



CONFERENCE OF ASIA PACIFIC EXPRESS CARRIERS

24th July 2001

Helen Owens
Presiding Commissioner
Cost Recovery Inquiry
Productivity Commission
Locked Bag 2
Collins St East
Melbourne VIC 8003

Dear Ms Owens

SUPPLEMENTARY SUBMISSION TO THE REVIEW OF GOVERNMENT COST RECOVERY ARRANGEMENTS

I refer to the earlier submission by CAPEC that was lodged with the Commission in December of last year.

The basic concerns that were expressed by CAPEC in that earlier submission remain and have now been compounded by

- the recent Federal Budget decision to dramatically increase the level of charges applied by the Australian Customs Service (Customs) and the Australian Quarantine and Inspection Service (AQIS); and
- the lack of attention that was given to the Customs charges in the draft report for this current review.

Level of Cost Recovery on Imported Goods

As stated in the submission made by Customs to the current review:

“Customs has been cost recovering selected government services over a number of years. Currently the most significant cost recovery activities are the Passenger Movement Charge (\$226 million), Import Processing Cost Recovery charges (\$74.7 million) and Section 31 (of the Financial Management and Accountability Act) services (\$63.4 million).”

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This impost of approximately \$75 million by Customs has now been increased by a further \$10.7 million per annum as a result of recent Government decisions “to strengthen Australia’s defence against the introduction of exotic pests and diseases, including foot and mouth disease.” (Australian Customs Notice 2001/41, dated 29 June 2001).

Furthermore, the recent Budget decision has meant that an additional \$5-6 million dollars will be levied on imports to fund additional activities by AQIS.

Thus we have an impost of \$90 million being levied on Australia’s import community. In many instances this now presents itself as a charge in excess of \$50 on each import shipment that has a value of \$250 or greater. That \$50 is in addition to any duty/GST liability.

Given that many of these imports would be for further manufacture and subsequent export, this would be expected to have a significant adverse impact on the competitiveness of Australian exports.

These are clearly significant sums that warrant greater scrutiny within the terms of this current review.

Inconsistency in Approach

The manner in which this latest Budget decision to increase charges has been applied, serves to highlight the inconsistency of approach in the levying of such charges by the Government.

Prior to this latest decision (and as addressed in the earlier CAPEC submission) there was a clear distinction between the cost recovery methodologies adopted by AQIS and Customs. AQIS applied a full recovery arrangement based on a ‘fee for service’ approach, while the arrangements for Customs were limited to recovery of those services that related to the commercial operations of Customs ie all community protection activities were excluded from cost recovery consideration.

CAPEC would again stress that this approach of limiting the cost recovery arrangements for Customs was emphasised by the Government when the arrangements were introduced into legislation back in 1997:

“The extension of the charging arrangements, however, relates only to commercial import processing. It does not cover activity associated with Customs' community protection function relating to the detection and interception of prohibited imports and drugs. The Government recognises Customs' important role in this area and has, in the Budget, provided funds to Customs to significantly increase the use of sophisticated technology to maintain and enhance its community protection capability.” (2nd reading speech)

In direct contrast to this, we now see the application of some \$10.7 million per annum in Customs charges that are directly related to community protection functions.

The confusion and inconsistency has carried through in the recent Budget announcement where the Treasurer commented that “to meet these necessary costs, the Government has decided to continue the policy of full cost recovery for Australian Quarantine Inspection Service and Australian Customs Service programmes involving cargo and sea reports.” (speech 22 May 2001).

Such a statement would seem to be in direct contrast with the policy intent espoused when the Customs charging regime was introduced, and certainly has not been a ‘continuation’ of policy as claimed.

Competitive Neutrality

CAPEC continues to express concern regarding the inequitable application of cost recovery on imports whereby goods carried by Australia Post are excluded from such charges while those carried by commercial service providers have charges applied.

