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## NEWSLETTER 2015/3

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### BUDGET 2015

Measures announced in the 2015 Federal Budget which have an impact on stakeholders in international trade include:

- \$5.6 million allocated to start a pilot phase of a Trusted Trader Programme. The pilot will start with four industry partners focusing on seaborne container exports and rapidly expand over the year to imports and air cargo involving around 40 Australian exporters and importers and their supply chains. Faster clearance of low risk cargo for traders with a history of high trade compliance and commitment to supply chain security will again enable border officers to focus on high risk consignments.
- revenues from cost recovery for licensing and import processing are expected to grow from approximately \$14 million in 2015/2016 to just around \$30 million for each subsequent year.
- expenditure on border revenue collection activities of \$78.6 million in 2015/16, reducing to \$69 million by 2018/19.
- imposition of GST on digital products and services sourced from off-shore suppliers.

### TRADE AND INVESTMENT DELEGATIONS WOULD INCREASE ACCESS TO GLOBAL VALUE CHAINS

Australian businesses would benefit enormously if Government trade and investment strategies focused more on “country to company” facilitation, according to the Chairman of the Australian Advanced Manufacturing Council, John Pollaers. “The

dominance of small and medium sized enterprises in Australia means some of the biggest opportunities for Australian business growth will *(Continued on Page 2)*

### STEVEDORE SLAMMED FOR “TOTALLY UNSATISFACTORY” PERFORMANCE

John Lines, Chief Executive Officer and Managing Director of ANL has told customers that Patrick Stevedore’s performance recently has been “totally unsatisfactory”. Mr Lines has apologised to his company’s clients for schedule disruptions to its Tranztas service and said the terminal delays in Australia have persisted over the Easter period and beyond. “This performance from our terminal provider was totally unsatisfactory so we have taken the decision to terminate the contract and move the Tranztas service to Hutchison in Sydney and to DP World Australia in Melbourne. It is expected that these new arrangements will help facilitate a quick return to the fixed-day weekly schedule we had committed to deliver in the Tasman.” Mr Lines thanked customers for their “patience and support through this trying period”, adding that they will see a marked improvement in the reliability of the service. Maritime Union of Australia Sydney Branch Secretary, Paul McAleer, said Patrick’s move to automation has created “a terrible outcome for port users. I think the blame can be laid squarely at the feet of Patrick for not negotiating automation. They tried to rush it through and I think the industry is suffering because of those decisions. It will take some time for them to re-engage with workforce and get back the confidence of their customers.”

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come from supplying large multinational companies' global value chains," Mr Pollaers said. "The opportunity for Australian companies - advanced manufacturers and service providers alike - is enormous," Mr Pollaers said. Speaking at the Hannover Fair, the world's leading trade fair for industrial technology, Mr Pollaers said SMEs could learn a great deal from understanding the strategic pathways of global industrial giants. "Where are these companies expanding? What are the new sectors, new technologies, new markets they are focusing on? What are the problems they are trying to solve? Really understanding this will give Australian companies an edge," he said. "This has become very apparent during the Hannover Fair. Traditionally, our trade and investment facilitators have taken groups of business people on "country to country" missions. There is a good case for saying "country to company" missions should also be strongly supported. Austrade is doing some great work in increasing access for Australian SMEs into global value chains. This would give that strategy critical support."

#### **EXTENSIVE GEOTECHNICAL ANALYSIS STARTS AT BADGERYS CREEK**

Progress towards a Western Sydney airport continues with the second phase of geotechnical works commencing recently on the site of the proposed airport at Badgerys Creek. Deputy Prime Minister and Minister for Infrastructure and Regional Development, Warren Truss, said the geotechnical drilling is an important step in seeing an airport come to fruition. "The Western Sydney airport will be among the nation's most impressive civil engineering projects over the next decade," Mr Truss said. "The Commonwealth-owned land at Badgerys Creek is a large site of around 1,700 hectares and extensive investigation is required to assist in planning for the first stage of an airport. A team of engineers will be at Badgerys Creek to profile the subsoil and rock at several locations." More than 100 boreholes of a depth up to 40 metres will be excavated, while earthmoving equipment will dig pits up to five metres deep. Extensive geological surveys to understand rock density will also be completed, with samples analysed by the end of the year. Mr Truss said the geotechnical works continue progress towards a Western Sydney airport, which will be a game-changer for both Western Sydney and the country. "In April last year the Australian Government ended decades of uncertainty with our decision that Badgerys Creek will be the site of an airport for Western Sydney," he said. "The airport will be a major boost for the local economy, creating thousands of jobs during construction and a pipeline of tens of thousands of jobs once the airport

commences operation. Work is well underway to develop a commercial proposal for an airport which could be expected to operate from the mid-2020s."

