



27 JULY 2023

SIMPLIFIED TRADE SYSTEM

Submission to the Simplified Trade System Implementation Taskforce on behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA)

“KEEPING AUSTRALIA’S INTERNATIONAL TRADE MOVING”



Australian Peak Shippers
Association Inc. (APSA)

Table of contents

03	ABOUT THE ALLIANCE
04	EXECUTIVE SUMMARY
05	RECOMMENDATIONS
07	HIGH-LEVEL VISION FOR THE FUTURE OF CROSS-BORDER TRADE POLICY
08	SIMPLER RULES
16	MODERN DIGITAL SYSTEMS AND PROCESSES
18	CROSS-BORDER TRADE DATA SHARING
19	STREAMLINING THE CARGO INTERVENTION MODEL
21	APPENDIX

ABOUT THE ALLIANCE

Freight & Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian biosecurity, border related security, compliance, and logistics activities.

FTA represents more than 500 businesses including Australia's leading customs brokerages, freight forwarders and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA).

APSA is the peak body for Australia's containerised exporters and importers under *Part X of the Competition and Consumer Act 2010* as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

FTA / APSA also provide international trade and logistics advocacy support to the following associations:

- Australian Cotton Shippers Association;
- Australian Council for Wool Exporters and Processors;
- Australian Dairy Products Federation;
- Australian Horticulture Exporters and Importers Association;
- Australian International Movers Association;
- Australian Meat Industry Council;
- Australian Steel Association; and
- Tyre Stewardship Association.

The current APSA Officers and Committee of Management are listed below:

- Olga Harriton (Manildra Group) - APSA Chair
- Brian Thorpe (Visy) - APSA Vice Chair
- Flaminio Dondina (Casella) - Treasurer
- Paul Zalai - APSA Secretary
- Sarah Granger (Fletcher International Exports)
- Billy Davies (Australian Meat Industry Council)
- Peter Morgan (Australian Council for Wool Exporters and Processors)
- Brian Wright (Australian International Movers Association)
- Michael Lamperd (Norco Co-operative Limited)

A list of all members and further information about FTA / APSA is available at www.FTAlliance.com.au



EXECUTIVE SUMMARY

STS TO BE IMPLEMENTED IN PARALLEL TO THE PRODUCTIVITY COMMISSION REVIEW OF AUSTRALIA'S MARITIME LOGISTICS SYSTEM

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) represent leading import and export businesses including world class manufacturers and producers, supported by skilled customs brokers and freight forwarders. This broad membership of professional entities is ready to take advantage of the opportunities created by trade liberalisation measures and those economies recovering from the pandemic.

As noted by various presenters during the highly productive *Simplified Trade System (STS) Summit* in Melbourne on Monday 26 May 2023, Australia is disappointingly currently ranked 106 by the World Bank for “trading across borders”.

FTA / APSA do not attribute this ranking solely to inefficiencies in legacy government systems, processes, and regulation.

As noted by the recent Productivity Commission review of *Australia's Maritime Logistics System*, urgent reform is required in shipping competition exemptions (Part X Competition & Consumer Act), infrastructure needs, administration of terminal access charges, container detention, and workplace arrangements.

FTA / APSA has provided extensive data to the Federal Government that specific supply chain practices referenced by the Productivity Commission are unfairly costing exporters and importers more than \$1billion per annum.

It is essential that the Federal Government address the STS agenda in parallel with implementation of the well-considered recommendations of the Productivity Commission to reduce supply chain costs, stimulate an economic recovery and support significant growth opportunities for Australian exporters and importers.

STS REQUIRES A SECURE FOUNDATION TO IMPLEMENT LONG TERM, SUSTAINABLE REFORM

Jennifer Westacott AO provided an insightful presentation at the *STS Summit* where she summarised a need for four (4) main action items being:

1. complete mapping of current processes / systems and the establishment of an agreed future plan;
2. engage with industry on incremental steps avoiding any “big bang” introduction of systems, processes and / or statutory reform;
3. bi-partisan support for STS at a Federal Government level to ensure continuity and long term implementation of reform; and
4. the establishment of the STS as a permanent body.

FTA/APSA see merit in the above approach.

In response to the questions posed in the *STS Consultation Paper* (released Monday 26 May 2023), FTA / APSA offer the following submission, with extended commentaries and 28 specific recommendations.

CONTACT

For further detail please contact:

Sal Milici - Licensed Customs Broker
General Manager Trade Policy & Operations - FTA / APSA
Chair – Container Cleanliness Working Group | Global Shippers Forum (GSF)
smilici@FTAlliance.com.au

RECOMMENDATIONS

RECOMMENDATION 1 – to ensure continuity and long term implementation of reform, the Federal Government to engage in bi-partisan support to establish the STS as a permanent body.

RECOMMENDATION 2 – the STS Taskforce to complete mapping of current processes / systems and the establishment of an agreed future plan including incremental steps to avoid the “big bang” introduction of systems, processes and / or statutory reform.

RECOMMENDATION 3 – the STS Taskforce to clearly articulate the full scope (boundaries) of the reforms and the Federal Government's needs in terms of data requirements, physical screening of cargo and limitations (lifespan) of existing systems.

RECOMMENDATION 4 – the STS Taskforce to communicate the opportunities available via the *Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022* to facilitate time-limited trials of trade and customs practices and technologies, with approved entities, in a controlled regulatory environment.

RECOMMENDATION 5 – the Australian Border Force to revise licensing conditions to permit customs brokers to short term lodge import declarations from overseas under prescribed circumstances.

RECOMMENDATION 6 – the STS Taskforce to support government departments in engagement with industry to set pragmatic service standards.

RECOMMENDATION 7 – the Australian Border Force to provide online access of import / export reports to approved trade entities.

RECOMMENDATION 8 – the STS Taskforce to oversee trial statutory reporting of fully digitised messaging between Australia and New Zealand.

RECOMMENDATION 9 – the STS Taskforce to complete a review into all cross-border fees and examine opportunities for a streamlined collection methodology.

RECOMMENDATION 10 – the STS Taskforce to engage with government departments and industry to establish and maintain standards for fair, consistent and informed compliance regimes.

RECOMMENDATION 11 – STS Taskforce to oversee standardisation of export messaging standards including the development as defined by the International Plant Protection Convention (IPPC) - ePhyto Solution.

