

Accredited Broker Program – Discussion Paper – August 2001

Aim

This “discussion paper” has been prepared to provide a basis for further consultation between the Australian Customs Service (Customs) and the Customs Brokers and Forwarders Council of Australia Inc (CBFCA) in relation to the development of an *Accredited Broker Program (ABP)*.

Background

- The Customs Cargo Management Re-engineering (CMR) project has an extensive focus on the Accredited Client Program (ACP) that provides industry with alternative methods of dealing with Customs, the Australian Quarantine and Inspection Service (AQIS) and the Australian Bureau of Statistics (ABS).
- The CBFCA supports this approach based on the experience of the various industry accreditation arrangements established by AQIS (including Broker Accreditation). Co-regulation arrangements between industry and Government authorities and is clearly an essential strategy in order to meet future barrier clearance objectives.
- The CBFCA acknowledges Customs implementation plan for the ACP as outlined in the June 2000 edition of “Manifest” where it is states :
“The Accredited Client arrangements will initially focus on importers and exporters but will be expanded over time to include service providers such as Customs brokers and freight forwarders”.
- The CBFCA sees an accreditation program with Customs Brokers as a logical progression from the established Business Partner Group (BPG) that is initially focusing on a small number of large volume importers. It is important to note that Customs Brokers currently complete approximately 97% of all import entries.
- The CBFCA supports Customs in their current approach with air express carriers in relation to accreditation for “Confirming Exporter” status. The CBFCA now looks forward to conducting similar consultation with Customs to develop improved processes involving its members in the barrier clearance and international freight forwarding industry.
- Implementation of an *Accredited Broker Program* will assist Customs in meeting economic sustainability through the facilitation of legitimate international trade, at the same providing a focus on the expectations of Government, industry and the community by identifying and responding appropriately to non-compliance with Australian law.

Customs Regulatory Philosophy

The CBFCA acknowledges and supports the Customs Regulatory Philosophy that treats “clients” according to their identified risk.

In accordance with the “Customs Compliance Continuum” the ABP supports a self regulation model based on :

- **Education and training (informed self assessment)**
- **Maximum pre-arrival information**
- **Minimum real time pre-clearance intervention**
- **Compliance verification based on online document availability**
- **Accreditation**

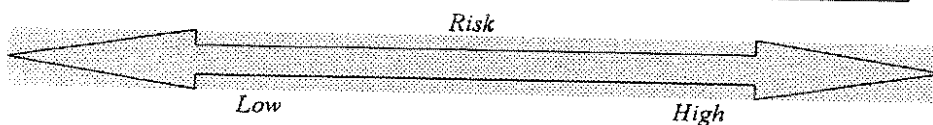
Customs Compliance Continuum

CLIENT CATEGORIES – BEHAVIOURS AND MOTIVATION

Self Regulation	Assisted self regulation	Directed regulation	Enforced regulation
<ul style="list-style-type: none"> • Informed self assessment • Management is compliance orientated • Includes accredited clients 	<ul style="list-style-type: none"> • Not yet compliant • Attempting compliance • Developing internal Control systems 	<ul style="list-style-type: none"> • Resistance to compliance • Lack of compliance • Limited / poor systems 	<ul style="list-style-type: none"> • Deliberate non-compliance • Criminal intent • Illegal activity

CUSTOMS OPERATIONAL RESPONSE

<ul style="list-style-type: none"> • Education and training • Maximum pre-arrival / Departure clearance • Minimum real time pre-clearance intervention • Some compliance verification : <ul style="list-style-type: none"> - x-ray - checks of documents and goods • Sanctions may be imposed 	<ul style="list-style-type: none"> • Education and training • Some real time pre-clearance intervention • Some post clearance Checking • Compliance verification : <ul style="list-style-type: none"> - x-ray - checks of documents and goods • Sanctions may be imposed 	<ul style="list-style-type: none"> • Pre and post clearance intervention • Post clearance Comprehensive audit • Pre-clearance major examination • Sanctions may be imposed 	<ul style="list-style-type: none"> • Pre and post clearance intervention • Comprehensive audit • Cargo searches (may be covert) • Surveillance • Investigation by multi Disciplined teams • Sanctions imposed
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Education and training

In accordance with the Customs philosophy of “informed compliance” there would be an expectation that an accredited process is only available to entities that have satisfactorily met specified training requirements (to be developed and administered in partnership between Customs and the CBFCA).