#### **AUSTRALIAN PMI®: MANUFACTURING CONTRACTION EASES IN APRIL**

Activity across the Australian manufacturing sector contracted for a fifth consecutive month in April, although the pace of contraction eased, with the Australian Industry Group Australian Performance of Manufacturing Index (Australian PMI®) moving up 1.8 points to 48.0 (readings below 50 indicate a contraction in activity, with the distance from 50 indicative of the strength of the decrease). Ai Group Chief Executive, Innes Willox, said: "Weak local demand continues to weigh heavily on Australian manufacturing. While there are benefits from strong residential construction activity, low interest rates, and the weaker Australian dollar, these are being outweighed by subdued local business investment in equipment, the ongoing drop in mining construction and the progressive closure of automotive assembly. While another cut in interest rates may help boost demand, budgetary measures, particularly those targeting increased investment are more likely to provide the lift the domestic economy needs."

#### **ACCC WILL NOT OPPOSE ACQUISITION OF THE LEASE FOR AUTOMOTIVE TERMINAL AT PORT OF FREMANTLE**

The Australian Competition and Consumer Commission has announced that it will not oppose the proposed acquisition by Australian Amalgamated Terminals Pty Ltd (AAT) of a long-term lease to develop and operate the automotive and RoRo Terminal at the Port of Fremantle, after accepting a court-enforceable undertaking. AAT is one of two bidders shortlisted by Fremantle Ports to acquire a long-term lease for what will be the sole automotive and RoRo Terminal at the Port of Fremantle. The undertaking seeks to address the vertical competition concerns that arise should AAT be successful in its bid. AAT is equally owned by P&O Wharf Management Pty Ltd, a wholly owned subsidiary of Qube Holdings Ltd, and Plzen Pty Ltd, a wholly owned subsidiary of Asciano Ltd. Qube and Asciano have interests in the provision of automotive stevedoring and vehicle pre-delivery inspection (PDI) services at the Port of Fremantle. In particular:

- Qube and Patrick Stevedoring Pty Ltd (a wholly owned subsidiary of Asciano) have automotive stevedoring operations at the Port of Fremantle; and
- Prixcar Services Pty Limited (in which Qube has an indirect 25% shareholding) and Patrick Autocare Pty Limited (in which Asciano has an 80% interest) provide PDI services for motor vehicles at the Port of Fremantle.

“The ACCC was concerned that if the proposed acquisition proceeds, AAT would have the ability and incentive to discriminate against rival and potential new stevedores and PDI service providers through pricing or non-price terms of supply,” ACCC Chairman Rod Sims said. “This could potentially lead to a substantial lessening of competition in the markets for the supply of automotive stevedoring and vehicle PDI services at the Port of Fremantle.”

The undertaking addresses these vertical competition concerns by:

- requiring AAT to comply with a number of non-discrimination, open access, ring-fencing of confidential information and self-reporting obligations;
- providing mechanisms for the independent resolution of price and non-price related disputes if parties consider that they have been discriminated against or have other concerns relating to the supply of terminal services by AAT;
- providing for independent auditing of AAT’s compliance with its obligations in the undertaking; and
- providing the ACCC with the power to publicly review the undertaking two years after its commencement and every five years thereafter.

### **BOTANY CRIMINAL TASKFORCE ARRESTS 18 AND SEIZES WEAPONS, DRUGS AND CASH**

A major criminal ring at Port Botany has been busted with 18 people arrested and charged with over 80 offences after the conclusion of an investigation that began in May 2014. According to a joint statement from Federal and State police, along with Customs and the Crime Commission, Operation Aperia began when the task force began investigating an individual who worked on the waterfront at Port Botany. However, it appeared the person was working with, or in concert, with others. “The investigation then expanded to target a number of associated persons who it will be alleged were involved in drug trafficking, weapon possession and supply and drug cultivation,” the joint statement reads. It added that 20 search warrants have been executed in Sydney and on the NSW south coast. Evidence of drug trafficking and importation has been seized from the homes of several suspects. “From one small piece of information, this investigation expanded to see dozens of charges laid, weapons seized and drugs and cash confiscated,” the joint statement reads. Outcomes from the operation included:

- 18 persons charged with 81 offences;
- seizure of 73kg of prohibited drugs, 31kg of precursors and 150 cannabis plants;
- seizure of 14,600 cigarettes;

- seizure of \$893,139 in cash believed to be the proceeds of crime; and
- seizure of 22 firearms and in excess of 3000 rounds of ammunition.

