

PART D: EXHIBITIONS

Chapter 21: Customs

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21. CUSTOMS

Introduction

Customs is an integral part of the process of international lending, borrowing, and acquiring museum collections. The Australian Customs Service (ACS) collects the duty and tax on all goods imported into Australia. Fortunately some, or all, of these costs can be waived if the material is being imported for temporary exhibition or being acquired for a public collection.¹

Overall the collections sector has a broad range of interactions with the ACS. For these to be effective, three things are essential:

- a good understanding of the institution's regulatory obligations under the Customs Act 1901 and the Customs Tariff Act 1995; and
- the maintenance of good record keeping systems; and
- conduct regular checks of import activity on order to retain a high degree of Customs compliance.

The ability to import material temporarily, exempt from tax and duty, is an important provision in customs law for collecting institutions. Without it, the substantial amounts of tax and duty applicable on cultural material would inhibit the ability of most, if not all, institutions to borrow from international collections.

When a public collecting institution acquires collection material from an international source, generally, there is no import duty payable (although GST must be paid).² To achieve this, particular care must be paid to the tariff line stated in the Customs Declaration. 'Tariff lines' are the internationally recognised categorisation system that defines every type of product and its applicable duty and tax. This duty exemption is a significant aspect of customs law that enables the purchase of international material by public collections without incurring prohibitively high expenses at the time of import.

It is important to remember that collecting institutions also import material that does attract duty and tax. Many departments import machinery and equipment, published material, retail stock and other goods on which tax and

¹ The discussion in this chapter focuses on goods worth over AU\$1000, items under this amount can be released from Customs by simply completing a Self Assessed Clearance Declaration.

² *Customs Tariff Act* 1995 Schedule 3, Section 21, Chapter 97/3.

duty must be paid. Again, the tariff class into which the material is entered, determines the amount of duty payable.

The Customs Act 1901

The *Customs Act 1901* is the key piece of legislation that governs the import and export of material to and from Australia. This legislation is substantial, covering every type of import and export scenario, so it is unrealistic for museum staff who occasionally delve into importation to be fully conversant with this legislation in its entirety.

A useful reference is the Australian Customs *Documentary Import Declaration Comprehensive Guide* and *Information for Exporters*. It is available online.³

The Customs Tariff Act 1995

The *Customs Tariff Act 1995* defines tariff lines and determines rates of duty. The Schedules to the Act are enormous, listing and categorising every type of product into a tariff line. The tariffs change regularly due to the availability of new products so it is fortunate that the full working tariff is available online⁴.

Importing

Types of Customs entries

The Australian Customs Services treats items differently depending on the purpose that they are brought into Australia. There are two main types of customs entry that collecting institutions usually use:

- **Home consumption**

For Customs purposes, an item that is purchased or gifted from an international source and that will permanently stay in Australia once imported, is entering the country for 'home consumption'.⁵ Items that typically fall into this category include acquisitions and gifts for permanent collections, machinery and equipment, and stock for retail outlets.

³ *Documentary Import Declaration Comprehensive Guide:*

<http://www.customs.gov.au/webdata/resources/files/DocImpDecGuide.pdf>

Information for Exporters:

<http://www.customs.gov.au/site/page.cfm?u=4784>

⁴ <http://www.customs.gov.au/site/page.cfm?u=5663>

⁵ *Customs Act 1901* Section 68

- **Event Status**

Event Status is a special provision that allows items to be brought into Australia free of duty and tax for a temporary event.⁶ This is used both for the temporary exhibition of material borrowed from an overseas source, and for some collection development loans that are used for short-term research and display.⁷

Customs brokerage

As the owner or borrower of items that are imported from overseas, an institution will need to engage a licensed customs broker to act on its behalf. A customs broker will prepare and lodge a Customs Import Declaration, which involves providing the Australian Customs Service (ACS) with the relevant information to determine any applicable tax and duty payable and to make an assessment of border security risks. It is also used to provide information to the Australian Bureau of Statistics on trade activity.

Many collecting institutions may not have a direct relationship with customs brokers as it is usual practice to employ a freight forwarding company that offers a complete freight and customs service. There are two types of freight forwarders offering these services:

- companies, such as Fedex, who have licensed brokers on staff to carry out the Customs reporting for the material that they transport; and
- companies that subcontract the brokering function to a third party, a specialist customs broker.

The institution is ultimately responsible to the ACS for the information that is declared to Customs, so it is important that the staff involved in the importation of any goods from overseas have enough knowledge of Customs legislation to provide the correct information to their broker, and so that they can check the accuracy of the information that their broker is declaring to Customs. Such checks are important and must be made regularly.

