberately using DWA in order to achieve financial gain or to expedite delivery of the goods from Customs control.

Industry can expect an increase in focus on underbond movements by Compliance Assurance in 2010, with special attention being paid to goods moving via underbond from CTO's and depots.

HOW CAN YOU COMPLY WITH UNDERBOND MOVEMENTS?

- If you apply for an underbond movement, ensure that the cargo is subsequently moved in a timely manner and not left sitting in transit at an unlicensed place.
- When you receive underbond goods at your depot, ensure that you outturn the receipt or unpack of the goods within the legislated timeframe (24 hours).
- If you are expecting goods to arrive at your depot via underbond movement and they don't arrive within a reasonable time, ask the transport company or freight forwarder where the goods are and when they are expected to arrive.
- If you have any suspicions about the seals on containers or unusual delays in transit, or if you suspect that the goods have been tampered with, report it to your local Compliance Assurance office.

Compliance Assurance teams will be looking at outturn performance at depots to determine the level of risk that a premise represents. A high risk rating will mean more monitoring from Customs and Border Protection.

If you have any questions about your responsibility in relation to underbond movements ([Sea](#) and [Air](#)), contact Compliance Assurance, email: compliance1@customs.gov.au or call 1300 558 099



ASEAN-Australia-New Zealand Free Trade Agreement

The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area ([AANZFTA](#)) was signed in Thailand, on 27 February 2009.

The AANZFTA will enter into force for Australia, New Zealand, Singapore, Myanmar (Burma), Brunei, Malaysia and Vietnam on 1 January 2010.

The entry into force date for the remaining ASEAN Member States (Thailand, the Philippines, Indonesia, Laos and Cambodia) is subject to implementation of required domestic legislative requirements by those countries.

Imported goods from these countries are not originating goods until their entry into force is reached. It is therefore not possible to make use of AANZFTA to import goods from these countries until the entry into force date. An Australian Customs Notice ([ACN](#)) will be issued and published on the Customs and Border Protection website when the entry into force date for those countries is known.

The full text of the AANZFTA, including Schedules, AANZFTA Fact Sheets, Guide to the Chapters of the Agreement and a Background to Negotiations can be viewed on the web site of the Department of Foreign Affairs and Trade ([DFAT](#)).

Additionally, DFAT has published a document titled “[Making Use of AANZFTA to Export or Import Goods](#)” to help exporters and importers to make full use of AANZFTA. It contains practical advice on how to find tariff commitments and Rules of Origin (ROO) requirements for individual products.



National Refunds Centre

The National Refunds Centre (NRC) was established in Adelaide in January this year when the previous regional approach to processing refunds was reviewed and discontinued (refer [ACN 2008/58](#)). The NRC has been reviewing and consolidating processes and policies to ensure consistency with the refunds legislation contained in the *Customs Act 1901* and Regulations.

The following issues are brought to brokers' attention with the aim of ensuring that the processing of refund applications occurs as smoothly as possible for both industry and Customs and Border Protection.

WITHDRAWAL OF DECLARATIONS

Customs and Border Protection legislation under section 71F of the *Customs Act* allows an import declaration to be withdrawn, and if eligible a refund paid, before the goods are dealt with in accordance with the declaration. Valid reasons for withdrawing an import declaration include:

- Duplicate import declaration finalised in the ICS (and not used); or
- The Owner wishes to utilise another broker.

The NRC receives a number of enquiries from brokers seeking refunds in situations where they have withdrawn declarations after the goods have been delivered from Customs and Border Protection control. The withdrawal may have been made because the details on the existing declaration do not accurately reflect the import transaction.

However, importers and brokers are reminded that they are not permitted to withdraw the declaration once the relevant goods have been dealt with in accordance with that declaration. Importers and brokers should only consider amending the import declaration.

Refunds will not be paid in these situations and brokers may also be subject to penalty for falsely answering ICS lodgement question 14 (*Have the goods been delivered into home consumption or into a S79 warehouse?*).

If an 'exceptional circumstance' exists then it should be referred to the NRC for consideration before any withdrawal can be authorised to take place. Refunds may not be paid in these situations and the importer or Customs broker may be subject to penalty for breaching the *Customs Act*.



