

Duty Free Security Co Ltd

Submission in response to
Treasury draft Regulations

Tourist Shopping Review –
the Sealed Bag Scheme and
Tourist Refund Scheme

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Table of Contents

Who is DFSec?	1
Executive Summary	2
Background	5
A LAGs declaration and procedure	6
B Extension of timeframe	12
C Other regulatory issues	13
Conclusion	14
Appendix 1: Analysis of GST Amendment Regulations 2011	15
Appendix 2: Analysis of Excise Amendment Regulations 2011	17
Appendix 3: Analysis of Customs Amendment Regulations 2011	20
Appendix 4: Sealed Bag Market Analysis	23



Who is DFSec?

The **Duty Free Security Co Ltd** (DFSec) is a not-for-profit organisation founded in 1978 to serve the duty free industry as its primary docket collection agency.

In its role administering the Sealed Bag System in Australia, DFSec services one of the most comprehensive offerings of tourist shopping schemes in the world. DFSec presently facilitates:

⇒ The implementation of Australia's Sealed Bag Scheme, which enables retailers to make export (duty free and tax free) sales to travellers; and

⇒ The administration of the Sealed Bag Scheme in the following Australian international airports:

- Sydney
- Melbourne
- Brisbane
- Perth
- Adelaide
- Cairns
- Gold Coast
- Darwin

DFSec has been operating the Sealed Bag Scheme in Australia for over 30 years, which in turn has supported both the tax free and duty free industries. Currently, approximately 40 duty free stores and 160 tax free retailers in Australia regularly use the system.

DFSec also works closely with the Australian Taxation Office (ATO) and the Australian Customs and Border Protection Service (Customs) in order to ensure the continued integrity of the Sealed Bag Scheme.

DFSec believes that access to a variety of tax free and duty free shopping choices is integral to the quantity and quality of retail shopping undertaken by travellers, with positive revenue outcomes for industry and the Australian Government. Tourist shopping schemes, including the Sealed Bag Scheme, should continue to be delivered in an efficient way, facilitated by streamlined processes which increase the overall visitor spend.



Executive Summary

DFSec welcomes this consultation as an opportunity to identify compliance burdens in the exposure draft regulations released by Treasury, with a focus on the resulting impacts for travellers and industry. The main issues for DFCSec and the retailers that use the Sealed Bag System include:

- ⇒ The proposed changes to the LAGs verification, including the addition of a mandatory LAGs declaration;
- ⇒ Extending the time available for international passengers to present their duty free and tax free shopping and purchases under both the Sealed Bag Scheme and the TRS from 30 to 60 days; and
- ⇒ A number of significant drafting and procedural irregularities identified in the draft regulations as tabled at **Appendices 1 - 3**.

The structure of the submission follows DFCSec's three concerns, as outlined below:

A **LAGs declaration and procedure**

DFSec **does not support** the proposed new requirement to have a mandatory LAG declaration as this represents a significant and impractical compliance burden to travellers and the duty free and tax free retailers using the Sealed Bag System. DFCSec recommends that the current SB declaration be amended to indicate an intention to pack the LAGs into luggage to be checked in.

Refer page 6

B **Extension of timeframe**

Upon further consideration of the proposal, DFCSec **strongly opposes** the 30 day timeframe moving to 60 days as this is likely to significantly increase misses and negatively impact retailers.

Refer page 12

C **Other regulatory issues**

In this section, DFCSec identifies irregularities in the proposed regulations in order to bring these to the attention of Treasury. DFCSec is concerned by the ambiguities in the draft regulations and **strongly recommends** that Treasury review its understanding of the existing schemes prior to finalising regulatory changes it may ultimately decide to make.

Refer page 13



Background

History

The duty free industry has been operating the Sealed Bag Scheme for duty free shops since the early 1970's. This also operated under what was then the Wholesale Sales Tax (WST) system. The key features of the system were changed under the Streamlined Sales Tax (SST) system, which applied from 1 January 1993 to 30 June 2000.

The GST legislation provided for the continuation of the Sealed Bag Scheme under the New Tax System, confirming the Government's endorsement of the Sealed Bag Scheme as a key component of Australia's tourist shopping arrangements for the 21st century.

The Sealed Bag Scheme has a proven track record of delivering simple and transparent tax free and duty free shopping to tourists. The sealed bag is a well recognised and familiar feature of Australia's tourist shopping arrangements.

Current proposal

As outlined in the Explanatory Material issued by Treasury:

"The Treasury has released for public consultation exposure draft regulations¹ to give effect to existing administration arrangements that support the Sealed Bag Scheme, and to increase the flexibility of off-airport duty free shopping under the Tourist Refund Scheme."

DFSec contends that the Tourist Refund Scheme does not apply to duty free shopping as this is covered under the *Excise Regulations 1925* and *Customs Regulations 1926*. DFCSec has also identified that the draft GST Regulations incorrectly refer only to "off-airport duty free shops", rather than to all retailers. DFCSec is concerned by these oversights and encourages Treasury to reconsider the proposed exposure draft regulations for accuracy and completeness.

Notwithstanding these errors, Treasury has stated that the purpose of the proposed regulations is to provide better export verification procedures for liquids, aerosols, gels, creams and pastes (LAG products) purchased free of (excise or customs) duty and Goods and Services Tax (GST) under the Sealed Bag Scheme, by passengers travelling on international flights.

