

AUSTRALIAN CUSTOMS NOTICE NO. 2002/72

Border Security Legislation Amendment Act 2002 – changes to sea cargo reporting

The *Border Security Legislation Amendment Act 2002* increases national security by further protecting Australia’s borders. The Border Security Legislation Amendment Act amends the *Customs Act 1901* (the Customs Act). References in this ACN to legislative provisions are references to the Customs Act.

The Border Security Legislation Amendment Act contains amendments that affect a range of Customs activities that contribute to the security of our borders, and includes new requirements that deal with the movement of goods. Specifically, the Border Security Legislation Amendment Act will require masters and owners of ships to report in-transit cargo to Customs. Customs has undertaken consultation with sections of industry during the past 6 months to assist in the implementation of the new reporting arrangements. The relevant amendments will commence on 5 January 2003, and masters and owners will be required to report all in-transit cargo from this date. This notice details requirements relevant to in-transit reporting in the sea cargo environment.

# In-transit cargo

In-transit sea cargo is cargo that is on board a ship that arrives in Australia that is intended to be kept on board the ship for shipment to a place outside Australia (including the external Territories) (s.64AB(3AA)).

# Reporting in-transit cargo

The Border Security Legislation Amendment Act amends section 64AB of the Customs Act to provide that, where a ship arrives at its first Australian port after having called at any port outside Australia, the master or owner of the ship must communicate to Customs a report of all in-transit cargo on the vessel (s.64AB(3AA)).

The in-transit report must be communicated to meet the following requirements:

If a ship’s journey from the last port it called at outside Australia is likely to take 48 hours or more, the report must be communicated to Customs not later than 48 hours before the ship’s arrival in Australia (s.64AB(3AA)(a)). If the journey is likely to take less than 48 hours, the report must be provided not later than 24 hours before its arrival (s.64AB(3AA)(b)).

*Electronic (email) in-transit cargo report*

Sea Cargo Automation (SCA) will currently not accept in-transit sea cargo reports. However, documentary in-transit cargo reports can be submitted to Customs by email until the implementation of the Integrated Cargo System (ICS).

Customs has established an Internet “*mail-box address*” in each State and Territory for receiving in-transit sea cargo reports. Documentary in-transit cargo reports will be accepted as an attachment to an email in either Excel or Portable Document Format (PDF). In-transit cargo reports must be emailed to the first Australian port that a ship intends to arrive at prior to the ship’s arrival. In-transit cargo reports do not need to be emailed to other intended ports of call while the ship remains in Australia.

An in-transit cargo report which is emailed to Customs uses the public domain Internet infrastructure. Cargo reporters concerned about Commercial-In-Confidence material being transmitted via the Internet should consider if the email reporting method meets their requirements. If not, a documentary in-transit cargo report should be submitted to Customs manually.

Customs is developing in-transit reporting functionality in the Integrated Cargo System (ICS), which will be introduced in 2004. Registered users will then be able to communicate in-transit cargo reports to Customs by computer.

*Manual in-transit cargo report*

Documentary in-transit cargo reports can be submitted to Customs manually. Prior to a ship’s arrival at the first Australian port that a ship intends to arrive at, a cargo reporter must deliver to Customs a completed and signed Form 1(A) Ship’s In transit Cargo Report, along with a copy of the ocean level bill manifest for all in-transit cargo. Where the ocean level bill represents a cargo consolidation, a copy of the house bill manifest must also be attached to the relevant ocean level bill.

There is no charge for making a documentary cargo report in respect of in-transit goods.

The Border Security Legislation Amendment Act amends subsection 64ABA(1) of the Customs Act to allow amendments to be made to in-transit cargo reports up until the time of the ship’s departure for an overseas port.

*Offence Provisions*

From 5 January 2003, s.64AB(3AC) of the Customs Act will provide that a person who intentionally fails to communicate an in-transit cargo report will commit an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

Subsection 64AB(3AD) will provide that it is an offence to fail to communicate an in- transit cargo report, which can attract a penalty not exceeding 60 penalty units. This is a strict liability offence (s.64AB(3AE)).

# Examination of in-transit cargo

Section 31 of the Customs Act provides that goods on board a ship from a place outside Australia are subject to the control of Customs while the ship is within the limits of any port in Australia.

Section 186 of the Customs Act provides that a Customs officer may examine any goods which are subject to the control of Customs and that the expense of the examination, including the cost of removal to the place of examination shall be borne by the owner.

Accordingly, under section 186, Customs may require in-transit cargo to be unloaded from a ship for examination. The costs associated with any such examination will be borne by the owner.

# Seizure of in-transit cargo

From 5 January 2003, s.203DA of the Customs Act will also allow Customs, under warrant, to seize in-transit cargo where a judicial officer is satisfied that the Minister has reasonable grounds for suspecting that the goods are:

* connected, directly or indirectly, with the carrying out of a terrorist act; or
* the existence of the shipment or the goods prejudices or is likely to prejudice Australia’s defence or security or international peace and security.

The owner of the goods will be able to apply to a court of competent jurisdiction for the return of the goods within 30 days of a seizure notice being issued (s.209F(1)). If the court finds that the goods are not associated with terrorist activity or do not impact upon Australia’s defence or security or international peace and security and, the goods were not used or otherwise involved in the commission of an offence, the court must order the return of the goods.

Any inquiries in relation to this Notice should be referred to the Manager Transport Policy, Shipping and Sea Cargo on (02) 6275 7501.

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National Manager Cargo Branch Cargo and Trade

for Chief Executive Officer 24 December 2002

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