

AUSTRALIAN CUSTOMS NOTICE NO. 2003/60

Duty recovery

This Australian Customs Notice (ACN) has been prepared to inform importers and brokers about legislative provisions and administrative arrangements applying to the recovery of unpaid Customs duty that should have been paid upon importation of goods. It only applies to Customs duty and does not apply to the recovery of other taxes payable at the border, such as GST, WET and LCT.

# Legislation

There are two sections of the *Customs Act 1901* (the Customs Act) that apply to duty recovery in the above circumstance. They are:

*Section 153 – duties recoverable as Crown debts*

Section 153 applies to the recovery of all duty where there is an outstanding liability to pay that duty.

The section is not limited in time, and is not limited to fraud.

*Section 165 – demands for duty short levied*

Section 165 limits Customs capacity to recover short levies of duty or erroneous refunds of duty arising from a Customs error in the calculation of duty or the classification of the goods. It does not affect Customs capacity to recover short payments or erroneous refunds of duty arising from fraud or Customs being misinformed by the owner.

The section operates to limit Customs to, currently, one year to fix its duty related errors. An amendment in the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the ITM ACT) has been passed which will extend this period to four years. The ITM Act is expected to commence later in 2004.

# Duty recovery procedures under section 153 and section 165

The table below sets out duty recovery procedures under sections 153 and 165. The power to recover duty is contained in section 153. Section 165 only applies to recovery circumstances where Customs has made an error resulting in a short levying of duty. Most recovery circumstances will not involve section 165.

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|  | **Section 153** | **Section 165** |
| **Legislation** | All duties shall constitute Crown debts charged upon the goods in respect of which the same are payable and payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector**.** | (1) When any duty has been short levied or erroneously refunded, the person who should have paid the amount short levied or to whom the refund has been erroneously made shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Chief Executive Officer within 12 months from the date of the short levy or refund. |



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| **How did short payment arise?** | The duty short payment arose from either:  incorrect self-assessment by the owner/importer; or  incorrect assessment by Customs based on incorrect information provided by the owner/importer; whether by fraud, negligent misdescription, or otherwise. | Customs incorrectly calculated the duty payable based on correct information provided by the owner/importer. |
| **How payment of duty will be required** | Although there is no statutory provision for a formal demand to be made, a letter of demand will be sent before commencing recovery action.  The letter will:  outline the circumstances in which the debt arose; request payment within a specified time;  indicate Customs intention to bring recovery action if the duty is not paid. | Section 165 requires a demand for payment to be made within 12 months of the short levy or erroneous refund. |
| **Who can require payment?** | ‘The Collector’ – therefore any officer of Customs doing duty in relation to duty recovery can sign such a letter. | Only the Chief Executive Officer or officers who are delegates of the Chief Executive Officer for the purposes of section 165 can issue a demand for payment. |
| **When can payment be required?** | Duty can be recovered under section 153 at any time. | The demand will be issued within 12 months of the duty being short levied or erroneously refunded.  If the duty is not paid/repaid on the demand, then provided the demand was issued within 12 months, action can then be brought under section 153 and 165. |

# Consultation

Where Customs identifies a short payment, normal consultative process providing the importer with an opportunity to explain matters relating to the short payment will be carried out before a letter demanding payment of duty is sent. Such consultation may comprise an exit interview after an audit or a letter seeking an explanation of why goods were described, valued or classified in a particular way.

Where an importer identifies a short-payment and lodges a voluntary post-warrant amendment (PWA) an explanation will not be sought about the short payment unless other circumstances make it necessary. A letter demanding payment of short-paid duty will be issued if the PWA remains unpaid, and where necessary, court action to recover the duty will be initiated.

# Duty Disputes

Section 167 of the Customs Act allows an owner to obtain authority to deliver his or her goods into home consumption while preserving the right to dispute the amount of duty assessed by Customs by paying the duty ‘under protest’. The owner can then apply to the Adminstrative Appeals Tribunal for a review of Customs decision.

Where goods have already been delivered into home consumption and Customs seeks to recover unpaid duty in relation to those goods it is not necessary that a person pay any duty demanded under protest in order to preserve the right to dispute the amount. If the duty is not paid, and Customs seeks to recover the debt, the owner can still challenge the lawfulness of the duty assessment when defending any debt recovery action brought by Customs.

Inquiries concerning this notice may be directed to Manager Compliance Policy on telephone number (02) 6275 6252 or fax number (02) 6275 6227.

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