International security restrictions applying since 31 March 2007, set out in the *Aviation Transport Security Regulations 2005*, have prevented passengers from carrying LAG products by hand onto international flights unless the product is 100 millilitres or less and the products are sealed in one transparent, one litre plastic bag (or less). As a result, international travellers have been required to pack LAG products containing more than 100

¹ A New Tax System (Goods and Services Tax) Amendment Regulations 2011 (No.), Excise Amendment Regulations 2011 (No.) and Customs Amendment Regulations 2011 (No.).



millilitres into checked in luggage, as opposed to being able to carry them on board international flights as hand held luggage.

These arrangements are inconsistent with the most regularly used sealed bag scheme rules established in the *A New Tax System (Goods and Services Tax) Regulations 1999*, *Excise Regulations 1925* and *Customs Regulations 1926* which require international travelling passengers to present their off-airport duty and GST free purchases (including LAG products greater than 100 millilitres) to an airside agent of the retailer (a 'docket plucker') who will remove the invoice attached to the sealed bag.

With the agreement of the ATO and Customs, off-airport duty free and tax free retailers have implemented interim sealed bag arrangements which are consistent with international airport security restrictions. This has resulted in travellers removing their sealed bag invoice (associated with LAG products greater than 100 millilitres) themselves, prior to packing the LAG products in their checked in luggage.

The proposed regulations will aim to ensure that people who have acted in accordance with the requirements of the *Aviation Transport Security Regulations 2005* and the interim sealed bag arrangements will not have breached any condition relating to the Sealed Bag Scheme rules.

Therefore, the draft regulations are intended to:

- ⇒ Provide new export verification procedures under the Sealed Bag Scheme for LAG products where such goods are purchased duty free or tax free from an off-airport retailer;
- ⇒ Extend the time available for international passengers to present their duty free shopping and purchases under both the Sealed Bag System and the Tourist Refund Scheme from 30 to 60 days; and
- ⇒ Allow travellers to aggregate multiple invoices from single retailers to meet the \$300 Tourist Refund Scheme (TRS) threshold.

The proposed regulations relating to the LAGs and the TRS will apply 60 days after the day the regulations are registered on the Federal Register of Legislative Instruments.

DFSec support for existing regulations

DFSec supports the existing validation mechanisms of the *A New Tax System (Goods and Services Tax) Regulations 1999*, *Excise Regulations 1925* and *Customs Regulations 1926* and recognises the need to support the security restrictions applying since 31 March 2007 and set out in the *Aviation Transport Security Regulations 2005*.

However, DFSec believes such considerations must dually recognise the needs of travellers and industry. A regulatory system that is cumbersome to the point of deterring travellers from shopping in Australia is detrimental to industry and negatively impacts Government revenue. DFSec is concerned by the potential risk of shifting tax and duty free purchasing



offshore as a result of implementing draft regulations which require travellers and retailers to observe the proposed compliance requirements.

Noting the importance of the sector to travellers, industry and the Australian Government, DFSec would also like to take this opportunity to bring consumer and industry issues to the attention of Treasury and to subsequently work with Government in order to update the existing regulations to achieve better outcomes.



A LAGs declaration and procedure

DFSec **does not support** the proposed new requirement to have a mandatory LAG declaration as this represents a significant and impractical compliance burden to travellers and the duty free and tax free retailers using the Sealed Bag System. DfSec recommends that the current SB declaration be amended to indicate an intention to pack the LAGs into luggage to be checked in.

Proposed regulation

Under the proposed amendments, off-airport duty free and tax free retailers will continue to be required to pack any duty or tax free LAG products into a separate sealed bag to all other goods.

In addition to the existing requirement that the barrier copy of the invoice be attached to the outside of the sealed bag, it is now proposed that a new LAG declaration also be attached to the outside of the sealed bag containing the LAG products.

⇒ DfSec notes Treasury's provision that this LAG declaration could be combined with the existing invoice. In respect of this provision, DfSec would like to:

- Alert Treasury to Regulations 79J and 93J (see Appendices 2 and 3 for details) which, in their proposed form, present practical barriers to the efficient administration of a combined invoice and LAG declaration;
- Reiterate the prohibitive cost burden of consolidating a LAG declaration and invoice, which is unpalatable to industry; and
- Communicate industry reluctance to potentially confuse consumers by including a declaration on an invoice which purchasers of non-LAG products will not have to sign.

⇒ As detailed by Treasury, the LAG declaration will state that the traveller **has** packed the goods into their checked in luggage, which also presents a timing challenge based on the definition of 'checked baggage' provided under Regulation 1.03 of the *Aviation Transport Security Regulations 2005* (see Appendix 1, SB Rule 2A, p 16).



- It is only after the baggage is accepted by the carrier that it becomes 'checked baggage'. Consequently, it is physically impossible to pack goods into baggage that is no longer in the possession of the traveller. A possible alternative reference would be 'to pack the LAGs into baggage that is subsequently checked in'.

Prior to travelling, the purchaser of the LAG products is to remove the LAG declaration and invoice from outside the sealed bag and pack the LAG products into their checked in luggage (refer to definitional obstacle as above at Appendix 1, SB Rule 2A, p 16).

- ⇒ Following this procedure, the traveller must sign the LAG declaration, stating that the goods have been (*past tense*) packed into their checked in luggage, with applicable penalties for false and misleading statements.
- ⇒ The traveller will then be required to present the barrier copy of the invoice and corresponding LAG declaration to the airside docket plucker. Any LAG invoice which is not accompanied by a signed LAG declaration will be treated as a miss.

