



1. Meeting Agenda

Meeting Number: 04/07
Meeting Name: Trade Facilitation Forum
Date: Wednesday 21 November 2007
Time: 11.00am
Location: Customs House
10 Cooks River Drive
Sydney International Airport

2. Invitees/Attendees

Y-in attendance; A-apology

Customs

Y Gail Batman (Regional Director NSW)
Y Catherine Asbridge (National Manager Cargo Operations North)
Y Peter White (National Director Compliance)
Y Doug Greaves (Director Compliance Intervention NSW)
A Jim Fleming (Director Compliance Audit NSW)
A Pam Radin (Director Air Cargo Operations)
Y John Barber (Director Sea Cargo Operations)
Y Rod Vaughan (A/g Director Customs Information & Support Centre)
Y Brian Sheridan (Manager Trade)
Y Kim Simmat (Supervisor National Industry Leads – Service Providers)
Y Debbie Buck (Supervisor Revenue Assessments)

AFIF

A Brian Lovell (CEO AFIF)
A Paul Angel
Y Stuart McFarlane

CBCFCA

Y John Law (President CBFCA NSW Branch)
Y Michael Hudson
Y Andrew Crawford
A Paul Zalai
A David Katte
Y Tony Fatouros
Y Greg Durham

CAPEC

A Stephen Ly
Y Robert Battistel

3. Agenda

Item No.	Subject	Presenter
1.	Welcome and Apologies	
2.	Minutes from the previous meeting	
3.	Matters arising from the previous meeting	
4.	Compliance Division Update	Customs
5.	NSW Trade Branch Update	Customs
6.	Regional ICS issues	Customs
7.	Sea Cargo Examinations	Customs
8.	Current Issues for the CBFCA	Industry
9.	General Business	
10.	Next Meeting – 2008 Meeting Schedule	

4. Minutes

Meeting commenced: 11.10am

ITEM 1 Welcome and Apologies

Gail Batman formally welcomed everyone to the meeting. She passed on apologies from Paul Zalai, Paul Angel, Brian Lovell, Pam Radin and Jim Fleming. Gail then introduced Catherine Asbridge (National Manager Cargo Operations North) and Peter White (National Director Compliance).

ITEM 2 Minutes from the previous meeting

The Minutes from the previous meeting, held on 29 August 2007, were accepted without change.

ITEM 3 Matters arising from the previous meeting

There were no matters arising from the previous meeting.

ITEM 4 Compliance Division Update

Doug Greaves indicated that he would describe the details of nine types of non-compliance detected by the NSW Compliance Division in the three months since the previous meeting.

Alcohol/ Tobacco Warehouses

Doug explained that an increased rate of checking compliance with warehouse licences, including specialised alcohol/tobacco warehouses, has revealed more than one that had closed, without notifying Customs. When a warehouse is being closed, Customs undertakes a comprehensive stocktake and audit, then calls up the revenue on any unaccounted goods. In some circumstances, if underbond goods are missing and there is insufficient security to cover the revenue payable, Customs *could* seek payment directly from the relevant importer, rather than the warehouse operator.

Doug asked that if TFF members become aware of a warehouse that is closing and suspect that Customs may not have been notified, would they please notify Customs.

Private Imports of Luxury and Exotic Vehicles

Doug indicated that Customs continues to detect attempts to evade duty, GST and Luxury Car Tax by importers of second-hand luxury cars. This has involved a range of techniques, including the miss-identification of rare exotic cars and undervaluation through the use of false invoices. Given the relatively high rates of non-compliance, Customs will continue to pay close attention to these imports, which may include criminal prosecutions in appropriate cases.

Doug invited TFF members to advise Customs in confidence, if they have suspicions about the bona-fides of importers of second-hand cars, or about the legitimacy of their importations. He suggested that brokers in such cases could consider using an amber-line import declaration.

John Law supported Doug's request and referred to a recent situation where industry had provided Customs Central Office with information regarding the importation of a \$1,000,000 McLaren motor vehicle.

