



PHILIP MORRIS LIMITED

Philip Morris Limited

Submission to the Department of Immigration and Border Protection

Review of Customs Licensing Regimes

Discussion Paper

31 December 2015

Introduction

Philip Morris Limited (PML) is pleased to provide a submission to the Department of Immigration and Border Protection (Department) on the Review of Customs Licensing Regimes discussion paper.

Philip Morris International (PMI), our parent company, is the leading international tobacco company, with six of the world's top 15 international brands. Our goals are to provide high quality and innovative products to adult smokers and reduce the harm caused by smoking while operating our business sustainably and with integrity.

PML recognises the Government's overarching objectives, to protect the revenue of the Commonwealth, ensure compliance with legislation, and protect the interests of importers and the Australian community. International trade, advancements in technology and general business practices have reshaped the commercial environment in which these licensing arrangements operate, and it is timely that another review is undertaken.

In particular, the need to protect the interests of law abiding businesses and the Commonwealth revenue for high-value excisable goods drive a need to reconsider how these goods are treated, and the licencing regime for the Customs Brokers and Warehouses that support the supply chain. This occurs in an environment where there have been recent, documented cases of corruption detected by the Australian Border Force (ABF) and other law enforcement authorities, committed by private sector operators in these areas.

With respect to tobacco, local and international regulatory trends and developing best practices should inform the development of the Australian licencing regime and overall control environment. This includes ensuring any steps made now are compliant with the World Health Organization's Illicit Trade Protocol (ITP), regardless of whether Australia ultimately decides to accede to the protocol.

Submission

At the outset, PML supports for the Department's plans to recognise secure and compliant supply chain practices and offer streamlined trade facilitation benefits to accredited businesses, with the introduction of a fully operational Trusted Trader programme as an excellent example. We believe this is a step in the right direction, in reducing the regulatory burden by encouraging a stronger partnership between government and law abiding businesses through shared responsibility and transparency.

Supply chain security is an important issue for our industry, and we believe that our responsibility does not start and end at the border. As a business operating in multiple countries, we constantly review and improve our supply chain security throughout our global operations. This will not only enable us to secure our own supply chain, but also ensure compliance with the ITP. To avoid imposing unnecessary red tape, Australia should facilitate companies preparing for the impact of the ITP on global organisations like PML, regardless of whether Australia ultimately decides to accede to the protocol. Any regulations which prevent the implementation of ITP-compliant solutions are likely to weaken supply chain security rather than strengthen it.

With respect to the review specifics, we will provide commentary in a manner consistent with the discussion paper format. However, we have also provided a general summary of our position on a series of mechanisms that would enhance the licensing regime detailed under 'Any Other Issues'.

1) Government's Objectives

a) Fit and Proper Person

No commentary

2) The Regulatory Burden of the Licensing Arrangements

a) Requirements for a Licence

A licence to import tobacco products and key cigarette manufacturing components should be required.

b) Licence Conditions

A licence to import tobacco products and key cigarette manufacturing components should be required. Further, such importers and their service providers and agents (including customs brokers, warehouse operators) should be required to adopt an 'open standard' control system that can verify product authentication, and tax verification, to reduce illicit trade. The standards organisations GS1 provides such standards.

c) Securities

No commentary

d) Duration of the Licence

No commentary

e) Timeliness of Decisions

No commentary

3) The Administrative Process of the Licensing Arrangements

a) Application Form

No commentary

b) Manual Process

No commentary

c) Information and Advice

No commentary

d) Customs Brokers – National Customs Brokers Licensing Advisory Committee (NCBLAC)

No commentary

4) Multiple Licensing

a) Excise Equivalent Goods (EEG) Warehouses

At present, there is unnecessary duplication in the licencing scheme for various types and stages of the tobacco supply chain. A single tobacco importation licence for customs (including excise equivalent goods) and excise purposes could replace the current regime.

We look forward to progressing the Excise Modernisation project being undertaken by the Australian Taxation Office in conjunction with the Department of Immigration and Border Protection. While in their early stages, it would appear that such reforms would address many of these issues.

In the interim, a streamlined system that removes the requirement to hold multiple licences (excise and EEG) would be appropriate, even where they are administered by the same agency. This regulatory streamlining would improve efficiency by removing the need to comply with two sets of regulations and payment arrangements.

5) Any Other Issues

Please note the tobacco industry specific considerations and recommendations below.