DFSec position

DFSec **strongly opposes** the idea of a separate LAG declaration as this requirement represents a substantial compliance burden for the duty free and tax free retailers using the Sealed Bag System. In addition to the impact on industry, DFSec notes that a separate LAG declaration will also inconvenience consumers.

In the absence of the introduction of a separate LAG declaration, should the Australian Government wish to pursue a strategy with the view to strengthening verification of exports, DFSec would prefer to consider a solution including the following:

- 1) Changing the existing Sealed Bag declaration to incorporate the concept of the proposed LAG declaration to the suggested effect that the traveller *will pack* LAG products into luggage prior to it being checked in when departing Australia, or similar; and
- 2) That the existing Sealed Bag declaration be amended to differentiate between LAG and non-LAG goods.



Office of Best Practice Regulation

DFSec notes that a Regulation Impact Statement (RIS) is required under the Australian Government's Office of Best Practice Regulation (OBPR) requirements, when a regulatory proposal is likely to have an impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.

In accordance with the RIS framework outlined by OBPR, a RIS has seven key elements, setting out:

- 1 the problem or issues which give rise to the need for action;
- 2 the desired objective(s);
- 3 the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s);
- 4 an assessment of the impact (costs, benefits and, where relevant, levels of risk) on consumers, business, Government and the community of each option;
- 5 a consultation statement;
- 6 a recommended option; and
- 7 a strategy to implement and review the preferred option.

In respect of the current exposure draft regulations to give effect to existing administration arrangements that support the Sealed Bag Scheme, DFSec queries whether or not Treasury is undertaking or has completed a RIS in relation to the proposed separate LAG declaration, and associated procedures.

Noting that the introduction of a separate LAG declaration has significant practical and procedural implications for retailers, including the imposition of substantial implementation costs, DFSec submits that:

- ⇒ The current checked in baggage provisions of the Sealed Bag System have been running smoothly without a separate LAG declaration and therefore there is no problem or significant issues which give rise to the need for regulatory action.
- Where is the evidence that the current checked in baggage procedures are not working and/or are being abused? What evidence is there of the need to have a new declaration included?
 - If Treasury establishes there was a problem to justify a case for action, it should also be explained how the introduction of a mandatory LAG declaration addresses this problem, for example, by significantly strengthening verification of exports.



- ⇒ Treasury should provide evidence that an assessment of the impact of the proposed introduction of a separate LAG declaration (on consumers, business, Government and community) has been undertaken, including an analysis of costs, benefits and associated risks.
- In relation to the cost/benefit analysis required by the RIS framework, DFSec submits that the quantum of potential non-exported LAGs and resultant loss of GST/duty/excise could be as low as \$105,000 per annum, depending on assumptions (see **Appendix 4**). DFSec therefore queries the cost/benefit impetus to introduce a separate LAG declaration.

If there is insufficient justification for the implementation of a separate LAG declaration at the conclusion of the RIS process, DFSec **strongly recommends** that the proposed implementation not proceed in observance of OBPR requirements.

Impacts – Travellers

DFSec suggests that imposing an additional declaration on travellers will have a **negative impact**, particularly on those who are non-English speakers or purchasing non-LAG products.

- ⇒ Due to language difficulties, an additional declaration represents an increased burden faced by individuals undertaking international travel, resulting in potential misunderstandings which could lead to incorrect declarations.
- ⇒ Treasury's suggestion that the LAG declaration could be combined with the invoice also risks confusing travellers who, if purchasing non-LAG items only, would query why there is a declaration on their invoice which is not applicable to them.

DFSec is concerned that the confusion for travellers caused by the introduction of an additional LAG declaration has the potential to result in:

- ⇒ Travellers inevitably forgetting to sign (or incorrectly signing) the LAG declaration after packing the LAGs into baggage to be checked in, creating a fear of undeserved prosecution; and
- ⇒ Delays in passenger facilitation throughout airports due to the requirement to check for signatures and explain processes to passengers; this may lead to bottlenecks at screening points, traveller dissatisfaction and the failure of some travellers to have their docket collected as required.



DFSec acknowledges that international travel already requires substantial documentation and suggests that imposing additional requirements for paperwork will impact negatively on travellers and their duty free and tax free purchasing experience in Australia.

Impacts – Industry

DFSec contends that there are already significant language challenges in communicating with travellers who are users of the Sealed Bag Scheme. This presents the dual challenge to industry of:

- ⇒ Communicating the extra process to travellers in a way that will be easily understood, with anticipated administrative and financial impacts; and
- ⇒ Ensuring that travellers using the Sealed Bag Scheme understand that they must sign the additional declaration so that revenue-reducing misses are avoided.
 - Explaining this extra process will be difficult (especially to purchasers of non-LAG products who will query why their invoice contains a declaration they do not have to sign) and will likely result in increased staffing costs to ensure additional declarations are collected at the airport.

Industry is concerned that the burden imposed on travellers in being required to sign an additional declaration will result in more travellers failing to sign their declaration, rendering the invoice a miss when it is handed to the airside docket plucker unsigned. This is likely to result in detrimental revenue results for retailers.

The introduction of a separate LAG declaration will also potentially require DfSec to undertake an additional process of matching LAG declarations with their invoices should they become separated. This process of matching would either be undertaken manually or electronically, but in either case would require significant investment in changes to existing software and/or the hire of additional labour, with costs to be passed on by DfSec to the industry.

