

Customs Compliance

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Topics

1. Expectations of customs brokers
2. Dumping duties
3. Broker licensing
4. Subcontracting customs brokerage
5. Compliance Trends



Expectations of customs brokers

ABF Expectations of Customs Brokers

- ABF published document – “ABF expectations when answering community protection/lodgement questions”
- Same principles apply to any information provided by brokers to the ABF
- ABF position:
 - Customs brokers have an obligation to **ensure** declarations made to the ABF are accurate
 - Customs brokers should exercise **due diligence** by seeking information from importers to **ensure** communicated information is correct
 - If unsure about a question – conduct further inquiries
 - if audited, the ABF expects that the customs broker can provide evidence to support their position

Key points



“Ensure” information is correct

- This is not the legal obligation
- You will not physically inspect the goods

Example of asbestos

- Not a great example
- Asbestos is absolutely prohibited and a deadly good
- The level of due diligence required in respect of asbestos is not the same as low risk goods

Due diligence

- what is due diligence will depend on:
 - the goods
 - the value
 - the regulations
 - red flags

What is the legal test

Unintentional false statements:

- reasonable mistake of fact
- relevant for infringement notices

Mistake of fact

Individual

(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:

(a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is **under a mistaken but reasonable belief** about those facts; and

(b) had those facts existed, the conduct would not have constituted an offence.

Mistake of fact – Due diligence

Corporation

(1) A body corporate can only rely on section 9.2 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it **exercised due diligence** to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) **inadequate corporate management, control or supervision** of the conduct of one or more of its employees, agents or officers; or

(b) **failure to provide adequate systems for conveying relevant information** to relevant persons in the body corporate.

Red flags – Border Watch



- Vague goods descriptions
- Declared values that appear to have been altered
- Commercial documents received from an unusual source
- A consignment that has been split to evade the \$1,000 entry threshold
- Consignments sent on a door-to-door basis for Delivery Duty
- Paid with an attached 'pro-forma' invoice

Red flags – Border Watch

- ☐ Has the importer or client's behaviour recently changed?
- ☐ Is the importer or client insistent on the use of a tariff or exemption code that isn't applicable?
- ☐ Has the importer advised they will take their business elsewhere when you advise them of tariffs or dumping duties?
- ☐ Have you been asked to use a Free Trade Agreement and have concerns that the requirements have not been met?
- ☐ Is the importer providing only 'pro-forma' invoices that are not accepted as valid by the ABF?
- ☐ Is the importer or client reluctant to provide evidence of how the goods were paid for?
- ☐ Is the importer or client reluctant to show exactly what the goods are?
- ☐ Has the importer or client asked for unusual amendments that result in a duty/GST refund after the goods have been delivered?
- ☐ Has the importer requested re-export or transshipment once the consignment has been held at the border?

Other issues of concern

- New client calling you out of the blue
- New client will not give details of the former broker
- Goods seem an unusual match for the importer's business
- Value of goods vs Freight costs
- Willingness to pay extra for express where there seems to be no commercial urgency
- Relying on information provided by a party other than the importer
- Relying on tariff classification in CoO
- Client reluctance to confirm verbal information in writing
- Saying a document exists, but failing to provide it
- Client eager to collect goods and transfer them to the depot

Key take away



Always ask yourself –
how will I explain this if
I am audited in 4 years

It is not enough to
simply trust the client

What is your document
trail:

Get detailed documents
for the first import and
periodically seek
confirmation

if verbal, make a file
note or ask for the
instructions to be
confirmed in writing

emails are great – time
stamped – but you
need to be able to find
it in 4 years



Dumping duties

Major compliance issue

- 54 Dumping targeted activities in 19/20

Trade remedies understatements identified	Financial year 2018-2019	1 April 2019–30 June 2019	1 April 2020 – 30 June 2020	Financial year 2019-2020
Customs duty	\$436,749.86	\$56,487.47	\$1246.39	\$347,317.72
Dumping duty	\$16,272,065.58	\$4,770,499.30	\$684,811.67	\$6,948,130.03
Countervailing duty	\$5,167,520.16	\$1,433,202.11	\$394,965.37	\$2,018,723.47
GST	\$2,243,554.22	\$654,834.42	\$108,097.29	\$1,077,336.56

- Focus products
 - Aluminium extrusions
 - Clear float glass
 - Hollow structural sections
 - Wire rope
 - Steel pallet racking
- Infringement notices - \$73K
- Pre-clearance intervention

