

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 234

Senator Ludwig asked the following question on 2 December 2004:

What is the current expected date of Release 3?

The answer to the honourable senator's question is as follows:

See answer to Question 222.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 235

Senator Ludwig asked the following question on 2 December 2004:

What has the total price of delivery of the Integrated Cargo System been so far?

The answer to the honourable senator's question is as follows:

See answer to Question 222.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 236

Senator Ludwig asked the following question on 2 December 2004:

What is the expected annual total price of using the system when it is finally fully operational?

The answer to the honourable senator's question is as follows:

The trading community will have a choice about how they will communicate to Customs – either interactively using an Internet dial-up, by sending EDI messages over the Internet or via a bureau service or for high volume users by a direct line to Customs. Each method will attract different annual fees depending on the volume of messages sent and the methods used to send them.

- The cost to an individual user to use the Integrated Cargo System via the Customs Interactive facility over the Internet will be limited to the cost of a digital certificate (approximately \$120 for 2 years) plus any costs imposed by the chosen Internet Service Provider (ISP).
- The cost to an industry user to use the Integrated Cargo System via the Customs Interactive facility over the Internet will be limited to the cost of a digital certificate (approximately \$180 for 2 years) plus any costs imposed by the chosen Internet Service Provider (ISP).
- The annual cost to an industry user who elects to use a commercially available EDI package is the annual cost of maintaining any EDI software, plus the cost of digital certificates (from \$180 depending on the size of the business and the number of certificates required) plus any costs imposed by the chosen ISP or bureau service.
- The annual cost for those high volume users with a direct line to Customs will be approximately \$10,000 plus the cost of required digital certificates.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 237

Senator Ludwig asked the following question on 2 December 2004:

What has the response from industry been to the Releases that have taken place so far?

The answer to the honourable senator's question is as follows:

The first release to become publicly available to industry was Release 2 (exports). Generally, industry is reacting positively to the functionality that is available under Release 2, with expectations being exceeded. Reporting of exports has easier and faster for exporters. The exporting community welcomes the availability of the system over the Internet and the new 'easy to use' windows type application. Much of the early industry scepticism about the ICS has dissipated.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 238

Senator Ludwig asked the following question on 2 December 2004:

What is the expected response from industry once the System is fully operational?

The answer to the honourable senator's question is as follows:

When the ICS is fully implemented both Customs and industry will benefit from the electronic capability the system will bring about. Full electronic message capability will enable the full spectrum of cargo processes to be completed with relative ease, including electronic lodgment, status checking, transshipment and underbond reporting. The ICS will significantly enhance the ability of both Customs and industry in tracking cargo movements more efficiently. The new ICS will make it easier for exporters and importers to declare their goods to Customs. Availability of the ICS over the Internet will provide many in industry with the directly ability to report their goods to Customs electronically for the first time, reducing the need for a service provider and reducing the costs of doing business. The system will also greatly improve the accuracy of data reported to Customs. Combined with sophisticated validation and profiling engines that exist within the ICS, this will also enhance Customs ability to undertake its border protection role and will improve Australia's standing and reputation in the international trading environment.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 239

Senator Ludwig asked the following questions on 2 December 2004:

- a) Can you outline the current 12 investigations in response to industry applications?
- b) In addition, can you advise whether you self-initiate investigations or whether investigations are only conducted in response to complaints from industry?

The answers to the honourable senator's questions are as follows:

As set out under the description of Output 5 of Customs' 2003-04 annual report :

During 2003-04, Customs initiated 12 investigations in response to industry applications. Six investigations related to goods in the minerals/metal sector (steel plate exported from China, Indonesia, Japan and the Republic of Korea, welded circular hollow sections of iron and steel exported from the Republic of Korea, and certain silicon exported from China); five to the foodstuffs category (olive oil exported from Spain, Italy and Greece). The investigations of olive oil covered both dumping and subsidy allegations. One investigation related to coated paper exported from China.

Seven investigations involved goods exported from Asia (three from China, two from the Republic of Korea, and one each from Japan and Indonesia.). Five investigations related to goods from Europe (see above in relation to olive oil).

Two investigations were current as at 30 June 2004 (welded hollow steel section exported from the Republic of Korea and certain silicon exported from China).

In respect of the **four** investigations involving steel plate, Customs found both dumping and injury to Australian industry producing like goods. The Minister imposed anti-dumping duties in April 2004 for a period of 5 years.

