



23/12/2015



Minister for Immigration and Border Protection,  
Member of Parliament,  
Parliament House,  
Canberra, ACT, 2600

Dear Sir,

Re: DIBP Review of Customs Broker Licensing

As a government agency with significant focus on commercial compliance and border protection the Department of Immigration and Border Protection (DIBP) including their operational arm Australian Border Force (ABF) only desires fit and proper competent people to have dealings with them.

Customs Brokers (CB) who are licensed corporately and individually by DIBP or ABF, as members of the class of the occupational profession known as Licensed Customs Brokers (LCB), must be fit and proper persons, possessing key features such as:-

- Skills based on theoretical and technical knowledge gained by prospective LCB;
- Direct participation of education and training for prospective competent LCB;
- Evaluating member competence on entry into the CB profession;
- Assessing members continuing professional development (CPD) to continue in the LCB profession as designated by Australian Customs Notices 2012/29 & 37;
- Member of a professional body such as the Customs Broker & Forwarders Council of Australia (CBFCA) who represents the LCB profession;
- Observance and adherence to a professional code of conduct;
- Emphasis on altruistic LCB services to clients which includes importers, exporters and local manufacturers;
- Competence and quality of LCB performance must be maintained and verified for the benefit of clients and Australian society including DIBP or ABF, Department of Agriculture & Water Resources in addition to related Federal and State government agencies which is supported by the effective regulatory DIBP licensing regime;
- Construction and social consequences of expert LCB knowledge through formal education is the linking mechanism between LCB expertise and their professional performance in an increasingly technological globalised trading world.

Thus the status of any profession is distinguished by its primary characteristic of autonomy, that is, the right to determine work activity on the basis of professional judgement. The public granting of autonomy to LCB has been founded on the client's implicit acceptance of the professional's technical expertise and service orientation.

However, the whole fabric of social relations has been rapidly changing in recent times. Importers are redefining their status from that of client to one of consumer. Consequently in the client-practitioner relationship, clients deliver themselves into the hands of professional LCB who in turn are the sole decision makers regarding the nature of the services to be delivered. In comparison the purchasers of services such as importers have considerable bargaining power which has been imputed in such areas Customs Broker shopping, noncompliance behaviour, and autonomous decision-making on the part of clients.

Two types of clients can be differentiated who exert pressure on LCB such as "demanding" clients who insist on additional unpaid services, expect instant attention at unusual hours, present vague often uninformed complaints, and are never satisfied with the service or rates. Yet professional LCB are perceived by importers as competent, qualified, formally licensed operators who take a personal interest in solving their client's importing problems and generally servicing their client's international transaction requirements. Thus when clients visit their customs broker, they bring with them such expectations about the LCB's roles and great emphasis is placed upon the broker being a reassuring expert in providing advice to their client. In short, clients seek not only adequate servicing but also expert international trade advice and support from their LCB. Conversely those "challenging" clients fail to accept the authority of a LCB, and wish to make Customs decisions on their own, often to their own detriment. For clients, a customs problem is the most significant thing in their importing world at the time, and they are likely to react to it with extreme concern as threatening their economic and often emotional well-being. In contrast customs brokers see a client and their problems as one among many daily encounters since they are trained to concentrate upon and solve customs clearance and customs consulting problems. This is precisely why there is a paramount need to continue the independent licensing system of customs brokers.

Furthermore, there is an open conflict for power in the LCB – client relationship by means of the consumer revolt in which clients shop around and scrutinise the customs clearance marketplace for convenient advice they want to hear and el cheapo customs clearance which often leads to the duplication of import declarations requiring correction as per s.71F Customs Act 1901. From a conflict perspective of the LCB – client relation there is an emphasis on the differences of interest between the professional advisers and their lay clients by drawing attention to the social structure in which DIBP (previously Customs) and importers are located. DIBP claims that these structural variables will influence whether the individual importer will behave normatively or not. For instance, solo and group agencies generate different types of pressures upon individual LCB and corporate customs brokerages. These pressures will affect the likelihood of LCB and customs brokerages complying with the legislative regimen such as doing the appropriate amount of research, checking the accuracy of import declarations and establishing internal corporate systems to maximise

optimal work performance and efficiency in accordance with their customs licence conditions. Thus the LCB- client relationship is most effectively analysed within the framework of a clash of perspectives where the importer/client critically evaluates and make demands on the LCB professionals rather than passively acquiescing to professional LCB advice. Consequently it is only the threat of penalties and/or infringement notices that forces the client/importer to comply once the LCB has pointed out all the alternative contingencies.

With negligent mistakes, unlike the purchase of a defective commodity, the client often cannot undo the economic damage, but they can gain financial compensation through litigation and furthermore it is the el cheapo customs clearance seeking client/importer who is the first to seek compensation through the courts. More than likely the el cheapo customs clearance seeking client/importer has ignored the correct compliance advice which is subject to duty from a reputable LCB and chose to go with the el cheapo customs broker in the pursuit of a duty free answer or reduced duty/GST/WET/LCT payments.

Another aspect of the structural change for LCB is seen in the shift from correcting and rectifying customs problems to the provision of preventative advice in Customs Law and Customs Related Law particularly since the introduction of penalties and infringement notice offences being increased from 30 to 82 as per Schedule 8, s.135 Customs Regulations 2015. Preventative advice represents a buyer's market because the client has to be persuaded to use a particular type of preventative customs law technique to mitigate against potential penalties and/or infringement notices. Here, the client has the power to choose between providers. A LCB who has a no or very low risk of non-compliance through adhering to their licence conditions should not be subject the potential additional conditions the CEO may impose as per s.183CGA Customs Act 1901 compared to the el cheapo customs broker who will have a very high risk of non-compliance and potentially be subject to s.183CGA Customs Act 1901 action along with the penalties and infringement notices.