Inland Freight Costs

Doug indicated that Compliance audits continue to reveal frequent errors in the calculation of "inland freight" component of declared Customs values (CVALs). If an error has persisted for many importations or over several years, a large revenue payment and perhaps penalty action may be the ultimate result. Given Customs continuing focus on this issue, any audit is likely to identify any errors.

Doug noted that due to differences in the terms of trade used in invoices and the frequent failure by suppliers to isolate such costs, it can sometimes be challenging for brokers to determine with precision the correct CVAL. Doug suggested that brokers with ongoing or new clients may wish to take a preventative approach, by focussing on this issue in advance and getting the client to clarify the supply process and then perhaps by arranging for appropriate itemisation in invoices.

Kim Simmat confirmed that during an audit, Customs needs to be able to determine how the inland freight costs are determined and, if there have been difficulties in arriving at these costs, these should be documented.

In reply to a question, Doug advised that Customs would be happy to provide advice, when asked, on how to calculate correctly the inland freight costs in difficult cases.

Clothing Importations from China

Doug indicated that Customs audit and intervention activities continue to detect frequent examples of undervaluation of clothing importations from China – notwithstanding the very low cost of such goods. The most common form of undervaluation is simply to misreport the amount paid, but three other forms were found in recent audits. They were:

- Failure to declare “production assists” (design costs and fabric supplies);
- Misreporting that accompanying coat hangers were “returned Australian goods”, not manufactured overseas; and
- False claims for Tariff Concession Orders (TCOs).

Doug asked that brokers and consolidators who deal with importers of clothing from China encourage their clients to be truthful in their dealings with Customs, as this will probably remain an area of Customs attention for years to come. Doug noted the potential dire consequences of deliberate non-compliance.

Pharmaceutical / Chemical Importations

Doug advised that in 2006-07, Customs embarked on a program of focused audits of pharmaceutical / chemical companies, to address the risk of precursor chemicals or pharmaceutical drugs being diverted to illicit markets. This program is continuing in 2007-08. Some of these audits have involved a lack of clarity about who was responsible for identifying chemicals that require import permits - the broker or the owner.

Doug encouraged TFF members with clients in the pharmaceutical and chemical industries to take appropriate steps to ensure that such goods are correctly identified; the appropriate permits are always obtained; and appropriate physical security measures are in place.

Overseas Consolidator Services

Doug noted that several overseas companies are now operating as an offshore consolidator for people who shop via the Internet. These companies can bundle up a series of purchases into one package, then despatch it to their client here in Australia at bulk freight rates. Intervention activities have identified two problems – one relating to accuracy, another relating to valuations.

Doug indicated that Customs has determined that if the company is indeed the party that arranges despatch to Australia, then it is appropriate described as the *consignor* in the cargo report. However, when an import declaration is required, then each separate vendor needs to be listed in that declaration as the *supplier* of each sub-item, with the appropriate value being shown.

Doug observed that the websites of some of these companies indicate that they are quite flexible regarding the declared value of the goods that they forward. Needless to say,

Customs will target their consignments accordingly. Doug invited CAPEC members to encourage these overseas companies to comply fully with Australian laws, when they use CAPEC members' services.

Misuse of Self-Assessed Clearances (SACs)

Doug advised that Customs intervention activities continue to identify the misuse of SACs for goods valued over the \$1000 limit. By way of example, Doug indicated that in the past three months, the ten worst examples involved goods worth \$717,000 – substantially more than the \$10,000 theoretical maximum. The worst single example involved several tonnes of goods with a revenue liability of \$39,000, delivered on three flights over three days, but reported on a SAC with a value of \$322.

Doug indicated that Customs has dedicated several staff to working full-time on profiling and targeting SACs. In reply, Rob Battistel invited Doug and key staff to meet with CAPEC separately, to discuss the extent of their in-house procedures for ensuring accuracy. Doug undertook to do so.

Inaccurate Permit Numbers

Doug advised that recent exporter audits have revealed a surprisingly high rate of errors in the export permit numbers quoted in EDNs. In one audit, 30% of the sampled EDNs from the company concerned had incorrect or missing permit numbers. Doug noted that such errors would usually proceed straight to penalty action and he asked TFF members to help their clients to focus on this issue, where appropriate.