This matter was the subject of review by the Commonwealth Competitive Neutrality Complaints Office and reported on in June 2000. That included three key recommendations as follows:

1. the value thresholds for formal screening by the Australian Customs Service of incoming and outgoing postal and non-postal items be aligned, at levels which strike an appropriate balance between revenue collection and risk management objectives and administrative efficiency considerations;
2. the Government give further consideration to the feasibility of imposing cost recovery charges for informal Customs screening of incoming postal items; and
3. the concerns of express couriers about the new High Volume, Low Value charging scheme be addressed as part of the Government’s consideration of the broader issue of whether Australia Post should pay cost recovery charges for informal screening of incoming postal consignments.

As can be seen, two of these recommendations specifically sought to remove the inequitable cost recovery arrangements that have been in place. Unfortunately despite the passing of over twelve months, the Government has failed to provide a response to that report.

In fact, rather than removing the inequitable cost recovery arrangements, the recent Budget announcements have served to increase the inequities. As outlined above, there have been significant additional charges imposed on goods that are imported via private carriers. In contrast to this the Government has provided an additional funding of \$28 million to Australia Post to assist that organisation in the processing of consignments.

In many instances this will now mean that imports that would attract no Customs/AQIS charge if imported via Australia Post will have a charge of approximately \$50 applied if imported via other means.

There is an obvious concern that these latest actions are in direct breach of the Government's own competitive neutrality policies, and rather than seeing a removal of such inequities (as proposed by the CCNCO) these inequities have been dramatically increased.

Structure of AQIS Charges

CAPEC would also ask that the review consider the legality of the current cost recovery mechanism utilised by AQIS. The draft report would appear to indicate that the charges imposed by AQIS can rightly be regarded as taxes and the associated legislative provisions should therefore not be included in an Act that deals with administrative matters.

The following extracts from the Australian Government Solicitor (AGS) advice that accompanies the PC draft report refer:

a tax, albeit qualified in various respects over the years, is: 'a compulsory exaction of money by a public authority for public purposes, enforceable by law, and ... not a payment for services rendered'

a fee for a service may (although it may not) be compulsory and enforceable by law.....it is, however, different in one respect from a tax, that is, it is a payment for services rendered to or at the direction or request of the person required to make the payment.

a Commonwealth Act of national application, imposing both fees and taxes... would infringe section 55 of the Constitution (which provides, amongst

other things, that a law imposing taxation shall deal only with the imposition of taxation).

This would suggest that where the charge imposed by AQIS is not discretionary (eg is automatically charged on each entry or consolidated clearance) it would most correctly be regarded as a tax. In contrast where someone elects to have goods fumigated rather than destroyed, may be a service (warranting a fee). Critically if any of the charges levied by AQIS are taxes, then they would need to be imposed by a proper taxing act.

In essence if the AQIS legislation was found to be imposing taxes and also detailing with administrative matter and levying fees, there could be a claim that this is unconstitutional.

CAPEC would ask that this potential concern be addressed within the current review.

Conclusion

CAPEC members ask that:

- the Commission give specific and detailed consideration to the cost recovery arrangements applied to imports by both Customs and AQIS;
- consideration be given to the inconsistencies in approach by the two agencies and the apparent change in Government policy whereby Customs now applies charges for community protection functions;
- the review include a consideration of whether the Customs and AQIS charges should more correctly be covered by general taxation rather than cost recovery arrangements on importers - given that the true beneficiaries of these actions are the broader Australian community (for quarantine matters) and the Australian manufacturing/ retail sector (via customs duty collection);
- the review address the stated concerns regarding the inequity in treatment whereby Australia Post receives exemptions from charging (and additional funding) despite the apparent breach of the Government's competitive neutrality policy; and
- consideration be given as to whether the current legislative arrangements for levying of charges by AQIS may be in breach of section 55 of the Constitution.

CAPEC members would welcome any opportunity to meet with Commission representatives to discuss this matter.

Should you have any questions in relation to this submission, please do not hesitate to contact me on (02) 9313 1680 or 0408 117 526

Yours sincerely

Chris Charlton
Secretary

CAPEC represents Australia's four major express carriers - DHL International (Aust) Pty Ltd,
TNT Australia Pty Ltd, Federal Express (Aust) Pty Ltd and UPS Pty Ltd.