Applicants must also satisfy the following pre-requisites :

- Licensed Customs Broker pursuant to Part XI of the Customs Act 1901
- Accredited Brokers in accordance with Section 66B of the Quarantine Act 1908

Maximum pre-arrival information

Consistent with the National Illicit Drug Strategy, the Government has introduced compliance measures in relation to the report and accounting of imported cargo. The purpose of these measures is to improve the quality and timeliness of cargo information provided to Customs to facilitate the identification of high-risk cargo, particularly cargo that may contain illicit drugs.

In accordance with the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000, Cargo Report information from shipping lines, airlines and freight forwarders must be reported electronically to Customs pre-arrival (sea cargo twenty-four hours prior to arrival and air cargo two hours prior to arrival). Customs have agreed that this data may be in accordance with commercial documentation as per the agreed standards outlined in the Kyoto Convention (i.e. as per the Bill of Lading or Air waybill).

In the event that this data is deficient, Customs will accept additional information supplied from the Broker in order to complete barrier risk assessment activities. Accordingly, Customs will develop a facility under CMR whereby Brokers can transmit a Consignee Declaration to supplement the Cargo Report information. It is acknowledged that Customs require the twenty four hour (sea cargo) and two hour (air cargo) windows to complete their risk assessment, therefore placing the onus on Brokers to supply this information in a timely manner to ensure risk assessment can be completed without unnecessarily impeding the release of cargo. Ideally this processing would be completed prior to the physical availability of the cargo.

Minimum real time pre-clearance intervention

Import consignments not in scope of the accreditation process will require standard pre-clearance processes to take place. An Import Declaration will be required with duty, goods and services tax and Government cost recovery charges paid prior to release. Payment of goods and service tax on taxable importations may be deferred, as permitted in circumstances specified in the regulations made for A New Tax System (Goods and Services Tax) Act 1999.

Consignments considered within scope for ABP purposes would have to be ascertained, however it is anticipated that these would be consistent with the category of goods referenced in the BPG arrangements.

Cargo within scope may be released from the delivery point (Cargo Terminal Operator, Stevedore or Licensed unpack depot) upon the reconciliation of the Consignee Declaration to the Cargo Report and the completion of barrier risk assessment (information will be provided to confirm that the cargo packing method poses no quarantine risk).

Unlike the Business Partner Group, commencement audit requirements would not be required. ABP would utilise separate Import Declarations per transaction rather than using Periodic Declarations. The main benefit of this process is to provide the Broker

with more flexibility to even out workloads and as a result, increase the level of accuracy in the data provided.

The final Import Declaration and total payments due would have to be finalised within five days of the lodgement of the Consignee Declaration. In the event that the client Importer is also able to defer the payment of the goods and services tax, duty can also be deferred in a parallel reporting period.

