

30 December 2015

Ports Policy
Traveler Branch | Traveler, Customs and Industry, Policy Division
Policy Group
Department of Immigration and Border Protection
Canberra ACT

Dear Sir/Madam,

Subject: Review of Customs Licencing Arrangements

Thank you for affording the Australian Federation of International Forwarders (AFIF) the opportunity to respond to the DIBP Review of Customs Licencing Arrangements.

AFIF is the representative industry association for the International Freight Forwarding and 3rd party logistics industry, representing members in the areas of international air & ocean freight movement, Customs & Biosecurity; IT/E-Commerce; Training & Education; Security; Depot & Warehousing; etc.

AFIF has a long history in participating in various engagement forums with ACBPS, notably NCTF (formerly CBPNCC) on national policy development and local operational issues at the border in Australian ports (Trade Facilitation Forum). AFIF is an active participant in Trusted Trader Industry Advisory Group and Streamlined Cargo Reporting Industry Reference Group, including Assembly Orders reform sub-committee.

AFIF supports this consultative approach to achieve best practice outcomes.

AFIF contributed funding to the AITTIDF commissioned *Review of Customs licencing under the Customs Act*, undertaken by the Centre for Customs and Excise Studies, Charles Sturt University (CCES).

AFIF broadly supports the findings and recommendations of the CCES review and will respond specifically in four parts as follows:

- 1) Background
- 2) Depots and Warehouses
- 3) Customs Broker
- 4) Conclusion

1) Background

The Australian international trade and transport industry has evolved over the past decades from a heavily regulated, labour intensive business with complex border clearance processes and high Customs tariffs.

Today, the global trading environment comprises free trade agreements, mutual recognition agreements, trusted traders, globalisation and complex supply chains, demanding a modern 'border continuum' risk based approach to border clearance processes, utilising sophisticated information technology, streamlined cargo reporting and fast physical movement of the goods, to facilitate legitimate trade.

AFIF's view is the current system of Customs licencing has not been reviewed for some years and needs to keep pace with contemporary business practices and structures of international trade, aligned to Government policy settings and priorities.

2) Depots and Warehouses

The current system of licenced depots and warehouses supports industry in the movement of goods through the border, by removing the bottlenecks that would otherwise occur if unpacking and packing of imports and exports was undertaken at airports and wharves.

Licencing of depots and warehouses, where goods are held under Customs control until clearance formalities are completed, is logical and desirable.

The current depot and warehouse licence application requirements of: fit & proper person checks on management & staff, physical security of the warehouse, plant and equipment used in the facility, record keeping and IT systems, a high annual licence fee and regular Customs audits, are sufficient controls on operators.

Some concerns have been raised around the Department's consideration of introducing securities on depots and warehouse licence holders - Quote "*securities should be taken from depot and warehouse licence holders to ensure compliance with the Customs Act and to protect the revenue, and if so, the factors that should be taken into account in determining the amount of security*".

AFIF believes that the introduction of securities is unnecessary. The proliferation of free trade agreements with Australia's major trading partners, will reduce significantly the risk of revenue exposure and the need to introduce securities upon depot and warehouse licence holders. The current INS penalty regime is an onerous incentive for operators to ensure compliance. Professional Indemnity insurance cover supports licence holders INS liabilities and is an additional cost to operations.

Four recommendations to improve the current licencing system that provide a red tape reduction and deregulation benefit.

I. Depot and Warehouse Licences granted and renewed on a 3 yearly basis.

Renewing licences on a 3 yearly basis would be a red tape reduction of the administration burden of renewing licences annually.

II. QAP Approval for all Depots

Revise licencing/approval procedures that apply to Depots in order to provide Class 1.1 to 1.3 QAP approval for all depots. In this way, all Customs approved depots would be authorised to be used for the deconsolidation of sea and air cargo, inspection and treatment of goods, containers and ULDs for both Customs & Quarantine purposes. It is not appropriate that some depots are approved for both and some are not.

III. Removal of Underbond Movement Requests

Revise

the current system whereby an underbond request is required to be submitted for each movement, replaced by a standard blanket movement authority to the 77G licenced depot. i.e. a consolidation addressed to a forwarder/depot is permitted to move 'automatically' to the premises.