Information declared to Customs

The key information required by a customs broker to complete a Customs Import Declaration is as follows:

⁶ *Customs Act* 1901 Section 162

⁷ Event status will be discussed in greater detail in Sections 2.4 - 2.10.

Mode of transport	How will the material be brought into Australia? By air or sea transport?
Arrival and departure ports	The city and country that the material departed from and arrived in.
Airway Bill (AWB) or Bill of Lading (B/L) number	Airway Bills are tickets for airfreight, and Bills of Lading are tickets for sea freight, that are issued by the airline or shipping company. Some consignments of goods that have travelled as part of a larger consignment have a House Airway Bill (HAWB) or House Bill of Lading (HBL). These are issued by a freight forwarder rather than an airline or shipping company to denote a smaller portion of a shipment.
Supplier	The supplier of the goods is the person, institution or company that the institution is borrowing or buying the goods from. As institutions are often dealing with agents or various representatives of the owner, it is important to be clear who is the actual supplier – it is <u>not</u> sufficient merely to disclose the identity of the representative or agent of the supplier.
Description of the goods	The description of the goods needs to be clear enough to permit Customs to assess accurately the risk of importing the material into Australia, and to ensure that the goods are classified in the correct tariff line. The description of the goods needs to include a list of all materials that each item is made from. This description

	<p>can include Illustrative Descriptive Material in the form of photographs or pictures which may be helpful for the customs broker in determining the tariff line.</p>
<p>Tariff category for the goods</p>	<p>There are a large number of tariff lines that attempt to classify every kind of material that can be imported. A customs broker will advise what tariff class is appropriate. These are not always self-evident. For example, Art museums have some challenges with defining the appropriate tariff line as artists are using an increasing variety of materials and techniques with the consequence that their works may no longer fit in the defined tariff categories. If a museum or its broker has problems determining the correct tariff class it can apply for Tariff Advice from Customs.⁸</p>
<p>Country of origin</p>	<p>The country of origin must be provided for each item, and the ACS may require further information to substantiate the origin of the goods. Country of origin information can be difficult to ascertain for many collection items that are very old or lack provenance information. In the event that you are importing material of an unknown origin, it would be prudent</p>

⁸ An application for Tariff Advice (B102) is available from <http://www.customs.gov.au/site/page.cfm?u=4533>

	to contact Customs Origin and Valuation policy section for formal advice. ⁹
Quantity and weight of the goods	The number of items in the shipment, and the number of packages that they have travelled in, must be provided along with the gross weight for the packed goods.
Terms of the invoice (Incoterm)	<p>Customs needs to know whether the cost of freight, packing and insurance are included in the cost of the items stated on the invoice, and which party in the transaction is responsible for the costs relating to various aspects of the transit. There are a set number of different scenarios that have been formulated and adopted internationally known as Incoterms.¹⁰ It is important to identify the Incoterm for the overall shipment. This may differ from the Incoterm on the shipping invoice as freight, insurance and/or packing may have been paid for separately. (These distinctions are not easy but an understanding of them is essential if the import is to proceed without pain.)</p> <p>It is essential that institutions clearly convey to their freight agent and/or customs broker:</p>

⁹ Contact details are available at origin@customs.gov.au,

¹⁰ For a plain English explanation of Incoterms, see '*International Trade – A Practical Introduction*', R. Bergami (3rd ed.), Eruditions Publishing, Melbourne 2009. A reference table of Incoterms can also be found http://www.customs.gov.au/webdata/resources/files/FS_Incoterms.pdf

	<ul style="list-style-type: none"> • which party is paying for freight, insurance and packing; and • whether these costs are included in the cost of the items on the shipping invoice, or • whether these services are paid for on different invoices. <p>The freight agent or broker can then advise the appropriate Incoterm.</p>
Value	<p>The value of the goods must be declared to the ACS in the currency in which it was paid or stated on a loan contract. It must also be clear whether the transaction is a loan, or a purchase, as this determines the valuation basis that the broker must declare.</p>
Treatment code	<p>The treatment code links any special Customs provisions to the entry that effects the applicable duty and tax. The most common treatment codes for collecting institutions are <i>Event Status</i> (354) - for the temporary import of goods on loan for exhibition, and <i>Returning goods</i> (817), which withholds import duty and GST on items returning from loan. Another example may be the treatment codes that denote the various free trade agreements to which Australia is a party and that have particular tax and duty exemptions and provisions.</p>

Other specific information such as the owner's contact details, the delivery address, the importer's ABN, and particular technical details relating to specific types of shipments will also be required. A full list of all the fields on an Import Declaration is listed in the Australian Customs *Documentary Import Declaration Comprehensive Guide*.