RECOMMENDATION 12 – STS Taskforce to provide a “roadmap” of reform and timelines for initiatives where the status, updates, changes are linked directly to development pipelines - at minimum, focussed quarterly STS project status reports.

RECOMMENDATION 13 – the Department of Agriculture, Fisheries and Forestry to engage with industry on STEPS and how it ties in with the broader STS roadmap.

RECOMMENDATION 14 – the Department of Agriculture, Fisheries and Forestry to engage with industry on strategies to move away from reliance on documents / manual assessments to the use of data to automate / streamline risk assessment of import cargo.

RECOMMENDATION 15 – the STS Taskforce to engage with industry to: streamline and harmonise Fit and Proper Person (FPP) across government departments; explore the opportunity and benefits of a single government body to manage FPP; and establish parameters and safeguards for FPP sharing across whole of government.

RECOMMENDATION 16 – additional benefits to be provided to Australian Trusted Traders by enhancing Full Import Declaration functionality by removing “lock down” periods and the introduction of periodic declarations.

RECOMMENDATION 17 – the Australian Border Force to engage with industry to reform the tariff concession system (TCO) addressing TCO applications; late communication; Tariff classifications; concurrent TA and TCO applications; Tariff classifications of TCOs to operate as a Tariff Ruling; TCO wording; amendments of TCO wording by TARCON; strict compliance; objections to TCOs; information requirements in making a TCO objection; revocation of TCOs; impact of TCO revocation and reissue on refunds; and Tariff decisions by Refunds and Monitoring Officers.

RECOMMENDATION 18 – the Department of Agriculture, Fisheries and Forestry to engage with industry to change the access terms or potentially repeal the Cheese and Curd Quota System to ensure the importers operate on an even commercial basis.



RECOMMENDATION 19 – the STS Taskforce to conduct a focussed review to re-engineer process, legislative and systems functionality in dealing with cross-border clearances of personal effects.

RECOMMENDATION 20 – the STS Taskforce to assist peak industry bodies in obtaining government funding to promote the trade sector to the employment market to meet the supply of personnel in roles such as (but not limited to) licensed customs brokers.

RECOMMENDATION 21 - the STS Taskforce to facilitate a review of government department targeting to ensure that traders with a demonstrated high level of compliance receive greater relief from physical inspections or audits.

RECOMMENDATION 22 - the STS Taskforce to facilitate a review of Product Stewardship statutory requirements and collaborate with industry to mandate “best practice” arrangements across end-of-life waste products.

RECOMMENDATION 23 – the Australian Border Force to engage with industry on implementation of a pre-load cargo reporting regulatory model and systems implementation.

RECOMMENDATION 24 – the Australian Border Force to phase out and replace the use of Digital Certificates with a more contemporary, cost effective and a whole of government approach to data integrity.

RECOMMENDATION 25 – the Australian Border Force to limit the ability of customs brokerages in making EFT payments of duty and / or GST on behalf of client importers, forcing the cargo owner to provide financial banking data direct to the ABF, to reduce opportunities of identity theft and ‘piggy-back’ illegal imports consignments.

RECOMMENDATION 26 – associated costs for the streamlined cargo intervention model to be borne by the Federal Government and remove the onus on stevedores (and potentially intermodal terminals / depots) from using their own mechanisms to cost recover operational costs against transport operators.

RECOMMENDATION 27 – the STS Taskforce to work with government departments and industry to introduce differential import processing charge payments for Australian Trusted Traders and ‘green lane’ biosecurity participants.

RECOMMENDATION 28 – the STS Taskforce to establish regulatory reform to mandate: terminals and depots to provide a minimum of three days free storage for goods held by government departments; and shipping line detention clock on the return of empty containers to commence once the cargo hold is removed.

1. HIGH-LEVEL VISION FOR THE FUTURE OF CROSS-BORDER TRADE POLICY

Q1. Does the high-level vision for the future of cross-border trade align with the needs of business? What would you prioritise or emphasise? Are any components missing?

STS Priorities

As a general statement, most FTA / APSA members have highly trained staff, sophisticated systems, and processes to adequately interface with other supply chain and regulatory bodies.

Having stated that, member feedback suggests opportunities exist to further improve the operating environment faced by the international trade sector by removing duplication; improving services to industry; ensure compliance and enforcement is aligned with product/risk; and implementation of “*paperless trade*”.

Feedback from the Australian Border Force (ABF) indicates that despite doubling its strike rate in recent years in terms of the drugs they have intercepted (through better technology, targeting and intelligence), wastewater testing cells suggest about 75 to 80 per cent of illicit drugs succeed in getting across the border.

To best contribute views on priorities to reform, industry needs further engagement with STS to understand the full scope (boundaries) of the reforms and the Federal Government’s needs in terms of data requirements, physical screening of cargo and limitations (lifespan) of existing systems.

Interim steps

An opportunity exists to implement incremental reforms via the *Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022*. This legislation amends the Customs Act 1901 to establish a framework to facilitate time-limited trials of trade and customs practices and technologies, with approved entities, in a controlled regulatory environment.

RECOMMENDATION 1 – to ensure continuity and long term implementation of reform, the Federal Government to engage in bi-partisan support to establish the STS as a permanent body.

RECOMMENDATION 2 – the STS Taskforce to complete mapping of current processes / systems and the establishment of an agreed future plan including incremental steps to avoid the “big bang” introduction of systems, processes and / or statutory reform.

RECOMMENDATION 3 – the STS Taskforce to clearly articulate the full scope (boundaries) of the reforms and the Federal Government’s needs in terms of data requirements, physical screening of cargo and limitations (lifespan) of existing systems.

RECOMMENDATION 4 – the STS Taskforce to communicate the opportunities available via the *Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022* to facilitate time-limited trials of trade and customs practices and technologies, with approved entities, in a controlled regulatory environment.



2. SIMPLER RULES

Q2. Which of these regulatory reforms would deliver the most practical benefits for business? Are there other reforms you would recommend we prioritise?

Border controls

As outlined in the FTA / APSA response to question 5 Enabling Paperless Trade, immediate and longer term opportunities exist to simplify import and export permits and related documents.

Trust and risk

As outlined in the FTA / APSA response to question 21 *How might use of digital identification in cross-border trade interactions impact your business?*, a potential immediate solution could be deployed to address a major concern to border integrity in the use of “piggy-back” shipments and identity theft practices.

