



## INSTRUCTIONS AND GUIDELINES

### Defining '*consignment*' for the purposes of section 68 of the Customs Act 1901

**March 2010**

**These Instructions & Guidelines refer to Practice Statement:  
Clearance of Cargo – Imports (PS2009/23)**

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**Availability:** Internal and external  
**Subject:** Defining '*consignment*' for the purposes of section 68 of the Customs Act 1901 – March 2010  
**Purpose:** To clarify the definition of '*consignment*' for the purposes of Australian Customs Notice 2006/59  
**Owner:** National Director, Trade and Compliance  
**Category:** Operational Procedures  
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***The electronic version published on the intranet/internet is the current Instructions and Guidelines.***

## **1. SUMMARY OF MAIN POINTS**

These Instructions and Guidelines:

1. define 'consignment' for the purposes of the Customs Act 1901;
2. clarify the definition of 'consignment' and provide examples to illustrate its meaning; and
3. outline the Compliance approach for the purposes of reporting consignments.

These Instructions and Guidelines apply to staff in:

- Trade and Compliance Division
- Cargo Division (including Customs Information and Support Centre)

## **2. INTRODUCTION**

Section 68 of the *Customs Act 1901* (the Act) requires certain imported goods to be entered for home consumption or warehousing unless a specific concession exists. An entry for home consumption can be made by submitting an import declaration in respect of the goods, to the Australian Customs and Border Protection Service (Customs and Border Protection).

These Instructions and Guidelines are intended to complement and clarify Australian Customs Notice 2006/59 regarding the meaning of consignment.

## **3. CONTEXT AND SCOPE**

These Instructions and Guidelines apply to all goods imported into Australia:

- that are sent from one (1) consignor to one (1) consignee; and
- arrive in multiple packages.

## **4. INSTRUCTIONS AND GUIDELINES**

### **I. Definition of Consignment**

The term 'consignment' is not defined in the Act. Therefore, it is necessary to consider its ordinary legal meaning to determine what constitutes a consignment for the purposes of the Act.

Osborn's Concise Law Dictionary defines consignment as '*goods delivered by a carrier to a consignee at the instance of a consignor*'. There is no requirement that a consignment of goods must be shipped as one (1) package or lot: in certain circumstances, goods may be part of a 'split consignment'.

Applying this definition, Customs and Border Protection considers a consignment to be goods that are shipped from one (1) consignor to one (1) consignee as a single consignment but which may not be packed in a single package or arrive in Australia at the same time. Where the total value of the goods (all parts of the consignment) is greater than AUD1000, then the goods must be entered.

## II. Context

Customs and Border Protection acknowledges that with the increase in international trade and the changing global economy, there are many different ways in which goods from a consignor (or different consignors) arrive in Australia. The intent of this advice is to provide guidance on when goods must be entered under section 68 of the Act. This is to ensure importers do not intentionally split consignments of cargo into multiple consignments to avoid the payment of relevant duties and taxes.

Generally, a split consignment is one that is sent from one (1) consignor to one (1) consignee that is made up of more than one (1) package, with each package arriving separately to each other. While the goods arrive at different times, for the purposes of the Act, they are considered to be one (1) consignment and relevant duty and taxes apply.

Close attention will be paid to orders suspected of being split consignments, or bulk-orders. By-laws 32a and 32b to Schedule 4 of the *Customs Tariff Act 1995* exclude goods that form part of a bulk-order from receiving the concessional treatment applied to low value goods e.g. those below the AUD1000 import entry threshold.

Bulk-orders that are shipped over two (2) or more shipments and entered on multiple import declarations/self assessed clearance declarations are one (1) consignment. The Integrated Cargo System (ICS) will allow the separate reporting of such orders. In such cases the importer/reporter/owner must select the “pay duty and GST” option available in the ICS. Bulk-orders are goods ordered together but shipped separately.

Single consignments will generally be transported to Australia in the same ship or aircraft (at some stage of their journey); however, they may not necessarily arrive in Australia on the same ship or aircraft.

NOTE: The ICS has functionality that supports the lodgement of one (1) import declaration for multiple suppliers. This function is ONLY limited to FCX<sup>1</sup> Cargo (for containerised sea cargo).

## III. Examples

The fundamental factor when determining whether a consignment is a single consignment is whether the goods are from one (1) consignor to one (1) consignee. With this in mind, the following questions and flow chart will assist in determining the existence of a consignment:

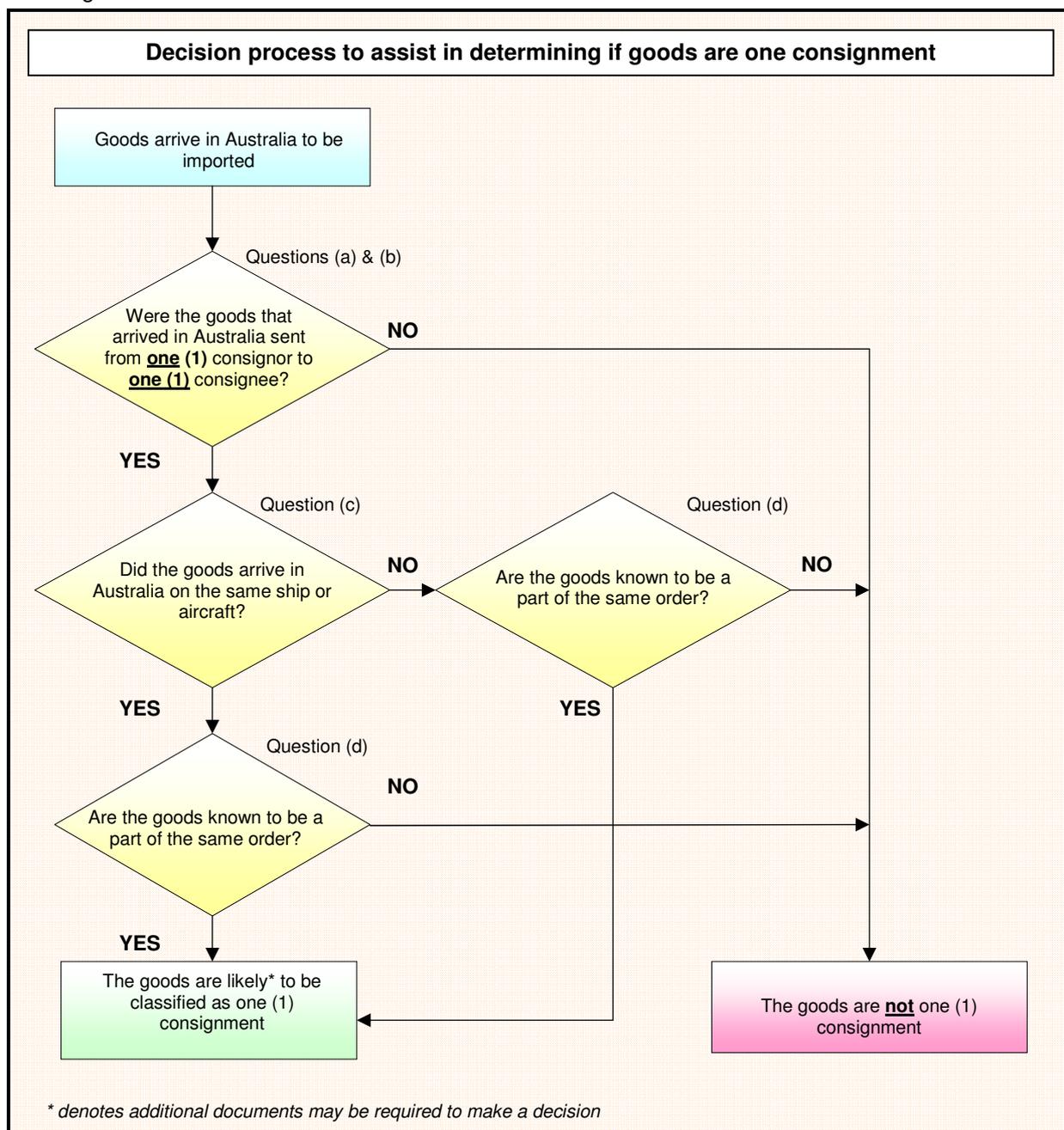
- a) are the arriving goods from the same consignor (regardless of date of shipment); **and**
  - b) are the arriving goods for one (1) consignee; **and**
  - c) did the goods arrive in Australia on the same ship/aircraft; **and**
  - d) are the goods “known to be part of the same order” ?
- If the answer to questions (a) and (b) is ‘no’, then the goods do not constitute one (1) consignment.
  - If the answer to questions (a) and (b) above is ‘yes’ but the answer to question (c) is ‘no’, then the goods may be part of the same order, and the bulk-order by-laws may apply.
  - If the answer to questions (a), (b) and (c) above is ‘yes’ but the answer to question (d) is ‘no’, the goods do not constitute one (1) consignment.
  - If the answer to all four questions above is ‘yes’, then the goods constitute one (1) consignment.

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<sup>1</sup> FCX (Full container multiple house bills) is a shipping container containing a number of individual consignments for one consignee.

The term “known to be a part of the same order” means the relevant information regarding an order is/was known or available at the time a decision is/was made. If further information or different information becomes available, or is made known at a later time, amendments should be made to ensure compliance with the definition of a consignment and that the correct duty and GST is paid in the ICS.

The flow chart below provides a simple visual aid to assist in determining if goods are one consignment.



Further examples are provided below:

#### Example 1

Goods arriving on the same ship/aircraft, from different companies or branches owned by a multi-national corporation (not the same consignor) to the one (1) consignee.

*Refer back to the test: Questions (a) and (b) – this does not constitute one (1) consignment.*

#### Example 2

Goods are from multiple consignors to one (1) consignee but arriving on the same ship/aircraft and were shipped from the same port.

