



AUSTRALIAN INSTITUTE OF PETROLEUM

Ms Alison Neil
a/g Assistant Secretary
Customs & Industry Branch
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Dear Ms Neil

CONSULTATION ON THE EXPOSURE DRAFT OF THE CUSTOMS REGULATION 2015

I am writing in response to the Australian Customs and Border Protection Service (ACBPS) invitation for interested organisations to make submissions on the exposure draft of the *Customs Regulation 2015* which remakes the *Customs Regulations 1926* which are due to sunset on 1 April 2015.

Thank you for the opportunity to provide our views to ACBPS through this Submission on behalf of the Australian Institute of Petroleum (AIP) and its core member companies:

BP Australia Pty Ltd
Caltex Australia Limited
Mobil Oil Australia Pty Ltd
Viva Energy Australia Ltd.

AIP member companies operate across all or some of the liquid fuels supply chain including crude and petroleum product imports, refinery operations, fuel storage, terminal and distribution networks, marketing and retail. As a result, AIP member companies play a very significant role in delivering the majority of bulk fuel supply to the Australian market.

- In relation to conventional petroleum fuels, AIP member companies operate all major petroleum refineries in Australia and supply around 90% of the transport fuel market with bulk petroleum fuels.
- In relation to gaseous fuels, AIP member companies are the major suppliers of bulk LPG to the domestic market, representing around two thirds of the market.
- In relation to biofuels, AIP member companies are the largest suppliers of ethanol and biodiesel blend fuels to the Australian market.

AIP member companies are also very significant fuel duty/excise collectors for the Government, totalling over \$16 billion per year.

Given this background and their significant role in the Australian fuels supply chain and broader economy, AIP member companies have a very strong interest in taxation regulations, legislation and broader policy settings which can directly impact on the downstream petroleum industry, including the industry's ongoing operation, competitiveness and transparency, and also on the costs of doing business in Australia.

2.

AIP FUEL TAX PRINCIPLES

From a tax policy perspective, AIP supports a tax system for transport fuels that:

- is efficient (causes minimum distortions), equitable (fair) and simple (easily understood);
- is practical/workable and minimises compliance and administration costs for business and government;
- supports clarity, consistency and stability in policy settings relevant to the transport fuels industry.

AIP also supports relief from the burden of excise being provided for 'business inputs' to production, and has therefore supported the policy intent of the *Fuel Tax Credits* system.

Overall, AIP supports the principle that all fuel used for transport use - including liquid fuels (conventional fuels and biofuels) and gaseous fuels (LPG, LNG and CNG) - should be taxed on a comprehensive and neutral basis, to ensure the most efficient and robust tax system for road transport fuels.

- AIP supports all road transport fuels being brought within the fuel excise system (as they are now) so that all fuels (equitably) need to meet compliance obligations underpinning the integrity of the fuel excise system and also comply with relevant fuel quality and environmental performance standards.
- AIP supports energy content as an appropriate and neutral basis for taxing all transport fuels, and so as to not distort the allocation of resources and producer or consumer choices.
- AIP supports the principle that the point at which excise/duty should be imposed should be at the highest point in the supply chain to ensure the most compliant fuel excise system.

AIP COMMENTS ON THE 'EXPOSURE DRAFT CUSTOMS REGULATION' (EDCR)

AIP notes that the stated objectives of the EDCR and the remaking of the *Customs Regulations 1926* is to "make significant improvements to the existing provisions by repealing redundant provisions, simplifying language and restructuring provisions that have become difficult to navigate due to multiple amendments over the past 89 years". AIP also notes that the intention of this 'streamlining' and 'updating' is not to change the operation of the equivalent provisions in the *Customs Regulations 1926*.

AIP considers that these objectives are largely satisfied in the EDCR which is simpler and removes a range of content that is outdated.

However, AIP has identified three concerns/issues with the EDCR including:

- The definition of 'petrol' – Section 5;
- Requirements for a refund of duty on Petrol – Section 108(1)&(2) ;
- The timeframe for making refund applications – Section 114(1) and Clause 2 of Schedule 6;

Definition of Petrol

In Section 5 of the EDCR, 'Petrol' is defined as including "benzene, benzol, gasoline, naphtha, pentane and any petroleum, shale or coal tar distillate under the Act". The equivalent clause/definition in the Excise Regulations includes "goods described in item 10 or 15 of the Schedule to the Excise Tariff Act".

Thus, the definition in the EDCR may be too narrow given it appears to be limiting return to bond claims to mainly petroleum products (item 10) and does not include lubricants (item 15). Importation of lubricants has increased in recent years with the closure of some domestic manufacturing facilities.

AIP recommends alignment with the definition in the Excise Regulations to the greatest extent possible, noting there are separate provisions/circumstances for gaseous fuels in the EDCR.

3.

Requirements for a refund of duty on petrol

Section 108 specifies the requirements for a refund of duty on 'petrol' (defined above) including, amongst other things:

- notice of a proposed return of 'petrol' must be "received by an officer before the return of petrol" to a warehouse or licensed manufacturer –Section 108(1)(b)(i); and
- for contaminated petrol, the sample "must be taken in the presence of an officer" – Section 108(2)(b).

AIP member companies consider that these requirements are:

- *untimely and impractical* – particularly in the context of the 24/7 operation of the fuels supply chain and the geographically dispersed facilities of AIP member companies and their customers;
 - Notices provided to Customs officers and applications of refunds made under Section 112 of the EDCR can only occur during weekday business hours. Where a proposed return of petrol to a warehouse was to occur prior to the weekend or a public holiday period, a return to bond might not be possible until the following week (ie. unless forfeiting the ability to apply for a refund at a later stage).
- *create unnecessary red-tape* - particularly in the context of the other verification and record keeping requirements in Section 108 which should provide evidence continuity.

As a result, AIP recommends these two requirements in Section 108(1)(b)(i) and 108(2)(b) be removed, including against the background of normal ACBPS compliance, audit and licensing activities.

Timeframes for Refunds of Duty

The EDCR is also set against the background of the Government's deregulation agenda and reducing compliance costs for business, as noted in the Explanatory Statement.

AIP notes that while simplification and greater clarity in regulation will be welcomed by the industry and is good practice, we consider there is additional scope for further streamlining and consistency, particularly in the time periods in the EDCR for making an application for a refund or rebate of duty. Clause 2 of Schedule 6 details the different period requirements for making a refund application across a range of circumstances. Different time periods for different circumstances is out of step with other taxes (where a 4 year period is typical and uniform) and may unfairly disadvantage duty payers compared to other taxpayers. Consistent with AIP's longstanding fuel tax principles, AIP recommends a 4 year time period apply to all circumstances in the final Customs Regulation 2015, to align duty refund timeframes with other taxes and ensure simplicity, fairness and consistency across various taxing arrangements. This time limit should apply to the correction of the net 'duty' amount, consistent with other taxes.

Thank you for the opportunity to provide our views to the ACBPS through this AIP Submission. If you have any further questions in relation to AIP's Submission, you can contact me on (02) 6247 3044. AIP is happy for our submission to be made publicly available on the ACBPS website.

Yours sincerely



Nathan Dickens
General Manager – Policy
25 February 2015