As also outlined in the FTA submission to the Customs Broker Licensing Review on 19 April 2023, a need exists to allow licensed customs brokers the capacity to operate offshore temporarily and on an ad hoc basis. In a contemporary communications environment with appropriate technology security, this should not increase risk to the ABF as compared to having import declarations lodged in Australia.

FTA assumes the intent of the current licensing condition 7 is to prevent offshore operations completing import declarations on an ongoing basis. FTA suggests that the ABF consider permitting short term lodgement outside of Australia to account for the licence holder/nominee traveling for work. This condition may be restricted to a reasonable period or maximum percentage / number of offshore lodged import declarations.

Service standards

Government departments must engage with industry to set pragmatic service standards rather than work to self-determined standards.

The ABF has a paid subscription service through which it sends businesses their import / export reports, provided via labour-intensive email services. Businesses use these reports to monitor cross-border activities and as a means for reconciliation. The ABF only provides these reports upon request, once every two months. An ability is required to access the import / export data files online to facilitate the ability for businesses to monitor all activities under their ABN.

Aside from facilitating online commercial operations, it will importantly also help businesses monitor any identity theft and “Piggy-backed” consignments illegally lodged under their ABN.

Reporting

A clear opportunity exists to develop messaging between Australia and New Zealand Governments that would facilitate fully digitised messaging for all exports from either country, used to immediately initiate import customs clearance at destination. This would require collaboration on the information requirements for both countries (import / export compliance) consolidated into a single message completed by the exporter in either country. If successful, this model could then be leveraged for both Australian and NZ Governments for other origins/destinations.

To achieve this outcome, a broader compliance strategy would be required to improve the integrity of export data and to align with the ABF and New Zealand Customs Service on the Trans-Tasman Secure Trade Lane (STL) initiative.

Opportunities exist for subsequent expansion to other countries, particularly those that share Free Trade Agreements and Mutual Recognition Arrangements (MRAs) with Australia.

Revenue

Merit is seen in providing a central location for all cross-border related fees and charges (including infringement notices and those that are due periodically such as depot licences or DAFF Approved Arrangements fees) facilitated by contemporary methods of payment.

FTA / APSA note a previous review completed in 2014 by the Department of Home Affairs into Border fees, charges and taxes. This review was limited in scope to a small amount of border related fees and charges and did not include over 50 charges levied by the Department of Agriculture, Fisheries and Forestry (DAFF).

Compliance and enforcement

Compliance and enforcement activities are essential to ensure integrity across the trade system. A fair, consistent, and informed compliance regime will support industry in ensuring higher levels of professionalism are maintained.

RECOMMENDATION 5 – the Australian Border Force to revise licensing conditions to permit customs brokers to short term lodge import declarations from overseas under prescribed circumstances.

RECOMMENDATION 6 – the STS Taskforce to support government departments in engagement with industry to set pragmatic service standards.

RECOMMENDATION 7 – the Australian Border Force to provide online access of import / export reports to approved trade entities.

RECOMMENDATION 8 – the STS Taskforce to oversee trial statutory reporting of fully digitised messaging between Australia and New Zealand.

RECOMMENDATION 9 – the STS Taskforce to complete a review into all cross-border fees and examine opportunities for a streamlined collection methodology.

RECOMMENDATION 10 – the STS Taskforce to engage with government departments and industry to establish and maintain standards for fair, consistent and informed compliance regimes.

Q3. What is your experience in understanding cross-border trade regulation? How accessible do you find this information? How can better guidance on regulatory requirements be provided?

Cross-border trade compliance

Keeping up with ever-changing cross-border requirements when declaring goods for import or export purpose is complex, time consuming and requires knowledge of the numerous measures and laws that apply.

Web-based products exist that deliver sophisticated advanced search functionality across a range of cross-border content and data including law and regulation, Tariffs, and duty rates.

The leading commercial product provides a single window with an integrated Tariff Nomenclature for each country, an ability to search and bookmark thousands of global customs publications, including tariff classifications, legislation, prohibitions and restrictions, Dual Use Goods and Munitions Lists, CITES, Prohibited Imports and Exports, and Dumping commodities.

The libraries also provide Free Trade Agreements in full text, their specific Rules of Origins and Certificate of Origin or Declaration of Origin requirements to assist in meeting due diligence checks before import or export.

Q4. What duplication in cross-border regulation have you experienced? What are the opportunities to streamline?

Export and import trade professionals are faced with the challenging requirements of staying up to date with the latest compliance changes as the government and the various departments continually review and update regulations to balance trade facilitation with border controls.

This requires industry to be constantly learning, changing their operating practices, and regularly engaging with industry and regulatory bodies with significant investment made in leveraging technology and automation tools to streamline processes and ensure compliance with border control.

2.1. ENABLING PAPERLESS TRADE

Q5. What international best practices or models could be adopted or adapted to improve the cross-border trade regulatory environment?

ePhyto

Feedback from APSA members has highlighted a need to develop messaging to support the international standard as defined by the International Plant Protection Convention (IPPC) - ePhyto Solution.



As highlighted in previous engagement with the STS representatives, exporters have been making representation to the Australian government directly and indirectly through industry bodies for many years without any tangible outcomes.

Messaging standards

Create messaging standards that facilitate single file formats that allow multiple government agencies to access information and eliminate the need for an exporter to move information via separate messages.

Direct engagement with exporters

As highlighted in previous engagement with the STS representatives, The NEXDOC experience provided very limited visibility or real commercial value for Australian dairy exporters and now agriculture and meat exporters have very little awareness of the next stage of the project.

RECOMMENDATION 11 – STS Taskforce to oversee standardisation of export messaging standards including the development as defined by the International Plant Protection Convention (IPPC) - ePhyto Solution.

RECOMMENDATION 12 – STS Taskforce to provide a “roadmap” of reform and timelines for initiatives where the status, updates, changes are linked directly to development pipelines - at minimum, focussed quarterly STS project status reports.

Q6. What is your experience with paper-based and electronic records in how you interact in cross-border trade with the Australian Government?

Manual processes

It is evident that DAFF is reliant on labour intensive processes with biosecurity officers physically assessing import documentation and select consignments for further biosecurity action based on the assessment of risk.

The only real progress in the last half-century in terms of document assessment is instead of industry physically presenting documents to a counter, in more recent years these are scanned and sent electronically.