Professionals such as LCB perform a crucial social and economic function in assisting in the maintenance of Australian industry through correctly interpreting the tariff, valuation issues, free trade agreement issues, Customs Laws and Related Customs Laws. This important role of LCB is frequently, if not conveniently, overlooked by government agencies such as the burden of licensing. Whilst the LCB profession is not elitist in character, members of the industry have organised themselves into a profession and through the limited number of people having the capacity to endure the extended and rigorous education and training processes, such as the Diploma of Customs Broking, there must be sufficient rewards to motivate prospective brokers to enter the field.

The universal normative business principles require LCB to treat clients/importers according to neo-scientific and business standards without being prejudiced by personal or social considerations. Then, in order to safeguard professional objectivity, LCB must maintain affective neutrality when dealing with clients/importers. As professionals, LCB in pursuing profit, self-interest, status and commercial esteem also indirectly work for the welfare of Australian society through correctly applying ALL Customs Laws and ALL Customs Related Laws.

LCB as a status group are in continuous struggle for power against other status groups who shall remain nameless for this submission. Thus the LCB future is not guaranteed by the assumption concerning the functional importance of LCB practitioners, but is indeed threatened by the power of the other interest groups.

The LCB profession stresses two important strategic attributes for explaining any profession's position and function in society such as technical competence and functional importance to society. Thus the LCB profession is conceived of the following attributes that applies a systematic body of knowledge to solve international trade problems that are highly relevant to the central values of Australian society within the globalised trading world.

To reinforce the continuing burden of licensing a professional's high degree of learned competence creates special problems of social control in that lay people cannot realistically judge the performance of the professional. As a consequence, bureaucratic supervision through the licensing mechanism is an appropriate form of control. Certainly this is supported by the professional LCB individual self-control supplemented by collegial surveillance. The LCB profession is a collection of individuals viewed as an element of social structure forming a community within a community in which the LCB status is reinforced through the exclusivity of the LCB language and business world's confidence in the LCB practitioner's superior Customs Law and Customs Related Law knowledge. Based on the functionalist analysis the LCB –client/importer relationship as a subsystem of the larger social system is one that shares the central values of Australian society as a whole. Thus both LCB and clients/importers bring commonly accepted societal values into their business relationship in which clients/importers have acceptable and expected assurance the CB has satisfied all the necessary formal requirements so they can legitimately perform as LCB.

As a community within the totality of the Australian social system, the LCB profession functions within boundaries that are reasonably clear, though it should be noted that they are not physical or geographical, but social boundaries. The LCB profession does not produce future generations biologically, yet it does so, on a social level through its control of recruitment and socialisation of its members. Members of the LCB profession maintain values in common, speak the same language (jargon for eg 6110.10.00 non-customs broking people have no idea what we are talking about), and are therefore bound by a sense of identity. Among the values shared by LCB as professionals in particular is 'other-orientation', that is, the offering of a service in general to not only the public at large, but specifically to importers, exporters and Australian manufacturers who need to have confidence they are being represented by qualified competent professionals that have the backing of a bureaucratically endorsed licence. The licensing of customs brokers is also designed to prevent exploitation of vulnerable lay people by LCB who monopolise highly specialised knowledge.

It is interesting to note that several times the word "BURDEN" was employed in DIBP Notice 2015/35. Does the DIBP consider the licensing of Customs Brokers a burdensome role now there is no such Federal Government Agency as Customs? Although, it was refreshing to

observe DIBP unburden themselves and nominate Registered Training Organisations (RTO) to organise and allocate continuing professional development (CPD) points for LCB.

Certainly the introduction of the DIBP or ABF “Trusted Traders Programme” (TTP) will only include competent and compliant Customs Brokerages and their Nominee Customs Brokers who have an exemplary compliance record with DIBP and/or ABF.

The discussion paper headed by Professor Widdowson highlights an admixture of approaches countries adopt to authorise their customs clearance and customs consulting personnel to operate within their country’s border clearance system. Countries employ various methods from licensing, to registration, to total de-regulation in their quest to ensure there is no revenue leakage of import duties and taxes including community protection. This community protection principle results in Australian LCB also being Quarantine Brokers in addition to being qualified in local and overseas transportation of dangerous goods, so they can perform the totality of their professional role within Australia. The country that closely resembles our business culture and international trading standards is the United States of America. The USA has a formal licensing system for their customs brokers which is administered by the USA Customs Border Protection (CBP). The USA CBP licensing of their customs brokers ensures legislative compliance, correct revenue payments and community protection which is similar to Australia’s current licensing regime and by way of example justifies the continuing licensing regime of Australian customs brokers.

Therefore based on the aforementioned facts and sociological arguments employing structural functionalist, conflict analysis and symbolic interactionism, it is indisputable that Australian society and all communities within Australian society demand that customs brokers must be licensed incorporating at least the current licence conditions, current mandatory CPD regime to ensure LCB keep up to date, and the TTP be open to Corporate Customs Brokerages/Sole Traders with a faultless compliance record.

Furthermore, three draft recommendations detailing the key points for each licensing category under review must be published so any recommendations can be genuinely debated BEFORE any final position on licensing customs brokers is concluded.

Yours sincerely,



Cc Border Licensing Review