DUPLICATE DECLARATIONS

Customs and Border Protection is concerned at the significant number of instances where duplicate declarations are lodged in respect of the one consignment. These errors cause significant unnecessary workload for Customs and Border Protection and the NRC, as well as causing potential cash flow problems for affected brokers and importers.

Under section 71G of the *Customs Act*, it is an offence to lodge a second declaration in respect of goods unless the first lodged declaration has **already** been withdrawn. Penalties may apply.

Sub-section 181(4) also prohibits a broker acting on behalf on an owner (e.g. by lodging a declaration on behalf of the owner) unless that broker has written authorisation from the owner. The NRC may also ask for written authorisation to be produced before processing refund applications in these circumstances. Penalties may apply for infringements.

Brokers should therefore ensure that the appropriate declaration is withdrawn as there is no facility to reinstate a withdrawn declaration. A refund will only be paid where the “non-operative” declaration is withdrawn and Customs and Border Protection is satisfied as to the bona fides of the claim.

ORDERS TO PAY AGENT

Brokers seeking payment of refunds to their own account should ensure that a completed and signed Order to Pay Agent (Form B923) is included with the documents supplied to support the refund application.

For refund claims lodged in the ICS, lodgement declaration number 10 requires a broker to state that they hold this signed authorisation at the time of lodgement of the refund application. Where it is found that the broker did not hold this authorisation at time of lodgement, they may be subject to penalty.

Alternatively, if the broker has arranged a standing authority for payment in respect of the relevant importer, they should quote the authority number in the “Change Reason Description” field when preparing the refund version of the declaration in ICS.

NOTICES TO PRODUCE DOCUMENTS (NPDs)

NPDs are the accepted method of communication with brokers in respect of additional information required for processing of refund applications. Brokers who cannot currently access NPDs through their internal messaging system should rectify this with their internal IT service provider.



Brokers are also requested to check the details of NPDs transmitted through ICS before responding. The NRC often finds that brokers will resubmit the commercial documents set but ignore the requirements of the NPD (eg order to pay agent required). This may cause further delay in the processing of the refund.

NEED FOR COMPLETE ILLUSTRATIVE DESCRIPTIVE MATERIAL (IDM)

On receiving your refund application, Customs and Border Protection will assess the particulars and may, through the NRC, request supporting evidence should verification become necessary.

Where tariff concession orders or changes in tariff classification are the basis for the refund application, brokers should ensure that sufficient IDM is provided to display the compliance with all elements of the respective TCO or classification. Brokers should also consider including a written explanation which describes the relevance of the IDM where it is not obvious from the IDM itself.

REFUND APPLICATION PROCESSING PERIOD

Customs and Border Protection aim to process your refund applications (including the withdrawal of an import declaration) within 30 calendar days of receipt of all necessary information. If the NRC request supporting information or evidence, then importers

or Customs brokers also have 30 calendar days to provide the information requested, during which time the processing of the refund application is placed on hold. At the end of this period, the NRC will make a decision to approve or reject the claim.

The NRC will process refund applications as quickly as possible. Importers and Customs brokers should wait at least 30 calendar days after lodgement of their refund application before making any inquiries about the progress of the refund application. Importers and Customs brokers are also asked to check with the NRC before resubmitting documents.

Should importers and Customs brokers have exceptional and legitimate reasons for requesting the expedited processing of a specific refund application, then please contact the NRC (ph 08 84479310 or nationalrefunds@customs.gov.au), either before or when supporting documents are submitted.

FORWARDING OF DOCUMENTS

Where brokers believe that the reason for a red line match is a duty and/or indirect tax (ie GST, WET, LCT) refund they should submit the supporting documents directly to the NRC mailbox (nationalrefunds@customs.gov.au) or fax (08) 84479227 rather than forwarding to their local Redline mailbox or fax number. This will expedite processing.



BROKER ACCESS REQUESTS

Brokers are advised that the NRC has a five day turnaround for processing of broker access requests (i.e. where the importer authorises Customs and Border Protection to change ownership of the relevant declarations from the existing brokerage to a different brokerage.) The existing broker ABN should be included in the request. It is also preferable that you contact the NRC about an outstanding request rather than just resubmitting it.