Late or Non Production of Documents During Audits

Doug raised the issue of the production of relevant documentation during company audits. He noted that Customs commences each audit with a letter issued under Section 214 of the Customs Act 1901, which does not impose a timeframe for the production of the sampled documents. He indicated that, mindful of commercial pressures, Customs is flexible about the timeframe for a response, but if delays appear unwarranted and unjustified, a notice is issued under Section 240, which specifies a two-week deadline. Failure to produce the required documents within that period is an offence against s.243SB, which carries a penalty of 30 penalty units.

Doug noted that a small number of companies have proven very reluctant to comply with the legislated timeframe and he observed that Customs may need to start using prosecutions to encourage greater compliance in this area.

Andrew Crawford mentioned the difficulties in obtaining expert valuations for private vehicle importations. This generated some discussion on the topic.

Subsequent discussion reemphasised the difficulty with calculating some inland freight costs. Industry representatives noted that in many transactions, the value of inland freight would be immaterial and therefore it would not be feasible to seek valuation advice from Customs. Industry members suggested that some form of guidelines that would assist with the calculation or establishment of inland freight costs. Kim Simmat replied that in situations where brokers had problems establishing inland freight costs,

they should seek this information from the relevant freight forwarders and make a written note of what they received back. She went on to explain that during a Customs audit, a broker will need to show how they determined the cost of inland freight and should then refer to notes on their discussions with freight forwarders. She pointed out that if a broker has made a genuine effort to determine the correct amount, Customs would of course take that into account.

In relation to the audit program for chemical and pharmaceutical importers, Michael Hudson mentioned that although some items may be subject to a permit, brokers were not always aware of the permit requirements. Doug replied that this was why he had raised this issue, as Customs had found some situations where the broker was relying on the owner to know the answer and the importer was relying on the owner. He restated the importance of brokers and their clients deciding on their respective responsibilities, so that permits are indeed obtained when necessary.

Stuart McFarlane took the opportunity to relate his experience with a company audit conducted by Customs several months ago. He advised that Customs Officers spent three days at the company and he was very complimentary about how the audit was carried out. He noted that “all went well” and that relationships were cordial and that there was good communication between all parties.

Following this discussion of recently identified forms of non-compliance, Doug went on to describe three other issues.

DVD launch

Doug informed the forum of that the public launch of the new Customs Exports Reporting DVD was tentatively planned for the morning of 11 December at the Mercure Hotel, near Sydney airport. Although the arrangements were not yet confirmed, he invited all those who might be interested to make a “pencil booking” in their diaries.

Revised Audit Reports

Doug explained that, following an internal review of audit reporting practices, the new audit report format would no longer include risk ratings or confidence ratings. He explained that this was partly due to recurring industry complaints about less-than-positive ratings and partly due to problems in achieving national consistency in applying the ratings.

Andrew Crawford stated that he favoured the existing rating system, as it was an effective means of providing feedback, motivation and encouragement to his staff. Andrew acknowledged that there needs to be a uniform approach to assessment and reporting that did not “give mixed messages”, but he encouraged Customs to reconsider this decision. Doug advised that he would convey this perspective to Central Office.

Peter White invited industry to check if Andrew’s perspective was representative of the national view and he indicated that, if so, he would raise this at a meeting of the Compliance Executive Group.

John Law and Tony Fatouros asked about the reasons for changing the report format. Kim Simmat explained that there had always been a significant degree of subjectivity in the rating process and that the new report format is intended to address that issue. Andrew added that there should be some form of “judgement scale” to rate the level of compliance. Doug pointed out some of the problems in designing an objective set of rating rules that would cover all kinds of audit, across all industries, despite the huge differences between companies and their operations.

Peter White stated that he was interested in learning how the change to the audit report format came about, and how and why it now appears to vary from the preferences expressed by industry representatives at this forum. He added that if there is any product that might improve compliance, Customs would be happy to look at it.

Idle Export Declaration Numbers (EDNs)

In case anyone had missed the announcement, Doug advised the forum that the ICS *Release Notes* of 24 September had advised of a change to the time it takes for EDNs to become idle. Previously, the ICS allowed a period of 14 days, but now it only allows 10 days.

