

The number one error made on import declarations – the valuation date

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The number one error detected on import declarations by the Australian Border Force (ABF) in 2107 – 2018 was incorrect valuation date. To put this in context, there were more valuation date errors detected than the combined number of tariff classification, use of tariff concession orders and invoice term errors combined. However, this is not a case of customs brokers suddenly deciding to ignore the need to report the correct valuation date, rather, the ABF has changed how it measures compliance. This is causing headaches for customs brokers, clients and exporters. Frustratingly, there is no strong economic or security reason driving the increased compliance approach.

Which date is the correct valuation date?

The valuation date is determined by the date of export. This would be easy if the export date was the date the aircraft or boat left the country of export. However, the Customs Act effectively states that for containerised goods, the date of export is the date the goods left the place where they were packed in the container (Packing Location). This will most often be the manufacturer's premises or a consolidation facility. Depending on the logistic arrangements, there may be significant time between the container leaving the Packing Location and the date it sets sail on a vessel bound for Australia.

Customs brokers have often relied on information contained on the bill of lading to determine the date of export. While this may show the date of loading of the container or day of departure of the vessel, it will not of course state where the container was packed, or the date the container left that place.

The ABF has recently taken the approach that it will only accept the date of departure of the vessel where attempts have been made by the customs broker/importer to determine the date of departure from the Packing Location. At a minimum, this will require either the customs broker or the importer to actually ask the supplier what date the container left the Packing Location.

It is not an international requirement to document where a container was packed

or the date it departed that place. As such, many exporters will not be recording this information in a way that is easily accessed by Australian importers. The information will usually only be obtained following an additional inquiry being made by the customs broker or importer.

This creates an extra job and paperwork in the supply chain. This is an unwelcome burden at a time when time pressures on customs brokers are increasing and there is intense pressure to reduce the costs of international trade.

Does this need to be a compliance focus area for the ABF

The ABF cannot rewrite the Australian legislation and declare the date of export as being the date the vessel set sail. However, it can choose the legislation requirements on which it will focus. In choosing to focus on export date, it is important to identify what is the policy concern. It is hard to see how the date of export could determine any level of security risk.

However, there is a minor revenue issue. The date of export is used to determine the date for currency conversion for invoices that are in a foreign currency. There is a theoretical risk that the export date could be manipulated to produce a lower Australian dollar customs value. By the time the goods reach Australia an importer will know if the exchange rate was more favourable on the date the vessel departed or the date the container left the Packing Location. The ability to

produce a material revenue difference will realistically only occur where each of the following occurs:

1. the invoice price is in a volatile currency;
2. there is a reasonable time difference between the real date of export and the date the vessel departed; and
3. either the goods are subject to high levels of duty (such as dumping duty) or it is an extremely high invoice.

For goods that are duty free there would obviously be no customs duty impact. Even for goods with a 5% duty rate, the currency movement would need to be at levels that are extremely rare for the duty impact to be material.

Unless there is evidence of the date of export being manipulated to avoid customs duty, there does not appear to be a revenue justification for the heightened levels of compliance activity.

What can the ABF do?

The Customs Act says that ABF must use the date the goods departed their place of export (where the container was packed), where the ABF is satisfied of that date. As such, the date of departure from the Packing Location should be the ABF preferred starting point. This seems to be the intent of the legislation. However, it is not a compulsory requirement that this date be used. If that date is not available, the ABF can use another date at its election.

The ABF has discretion as to when it will or will not be satisfied as to the use of a particular export date. At this stage the ABF requires customs brokers to make unsuccessful inquires before that customs broker can use the date of export of the vessel. However, the ABF could have stated that a customs broker can use the date of export of the vessel unless it knows the date of departure from the Packing Location. Under this approach the customs broker could not have ignored a known date of departure

from the Packing Location, but at the same time, he or she would not have been required to try track down the date the truck carrying the container left the Packing Location.

Put differently, the ABF approach could be, the date of export will be the date the vessel departed unless you can satisfy us of the correctness of an earlier date.

Legislative change

The ABF is in an awkward position because of the Australian legislation. It prescribes a date of export for containerised goods which is very hard, and sometimes impossible, for the importer to determine.

There doesn't seem to be any reason why the legislation could not be changed to make the date of export the date the vessel or aircraft carrying the goods departed the port of loading. Most people would think of this as an export date, rather than the date the goods left the domestic location where the container was packed.

Under WTO rules a country may choose either the date of import or the date of export as the date for currency conversion. It is arguable that by

choosing a date prior to export of the goods, Australia has not complied with this WTO requirement. Rather, Australia converts currency at the date the goods commence their journey to the place of export.

It would seem easier for the ABF, importers and customs brokers if the Customs Act was amended to make the date of export the date the goods carrying the vessel left of the port of loading. This approach would also mean Australia is more fully complying with the valuation commitments it made when joining the WTO.

Practical issues

Customs brokers need to inform their clients of the need to try find out the date the goods left the Packing Location. Clients may have no interest in this issue. However, they should be made aware that a failure to at least inquire may lead to:

1. an infringement notice;
2. delays in clearing the goods while the customs broker makes attempts to obtain the information; and
3. the need to amend the import declaration.

Some clients will have the ability to track the movement of the consignment online or will have received a notification when the goods were dispatched. Supplying this information can become habit once its importance is realised. The ABF will expect you to at least ask.

While it may seem that the ABF is being overly pedantic about this issue, we recommend that customs brokers take it seriously. In our view, the general approach of the ABF is correct at law. If it can be determined, the date of export is the date that containerised goods left the Packing Location. If the ABF is technically correct, it will not help your client to argue that they are applying the law in a way that impedes trade.

It is also the case that the ABF is identifying a lot of errors. If the errors persist, the ABF is likely to do one of three things, change its compliance approach, seek legislative change or start issuing infringement notices.

Out of the 3 options, the issuing of infringement notices may seem the most appealing for a Government looking to raise revenue in times of falling duty rates and a rising global climate of protectionism.



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