Customs Brokers and Forwarders Council of Australia Inc.

COMMENTARY

Productivity Commission Discussion Paper

Collection Models for GST on Low Value Imported Goods

July 2017

August 2017

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1. Executive Summary

In response to the Productivity Commission (the Commission) Discussion Paper *Collection Models for GST on Low Value Imported Goods* the Custom Brokers and Forwarders Council of Australia Inc. (CBFCA) does not believe that the results from the Commission's 2011 Inquiry *Economic Structure and Performance of the Australian Retail Industry* to the effect that : *"benefits of doing so would far outweighed by the collection cost"* is no longer the case in 2017 as to the collection of the Goods and Services Tax (GST) on Internet e-commerce . There have been significant advances in communication and information technology (CIT) since that Inquiry and those who handle low value consignments driven through Internet e-commerce now have, in the main, the capability to report goods and to collect any relevant GST on those goods which fall below the referenced $1000 customs value threshold.

The CBFCA recognises that vested interests drive the biases as to the support, or otherwise, of the GST collection models either the *vendor or transporter intermediary model(s).* However, the Government has clearly signalled an intention that effective 1 July, 2018, GST will be collected on low value imported goods. The CBFCA also noted with interest the Report of the Senate Economics Legislation Committee of May 2017 and in particular the additional comments provided by Senator Xenophon as well as debate on the Bill in both the House of Representatives and the Senate on the GST collection issue.

The CBFCA as part of its work with the Low Value Parcel Processing Taskforce(Taskforce) and as to its Final Report - July 2012 was cognisant of the position put by the Taskforce that:

"a more streamlined and automated version of the border model but with the transporter ultimately responsible for collection and remitting the GST "

The CBFCA has noted the comments of the Commission in its Discussion Paper as to issues of compliance, revenue, and cost. On balance, the CBFCA sees that the above-mentioned commentary of the Taskforce will meet the challenge of higher levels of compliance, data integrity and an

ability to collect and remit the GST in a cost-effective and cost-efficient manner.ie. ***transporter/intermediary model.***

The CBFCA notes that in other places taxes (as to other economies or jurisdictions as they relate to security and other travel issues) are collected by service providers in Australia (and elsewhere) and remitted accordingly to the respective economies taxing authority. Therefore, it is suggested in purely commercial arrangements that precedent exists as to tax (and cost recovery) collection and that the *transporter / intermediary model* brings the opportunity for uniformity and consistency to the collection process and supports border control requirements which appear to have been lost in the discussion on fiscal collection.

Clearly what is needed is a system which provides for appropriate facilitation of the movement of Internet e-commerce and the appropriate controls in relation to fiscal and border compliance (customs, biosecurity and transport security).

The CBFCA expands on these key issues in this response to Commission's Discussion Paper.

2. Introduction

2.1 Customs Brokers and Forwarders Council of Australia Inc.

The Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) is the peak industry association representing service providers in international trade logistics, border compliance and supply chain management. The CBFCA represents its members and industry in a diverse spectrum of domestic and international trade committees, forums and discussion groups which reference customs, biosecurity and transport security matters.

In this capacity, the CBFCA has provided commentary and submissions as to equity, compliance, cost recovery and process improvement issues on the low value threshold (LVT) to a variety of Inquiries, the Taskforce and other reviews since 1998.

Further details of the CBFCA, its credentials and its involvement in the movement, and border clearance of goods Australia are available at www.cbfca.com.au

2.2 Contact Details

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3. PREVIOUS COMMENTS

In response to the Taskforce Final Report of July 2012 the Federal Government (Government) acknowledged that the $1000 threshold at which customs duty and the GST was collected on imported goods was high by international standards. It rejected at that time an immediate reduction of the threshold however it stated:

"... there are in principle grounds to reduce the low value threshold ... it would not currently be cost effective to do so without improvements of the efficiency of processing low value parcels"

The CBFCA recommended at the time that the Government facilitate an early review of the Taskforce findings to determine a suitable low value threshold (LVT) for all stakeholders in the international trade logistics and supply chain so as to ensure:

- Collection of appropriate/determined data for Australian border agencies to ensure statutory and mandated security checks (cargo screening) on Low Value Shipments (LVS) prior to their arrival into Australia

- Cost effective and cost-efficient process be provided for the collection of GST on LVS to ameliorate the effect on Australian retailers and ensure competitive neutrality
- Facilitated early release of imported goods to enable improved distribution and delivery
-A *self-assessment* philosophy be maintained for the clearance of all imported goods

The CBFCA commented at the time that the lowering of the LVT could be achieved (allowing for the above) for **all** stakeholders involved in the movement and clearance of Internet e-commerce consignments by way of **all** the parties seeking a holistic solution rather than maintaining sectoral biases.

What has been seen since the Taskforce Report is a variety of bilateral discussions on policy and process to meet the Internet e-commerce challenge. The draft legislation was recognition, eventually, that revenue leakage, cross subsidisation on cost recovery and compliance failures were becoming difficult to ignore and border controls (and regulators) were struggling to meet the challenge of increased levels of LVS consignments. While there was a recognition of the issues by all parties it was clear that the divergences of opinions would require Government to make the decision on how those challenges would be met.

