



Goods
Compliance
Update
Oct 2024

Outline

Broker Licensing

Illicit Goods

Random highlights

Compliance results

Broker Licensing

New customs broker applications

2023 – 2024 year there were 66 customs broker applications

Nominees – 44 application – 32 granted – 12 rejected

Corporate – 22 applications – 22 granted

However – 103 customs brokers (63 nominees, 39 corporate, 1 sole trader) did not renew – going backwards

As at 14 July 2024

- 422 corporate brokers
- 1539 nominees – 275 had not lodge a FID in 2024

Renewals – about 5% of industry unintentionally failed to renew

Who are the nominees

	20-29	30-39	40-49	50-59	60-69	70-79	80+	Total
NSW	< 5	85	247	201	137	32	0	705
VIC	< 5	48	143	133	114	34	0	474
QLD	< 5	28	78	56	44	8	< 5	218
WA	< 5	15	33	31	15	10	0	105
SA	0	5	12	17	5	< 5	< 5	41
TAS	0	0	< 5	< 5	< 5	0	0	6
NT	0	< 5	0	0	< 5	0	0	2
Total	8	182	515	441	317	85	3	1551

Broker due diligence

Nominee lack of due diligence

- 40 import declarations that involved the detection of prohibited imports
 - 6 FIDs investigated – each showed that there was almost no due diligence as to the importer identity or the legitimacy of the goods
 - there were red flags such as:
 - *unusual email addresses
 - *delivery addresses that were not businesses addresses
 - However, others in the brokerage had the role of verifying the identity of the importer – not the nominee
- Raised the issue – when is it reasonable to rely on tasks undertaken by others in the brokerage – identity, classification, invoice details
- License would have been revoked by the ABF but surrendered before this decision was made

Licence suspension

- Nominee and Corporate Broker lodged 10 FIDs which resulted in the ABF detecting 1.7 million undeclared cigarettes and 2 tonnes of chewing tobacco
- No due diligence regarding the identity of the importer or the legitimacy of the goods
- ABF accepted that the entries were actually lodged by other nominees due to a third party software issue
- Following NCBLAC report, the ABF found that both the corporate broker and the nominee had ceased to perform their duties in a satisfactory and responsible manner and were guilty of conduct that was an abuse of the rights and privileges arising from their licence
- Further 6 month suspension
- Additional licence conditions relating to due diligence and completion of a corporate governance course

NCBLAC referral due to offshore lodgement

- Broker identified as lodging 147 FIDs while outside of Australia
- ABF picked up the lodgements by viewing passport information
- Referred to NCBLAC – Decision not yet made
- Important to remember – you cannot lodge from outside of Australia
- Assume that the ABF will identify the conduct
- Consider voluntary disclosure if you have lodged offshore

Fit and Proper Person Rules

New obligations outlined in ACN 2024/21

- Applied to new employees immediately
- Applied to all other persons from 24 September (90 days from publication)
- All persons who participate in the operations of the customs broker must have completed a B1555 form
- Must have verified the identity of all persons
- These requirements are being audited and enforced in relation to depots
- Check the forms are properly completed and you retain copies of the identification documents

Section 183B provides that a person “participates in the work of a customs broker” if:

- (a) he or she has authority as a nominee of, or as an agent, officer or employee of, the customs broker, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or
- (b) he or she has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

Definition of ‘participating in the operations of the customs broker’?

For the purpose of these conditions a person, including persons located outside of Australia, “participates in the operations of a customs broker” if the person (other than a customs broker) is:

- (a) authorised by the broker to populate, pre-populate, answer any questions or edit any fields of an Import Declaration related to the classification, currency or valuation of imported goods within the Integrated Cargo System (ICS) or any third party software that communicates with the ICS; or
- (b) The person is authorised by the broker to answer or prepopulate the Community Protection (CP) questions for an import declaration.