This is in vast contrast to customs processing whereby the same industry participants submit data, using sophisticated systems, and receive automated status responses within minutes.

Simplified Targeting and Enhanced Processing System

The presentation delivered by Senator the Hon Murray Watt (Minister for Agriculture, Fisheries and Forestry) at the *STS Summit* referenced the financial commitment of \$145.2 million over three years from 2023-24 for the Simplified Targeting and Enhanced Processing System (STEPS).

FTA /APSA look forward to further detail on STEPS, described as a modern digital system to improve the effectiveness and efficiency of biosecurity in cargo pathways clearance, and how this aligns with the broader STS strategy.

RECOMMENDATION 13 – the Department of Agriculture, Fisheries and Forestry to engage with industry on STEPS and how it ties in with the broader STS roadmap.

Q7. How many paper-based documents would you transfer between your business and Australian Government in cross-border trade interactions per year? On average, how much time do these processes take?

Systemic problems

As outlined in an independent report completed by the Inspector-General of Biosecurity (IGB) in February 2021, the biosecurity system is not in a strong position to address the diverse and evolving biosecurity risks and business environment expected to prevail through to 2025. *This assessment is based on an examination*

of the systemic problems, including the department's regulatory maturity, its approach to coregulation, inadequate frontline focus, and the absence of an appropriate funding model.'

The release of the IGB report coincided with a meeting between FTA / APSA representatives and the Hon David Littleproud (the then Minister for Agriculture, Drought and Emergency Management) resulting in the Minister producing a media release acknowledging performance failures, outlining necessary proactive initiatives and making the following affirmative statement 'I have asked my department to work with industry groups on other short-term and medium-term system and process improvements, and on setting a global benchmark in biosecurity best practice through co-design.'

Interim measures developed in consultation with industry and deployed by DAFF during 2021 provided a level of relief but was not sustained as they failed to address longer term underlying causes.

High cost to industry

Document assessment and inspection processing times continue to fluctuate resulting in importers, freight forwarders and customs brokers suffering significant delays. This adds considerable costs which include but are not limited to contractual failures in meeting supply commitments and foreign shipping line administered container detention penalties for the late dehire (return) of empty containers.

As outlined in the FTA/APSA response to the Productivity Commission's review of *Australia's Maritime Logistics System*, foreign owned shipping lines do not reasonably consider why there is a delay in returning empty containers. Biosecurity delays are one of many causes of container detention fees that conservatively cost importers \$500 million per annum.

RECOMMENDATION 14 – the Department of Agriculture, Fisheries and Forestry to engage with industry on strategies to move away from reliance on documents / manual assessments to the use of data to automate / streamline risk assessment of import cargo.

Q8. Are there other approaches, instead of MLETR, that would support the adoption of digital solutions and/or transference of electronic records in cross-border trade interactions with the Australian Government?

Despite initiatives such as the IBM and AP Moller-Maersk TradeLens, blockchain-enabled technology has not translated into widespread solutions in the cross border trade sectors,.

To support electronic initiatives and on preliminary review, FTA / APSA see merit in the Model Law on Electronic Transferable Records (MLETR) with alignment to such policies/ solutions as the Department of Foreign Affairs and Trade (DFAT) Digital Trade Strategy as well as the World Trade Organisation (WTO) Cross-border Paperless Trade Toolkit.

Q9. What factors should the Australian Government consider if it were to adopt the MLETR? Are there inter-jurisdictional considerations that should be considered by the Australian Government in looking into whether to implement the MLETR domestically?

FTA / APSA note global standards including those as referenced in *Digital Trade and the WTO: Negotiation Priorities for Cross Border Data Flows and Online Trade in Services*:

- Privacy Standards
- Cybersecurity Standards
- Global digital standards
- E-Commerce related Services Market Access
- Dovetailing New Rule-Making with the WTO System

2.2. ALIGN BORDER REGULATIONS, INITIALLY FOCUSING ON FIT AND PROPER PERSON (FPP) TESTS

Q10. Please describe your experience of the varying levels of administrative burden placed on your business in order to provide the information required to satisfy FPP tests.

The Fit and Proper Person (FPP) checks currently required by multiple government departments controlled via



the Export Control Act 2020, Biosecurity Act 2015, and Customs Act 1901 as examples, can be burdensome due to the varying formats, methods of completion, and accountability of businesses in administering the requirements demanded by each department.

It is further exacerbated because of some businesses requiring obtaining consent for FPP checks from personnel on multiple occasions to satisfy each individual government department they deal with individually, when a business may operate a facility with operations relevant to each of those departments.

Whilst DAFF have some online processes in place for Approved Arrangement applications and the uploading of FPP information, the ABF on the other hand recently announced via Australian Customs Notice (ACN2022/46) a more manual method for obtaining consent for FPP checks (B1555 form).

The lack of standardised formats and methods across these checks can create inefficiencies and increase the administrative burden on applicants, potentially leading to delays and confusion. That in turn may see a business struggle to ensure compliance to conditions leading to breaches, infringement notices, penalties, and potentially cancellation of licence.

Q11. What digital or other opportunities exist to streamline collection of all your requisite FPP information, and would they enable you to integrate possible future FPP monitoring requirements into your business' own fraud and risk management process?

Digital solutions such as online application portals, secure data platforms, and automated document verification can streamline the collection of FPP information. By integrating these solutions, businesses can efficiently gather and manage FPP data, potentially enabling future integration of FPP monitoring into their fraud and risk management processes, enhancing overall compliance and risk mitigation efforts.

Ideally though, the idea of a single body being responsible (such as what is being implemented for Maritime Security Identification Cards (MSIC) by way of a single issuing body) has merits as it ensures consistency.

Q12. Would you support your FPP test information being shared between relevant agencies and, if so, would there be any concerns or risks you'd want to see mitigated?

Support for sharing FPP test information between relevant agencies would depend on the specific context and safeguards in place. Concerns or risks to mitigate may include ensuring data security, protecting privacy, establishing clear guidelines for information sharing, and implementing oversight mechanisms to prevent misuse or unauthorised access to sensitive FPP data.

As in most cases staff do voluntarily provide consent to fulfil their roles, an assumption can be made that the staff would also consent to sharing the data within other departments within the industry if safeguards to ensure data security and protection of privacy were ensured.