Documentation

Museums need to keep clear documentation of their Customs activity in a form that can be easily retrieved for auditing purposes. Customs runs a rigorous compliance program and can audit organisations at least every five years. Key documentation should be retained for a minimum of seven years. It includes:

- Copy of the Customs Importation Declaration;
- Invoice for goods being purchased (or Pro forma Invoice for material that is being borrowed);
- Airway Bill or Bill of Lading;
- Any contracts or correspondence detailing the terms of the purchase or loan (particularly those clauses relating to who will pay for which aspects of the freight, packing, insurance and any applicable tax and duty);
- Proof of payment for the goods, freight, packing and insurance (invoices, bank statements & remittance receipts);
- Any Illustrative Descriptive Material used to determine tariff class, and any written proof of origin of goods (this may include curatorial statements and publications);
- In the case of material brought in with special provisions such as Event Status, copies of the applications and approvals.

The ACS requires that all documentation must be in English otherwise a translation must be provided.

Museums should regularly check that the information that their broker has declared to Customs correctly matches the documentation relating to the transaction, and ask for amendments to be made if errors are found.

Event status

Section 162A of the *Customs Act* 1901 allows the temporary importation of material for museum exhibitions, free of import duty and GST. This is known as Event Status.

An application for Event Status is submitted to the ACS through a specialist freight agent or directly to the ACS. A single application can be made for an exhibition rather than individual applications for each shipment or item. The application form, covering letter and pro forma invoice that form part of the application must include specific information about the material being imported, including details of any material that is subject to Quarantine restriction, the value, any movement within Australia (if it is touring to several venues), and the timeframe for departure. It must be submitted a minimum of seven to ten days before the shipment arrives so that clearance can be secured in advance of the shipment arriving, therefore mitigating any Customs inspection at the airport.

While the loans are in Australia the material remains under the control of the ACS. It is important that the material is identifiable on import and export; that it must be re-exported within a 12-month period unless otherwise negotiated; and that the material can not be sold or further lent without the permission of the ACS. **The key to a successful and straightforward relationship with the ACS is keeping it informed of all plans relating to the movement of the material well in advance.**

The ACS grants Event Status subject to the following conditions:

- (a) The number or quantity of articles is reasonable, having regard to the purpose of the importation.*
- (b) A complete list of items (including means of transport) must be supplied to Customs prior to the commencement of the Event.*
- c) A Form 46AA – Application for Permission to take delivery of Goods upon Giving a Security or an Undertaking for the Payment of Duty must be lodged with Customs for every shipment;*
- (d) All goods are subject to import and re-export inspections unless otherwise waived by Customs*

(e) It is essential that all goods are identifiable on import and export, a short form copy of the import declaration MUST be forwarded to the events officer for each item imported under the event status;

(f) The goods must be re-exported within such period, not exceeding 12 months, after the date on which the goods were imported as is notified to the person who imported the goods by the Collector when he or she grants permission to take delivery of the goods (as specified on Form 46AA), or within such time as allowed by the CEO may decide;

(g) Goods that are intended for sale must be entered for home consumption prior to transfer to the exhibition;

(h) Goods that are included in the "event" list are not to be loaned, sold, pledged, mortgaged, hired, given away, exchanged or otherwise disposed of or altered in any way;

(i) Should it eventuate that some of the goods are to be sold, they must not be sold without prior permission from the Australian Customs Service in accordance with regulation 125B of the Customs Regulations 1926;

(j) Where permission has been given and some goods have been sold during the exhibition, then there must be duty and GST paid and released only at the conclusion of the "event";

(k) Your attention is drawn to Regulation 125B of the Customs Regulations 1926:

Where goods are, in accordance with Section 162A of the Act, brought into Australia on a temporary basis without payment of duty, the person to whom the goods are delivered under that section shall not, except with the consent of the CEO, lend, sell, pledge, mortgage, hire, give away, exchange or otherwise dispose of or part with possession of the goods or

in any way alter the goods.

(l) Goods that are stolen during temporary admission are not entitled to

exemption from duty and GST.

(m) Small "give away" samples which are representative of foreign goods displayed, printed matter, catalogues, price lists, advertising posters etc, that are in accord with Article 5 of Annex B1 of the Convention, will be admitted duty free under Items 32A (By-Law 9640088), 32B (B/L9640098), 33A (B/L 9640093) and 33B (B/L 9640102).