B1555 continued

- 2024 YTD broker licensing have assessed 2644 fit and proper person applications
- 206 assessments required further investigations
- 4 individuals were removed from licensed places
- ABF will continue to check the accuracy of information and remove high risk staff
- Common errors:
 - Incorrect or insufficient identity documents
 - Not signing forms
 - Non-disclosure of convictions



Transfer of licence

ABF noted a trend of depot licence holders attempting to transfer their licence

- Transferring a Depot or Warehouse licence is a breach of section 77Z/82A of the Customs Act
- Customs Broker licences are granted to specific entities and cannot be transferred
- There is no prohibition on the sale of shares in a company, however:
 - Customs brokers must notify of a change of members
 - All license holders must notify of a change of those in management and control
 - Depot/Warehouse must notify of a change that impacts security
- ABF could form the view that the new owners/management do not pass the fit and proper test



ILLICIT GOODS

Illicit goods

- Major focus area of the ABF
- Focus on SACs, FIDS and depots
- Types of goods:
 - *Tobacco / vapes*
 - *Drugs*
 - *Weapons*
 - *Undeclared cash*
 - *Wildlife goods*
 - *Any prohibited or concealed goods*

Reporting obligations

- Illicit goods will always involve a breach of the Customs Act. The goods will almost always be either:
 - *Incorrectly described*
 - *Smuggled*
 - *Have incorrect party information*
 - *Be a prohibit import*

The reporting obligations depend on the licence type and whether you are a trusted trader

Customs Brokers

Addition Condition 4

If the broker becomes aware that information that has been provided to the ABF or the Department of Home Affairs (Department) is false, misleading or incomplete, the broker must as soon as practicable after becoming aware provide written particulars of the incident to the ABF via Border Watch as specified on the ABF website.

- Relates to false, misleading or incomplete info – not breaches of the Act
- Obligation is to report to **Border Watch**
- Good practice to disclose to Broker Licensing

Depot and Warehouse

Licence condition

The holder of the licence must inform the Australian Border Force of any suspected breaches or offences of Customs-related law, **by any persons related to the premises**, whether or not it is **related to the licensed place**, as soon as practicable or always within 24 hours.

- The connection is a breach by any person related to the premises
- It is possible that the discovery of illicit goods will not involve any person related to the premises

Do not open packaging and investigate yourself

Assume that the ABF will request and review CCTV footage

Trusted Traders

Trusted Trader Agreement – section 7 – Reporting obligations

Notify the ABF via the account manager as soon as practicable after becoming aware of any event which is a suspected or actual breach of security or of a Customs-related law **with respect to the Entity's International Supply Chain**

01

Failure to disclose may raise questions about whether the entity is a fit and proper person/entity to be licensed

02

ABF may suspect your involvement or at least argue a lack of due diligence

03

Is non-disclosure consistent with being a trusted trader?

04

Are you aiding or abetting an offence by not disclosing (section 236 covers "direct and indirect conduct")

05

May be a breach of the duty of confidentiality owed to your client, however:

- *Very unlikely to be sued*
- *Implied duty to comply with the law*

Whether to disclose

Random highlights

Mutual Recognition Agreement (MRA)

Special treatments
for AEO/Trusted
Trader Participants

Feature is
streamlined customs
clearance

New MRA with India
and Indonesia

Existing - Canada,
China, HK, Japan,
Korea, NZ, Singapore,
Taiwan, Thailand

Negotiating –
Malaysia and the US

More global
uncertainty = greater
benefit from MRA

More MRA = greater
focus on export
compliance

Delays caused by inadequate documents

Often very little explanation is given

Number documents and explain your reasoning clearly in a letter or email

Don't expect the ABF to do the hard work for you

Issues identified by the ABF

IDM needs to demonstrate how the characteristics of the goods meet the terms of a TCO

If a TCO/class relates to parts, you need IDM that shows how the parts relate to the primary good

Address (where applicable) composition, manufacture process, shape and dimension and function

Annotate IDM to make it clearer

Redline Refund Applications

Import declaration errors

Tariff classification - Usually simple errors resulting from not holding sufficient IDM or properly reviewing documents

Invoice term – Ensure you are using the correct INCOTERM. FOB is often selected without proper review. Invoices often say FOB even when the supplier is responsible for freight