It is essential that any revised process streamlines processes and does not add any additional layers of bureaucracy.

RECOMMENDATION 15 – the STS Taskforce to engage with industry to: streamline and harmonise Fit and Proper Person (FPP) across government departments; explore the opportunity and benefits of a single government body to manage FPP; and establish parameters and safeguards for FPP sharing across whole of government.

2.3. REDUCING THE COST OF ENGAGING IN CROSS-BORDER TRADE

Q13. How can we reduce the cost of cross-border trade administration?

Cost reduction of cross-border trade administration can be achieved by simplifying and harmonising documentation / data transmission, implementing / enhancing electronic systems, enhancing cooperation and data sharing, standardising customs procedures, investing in infrastructure and logistics, and promoting trade facilitation agreements. These efforts aim to streamline processes, minimise paperwork, expedite clearance, and improve overall trade efficiency.

By way of example, the current Australian Trusted Trader “Duty Deferral Plus” benefit has a limitation of a “lock

down” period between the 16th and 21st of each month. During this period those Full Import Declarations cannot be accessed for purposes of amendment or withdrawal.

Integrated Cargo System (ICS) functionality requires enhancement to remove this limitation that causes delays in the release of cargo if data requires amendment.

This could potentially be addressed if Full Import Declarations were provided periodically instead of the current per consignment basis. Consolidated monthly reporting would save industry significant time and expense (similar to the Australian Taxation Office Business Activity Statement reporting methodology).

It is noted that the ABF is exploring the concept and feasibility of Trusted Trader 2.0, which can look at things including cyber security and green initiatives among its Australian Trusted Trader Program members. Trusted Trader 2.0 will potentially offer a more tiered approach which better recognises “gold standard” traders versus those that are still working towards that outcome.

Q14. How can information on the tariff concession system be more accessible and what are the opportunities to simplify the tariff concession system?

After extensive engagement with members, FTA has prepared a detailed paper on numerous aspects of the tariff concession system and opportunities to improve associated processes – refer to the Appendix to this submission.

RECOMMENDATION 16 – additional benefits to be provided to Australian Trusted Traders by enhancing Full Import Declaration functionality by removing “lock down” periods and the introduction of periodic declarations.

RECOMMENDATION 17 – the Australian Border Force to engage with industry to reform the tariff concession system (TCO) addressing TCO applications; late communication; Tariff classifications; concurrent TA and TCO applications; Tariff classifications of TCOs to operate as a Tariff Ruling; TCO wording; amendments of TCO wording by TARCON; strict compliance; objections to TCOs; information requirements in making a TCO objection; revocation of TCOs; impact of TCO revocation and reissue on refunds; and Tariff decisions by Refunds and Monitoring Officers.

2.4. TRADE BORDER CONTROLS

Q15. Are there any border controls that you consider have a high regulatory burden on your business?

Level playing field

FTA/APSA has been made aware by members of adverse competition factors generated by the Cheese and Curd Quota System. In essence, those importers privileged to have access to the quota system may import produce free of duty, providing a significant commercial advantage over those denied access.

While the arrangement was no doubt implemented for good reason, FTA is particularly interested in understanding the rationale and whether the same parameters are relevant today.

This concern was tabled by FTA at the Trade Facilitation Initiatives Working Group (TFIWG), chaired by the ABF, on 23 February 2023 in context of the standing agenda item of the Border Permits Review. Follow up correspondence was sent to the TFIWG chair and DAFF executives highlighting that information on the quota system is scarce, seeking any relevant information as to how the system is enforced, the impact it has had on local cheese producers, and any potential changes or updates that are being considered.

Whilst the quota system would potentially become redundant with the implementation of a free trade agreement with Europe, recent media suggests that such a trade liberalisation measure may take considerable time, if ever, before delivering benefits.

High Volume Specialist Operators (HVSOs)

High Volume Specialist Operators (HVSOs) focus on servicing the international movement and cross-border clearance of personal house-hold effects. Current statutory reporting processes administered by both the ABF and DAFF are labour intensive (both for industry and government) and accordingly, attract expensive



government cost recovery fees.

Recent changes introduced by DAFF in terms of dealing with a “part release” has added further inefficiencies. HVSOs could previously deconsolidate a consignment and separate items requiring DAFF inspection and potential washing / treatment. The remainder of the consignment could be released.

A recent administrative change prevents this from occurring meaning that the consignment can only be released once all items have been inspected and / or treated. This adds to delays in releasing cargo and significant additional costs for the storage of goods.

To generate further operational efficiencies, a need also exists to digitise the current Unaccompanied Personal Effects Statement (B534 Form) to facilitate a declaration from the owner of the personal effects.

RECOMMENDATION 18 - the Department of Agriculture, Fisheries and Forestry to engage with industry to change the access terms or potentially repeal the Cheese and Curd Quota System to ensure the importers operate on an even commercial basis.

RECOMMENDATION 19 - the STS Taskforce to conduct a focussed review to re-engineer process, legislative and systems functionality in dealing with cross-border clearances of personal effects.

Q16. How many border controls would your business typically interact with? Please identify the impact of border controls on your business.

Licensed customs brokers are required to perform and operate to the conditions of a nominee with eleven standard conditions and a further 7 listed. As one member summarised “you perform the role of detective, administrator, operator, facilitator, and customer service all within a single profession”. Customs brokers are required to perform an extensive assessment of each shipment, considering guidelines from 29 government departments, and reviewing more than 200 regulations and legal acts.

In the one full import declaration (FID), a customs broker is expected to review and navigate a multitude of regulatory aspects, taking direction from at a minimum the Biosecurity Act 2015, Customs Act 1901, Customs Regulations (International Obligations) 2015, Customs (Prohibited Imports) Regulations 1956, Customs Tariff (Anti-Dumping) Act 1975, a specific Free Trade Regulation and Agreement, GST – A New Tax System (Goods and Services Tax) Act 1999. That being seven legislative acts and regulations for the most basic of customs declarations.

Putting this into perspective, the ABF estimates that cross-border information duplication alone costs Australia \$431 million a year.

Considering the limited number of licensed customs brokers in Australia (less than 1620), this places immense pressure on a profession facing a decline in numbers while trade volumes continue to rise (the ABF projects a 70% increase in cargo imports over the next decade).