In this regard, the CBFCA would suggest that the work undertaken by the parties charged with the responsibility to put forward appropriate outcomes for Government consideration was, in relation to the CBFCA's experience with regulators developing good governance principles and appropriate policy, less than effective.

The CBFCA after making a submission to the Taskforce Inquiry in 2013 had not been engaged in any discussions with any regulatory agency on the issues that led up to the Exposure Draft which was provided to the CBFCA for comment on 24 November 2016. The teleconference held on that date to address issues was less than satisfactory in terms of the CBFCA being able

to provide any constructive comment as to the position put forward by Treasury as to its support of the *vendor model*. The CBFCA suggested at the time that based upon the lack of appropriate empirical evidence and as to any evidence provided being less then timely that the industry consultation was, in the opinion of the CBFCA, flawed. The teleconference appeared more about consultation for consultation sake rather than trying to achieve a workable outcome, (refer CBFCA letter to Treasury Attachment A)

4. BACKGROUND

4.1 Internet E-Commerce

The challenge of Internet e-commerce in the Australian context came into Government focus in 1997 with the establishment of the Joint Committee of Public Accounts and Audit (the Committee) *Inquiry into Internet commerce.* This Inquiry was wide ranging and attracted a significant level of interest from individuals, traders, service providers and regulators. The Committee reported to Parliament in May 1998 in its Report 360 *Internet Commerce To buy or not to buy.*

The CBFCA participated actively in the Inquiry and commends to the Commission the Submissions made to the Inquiry and the Report itself as instructive background material. In hindsight had the Report Recommendations been appropriately considered and implemented by Government over the intervening period these may have alleviated the position Australia drifted to in relation to poor policy and process to give effect to a cost efficient and cost-effective oversight and regulation of Internet e-commerce.

The next iteration in relation to Internet e-commerce occurred in 2005 when the Australian Customs Service (ACS), Integrated Cargo System (ICS), Release 4, Imports was introduced to industry on the 12 October 2005, as part of the major customs reform under the Cargo Management Engineer (CMR) project.

As part of the 12 October 2005 reforms the threshold for low value goods was standardised to $1000 with this threshold purportedly to provide a balance between revenue thresholds in post and elsewhere, address the impost of regulatory burden and to enable the efficient movement of goods. Prior to 2005, the customs value threshold for goods imported by post was $1000, while the value threshold for goods imported by sea or air was $250. In addition, customs duty and GST was collected only if the combined customs duty and sales tax(GST) liability exceeded $50.

No industry discussion paper was, to the CBFCA's understanding, ever tabled or discussions undertaken with industry (this being confirmed in redacted Freedom of Information Data release in Ministerial correspondence of 23 August 2005) in relation to the proposed 2005 change and subsequent to that change there has been little, if any, review or assessment as to the impact of the change in policy either from a fiscal or border control impact. This in itself has led to a further deterioration of compliance oversight over an ever-increasing level of consignments entering the Australian commerce particularly through the express carrier process and the Australia Post express mail service(EMS)

At the time of introduction of the changed arrangements, communicated in the first instance to industry in a Special Meeting of the then Customs National Consultative Committee on 13 December 2005, the CBFCA noted that a significant increase in cost recovery (as result of a large portion of import declarations being culled) as a result of the variation of the customs value threshold to $1000 would occur to those importers whose goods required entry for home consumption. Again, as noted in FOI data, a saving of $8 million in import processing charges and about $15 million in commercial charges (in 2004/05-dollar values) was availed of by the express carrier industry.

To this change and with a view to the future the CBFCA stated in a letter to the then ACS, *inter alia*:

".. the CBFCA's perceives there will be variances in buying patterns and business arrangement as the threshold becomes more widely known with business and consumers. This will also affect cost recovery arrangements across other regulatory

agencies and may require a different approach to cost recovery over and above existing arrangements in all agencies as it is apparent cross subsidisation will continue to expand."

In simple terms to those who understood trade it was clear that the decision which had been taken without an appropriate level of understanding of the intended, or unintended consequences, would over time fail to deliver on any of the key aspects to facilitate or ensure regulatory compliance in Internet e-commerce trade.

4.2 Productivity Commission 2011 and Low Value Parcels Taskforce 2012

On 18 December, 2010 the Government announced an Inquiry into the future of Australian retail by the Commission this coinciding with a release of new research into online shopping in Australia and a campaign as to addressing border compliance as trend analysis showed individuals and businesses seeking to have their consignments fall below the $1,000 low-value threshold.