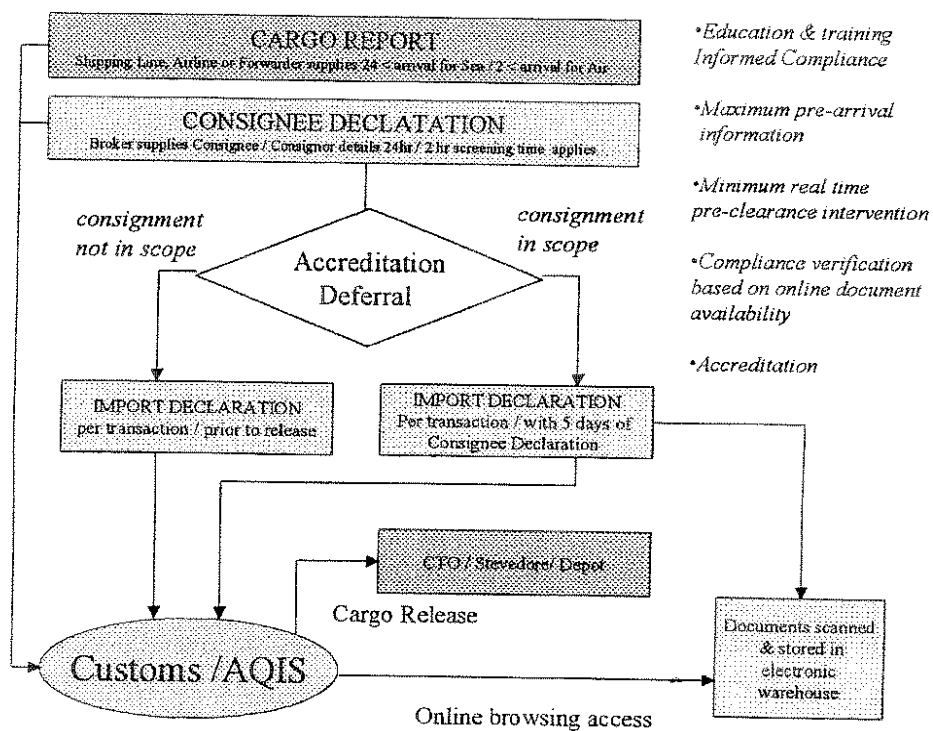
Compliance based on online document availability

Acceptance into the ABP would be based on a past compliance history with the requirements of Australian law and in particular the Customs Act 1901.

A feature of the ABP proposal is the implementation of an innovative technical solution for document storage and retrieval that would revolutionise Government compliance activities. The concept revolves around providing Customs and AQIS online access to documents to facilitate “desk top” audits. Brokers would store electronic data and scanned document images under the index of the Import Declaration number with the provision for Customs and AQIS to have remote “browsing” access.

There would be an expectation that this facility would also result in reduced Customs Cost Recovery charges through the efficiencies it would provide in compliance activities.

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Accreditation

Business rules will need to be established to ascertain final criteria for acceptance, suspension and / or removal from the Accreditation process.

EXTRA NOTES

13/8/01 Ken Riordon against concept of Securities (labor intensive for ACS) preferred NZ model
Credit Checks / Credit Limit ?? I have not made any reference to these aspects.

Ref No:

15 April 2003

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Dear Tania

Accredited Client Program

Reference is made to Australian Customs Notice (ACN) No. 2003/18 seeking submissions from interested parties in relation to the Australian Customs Service (Customs) Accredited Client Program (ACP).

Background

The Customs Brokers & Forwarders Council of Australia Inc. (CBFCA) has maintained an ongoing interest in the ACP arrangements since the notification to industry in June 1997 by Customs as to the introduction of the then Pilot Program on *Trial Partnerships* as part of the then Cargo Management Strategy (CMS).

The CBFCA endorsed the *Trial Partnership* concept of CMS and in its response to the Australian Customs Service Cargo Management Strategy stated, *inter alia*:

*'In this regard the CBCA sees many licensed corporate customs brokerages or individuals as being perfectly placed to work with the ACS in such partnership arrangements. As a result of such entities being regulated by Part XI of the Customs Act or by way of accreditation from other regulatory authorities such as the Australian Quarantine & Inspection Service, partnership arrangements would provide significant benefits to the ACS and customs brokers (on behalf of their clients) in doing business with Government.'*¹

From the commencement of the *Trial Partnership* arrangements there was a clear recognition as regards the eight pilot companies that their respective customs brokers were a vital component in the *Trial Partnership* process. The CBFCA saw that the extension of *Trial Partnership* arrangement to service providers as logical as service providers were already incorporated in the *Trial Partnership* through the common law principal and agent

¹ CBCA response to the Australian Customs Service Cargo Management Strategy, 23 June 1997 P3

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arrangement. To further that philosophy, in September 2001 the CBFCA provided a Discussion Paper, *The Accredited Broker Program* to Customs to stimulate further discussion and consideration by Customs of the development of an *Accredited Service Provider* (ASP) program.