Such cumbersome requirements, including the proposed changes to LAG verification, will be impractical for both travellers and the retailers who use the Sealed Bag System. Duty free shopping is a competitive global industry and it is easy for a passenger departing Australia to purchase goods upon reaching their destination if they are incentivised to do so. DfSec would appreciate receiving any information



available regarding whether other countries have implemented similar requirements.

In addition, businesses would be burdened by the administrative requirements of implementing changes to the system, including:

- Printing new invoices to incorporate the LAG declaration;
- Reconfiguring electronic invoice-processing systems, at a substantial cost;
- Reconfiguring and/or replacing software at point of sale for retailers, at a substantial cost;
- Training staff to advise travellers of new requirements; and
- Developing software for point of sale and back-end systems in order to facilitate compliance.

DFSec expects retailers would be required to modify their software to track both LAG declaration and Sales Transaction numbers if they are to accurately identify who has not correctly completed a LAG declaration regarding their checked in baggage exports.

Summary of DFSec position

DFSec is committed to the duty free and tax free retail industry in Australia and believes in the adequacy of the current system.

DFSec **strongly opposes** the idea of a separate LAG declaration as this requirement represents a substantial regulatory burden for the duty free retailers, tax free retailers and consumers using the Sealed Bag System.

DFSec **resists** the introduction of a separate LAG declaration due to practical inconveniences, including the imposition of significant establishment costs which would require prompt assessment in a cost/benefit analysis as required by the OBPR's RIS process.

DFSec **queries** why a separate LAG declaration is necessary to the continued successful operation of the current Sealed Bag Scheme and submits that the quantum of potential non-exported LAGs and resultant loss of revenue could be as low as \$105,000 per annum (see **Appendix 4**).

DFSec **recommends** that the current Sealed Bag declaration be amended to indicate an intention to pack the LAGs into luggage to be checked in.



B Extension of timeframe

DFSec is concerned regarding the increase of 30 days to 60 days for travelers to take possession of their goods as this increase is likely to substantially increase the incidence of misses, thus negatively impacting retailer revenue.

DFSec position

DFSec is concerned that the extension of time from 30 days to 60 days during which travellers can make duty free or tax free purchases under the Sealed Bag Scheme could lead to more misses as there is now additional time during which travellers could forget to take goods with them when leaving Australia and/or lose their documentation.



C Other regulatory issues

DFSec is concerned by the number of errors and oversights in the draft regulations and **strongly recommends** that Treasury critically review its understanding of the existing schemes prior to pursuing regulatory changes.

Draft Regulations

DFSec has carefully considered the *A New Tax System (Goods and Services Tax) Amendment Regulations 2011 (No.)*, *Excise Amendment Regulations 2011 (No.)* and *Customs Amendment Regulations 2011 (No.)* and critically assessed them in the context of Treasury's consultation questions.

In respect of the draft Regulations, DFSec believes:

- The GST Regulations should not refer to 'off-airport duty free shops'. This approach unintentionally excludes all tax free retailers who are not licensed duty free shops from the scope of the proposed changes.
- Treasury is missing the opportunity to simplify the *Excise Amendment Regulations 2011 (No.)*, *Customs Amendment Regulations 2011 (No.)*, and existing Acts, in alignment with the simple table format of the GST Regulations, including the opportunity to standardise language across the draft Regulations;
- One challenge for Treasury is to take the proposed Rules around LAG declarations and simplify them so they present little to no practical impediment to industry in the event of future implementation; and
- There are numerous opportunities within the current draft Regulations to address ambiguous phrasing, poor clause chronology and to provide important additional details.

DFSec's analysis of the draft Regulations is detailed in the Appendices (p 16) and DFSec welcomes further collaboration with Government to address the ambiguities and practical obstacles which have arisen in this round of drafting.



Conclusion

DFSec **does not support** the proposed new requirement to have a mandatory LAG declaration as this represents a significant and impractical compliance burden to travellers and the duty free and tax free retailers using the Sealed Bag System. DfSec submits that the quantum of potential non-exported LAGs and resultant loss of GST/duty/excise could be as low as \$105,000 per annum (see **Appendix 4**).

DFSec recommends that the current Sealed Bag declaration be amended to indicate an intention to pack the LAGs into luggage to be checked in.

DFSec encourages Treasury to prepare a RIS in respect of this issue, in order to determine what existing problem or issues give rise to the need for the action of implementing a separate LAG declaration, what the desired objective of such a change is, and what impact a separate LAG declaration is likely to have on stakeholders, including consumers and industry.

If, as a result of preparing a RIS, the Government feels justified in introducing a separate LAG declaration, DfSec would welcome the opportunity to discuss the options (both regulatory and non-regulatory) that may constitute viable means for achieving the desired objectives.

Additionally, DfSec remains concerned that the extension of time from 30 days to 60 days during which travellers can make duty free or tax free purchases under the Sealed Bag Scheme. DfSec urges Government to reconsider the commitment to this extension as it is likely to lead to more misses as there is now additional time during which travellers could forget to take goods with them when leaving Australia and/or lose their documentation.

Prior to finalising any regulatory changes in relation to the aforementioned issues, DfSec would appreciate the opportunity to meet with Treasury and discuss these issues in greater detail.

2 June 2011



Appendix 1: Analysis of GST Amendment Regulations 2011 (No.)