*Refer back to the test: Questions (a) and (b) – these goods do not constitute one (1) consignment.*

#### Example 3

Goods from one (1) consignor to one (1) consignee, arriving on different ships/aircraft, and the goods were ordered together.

*Refer back to the test: Question (d) - the goods constitute one (1) consignment if part of the same order. Supporting documentation may be required to assist in decision making.*

#### Example 4

Goods from one (1) consignor to one (1) consignee arrive on different ships/aircraft (on the same or different day) and it is unclear the goods were ordered separately.

*Refer back to the test: Question (d) - the goods are more than one (1) consignment as they were ordered separately (not on the same order), supporting documentation indicates that there was more than one order for the goods. If goods are not part of the same order, then the goods are not one (1) consignment. This example is one that may require supporting documentation to assist in decision making.*

#### NOTE:

- The examples above have been developed to assist determining when goods are one (1) consignment, and are a guide only. Where Customs and Border Protection questions the legitimacy of the consignment, Customs and Border Protection officers reserve the right to seek further information to assist in verifying whether goods constitute one (1) consignment.
- An arriving package with a value at or below the import entry threshold (AUD1,000) does not automatically qualify for the duty and tax exemption; other legislative requirements (such as By-laws 0540003 and 0540004 to Item 32A and 32B of Schedule 4 to the *Customs Tariff Act 1995*) must also be met before the package is delivered into home consumption without the payment of duty, taxes and other charges.

## **5. OBLIGATIONS**

Customs and Border Protection has a Compliance Assurance program in place to monitor cargo reports and related import declarations, and will seek evidence of consignor and consignee details where there may be concerns that reporters are not reporting cargo correctly, or are making import declarations incorrectly.

Where Customs and Border Protection identifies non-compliant behaviour, it will consider a range of responses aimed at improving, and if necessary, enforcing compliance. Responses include assessing cargo reporting systems, increased monitoring and cargo interventions to cross check reports of goods and values, and/or penalty action in accordance with the Customs and Border Protection Regulatory Philosophy and Infringement Notice Scheme guidelines.

It is advisable that importers take steps to understand their obligations. Providing false or misleading information to Customs and Border Protection is a strict liability offence under sections 243T and 243U of the Act.

Information on Customs and Border Protection reporting processes and obligations is available via the Customs and Border Protection website ([www.customs.gov.au](http://www.customs.gov.au)). In the first instance you can contact the Customs Information and Support Centre for further information.

**BCS CLASSIFICATION: Trade Facilitation and Compliance – Procedures - Guidelines**

**FILE NUMBER: 2009/016917 – 01**

## **6. RELATED POLICIES AND REFERENCES**

### Australian Customs Notices (ACNs)

- ACN 2006/59 – Definition of “consignment” for the purposes of Section 68 of the Customs Act 1901
- ACN 2009/47 - Definition of “consignor” and “consignee” and Compliance Approach for the purposes of reporting cargo

### Practice Statements:

- Clearance of Cargo – Imports

## **7. KEY ROLES AND RESPONSIBILITIES**

### National Manager Trade Policy and Regulation

- Provision of strategic, directional and operational policy development relating to clearance of import and export cargo.
- Policy outcomes required by Government, Customs and Border Protection and other Government Agencies for the clearance of cargo.

### Director Import / Export Policy

- Provision of strategic, directional and operational policy advice on matters relating to clearance of import and export cargo including the development of Practice Statements and Instructions and Guidelines, to achieve required outcomes.

### Regional Directors

- Assist in the development, revision and maintenance of Instructions and Guidelines.
- Ensure managers are provided with the resources to enable staff have access to the Instructions and Guidelines and are trained accordingly.
- Ensure that staff adhere to the approved Instructions and Guidelines.
- Ensure that errors or potential improvements identified in the Instructions and Guidelines are reported to the Director Import/Export Policy.

### Managers

- Providing training to supervisors and officers, ensuring they have a sound understanding of these Instructions and Guidelines to achieve nationally consistent outcomes.
- Assisting in the development and maintenance of Instructions and Guidelines.
- Ensuring that Practice Statements and associated Instructions and Guidelines are complied with.

### Supervisors and Officers

- Ensuring they are familiar with this Instruction and Guideline and undertake appropriate training.
- Complying with the Instructions and Guidelines.

## 8. CONSULTATION

The following internal stakeholders have been consulted in the development of these Instructions and Guidelines.

### Internal

- Cargo Division (CI&SC and Cargo Reporting)
- Compliance Assurance Branch
- Customs Legal Unit

### External

- Conference of Asia Pacific Express Carriers (CAPEC)
- Customs Broker and Forwarders Council of Australia Inc. (CBFCA)
- Australian Federation of International Forwarders (AFIF)
- Brokers and Freight forwarders not affiliated with CBFCA or AFIF

## 9. APPROVAL

<b>Approved on</b>	(date)	(signature)
<b>By</b>	Sue Pitman National Director, Trade and Compliance	
<b>Review Period</b>	Annually	