Amending Event Status entries

Customs Import Declarations for material brought into Australia temporarily under Event Status cannot be amended once the Event Status has expired. Any amendments must be made while the material is in Australia.

Extending Event Status

As a standard rule, the ACS allows material to enter Australia for 12 months under Event Status after which time the material must be exported or an extension to the Event Status must be sought. The ACS will usually allow extensions to the Event Status as long as the request for an extension is made in advance of the Event Status expiring.

Acquitting Event Status

Collecting institutions must ensure that their Customs broker and/or freight agent acquits the Event Status once all of the material has been exported.

Acquiring material that has been imported under Event Status

If material brought in under Event Status is acquired during the duration of the loan or the Event Status period, the GST and any other applicable duties must be paid to the ACS. It is important to note that the GST payable is based on the amount declared on the original temporary import permit.

For example, if an item is brought into Australia using Event Status with a declared value of \$10,000, and is subsequently purchased for \$8,000, the GST will be based on the \$10,000 declared at the time of import. It is also worth noting that if an item is gifted it still attracts GST based on the declared value at the time of import.

Issues to avoid with Event Status

Customs is a strictly administered process with clear guidelines that work as long as communication with Customs officials is kept open. Usually issues are

encountered when the exit of the material from the country is not properly considered before the material is imported. Many scenarios may affect the planned exit of the material – a tour venue may be added to an exhibition, or the museum may decide to acquire the work through gift or purchase.

All too often, museum staff or lenders bring loan items into the country in their luggage without notifying Customs and gaining pre-clearance. This is not good practice. Not only are there obvious issues as the physical care of the material and possible inspection on arrival in the airport. It also has financial implications when the material is shipped back to the country of origin: Customs authorities in the country of origin will require tax and duty (as a percentage of the value) to be paid on re-entry of the material as they will have no record of the initial export.

Some material that may be imported for temporary exhibition may be retained on a long-term loan after an exhibition is complete. It is important to avoid setting up expectations with the lender that the loan is 'permanent' or 'indefinite' as Event Status requires that the item will be returned within the 12-month period. The ACS may extend the Event Status on a year-by-year basis, but this is discretionary and will not be extended indefinitely.

Destruction or loss of material under Event Status

There are no specific provisions in the *Customs Act* 1901 that deal with the total destruction or theft of goods brought into Australia under Event Status. As a result, the ACS deals with these situations on a case by case basis. In theory, an item that is stolen or destroyed is no longer in control of the ACS and thus, the tax and any applicable duty is payable. In practice, the ACS has discretionary powers and is unlikely to demand payment if the institution can prove that it carried out due diligence in protecting and caring for the Event Status goods.

Event status and touring exhibitions

With the increasing number of touring exhibitions that are all, or partially, borrowed from international sources, customs legislation affects the contractual arrangements between the organisation that originally applies for the Event Status and the venue that disperses the exhibition/item back to its country of origin.

Event Status can only be taken out by one institution. It cannot be jointly held by touring venues or transferred between touring venues. If the holder of the Event Status is not directly in control of the re-export, in its contract with the venue responsible for administering the re-export, it must pass on the obligation to properly acquit the Event Status obligations.

Sample agreement for acquittal of Event Status

The key aspects of this type of contract should include:

- The timeframe for re-export;
- The dispersing venue's liability in relation to the terms of the temporary import permit, i.e not to sell or further lend the items;
- Clearly defined responsibility for liability and costs relating to the acquittal of Event Status;
- Clear jurisdiction and conflict clauses.

Example contract clauses for acquittal of Event Status

This agreement (Agreement) is between the Fictitious Art Gallery (the Gallery) and the Fictitious Museum (Museum) in relation to art-work from the Fictitious Art Gallery exhibition (the Works) listed in Attachment A.

The Museum has an agreement with the Overseas Owner in New Zealand to exhibit the Works in Adelaide from 30 June to 24 September 2006.

The Gallery imported the Works for their own exhibition and was granted Event Status by the Australian Customs Service (ACS). The Event Status expires on 30 September 2006.

Both the Gallery and the Museum are of the understanding that if the Museum arranges for the Works to be exported to New Zealand by 30 September 2006 then no liability will be owed by the Museum to the ACS. The Museum acknowledges that if the Works are not exported to New Zealand by 30 September 2006 then the ACS is likely to impose taxes, fines and/or costs upon the Gallery.

The Museum hereby undertakes to the Gallery that it will export the Works to New Zealand by 30 September 2006, and that if for any

reason (other than a reason caused by the Gallery) it fails to do so the Museum agrees to accept liability for any taxes, fines and/or costs imposed by ACS as a consequence of the Museum's failure to export the Works by the specified date.

