

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 214

Senator Ludwig asked the following question at the hearing on 31 October 2005:

- a) How much duty was underpaid in total following the UN classification changes?
- b) How much is being demanded on the basis that Customs are only able to recover the relevant duty for a 12 month period under Section 165 of the Customs Act 1901 (as then applied)?
- c) What advice has Customs received or secured regarding its ability to recover this underpaid customs duty?
- d) How many demands have been issued to importers to recover the allegedly under levied customs duty?
- e) Does Customs intend to pursue every demand which is not paid by importers? Is there some sort of tolerance on the amount of customs duty owing from each importer before recovery action is undertaken?
- f) Does Customs have any estimate on the likely cost to recover the customs duty?
- g) How much is being paid as refunds to importers from whom the customs duty had been improperly collected?
- h) How much would have been paid in refunds in total if the requirement to pay refunds extended beyond 12 months from the date that the right to the refund was created?
- i) Was the duty recovery and payment of refund decision made purely by Customs or with the advice or input from Treasury?
- j) What steps have been taken to avoid problems reoccurring?

The answer to the honourable senator's question is as follows:

- a) The amount of duty on certain imported goods which should have been entered as business inputs and subject to a 3% customs duty, rather than entered as consumption goods, and therefore allowed duty-free entry in early 2003 until May 2005, was approximately \$44 million.
- b) Customs made demands for duty totalling approximately \$13 million (but also refer to answer (e)).
- c) Customs obtained advice from the Australian Government Solicitor and from the Office of General Counsel in relation to some of the issues involved in this matter.
- d) Customs issued demands for duty to 1114 companies.
- e) Customs initially decided to pursue the duty payable in line with the requirements of the *Financial Management and Accountability Act 1997* (FMA Act). In particular, section 47 of the FMA Act requires Chief Executives to pursue recovery of each debt unless:
 - the debt has been written off as authorised by an Act; or
 - the Chief Executive is satisfied that the debt is not legally recoverable; or
 - the Chief Executive considers that it is not economical to pursue recovery of the debt.

Having regard to objections lodged by some affected entities and further advice, Customs decided that grounds existed for the short levied duty to be written off and monies already paid to be returned on the basis it would be uneconomical to pursue the debts. Customs issued Australian Customs Notice 2005/73 to this effect on 16 December 2005 and will write to each affected entity advising of its decision. Where an entity has already made a payment, the amount will be reimbursed by Customs.

As a general rule, if a demand for duty is not paid within the stated time frame for payment, Customs will consider on a case-by-case basis whether it would be economical to pursue recovery of the debt through court action before commencing such action. Customs considers the cost effectiveness of recovering duty before making demands for duty or commencing court action.

- f) Customs is unable to estimate the full cost of recovering the duty initially demanded as it is unknown how many demands would have been pursued through court action.
- g) Customs has repaid more than \$15 million to affected parties who have lodged applications for refund.
- h) If refund applications were allowed Customs total payment would have been approximately \$49 million. This equates to the amount of duty that was collected on certain imported goods that should have been allowed duty free treatment as consumption goods and therefore is potentially subject to a refund application.
- i) Customs consulted with a number of agencies, including the Treasury, prior to the payment of refund applications and the issuing of demands for the payment of the short levied duty. However, the decisions to pay refunds and issue demands were made by Customs, having regard to input from a number of sources. Subsequent legal advice was taken into account in deciding to write off the debts.
- j) This circumstance will not recur. Item 50A was repealed in May 2005 as part of the Government's decision to remove the 3% duty applicable to business inputs subject to a tariff concession order.