Draft Regulation	Comment
<p>Schedule 5, subclause 1 (1) - after definition of goods <i>Insert</i> LAG means liquid, aerosol, gel, cream or paste as a tax free item at an off-airport duty free shop.</p> <p>LAG declaration means a form of declaration that, in this Schedule:</p> <ul style="list-style-type: none"> (a) must be provided by the seller to the relevant traveller at the time of the sale of goods that are LAGs; and (b) must be made by the relevant traveller after the LAGs are packed into checked baggage. 	<p>DFSec notes that LAGs can also be purchased from retail stores that are not off-airport duty free shops and that, in order to be materially accurate, the definition of LAG should be expanded to include this.</p> <p>For the purposes of (b) it would be useful to explain what 'made' specifically means, i.e. 'signed'.</p> <p>DFSec recommends that the definition of "off-airport duty free shop" is too narrow in scope and should be removed because these Regulations apply to retailers who are not duty free shops of any kind.</p>
<p>Schedule 5, clause 2 - Interim sealed bag arrangements for LAGs from 31 March 2007 (2) If, during the period:</p> <p>(a) the person purchased a LAG as a duty free item at an off-airport duty free shop...</p>	<p>DFSec notes that LAGs can also be purchased from retail stores that are not off-airport duty free shops and that, in order to be materially accurate, the reference to the purchase of a LAG in this regulation should be expanded to include this possibility.</p>
<p>Schedule 5, table 1, SB Rule 2A – Purchaser to sign a LAG declaration <i>Details of rule:</i> The purchaser must sign a declaration stating that, if the matter is true, the purchaser has packed a sealed package containing a LAG product into checked baggage.</p> <p><i>Time when the requirements of the rule must be satisfied:</i> After the purchaser packs the sealed bag into checked baggage and before the purchaser would surrender the sealed package for inspection if it did not contain a LAG product.</p>	<p>DFSec suggests this Rule is more appropriately labelled SB Rule 7A and placed before current proposed SB Rule 7A (which would be become SB Rule 7B) due to the chronology of its prescription.</p> <p>DFSec also queries the application of the definition of 'checked baggage' under Regulation 1.03 of the <i>Aviation Transport Security Regulations 2005</i> as it applies to SB Rule 2A:</p> <p>Checked baggage means an article or possession of an aircraft passenger or crew member that:</p> <ul style="list-style-type: none"> (a) has been checked in for a flight on the aircraft; and (b) is intended to be carried on board the aircraft or another aircraft; and (c) if carried in any aircraft, is not accessible to the passenger or crew members while the aircraft is in flight. <p>This raises a timing issue. If checked baggage is that which 'has been checked in for a flight on the aircraft', then how is a purchaser to sign a declaration after he or she has 'packed a sealed package containing a LAG product' into luggage which is already checked? Based on the definition of checked baggage provided above, to fulfil the requirement of this rule would be a logistical impossibility.</p>
<p>Schedule 5, table 1, SB Rule 2 – column 3, subparagraph (ii) <i>substitute</i> (ii) submitting the sealed package, or the LAG declaration, to the seller in accordance with SB rule 7, 7A or 8;</p>	<p>Noting DFSec's suggestion that SB Rule 2A become SB Rule 7A, the current proposed SB Rule 7A would need to become SB Rule 7B, and this should be referenced in the text of this substitution.</p> <p style="text-align: right;"><i>Continued on page 16</i></p>



Draft Regulation	Comment
<p>Schedule 5, table 1, SB Rule 2 – column 3 subparagraph (iii) <i>substitute</i> (iii) will, in accordance with SB rule 7, 7A or 8, either submit the sealed package to the seller for removal of the barrier copy of the invoice, or, if the sealed package contains a LAG product, surrender the LAG declaration and the barrier copy of the invoice to the seller;</p>	<p>As above, SB Rule 7B would need to be referenced in the text of this substitution.</p>
<p>Schedule 5, table 1, SB Rule 3A – Seller to provide a LAG declaration If a sealed package contains 1 or more LAGs, the seller must provide, and attach to the sealed package, a LAG declaration: (a) at the time of the sale; and (b) enabling the purchaser to declare, by signing the declaration, that the sealed package has been packed into checked baggage.</p>	<p>DFSec notes there is no text in column 4 to detail 'what the Commissioner may approve' and suggests that text is inserted so that the Commissioner may approve the form of the declaration to be made by the purchaser.</p> <p>Paragraph(b) also raises the question of timing in relation to the definition of 'checked baggage' and needs to be clarified as the current definition does not logistically permit a purchaser to pack a sealed package into baggage already checked in.</p>
<p>Schedule 5, table 1, SB rule 6 – after subparagraph (a) <i>Insert</i> (aa) if the goods are LAGs, the goods are contained in a package that does not contain goods that are not LAGs; and</p>	<p>DFSec queries why LAG and non-LAG products cannot be packaged together. For traveller and retailer convenience, it is recommended that both products are able to be packaged together.</p>
<p>Schedule 5, table 1, SB Rule 7A – LAG declaration and invoice to be surrendered before of beyond Customs barrier <i>Insert</i> If the sealed package contains 1 or more LAGs and has been packed by the purchaser in checked baggage, the purchaser must surrender the signed LAG declaration and accompanying copy of the invoice at the Customs barrier, or to the seller beyond the Customs barrier</p>	<p>DFSec recommends this becomes SB Rule 7B to accommodate SB Rule 2A becoming SB Rule 7A for sequencing purposes.</p> <p>DFSec queries why the reference to an invoice in this rule does not include the phrase 'barrier invoice'.</p> <p>DFSec seeks clarification as to why the LAG declaration and invoice copy would be surrendered at the Customs barrier, and if it is the intention of Customs to begin collecting this documentation. If so, is it then necessary to also have the seller's agent 'beyond the Customs barrier'?</p>
<p>Schedule 5, table 1, SB Rule 11A – Retrieved signed LAG declaration must be matched to invoice <i>Insert</i> <i>Details of rule:</i> The seller must match a retrieved signed LAG declaration as soon as practicable by reconciling the declaration against the seller's copy of the invoice relating to the same goods.</p>	<p>DFSec notes there is no text in column 4 to detail 'what the Commissioner may approve' or column 5 to detail the 'time when the requirements of the rule must be satisfied'.</p> <p>DFSec suggests such text is inserted to provide guidance in respect of how, and at which point in time the seller (or their agent) must reconcile the declaration against the seller's copy of the invoice relating to the same goods.</p>



