



Australian
BORDER FORCE

Movement of goods under customs control

It is an offence under the *Customs Act 1901* (Customs Act) to move, alter or interfere with goods under customs control where the movement, alteration or interference is not authorised under the Customs Act.

Owners or their agents may seek authorisation to move goods under customs control (underbond movements) between specified locations through the Integrated Cargo System (ICS). The ABF approves Underbond Movement Requests (UBMR) through the ICS using different codes set out in Attachment A.

The main steps in underbond movements are to:

- seek approval for the proposed movement, in most cases through the ICS;
- complete the movement as approved or withdraw the request;
- acquit the movement that has taken place.

Movement and storage of underbond goods

An approved underbond movement allows the **direct** movement of goods subject to customs control between two places. A person who moves goods other than in accordance with an approved underbond request may be found to have committed an offence (section 33 of the Customs Act) and the goods may be forfeited (section 71E(3B) and section 229(1)(g) of the Customs Act). Attachment A contains further information on how these conditions may apply in various circumstances.

Goods subject to customs control may only be stored at the licensed depot or warehouse nominated in the approved underbond movement. Storage of underbond goods at any other place (whether licensed or unlicensed) for example, transit or transport yards, at an agent's office or at an alternative licensed depot or warehouse, is not permitted. Attachment A contains further information on how these conditions may apply in various circumstances.

Liability where goods are not kept safely

Persons and entities entrusted with the movement of goods under customs control should be aware of their obligations to keep goods safely and the potential consequences if they fail to do so (see section 35A and section 36 of the Customs Act). Persons and entities moving underbond goods must manage risks appropriately. Risk mitigation measures could include risk assessments, undertaking appropriate route planning, considering suitable contingency arrangements, providing appropriate physical and personnel security, and implementing suitable integrity measures and insurance arrangements.

The High Court's decision in the case of *Comptroller General of Customs v. Zappia* [2018] HCA 54 affirmed that the provisions of section 35A of the Customs Act in relation to issuing demands apply to any person with sufficient power or authority to keep or to direct that goods be kept safely. Several different persons, including a relevant corporation, but also potentially officers and employees of the corporation, or contractors or drivers, may each possess power or authority over the goods to the requisite degree.

Department of Home Affairs Notice No. 2019/19 contains further relevant information on the *Zappia* case.

High-risk goods

Persons or entities should consider the nature of the goods being moved as part of their risk assessment when planning or undertaking an underbond movement. For example, goods subject to excise-equivalent duties or other controls such as licences or permits represent a higher risk than ordinary commercial goods.

Since 1 July 2019, tobacco may no longer be entered into a licensed customs warehouse. The Australian Border Force (ABF) has the power to seize most common tobacco products imported without a permit. Further information can be found at www.abf.gov.au/tobacco.

Acquitting an underbond movement

When the goods specified in an underbond movement have arrived at the authorised licensed establishment, the operator of the establishment must submit an outturn report to the Department within timeframes specified in section 64ABAB of the Customs Act. This outturn report verifies that the goods have arrived at the nominated establishment and acquits the movement.

Only underbond movements that have arrived at the nominated establishment may be acquitted by the establishment.

Withdrawing or amending underbond movement requests

Situations that may require the withdrawal or amendment of an underbond movement request are set out in Attachment A.

Compliance Approach

The incorrect use of underbond movements is of serious concern to the Department and the ABF. Incorrect handling of underbond goods may undermine the ability of the ABF to prevent the importation of illicit goods, protect the community and collect due revenue. The ABF may undertake compliance and auditing of underbond movements and practices from time to time.

The Customs Act provides for a broad range of enforcement actions where persons fail to comply with various obligations in relation to underbond movements and movement applications. These include:

- issuing of demands to the person(s) entrusted with the possession, custody or control of dutiable goods subject to customs control who fail to keep those goods safely or to account for those goods, for an amount equal to the duty on the goods;
- cancellation or suspension of a licence issued to a broker or licenced premises due to any breaches of licence conditions;
- the issuing of infringement notices in relation to strict liability offences, including offences for making false or misleading statements (such as in a movement application), for moving goods without authority, or for failing to keep goods safely or account for the goods;
- prosecution of offences, including the strict liability offences mentioned above, and similar offences with a higher fault or criminal intent element which attract higher penalties; and
- forfeiture of the goods moved without authorisation.