Tobacco industry considerations and recommendations

The tobacco industry faces unique challenges in Australia, and the current licencing regime (within the broader control environment) is increasingly failing to deliver on the Government's stated objectives. Extreme regulation and increases in excise taxes on tobacco products have created an environment where smuggling illicit tobacco is now a very profitable business for international criminal syndicates who adopt sophisticated techniques to undermine the regulatory and enforcement efforts.

These international criminal syndicates are diverting cigarettes from the legal supply chain and smuggling them into countries with a profitable black market, of which Australia is one of the 'best' and most prominent examples. A number of known countries, including China and South Korea, are the primary source of illicit cigarettes, where prices can be more than 600% cheaper than those in Australia.¹

According to the latest KPMG *Illicit Tobacco in Australia, 2015 Half Year Report* illicit tobacco consumption now represents 14.3% of total tobacco consumption, depriving the Commonwealth of an estimated \$1.42 billion in excise taxes. In addition, illicit trade undermines public health objectives, and provides a lucrative revenue stream for criminal networks to expand their domestic and international operations.

Earlier this year, the Polaris Joint Waterfront Taskforce raided an illegal tobacco smuggling ring as detailed in an Australian Border Force Media Release: *Thirteen charged, illegal tobacco importation syndicate shut down* dated 30 September 2015. After the operation, the Australian Border Force [REDACTED] stated:

"Illicit tobacco is a real priority for the Australian Border Force, simply because of the involvement of organised crime groups and transnational crime groups. The sheer size of the profits that are available to those groups, and the fact that those groups don't discriminate between commodities. They'll trade in tobacco; they'll trade in drugs; they'll trade in human beings."

Following other efforts to crack down on tobacco smuggling, the Minister for Immigration and Border Protection announced the creation of a dedicated Australian Border Force strike team in recognition of the serious nature of the illicit tobacco trade:

*"There are clear links to organised crime and we know that groups smuggling illicit tobacco into Australia are also involved in other illegal activities such as narcotics."*²

We understand that combatting the illicit tobacco trade is a key priority for the Australian Government, and we are pleased to work together with State and Commonwealth law enforcement authorities to combat tobacco related crime. We provide assistance through identification of tobacco products and by helping to trace their supply chain where possible.

The illicit tobacco trade is international in scope, and requires an international response. While the global illicit tobacco trade will not be defeated by one state actor alone, there are numerous measures

¹ KPMG, 'Illicit Tobacco in Australia' (Half Year Report, KPMG LLP, 9 October 2015) 23.

² Media Release from The Hon Peter Dutton MP, Minister for Immigration and Border Protection: *Record Illicit Tobacco Seizure Leads to New Strike Team*, 16 October 2015.

that governments can take. We will only stop the ability of smugglers to profit from the illicit tobacco trade by acting in concert with other stakeholders including the private sector.

Greater Supply Chain Controls

If the Government's objectives are to be met, a new regime would need to enhance supply chain security for excisable goods, especially in the tobacco sector, to provide greater supply chain security and greater revenue assurance. However, as part of a comprehensive review process, the Department should also use this customs licencing review process to restructure the customs licensing regime to be compliant with current and prospective international treaty obligations.

Special Licence: Excisable Goods / Tobacco

Given the value of excisable goods and the importance of the associated revenue to the Commonwealth, PML supports the need for a special licence for those involved with excisable goods, or alternatively, those involved in facilitating the importation of tobacco. This would align with the higher risks involved to Commonwealth revenue involved in excisable goods.

Additional tobacco supply control measures such as licensing, approvals and/or control systems are a sensible move to address current Commonwealth revenue losses, as well as being best practice and required to meet future ITP obligations:

Article 6... "each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

*(a) manufacture of tobacco products and manufacturing equipment; and
(b) import or export of tobacco products and manufacturing equipment."*³

To assist in efforts to restrict the flow of illicit trade, we believe importation of tobacco should be restricted to specially approved providers, as supported by the international community. In concept, this could align with the existing trusted trader initiative, however would be a mandatory requirement.

Tobacco is classified as an excisable good, therefore, it would be efficient for Government and business if the Australian Tax Office were granted authority to manage tobacco importation licences, approvals or control systems. The Department should also consider restricting key manufacturing inputs, materials which are unique to cigarette manufacturing, to ensure illicit cigarettes are not locally manufactured in the face of enhance security along the tobacco product supply chain. At present, tobacco rolling papers, tubes and other materials are freely available but a necessary element of both the legal and illicit markets and could be monitored to control the latter.