Fundamentally, all border controls impose a high regulatory burden. Every aspect of the job, from document management to audits, classification, valuation, and quarantine, has become more burdensome, hindering the flow of goods across the border.

Each step in the lodgement process carries significant compliance risks, as any mistake can lead to penalties, higher audits, increased charges, cargo clearance delays, or even loss of the nominee broker’s license. Minor issues result in financial burdens for both customs brokerages and their clients. Many non-operational brokers have left the industry due to excessive regulation, an ever-changing compliance environment, high demands, stressful work conditions, and inadequate compensation. The government must address the need for advancements that reduce the regulatory burden while acknowledging the commercial realities faced by operational customs brokers.

The primary platforms include the Integrated Cargo System (ICS), commercial software systems that interface with ICS, and the Cargo Online Lodgement System for Quarantine (COLS).

However, the interaction between private industry and government departments through these systems is limited. This often creates challenges when standard operating procedures do not align with specific situations that arise. Industry relies on a range of systems and resources to ensure compliance with various regulations,

including those related to biosecurity, customs, controlled substances and restricted goods, tax systems, money laundering, trade compliance, sanctions, trade remedies, export controls, intellectual property, imported foods, environmental regulation, and anti-dumping measures.

Inefficient border controls lead to delays, increased lead times, additional overhead costs, loss of competitiveness, compliance challenges and penalties, inefficient trade practices for service providers and clients, and supply chain disruptions at both domestic and international levels. These issues can have significant economic implications, including increased costs of doing business in Australia, the retraction of small to medium enterprises, shortage of available products, reduced foreign investment, lowered consumer confidence, and a challenging economic environment to operate in.

RECOMMENDATION 20 – the STS Taskforce to assist peak industry bodies in obtaining government funding to promote the trade sector to the employment market to meet the supply of personnel in roles such as (but not limited to) licensed customs brokers.

Q17. Are there any specific border controls that could be streamlined?

Digitising border control processes

Digitising border control processes through automation and electronic data exchange can minimise paperwork, errors and accelerate processing and facilitation times. The simplification of documentation requirements leads to the reduction of unnecessary paperwork, saving time and resources for all stakeholders involved within the supply chain.

Encouraging industry collaboration and information-sharing programs would enhance the working relationship between the government and the private sector. The development of continuous improvement and feedback mechanisms leads to a symbiotic partnership, which can drive the development of streamlined systems, reform regulatory compliance, and align with the current commercial realities of the industry. Overall, these streamlined measures would improve efficiency, reduce regulatory burden, and create a more conducive environment for trade facilitation.

Benefits for highly compliant traders

Government departments need to further enhance their targeting to ensure that traders with a demonstrated high level of compliance receive greater relief from physical inspections or audits.

This will result in decrease in delays with less shipments being held at the border, reduce compliance costs, make stock available quicker for customers and give businesses' certainty with their planning. Importantly it will also allow government to better utilise limited resources.

A specific example of how this can be applied would be to reduce the number of inspections of containers for which businesses have valid fumigation certificates issued by DAFF authorised fumigators. During the Brown marmorated stink bug (BMSB) season, DAFF will still inspect a certain proportion of shipments even if there is a valid fumigation certificate. To improve efficiencies this percentage could be reduced for highly compliant businesses..

Environment, Social - Governance

It is increasingly evident that both the government and industry need to take a strong and proactive approach to tackle the challenges of climate change and address standards for responsible border waste management.

Working together an aim exists to create a circular economy based on the principles of eliminating waste and pollution, circulating products and materials at their highest value and regenerating nature.

RECOMMENDATION 21 - the STS Taskforce to facilitate a review of government department targeting to ensure that traders with a demonstrated high level of compliance receive greater relief from physical inspections or audits.

RECOMMENDATION 22 - the STS Taskforce to facilitate a review of Product Stewardship statutory requirements and collaborate with industry to mandate “best practice” arrangements across end-of-life waste products.



3. MODERN DIGITAL SYSTEMS AND PROCESSES

3.1. TRADE SINGLE WINDOW (TSW)

Q18. What global best-practice examples of digital improvements might be relevant in the Australian context?

Pre-load cargo reporting

By way of background, during the 1990s, Australian Customs was a leading global border administration requesting 'pre-arrival' cargo reporting to be provided electronically via legacy systems Air Cargo Automation (ACA) and Sea Cargo Automation (SCA).

The transition to the imports phase of the Integrated Cargo System (ICS) in October 2005 maintained this same requirement under Sec 64AB of the Customs Act.

An extensive joint Customs and industry review was conducted in 2007 to examine the potential to follow the US 7+1 cargo reporting requirements to be provided 'pre-load'.

This did not progress at the time due to complex design requirements and a somewhat understandable requirement to have systems stability (minimal systems changes) following the flawed ICS imports implementation.

Since this time, many Customs administrations globally have implemented a 'pre-load' model. The most recent notable development is the European Union (EU) deployment of the Import Control System2 (ICS2).

Impacts on industry and government departments

In 2018, FTA provided Customs (via its Compliance Advisory Group) insights into reasons why industry falls short of 100% in the timely supply of this critical data (required as the first line of risk assessment), noting the only way to achieve consistent timely reporting would be to implement a 'pre-load' model – if cargo is not reported it is does not get loaded.

During 2021, engagement between DAFF and FTA members / representatives examined causes of 'late' declarations submitted by importers / customs brokers. Feedback from members was that one of the reasons for late reporting was the need to wait for the cargo report to be lodged by the shipping line / freight forwarder noting that the import declaration must match with the cargo report on critical data fields (including vessel / voyage).

While an importer or customs broker may have consignment details (in some cases weeks) in advance of arrival, they may not know the import vessel details until much later - particularly in the common circumstances where the cargo is being transhipped between vessels before arriving in Australia.

RECOMMENDATION 23 – the Australian Border Force to engage with industry on implementation of a pre-load cargo reporting regulatory model and systems implementation.

Q19. What are the priority improvements from a whole-of-government digital services perspective you would see delivering early benefits to business?

Systems implementation

A significant lesson was learnt from the ICS imports' phase implementation in 2005, not to introduce reform with a 'big bang' approach. This flawed introduction brought cargo movement to a grinding halt and caused gridlock at ports and airports. It took many months of "workarounds" and contingency processes to ensure any form of structured business continuity.