On 4 November, 2011, they Commission released its Final Report on the *Economic Structure and Performance of the Australian Retail Industry*. In the Commissions' Recommendations at 7.1 it stated:

> *"...in principle, the low value threshold exemption for GST and duty on imported goods should be lowered to promote tax neutrality with domestic sales. However, the Government should not proceed to lower the threshold until it is cost effective to do so"'*

and at 7.2:

> *"The Government should establish a Taskforce charged with investigating new approaches to the processing of low value imported parcels, particularly those in the international mail stream, and recommending a new process which would deliver significant improvement and efficiencies in handling"'*

In response to this above Recommendation on 9 December, 2011 the Assistant Treasurer, the Minister for Broadband, Communications and the Digital Economy, the Minister for Home Affairs and Justice and the Minister for Small Business jointly announced the establishment of a *Taskforce to Review Processing Arrangements for Low Value Parcels.*

The Taskforce Interim Report was released on 30 March, 2012 with the Final Report submitted to Government on 31 July, 2012. The CBFCA provided commentary to the Taskforce in its research and lead up work to the Interim Report and additional technical/business support to the Taskforce in its scenario testing for the Final Report.

The CBFCA participated actively in the work of the Taskforce and commends the work undertaken by its Chair, Mr B Cohen and the Taskforce members. This Report, for the first time provided significant empirical evidence in relation to low value importations, debunked certain myths, identified key components and players within the process as to sale, carriage and movement of Internet e-commerce consignments. It provided a pathway for Government implementation of effective policy to meet the challenge which had been identified.

The Executive Summary and Recommendations of the Report are commended to the Commission as to it understanding of not only the fiscal related aspects that need to be addressed in any process implementation but also as to **how integrated data will help support border control and facilitate the movement of Internet e-commerce consignments**. Suffice to say vested interests obfuscated the implementation of the Report Recommendations.

4.3 Import Processing- Cargo/Mail

Inherent in the discussion of low value parcels arising from Internet e-commerce trade is the need to distinguish between consignments that fall within normal commercial carriage by air or sea as against those handled by postal authorities.

These channels provide for different requirements under legislation as to import processing of goods carried either as:

. International mail, or

. Cargo (air and sea)

The key difference between international mail and cargo relates to reporting requirements. International mail (including parcels) is not electronically reported to the DIBP/ABF prior to arrival and requires a significant

intervention by way of manual processing supported by x-ray and canines. For customs purposes, there is no requirement to apply barcodes to parcels under a certain weight requirement this making identification and linking of data in any electronic process to an identified parcel. These arrangements have changed over time with track and trace now a key element of postal authority delivery arrangements for certain letter class articles, small and large parcels however in most instances there is no definitive data capture in relation parcel contents or value. However, within postal authority's EMS offerings this data has now commenced to be captured.

As to cargo this is reported electronically through the ICS by a service provider (Cargo Reporter) submitting manifested data for cargo being carried (imported) and prior to its arrival into Australia. The main purpose of the Cargo Report (CR) is to allow the DIBP/ABF and Department of Agriculture and Water Resources (DAWR) to adequately screen all shipments prior to arrival as to border compliance issues.

The Taskforce's Recommendation at 4.1, suggested several changes and modifications to then existing processes including, but not limited to :

(a) *enabling data capture for pre-arrival electronic data exchange by Australia Post and ACBP for clearance processing*
(b) *modifications of systems to capture and risk assess data provided by Australia Post in a manner consistent with current cargo reporting and clearance processes*
(c) *development of system interfaces with Australia Post*
(d) *implementation of processes to manually capture value data to assess revenue liability for goods without electronic data by Australia Post*

These issues remain core in the discussion as to equity of application and competitive neutrality between express operators and postal authorities as will be commented in other places in this Submission.

If postal authorities are competing in a marketplace where there is a need for specific regulatory compliance to be undertaken (particularly in relation to EMS) then there is, in the opinion of the CBFCA, a difference which needs to be applied in relation to regulatory requirements of the Universal Postal

Union (UPU) as to the changed business practices in a competitive global marketplace of express services.

5. CONCEPT AND PROCESS

5.1 Trade

International trade is as inherently complex as it appears simple. Not only are there a variety of interplays between buyers and sellers, service providers (whether they be carriers air, sea, road, rail, post or those providing services in international trade logistics and supply chain management) but also as to regulatory intervention at the border which operates in relation to both exports and imports addressing a variety of regulatory agencies fiscal, community safety, security, import prohibitions and restrictions, agriculture/quarantine, intellectual property rights and trade statistical requirements. **However, in all transactions there are common issues which form the basis for the purchase and movement of goods (and the data from same) these being a contract of sale and a contract of carriage. It is these which underpin the data requirements for business transactions and regulatory intervention.**

5.2 Contract of Sale

In the Internet e-commerce context, it is suggested that there is little understanding or attention by the parties that they are in fact undertaking a contract between a buyer and seller however all the normal conditions of a contract of sale and/or carriage are readily discernible. As to any remedies under such a contract these would be a rarely considered by a buyer other than having explicit faith in the process all of which and, of course, comes into stark reality when customs duty, other taxes and GST may become applicable at the time when the goods, cross the border in the country of importation and do not meet the buyer's expectations or are in some manner shape or form not able to be imported into the country. Such goods are then left to the carrier to address with the regulatory authority.