Cargo Reporting Timeframes

Doug advised that during the three month period between August and October there was a national 0.4% decline in on-time reporting for both all sea and air bills. By October, on-time reporting of sea cargo was 83.9%, while on-time reporting of air cargo was 94.95%.

Doug pointed out that these declines are concerning, as Customs aims for constant improvement in the rates of on-time reporting. He mentioned that this area will receive greater scrutiny in NSW soon, with the recruitment of a new Customs Supervisor in NSW who will focus on this problem. The Cargo Control group will examine statistics for November and contact those parties with the greatest level of non-compliance for the month.

ITEM 5 NSW Trade Branch Update

Brian Sheridan presented the forum with a brief overview of his area’s workload statistics for the month of October. He reported that the Tariff section had received a total of 126 tariff advice requests (TAs) in that month and that of the decisions made, 31% did not support the applicant’s submission. He noted that these figures were quite low and represented “a reduction to the mid year spike”.

Brian advised that 174 refund applications were processed in October. Of these, 33 applications were rejected, a figure which represents a higher than normal rejection rate. The reasons for the rejections were that:

- 28 did not respond to query advices and
- 5 failed to produce redline documents.

Brian also reported that the Refunds Section had received an application for a review by the Administrative Appeals Tribunal (AAT). He noted that this was the first AAT

application that his work area had received during the two years he had been managing it. Brian indicated that the appeal involved a claim for a refund of approximately \$17,000 which Customs had rejected because it was outside the permitted time period. He noted that the legislation was very clear about the time limits for refunds.

Brian then informed the forum about a potential anomaly which a broker had recently brought to Customs attention. It involves a potential conflict between the refund time limit expressed in the Customs Regulations (four years) and the time limit for the issuing of certificates of origin by the Thai Ministry of Commerce (one year) expressed in the Thailand-Australia Free Trade Agreement (TAFTA) regulations. Customs has now clarified this issue. If the Thai Ministry of Commerce will issue a certificate of origin after 12 months (this is a matter for the Thai Ministry), Customs will accept a refund application within the 4 year period permitted by the Customs Regulations.

Brian revisited an item that he raised at the last meeting. He referred to the press release from the Assistant Treasurers Office entitled “Excise – Reducing Compliance Costs for Business”. Brian reminded the forum about the changes that are proposed, highlighting the proposal to:

“Reform the rules concerning eligibility for refunds, remissions, and drawbacks of excise-equivalent customs duty. The reform measure will allow all excise and excise-equivalent imported goods to be eligible for a refund of duty where they are returned to a place licensed for that good or destroyed with the prior approval of the relevant administering authority”.

Michael Hudson asked if there had been any Customs advice published in regards to this issue. Brian replied that at this stage he was not aware that any had been prepared or disseminated.

Brian concluded his report by providing an update on his staffing situation, advising that two of his most experienced Level 2 officers had retired in September.

ITEM 6 Regional ICS Issues

Rod Vaughan reported that there had only been one, very brief ICS outage since the last meeting. The outage occurred between 4:30pm and 4:35pm on 24 September and it resulted in no email or contingency requests.

Rod then described the impact of a major power outage that occurred on Friday 16 November in Sydney when a local substation failed. The subsequent lengthy blackout caused significant problems throughout the airport environment, including the loss of all power to Customs House, which continued for much of the afternoon and well into the evening. For several days after that, mobile generators provided building power.

Rod explained how the blackout prompted invocation of Stage 1 of the Disaster Recovery Plan and how a number of staff were moved to the international terminal, to ensure business continuity during the outage. Rod noted that there was also a scheduled power outage between 4:30pm and 7:00pm on 20 November, which allowed installation of a new transformer at the substation. Mains power was restored on 26 November.

Rod reported that the Business Continuity Plan (BCP) testing team would be conducting a testing day on 5 December. He informed the forum that a company by the name of AVARA had been chosen as the successful tenderer for the supply of hardware and software for the new Customs Information and Support Centre (CI&SC) phone system.

