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# Import rort

K&L Gates' Savannah Hardingham and Zara Lim report an important issue facing importers.

**M**ANY FASHION BUSINESSES (including designers, distributors and retailers) import goods into Australia from overseas suppliers. This month, we consider the importance of ensuring that businesses are aware of their legal obligations surrounding the accurate valuation of imported goods for the payment of customs duties and taxes at the border, and the consequences of falling foul of these requirements.

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In New Zealand last year, fashion label Federation was found to have deliberately undervalued clothing it imported from China into New Zealand between December 2010 and February 2014. New Zealand Customs identified over 100 erroneous import entries submitted by Federation and found that Federation had undervalued its total imports by over \$NZ2.8 million and evaded Customs fees of \$NZ680,000. The directors of the defendant companies were held personally liable and one former director was fined \$NZ40,000 for her role in this conduct.

Similarly, in Australia it is an offence to provide false or misleading information to Customs that results in a loss of the amount of duty payable, and penalties will be imposed for such conduct. This includes providing inaccurate information as to the value of goods being imported, as the declared value is used to assess whether customs duty (and other costs) apply and, if so, calculate the amount payable. Customs duty is payable on imports of goods with a value of over \$A1,000. The declared value of the goods also impacts the quantum of further costs that are payable for the import, such as clearance fees, GST and other taxes.

It is also important for fashion businesses importing goods to be aware that, as the importer, they are liable to the Australian Government for any unpaid customs duties. This is the case even if the supplier (the exporter) has agreed to be liable for or attend to the payment of any duties. Unpaid import duties are treated as debt and Customs may demand payment of such amounts or sue for the recovery of the debt in Court.

In 2015, the CEO of Customs issued a demand to Australian fashion retailer Studio Fashion for the payment of duty and GST it had underpaid for the import of goods from a supplier in China. Under the arrangement between the parties, the Chinese supplier had undertaken to deliver

the goods 'DDP', meaning 'delivery duty paid'. Studio Fashion argued that it should not have been required to pay the duty when the Chinese supplier had undertaken to deliver the goods with the applicable duties paid. However, the Administrative Appeals Tribunal held that while under the contract the Chinese supplier was liable to pay the duty, as the supplier had not in fact paid the duty the goods continued to have duty imposed upon them when they entered the country and when the goods were delivered to Studio Fashion. As the importer, Studio Fashion was therefore liable to pay the duty.

These two cases highlight the importance of examining your business' obligations when it comes to importing fashion goods from overseas suppliers. While your fashion label may be experiencing rapid growth and it is desirable to focus on the creative aspects of your business, it is essential that you turn your eye to your legal obligations to avoid penalties and other consequences down the track. ■

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