In international trade, the *United Nations Convention on Contracts for the International Sale of Goods* is instructive as to issues relating to contracts of

sale noting that *Article* 2 references sales for personal or household use being outside the scope of *Convention* however it remains a valuable guide as no other international legislation exists to address such activity. In the Australian context, the respective Sale of Goods Acts only address contracts in each respective State.

While a level of Internet e-commerce could be regarded as falling within the personal or household use criteria (Business to Consumer- B2C) however closer inspection of goods as imported shows a significant level of consignments are in fact commercial arrangements (Business to Business - B2B) where the goods in question are forwarded in several consignments (however probably under the one contract of sale) to enable the minimisation of customs duty, indirect tax payments and cost recovery.

So, for International e-commerce sales there is little, if any, governing legislation on rights and responsibilities save for explicit faith between the parties. The buyer either by way of this faith or on the basis of expectation, carries the liability as to the goods meeting regulatory requirements on importation into Australia. A dangerous position for buyers, carriers and regulators.

5.3 Contract of Carriage

In the international movement of goods and usually referenced in the contract of sale (even though that contract is more implied then expressed) is a usual requirement for the goods to be placed at the buyer's disposal at a certain place and/ or time. For buyers in Internet e-commerce and, using the vendor's electronic platform, there is a simplicity in arranging the transport of goods. The seller will usually provide a price for the goods and, by way of its understanding, or an arrangement with a carrier (whether that be an express carrier or a postal authority), provide a cost for the carriage of the goods from the point of place of sale to the point of place as designated by the buyer. Neither the seller nor the buyer (or if there is an understanding see that it is the responsibility of the other party) have, in most cases, especially the seller but in many ways also the buyer, any or little understanding as to regulatory requirements particularly in relation to the country of importation whether that be fiscal, community protection, import

prohibitions and restrictions, infringement of intellectual property rights, biosecurity or other border compliance issues. Little if any attention is given to the provisions of carriage dangerous goods (such as lithium batteries) the basis on which the goods are despatched or the rights, responsibilities and liabilities of the parties. Usually accepted trade terms (as referenced in the International Chamber of Commerce *Incoterms*) provides a variety of options as to carriage, the key for airfreight being:

. free on board (FOB),

. cost, insurance, freight(CIF), or

. delivered at place (DAP) …which is usually the default position.

The buyer (usually) has little understanding as to what may be the regulatory requirements in relation to goods that have been purchased for importation or if they do, hope that on the basis of poor regulatory oversight, that the goods in fact will be delivered without regulatory intervention.

Only on the arrival of the goods in the country of importation will the customs duty, other indirect tax requirements, import prohibition and restrictions crystallise. It is then when the carrier finds itself left in the possession of consignments which may be abandoned, or rejected for return to the seller who may not wish the return of the goods as in fact any return carriage of the goods is to the seller's account rather than the buyer's. This has been a conundrum for both the express carriers and the postal authority EMS process.

In bringing together the desirability of expansion of Internet e-commerce trade, and the underpinning contractual and carriage arrangements it is interesting to note that governments and regulators either in a desire to embrace Internet e-commerce or, by way of it being recognised as a significant trade issue, have been content to enable the Internet e-commerce process to work outside established business principles and regulatory norms.

In most cases domestic regulation ensures the parties to transactions meet specific rights, responsibilities and liabilities. Domestic legislation does not entreat value manipulation, misdescription of goods in relation to a sale nor unacceptable business practices which appear acceptable in relation to the carriage of Internet e-commerce goods across borders. Value manipulation of sales invoices is not an acceptable practice in most domestic legislation however "a *value for customs, no commercial value, no value declared*" are not strangers in relation to Internet e-commerce consignments neither are generic descriptions of goods.

To provide for an acceptable transition to Internet e-commerce there must be appropriate transparency, uniformity and consistency in the regulatory approach to this changing trade. International governmental entities such as the World Customs Organisation and the World Trade Organisation are now struggling to give that outcome and **Australia, in putting its position forward on Internet e-commerce must ensure that it has policy and process that not only addresses the fiscal issues but also the other key issues surrounding the movement of goods across borders.**

These border control aspects are addressed below.

5.4 Border Control

Internet e-commerce brings significant challenges for regulators at the border where, customs administrations are the point or place for control of goods either entering or exiting a country. Through a potential *single window* other regulator provide oversight for their requirements in relation to goods as imported. It is suggested that for most economies, while there is the vendor electronic platform in relation to Internet e-commerce sales (and it is suggested that these are the entities which provide data in relation to the exportation of goods)undertake minimal regulatory intervention as to the export of goods where in the Australian context, the DIBP/ABF has a differential interest in relation to exports as to imports and as noted in DIBP/ABF Compliance Advisory Group (CAG) Reports export data is poor in relation to quality and reliability. However, all goods exported are subject to the control of DIBP/ABF under the provisions of the *Customs Act 1901 (the*

Act). So if this is the regulatory position on export data the this will translate to poor, or deficient, import data.