The commitment of the CBFCA to the ASP objective has not diminished and in relation to the discussion issues referenced in the ACN the following comments are provided.

Accredited Service Providers

The CBFCA notes in Clause 1.1 of the *Draft Accredited Client Program Business Rules*, the requirement for a *person* to enter into *Import and / or Export Information Contracts*. The CBFCA would see that it would be a logical extension of the reference to a *person* to include, but not limited to, a corporate customs broker as referenced under Part XI of the Customs Act 1901. As Customs will be aware Part XI provides significant regulatory control over and above the commercial law aspects that would underpin any *Import or Export Information Contracts* agreed between Customs and a *person*.

For interested corporate customs brokers, the *Accredited Client Program Business Rules* could be amended accordingly to incorporate the standards that persons or entities are required to meet in the licensing requirements of Part XI of the Act and the accreditation standards of Section 66B of the Quarantine Act 1908 (which provides for the Director of Quarantine to enter into Client Agreements in circumstances as prescribed).

It is clear in relation to barrier clearance functions that corporate customs brokers have a high level of understanding and commitment to regulatory requirements. In addition, their workplace performance is subject to ongoing regulatory review, this in conjunction with the existing client commercial requirements could be leveraged accordingly within an ACP concept.

Security

The CBFCA notes the international commitment to supply chain security. For industry the supply chain is an integration of complex relationships between parties within that chain and industry has been able to integrate these arrangements so as to provide for a cost effective supply chain process.

Part of this integrated process includes barrier clearance and the meeting of regulatory requirements of Customs, Quarantine, transport and a variety of other regulatory agencies. All parties to the supply chain have a commitment to secure trading. Notwithstanding the need for compliance with regulatory requirements, it makes good business sense to have a secure and integrated supply chain. A secure supply chain provides value added incentives to businesses in meeting regulatory requirements and receiving the benefit of being acknowledged as an appropriate risk assessed entity for security requirements.

All of these arrangements however require considerable investment and in joining with regulatory authorities in any appropriate partnership on security and compliance there needs to be tangible and measurable benefits for those willing to commit to such arrangements. This is seen as being the driver for the ACP and / or ASP process.

In this regard, the CBFCA makes reference to the Customs Guidelines on Advanced Cargo Information (ACI Guidelines) of the Task Force on Security and Facilitation of the International Trade Supply Chain of the World Customs Organization² (WCO). In the Guidelines a particular reference is made to the *Authorised Trader* concept, however it was

² WCO Task Force on Security and Facilitation, ACI Guidelines Version 3, 21 March 2003, TF0005E1

agreed at the 21 March 2003 meeting of the Task Force that the *Authorised Trader* concept in an *Authorised Supply Chain* should appropriately include *Authorised Service Providers*.

From an international context this recognition by the WCO and its Customs administrations members, of the *Authorised Service Provider* is appropriate in a security and compliance context. There is also recognition by the US Customs Administration in its Customs Trade Partnership Against Terrorism (C-TPAT) as well as the Swedish Customs in its StairSec® approach that *Authorised Service Providers* provide certainty to the objectives of security and facilitation in international trade.