Aluminium extrusions

- Reduction in dumping duty rates on Chinese goods
- 14 Residual exporters
- Floor price

Exporter	Old rate	New rate
All other	101.9	77.4
Residual	29.8	11.5
Goomax	43.5	1
Jinxiecheng	15.8	0

Interesting comments from the ADC report

- Tariff codes listed by the ADC – does not form part of the goods description
- When does a good cease to be an aluminium extrusion
 - cut to small lengths
 - bending
 - made for specific commercial application
 - not produced in Australia
- Addition of components

Other developments

- Rulings
- Automatic exemptions for TCO goods
- Right to AAT Review – Unenergy and C-G of Customs
- Overturning of ADC decision by Review Panel



Broker licensing issues

Compliance with the ICS EFT facility

- ABF reporting increase in dishonoured EFT transactions
- ABF concern with continually dishonoured transactions
- 16 licensed customs brokers accounted for \$15 million in dishonoured payments
- ABF has removed repeat offenders from the EFT facility
- Issue:
 - **broker** EFT being suspended for **client** non-compliance
 - no right to cancel broker EFT due to a third party not honouring their own EFT agreement
 - defective administration
 - if this has happened to you, please let us know

ABF expectation



You must confirm with clients that they have sufficient funds in their accounts prior to finalising an import declaration

\$11 billion in customs duty - \$49.5 million dishonoured

Is it fair to require customs broker to notify of debits where dishonoured amount is about 0.5% of revenue?



Reasonable notification by broker:

First time importers or users of the EFT system

Irregular importers

An unusually high duty/GST bill



What is the risk to the Commonwealth- goods will not be cleared without payment

Subcontracting of customs brokerage services

ABF is comfortable with freight forwarders subcontracting customs brokerage services

A customs broker can only act where they are authorized by an “owner”

Wide definition of “owner” – it can include “agent”

The FF’s T&Cs will almost always authorise the FF, as agent for the importer, to enter into contracts with third parties

Preference – Have a LOA that either:

- specifically names the customs broker; or
- specifically authorises the FF to appoint a customs broker on behalf of the importer

Subcontracting of customs brokerage services

Where forwarder wants to hide the identity of the customs broker

- the FF should not be representing that they are a customs broker (s181(4))
- What evidence does the customs broker have as to the:
 - the identity of the importer
 - the goods being imported
- How does the customs broker satisfy the due diligence requirement
- Can the FF's concerns be satisfied with a non-compete or non-solicitation clause

Claims by the importer against the broker:

- No contract relationship between the customer and the customs broker
- Does the FF's T&Cs say the customer will not bring a claim against a sub-contractor



Other issues

Modern Slavery

Extended due dates for first reports

Financial year end	Original due date	New due date
31 March 2020	30 Sep 2020	31 Dec 2020
30 June 2020	31 Dec 2020	31 March 2021
31 Dec 2020	30 June 2021	No change

Modern slavery - situations where coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom.

Every Australian business with turnover greater than \$100 million must produce an annual modern slavery statement

- many of your clients will be impacted
- some freight forwarders will be impacted
- statements look at how they address modern slavery in their supply chains

What to expect

International logistics can be high risk as:

- many subcontractors
- costs pressures
- some elements use unskilled labor
- low level of supervision or regulation

What your customers may require

- modern slavery clauses in your contracts with your customer
- details of your supplier screening or code of practice/ethics
- requests for details about the supply chain
- requests for details about what you do to identify and address modern slavery in the supply chain
- expectation that you will include modern slavery clauses in your contracts with suppliers

Miscellaneous

- Penalty unit increase \$210 to \$222 – increases many infringement notice (pg 21)
- Indonesia FTA – Still no approval for Indonesian exporters to use a DoO (pg 9-10)
- Use of tariff lists provided by previous broker or the client (pg 12)
 - these should be reviewed before being used
 - are there TAs in place
 - to what extent were they based on Australian law
 - focus review on top goods by value – don't limit review to lines currently attracting duty