5.4.1 Data Integrity and Cargo Reporting

Cargo reporting effectively provides a summary of data relating to consignments entering Australia this being made up from shipping bills of lading, airline airway bills, express carriers consignment notes and post EMS declarations. These reports are required within certain specific timeframes as referenced in *Part IV Division3 of the Act* which regulate carriers, cargo handlers and others involved in the reporting and unloading of cargo

So, for the arrival of the majority Internet e-commerce consignments data is provided electronically to DIBP/ABF (under special provisions) however for a variety of reasons these reports have limited value to border agencies for risk assessment. The information supplied to DIBP/ABF by Cargo Reporters is electronically generated and originates from shipper data when the shipment is booked for export. Screening of the manifest data is system based and is rarely checked against commercial documentation by Cargo Reporters (freight forwarder, express carrier etc.) who are responsible for submitting the information (in the form of a CR) prior to cargo arrival to enable DIBP/ABF and DAWR profiling. In contrast, the FID contains a comprehensive level of detail pertaining to a consignment and holds the key data set for regulatory profiling.

It is interesting to note from the Commission's 2011 analysis as to lowering the LVT that

".. an estimated 73% of international mail parcels containing goods below the LVT were in fact valued at $100 or less (for which the GST, where it applicable, would have been no more than $10 per item."

The Footnote to this comment goes on to say that the same analysis of international mail parcels estimated that 87% of items were valued at $200 or less and 90% were valued at $500 or less. It would be of interest to determine how those values were assessed.

Values as shown on consignment notes or the post parcel Customs Declarations can only be qualified and quantified by way of seeking from

the buyer what is commonly referenced in industry parlance as *"evidence of money price paid"* (through credit card receipts, bank transfers or other evidentiary provision.)

The CBFCA is aware that details on consignment notes whether that be as to description or values are inherently vague and but still form the basis of the electronic report to DIBP/ABF by Cargo Reporters as this is the only information they have available to them as they are not privy to the contract of sale details. This differs significantly from goods that require a FID (customs value over $1000) where the declaration is supported by appropriate packing lists, invoices, illustrative descriptive information to support classification and, if needs be, evidence by the importer of record as to the customs value of the goods as determined under *Part VIII Division 2 of the Act.*

5.4.2 Self-Assessed Clearance Declarations

A Self-Assessed Clearance (SAC) declaration is an electronic declaration that the DIBFP/ABF currently requires to clear goods imported by air and sea with a customs value at or below, the $1000 import entry threshold. Goods valued above the import entry threshold (and entered for home consumption) need to be cleared on a FID. Cargo Report SAC's are communicated through the DIBP/ABF, ICS and are screened against words of a kind as outlined in the SAC Thesaurus and should, in theory, provide accurate and correct information from third party sources. This in itself is an inherent defect as data from third parties on carriage documents is rarely if ever reconciled to commercial documentation.

There are two types of SAC's:

(1) Short form (this notification does not require a licenced customs broker intervention and can be/is completed by registered communicator in the ICS)

(2) Full Declaration Form (which requires the importer to be registered in the ICS and for the importer of record a licenced customs broker to complete the declaration)

The majority of SAC declarations submitted to the DIBP/ABF are made by a Cargo Reporter on a CR and when SAC declarations are made in this way no further verification is required.

As mentioned in the Taskforce Final Report July 2012, the compound annual growth rate of low value goods arriving by airfreight was 25.8% for the financial years 2008-2009 and 2010-2011. For the 2010-2011 financial year there were a total of 10,572,671 low value air consignments with only 720,867 having a value of $500 to $1,000 cleared on a short form Cargo Report SAC. However as regards to the customs value declared on consignment notes, no verification was then, or is today, undertaken. So, does this data have questionable validity?

5.4.3 Express Carriers

The express carriage model allows integrated service providers to have control of goods usually throughout the supply chain including the Australian import process. As previously stated the shipper's contract of carriage terms with their client (importer) determines who is liable for customs duty, GST and any other import compliance requirements. Therefore, this integrated model is heavily reliant on the carrier's business CIT system and data information generated by the shipper when the shipment is consigned for export. The information supplied by the shipper flows through to the carrier for any pre-arrival import screening prior to submission of the CR to DIBP/ABF.

This process is highly efficient and effective as to supply chain data and process management. However, a key concern (as mentioned in the Taskforce Final Report) is the accuracy of the data being submitted to the DIBP/ABF for evaluation and profiling prior to goods arriving into Australia.

Currently approximately 90% of all consignments moving through the express carrier's business model are, supposedly, under $1000 in customs value. As such they are considered low value shipments and consequently cleared via a CR SAC declaration.

However, the inherent risk to customs, biosecurity and other regulatory compliance requirements is that shipments are being cleared and delivered with minimal and usually deficient descriptions of the goods which results in restricted goods regularly going undetected or matched to the DIBP/ABF Thesaurus and/or other regulators profiles.

