



Law Council
OF AUSTRALIA

Business Law Section

Ms Alison Neil
Acting Assistant Secretary
Customs and Industry Branch
Trade, Customs and Industry Policy Division
Australian Customs and Border Protection Service
3 Constitution Avenue
Canberra ACT 2600

Via email: regulationsreview@customs.gov.au

23 February 2015

Dear Ms Neil,

I am writing to you in my capacity as the Chairman of the Business Law Section of the Law Council of Australia (LCA) and its Customs and International Transactions Committee (CITC)..

The LCA has a long history of providing assistance to the government of the day by offering considered, non-partisan opinions on the regulation that affects Australian business. It is from this perspective that the LCA welcomes the recent initiatives regarding the reduction of red tape, in order to improve the efficiency and effectiveness of policy delivery in general and in particular, reduce the burden of business regulation. In this regard this letter seeks to provide the CITC's view on the exposure draft of the new instrument to replace the Customs Regulations 1926.

In particular, the focus of the CITC in this instance is on the provisions relating to the making and lodgement of applications for refunds. This area is significant to Australian importing businesses as it continues to cause significant frustration and cost to amending importers.

The requirements relating to making and lodging an application rely on the Customs Regulations 1926

CUSTOMS ACT 1901 - SECT 163

Refunds etc. of duty

(1) Refunds, rebates and remissions of duty may be made:

(a) in respect of goods generally or in respect of the goods included in a class of goods; and

(b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.

(1A) The regulations may prescribe the amount, or the means of determining the amount, of any refund, rebate or remission of duty that may be made for the purposes of subsection (1).

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(1AA) Subject to subsection (1AD), the regulations may prescribe:

(a) the manner of making application, either by document or by computer, for such refunds, rebates or remissions; and

(b) the procedure to be followed by Customs in dealing with such applications, including procedures for requesting further information in relation to issues raised in such applications.

(1AD) The regulations may identify circumstances where a person is entitled to a refund, rebate or remission of duty:

(a) without making an application at all; or

(b) on making an application in respect of which a refund application fee is not payable.

When import transactions are subject to tariff or valuation rulings that result in the retrospective variation of the duty payable to the ACBPS, single bulk payments of can be accepted to the extent that duty is deemed to be underpaid. However, when a variation results in an overpayment of duty, under the existing regulation (as administered by the ACBPS) Australian importers who have a single refund reason that affects multiple import declarations must make multiple applications for refunds. This has resulted in extreme outcomes in some circumstances such as the preparation and lodgement of 75,000 applications for refunds in the case of transfer price adjustment to customs value. The CITC considers this to be an unnecessary cost to business and in terms of administration, an inappropriate allocation of government resources.

In the exposure draft there appears to be no provisions that vary the current requirement to amend individual import declarations in order to apply for a refund of duty

The existing process of dealing with each IDN separately has proved expensive and time consuming for business. Anecdotal comments from various Customs personnel have attributed the situation to inflexible requirements in the Customs regulations. It is now possible to overcome the barriers to efficient, cost effective refund processing by amending the new instrument to accommodate the bulk application and lodgement of refunds.

The CITC would be pleased to offer further comment on potential mechanisms to achieve this outcome in the draft instrument, should ACBP decide to pursue this issue. In the first instance, please contact the Committee Chair, Bill Cole, on 03-8603 6043 or via email: bill.cole@au.pwc.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John- SK', with a long horizontal stroke extending to the right.

John Keeves, Chairman
Business Law Section