Industry requires predictability and regular engagement to ensure that any reform is phased, thoroughly tested and meets user requirements.

3.2. ENTITY MANAGEMENT AND DIGITAL IDENTITY

Q20. Do you or your business currently use services like myGovID for digital identification?

Digital Certificates

FTA/APSA see a need to move away from Digital Certificates mandated for the use of the Australian Border Force (ABF) Integrated Cargo System (ICS) to standardise identification and the digital agreement of terms and conditions in line with other government departments.

To interface with the ICS, users must have digital certificates for servers (Gatekeeper Device Certificate) and individuals (Standard / Manager Gatekeeper Certificates). This appears to be dated (and expensive) technology, first introduced in 2004 as a part of the exports phase of the ICS implementation and the then new use Internet protocols.

As it stands today, there is a monopoly supplier of digital certificates and a high cost of purchase / renewals.

By way of example of the rapid increase in pricing, Gatekeeper Manager Certificates with a 2 year validity has seen the following increases:

2015 \$126.50

2017 \$209.00

2019 \$299.00

2022 \$360.00

The most recent increase (announced in December 2021) is outlined in the below table:

Certificate Type	Previous Price	New Price
Gatekeeper Manager Certificate – 2 year validity	\$299.00	\$360.00
Standard Gatekeeper Certificate – 2 year validity	\$275.00	\$330.00
Gatekeeper Device Certificate – 2 year validity	\$800.00	\$960.00

These Digital Certificates are being used for communications to the ICS only and no other Federal Government application used by the international trade sector.

RECOMMENDATION 24 – the Australian Border Force to phase out and replace the use of Digital Certificates with a more contemporary, cost effective and a whole of government approach to data integrity.

Q21. How might use of digital identification in cross-border trade interactions impact your business?

Strengthening the supply chain

During industry consultative forums, the ABF has articulated that verification of identity is an essential aspect of establishing trust; suggesting the focus is on a robust use of technology to harden the use of identity to strengthen the supply chain.

A major concern to border integrity is the use of ‘piggy-back’ shipments and identity theft practices.

A relatively simple and ease of implementation solution could potentially be to change the Integrated Cargo System (ICS) functionality, limiting the ability of customs brokerages in making EFT payments of duty and / or GST on behalf of client importers, forcing the cargo owner to provide financial banking data direct to the ABF. This data in turn can be used for risk assessment and identity verification.

RECOMMENDATION 25 – the Australian Border Force to limit the ability of customs brokerages in making EFT payments of duty and / or GST on behalf of client importers, forcing the cargo owner to provide financial banking data to reduce opportunities of identity theft and ‘piggy-back’ illegal imports consignments.



4. CROSS-BORDER TRADE DATA SHARING

Q22. Does the Framework reflect your views of how the Australian Government should approach improvements to the collection and use of cross-border trade data?

Integration of government systems

An opportunity exists to evolve and integrate government departments' systems without the need to replace each of them into a TSW.

As identified in the STS consultation paper, global experience shows that regular, iterative improvements that deliver ongoing benefits to business, and enable industry to transition to new processes and systems without adverse impacts, is the best approach.

FTA/APSA see merit in a *Cross-Border Trade Data Sharing Framework* as outlined in the STS consultation paper.

Q23. Are there benefits or concerns with the sharing of data collected by trade agencies beyond government to facilitate trade (e.g. with foreign governments or third parties that facilitate trade, such as financiers)?

Data sharing

FTA/APSA has concerns in terms of the sharing of data beyond government departments. Without dismissing the concept outright, extensive industry engagement would be required to weigh potential benefits against risks.

5. STREAMLINING THE CARGO INTERVENTION MODEL

Q24. What benefits might Australian businesses see from a streamlined cargo intervention model? What data can you share with us about your experience with the current model?

Purpose

FTA understands from previous engagement with Australian Border Force (ABF) and STS representatives over several years that the aim of this initiative is to develop new intervention models for sea and air cargo to enhance the detection of threats and risks and maintain the integrity of the border.

While a broad vision would see real-time screening as cargo is brought onboard ships and aircraft, a more immediate and pragmatic approach is being examined in using automation and innovative non-intrusive technologies embedded into domestic logistics operations.

The current Container Examination Facilities (CEFs) deployed by ABF at major containerised seaports are now out-dated, necessitating reform.

The alternate proposed sea cargo model includes:

- continuation of 100% profiling / risk assessment against cargo reports / Full Import Declarations (or a variation of the reporting models into the future);
- on a risk assessed basis, an increased percentage on today's levels (to be advised) to be scanned on-site at stevedore facilities; and
- on assessment of images, a percentage (to be advised) to be transported to a site within the port precinct for ABF and / or DAFF examination.

Preliminary concerns raised from industry appear to be in terms of the 'footprint' required at stevedore premises for scanning and limited availability of separate sites within port precincts for the physical examination of goods within containers (assuming larger facilities are required above and beyond current CEF sites).

Q25. What opportunities do you see for industry collaboration and involvement in co-design of the cargo intervention model?

Intermodals and off-airport scanning

FTA/APSA see significant merit in using rail scanning technology with the potential of 100% x-ray of containers going to/and from intermodal terminals. Understandably, previous ABF/DAFF feedback outlined concerns for the need to then establish multiple examination facilities and / or a reliance on mobile examination solutions. FTA/APSA see an opportunity to progress this initiative by limiting the scanning deployment to facilities with a prescribed minimum throughput.

FTA/APSA see this as requiring immediate consideration as many of the facilities are in a final design phase and could incorporate needs within these 'green-field' sites.

A similar model was suggested during the discussion on air cargo with the potential to 'carve out' air cargo consolidations moving to express courier facilities and to high volume freight forwarder depots.

This would ease congestion at on-airport cargo terminal operations (CTOs) with scanning to be completed off-site under strict underbond conditions. The proposal has merit as a means of keeping these airport gateways free of congestion and to keep cargo moving. While new 'green-field' sites such as Western Sydney Airport offer new modelling opportunities, legacy facilities were not intended and built (fit for purpose) for deconsolidation and to do so will likely introduce OHS issues amongst others.

Like the suggestion to scan at intermodals for sea cargo, this proposal for air cargo appears to be the only viable solution to meet the government's mandate for increased intervention. FTA/APSA look forward to further engagement with ABF/DAFF on this concept to deliver pragmatic solutions.