ITEM 7 Sea Cargo Examinations

Before commencing his report, John Barber clarified the difference between his role (Director Sea Cargo Operations) and that of Pam Radin (Director Air Cargo Operations). John explained that while he is responsible for Sea Cargo Operations, Pam is responsible for the programmers who schedule both air and sea examinations. John advised that in Pam's absence, he would report on the outcomes of the "extended examination hours" trial that Pam discussed at the last meeting.

By way of background, John advised that there had been a 30%–40% increase in the number of examinations, mostly due to inspections of brake pads from China. During the trial period itself, when examination hours had been extended, there were 220 examinations scheduled. Of those examinations, only 12 took advantage of the extended hours and most of these were scheduled around 8:00am. Based on this low uptake rate and an evaluation of the trial results, it was decided not to extend the examination hours beyond the trial period.

The forum discussed some of difficulties in arranging examination and removal of the brake pads from vehicles imported from China. Tony Fatouros noted that he had encountered problems finding licensed mechanics to attend these types of examinations. John Barber spoke of instances where Customs attended examinations but found there was no appropriately qualified person available to dismantle the vehicle concerned.

Tony Fatouros enquired about the current hours of operation and was advised by John that the hours are 0830 – 1700. John added that if anyone saw any value in an 8:00am start, this is something that might be given further consideration. For urgent jobs that might need to be done outside of core hours, John encouraged brokers to contact the (cargo examination) programmers.

ITEM 8 Current Issues for the CBFCA

Port Kembla Update

CBFCA members asked how Customs is coping with the workload in Port Kembla, due to the relocation of the "roll on / roll off" (RORO) vessels used for importing cars into Australia. John Barber advised that Customs was reviewing its procedures for booking vehicle inspections there. He indicated that at this point, Port Kembla examinations will need to be "tentatively" booked through the Sydney programmers and then confirmed with Customs in Wollongong.

Tony Fatouros enquired about whether a broker needed to be in attendance during these vehicle examinations. Catherine Asbridge acknowledged that this was a good question and noted that Pam Radin had also questioned why such examinations could not be done without the broker. Andrew Crawford and Tony Fatouros raised issues relating to

wharf access and “one off passes”. John Barber replied by saying the he would take on notice the broader question of scheduled sea cargo examinations.

Catherine Asbridge added that Customs would like feedback from industry on whether it is inefficient to have brokers attend motor vehicle examinations. John Law advised that he would liaise with Catherine to clarify the nature of the questions that will be put to industry, to elicit their views.

Gail Batman summarised by saying that Customs will certainly consider the issue of whether or not brokers need to attend straightforward vehicle verifications.

Statistics on Compliance Issues

The meeting noted the agenda item which indicated that the CBFCA would like to obtain information about the levels of industry compliance revealed through audit activities. Doug suggested that this item had been addressed through the information provided in his earlier presentation.

Delays in CEF Processing

The CBFCA expressed concern at reported delays of up to five days in the X-raying of containers at the Container Examination Facility (CEF). The CBFCA asked the reasons for these delays and whether the underlying issues had been resolved.

John Barber confirmed that lengthy delays had been experienced, but these had been confined to a period in October, when Port Botany was heavily congested to the point of “gridlock”, with lines of trucks as far back at Matraville. Consequently, the Customs-contracted trucks had difficulty collecting containers for the CEF. The delays were partly due to Patricks’ problems with their cranes and equipment and partly due to vessel numbers, which had doubled during this period. John advised that the problems at Patricks have been resolved and waiting times have returned to normal.

Andrew Crawford noted that the CEF operates during the peak hours from 0700-1500hrs and asked if there was any chance of extending its examination hours. Catherine Asbridge stated that due to the cost implications, Customs is not currently in a position to consider extending the hours. However, she said that Customs may have to pursue this option when cargo volumes increase further.

New Compliance policy guidelines

The meeting noted the agenda item regarding new policy guidelines from the Compliance Division, regarding audit reporting. This issue had earlier been discussed during Doug Greaves presentation.