IV. Allow for unpack outside the physical depot within secure premises

Sometimes operational requirements of the depot, seasonal space constraints, etc. require cargo to be unpacked outside the physical depot, AFIF believes this should be allowed under controlled circumstances

3) Customs Broker

AFIF has contended for several years that the heavy emphasis on the National Examination and NCBLAC interview as the centrepiece to obtaining a broker's licence is outdated. AFIF regards the DIBP change of direction, in applying a combination of recognition of prior learning and on the job experience, as a far better approach to ensuring well rounded technical and practical experience in licence applicants. A recent Court case highlighted the need for modernisation of NCBLAC as to the representative structure, together with a new set of Terms of Reference, appointment process and guidelines for the panel.

AFIF does however question the requirement for licenced individual Customs Brokers. AFIF does not have a fixed position and is supportive of the 'Alternative Customs Broker Licencing Models' options in the CCES review.

Re Option 2 – Abolish licencing of individual Customs brokers but maintain licencing of brokerages

This option reflects a consistent rationale as is taken with licencing of Depot & Warehouses, whereby the corporate entity is licenced, rather than individual Customs brokers.

Corporations, companies, partnerships and sole traders (Pty Ltd's) would be licenced under this system. Nominee Customs Brokers or locums who are contracted to Customs brokerages would need to have a separate category of 'corporate' style licence to enable them to operate, including appropriate Professional Indemnity insurance (not unlike qualified professionals contracting in other fields). NCBLAC would then by necessity also require some form of re-structure.

Benefits

- A corporate approach reflects the contemporary global trading environment, business practices and structures of international trade, aligned to Government policy settings and priorities.
- The scale of operation of brokerages has grown to a level where the optimal business structure is a company, whereas partnerships and sole traders are declining.
- The level of investment required to operate a customs brokerage is better accommodated by corporations than by individuals.
- Government agencies oversee the operations and behavior of corporations: ASIC, ATO, DIBP, DAWR, OTS.
- A basic tenet of corporate business is that corporations are liable for the acts of their employees. In the case of customs brokerages, this would mean that the corporate brokerage would be liable for the acts of its individual employee customs brokers. Customs brokerages enter into contractual arrangements with its clients, not individual nominee brokers. From a commercial perspective the accountability rests with the customs brokerage, including in the event of negligence or fraud affecting the brokerage's clients.
- Department of Agriculture compliance agreements are with the corporate entity not the individual nominee.
- The corporate entity would be liable for INS penalties, not the individual nominee broker. The corporate entity would have Professional Indemnity Insurance as a requirement of holding a corporate broker's licence
- DIBP resources would be better utilised and red tape reduced by focusing on a more concentrated population of corporate brokerages, than incurring administration costs of licencing many hundreds of individual brokers.
- Removal of licencing obligations on individual customs brokers would not mean a reduction in the professionalism or accountability of those brokers. Educational qualifications, CPD obligations, the gaining of relevant experience, compliance with codes of conduct could be maintained.

- It would be similar to the current requirements of International freight forwarders undertaking export airfreight, the company is required to be licenced by IATA and also OTS RACA or ACCA licence for security. An employee must have IATA & CASA approved Dangerous Goods training, renewed bi-annually.
- Corporate brokerages would take on an increased responsibility to ensure their employed customs brokers met those standards, not only to ensure that their clients were well served, but because of their liability to DIBP for any failures of those employees.
- Self-regulation by corporate entities is consistent with the DIBP Trusted Trader partnerships future direction.

4) Conclusion

AFIF has outlined its position on the current licencing system of depots, warehouses and Customs brokers and provided recommendations on changes and enhancements to align licencing with the modern international trading environment of today and future directions of the 'border continuum'.

AFIF recommends a move away from individual licencing to corporate licencing and an emphasis on partnership agreements with all government agencies, which supports the future direction of industry and government.

We trust that this feedback from AFIF on behalf of its members is useful to the review process and we would be pleased to receive your comments on the areas highlighted.

Thank you for the opportunity to participate in this review, AFIF strongly supports DIBP in its endeavours to enhance the level and quality of engagement with our industry.

Yours faithfully

Australian Federation of International Forwarders Ltd



AUSTRALIAN FEDERATION OF INTERNATIONAL FORWARDERS Ltd.

Level 3, Suite 403, The Office Tower, 152 Bunnerong Road, EASTGARDENS, NSW 2036
Tel: +61 (02) 9314 3055 Fax: (02) 9314 3116 Website: www.afif.asn.au Email: afif@afif.asn.au
ACN: 008 576 681 ABN: 43008 576 681