The 81 offences that the 18 men were charged with relate to:

- the supply, possession and manufacture of prohibited drugs and precursors;
- possession of instructions and apparatus for the manufacture of prohibited drugs;
- possession of unregistered or prohibited firearms and supply of firearms;
- possession of ammunition without authority;
- possession of stolen goods;
- possession of property, the proceeds of crime;
- possession of explosives;
- directing the activities of a criminal group;
- participation in a criminal group and contribution to criminal activity;
- recklessly dealing with the proceeds of crime; and
- hindering an investigation.

“Investigations into the criminal syndicate continue and further arrests may occur,” the joint statement reads.

### **PERTH FREIGHT LINK**

The Australian and Western Australian governments have invited three proponents to participate in the Request for Proposals (RFP) phase of the \$1.575 billion Perth Freight Link project. Assistant Minister for Infrastructure and Regional Development, Jamie Briggs, said this next stage continues the Australian Government’s commitment to delivering jobs and economic prosperity. “The Perth Freight Link will create a new world class freight connection between the Roe Highway and the Fremantle Port, reducing transport costs and improving efficiency in heavy vehicle movements,” Mr Briggs said. “This game changing project will help drive economic growth by providing benefits of more than \$3.9 billion to Western Australia, including \$2.5 billion in travel time savings and \$840 million in reduced vehicle operating costs. Importantly, it is expected to create 2,400 construction jobs, providing a vital employment boost for Western Australia.”

### **REAL RISKS WITH DUMPING AND COUNTERVAILING MEASURES**

Andrew Hudson of Gadens Lawyers has provided timely advice on the risks associated with dumping and countervailing. As the numbers and size of dumping and countervailing measures have increased here and overseas, so has the importance of the expertise to identify and manage the risks associated with those measures. That expertise needs to be held by exporters, importers and their

service providers such as freight forwarders and licensed custom brokers as each of them face significant liabilities from transacting with goods subject to the measures. Unfortunately, at the same time as those liabilities and risks increase, so does the pressure to avoid those measures. It needs to be kept in mind that the liabilities can be extreme, including significant financial penalties as well as possible jail time. In the Australian jurisdiction, the issues of dumping and countervailing measures, the increased complexity of the regime, the introduction of anti-circumvention provisions and the incidents of alleged fraudulent action have pushed to the fore. There have been a number of recent media releases from the Australian Customs and Border Protection Services referring to actions taken to address concerns on supply chain integrity. Many of those concerns refer to companies which may be seeking an unfair advantage by avoiding payments of duties and taxes on certain imported goods. Some factors contributing to these problems include:

- measures are often imposed after exporters and/or importers have made a decision to start trading in Australia and after the parties have already entered into agreements for the purchase and subsequent sale of goods subject to the measures;
- It's a very complicated area in which the law and practice changes rapidly;
- Determining which goods are subject to dumping and countervailing measures can be a difficult task;
- The introduction of circumvention measures makes the task of identifying goods subject to measures more difficult;
- The regulatory regime is subject to significant legislative and practice changes. Not only does this create uncertainty regarding the regime it may also create liability to measures where none had previously existed;
- The risks for service providers handling such goods are significant. In recent times, freight forwarders and licensed customs brokers have received search warrants from Customs regarding their involvement with such goods.

It is in everyone's interest to ensure that exporters and importers affected by new investigations which could lead to the imposition of measures should seek advice and take all appropriate steps to protect against or minimise the effect of such measures during the investigation. In the event of doubt, exporters, importers and their service providers need to exercise extreme caution with goods which could be subject to dumping or countervailing measures to ensure correct declarations are made and correct duties are paid.

## **ACCC CHAIRMAN BLASTS GOVERNMENTS OVER BAD PRIVATISATIONS AND PORT PRICE HIKES**

In a wide-ranging speech at the Committee for Economic Development of Australia in Brisbane recently, Australian Competition and Consumer Commission (ACCC) Chairman, Rod Sims, commented on the contents of the recent Harper report and then spoke against the anti-competitive impact of recent privatisations. Mr Sims outlined "concerns" about how governments sold "significant" assets without "appropriate" market structures and/or regulatory arrangements being put in place. Two examples cited by Mr Sims were the right of refusal being granted over the development of a second Sydney airport and the sale of the ports of Botany and Kembla to the same owner. Mr Sims was also concerned over the proposed rental increase at the Port of Melbourne. "This proposed price increase apparently reflects the rent bid by a new third stevedore in Melbourne. An economic regulator would not allow the Port of Melbourne to increase prices on this basis. If the new bidding party saw their bid price being reflected in the rents of the existing players then it means their bid came at no risk. In addition, if the higher rent of one player sets the benchmark for others, we risk an upward rent spiral at all Australian ports that will significantly add to Australia's cost structure and hurt both exporters and consumers. We need to be careful to ensure that privatisation boosts economic efficiency rather than detracts from it, otherwise we risk giving privatisation a bad name because consumers will continue to associate privatisation with higher prices."

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