Appendix 2: Analysis of Excise Amendment Regulations 2011 (No.)

Draft Regulation	Comment
<p>Regulation 79 (2) – Definitions In regulations 79N, 79O, 79P, 79R and 79V: (a) <i>proprietor</i> includes an agent of a proprietor; and (b) a requirement with which a proprietor must comply is satisfied if an action that has been taken by an agent of the proprietor would comply with the requirements if it were taken by the proprietor.</p>	<p>DFSec believes regulations 79O and 79X should be included in this definition of proprietor as it will be the agent of a proprietor (eg. DFSec personnel) who under (c) is given the LAG declaration and the accompanying invoice.</p> <p>DFSec implores Treasury to consider the impracticality of requiring the proprietor to collect the LAG declaration and accompanying invoice under this provision when in all other instances the proprietor's agent is authorised to do so.</p>
<p>Regulation 79H (3) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 79H(3) The proprietor must, after preparing the invoice: (a) place 1 copy of the invoice with the goods inside the package mentioned in subregulation 79K (3); and (b) place 1 copy of the invoice in a waterproof envelope attached securely to the outside of the package; and (c) retain 1 copy of the invoice in his or her own records.</p>	<p>DFSec wishes to alert the Treasury to paragraph 79H(3)(b) in respect of the implications it has for the practical operation of Regulation 79J – Preparation and placement of declaration about LAGs. Requiring the copy of the invoice to be placed in a waterproof envelope and secured to the outside of the sealed package renders it impractical to include a LAG declaration on existing invoices as suggested by 79J(4); the LAG declaration therefore needs to be attached to the bag separately, in a way that is practical for the traveller to remove from the sealed bag and sign.</p>
<p>Regulation 79H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 79H (5) The invoice must set out the following matters: (a) the name and usual residential address of the relevant traveller purchasing the goods;</p>	<p>DFSec queries what the purpose of this regulation is when, in reality, the usual address of the relevant traveller purchasing the goods is meaningless; for example, when it is a foreign location and written in a foreign language.</p>
<p>Regulation 79H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 79H(5)(b)(iii) [The invoice must set out...] the number or other identification of the traveller's ticket or other travel document approved by the Collector for paragraph 61D (7) (b) of the Act;</p>	<p>DFSec queries why industry needs to include the number or other identification of the traveller's ticket or other travel document on the invoice when the existing requirement is for the proprietor to "sight" the same? This represents a significant practical burden when preparing invoices, particularly those which are electronically generated from existing templates.</p>
<p>Regulation 79H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 79H(5)c(i) [The invoice must set out...] (c) a precise description of the goods, including: (i) the quantity, in figures, of each item of the goods and the total number, in words, of items on the invoice;</p>	<p>DFSec queries why the total number of goods on the invoice needs to be set out in words when from a practical perspective (automatic invoice generation), figures are displayed. DFSec contends that there is no rationale behind the inclusion of noting the total number in words and recommends the inclusion of the total number, in numeric form be sufficient.</p> <p style="text-align: right;"><i>Continued on page 18</i></p>



Draft Regulation	Comment
<p>Regulation 79J (2) and (4) – Preparation and placement of declaration about LAGs</p> <p>(2) At the time of the sale of the goods, the proprietor must attach a declaration to the outside of the sealed package containing the goods.</p> <p><i>Note 1 This is a LAG declaration</i> <i>Note 2 This requirement is in addition to the requirement to attach an invoice to the sealed package.</i></p> <p>(4) The declaration may be included on the invoice.</p>	<p>DFSec contends that due to constraints imposed by the existing regulations, prescribing that the LAG declaration may be included on the invoice is not realistic or practical. Including a LAG declaration on an invoice which must be placed in a waterproof envelope attached securely to the outside of the package (Regulation 79H(3)(b)) does not render it easily accessible for a traveller to sign after the LAG items have been packed into the relevant traveller's checked luggage.</p> <p>Furthermore, attaching the LAG declaration to the sealed package in a way that is easy to sign means it is susceptible to environmental damage and loss (not otherwise incurred by the invoice which is protected in its waterproof envelope), thus likely increasing the incidence of travellers failing to sign their LAG declarations.</p>
<p>Regulation 79L (3) – Notification of sale of goods to Collector</p> <p>79L (3) The information must be provided:</p> <ul style="list-style-type: none"> (a) before the scheduled departure time of the international flight on which the relevant traveller proposes to export the goods; and (b) by the means approved by the Collector. 	<p>DFSec would like to alert Treasury to the fact that providing information to a Collector under this regulation has not occurred in practice for many years and is considered by industry to be a redundant provision.</p>
<p>Regulation 79L (4) – Notification of sale of goods to Collector</p> <p>79L (4) [Proprietor to provide information in relation to ...]</p> <ul style="list-style-type: none"> (f) the total number of sealed packages in which the goods included in the sale are packed; and (g) the total number of sealed packages that: <ul style="list-style-type: none"> (i) may be carried onto the flight or voyage as carry-on baggage; or (ii) must be packed in checked baggage; and 	<p>DFSec queries why this regulation is required and submits that information about the total number of sealed packages in which the goods are packed, including the number of packages that can be carried onto the flight as carry-on baggage as well as those to be checked baggage, is not material to the successful administration of the Sealed Bag Scheme.</p>
<p>Regulation 79S - Obligation to notify details of revised flight or voyage</p>	<p>DFSec seeks to understand what the relevance of this regulation is in practice. Assuming the traveller exports the purchased goods on an international flight or voyage within 48 hours of their previously indicated departure time, this has no material impact on the administration of the Sealed Bag Scheme or retailer reporting requirements. DFSec believes this obligation is an unnecessary imposition on travellers and retailers and should be omitted.</p>
<p>Regulation 79T - Obligation to notify that goods will not be exported on expected flight or voyage and return of goods to shop</p>	<p>DFSec submits that a passenger's changed flight arrangements is not material to industry unless such information is provided in advance to a Collector as per Regulation 79L and the Collector cross-checks this information. Industry contends that this is not standard practice and has not been for several years. As retailers are lodging monthly returns, if goods are not exported on the expected flight or voyage then they pay duty and tax.</p>