As advised DIBP/ABF profiling is based on consignor (seller)/consignee (buyer) names, addresses, country of origin and other descriptors which are in the main CIT driven.

Examples of non-compliance are noted in DIBP/ABF CAG Reports and highlight the need for increased intervention and screening by express service providers. The compliance activities indicate that there is non-compliance in CR SACs including exempt goods (alcohol, tobacco), permit goods and goods with a value in excess of $1000. This being acknowledged in DIBP/ABF compliance reports.

The express carrier model is based on pre-clearance of shipments which allows for an uninterrupted flow of goods through the border process for quick facilitated delivery to the customer.

The CBFCA would suggest based, upon its understanding of this industry, that the express carrier industry has CIT systems which as to shipment information can adequately capture, with minimal and/or no additional human resources, the fiscal and border control data in a manner similar to a FID.

5.4.4 Customs Value Threshold

The current customs value threshold was, so the CBFCA understands standardised to $1000 in October 2005 following a review by the Competitive Neutrality Complaints Office of the Commission. The threshold was, as stated set to provide a balance between revenue thresholds, the impost of regulatory burden on industry and the efficient movement of goods. Prior to 2005, goods imported by post had a $1,000 threshold, while goods imported as sea or air cargo had a $250 threshold. In addition, customs duty and GST was collected only if the combined duty and GST liability exceeded $50.

As regards this change in policy (and process), at no time did the then ACS provide a discussion paper as to the change nor did it canvas from industry at large the policy/process implications. No public document on such has been provided to date. The CBFCA also understands the policy change was made out of the Office of the Prime Minister and not the Department of Prime Minister and Cabinet. (refer Attachment B)

It is also noted that no appropriate policy/process review was, or has been, undertaken on such a significant change until 2012 even though there was sufficient information available as to revenue leakage and customs/biosecurity risks and this would form part of a normal policy review cycle. As the Taskforce noted in the period 2005/2009 little, if any, substantive data as to the SAC levels or leakage was collected.

The change in October 2005 was advantageous to express carriers as these service providers (as previously commented) gained business outcomes by reduced human resource requirements due to the fact that shipments between $250 to and $1000 no longer required a FID and subsequently these consignments were able to be cleared without human intervention, in the main, through the CR SAC for such goods.

5.4.5 Formal Import Declaration

An import declaration is made by the owner of goods or authorised licenced customs brokers (with an authority to act) to the DIBP/ABF.

The FID provides detailed information, supported from commercial and contract documentation (unlike a SAC) as to key issues related to the goods as informed and concluding including: *inter alia*

- owner
- supplier
- carrier
- origin
- weight
- customs value

When the customs value exceeds $1000 an assessment of any customs duty, GST and other charges occurs **including cost recovery charges**.

Import declarations are not only used for assessing revenue collection but are also an efficient way of profiling for restricted goods (goods requiring permission to import) or prohibited good.

The FID is both system and human resource integrated and as a start point a licence customs broker as the signatory to the declaration (and as a condition of their licence) is required to ensure the goods are correctly entered and satisfy community protection, biosecurity, safety and a myriad of other issues based on the information provided by the importer of record and carriers.

The licenced customs broker (or owner) electronically submit the import declaration directly to DIBP/ABF via the ICS or via their in-house computer software system using electronic data interchange (EDI) messaging where the DIRP/ABF undertakes *intelligence led risk assessment*.

5.4.6 Customs Duty and GST

Due to the complexity of customs duty arrangements, combined with increasing free trade agreements the lowering customs duty rates the Government agreed with the Task Force's Recommendation 3.3:

"…. that duty and GST LVT be separated to facilitate a more efficient process for handling low value imports."

The Taskforce Recommendation 4.8 was to the effect that the DIBP/ABF undertake periodic testing to assess changes in the level of undervaluation occurring in relation to low value imported goods.

In addition, the Taskforce recommended:

"…. review of offence and penalty provisions be undertaken to ensure appropriate penalties having regard to the growth in low value imported goods and changed processes, including any separation in the threshold for duty and GST."

These offence provisions underpin the compliance continuum of informed compliance, self-assessment and regulator risk assessment.

5.4.7 Authority to Act

To ensure compliance with regulatory requirements all service providers undertaking the clearance of goods must comply with the provisions of *Section 181* of *the Act* which states, *inter alia:*

> *(1). Subject to subsection (2), an owner of goods* ***may****, in writing, authorize a person to be his or her agent for the purposes of the Customs Acts at a place or places specified by the owner.*

In the context, of the *'may* 'provision (the CBFCA with its own legal advice) and from DIBP/ABF advice(s) over many years notes that *may* is a positive and a service provider, as to entry creation, requires such authority. There has been a long-standing issue with express carrier as to the need to hold such authority to represent clients.

