



Australian Government
Department of Immigration
and Border Protection

INDUSTRY
SUMMIT

Revenue related dispute resolution



Introduction

- Avoiding disputes - Trade Advice System
- Internal reviews
- External review
 - AAT
 - Judicial review
- Dumping duty disputes
- Revenue disputes in 2014-15
- Dispute resolution approach
- Questions and discussion



Avoiding disputes - Trade advice services

- Trade advice can be sought on all topics relevant to Customs duty - (classification, valuation, origin, preferential rates, concessional items)
- System is administrative, not statute based
- Main source is via the National Tariff Advice Centre (NTAC)
- If an importer enters goods in accordance with a Trade Advice issued to them, and facts reasonably disclosed on request, no demands or penalties will be issued
- Trade advice services and products are currently being reviewed.



Internal review

- There is a statutory internal review for decisions to refuse to grant a Tariff Concession Order (TCO) or to revoke a TCO upon application. Such internal review is mandatory before AAT review.
- Otherwise internal review is available as a matter of administrative practice, of Trade Advice decisions, and of demands for duty.

External review - Administrative Appeals Tribunal

- Wide range of decisions under the *Customs Act 1901* are subject to external review by the AAT, as set out in s.273GA
- Almost all applications for review are duty related
 - granting or revoking of TCOs
 - refused refunds
 - duty demands, only after duty has been ‘paid under protest’ pursuant to s.167, application can be made within 6 months for review of demand and decisions leading to demand (classification, valuation, origin, application of concessions including by-laws and TCOs.)
- Other reviewable decisions include licensing of brokers, depots and warehouses, issuing demands for duty on goods lost under Customs control.

External review - judicial review

- Administrative decisions are subject to judicial review, but rarely exercised.
- Almost all judicial review applications in recent years have been in relation to anti-dumping measures.
- The Minister for Industry, the Department of Industry and its Anti-Dumping Commissioner are responsible for investigations of anti-dumping complaints and decisions under Part XVB *Customs Act 1901* regarding the imposition of measures (and review or continuation of those measures).
- DIBP and the ABF remain responsible for the collection of duty under the *Customs Tariff (Anti-Dumping) Act 1975*, after measures have been imposed by the Minister for Industry.

Review of demands for dumping duty

- Disputes arise regarding whether dumping duty is payable, however duty under the *Customs Tariff (Anti-Dumping) Act 1975* can not be paid under protest pursuant to s.167, and so the usual AAT jurisdiction for duty disputes is not available.
- However, there are two avenues for review:
 - Judicial review, for example *Primaplas* this year, judicial review sought of classification decision relevant to dumping duty, or
 - Apply for refund of dumping duty paid, and then can seek review by AAT of refusal to pay refund

Snapshot of external revenue disputes 2014-15

- \$15.6 billion in revenue collected, including \$10.8 billion Customs duty
- 33 AAT applications regarding revenue disputes, all regarding Customs duty:
 - 15 concluded without a hearing, of which 12 applications were withdrawn and three settled in a manner favourable to the applicant
 - 13 AAT decisions after contested hearing, of which three set aside decision under review
- One decided Federal Court appeal from AAT, decided against appellant
- One judicial review application, initially decided against applicant, appeal decision is pending.



External dispute resolution approach

- Flexible and informal, making use of AAT processes as appropriate.
- Applicants encouraged to explain their issues early, during and outside AAT conferences. Informal discussions encouraged to appreciate issues and explore settlement opportunities.
- If no settlement is reached, DIBP's position is explained and attempts made to identify and narrow factual and legal issues so hearing is as short and smooth as possible, assist the Tribunal to reach the correct and preferable decision.



Our vision

We seek to resolve revenue disputes as efficiently as possible, with minimal disruption and cost, after full consideration and explanation of the issues, and in accordance with the revenue law.

We want industry to be well aware of, and to appropriately exercise, their internal and external avenues of review, as part of the process to resolve disputes.



Challenges

While with new Free Trade Agreements (FTAs) more goods can be imported duty free, the FTAs also add to the complexity of the law, as does developments in other areas including anti-dumping.

The increased complexity of the law and of international supply chains adds to the difficulty of ensuring the revenue law is correctly applied by importing businesses and by DIBP. We expect that the number of revenue disputes will not decrease, and will involve a wider range of issues.



Questions?

- From your experience or observation of Customs duty disputes, do you consider the dispute resolution processes that are used are generally appropriate? What practical suggestions do you have for improvement?
- Do you consider that industry, including its professional advisers, is sufficiently aware of the available internal and external review mechanisms? What could be done to increase awareness?