REFUND REASON CODES “G” AND “H”

Refund applications under Customs Regulations 126(1)(g) or 126(1)(h) require the goods to be re-exported or destroyed or otherwise dealt with as approved by the NRC. Once permission to destroy the goods has been given by Customs and Border Protection an importer may opt to destroy the goods. It is not necessary for Customs and Border Protection to supervise the destruction. However, the waste management company engaged to undertake the destruction must provide a certificate which details the quantities and type of goods destroyed to enable confirmation of the basis for the refund.

Queries on any of these issues should be directed to the NRC.

NATIONAL REFUNDS CENTRE CONTACT DETAILS:

For more information on any of the above, please visit the Refunds [FAQs](#) on the Customs and Border Protection website, or via the following:

Email: nationalrefunds@customs.gov.au

Phone: 08 84479310

Fax: 08 84479227

Post:

National Refunds Centre
Australian Customs & Border Protection Service
PO Box 50, Port Adelaide SA 5015



Update on the Compliance Monitoring Program

The last edition of Compliance Update included an introduction to the Compliance Monitoring Program (CMP), which replaced the Benchmark Audit Program by utilising Pre-Clearance Intervention or Redline processing.

HOW TO IMPROVE COMPLIANCE FOR MINIMAL IMPACT ON YOUR BUSINESS

You can minimise the effect of compliance on your business by ensuring prompt presentation of the commercial documentation requested by Customs and Border Protection. This is likely to be particular supplier invoices and similar commercial documents relating to the lines being sampled. It is particularly helpful if the customs broker is able to respond and provide relevant additional information in a timely manner.

HOW WILL CUSTOMS AND BORDER PROTECTION KEEP ME INFORMED?

Customs and Border Protection will provide regular updates through the Compliance Update newsletter and via our website to advise industry on import data integrity issues arising from this activity.

If you have any questions or suggestions about the process, or would just like to comment, contact Compliance Assurance via email or telephone.



QUARTERLY FIGURES – SEPT 2009

Type of Non Revenue Related Detections	No of Detections	Percentage
Invoice Terms	95	25.1
Tariff Classification	58	15.3
Related Transaction	50	13.2
Valuation Date	28	7.4
Origin	22	5.8
Incorrect Supplier Details	14	3.7
Overseas Freight	13	3.4
Tariff Concession or Other Concessional Item	12	3.2
Quantity	8	2.1
Incorrect Importer/Owner Details	3	0.8
Non-Declaration of Imported Goods (Free of Charge Goods)	3	0.8
GST Exemption Code	2	0.5
Overseas Insurance	1	0.3
Other FID Data Inaccuracy		17.7
– Currency	18	
– Goods Description	16	
– Weight	14	
– Foreign Inland Freight	10	
– Transaction Basis	3	
– Free Trade Agreement Concession	2	
– Other	4	

Table: Common Detections Types



Compliance statistics 2009-10 financial year to date

THE INFRINGEMENT NOTICE SCHEME

INs – Infringement Notices served

DWL – Delegate Warning Letter

NDWL – Non-Delegate Warning Letter

1 JULY 2009 TO 31 OCTOBER 2009

FALSE AND MISLEADING STATEMENT RELATED OFFENCES

Offence	INs Served	DWL	NDWL
Offence 243T(1) False or misleading statement – loss of duty	1	22	8
Offence 243U(1) False or misleading statements – no loss of duty	0	2	0

MOVEMENT OF GOODS RELATED OFFENCES

Offence	INs Served	DWL	NDWL
33(2,3 & 6) – Moving, altering or interfering with goods subject to Customs control without authority	23	3	21

CARGO REPORTING AND ARRIVAL RELATED OFFENCES

Offence	INs Served	DWL	NDWL
64(13) Failure to meet reporting requirements for the impending arrival of a ship or aircraft	0	0	1
64AA(10) Failure to meet reporting requirements for the arrival of a ship or aircraft	1	0	0
64AB(10) Failure to meet reporting requirements for the report of cargo	0	0	3
64ABAA(9) Failure to meet reporting requirements for outturn reports	0	0	4

