

# Export trade compliance/ ChAFTA DoO

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hunt & hunt  
lawyers

# Topics

1. Why does export trade compliance matter
2. Most common errors on export declarations
3. The export of controlled goods
4. Penalties
5. Export related revenue issues
6. Export compliance - What to do now
7. ChAFTA – Declarations of origin

# Export Compliance

Export compliance issues:

1. can the goods be exported
2. is all information provided correct
3. is the proposed transaction permitted
4. associated revenue issues

# Export declaration error rates

Error rate by number of lines for 2016-17

40.2%

# Who is liable for non-compliance

1. Look at the Incoterm:
  - i. EXW could shift liability from seller to buyer
2. An agent (such as a broker) can be liable
3. Wide definition of “owner” not as important with exports
4. Liability for prohibited exports is on the person who exports the goods

# Why does export trade compliance matter

## Poor compliance:

- Slows supply chain
- Leads to customer dissatisfaction
- Can negatively affect trusted trader status
- Result in infringement notices
- Result in an increased focus on imports
- Ultimately, impacts your ability to trade

# It matters to the ABF

DIBP Notice 2017/17 – Important reminder about export reporting obligations – 15 June 2017

## Compliance Approach

Incorrect export reporting is of serious concern to the Department and the ABF. Offences related to export reporting may undermine the ability of the ABF to perform its designated role at the Australian border in preventing the exportation of illicit goods and the application of government policy. For any offences identified by the ABF, or failure to adhere to licence conditions, appropriate treatments will be applied. Treatments can include education, warning letters, infringements, suspension or cancellation of Department issued licences and/or prosecution. Goods that are subject to customs control and are moved without authorisation may be forfeited to the Crown.

# Top errors on export declarations

FOB Value	164
Gross Weight	103
Net Quantity	68
AHECC - Misclassification	52
Origin	39
Other Export Data Inaccuracy	30
AHECC - Multi-Lines	24
Consignee Name	17
Consignee City	14
Declared Owner	13



# Common mistakes

- **FOB value**
  - should include domestic freight
  - does not include overseas freight and insurance
  - import valuation provisions are not applicable
- **Documentation**
  - be careful relying on pro-forma invoice
  - be able to link the declared value back to the commercial documents and payment records
  - never produce a false invoice

# Common mistakes

- **Gross weight**
  - includes outside packaging
  - does not include the container weight
- **AHECC Code**
  - tariff classification principles apply
  - Import class error rate 3.7%, export rate 6.2%
  - hard to get it right without using a broker
- **Consignee name**
  - not a bank or freight forwarder

# Common mistakes

- Origin of the goods
  - Australian origin or imported goods
  - If Australian origin – which State/Territory
    - not the state of export
    - not state of the exporter's head office
    - focus on the state where the final stage of production occurs
    - ignore processes which essentially leave the goods in tact
  - ACN 2003/70 – State of origin for exports
  - Foreign Goods - Apply the same principles as country of origin for imports

# Controlled exports

The Customs Regulations and other legislation:

- prohibits the export of certain goods absolutely
- restricts the export of certain goods without permission
- restricts the export of certain goods to specific countries
- restricts the export of certain goods to specific individuals

# Examples of controlled goods

- Asbestos – zero tolerance
- Certain chemicals
- Certain drugs
- Cultural and heritage goods
- Defence and strategic goods
- Firearms and parts
- Human blood and tissues
- Nuclear material and radioactive sources
- Prescription medicines
- Sanctioned exports (based on country)
- Suicide devices
- Biological agents
- Dog and Cat fur
- Rough diamonds
- Endangered animals and plants
- Hazardous waste
- Ozone depleting substances
- Pornography
- Precursor substances
- certain ammonium nitrate substances
- Toothfish
- Wine and brandy

# DSGL goods

- Applies to both:
  - goods with a military end use
  - certain goods with both a civilian and military end use
  - goods merely transhipped via Australia
- No automatic exemptions
- If any doubt apply to DEC
- Carefully review the DEC permit:
  - Which supplier
  - Quantity
  - Multiple shipments
  - Period in force

# Sanctioned goods

Important to review DFAT and not border.gov.au website

Most restrictions only relate to arms of related material:

- weapons
- ammunition
- military vehicles and equipment
- spare parts and accessories for the things mentioned above
- paramilitary equipment

Wider restrictions apply to North Korea, Crimea and Sevastopol, Iran, Russia, Syria,

# Autonomous Sanctions – wide application

- Generally apply to any purchase of the sanctioned good – even if not imported into Australia
- Applies to any import, not just imports into Australia
- Applies to goods exported from, or originating in, the sanctioned country
  - could capture goods of any origin exported from the sanctioned country
  - goods exported from any country if originating from the sanctioned country



# Penalties

The penalties for non-compliance can be extreme

- Infringement notices
- Seizure of goods
- Conviction resulting in:
  - fines of up to:
    - \$210,000 (individuals);
    - \$1,050,000 (corporations);
    - 3 times the value of the goods
- Autonomous Sanctions
  - 10 years imprisonment
  - fines up to \$2.1 million