The ABF may also decide to provide education or issue a warning letter in relation to minor breaches of obligations. The particular approach taken will consider all of the circumstances of the apparent breach and the compliance history of the person(s) involved.

Underbond Movement Request approvals in the Integrated Cargo System (ICS)

The ABF can approve Underbond Movement Requests (UBMR) in the Integrated Cargo System (ICS) for the following reasons:

AQS - Department of Agriculture movements where cargo has been directed to a licensed Agriculture premises and Section 77G depot for quarantine purposes

DCL - Deconsolidation at a Section 77G depot of individual consignments for delivery to their respective owner once an Authority to Deal is granted

DEL - Delivery of imported cargo, moving once to a place for final delivery. Once a DEL underbond has been submitted, no other UBMR's will be accepted by the ICS

MOV - Movement of imported cargo between licensed establishments

TSH - Transshipment of imported cargo between Cargo Terminal Operators (CTOs) for subsequent movement out of Australia

TUW - Movement of time up goods that have not been delivered or claimed for a specified period from a depot to a Section 79 warehouse.

An authorised entry for warehousing (Nature 20) includes authority to take the goods to the nominated warehouse for warehousing. A UBMR is not required in order to move goods to a licenced warehouse for initial warehousing.

Movement and storage of underbond goods

The ABF recognises that there may be instances where, due to circumstances beyond an owner's or agent's control, it is not possible to complete an approved underbond movement in a single, direct movement. This could include, for example, the distance between the originating and destination establishment (e.g. moving a container by rail between Port of Melbourne and Fremantle or moving a consignment by road between Sydney and Adelaide).

In such cases, the ABF will assess the reasonableness of the movement, taking into account the facts and circumstances of the case and compliance history of the applicant when considering compliance or other follow up action.

Instances that **may ordinarily be considered reasonable** could include, for example:

- delivery of low-risk goods interstate by road, with the driver taking mandated rest periods in established truck stops on main routes. This could also include, for example, delivery of a separate low-risk approved underbond consignment to a licensed establishment on the way;
- transfer of a container from one train to another via a recognised transit yard as part of an interstate movement by rail.

Instances that **would not ordinarily be considered reasonable** would include, for example:

- storing underbond goods at a company or private premises overnight for delivery to a licensed establishment the following day;
- deviating from recognised truck routes between nominated establishments or parking vehicles away from recognised rest stops or for reasons other than mandated rest or safety reasons;
- allowing others access to underbond goods, unless lawfully directed to do so (for example, by a law enforcement or other authorised official undertaking safety or other vehicle checks);

- otherwise delaying the delivery of underbond goods to the nominated establishment, leaving underbond goods in insecure areas or unattended for unreasonable periods of time.

The ABF may take into account factors such as route planning when determining whether a movement was reasonable. This could include, for example, using a single vehicle to deliver low-risk goods to separate licensed establishments for reasons such as achieving efficiency of vehicle movements. In such cases, ABF would expect processes and procedures would be in place to ensure consignments were delivered to the correct licensed establishment, noting that compliance action may be taken in cases where goods being moved on an approved underbond movement were delivered anywhere other than the nominated licensed premises.

Withdrawal or amendment of underbond movements

Change in circumstances

In the event the UBMR is no longer required or circumstances change, the UBMR should be withdrawn prior to any authorised movement taking place. Once part of the authorised movement has occurred, the underbond movement should not be withdrawn.

Details of a movement change while in transit

In the event an authorised movement has taken place and circumstances of the underbond goods change whilst in transit, such as requiring a new nominated establishment, then the underbond movement should remain in place and be amended.

Authority to Deal (ATD) is granted

An Authority to Deal (ATD) takes effect when it is issued. Once goods have been given a 'CLEAR' status in the ICS and an ATD is issued, UBMR can no longer be lodged in the ICS.

In the event an ATD is granted for the goods while in transit to the nominated establishment, the goods may be delivered into home consumption without completing the underbond movement.