Tracking & Tracing

While a decision on accession to the ITP has not been made, Australia is a signatory to the World Health Organization ('WHO') Framework Convention on Tobacco Control ('FCTC') which sets out the

³ Protocol to Eliminate Illicit Trade in Tobacco Products, opened for signature 10 January 2013, UNTS (not yet in force) art 6.

requirement to implement measures that enhance supply chain control to reduce the illicit trade in tobacco products.⁴ Specifically, Article 15(2) expressly requires each party to consider tracking and tracing regimes to secure the distribution system and assist with the investigation of illicit trade.

Track and trace ('T&T') technology appears in many industries, but would be familiar to most people who have used this feature when tracking a parcel in the post – enabled by the unique code (or barcode) applied on every parcel. Through transit, the parcel code is scanned at specific points (e.g. warehouses, ports, airports) creating a complete record of the path history. This information is captured in a database, making it possible to retrieve information about the path history, including the last place the parcel was scanned. If the parcel does not reach the intended destination on time, this feature helps to determine where the parcel was potentially diverted or lost.

For the purposes of this submission, T&T will be defined in the following terms:

- **Tracking** is the ability to monitor the forward movement of finished goods/items through the distribution chain.
- **Tracing** is the ability to recreate that movement up to a certain point in the supply chain to help determine where the product was potentially diverted into illegal channels.

Following the finalisation of the ITP in November 2012, several hardware and software suppliers have developed solutions providing effective and affordable T&T systems at both the manufacturer and supply chain levels which have an application to the tobacco industry. The software and hardware solutions selected by manufacturers and supply chain distributors follow an internationally recognised open standard⁵ for the unique identification of products, system security, and underlying data management – allowing for global and regional interoperability as well as adaptability to future new developments.

The Open Standard approach, especially those standards associated with the international standards organisations GS1, has been adopted by other industries, and is considered to be global best practice.⁶ It has ensured rapid implementation of T&T systems under various infrastructure and budget (small/medium supply chain distributors) constraints that work beyond national and regional borders,⁷ and are accessible through a variety of vendors and commonly available, affordable devices (e.g. smartphone).

We would encourage the Department to consider using the special excisable goods/tobacco importation licencing conditions to implement T&T requirements based on Open Standards to:

- a) prevent significant cost and administrative burden to both supply chain distributors and the government;
- b) implement the most efficient and effective supply chain control solution; and
- c) achieve the FCTC Protocol's stated goal to reduce and prevent illicit trade in tobacco products.

⁴ *WHO Framework Convention on Tobacco Control*, opened for signature 16 June 2003, 2302 UNTS 166 (entered into Force 27 February 2005) art 15.

⁵ "Open standard" refers to international standards that device makers comply with so that their devices will be interoperable with other devices produced by other device makers. The global Wi-Fi standard is an example of an "Open Standard".

⁶ The same approach has been taken in a variety of other EU contexts such as the Falsified Medicines Directive (EC Directive 2011/62/EU), Regulation on Food Safety (EC Regulation 178/2002).

⁷ The currently deployed T&T systems cover more than 50 markets including key diversion markets such as Eastern Europe, Middle East, etc.

With the ongoing review of the *Customs Act 1901*, the Department has a unique opportunity to capitalise on the existing global network of proven and operational systems, and leverage the competitive international supplier environment. However, this will require:

- That internationally recognised technical standards are used for establishing and operating a T&T system, including for the unique identifier; the recording, transmitting, processing, storing and accessing data;
- That internationally recognised technical standards are used for establishing and operating a T&T system, including for the unique identifier; the recording, transmitting, processing, storing and accessing data;
- That nationally applied technical standards do not directly or indirectly exclude current hardware and software suppliers or their solutions;
- That manufacturers and supply chain distributors are able to choose from a variety of T&T systems – creating a competitive environment; and
- That the Australian Border Force, or a designated government authority (e.g. Australian Tax Office), is empowered to supervise and audit data storage providers used by manufacturers and supply chain distributors.

Finally, in order to effectively address the global and regional nature of the illicit tobacco trade, it is essential for T&T standards to be interoperable with solutions used in other countries, and satisfy ITP requirements as best practice, and in the event Australia accedes to the protocol.

Allowing the use of systems based upon internationally recognised technical standards (i.e. ‘Open Standards’) is the best approach as it allows competition and encourages the development of multiple solutions – thereby reducing regulatory compliance costs for producers and the Government. It would also avoid potentially costly proprietary systems, which, by nature, do not allow regional and global interoperability required by the Protocol.