In 2007 the then ACS advised members of the Conference of Asia Pacific Express Carriers i.e. DHL, FedEx TNT and UPS that the terms and conditions of carriage as referenced on their respective express shipment airway bill (consignment note) did in fact represent an authority to act. Based upon this consideration and the ACS acceptance that each entity is in fact an *agent* of the principal to the transaction under the contract of sale or carriage then a change in representation arises as to data submission by the parties to the DIBP/ABF. It is interesting to note the interaction between the seller, buyer and carrier where in the main the contract of carriage as to Internet e-commerce is concluded by the seller (consignor) of the goods however, an authority to act in terms of *agency* would more fittingly see the importer(consignee) of the goods as the principal party.

Notwithstanding this issue it is clear that each of the express carriers has an obligation to the importer and in terms of recent commentaries by the DIBP/ABP on aspects related to an authority to act and the linking of service providers to the definition of *owner* under *Section 4 of the Act* would clearly facilitate the *transporter intermediary model* where the service provider would take the responsibility for GST and collecting that liability from either the seller or the buyer of the goods.

(refer 'Notice of Decision as to CAPEC Documents' under FOI reference 2011/018431. Attachment C)

While it is noted in the Commission's Discussion Paper that the international mail stream does not have the appropriate systems in place to manage the efficient assessment and collection of GST on the importation of low value goods should Australia Post (and its overseas agents being postal authorities that integrate through the UPU) offer an EMS product then that service must comply with all the Australian provisions of electronic cargo reporting and the other requirements for safety and security. It should be noted that there is a requirement at this time in relation to the transportation of goods by air over 200 grams for postal authorities to capture certain information for safety and security arrangements.

There is in the opinion of the CBFCA and in its trade experience, a distinct difference between the EMS process and other movements of parcels where Internet e-commerce is not involved. Persons move goods through the postal system i.e. letters and parcels/gifts, to which no contract of sale exists and as such cannot be construed as a business to consumer (B2C) Internet e-commerce transaction. These transactions would also not be deemed as an import sales transaction under *Section 161 of the Act.*

The CBFCA would suggest the *transporter/intermediary model* for express carriers would cover off at least 80% of Internet e-commerce carriage of goods into Australia. The CBFCA perceives that the comment made by Australia Post to the Senate Committee Inquiry into the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 needs qualification as to the costs referenced for additional human resources and other activities to meet the challenge of EMS in the electronic reporting environment. Further discussion should be held with Australia Post on this issue noting that the UPU has already undertaken significant work to support EMS for its respective members and software development for reporting has already been tested and implemented in some economies. A sunset provision could be provided to Australia Post for it to meet the new requirements and this in itself would support the competitive neutrality position as put forward by CAPEC.

5.4.8. Security requirements

The DIBP/ABFD operates an *intelligence-led risk-based* strategic approach to managing the Australian border. Intervention is focused on high risk goods supported by processes which are designed to support the intelligence approach and inform the DIBP/ABF of emerging risks. DIBP/ABF resources are prioritised towards detecting high risk goods which pose significant threat to security and community safety. In addition, for transport requirements particularly in relation to air cargo, the Australian Office of Transport Security requires certain carrier electronic data submission from carriers .

In an international context referencing the US Department of Homeland Security, Customs and Border Protection provisions as to pre-load data requirements there are requirements for data as it relates to sea freight to be provided 24 hours before cargo is loaded into a container (Importers Security Filing) as well in relation to air cargo the submission of electronic data under its current pilot Air Cargo Advance Screening (ACAS). In both of these processes data is provided by carriers and/or other international freight forwarders by way of CIT and in it is interesting to note in relation to ACAS that the express carrier industry is the key pilot partner and has been able to readily meet the challenge of data exchange - not only security purposes but also as to commercial requirements.

6. OTHER CONSIDERATIONS

6.1 Declared Value and Cost Recovery

The current threshold is based on the customs value determined under *Part VIII* of *the Act* in essence at the ICC *Incoterm* FOB. Therefore, if the freight and insurance costs are included in the shippers declared customs value then overseas freight and insurance charges are allowable deductions for clearance purposes. The customs value therefore shown on the express shipment airway bill as CIF or DAP may create discrepancies as to the accurate determination of the customs value and as to whether a SAC clearance or a FID is applicable.

The declared value therefore has an impact on both DIBP/ABF and DAWR cost recovery arrangements for FIDs. Moving from a customs value of $999 to $1001 sees the importer subject to cost recovery for DAWR of $33 (air), $42 (sea) and DIBP $50 on a FID. So, in a situation where the goods may be free of customs duty and subject to GST not only will the GST be collected but also a cost recovery of $83 or $92. Therefore, as can be understood there is a propensity for importers (B2B, B2C) to ensure, as far as possible, that goods fall below the $1000 threshold as to mitigating GST payments and cost recovery.

