



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Mr John EDGE
Division Manager
Government Business, Special Claims and
Land Policy Division
Department of Finance and Deregulation

Dear Mr Edge

REQUEST FOR WAIVER OF A DEBT TO THE COMMONWEALTH

The Australian Customs and Border Protection Service request that the Minister for Finance and Deregulation consider waiving a debt owing to the Commonwealth under s34(1)(a) of the *Financial Management and Accountability Act 1997*.

Customs and Border Protection undertook an audit of the import activities of Catalyst Chemicals Pty Ltd in June 2009. The audit identified that Catalyst had misclassified two chemicals it had imported under a duty free tariff classification for a period of four (4) years. The correct tariff classification for the imported goods attracts a duty rate of \$0.38143 per litre.

As a result, Customs and Border Protection issued Catalyst with demands for payment for an amount of \$881,232.95 comprising of \$801,120.86 duty and \$80,112.09 GST (Attachment A and B, respectively).

Catalyst have since argued that Customs and Border Protection should not recover the unpaid duty as the end users of the chemicals would have been eligible for fuel tax credits from the Australian Taxation Office, had the correct classification been used and appropriate duty paid, resulting in a revenue neutral outcome for the Commonwealth. Catalyst has also said that end users have not claimed fuel tax credits for the audit period (Attachment C).

To support this claim Catalyst has provided Affidavits from three of its major customers (Attachments D, E and F). The Affidavits indicate the amount of the chemical ISO Hexane purchased by these three companies. All three companies have indicated that they would have claimed fuel tax credits had Catalyst passed on the duty and GST on the product. Catalyst has not provided any material to identify the purchasers of the chemical Solvent 150.

Customs and Border Protection has temporarily held off enforcing the debt to assess the merit of Catalysts' claim. It is worth noting that Catalyst has lodged an appeal in the AAT disputing the classification of the goods, but has effectively put the proceedings on hold pending the outcome of their request to waive or not recover the debt. Customs and Border Protection legal advice is that the tariff classification is correct and the AAT would uphold the decision.

Customs and Border Protection considered writing of the debt under section 47 of the FMA Act, but determined that the option was not available in the circumstances.

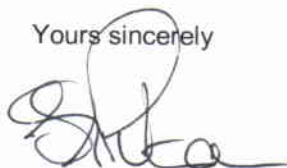
Customs and Border Protection consider that waiving this debt has merit. Had Catalyst classified the chemicals correctly and paid the relevant duty and GST, it would have passed these costs to their customers, who in turn would be eligible for fuel tax credits, offsetting the duty paid to the Commonwealth.

Customs and Border Protection is reviewing its audit practices to ensure that in circumstances similar to this case, Customs and Border Protection does not issue a debit note, until it has properly considered the implications to Government revenue.

Catalyst may need to provide further evidence regarding the purchasers of the chemical Solvent 150, however before seeking that information from Catalyst, Customs and Border Protection would appreciate advice from the Department of Finance and Deregulation as to any other information which would be required to support a waiver request to the Minister for Finance and Deregulation.

The contact officer for this matter is Mr Brendan Tegg, Director Compliance Approach and Framework ph (02) 6275 6804, or email brendan.tegg@customs.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue Pitman', written over the typed name.

Sue Pitman
National Director
Trade and Compliance Division
19 May 2010