



Structured ordering and compliance

Susan Danks explores the implications of a practice used by some importers to reduce their duty and tax liabilities

IN THE REALM OF INTERNATIONAL trade and customs compliance, structured ordering is a technique some importers use to reduce their duty and tax liabilities. This article delves into this practice, examining its implications under the Customs Act and the Australian Border Force process and policy.

The ABF closely monitors structured ordering to prevent undervaluation and duty tax evasion, posing significant compliance challenges for importers.

WHAT IS STRUCTURED ORDERING?

Structured ordering involves placing multiple small orders with a single supplier within a short timeframe, each valued at or below the \$1000 threshold. These orders arrive in Australia around the same time, circumventing customs duties and GST

liabilities where the declared value is less than the \$1000 threshold, above which a full import declaration and payment of customs duties and taxes is required.

This practice is especially pertinent for importers looking to minimise costs, but it raises red flags for the ABF, especially where such orders are for clothing and footwear originating in China.

The ABF's position is contained in Australian Customs Notice (ACN) 2021/01 which relies for authority on sections 68 and 71A of the Customs Act.

Section 68 of the Customs Act requires imported goods to be entered for home consumption or for warehousing, by submitting an import or warehouse declaration. Paragraphs 68(1)(e) and (f) provide that section 68 does not apply to goods (other than prescribed goods)

included in a consignment that has a value not exceeding \$1000.

Section 71A of the Customs Act provides only that goods to which section 68 of that Act applies should be entered for home consumption or warehousing (or transhipment).

According to the ABF interpretation of these sections, goods that are deemed to be part of the same order from a consignor to a consignee should be treated as one consignment, even if they arrive in separate packages on separate days. A full import declaration would therefore be required if the total value of the "consignment" was over \$1000.

The ABF's position is that it is inconsistent with the requirements of section 68 to structure a consignment in such a way as to deliberately avoid duty

and GST liability. Unfortunately, it is not always clear to the importer when he has overstepped the mark between acceptable and unacceptable behaviour.

This interpretation, though not yet tested in court, is used to ensure importers do not avoid duties and taxes by splitting orders.

COMPLIANCE MONITORING

ABF's compliance audit teams regularly monitor split consignments and structured ordering. They particularly scrutinise cargo-report self-assessed clearances for shipments that can be identified as split consignments. These are also audited for signs of undervaluation as these two matters are often linked, especially as textiles and similar goods incur export duties from China.

If the total value of goods from a single supplier exceeds \$1000, a full import declaration is required. Documents and evidence of money price paid (MPP) will also be requested.

DUTY MINIMISATION VERSUS EVASION

Duty minimisation is a legitimate practice where importers use lawful methods to reduce their tax liabilities. This includes classification reviews, tariff concession orders and free trade agreements. It is a strategy that aligns with the legislative intent and does not imply wrongdoing.

Lord Tomlin said: "every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be".

Provided, of course, it is lawful.

Duty evasion, on the other hand, is illegal and involves fraudulent actions to avoid paying duties and taxes. The ABF is vigilant against such practices, as they result in significant revenue losses. Importers found guilty of duty evasion face severe penalties, including fines and legal action.

But is it cheating to use legitimate means to minimise duty and tax payable?

ACN 2021/01 provides that the ABF does not consider businesses that normally place multiple small orders at ad hoc intervals and ad hoc values, as attempting structured ordering. In my experience however this is not the practice and if the importer objects to the ABF's assessment the onus is on them to provide additional information, such as evidence of ordering patterns over previous months that would

support a different conclusion. This may or may not be accepted.

INTERPRETING LEGISLATION

Is the ABF interpretation valid? Only the courts can decide, but guidance can be obtained from various sources, including definitions within that Act, the *Acts Interpretation Act 1901*, the bill's explanatory memorandum, Hansard and the second reading speech in parliament.

Section 15AA of the *Acts Interpretation Act 1901* (Cth) for example provides that,

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in interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.

The Customs Act provides that the "object of the Act" is only that it relates to the customs.

When interpreting ambiguous provisions, the courts can draw upon the purpose and intention of the legislation and so cut down the opportunities for those seeking to exploit the tax system by appealing to a literal interpretation of the legislation.

Is section 68 ambiguous? It does not appear to be.

The Australian courts have provided these important principles of statutory interpretation:

- An Act should be construed as a whole, considering the language, purpose and policy of all the provisions.
- The statute should be read in a way that is consistent, rational and convenient, promoting the express or implied objects of the Act and avoiding internal inconsistency or absurdity.
- Words and expressions are used consistently throughout a statute, and each word in a provision should be given effect as far as possible.
- The meaning of a word is derived from the context in which it appears, and more general words in a list may be read down in light of specific words preceding them.

- A specific power with specific conditions attached to it takes precedence over a more general power without such conditions.

These rules do not override the meaning derived from the text itself.

In the Customs Act there are 75 references to "consignment", none of which support the expanded meaning applied by ABF to section 68 in ACN 2021/01.

A consideration of context and purpose does not provide for interpretations that pay no regard to those words or expand its

scope beyond its common meaning. The courts have often said that the language used in the legislation is the surest guide to legislative intention.

A perceived intention cannot on its own determine how a provision should operate, and legislation should not be approached with an eye to reading it to conform with a desirable policy of the regulator.

NAVIGATING REQUIREMENTS

Structured ordering is a complex area of customs compliance with significant implications for importers. Importers must stay informed about their requirements under the Customs Act and ABF guidelines to avoid legal issues. By following these guidelines, importers can effectively manage their compliance risks and ensure smooth operations in their international trade activities.

While legitimate duty minimisation is permissible, crossing into duty evasion can result in severe penalties. Importers must navigate these requirements carefully, ensuring full compliance with the Customs Act to avoid legal and financial repercussions. ■



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