The Museum agrees:

- *that it has entered into an agreement with the Overseas Owner and will provide a copy of the agreement confirming this arrangement to the Gallery by 21 April 2006;*
- *that it will cover all insurance, packing, and freight costs relating to the transfer of the Works from the Museum to the Overseas Owner ;*
- *that it will export the Works to Overseas Owner by no later than 30 September 2006;*
- *that if the Museum fails to export the Works by 30 September 2006, it will pay any taxes, fines and/or costs (based on the value of the Works specified in Attachment A) imposed by ACS as a consequence of that failure;*
- *that it will not sell, lend, mortgage, hire or deal with the Works in any way without the prior written consent of the Gallery;*
- *that it will comply with the terms of the Event Status as it relates to the Works.*

This Agreement may be terminated by the Gallery if it becomes aware that the Museum has breached this Agreement or any of the terms of the Event Status in a material way, and in such an event, the Museum will upon instructions export the Works and pay all reasonable and legitimate fees, charges and taxes as applicable.

This Agreement is governed by the laws of and both parties agree to submit to the jurisdiction of the Courts of that State.

Signed on behalf of the Museum:

Signed on behalf of the Gallery:

Acquisitions

Items of historical or cultural significance and original works of art acquired internationally by Australian institutions are exempt from customs duty - but still attract GST. Occasionally when assessing a duty exemption the ACS will ask for evidence of the significance of an item being imported, and the onus is on the importing museum to provide the necessary written documentation.

The most common method of customs entry for Australian institutions purchasing items internationally is to buy a work for 'home consumption' in the same way that would purchase anything from an international source and use the Australian Tax Office's (ATO) deferred GST scheme that many institutions have in place.

To defer GST institutions must apply to the ATO to use the scheme, and once approved they provide their ABN to Customs through their specialist freight agent and/or customs broker. Customs then reports to the ATO on the import activity of the museum and the GST is reconciled through the museum's monthly Business Activity Statement.

Exporting

Export Declarations

Exporting goods from Australia is more straightforward than importing into Australia because the onus is on the overseas buyer or borrower to fulfil the requirements of the Customs authority in their own country. That said, the overseas importer will rely on the Australian lender to provide the correct information on which to base their Customs Declaration.

For goods worth over AUD2000¹¹ an export must be declared to the ACS.¹² This can be completed manually by the owner/vendor but due to the technicality of much of the information it is preferable that it is completed electronically by a

¹¹ This is based on the Free on Board value of the goods which is calculated as all costs to the airplane or ship excluding the international freight and insurance costs.

¹² *Customs Act 1901*, s.113

freight forwarder on behalf of the institution. In its most basic form the declaration states (but is not limited to):

- who is lodging the declaration (the owner or an agent);
- the intended date of export;
- whether the goods are currently under Customs control (most commonly for museums under Event Status);
- export type (one of three different codes);
- goods type (one of six different codes);
- port of loading;
- currency of the invoice;
- total of the Free on Board (FOB) value (value of the goods including all costs to get them to the port of loading including any export charges);
- currency of the FOB value.

In addition to this overall information about the consignment, further information must be provided about each of the item lines listed in the import which includes the goods description, origin, and value; their tariff classification; and information about their weight per unit and gross¹³.

Export Documentation

Remember that the tariff classification and terms of trade rules apply internationally. The information you have to provide to the local authorities is the same information that will be required by an overseas buyer or borrower.¹⁴ This key information needs to be conveyed to the buyer or borrower in a Commercial Invoice (for selling) or a Pro Forma Invoice (for lending). A commercial invoice or pro forma invoice should, at the very least, contain the following information:

- details of both the owner/vendor and buyer/borrower (and consignee if acting on behalf of the buyer);
- name of freight forwarder or agents responsible for the logistical arrangements;
- details of the vessel/aircraft and ports of loading and destination;
- description of the goods;

¹³ A full list of the mandatory fields that needed to be completed for an Export Declaration can be found at http://www.customs.gov.au/webdata/resources/files/FS_ExportDeclarations.pdf

¹⁴ See discussion above at *Information declared to customs*.

- quantity of goods, number of packages, weight of packages, gross weight of consignment;
- terms of trade – Incoterm;
- price or value per item, and for the total consignment.

Further information may be required by the overseas importer specific to the type of goods being exported from Australia. This is particularly important for prohibited material such as weapons and material that is subject to the *Protection of Movable Cultural Heritage Act 1986*.