The Deputy Commissioner US Customs noted that the *Authorised Trader (Service Provider)* would be a key component to an *Authorised Supply Chain*³. As to the unique position of customs brokers in the international supply chain he stated:

*'Key factors in this uniqueness include: familiarity with a wide range of shippers and importers, as well their business practices: a knowledge of customs requirements that can assist in training others in the private sector regarding recommended security practice: and an effective international reach to foster engagement by other critical factors in the supply chain.'*⁴

Audit Issues

The CBFCA notes the objectives of the audits undertaken within the ACP is to ensure that the Information Contract is:

*'Underpinned by Business Rules containing accredited standards and continuing obligations.'*⁵

The CBFCA understands that the purpose of the commencement audit is to determine whether or not the *person* has processes and systems in place that accurately produce import and / export information to the Accreditation Standards as referenced in Part 2 of the Business Rules. As regards determining appropriate internal control procedures, the CBFCA references the requirements of licensing under Part XI of the Act and Section 66B(1) of the Quarantine Act as integral standards in meeting the Business Rules.

In addition to these regulatory requirements, many other issues would be referenced in work practices and Policy and Procedure Manuals. Some of which may be as a result of that industry sector's commercial processes and / or precedent.

It is for the auditor to make an objective judgement as to whether the *person* (including customs brokers) is (capable of) meeting the Accredited Standards as detailed within the Business Rules. This however needs further clarification as to the appropriate ways and means to objectively assess these standards.

The CBFCA is of the opinion that for those wishing to participate in the ACP or ASP there is a need for an appropriate level of compliance and entrance audit. The CBFCA however sees difficulty as to agreeing the scope of an audit engagement unless the parameters that need to be addressed in that audit that are set by Customs in consultation with industry.

³ WCO - ICC Symposium on Security and Facilitation, Mr Douglas Browning, Deputy Commissioner, US Customs Service, 14-15 October 2002

⁴ Bureau of Customs and the Broker in today's environment, Mr Douglas Browning, Deputy Commissioner, US Customs Service, IFCBA Conference, 22 May 2002

⁵ Accredited Client Program, Audit and Review Obligations, Circulation Version March 2001

As referenced, the audit is to ensure that there are processes and systems to accurately produce import / export information. However in terms of the audit and review obligations, systems and processes, not one system and / or process will be common to each and every ACP / ASP.⁶

Data Accuracy

In addressing data accuracy within the audit Accreditation Standard 3 of the Business Rule [Clause 2.3.1 Subparagraph (a) or (b)] contain some items which in the main could fit within the 2% error rate. The CBFCA however sees that the items listed are not necessarily mutually inclusive for the determined error percentage.

The CBFCA acknowledges the criticality of some items over others however as many profiles and / or risks to the revenue relate to the correct classification of goods within the Customs Tariff Act 1995 (the Tariff) and the correct determination of customs value under Part VIII, Division 2 of the Act these are seen as key items.

The issues of identifying goods for classification purposes and determining the correct customs value, are inherently complex. The results of applications to the Administrative Appeals Tribunal and appeals to the Federal Courts will attest to the difficulty in interpretation of the Tariff as regards classification or of the Act in the determination of the customs value. While there are administrative arrangements through Tariff and Valuation Advices with the Customs, many of these are subject to dispute and also have found their way into the Tribunal or the Courts for determination.

Therefore for an auditor with either limited, or a high level of experience in the determination of the classification or of the customs value of goods, to hold themselves out as the final arbiter of these critical issues appears beyond the scope of the audit. However, based upon appropriate software and hardware tariff review resources, the use of Tariff or Valuation Advices, legal precedent and other sources which would provide for a high level of informed compliance on these critical items an auditor would be able to provide an objective assessment as to compliance and process.

As to Accreditation Standard 3, the CBFCA perceives that it requires further consideration to include aspects of process management and reasonable care. As regards reasonable care, the inherent self assessment must be based upon informed compliance which requires appropriate competency based training.

The CBFCA commends Customs on reassessing the ACP to include an ASP option and looks forward to working with Customs and other industry associations at the meeting on 6 May 2003 on this challenging initiative.

Kind regards



STEPHEN J MORRIS
Executive Director

⁶ Accredited Client Program Audit and Review Obligations Circulation Version 1 March 2001, Page 3