Valuation date – ABF says “Usually the valuation date is the date that the goods leave their country of export, as stated on the freight documentation” – However, for containerised goods, it is the date the goods leave the location where the goods were containerised. If you do not know this date, the date on the BOL will be accepted by the ABF

Delivery address - This is the address where the goods are finally destined. Usually this is not a freight forwarder warehouse or depot. However, where a single consignment is to be split and delivered to multiple addresses, the intermediate location is acceptable

Trade based money laundering

What is it – disguising the proceeds of crime and moving value through the use of trade transactions

- Over or under valuing goods is a common example
- Report to Border Watch

What are the red flags?



Lack of documentation to support transaction



Payment made by a third party



Discrepancies in documentation



Consignment (size/type) not consistent with the normal scale/activity of business



Consignee/consignor business inconsistent with shipped goods



Shipping to/from free trade zones (FTZ)



A ban on the importation of engineered stone benchtops, slabs and panels commences on 1 January 2025



A domestic ban on the use, supply and manufacture of engineered stone products has been in place since 1 July 2024 – so no current reason to import



ABF will be funded to enforce the ban



Be careful of imports described as alternatives such as natural stone (granite, marble), concrete or cement products and porcelain – request IDM

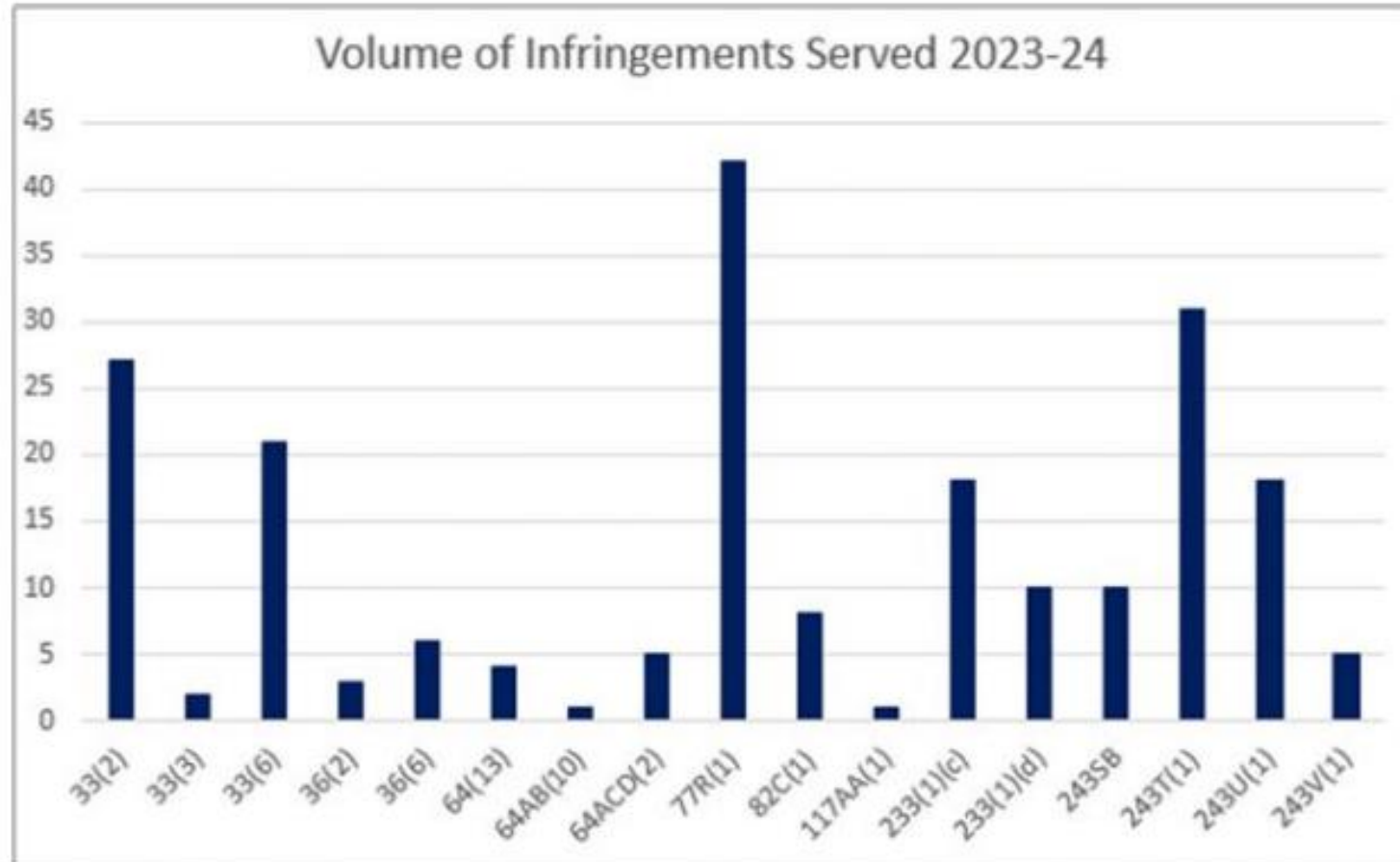


Such imports may be held and inspected by the ABF

Engineered stone importation ban

COMPLIANCE RESULTS

Infringement notices



s33 – movement, altering, interfering with goods

s77R – Breach of a depot licence condition

S233 – Prohibited import

s243SB – Failure to produce document

s243T – False statement resulting in underpayment of duty

243U – False statement not resulting in an underpayment of duty

Description	FYTD 2023/24	FYTD 2022/23
Val - Valuation Date	141	179
Other	98	157
Val - Invoice Terms	197	153
Incorrect Delivery Address	196	139
Goods Description	88	89
Tariff Classification	135	87
