



Export Council of Australia

The Voice for Australia's Exporters

25 February 2015

Regulations Review
Customs Regulations 1926

BY EMAIL: regulationsreview@customs.gov.au

Dear Sir/Madam

Export Council of Australia Commentary on Exposure Drafts of Customs Regulations 2015 and Customs (International Obligations) Regulation 2015

I refer to Customs Notices numbered 2015/05 and 2015/07 issued by the Australian Customs and Border Protection Service ("**Customs**") regarding the exposure drafts of the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* ("**New Regulations**") intended to replace the current *Customs Regulations 1926* ("**Current Regulations**").

I am pleased to provide the following commentary on issues on behalf of the Export Council of Australia ("**ECA**").

1. While the ECA is pleased to be able to provide commentary regarding the New Regulations, the ECA would request that, in future, to the full extent possible all requests to review proposed changes to legislation or regulation should provide time to review such changes which reflects the timeframe set out in paragraph 28 of Customs Practice Statement 2011/02.
2. The ECA would also seek assurance from Customs that the New Regulations will not be brought into effect until industry has been provided with ample time to consider any further changes to the New Regulations together with the proposed Forms to be used in conjunction with the New Regulations.
3. The ECA would also seek further assurance that Customs engagement has included comprehensive engagement with those who provide reporting software used by industry to report its transactions to Customs. It will make it difficult for those in industry if such software has not been brought into existence and been the subject of extensive testing.
4. The ECA would be grateful if Customs could advise on the nature of its planned "*outreach*" or "*engagement*" with the trading community in relation to the changes to be effected through the New Regulations. As Customs would be aware, the Current Regulations have been in place for a significant period of time and provide an important underlying set of provisions governing the operation of parties under the *Customs Act 1901*. Established practices, case law and knowledge have accrued over that



period of time which may now be swept aside and disregarded with the implementation of the New Regulations. Notwithstanding that the intent of Customs is only benign, the changes will create some degree of uncertainty. Accordingly, the ECA is of the view that the provisions of the New Regulations should be the subject of extensive engagement with those affected (directly or indirectly) by the New Regulations.

5. The ECA would also request that Customs issues a notice or practice statement which identifies the status of advices, rulings or judgments relying on the provisions of the Current Regulations and their application to the equivalent provisions of the New Regulations. That would enable parties to have clarity and certainty as to the status of their position prior to the New Regulations coming into effect.
6. The ECA also requests that Customs confirms a moratorium period during which there will be no liability of parties to Customs for an innocent or inadvertent or non-material breach of the New Regulations. That moratorium would also operate equally in relation to liability pursuant to the Infringement Notice Scheme which may have application pursuant to the New Regulations.
7. The ECA is concerned that section 159 of the *Customs Regulation 2005* may not adequately deal with the validity of licences granted, approvals granted or applications made prior to the expiry of the Current Regulations. At the moment, section 159 of the *Customs Regulation 2015* (and the corresponding provision of the *Customs (International Obligations) Regulation 2015*) only provide a general statement to the effect that all things done under the Current Regulations will continue to have effect as if made under the New Regulations. However, something more specific may be needed to provide parties with a level of comfort that the status of their rights has not been impeded by the creation of the New Regulations. For these purposes, it may be appropriate for the New Regulations to reflect that licences, permissions, approvals or applications for such instruments made pursuant to specific provisions under the Current Regulations prior to 1 April 2015 will be deemed to have effect for specific corresponding provisions in the New Regulations. That provisions should also apply to and preserve any fees or other charges paid under the Current Regulations.
8. The ECA notes that the provisions of the New Regulations purport to terminate the effect of the Current Regulations on 1 April 2015. The ECA wonders whether the provisions may better reflect that the Current Regulations are terminated save and except so far as is needed to preserve rights of parties having accrued pursuant to 1 April 2015?
9. The ECA notes that the Exposure Draft Explanatory Statement issued in respect of the *Customs Regulation 2015* does not identify in either of table 1.1 or 1.2 which provisions in the New Regulations correspond to regulations 126DAA and 126 DB of the Current Regulations. While we understand that those regulations have been moved into the *Customs (International Obligations) Regulations 2015*, reference to that movement should be included in the tables relating to the *Customs Regulation 2015*.
10. The ECA notes that Schedule 9 of the *Customs Regulation 2015* (generally having the equivalent effect to the Excluded Goods Schedule under the Current Regulations) has now been split into two parts, one relating to goods to which a TCO should not extend and one in relation to goods to which a TCO should not extend unless listed. These operated under the same provision under the Current Regulations and the ECA raises the question as to why they have now been separated?
11. The ECA notes that in some instances, Customs has not prescribed a revised penalty for breach of the New Regulations, merely providing for such penalties "TBA". The ECA seeks early confirmation on such proposed penalty.

12. The ECA notes that despite the New Regulations the fees payable have, in general, not been changed. Is this to remain the case indefinitely or can Customs confirm that fees may be revised pursuant to the current Review of Fees Paid to Border Agencies?
13. Can Customs confirm that all Regulation under current and future Free Trade Agreements (or similar Preferential or Regional Trade Agreements) will be effected pursuant to the *Customs (International Obligations) Regulation 2015*? The ECA seeks assurance that it would be provided with Exposure Drafts of all proposed amendments to the *Customs Act 1901* and to the Regulations to implement such Agreements.
14. The ECA notes with some regret that Customs has not taken the opportunity in the New Regulations to modernise the provisions of the Current Regulations which preclude parties seeking refund of customs duty on multiple import declarations by the use of one refund application and an annexed spreadsheet of affected import declarations. The ECA would urge Customs to treat as a priority the ability to apply for multiple refunds by one refund application and an annexed spreadsheet of affected import declarations.
15. The ECA notes that the Customs Regulations associated with Prohibited Exports and Imports are both due to expire on 1 October 2016 due to the effect of the *Legislative Instruments Act 2013*. The ECA would be keen on early and comprehensive engagement with Customs on the regulations proposed to replace those Prohibited Exports and Imports Regulations as such new regulations will have a comprehensive impact on the business of the members of the ECA.

We look forward to discussing these matters with you in future.

Yours faithfully



Andrew Hudson

Director and Chair of the Trade Policy Committee
Export Council of Australia