IMPORTING GOODS

Focussed Program Import audit statistics	1 July 2009 to 30 October 2009
Total Number of Audits	32
Total Number of Lines Checked	2,032
Total Number of Revenue Errors	445
Total Number of Non-Revenue Errors	41



IMPORT: AREAS OF NON-COMPLIANCE

Error Type - (Revenue)	Number	Percentage
Classification	202	45.39%
Interest	48	10.79%
Tariff Concession	31	6.97%
Relationship affecting price	28	6.29%
GST exemption code	20	4.49%
Origin	18	4.04%
Error Type (Non Revenue)	Number	Percentage
Cos Codes	41	100%

Top 3 errors by industry type:

NIL Area	Description	Number	Percentage
Alcohol	Quantity – fixed duty rates	6	54.55%
	Overseas Freight	5	45.45%
Auto	Classification	66	38.82%
	Tariff Concession	30	17.65%
	Overseas Freight	23	13.53%

Clothing	Classification	75	60.00%
	GST exemption code	18	14.40%
	Overseas Freight	11	8.80%
Mining	Relationship affecting price	9	56.25%
	Invoice terms	3	18.75%
	Overseas Freight	2	12.50%
Chemical	Classification	10	47.62%
	Overseas Freight	6	28.57%
	Origin	3	14.29%
Tobacco	Classification	10	76.92%
	Price	1	7.69%
	Tariff Concession	1	7.69%
Other	Classification	4	30.77%
	Relationship affecting price	3	23.08%
	Instruments	2	15.38%



Compliance update

EXPORTING GOODS

Focussed Program Export audit statistics	1 July 2008 to 30 October 2009
Total Number of Audits	6
Total Number of Lines Checked	200
Total Critical Errors	142
Total Non-Critical Errors	84

Critical Error Type	Number	Percentage
FOB	66	46.48%
AHECC	32	22.54%
Origin	11	7.75%
Owner Name	11	7.75%
Consignee Name	9	6.34%
Quantity	7	4.93%
Permits	3	2.11%
Destination	3	2.11%

The Exporting Goods chart lists the errors that are considered “critical errors”. Critical errors are errors that result in incorrect reporting of important information that is reported in our trade statistics, and information that allows us to risk-assess the cargo for prohibited exports.

INACCURATE EXPORT VALUES

Compliance Assurance (audit and non-audit) have identified more than \$745 million in overstated export valuations and about \$59.4 million in understated export valuations this financial year to date.

Common errors include the incorrect placement of decimal points, the use of incorrect currency when declaring the Free On Board (FOB) value and the placement of the Australian Harmonised Export Commodity Classification (AHECC) codes in the valuation field.

To minimise “critical errors” please take the time to check all decimal places, ascertain the appropriate currency for FOB goods and check that all valuation codes are entered correctly. This will save you time, money and resources in the future.

AIR AND SEA CARGO REPORTING

Average reporting time for Air Cargo YTD is 94% maintaining the high performance levels of the last 6 months.

Statistics for Air Cargo are calculated on performance against legislative timeframe (2hrs prior to aircraft's ETA at first port).

Sea Cargo reporting levels were maintaining levels around 90% however in October they dropped to 84% which can attributed to a process issue with one client.



Sea Cargo timeliness is based on latest ETA at first port on any version of the Impending Arrival Report.

PRE CLEARANCE INTERVENTION

Non-Audit activity for 01 July 2008 to 30 June 2009

Lines Checked	Lines in error	% of lines in error
68,281	23,483	34.39%
	Overstated	Understated
Actual Duty	\$133,579	\$3,557,722
Standard Duty	\$278,398	\$40,342
Good and Services Tax	\$64,926,827	\$81,240,996
Luxury Car Tax	\$2,123	\$126,284
Wine Equalising Tax	\$0	\$6,560

CONTROL AND ACCOUNTING

In 2009/10 financial year so far *22 percent* of Licensed Premises (warehouses and depots) have been checked.