Miscellaneous

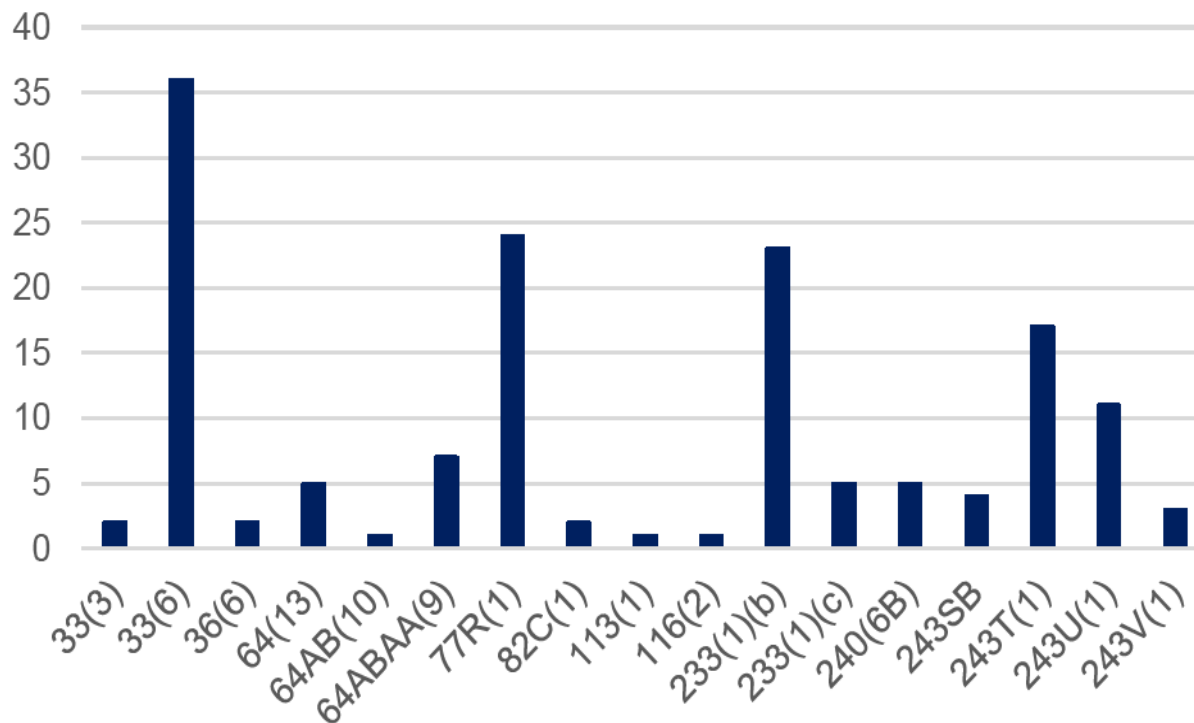
- Trusted trader origin waiver benefits applies to the Indonesian FTA (pg 10)
- 18.7% of AU two-way trade covered by trusted traders (pg 3)
- AAT Consolidated Cargo Reporting benefit (pg 15):
 - consolidation of suppliers for cargo reporting where there is the one consignee
 - still requires an import dec for each supplier
 - both the cargo reporter/FF and the importer must be trusted traders
- 32 brokers referred to NCBLAC for failure to meet CPD requirements (pg 18)
- Depots and warehouses – restraint on submitting B301 forms – fit and proper person in position of management or control (pg 19)



