

EXPLANATORY STATEMENT

CEO Specification No. 2 of 2005

Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004

Section 6 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* (the Application Act) provides:

“[b]efore the ITM import amendments commence, the CEO must, by notice published in the *Gazette*, specify a time not more than 40 days (including Sundays and holidays) after the import cut-over time as the turn-off time.”

Background and Instrument

The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the ITM Act) amends the *Customs Act 1901* (the Customs Act) to, amongst other things, create the legal foundations for communicating electronically with the Australian Customs Service (Customs) using a new computer system known as the Integrated Cargo System (the ICS). In order to allow people who want to communicate with Customs electronically time to prepare the relevant systems, the amendments in the ITM Act have been proclaimed to commence progressively.

The amendments relating to the importation of goods and the arrival of ships and aircraft in Australia (the ITM import amendments) have been proclaimed to commence on 19 July 2005.

Section 7 of the Application Act provides, in part, that the ITM import amendments apply to reports relating to the impending arrival, arrival and unloading of goods from a ship or aircraft if the ship or aircraft is due to arrive at its first port or airport in Australia at or after import cut-over time. This includes the requirement to use the ICS to make electronic reports to Customs. A ship or aircraft that is due to arrive at its first port or airport in Australia before import cut-over time is subject to the requirements in the Customs Act before the ITM import amendments commence (the unamended Customs Act). Section 7 also sets out what requirements apply if the ship or aircraft arrives earlier or later than expected. The Chief Executive Officer of Customs (the CEO) has specified that the import cut-over time be 2am in the Australian Capital Territory on 28 August 2005.

Similarly, section 8 of the Application Act provides, in part, that the ITM import amendments apply to imported goods that are on board a ship or aircraft that is due to arrive at its first port or airport in Australia from a place outside Australia at or after the import cut-over time. This covers for example, the requirement to enter goods for home consumption or warehousing. Again, the unamended Customs Act will continue to apply to goods on board a ship or aircraft that is due to arrive at its first port or airport in Australia from a place outside Australia before the import cut-

over time. If however, such a ship or aircraft does not actually arrive until at or after turn-off time, the ITM import amendments will apply.

The unamended Customs Act requires electronic reports relating to imports and the arrival of ships and aircraft to be made using the Sea Cargo Automation System (SCA), the Air Cargo Automation System (ACA) and COMPILE.

The turn-off time is the time that these systems will no longer be able to be used by importers, cargo reporters, operators of ships and aircraft etc to make these reports.

The CEO has specified that the turn-off time is 2am in the Australian Capital Territory on 7 October 2005. This is the latest possible day that the CEO could specify. The 40 day gap between import cut-over time and turn-off time will enable processes started in SCA, ACA and COMPILE to be completed in those systems. This is because these systems will not be compatible with the ICS.

In addition, some reports will still have to be made under the unamended Customs Act at or after turn-off time. Division 3 of Part 2 of the Application Act sets out how the unamended Customs Act will operate after turn-off time. For example, amendments of computer cargo reports will have to be made by document.

Since there are lower or no import processing charges for making electronic reports, the *Import Processing Charges (Amendment and Repeal) Act 2002* will reduce or remove the charges that apply to documentary reports made under the unamended Customs Act at or after turn-off time.

It is a strongly held view of the importing community and their agents that they will not have the systems in place in time to communicate using the ICS in relation to ships and aircraft (or goods on board them) arriving on or after 2am in the Australian Capital Territory on 28 August 2005. This situation would result in severe disruption at all major ports and airports that deal with import cargo as well as having a major impact on Australian business and manufacturing dependent on imports.

Hence, the Minister for Justice and Customs has announced that a Bill will be introduced into the Parliament during the 2005 Spring Sittings to allow the cut-over period to be extended until 12 October 2005 and turn-off time delayed until 21 November 2005 also 40 days apart. This will allow communicators additional time to prepare and test their electronic systems.

Whilst it is proposed that the turn-off time will be delayed, the CEO has made CEO Specification No. 2 of 2005 to meet his current statutory obligation.

Consultation

The importing community and their agents have been consulted about the proposal to specify the turn-off time.

Commencement

The instrument commences on the day on which it was registered.