# US Controls

- The US seeks to exercise control over entities outside of the US
- The controls include regulating the export of goods of US origin
- In some cases re-export approval will be required from the US
- Penalties can apply for a breach and the exporter may be placed on a US “denial list”

# Trade descriptions

The *Commerce (Trade Descriptions) Act 1905* prohibits the export of any good containing a false trade description

Such goods may be forfeited to the Crown

Where the false statement was not deliberate the ABF can:

- give the exporter the opportunity to relabel the goods; or
- withdraw them from export

Trade description means statements related to:

- nature, number, quality, purity, class, grade, or weight
- country of origin
- the manufacturer
- materials or ingredient

# Revenue issues

- **Tradex**
  - Review level of exports
  - Are exports within 12 months
  - Are your exports of the goods covered by the order
  - Are you liable for Tradex duty liability
- **Drawback**
  - Are you the legal owner at the time of export
  - Have the goods been used in Australia (other than processing, treatment or further manufacture)
  - Is the good's value more than 25% of the imported customs value
  - Has there been a refund of customs duty
  - What method is used to calculate the amount of the drawback
  - About 5% rejection rate
- **FTAs**

# How to manage the risk of trade non-compliance

1. Know the rules
2. Identify risk factors
3. Review
4. Disclose
5. Compliance policies

# Know the rules

A condition of the right to import and export is that you have an understanding of the regulations

- what policies are in place to embed trade compliance
- what trade compliance training is undertaken
- what systems are in place to become aware of new sanctions

Remember the offences are strict liability

# Risk factors

- Increasing levels of exports
- New products
- Acquiring a new exporting company/business
- New overseas markets
- A significant period without a compliance review
- Leave periods for key personnel
- Change in customs broker
- Other red flags

# Review

- What systems are in place to ensure trade compliance
- Trade compliance is unlikely to be reviewed by external auditors
- Do you have internal audit skills – usually it has to be outsourced
- If you use a customs broker – ask the broker what quality review processes are undertaken



# Disclosure

- Penalties for false statements (s243U) can be avoided by voluntary disclosure
- For other offences, voluntary disclosure will minimise penalties
- The best is voluntary disclosure accompanied by a plan for future compliance

# Implement compliance policies

Liability for false statements can be avoided if the false statement resulted from a genuine mistake of fact PROVIDED the mistake could not have been avoided by the exercise of due diligence

- Due diligence will require some positive action
- Can you point to an export compliance policy
  - allocation of compliance responsibilities
  - procedures with new products/customers
  - training of new and existing staff
  - internal audit
  - exporting checklists
  - documentation requirements

# Remember.....

You can budget for the costs of a training and compliance program – you can't budget for the costs of enforcement action

# ChAFTA - Declarations

- Requirements to claim ChAFT benefit
  - Goods must be of Australian/Chinese origin; AND
  - a certificate of origin or declaration of origin must be held
- A declaration of origin can only be use if there is a origin ruling from the Customs authority of the importing country

**Declaration of Origin** means a statement as to the origin of the goods made by the exporter or producer of those goods, identifying the goods being consigned between the Parties and declaring that the goods to which the Declaration relates are originating goods

# Why use a DoO

- No external cost
- May be quicker to have the certificate issued in-house
- Less information required – only need:
  - Description of goods
  - HS code
  - Number and date of invoice
  - Reference number of ruling
  - Origin criteria
- Do not need:
  - Importer details
  - Transport details
  - Marks and numbers on packages
  - Number and kind of packages
  - Gross weight

# Obtaining a ruling from Chinese Customs

- Seek the assistance of the importer
- Must be registered with Chinese Customs to obtain a ruling
- This generally equates to having a physical presence in China
- Application 45 days before the import of goods
- Application to the Chinese port of arrival
- Best to check the procedure required by the local Customs authority before filing your application

# Using DoO

- The goods must be covered by an Advance Ruling
- Rulings are generally specific to:
  - The exporter
  - The manufacture
  - The particular model of the goods
  - The facts and circumstances on which the ruling was based

If any of the above change, the ruling may not apply

Example – you make a procurement change and now import a component that was previously sourced in Australia

# Using a DoO

- Covers goods under a single customs declaration (note that CoO refers to a single consignment)
- Valid for 12 months after issues
- No requirement that the DoO be issued prior to export
- Article 3.17(2) limits claims for refunds to 12 months from payment of duty
- Crucial that the information on the DoO corresponds with the supporting commercial documents



# Using a DoO

Best suited for:

- commodities
- exporters with a limited product range
- products where the inputs into production or production methods do not change

It is crucial that you have systems in place to identify any changes to procurement or the goods that may impact on the validity of the ruling

# Review of current procedures

Article 3.24 - within 3 years of entry into force of ChAFTA, China and Australia will review broadening the use of DoOs

3 years ends on 20 December 2018

Hopefully the advance ruling requirement will be removed

# Questions



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