Val - Price (Invoice Total)	99	83
Val - Related Transaction	61	57
Gross Weight	52	52
Loading Port	40	43

Import error rate - YTD – 30.6%

22/23 YTD error rate – 26.4%

Export data

No new export data given

Description	FYTD 2023/24	FYTD 2022/23
FOB Value	N/A	107
AHECC - Misclassification	N/A	27
Gross Weight	N/A	23
Net Quantity	N/A	21
Other Export Data Inaccuracy	N/A	17
AHECC - Multi-Lines	N/A	14
Origin	N/A	12
Consignee Name	N/A	11
FOB Currency	N/A	7
Permit Number	N/A	7

The ABF is generally not issuing infringement notices for incorrectly delivery address, incorrect weight etc

But

High levels of compliance are important as:

- It demonstrates a culture of compliance
- The ABF may base compliance action on the total number of breaches
- Close attention to minor breaches will help identify major breaches
- Can be costly to correct
- Reputation with clients

The problem with minor problems

Identifying and preventing minor errors



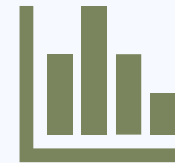
Internal quality assurance program



Standard Operating Procedures



Training



KPIs

Can identify systemic problems as well as operator specific problems

A good QA program will deter internal fraud

Combination of random and targeted samples

Objective, measurable and standardised

The assessor needs to be familiar with technical issues and application of procedures

Needs to be properly resourced

External vs Internal

Automated vs Manual

Clearly defined roles

Features of a good customs QA program

Trade Remedy Measures

2023/24 – 74 trade remedy verification activities.

Areas of focus:

- Aluminium Extrusions;
- Hollow Structural Sections;
- Steel Pallet Racking;
- Concrete Underlay film (Black) Precision Pipe and Tube Steel;
- Electric Resistance Welded Poles

Important to really understand what is being imported – with steel and aluminium you need to see drawings and pictures

Description	FYTD 2023/24	FYTD 2022/23
Cargo Report Data Inaccuracy (Other)	82	65
Consignee Incorrect	64	64
Consignor Incorrect	32	38
Port of Destination	24	32
Declared Value	8	28
Gross Weight	28	23
Goods Description	5	18
Origin Port of Loading	9	17

Cargo reporting

Year to date error rate 5.92%

Questions

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