

Beware of legal traps over imports and exports

By Philip Sheezel, a Customs and litigation lawyer with Melbourne law firm Rigby Cooke.

Australian importers, exporters and customs brokers will risk infringement notices and prosecution if they fail to familiarise themselves with changes to export and import classification of goods and statistical codes which came into force at the start of the year.

The changes, which are contained in the Customs Amendment (2007 Harmonized System Changes) Act have produced approximately 1200 amendments to the schedules contained in the Customs Tariff Act 1995. They also involve changes to the classification of goods for export purposes.

Unless people are aware of the changes, they could mistakenly quote incorrect tariff classification numbers on import declarations or incorrect commodity classification code numbers in export declarations.

Both amount to making false and misleading statements to Customs and are clear "strict liability" offences under section 243 of the Customs Act. It will make no difference if the incorrect statements are made deliberately or inadvertently. Importers, exporters and customs brokers are required to know the law and make correct entries on all Customs documents.

Furthermore, the six-month moratorium requested by the Law



Council of Australia for "inadvertent" errors made by people and organisations relying on "outdated" information was rejected by the Senate Standing Committee on Foreign Affairs, Trade and Defence.

For those who do breach section 243, the penalties are severe.

- Section 243T, for example, provides that making a false or misleading statement which results in a loss of duty will result in a penalty of 20% of the amount of duty short paid under the infringement notice scheme or the total amount of the duty short paid if the penalty is imposed by a court.

- Section 243U provides that making a false and misleading statement which does not result in a loss of duty will result in a penalty of the lesser of \$55 per false or misleading particular or \$1100 per statement under the scheme or \$5500 if the penalty is imposed by a court.

People who breach the Act and receive infringement notices now have little choice but to put themselves at the mercy of Customs and try to persuade its CEO to

exercise his powers in their favour.

This approach may or may not be successful. However, it will almost certainly be costly, given that professional advice may be needed to argue the case with Customs. Furthermore, a notice may result in the goods not being cleared through Customs quickly and may also expose the organisation to the possibility of a Customs' audit.

Even inadvertent errors will result in importers or exporters being "black marked" by Customs. This may make their future dealings with Customs more difficult and the outcome of any subsequent dispute less favourable.

Importers and exporters who typically rely on their brokers to clear goods through Customs must ensure that the information regarding each consignment is concise and accurate. The onus to ensure that goods are properly entered lies with the importer or exporter, not the broker.

They should immediately become familiar with the new rules that now apply, thereby ensuring that all Customs documents correctly describe, code and classify the goods being entered.

It is they who will bear the brunt of any action that Customs may take arising from the making of a wrong entry or statement. Customs rarely looks to brokers when it wants to recover the penalties imposed for incorrect entries.



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Parts maker in OWS focus

The Office of Workplace Services has launched legal action against a Melbourne electrical parts company that refused to pay 54 workers one week's pay because they banned overtime as part of an industrial dispute.

The OWS alleges Heinemann Electric has breached federal workplace laws by wrongly withholding workers' pay.

Members of the Electrical Trades Union imposed overtime bans in August last year during negotiations over a new enterprise agreement.

The office alleges the company should have paid the workers for ordinary hours worked.

Nicholas Wilson, OWS director, said the case highlighted the need for employers to contact the agency before withholding wages over industrial action.

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