Continued on page 19



<i>Draft Regulation</i>	<i>Comment</i>
<p>Regulation 79X – Obligation on proprietor – provide Collector with proof of export of goods</p> <p>79X(1) ...a proprietor of an off-airport duty free shop must provide proof to a Collector of the export of goods.</p> <p>(2) The proprietor must give the Collector a computer-generated list of invoices for goods proposed to be exported in a calendar month that has been reconciled against invoices that have been:</p> <p>(a) removed from goods by the proprietor in accordance with regulation 79O in that calendar month; or</p> <p>(b) given to the proprietor with a signed LAG declaration by the relevant traveller in accordance with regulation 79Q.</p> <p>(3) The proprietor must give the list to the Collector within 1 calendar month of the last day of the month in which the goods specified in the invoices were proposed to be exported.</p>	<p>DFSec believes this Regulation should be allowed within the definition of proprietor at Regulation 79(2) as without this definition, the declarations will need to go back to the proprietor.</p> <p>DFSec submits that the administrative and logistical compliance burden of such a situation would render these prescribed arrangements untenable.</p>



Appendix 3: Analysis of Customs Amendment Regulations 2011 (No.)

Draft Regulation	Comment
<p>Regulation 93 (1) – Definitions (1) In this Part: <i>Off-airport duty free shop</i> means a duty free shop that is not an on-airport duty free shop. <i>On-airport duty free shop</i> means a duty free shop that is located in a departure area of an airport.</p>	<p>DFSec notes that an off-airport duty free shop as defined in Regulation 93 (1) <i>can</i> nevertheless be located at (or on) an airport, for example, in cases where there is a duty free shop not located in the departure area. These definitions should be refined for accuracy and to protect travellers from confusion.</p>
<p>Regulation 93 (2) – Definitions (2) In regulations 93N, 93O, 93P, 93R and 93V: (a) <i>proprietor</i> includes an agent of a proprietor; and (b) a requirement with which a proprietor must comply is satisfied if an action that has been taken by an agent of the proprietor would comply with the requirements if it were taken by the proprietor.</p>	<p>DFSec believes regulations 93Q and 93X should be included in this definition of proprietor as it will be the agent of a proprietor (eg. DFSec personnel) who under (c) is given the LAG declaration and the accompanying invoice.</p> <p>DFSec implores Treasury to consider the impracticality of requiring the proprietor to collect the LAG declaration and accompanying invoice under this provision when in all other instances the proprietor's agent is authorised to do so.</p>
<p>Regulation 93H (3) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 93H(3) The proprietor must, after preparing the invoice: (a) place 1 copy of the invoice with the goods inside the package mentioned in subregulation 79K (3); and (b) place 1 copy of the invoice in a waterproof envelope attached securely to the outside of the package; and (c) retain 1 copy of the invoice in his or her own records.</p>	<p>DFSec wishes to alert the Treasury to paragraph 93H(3)(b) in respect of the implications it has for the practical operation of Regulation 93J – Preparation and placement of declaration about LAGs. Requiring the copy of the invoice to be placed in a waterproof envelope and secured to the outside of the sealed package renders it impractical to include a LAG declaration on existing invoices as suggested by 93J(4); the LAG declaration therefore needs to be attached to the bag separately, in a way that is practical for the traveller to sign.</p>
<p>Regulation 93H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 79H (5) The invoice must set out the following matters: (a) the name and usual residential address of the relevant traveller purchasing the goods;</p>	<p>DFSec queries what the purpose of this regulation is when, in reality, the usual address of the relevant traveller purchasing the goods is meaningless; for example, when it is a foreign location and written in a foreign language.</p>
<p>Regulation 93H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 93H(5)(b)(iii) [The invoice must set out....] the number or other identification of the traveller's ticket or other travel document approved by the Collector for paragraph 96A (7) (b) of the Act;</p>	<p>DFSec queries why industry needs to include the number or other identification of the traveller's ticket or other travel document on the invoice? This represents a significant practical burden when preparing invoices, particularly those which are electronically generated from existing templates.</p>
<p>Regulation 93H (5) - Preparation and placement of invoice for goods sold at an off-airport duty free shop 93H(5)c(i) [The invoice must set out....] (c) a precise description of the goods, including: (i) the quantity, in figures, of each item of the goods and the total number, in words, of items on the invoice;</p>	<p>DFSec queries why the total number of goods on the invoice needs to be set out in words when from a practical perspective (automatic invoice generation), figures are displayed. DFSec contends that there is no rationale behind the inclusion of noting the total number in words and recommends the inclusion of the total number, in numeric form be sufficient.</p> <p style="text-align: right;"><i>Continued on page 21</i></p>



