

Submission: Border Permits Review

Submission to the Department of Home Affairs Border Permits Review 8 May 2019

Introduction

The Australian Chamber welcomes this opportunity to provide input to the Department of Home Affairs (the Department) Border Permits Review, as part of the whole-of-government trade modernisation agenda.

The World Bank Doing Business Reports lists Australia as having the most expensive export and import border compliance among OECD high income economies, scoring last across the grouping in 2016, 2017, and 2018.¹

The Australian Chamber supports the spirit and intent of the import/export regulations under the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*, and agrees that Australia's border and biosecurity arrangements must remain strong in order to protect Australia's economy and the community.

However, the spirit and intent of these regulations must also be balanced with the cost of doing business with Australia, both for Australian businesses, and for foreign investors seeking to do business with Australia.

This balance forms the basis of our submission in the following paragraphs.

Meaningful review: why is regulation necessary for each prohibited good?

We refer to the Border Permits Review website,² and note the following broad non-exhaustive list of goods falling under this regulation:

- ANZAC goods
- Asbestos
- Australian native animals and plant species
- Cat and dog fur products

¹ World Bank Database, *Historical Doing Business: OECD high income - Trading Across Borders*, 2016, 2017, 2018.

² Dept of Home Affairs, Border Permits Review <<https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/consultations/border-permits-review>>.

- Certain chemical compounds
- Counterfeit credit cards
- Cultural heritage goods
- Defence and Strategic Goods
- Dog collars with protrusions
- Drugs, medicines and therapeutic substances
- Endangered animal and plant species
- Firearms and firearms parts, accessories and ammunition
- Fish and toothfish
- Glazed ceramic ware
- Goods bearing an image of the Australian Arms, Flag or Seal of the Commonwealth or an Australian state or territory flag, coat of arms or seal
- Goods made of toxic materials
- Hazardous waste
- Human body fluids, organs and other tissue
- Incandescent lamps
- Lighters
- Nuclear Material
- Objectionable material
- Ozone depleting substances/synthetic greenhouse gases
- Pesticides and other hazardous chemicals
- Plastic explosives
- Polychlorinated Biphenyls, Terphenyls and Polyphenyls
- Radioactive substances
- Rough diamonds
- Security Sensitive Ammonium Nitrate
- Suicide devices
- Tablet Presses
- Tobacco
- Viable material derived from human embryo clones
- Weapons and warfare goods

- Wine and brandy
- Woolpacks

A review of regulation should always start with the question of why the respective regulation is necessary. We note that the Border Permits Review information provided by the Department on its call to stakeholders does not address why each of these goods is regulated by the legislation, which aspects of each of these goods are regulated, and on what basis the review of each of these items should take place.

For example, the regulation of the word ANZAC on imported goods recalls a different set of industry needs in contrast to those related to weapons and warfare goods. Likewise, the regulation of asbestos as an imported good enlivens a different set of industry and community responses than those of suicide devices.

We appreciate that the location at which regulation and control takes place is the reason for the Border Permits Review grouping these disparate set of goods into a single review, but we wish to make the Department aware that many different type of industry stakeholders will be affected by regulation of these controlled products, for a variety of different purposes across vastly different sectors. The design of the review should take this diversity into account.

Recommendation 1:

The Department of Home Affairs should amend the consultation process for the Border Permits Review to divide then direct its requests separately to groups of stakeholders organised by each good listed on the non-exhaustive list of controlled goods, rather than as a macro grouping. Each good type has different trade processes and reasons for control at the border crossing, so responses from industry must be appropriately sought on a separate, rather than combined, basis. For example, wool producers and the wool transport industry should have the opportunity to have their particular products and needs addressed directly by the Department, within their own supply-chain context. Likewise, the tobacco industry should have their own opportunity for responses given the unique arrangements around the export and import of their products.

Light touch approach to regulating trading businesses

The safety of the Australian public and the protection of Australia's valuable agricultural and tourism sectors from biosecurity risks is paramount in the work of the Department of Home Affairs.

The *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958* form an important part of border control, and we understand that the implementation of the regulations through administrative approaches is necessary.

While we agree that the regulation of these goods is important, the Department must not allow regulation to produce unintended trade barriers for the relevant classes of imports and exports.

Recommendation 2:

To maintain the lightest touch possible to regulating prohibited goods, processes related to the application for, and administration of, associated licences related to certain imported and exported goods must only be amended in direct consultation with affected business stakeholders. Such consultations must be open to any business of any size

(taking into account Recommendation 1), and the Department must make its proposals for adjustment of processes publicly known in draft form, available for comment, for at least 28 days prior to implementing changes to the forms.

Annual review of forms and processes

The landscape for trade data flows changes annually alongside the advent of advanced Trade Community Systems,³ and as such the Department will need to maintain an ongoing mechanism for reviewing processes and forms that Australian business is required undertake whenever products fall under the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*.

In order to remain competitive, business has an ongoing need to avoid the pitfalls of regulatory red tape, particularly where SMEs are involved in just-in-time trade and supply chain demands. For this reason, business in Australia needs to know that all data required by the Department is not only relevant, but being collected for necessary purposes.

This is especially relevant to the Australian Government's movement towards the implementation of an Australian Single Window trade system and the trade modernisation agenda. A finely honed and relevant system relating to prohibited imports and exports will be optimal for transfer into a modernised system, but only if regulatory bloating is removed.

Recommendation 3:

Until such time as an Australian Single Window trade modernisation structure is introduced, all forms and processes related to the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958* should fall under an annual review process conducted by the Department, to ensure that the data required is fit for purpose in line with industry's needs (see Recommendation 2), and to also prepare the prohibited goods regulatory structure for transfer into a modernised trade system such as a future Australian Single Window.

Publication of information to assist business in compliance

We note the provisions of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), particularly at Article 1 which relates to the proper publication of information relating to procedures for importation and exportation. The commitment of WTO Members includes publishing any required forms and documents for undertaking import and export procedures, so that governments, traders, and other interested parties are not blocked from accessing the trade in a timely manner, with the overall purpose to streamline the trade.

We further note the current Australian Border Force website on prohibited goods,⁴ which contains a useful list of categories of goods falling under the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*. And yet we also

³ In 2018 the Australian Chamber trialled a Port Community Project with the Port of Brisbane and PwC, using blockchain and advanced trade modernisation techniques: < <https://www.portbris.com.au/Media/News/New-Tools-to-Revolutionise-International-Trade/>>.

⁴ Australian Border Force – Prohibited Goods < <https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/categories/>>.

note that clicking through this website leads the exporter or importer to a range of different Australian Government Department websites, instead of directly to a form that allows application for a licence and pathway to import and export.

Instead, it appears that the Australian Border Force website acts as a directory to other websites, instead of as a one stop shop for business to understand a) what is prohibited, and b) which forms to fill to obtain a licence to undertake import or export of those goods.

Recommendation 4:

As part of preparations for trade modernisation and an Australian Single Window, the Department should seek to move forms and procedural documentation for licences, permits, and export/import forms, into the one online hub under each of the categories relating to the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*. In consolidating this information, the Department will make trade easier, as well as meeting the obligations of the WTO Trade Facilitation Agreement to have export and import procedures clearly published and publicly accessible.



About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation

Telephone | 02 6270 8000 Email | info@australianchamber.com.au
Website | www.australianchamber.com.au

ABN 85 008 391 795 © Australian Chamber of Commerce and Industry 2018