

INTERNATIONAL TRADE

APRIL 2011

CUSTOMS DUTY UPDATE - VALUE FOR DUTY REVISITED



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This newsletter will be important if you:

- Are an importer;
- Pay import duty on the importation of goods; and
- Pay a separate fee (for the use of trade marks, patents, copyrights, exclusive distribution rights etc) in addition to the price of the goods.

Customs duty payable on goods imported into New Zealand is based on the “customs value” of the goods. Broadly, this is the “price paid or payable” for the goods when they were sold for export to New Zealand. However, the customs legislation may increase that price to include certain payments made to a third party.

In the late 90s, Customs challenged the valuations of importers and a series of disputes were taken to Court. The decisions focused on whether customs duty is payable in relation to third party royalty payments. The New Zealand Courts found in favour of Customs.

A Customs newsletter notes that importers are still failing to take into account royalties and licence fees when calculating the value of their imports and that this is an issue being monitored closely by Customs.

Goods which are imported into New Zealand often bear a trade mark or some

other intellectual property and the importer may be required to pay a royalty or licence fee in respect of that property.

Often royalties will be based on a percentage of actual net sales and the amount of royalties will not be known at the time of importation. In these cases, Customs will generally allow the value of imports to be uplifted by an estimated percentage with an annual “wash up” calculation performed once the actual royalty figures are known. We have documented a number of these arrangements for clients.

We have recently been involved in several disputes where Customs has suggested that the dutiable value of product should also be increased to cover other payments like technical services fees or fees paid to a representative to source overseas product. Certainly it would appear that Customs is becoming more aggressive in its view of the type of payments that must be taken into account when calculating values for duty and Customs is not always, in our view, correct. However, each situation needs to be considered on its facts and getting it wrong has become more costly as we explain below.

The Customs and Excise (Joint Border Management Information Sharing and

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Other Matters) Amendment Bill

significantly bolsters the Customs penalty regime. The proposed penalty regime has similarities to the shortfall penalties imposed under tax legislation, with a graduated series of penalties calculated as a percentage of the amount of duty unpaid or undeclared (up to a maximum of \$50,000):

- 20% for not taking reasonable care;
- 40% if the error or omission occurred because of gross carelessness;
- 100% if the error or omission was made knowingly.

This compares to the current rules where there is a single penalty rate of 20% with a maximum penalty of \$10,000. The administrative penalty of \$50 for materially incorrect entries that do not result in underpayments is proposed to increase to \$200. As with tax legislation, there are provisions that substantially reduce or remove penalties when disclosure of an error is made prior to an audit. One should of course be certain of one's position before disclosing an error.

It would appear from the current wording of this Bill that the new penalties regime will apply to any assessment made by Customs after the Bill is passed into law.

Accordingly past entries could be subject to the new penalties regime if Customs issues an assessment for unpaid duty after the Bill is passed.

If you would like to discuss any customs or excise issues with us, please contact a member of our international trade team whose contact details are shown in the left hand column.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

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