Draft Regulation	Comment
<p>Regulation 93J (2) and (4) – Preparation and placement of declaration about LAGs</p> <p>(2) At the time of the sale of the goods, the proprietor must attach a declaration to the outside of the sealed package containing the goods.</p> <p><i>Note 1 This is a LAG declaration</i> <i>Note 2 This requirement is in addition to the requirement to attach an invoice to the sealed package.</i></p> <p>(4) The declaration may be included on the invoice.</p>	<p>DFSec contends that due to constraints imposed by the existing regulations, prescribing that the LAG declaration may be included on the invoice is not realistic or practical. Including a LAG declaration on an invoice which must be placed in a waterproof envelope attached securely to the outside of the package (Regulation 93H(3)(b)) does not render it easily accessible for a traveller to sign after the LAG items have been packed into the relevant traveller's checked luggage.</p> <p>Furthermore, attaching the LAG declaration to the sealed package in a way that is easy to sign means it is susceptible to environmental damage and loss (not otherwise incurred by the invoice which is protected in its waterproof envelope), thus likely increasing the incidence of travellers failing to sign their LAG declarations.</p>
<p>Regulation 93L (3) – Notification of sale of goods to Collector</p> <p>93L (3) The information must be provided:</p> <ul style="list-style-type: none"> (a) before the scheduled departure time of the international flight on which the relevant traveller proposes to export the goods; and (b) by the means approved by the Collector. 	<p>DFSec would like to alert Treasury to the fact that providing information to a Collector under this regulation has not occurred in practice for many years and is considered by industry to be a redundant provision.</p>
<p>Regulation 93L (4) – Notification of sale of goods to Collector</p> <p>93L (4) [Proprietor to provide information in relation to ...]</p> <ul style="list-style-type: none"> (f) the total number of sealed packages in which the goods included in the sale are packed; and (g) the total number of sealed packages that: <ul style="list-style-type: none"> (i) may be carried onto the flight or voyage as carry-on baggage; or (ii) must be packed in checked baggage; and 	<p>DFSec queries why this regulation is required and submits that information about the total number of sealed packages in which the goods are packed, including the number of packages that can be carried onto the flight as carry-on baggage as well as those to be checked baggage, is not material to the successful administration of the Sealed Bag Scheme.</p>
<p>Regulation 93R (2) – Receipt of LAG declaration and invoice</p> <p>(3) The proprietor must receive a LAG declaration and accompanying invoice given to the proprietor under regulation 1T by a relevant traveller.</p>	<p>DFSec suggests the reference to 'regulation 1T' to be a typographical error, with the accurate reference to be regulation 93Q(2)(c).</p> <p>This regulation suggests the drafter's intention is to require DFSec, as agents of a proprietor, to physically send documents back to the retailer, which imposes an unreasonable administrative burden on both agent and proprietor. DFSec would appreciate clarification of this point.</p>
<p>Regulation 93S - Obligation to notify details of revised flight or voyage</p>	<p>DFSec seeks to understand what the relevance of this regulation is in practice. Assuming the traveller exports the purchased goods on an international flight or voyage within 48 hours of their previously indicated departure time, this has no material impact on the administration of the Sealed Bag Scheme or retailer reporting requirements. DFSec believes this obligation is an unnecessary imposition on travellers and should be omitted.</p> <p style="text-align: right;"><i>Continued on page 22</i></p>



<i>Draft Regulation</i>	<i>Comment</i>
<p>Regulation 93T - Obligation to notify that goods will not be exported on expected flight or voyage and return of goods to shop</p>	<p>DFSec submits that a passenger's changed flight arrangements is not material to industry unless such information is provided in advance to a Collector as per Regulation 93L and the Collector cross-checks this information. Industry contends that this is not standard practice and has not been for several years. As retailers are lodging monthly returns, if goods are not exported on the expected flight or voyage then they pay duty and tax.</p>
<p>Regulation 93X – Obligation on proprietor – provide Collector with proof of export of goods</p> <p>93X(1) ...a proprietor of an off-airport duty free shop must provide proof to a Collector of the export of goods.</p> <p>(2) The proprietor must give the Collector a computer-generated list of invoices for goods proposed to be exported in a calendar month that has been reconciled against invoices that have been:</p> <p>(a) removed from goods by the proprietor in accordance with regulation 93O in that calendar month; or</p> <p>(b) given to the proprietor with a signed LAG declaration by the relevant traveller in accordance with regulation 93Q.</p> <p>(3) The proprietor must give the list to the Collector within 1 calendar month of the last day of the month in which the goods specified in the invoices were proposed to be exported.</p>	<p>DFSec believes this Regulation should be allowed within the definition of proprietor at Regulation 93(2) as without this definition, the declarations will need to go back to the proprietor.</p> <p>DFSec submits that the administrative and logistical compliance burden of such a situation would render these prescribed arrangements untenable.</p>