

# Trade facilitation and its impact on customs broker

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hunt & hunt  
lawyers

# Everything has changed...

Trade looks very different today from 100 years ago



...nothing has changed



## **Customs Act 1901**

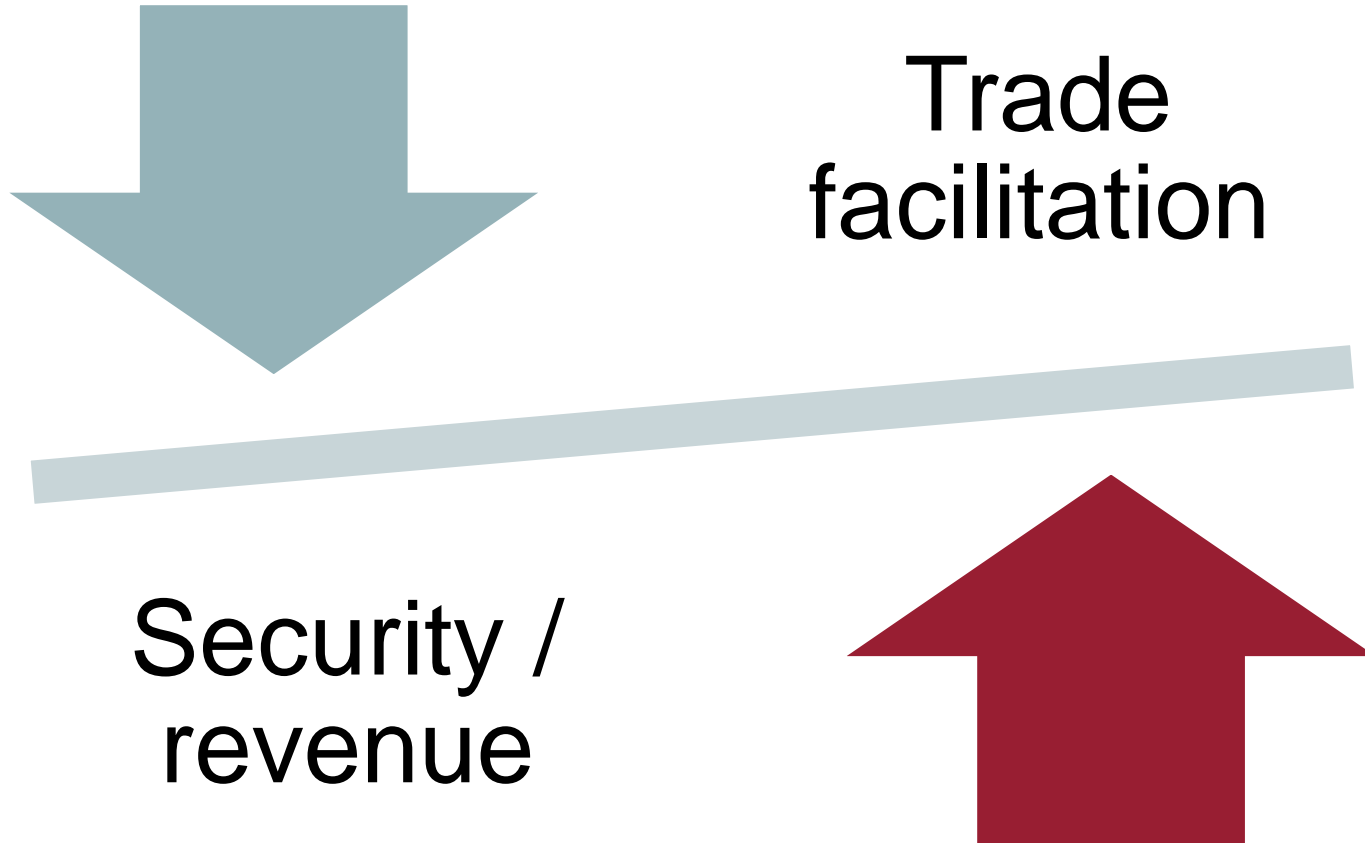
No. 6, 1901

# Where does this leave customs brokers

- Agent of the importer/exporter
- Service provider
- De facto regulator
- Owes obligations to the ABF

The primary defence against non-compliance with the *Customs Act*

# Why do we have this tension



# How can we have the best of both worlds?

The customs broker preforms both the facilitation role and the compliance role

# Examples

- Primary educator of importers and exporters
  - Informed compliance
- Less Government Intervention
  - Assessment of revenue
  - Assessment of concessions
  - Identification of controlled goods
- Free trade agreements
  - Self-certified certificates of origin
  - Very low level of ABF review
- Australian Trusted Trader
  - Trade compliance is being outsourced

# Impact of the changing roles

- First – Clients, brokers and the Government need to acknowledge the changing role
- Clients:
  - the role is not merely procedural
  - each declaration is a tax return
  - customs brokers will test your claims
  - a customs broker's duties to the client and Government may be in conflict



# Attitude of the ABF

- Customs brokers are in an extremely difficult position
- It is not commercial easy for customs brokers to question the truth of information provided by clients
- Customs brokers do not have investigative powers
- Just because the ABF detected an error does not mean the customs broker should have
- Need to provide customs brokers with tools to detect non-compliance
- Need better guidance:
  - public rulings
  - decision impact statements
  - guidance on dumping

# Customs brokers

- You owe duties not only to your clients
- The ABF considers that you are in a privileged position – more is expected of you
- Your liability is almost unlimited
- You must take reasonable steps to ensure that the information you receive is correct
- What is the level of due diligence required
- What level of training
- Internal audit
- Reporting of non-compliance
- Don't wait for the ABF to enforce a law

# Broker message to client

- How to measure success or value
  - Cost:
    - service fee is only one cost
    - duty
    - penalties
    - delays
    - audit costs
  - Speed of clearance
  - Maintenance of trade facilitation benefits
  - Predictability

You have to encourage a long term view

# Asbestos – when the system fails

- Asbestos was banned absolutely from 31 December 2003
- Customs issued an ACN notifying of the change
- Reminder ACNs were issued in 2007 and 2010
- 2015 and 2016 asbestos found in crayons and the Perth Children's' hospital
- From 1 July 2016 – 20 November 2017 – the ABF issued 92 infringement notices for prohibited imports
- Its clear that between 2004 and 2015 there was prolonged non-compliance

# Asbestos – What went wrong

- There was insufficient education about:
  - The requirements of the law
  - Goods containing asbestos
  - Countries that export asbestos
  - What assurances are expected
- Brokers didn't interrogate exporters/importers
  - How many times prior to 2016 do you remember asking for assurances that the goods do not contain asbestos
- The outcome
  - Goods stuck at the border
  - Increased costs
  - Uncertainty

# If you accept acknowledge the role of brokers

- You understand that customs brokers are ones who will be educating importers and their suppliers
- Provide detailed training to customs brokers about the law, the high risk goods and what is required
- The above information is provided before the law is implemented
- You work with brokers to identify problems with enforcing the law
- Fail to do this:
  - Big trade facilitation impact
  - Importers/brokers fined
  - Imports of asbestos are not fully prevented

# Something has to change

- Customs brokers are enabling seamless trade and bearing the responsibility of full compliance
- This is a valuable role that needs to be recognized by all stakeholders for continued trade facilitation improvements
- Trade facilitation can't be for the benefit of everyone except the customs brokers that are implementing it

# Questions



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