Compliance trends

Infringement notices

Volume of Infringements Served 2019-20



s33(6) – interfering with goods subject to customs control

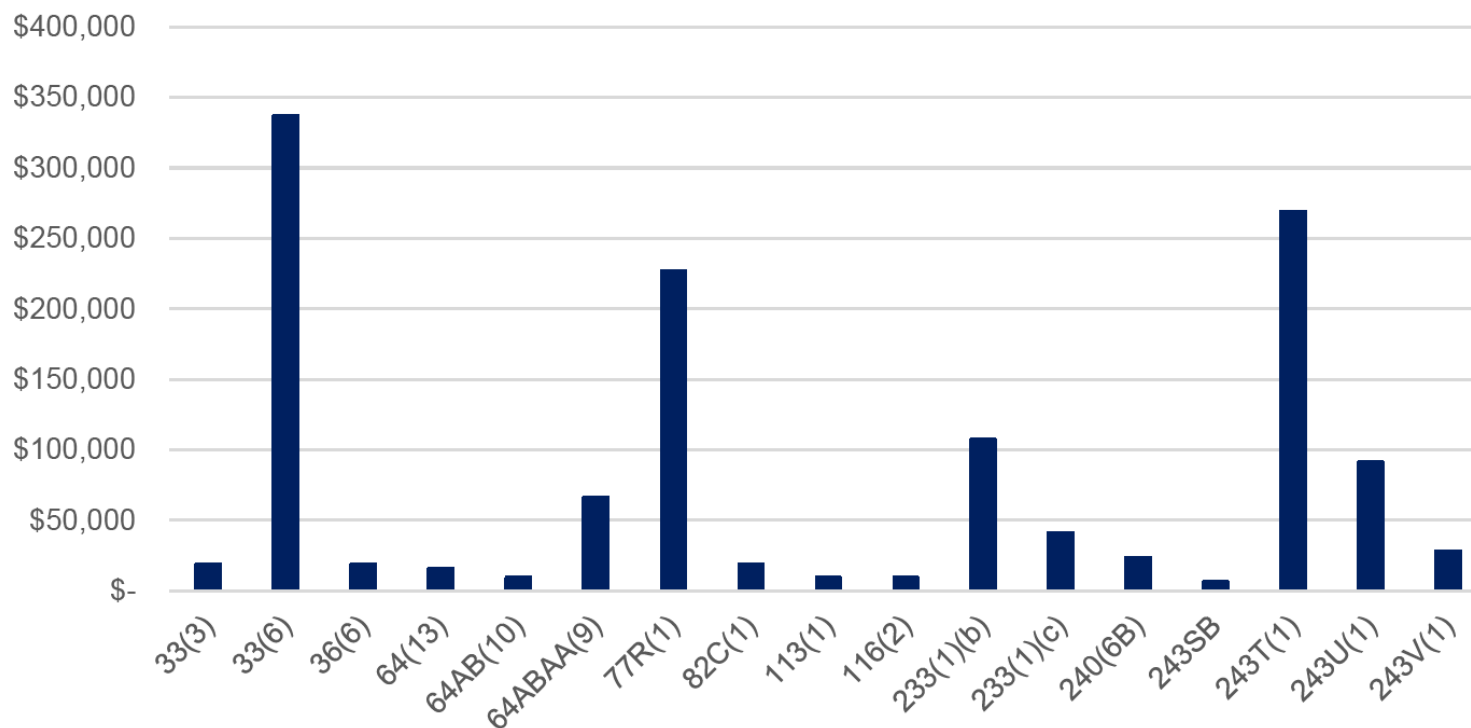
s77R(1) – breach of depot license conditions

S233(1)(b) – prohibited import
243T – false statement resulting in loss of duty

243U – false statement not resulting in a loss of duty

Infringement notices

Value of Infringements Served 2019-20



s33(6) – interfering with goods subject to customs control
s77R(1) – breach of depot license conditions
S233(1)(b) – prohibited import
243T – false statement resulting in loss of duty
243U – false statement not resulting in a loss of duty

Big jump in value of drawbacks

Description	Financial year 2018-2019	1 April 2019-30 June 2019	1 April 2020 – 30 June 2020	Financial year 2019-2020
Drawbacks Lodged	\$312,733,423.64	\$84,069,812.01	\$231,890,664.60	\$565,905,595.71
Total Drawbacks Paid	\$278,705,773.54	\$69,429,152.36	\$129,917,758.13	\$390,445,295.82
Drawbacks Rejected	\$8,762,520.26	\$1,844,122.25	\$229,945.70	\$42,252,251.70
Drawbacks Withdrawn	\$7,227,724.48	\$1,661,434.32	\$7,369.03	\$247,541.02

Error rates

	Checks completed	18/19	Checks completed	19/20
Import declarations	5,720	25%	6,175	27%
Export declarations	668	49%	481	49%
Cargo reporting	5,720	4%	6,175	3%
General cargo compliance checks	24,012	4%	9,167	3%

Top errors imports

Description	Financial year 18-19	Financial year 19-20
Incorrect Delivery Address	318	349
Tariff Classification	204	274
Val - Price (Invoice Total)	150	195
Val - Invoice Terms	146	177
Gross Weight	98	134
Quantity	75	93

Category	2015/16
Tariff Classification	169
Val - Valuation Date	118
Gross Weight	109
Val - Invoice terms	106
Tariff Concession or Other Concession	76
Val - Related Transaction	72

Export declarations

Description	Financial year 18-19	Financial year 19-20
FOB Value	183	136
Gross Weight	121	92
AHECC - Misclassification	66	48
Consignee City	50	24
Net Quantity	50	36
Origin	46	31
AHECC - Multi-Lines	41	24
Consignee Name	33	16
Other Export Data Inaccuracy	43	26

Category	2015/16
FOB Value	210
AHECC - Misclassification	83
Gross Weight	81
Net Quantity	63
Origin	53

Questions?

CONTACTS

Russell Wiese

T: 03 8602 9231

E: rwiese@huntvic.com.au



hunt & hunt
lawyers