In addition, as to the referenced 40 million express consignments there is a need for regulatory intervention from both customs and biosecurity with this intervention being both in CIT and human resource driven. At this time in relation to cost recovery there is a significant cross subsidisation from those who are required to enter goods on a FID as to those goods which fall under the customs value threshold. It should be noted that this cross subsidisation in the early onset of Internet e-commerce was marginal however today it is estimated that this cross subsidisation for both DIBP/ABF and DAWR cost recovery is at, or about, $12 for each FID (or about $40 million per annum) which clearly does not accord with the Australian Government *Department of Finance Australian Government Cost Recovery Guidelines.*

Therefore, the CBFCA sees that the *transporter/intermediary model* would provide not only for the appropriate collection of the GST but also give effect to appropriate cost recovery for regulatory services provided at the border as to Internet e-commerce consignments as to compliance intervention related to fiscal, import prohibitions and restrictions, intellectual property and community safety and security. In addition, there would be minimal cost to regulators or government as to any collection requirements, these being to the account of the *transport intermediary* as the *agent* of the principal and these then recovered from the user of their service.

6.2 GST Collection

The collection of GST as to goods imported into Australia is addressed in depth in the Australian Taxation Office Goods and Services Tax Ruling (GSTR) 2003/15. This GSTR is instructive as to the determination of an *agent* to persons or entities that carry the goods into Australia. This aspect gives further weight to the argument as to the carrier express shipment airway bill (and the position adopted by the DIBP/ABF as to an authority to act), where such carriers have a specific legal position in relation to customs duty, GST collection and cost recovery as the *agent* of the principal.

In addition, GSTR 203/15 helps bring together the interaction between the taxation legislation as it relates to GST and customs legislation as it relates to determination of customs value, *owner* of goods, agency and support, the *transporter/ intermediary model.*

6.3 Description of Goods

Currently there is no process for identifying goods in any consignment other than by physical and/or x-ray examination which is seldom used and/or available in the imports mode . This poses community safety and security concerns as goods can move through the supply chain undetected.

The DIBP/ABF uses various profiling techniques based on CR submissions and FID lodgements. The latter (FID lodgements) include community protection declarations made by the importer and/or licenced customs broker which assists the DIBP/ABF in risk assessment and reducing the risk of illegal importations. There is also a requirement for correct information to be declared which is subject to strict liability offence legislation.

As previously stated goods description data is used to clear the majority of shipments under the LVT through the CP SAC process. The DIBP/ABF in its December 2012 Cargo Compliance Report stated the following:

> *"Our compliance activities also indicate that Communicators have been responsible in a substantive way for some of the non-compliance and poor data quality."*

Poor quality data significantly impacts on compliance and CR SAC data has been found as having that quality deficiency.

7. INTERNATIONAL PERSPECTIVES

7.1 World Customs Organisation

In order to address the regulatory impact of Internet-e-commerce and to provide as far as possible uniformity and consistency in regulatory intent in relation to goods crossing borders the World Customs Organisation in October 2016 establish a Working Group on E-commerce (WGEC) noting in particular the key challenges faced by customs administration in terms of efficient revenue collection, effective risk management, illicit trade, cyber security, illicit financial flows and the need for enhanced cooperation to prevent this trade channel from being exploited for criminal purposes. The private sector has participated in these WGEC meetings (and the CBFCA as Chair of the Customs Affairs Institute of the International Federation of Freight Forwarders Associations is an active participant on the WCO Private Sector Consultative Group) and as to these meetings and intersessional work four (4) WGEC subgroups have been created to address:

1. Trade facilitation and simplification procedures
2. Safety and security
3. Revenue collection
4. Measurement and analysis

In addressing these issues, the CBFCA notes the upcoming meeting of the WGEC 10-13 October which will see DIBP/ABF making a presentation as to *"Members Proposals on cross border e-commerce."* It may be instructive to the Commission on how the DIBP/ABF sees the integration of the outcomes from the work of the four (4) sub groups and as with the Australian position on Internet e-commerce issues. In addition, the CBFCA understands that the WGEC will consider a Draft Recommendation to go to the WCO Policy

Commission *Guiding Principles for Cross Border E-commerce* where the aspect of revenue collection references both the *vendor* and *intermediary collection models*.

As previously advised the position adopted by Australia in relation to how it integrates its regulatory requirements for Internet e-commerce on fiscal measures as with other border control requirements is pivotal for the future. The CBFCA sees such outcomes should 11leverage electronic data provided by carriers.

7.2 European Commission

Significant work has also been undertaken by the European Commission (EC) (TAXUD) since 2015 as to an assessment of the application and impact of the VAT exemptions. Work was undertaken by Ernst & Young on behalf of the EC TAXUD and this work is commended to the Commission as another source of data and commentary on Internet e-commerce. The CBFCA also noted the EC December 2016 Directive 006/0370 (CNS) which directed the commencement of work in relation to modernising VAT for cross border B2C e-commerce obligations for suppliers of services and distance sales of goods. Of particular interest in relation to this work was the commentary that:

"Public postal authorities will need time to adapt their systems for these changes particularly as all commercial deliveries into the European Union will now be subject to VAT and further changes to the import procedures whereby all consignments will be subject to VAT will cause challenges to Customs administrations but these will be mitigated by investment in IT solutions through EU programmes".

The EC has deemed that implementation will occur by 2021 as this period will assist in providing the necessary time to make adjustments and postal authorities will need to comply as to these VAT requirements .