In respect of the **three** subsidy and **two** dumping investigations involving olive oil, the Chief Executive Officer (CEO) terminated the investigations in May 2004. Customs found that there was a production aid paid to olive growers in Greece, Italy and Spain, but the subsidy was not a countervailable subsidy. Customs also found that there were some dumped goods from Italy and Spain but there was no injury to Australian industry producing like goods. The decision to terminate the subsidy investigations was referred to the Trade Measures Review office, which confirmed the CEO's decision. The Federal Court found in December 2004 that the TMRO's decision should stand.

The CEO also terminated **one** investigation into the alleged dumping of A4 copy paper exported from China on 27 November 2003. Customs found that there was dumping but the dumping margins were negligible. The World Trade Organization anti-dumping agreement and Australia's legislation set 2% as the level below which dumping is considered negligible.

Of the **two** current investigations at 30 June 2004, Customs has made a report to the Minister in respect of silicon exported from China. The investigation into ERW CHS (welded hollow steel sections) exported from the Republic of Korea was terminated on 11 August 2004. Customs found

that injury to Australian industry producing like goods was negligible. The Trade Measures Review Office affirmed the termination decision on 22 November 2004.

Under section 269TDA of the *Customs Act 1901* (the Act), the CEO must terminate investigations if dumping margins or countervailable subsidisation are negligible, or if the volumes of the dumped or subsidised goods from a particular country are negligible, or if dumping or subsidisation causes negligible injury. Two recent Federal Court decisions (*Pilkington* and *Inglewood*) have confirmed this.

As a general rule, investigations are initiated following an industry allegation of dumping. However, the Minister may take anti-dumping measures on his or her own initiative. Section 269TAG of the Act provides that the Minister can initiate an investigation into the need to take anti-dumping measures in respect of goods although no application has been made by Australian industry. The response to question 240 provides additional detail.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 240

Senator Ludwig asked the following question on 2 December 2004:

If you initiate investigations without a complaint can you outline the number and type of those investigations and whether any have been finalised in the last twelve months?

The answers to the honourable senator's question is as follows:

The Minister has directed the Chief Executive Officer of Customs to initiate investigations into anti-dumping matters on four occasions, but not in the last 12 months. In each case there were special circumstances.

The Minister may take anti-dumping action as a result of an investigation, which must be carried out in accordance with the Minister's written requirements, instead of the requirements set out in Part XVB of the *Customs Act 1901*. The Minister must ensure however that the investigation is carried out in accordance with the requirements of the other provisions of Part XVB and it is consistent with Australia's international obligations under the WTO.

For A4 copy paper exported from Brazil, in June 1999 the Minister directed Customs to undertake an investigation into whether anti-dumping measures should be imposed. The direction arose after Brazilian paper mills challenged the outcome of a 1996 review in the Federal Court. The court set aside the anti-dumping measures and directed the Minister to further consider the matter in accordance with the law. Customs terminated the investigation in February 2000 when it found that the volume of dumped goods from Brazil was negligible when expressed as a percentage of the total Australia import volume.

For certain coated paper exported from Austria and Finland, in October 1999 the Minister directed Customs to initiate investigations after a Federal Court decision set aside anti-dumping measures. The measures applied to a particular German exporter but exporters in Austria and Finland were similarly affected by the court decision. Investigations involving Austria and Finland were initiated. (In the event, the German exporter provided sufficient evidence to show it was not dumping, therefore Customs did not initiate an investigation into export from Germany.) In September 2000 the investigation in respect of Austria was terminated because of negligible dumping, and the Minister imposed measures, in the form of a price undertaking, on goods exported from Finland.

In the case of canned tomatoes exported from Italy, the Minister initiated an investigation on 1 October 2002 into whether countervailing duties should be imposed. This followed a Federal Court decision that set aside the Minister's decision to continue the countervailing duties on imports of canned tomatoes from Italy after 28 April 2002. Once measures expired, there was no avenue available under the legislation for the continuation of those measures to be re-examined following the court decision. Customs found that the European Commission provided countervailable subsidies in connection with the production and export of canned tomatoes. Customs was satisfied that the benefit of this subsidy was linked to the export of canned tomatoes from Italy. Customs concluded that any canned tomatoes exported to Australia from Italy would be at subsidised prices.

However, Customs found that any injury to Australian industry that had been or may be caused by the subsidisation of the goods was negligible and the investigation was terminated on 11 April 2003.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 241

Senator Ludwig asked the following question on 2 December 2004:

In respect of Signet Group International Pty Limited:

a) who are security consultants which were directly engaged by Customs, can you outline the nature of the contract and the result of the work by the security consultant?

b) can you outline whether Signet Group International Pty Limited have been engaged for any other work by Customs? If so what is the nature of the work and was it by direct engagement and what was the cost of the work?

