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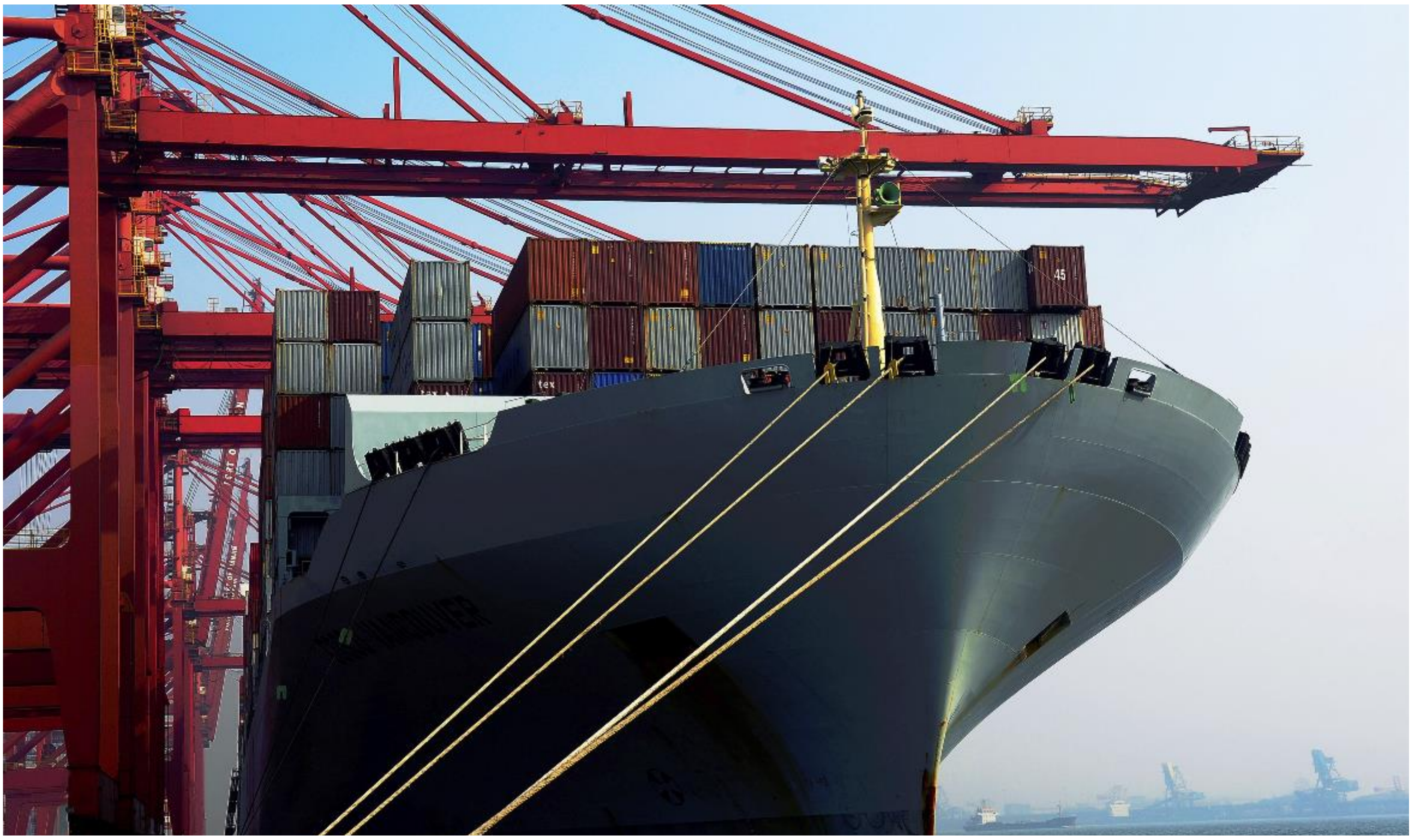
Australia 2017/15



Tax Insights

Customs duty compliance: What's there to worry about?

Snapshot

Recent customs duty compliance information published by the Australian Border Force (ABF) has highlighted several areas that should be of concern to any business importing trading stock, inputs to manufacture or other goods used or consumed in their operations.

The particular concerns noted also raise a more fundamental question: whether businesses importing goods are paying close enough attention to their customs duty obligations and the customs-related issues affecting them. In some businesses, ownership of customs duty rests with Procurement or Logistics rather than with Group Tax or Finance. Further, responsibility for customs duty is commonly outsourced to one or more third-party customs brokers, an approach which risks businesses not being sufficiently aware of and addressing customs compliance and supply-chain issues as they arise.

