Dear Brendan,

As per our conversation this afternoon regarding the mis-classification of (iso-Hexane) and your letter by Australian Government Solicitor (131002461) 15th December 2009 regarding the letter of demand for $881k.

In summary my understanding is that your concerns are:

1. Customs wants proof that there is no risk to the revenue
2. What are the customers eligibility and ability to claim the tax credit back?
3. Customs wants to protect the Commonwealth revenue
4. Customs need to be satisfied that the amount is revenue neutral
5. Customs suggests that Catalyst Chemicals pay the $881k over a 5-year period

I will try and precise the sequence of events that this case has been open since July 2009.

In consideration of the appropriate tariff, Catalyst has imported iso-Hexane under a chapter 29 because the components of this product are classified as a chapter 29. Further, Catalyst took into account the Global harmonised tariff scheme which classifies product as a Chapter 29 (duty free) and, most importantly, this product **CANNOT** be used as a fuel. This was done under self assessment and there is no malicious intent to defraud.

Catalyst had a Customs audit in January 2009 and the result of the audit found that, in the opinion of Customs, Catalyst had misclassified the product and it should have been classified as a Chapter 27 there being a special chapter note for this product. Catalyst have had two respected chemists review this chapter note and both agree that, even from their standpoint, the Chapter 27 note is hard to understand.

Nevertheless after spending time; employing resources (outside consultants) and incurring hefty legal bills Catalyst decided to try and negotiate this out with Customs and had a meeting on 3rd August 2009. At that meeting I presented a process flow diagram of the product, a letter from my producer stating they sell the product all over the world for industrial applications (not fuel) and that the product is not a blend. Classification under Chapter 29 requires that the product be a blend and Customs are discounting the common accepted definition of a blend and have imposed their own definition. Catalyst, and it's supplier, contend that this is not a blend under the common accepted definition. Catalyst has brought up the revenue neutral argument; we advised we did not want to proceed to the AAT; that we would pay the duty forthwith (which incidentally we have been doing since July'09 under protest); that both parties agreed to disagree; going forward Catalyst would classify the product under a chapter 27; going forward Catalyst would pay the duty (given the revenue neutral position for the product); and we understood that Customs would not go back 4 years and penalise Catalyst. Under Customs self assessment of the classification of products we have been importing this product for 4 years and at no time were we ever informed by Customs, when we logged our customs documentation, that we had incorrectly classified this product.

In October 2009, when it became clear Customs were totally intransigent in this matter, we approached our customers and advised them Catalyst had an issue with Customs perceived classification of our imported product. Catalyst implored our customers (at the expense of goodwill) to assist in the recovery of the fuel excise (via fuel tax credits receivable from the ATO) to offset the perceived liability to Customs.

Catalyst had not previously invoiced its customers for the fuel excise and, as the customers' affidavits attest (see 5. below), they have not claimed fuel tax credits and, more importantly, the use of the product was for industrial (non fuel) purposes. Our invoices show fuel excise as a separate line item on our customers' invoices. These invoices are open to scrutiny from either the ATO or Customs. As well, no doubt the ATO can confirm, through it's resources, that none of our customers have claimed fuel tax credits in respect of these 'non fuel' imports. Fortunately, despite the limited information provided by Customs, Catalyst staff were able to cross-reference (to the litre) the individual imports to Customer invoices. We are happy to provide you with copies of the invoices that the perceived liability relates to. A review of these invoices reveals a deficiency in audit process by Customs. Catalyst staff found Customs imposed a liability on Catalyst for duty that had already been paid. Further, they imposed a liability on Catalyst for duty on product that was not mentioned in any of their reports.

We went a step further and gained Affidavits from our major customers (Auschem/Oilchem/Bostik). They clearly stated that this product was not used as a motor vehicle fuel and that they had not claimed a fuel tax credit. (See attached)

This product is revenue neutral and has been and is being used in industrial applications. It cannot be used as a fuel additive. Customs and the ATO have a history from July 2009 – March 2010 where we have paid Customs; passed the amount onto our customers; and our customers have then claimed fuel tax credits from the ATO. Please feel free to follow the audit trail as this to date this further proves this product is a 'non fuel' application and our revenues have remained stable.

I am a good corporate citizen, paid my taxes on time, have an impeccable record with my bank, pride myself in running a very ethical business and can assure you we would not claim one penny that we were not entitled to claim. Our customer list has not changed since the audit which has to be proof that we are not doing anything mischievous with this product. Further, had our customers perceived this was a non recoverable impost, they would no longer be our customers. Our customers are also ethical business owners beyond reproach. They are eligible to claim fuel tax credits and would only have done so if we had charged them.

Catalyst Chemicals has attempted to recover some of the $881k however this process creates no value, is burdensome on business (already resource poor) for something that they can claim back from one Commonwealth department - ATO that had previously been paid to another Commonwealth department – Customs. Indications from our customers are that we could possibly recover 10-15% which falls way short of the $881k you are demanding.

Catalyst Chemicals is a small company and cannot afford to pay anywhere near the $881k. I find it extremely unpalatable, given this is a revenue neutral position for the Government, that you are offering me a concession to pay it over 5-years out of my hard earned Company profits - this is 2 1/2 peoples salaries per annum! To date it has cost our business $95,293.75 to defend a case that we cannot afford.

I cannot afford to pay $881k that I cannot recover and as such, under my fiduciary duties, will be forced to liquidate my business. Even if this non-recoverable liability were settled, this would be a windfall gain to the Government, that, as proven and in normal circumstances, would not be available to the Government. A blight on the Government at the expense of industry.

I appreciate you calling me and I had hoped that our discussion would have resulted in some flexibility and understanding. I would impress upon you the urgent need for a meeting with Michael Carmody. My customers are willing to attend this meeting with me and we will fly to Canberra or wherever to remedy this situation. We need to get on with business and get on with creating and building a better Australia.

Yours sincerely,

Yvonne Lockwood

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