The answer to the honourable senator's question is as follows:

Signet Group International Pty Ltd is a small company who were engaged by the Attorney-General's Department, to conduct an external review of Customs security arrangements in 2003. Customs were required to meet the cost of this review, hence Signet appears on the list of contracted consultants. The outcome of the review is a Cabinet-in-Confidence document.

Signet has not been engaged by Customs since this period.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 242

Senator Ludwig asked the following question on 2 December 2004:

In respect of a consultant Ernst and Young review of property management, can you provide an overview of the consultancy?

The answer to the honourable senator's question is as follows:

Ernst & Young were engaged to undertake an audit of the property services provided by Jones Lang LaSalle (JLL). The Australian Customs Service (Customs) has appointed JLL as its property manager to manage the commercial properties of Customs.

Customs requested Ernst & Young to audit the following items:

- Conversion of Lease property information – this was to ensure that the lease property information is accurately and completely recorded in the new property management system.
- Integrity of the property management system and its related procedures and controls - this was to ensure that the property management (Financial) system is operating efficiently and effectively, and payments are accurate and complete.

Customs directly engaged Ernst & Young for this process as they had the required knowledge of the JLL contract and background on previous audits. They also have the required knowledge of Customs property systems and requirements.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 243

Senator Ludwig asked the following question on 2 December 2004:

“In respect of the consultancy firm Ernst and Young CMR Security review, can you provide an outline of the contract or type of engagement or the work undertaken and in addition if there was any report can you provide a copy of same?”

The answer to the honourable senator’s question is as follows:

The engagement of Ernst and Young followed a select RFQ process (involving 5 companies selected from the Department of Finance Multi-Use Endorsed Suppliers List) and commenced on 10 December 2003. The type of work undertaken was to independently review the Cargo Management Re-engineering Project information technology security design principles and to provide a considered opinion on the appropriateness of these principles. Ernst and Young provided a final report in May 2004. The report is not available for public release.

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Question No. 244

Senator Ludwig asked the following question on 2 December 2004:

In respect of consultancy by Roger Rose described as dumping issue consultancy can you provide an outline of the consultancy together with any advice that was provided as a result of the report?

The answer to the honourable senator's question is as follows:

Mr Roger Rose was engaged by Customs to provide technical assistance and advice for the investigations into the alleged dumping and subsidisation of olive oil from Greece, Italy and Spain.

Mr Rose was a former senior research economist with the Australian Bureau of Agricultural and Resource Economics (ABARE), with expertise in agriculture and an overall knowledge of subsidies (especially agricultural subsidies of the European Union). Mr Rose was recommended by the Department of Foreign Affairs and Trade and ABARE.

His contract was for three months (February to May 2004) and was not to exceed \$20,000.

Mr Rose first provided a directions paper that defined the approach Customs needed to fully assess the economic evidence gathered during the course of the investigations.

Mr Rose also provided a report to Customs – Price Impacts of the EU Olive Oil Policy – on 26 March 2004. Customs took this report into consideration when assessing the effect of the production aid paid by the EU to olive growers on exports of olive oil to Australia.

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Question No. 245

Senator Ludwig asked the following question on 2 December 2004:

In respect of the High Court Decision which resulted in an application of the high criminal standard of proof in respect of customs prosecutions, can you outline the implication for Customs and what action has been taken to address the decision of the High Court by Customs?

The answer to the honourable senator's question is as follows:

Prior to the High Court decision in *Chief Executive Officer of Customs v Labrador Liquor Wholesalers Pty Ltd & Ors* [2003], the 'lower' Magistrates Court considered whether or not an accused person was guilty 'beyond a reasonable doubt' of the offence charged (the criminal standard of proof), while the 'superior' County Court considered whether or not the accused was guilty 'on the balance of probabilities' (the civil standard).

The decision in Labrador established that the standard of proof for all Customs prosecutions, instituted in either a 'lower' or 'superior' court is the criminal standard of proof. Customs considered all cases in progress against the higher standard.

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Question No. 246

Senator Ludwig asked the following question on 2 December 2004:

In addition whether Customs prosecutions currently underway and any new ones that have started have applied to them the higher standard of proof?

The answer to the honourable senator's question is as follows:

In all Customs prosecutions, the courts apply the higher (criminal) standard of proof when considering whether or not an accused person is guilty of the offence charged.

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Question No. 247

Senator Ludwig asked the following question on 2 December 2004:

Can you also advise whether Customs has engaged outside consultants to advise on how to undertake prosecutions in light of the High Court decision? If so can you provide details including any advice that Customs has received in respect of this matter?

The answer to the honourable senator's question is as follows:

Customs assumes that this question relates to the Labrador matter.

Customs has obtained legal advice on the High Court decision. Policy and process implications are being considered.