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Customs declarations – significant error rates

The ABF has recently reported results from its compliance monitoring program, showing a **28%** error rate in import declarations for 2016-17. These errors relate to several matters including some likely to affect the amount of customs duty payable, such as the tariff classification of the goods, their price, and values attributed to related party transactions and to related costs such as overseas freight and insurance.

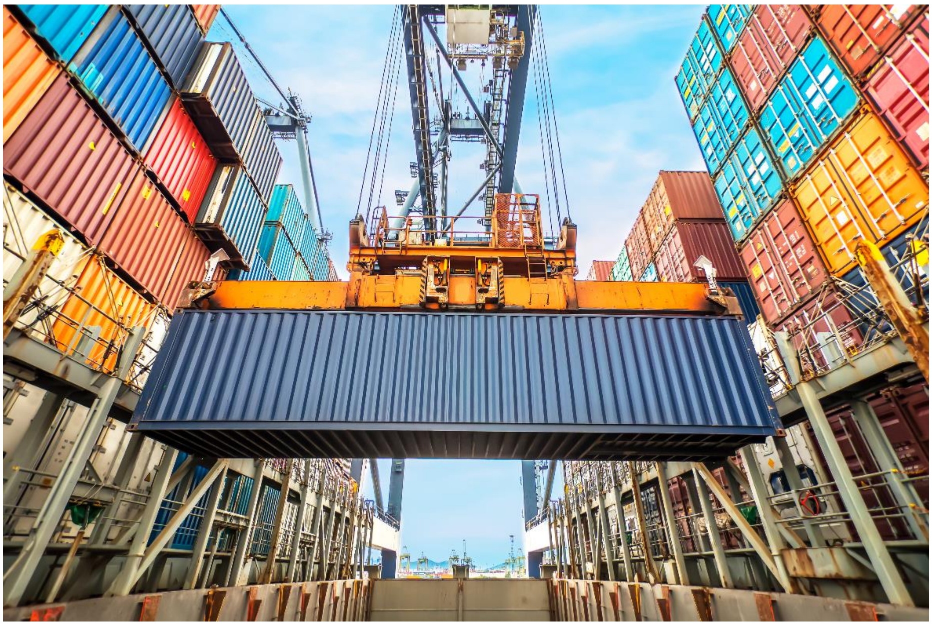
For the same period, the error rate identified by the ABF for export declarations was even higher, exceeding 40%.

Accuracy of customs declarations is important to ensure that the correct amount of duty is paid. Overpayments of duty are a net cost to the business. Underpayments of duty can result in sizeable penalties - i.e. per declaration, the higher of 45 penalty units (i.e. $9,450) or 75% of the short-paid duty. However, penalties can also be applied in respect of declarations that include false and misleading statements **not** resulting in a loss of duty. The ABF has been issuing plenty of infringement notices for breaches including in cases where there is no loss of duty, viewing the imposition of penalties as an effective strategy to encourage improved compliance. The circumstances of the breach will usually determine whether the penalty is payable by the importer or the customs broker.

Current ABF compliance activity

With error rates at these levels it is unsurprising that the ABF has been focusing in 2017 on non-compliance resulting in duty evasion through the misclassification and undervaluation of goods.

This includes a particular focus by the ABF on undervaluation occurring because the importer or broker, knowingly or otherwise, fails to include in the 'customs value' of goods certain price related costs incurred before the goods left their place of export. These costs include production assists costs, foreign inland freight and insurance, packing costs, commissions, and royalties or licence fees paid.



Other areas of compliance focus for the ABF currently include:

- **Evasion of duty through the misuse of duty concessions**
  This highlights the importance of importers taking care to ensure that their goods fully qualify for a duty concession that is claimed. For example, relying on a tariff concession order (TCO) depends on the goods exactly matching not only the description set out in the TCO but also the specified tariff classification. In the case of goods for which concessional duty treatment is claimed under a free trade agreement (FTA), it is essential that the correct tariff classification of the goods has been identified, the goods meet the applicable rules of origin, and a complying certificate/declaration of origin is provided. Where concessional duty treatment is based on an item in Schedule 4 of the *Customs Tariff Act 1995*, care must be taken to ensure that the particular goods are eligible. For example, the ABF is currently focused on identifying a wide range of aircraft parts, materials and test equipment that have been imported using the concession provided in Item 34 in Schedule 4, but which fall outside the item's narrowly confined scope.
- **Imports suspected of containing asbestos**
  Increasing instances of asbestos-containing imports are being detected by the ABF. Affected goods include brake pads, gaskets and associated motor vehicle and motor cycle parts, protective wrapping material, certain building materials, empty containers and crayons. Goods suspected of containing asbestos will be held at the border pending testing, leading to delayed clearance, extra costs, and potentially seizure and destruction of the goods and substantial penalties
- **Non-compliance in respect of imported cider products**
  The ABF reports finding significant levels of non-compliance and misunderstanding among importers and customs brokers about when overseas manufactured ciders fail to qualify for duty-free treatment and WET collection, so should be liable for customs duty instead (at a substantially higher cost for the importer)
- **Evasion of dumping duty and countervailing duty across a range of commodities**
  The ABF has been actively monitoring import data for certain commodity groups to identify instances of possible dumping, or foreign government subsidisation, of imports. The ABF is focused on ensuring that anti-dumping duty/countervailing (anti-subsidy) duty is recovered on imports subject to Australian anti-dumping measures, and is not avoided by importers declaring goods incorrectly.

Customs duty compliance: the bigger picture

The volume of goods crossing the Australian border is increasing. Customs duty currently contributes around $15 billion in revenue, and is forecast to continue to grow. The ABF has addressed this in the past couple of years by introducing new integrity and assurance measures, and strengthening its investigation and compliance functions to enable a more sophisticated intelligence-led and risk-based approach.

Businesses in Australia have financial, reputational and other reasons to ensure a high level of compliance with their taxation obligations. But while corporate, international and other high visibility tax issues are usually front and centre for tax managers and CFOs, a less visible tax like customs duty often doesn't get the attention it should. This is more likely to be the case in businesses where customs duty is owned by Logistics/Procurement, but without collaboration with Group Tax/Finance to put effective customs duty risk management controls in place and to agree on how relevant roles and responsibilities are divided. Another contributing factor may be Australia's relatively low import duty rates, the wide range of imports for which the duty rate is 'free', and the growing availability of duty concessions under FTAs with many of our significant trading partners. These may contribute to a perception that customs compliance is low risk.

Reduced attention to customs compliance is likely also due to customs administration, reporting and compliance being outsourced to one or more (in some cases, many) third-party customs brokers. The paradox in this is that outsourcing involves businesses giving significant responsibility to their brokers, including authorising them to pay duty liabilities and to make declarations to the ABF on the business' behalf.

What should business be doing to improve oversight?

Reviewing current systems, processes and controls between Group Tax/Finance, Logistics/Procurement and customs brokers is an important step.

Maintaining close communication with brokers, and requiring regular reporting from them, should also help to assure the business that its customs obligations are being met.

Undertaking a detailed prudential review of all data submitted to the ABF on the business' behalf over an extended period, should also help the business to ascertain the degree of customs compliance that it has been achieving up to that point. A review of this type should not only help identify duty underpayments or misapplication of concessions requiring disclosure, duty overpayments available for refund, declaration errors and so on, but also provide higher level insights relevant to the business' international supply chains.

An increasingly important benefit for businesses who more closely monitor and manage their level of customs compliance is their reduced risk in the eyes of the ABF. Broadly, low risk traders are less likely to face disruptive ABF attention in the form of audits, investigatory activity, cargo examinations, etc.

Further, businesses who can demonstrate a very high level of customs compliance, can seek accreditation under the ABF's Trusted Trader program. Trusted traders are formally recognised as being 'low risk' by the ABF (and by customs authorities in countries with whom Australia has a mutual recognition arrangement), and given access to various trade facilitation benefits. These include priority trade services and differentiated cargo examinations, resulting in faster and easier cargo clearance. Further, the federal government has announced a duty deferral arrangement for trusted traders from 2017-18. The opportunity to pay duty monthly, rather than prior to clearance of each consignment, may offer significant cash flow benefits to many businesses.

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Recommendations

Businesses importing goods should be paying close attention to the ABF's increased focus on non-compliance by importers and brokers. Reviewing current systems, processes and controls around customs duty, and undertaking a prudential review of customs data submitted to the ABF during the past four years, are important steps in identifying problems and opportunities, and may also give a useful indication of a business' readiness to seek accreditation as a trusted trader.

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