Revised processes at the Sydney Gateway Facility

Greg Durham raised a problem that one of his clients had encountered when trying to take delivery of a parcel that was processed at the Sydney Gateway Facility (SGF). Greg advised that the package had been cleared by Customs and the contractor was tasked to collect it from the SGF, but was advised that it could not be collected and that

it must be delivered by Australia Post. When the parcel did not arrive, the client contacted the brokerage, enquiring about its whereabouts. Inquiries with Australia Post revealed that the parcel had been sent back to the overseas supplier, because the delivery officer was unable to find the delivery address. Because the parcel had been sent back via sea, it would take 6-8 weeks before it arrives back where it started.

Greg had outlined this problem in a letter to the Customs Manager at the SGF, along with additional concerns about being unable to find reasons under Customs Regulation 126 to obtain a refund for the \$162.98 duty paid. Greg expressed to the meeting his concern that situation might arise again, given that goods can no longer be collected from the Sydney Gateway Facility once they have been cleared through Customs.

Catherine Asbridge advised Greg that although the Customs counter at the SGF had indeed been closed for some time, she had been assured that the failed delivery was a “one off” mistake. She noted that Australia Post is obliged to deliver parcels and should have tried to advise the appropriate parties of their inability to deliver the goods before returning them to the supplier. Greg said that he could accept that this may be an isolated incident, but if these sorts of problems continue, it might be viewed as a systemic problem which requires further scrutiny. Catherine said that she would be prepared to go back and look at the system, but is at this stage, she is assured that it was an unusual occurrence.

Updated NSW contact list for customs brokers

The forum was advised that Paul Zalai had suggested updating the NSW list of customs brokers who are willing to be contacted on an ad-hoc basis by novice and one-off importers. Gail Batman said that she would be happy to receive the list and asked that the CBFCA send the list to Debbie Buck, who will distribute it to Matt O'Connor at the international passenger terminal and to Rod Vaughan at Customs House.

ITEM 9 General Business

Cargo examinations at Port Kembla

John Law returned to the topic of the proposed process for booking sea cargo examinations at Port Kembla. He asked why it would be necessary to make a booking with two separate areas. Gail Batman offered possible reasons, but in the end it was agreed that John Barber will review the process and clarify the booking arrangements. The CBFCA representatives indicated their willingness to cooperate. John Law noted that a State Notice may be appropriate.

S.71E Movement Permissions

Andrew Crawford raised a concern about the need for S.71E Movement Permission applications to be lodged electronically in the Integrated Cargo System (ICS), by brokers acting on behalf of clients who do not have digital certificates. He noted that the party who lodges the electronic application assumes responsibility for the risk, which can be a significant liability. Andrew asked whether these applications could be

lodged and processed on paper forms, as this would enable the Broker to have the importer/owner sign the application and therefore be deemed the responsible party.

In reply, Customs representatives highlighted that the ICS is predicated on electronic transactions, so the reintroduction of a manual form would be a retrograde step.

Andrew then asked if Customs would be prepared to put out a policy statement along the following lines:

“If a broker or other party applies for a S.71E movement permission using their digital certificate on behalf of the owner of goods, Customs will seek compensation for any subsequent loss of duties and other taxes from the owner of the goods, not from the applicant for the S.71E movement permission”.

Catherine Asbridge replied that Customs would consider this issue and how it could be resolved.

CBFCA training initiatives

Doug Greaves noted that Paul Zalai had included on the TFF agenda a mention of the CBFCA's interest in learning about forms of non-compliance identified by Customs, in order to better guide the CBFCA's development of training modules for existing brokers. Doug advised that he had met with Sue Danks and Paul Zalai some weeks ago and Paul had undertaken to write to Customs on this issue, but there had been no further developments since then. He noted that the information presented earlier in the meeting was probably the kind of information sought by the CBFCA.

ITEM 10 Next Meeting – 2008 Meeting Schedule

Debbie Buck said that she had prepared a draft Trade Facilitation Forum meeting schedule for 2008. The following meeting dates were proposed and noted by forum members:

- Wednesday 26 March 2008
- Wednesday 25 June 2008
- Wednesday 27 August 2008
- Wednesday 26 November 2008

The next TFF meeting is scheduled for **Wednesday 26 March 2008**.

Meeting concluded: 1:00pm.