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Regulatory Burdens – Manufacturing
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Productivity Commission
GPO Box 1428
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ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS 2008

The Australian Customs Service (Customs) appreciates the opportunity to respond to the draft report for the above review. Customs' comments, background information about aspects of Customs' role in administering the Excise Equivalent Goods (EEG) system and corrections to the draft text, follow.

Customs notes that the report focuses, in relation to (EEG) administration, on the issues of import reporting, warehouse licensing and duty collection.

Customs is working with the Australian Taxation Office (ATO) to identify potential options for harmonising reporting and licensing aspects of the EEG and Excise systems, where practicable, while ensuring that Customs is able to maintain control over, and risk assessment of, all imported goods before they are cleared for release into home consumption or into a process of excise manufacture. Customs will take into account the submissions that have been made to the Productivity Commission review, as it continues this work with the ATO.

Customs notes that the draft refers to potential savings from consolidated processes. Customs is unable to comment on the basis for the estimate but notes that it appears to have been suggested by one of the industry submissions to the review. An empirical approach to identifying all costs and benefits that might flow from proposals for change would need to engage the views of all affected industry sectors. Any changes, beyond increased harmonisation, would require consideration by Government and careful assessment of industry impacts.

Attached is a brief outline of the processes that apply to EEGs in the importing environment—Attachment A. There are also a number of points that the Commission might consider for drafting correction—Attachment B.

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Outline of the processes that apply to EEGs

Since the former Government moved excise administration from Customs to the ATO in 1996, Customs has maintained control over imported goods for excise manufacture until they are used for that purpose. It is at the time of first use in a process of excise manufacture that the goods become subject to the excise legislation and control transfers to the ATO.

There are several circumstances under which Customs deals with the different forms of excise-equivalent goods (EEG):

- *imported in the form in which they will be sold at retail level*—Customs control continues until any border risks are assessed, relevant Customs duty and GST is paid and the goods are delivered into home consumption in accordance with an authority to deal given under the *Customs Act 1901*; or
- *imported in bulk and warehoused¹ prior to being mixed, blended and/or repackaged and entered for home consumption or export*—Customs control continues from the point of importation until relevant Customs duty and GST is paid and the goods are delivered into home consumption in accordance with an authority to deal given under the *Customs Act 1901*, or they are exported; or
- *imported for use in domestic excise manufacture*—Customs control continues until the goods are transferred to the excise regime (ie when they are used in the manufacture of excisable goods). The owner of the imported goods 'enters' them under Customs duty concession arrangements at the time they leave Customs control for use in excise manufacture.

Importers of EEG:

- must declare the importation of imported product to Customs; and
- report and acquit the transfer of product to the excise system.

There is a requirement to maintain records and acquit duty liability for each product (imported or locally produced) separately.

Customs compliance activity relates to imported goods until they leave Customs control and does not relate to excise manufacture or the payment of excise duties. Similarly, the ATO's compliance activities do not apply to imported EEG until they become subject to the excise regime (ie are used in the manufacture of excisable goods).

Over the past 2 years Customs and the ATO have undertaken a number of concurrent compliance activities in order to reduce inconvenience to industry and to track the movement of imported EEG into the excise regime where appropriate. A similar approach is planned for 2008-09.

¹ NOTE: Imported goods *other than EEG* are also warehoused under the Customs warehouse licensing system in order for the owners to defer payment of customs duty until the time goods are delivered into home consumption.

Attachment B

Errors in the draft report

- On page 166 there is an assertion that customs duty on EEG is applied at the same rate as Excise duty, which may be misleading. Some goods have an ad valorem duty component. If EEG are transferred to the excise system (ie for use in the manufacture of excisable goods), the ad valorem component is collected at the time of transfer.
- Page 167, footnote 1 is not correct. Under Customs legislation a separate licence is required for each premise where imported goods are warehoused.
- Page 167, footnote 2 describes duty payment as ‘technically’ being required for each delivery of EEGs from a licensed warehouse. The general rule for imported goods is that duty must be paid before goods are delivered into home consumption. This rule applies to all imported goods. In the case of EEGs, importers can obtain a weekly settlement permission to acquit their duty on a periodic basis on condition that goods are held in a warehouse before delivery into home consumption. Weekly settlement of duty payment is not available to non EEG imports that are warehoused under Customs legislation.
- The current reference to GST deferral as a model may be misleading.

GST deferral is a mechanism that removes the requirement to pay the GST on imported goods at the time of importation for importers who are registered for GST and will be eligible for an input tax credit for the same goods on their BAS. By deferring the time for payment until the lodgement of the BAS, the liability and input tax credit net each other out and no GST is actually paid. The GST system allows credits and liabilities on different transactions at different stages in the supply chain of goods to the consumer during a tax period to be set off against each other and a net liability to be paid. Customs and excise duties, however, are paid only on the transaction of delivery into home consumption and are not set off against other transactions.

If the reference to the GST arrangements is intended to refer to the length of time permitted for periodic settlement under those arrangements, then it should be noted that any increase to the period for settlement of duties for all parties who deal in excisable goods and EEG could introduce a significant new risk to Commonwealth debt management that would require an appropriate compliance response.