Q25. What opportunities do you see for industry collaboration and involvement in co-design of the cargo intervention model?

Costs

FTA/APSA noted that any associated costs for these processes must be borne by the Federal Government and remove the onus on stevedores (and potentially intermodal terminals / depots) from using their own



mechanisms to cost recover operational costs against transport operators. FTA/APSA have provided extensive evidence to the Federal Government that stevedores currently charge exorbitant Terminal Access Charges with industry having no means influence service or price.

Should the Federal Government opt to recover costs from industry, this would no doubt require further industry consultation. Assuming the cost recovery will be collected from importers via the Import Processing Charge (IPC), FTA/APSA see merit in the introduction of a differential (lower) payment from Australian Trusted Traders and 'green lane' biosecurity participants that presumably require a lesser level of intervention.

Regulation

The amount of cargo directed for screening and examination must be directly proportionate to the availability of ABF/DAFF staff. Where consequential delays will occur, ABF/DAFF should have guidelines and business processes in place ensuring only consignments about which there are known alerts / intelligence. There should be a time limit within which cargo must be released for trade facilitation and to maintain the covert integrity of processes.

FTA/APSA also note the current CEF arrangements whereby stevedores allow at least one day's free storage from the time the container is cleared and returned to the stevedore. FTA/APSA is of the view that a similar arrangement (preferably offering 3 days free storage as per normal commercial practices) be maintained and extended to any licensed premise handling underbond goods (sea and air cargo).

Shipping lines also charge container detention penalties for delays in the dehire (return) of empty containers to nominated locations. This is generally 7 to 10 days from the time of container discharge / advertised availability. FTA/APSA see a need to provide importers with protections, via regulation, to ensure the 'detention clock' commences from the time cargo is cleared from border / biosecurity intervention.

RECOMMENDATION 26 – associated costs for the streamlined cargo intervention model to be borne by the Federal Government and remove the onus on stevedores (and potentially intermodal terminals / depots) from using their own mechanisms to cost recover operational costs against transport operators.

RECOMMENDATION 27 – STS Taskforce to work with government departments and industry to introduce differential import processing charge payments for Australian Trusted Traders and 'green lane' biosecurity participants.

RECOMMENDATION 28 – STS Taskforce to establish regulatory reform to mandate: terminals and depots provide a minimum of three days free storage for goods held by government departments; and shipping line detention clock on the return of empty containers to commence once the cargo hold is removed.

Tariff Concession Orders

1. TCO applications

The power to make Tariff Concession Orders (TCOs) is contained in Part XVA of the *Customs Act 1901*. The “core criteria” that must be met for a TCO application to succeed are the subject of s 269C:

“For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business.”

The meaning of the expressions “*substitutable goods*” and of “*produced in Australia*” and of “*in the ordinary course of business*” are defined in subsequent sections.

Correspondence received by the applicant enables them to chart the progress of their application. Such correspondence includes an email acknowledgement where TCOs are lodged by email and a second email containing the application reference; a follow up letter about 28 days later confirming that the TCO is accepted and its gazettal date; and notice that the TCO has been made or rejected or that an appeal has been received.

In relation to the latter, industry would request advice regarding objections to a TCO application at the time of receipt of the objection, rather than waiting for the end of the gazettal period, which may be seven weeks later.

Late Communication

Once a TCO application is lodged, the Australian Border Force (ABF) have 28 days to either accept or reject it. If it is not accepted within that period, the legislation provides that it is deemed to be accepted.

Part of this initial process is that the proposed tariff classification of the TCO is reviewed by the National Trade Advice Centre (NTAC). This takes place before the TCO section process the application. Given that TCO acceptance is often very close to the 28 days and customs brokers and presumably officers are put under pressure in relation to proposed changes to wording as a result, is it possible for the two areas to complete their tasks at the same time so as to allow time to either discuss amended wording or seek data from overseas? According to the 2015 ANAO reports, there are only about 900 TCO applications lodged in a year and about 80% of them are successful. In addition to that 300+ TCOs are revoked

A TCO application should not be rejected because discussion is required if there is insufficient time because the customs broker is contacted so late. Note, that there is no referral to AAT if the application is rejected. Another TCO application must be lodged, which will not be possible if goods have arrived.

The application process for TCOs and the time frame is prescribed in the Act. It is understood that responses must be provided within a given time frame. In general, however questions are referred back to the applicant within the last few days of the 28-day screening period, which severely impacts upon the applicants existing workload, ability to respond and/or seek further information as required from the importer/overseas manufacturer.

Recommendation:

1. **The ABF have internal KPIs to ensure that applicants are not disadvantaged by late requests for information by the ABF, with such late requests being suggested as any past 21 days after lodgement.**
2. **We further recommend that where amendments to wording are suggested that the change is clearly notified to the broker as a comparison to proposed wording.**
3. **Further, where wording is changed by the ABF and later deemed to not cover the subject goods, that the ABF revoke and reissue the TCO to correctly reflect the proposed coverage in the application.**



Tariff Classification of TCO applications

A TCO must be accepted or rejected within the 28-day internal screening process. It is common to receive requests for information or clarification late in this time frame, with only a few days in which to respond. Given that manufacturers and suppliers of overseas goods are in different time zones this is frequently very difficult and places an unfair burden on parties because of shortfalls in ABF staffing / processing.

The FTA also receives many complaints that requests received for further information, including pictures, drawings and flow charts, are received from NTAC when that information has already been submitted with the TCO application. Both the ABF and the customs broker have priorities to consider in the current environment. Both have a role to fulfil, however with the customs broker having sought and provided the information, it should then be the responsibility of the ABF to review it before issuing queries, especially where relevant information is highlighted or referred to in correspondence. Industry is happy to discuss and clarify information provided, but that should be the limit, especially where many questions appear to indicate that the information already provided has not been reviewed.

Recommendation

The TCO branch be provided with additional resources allowing for its own “internal” tariff officer/s to ensure adequate and timely reviews of the tariff classification applicable to TCO applications.

This would also enable the applicant sufficient time to submit further literature or product data within legislated timeframes, with a view to reducing rejections because the Tariff Officer cannot determine the classification within the prescribed time.

2. Concurrent TA & TCO applications

Applicants are required to propose generic TCO wording that describe the goods in terms of their physical characteristics. TCO section support that view.

Where an existing TCO is in place the costs for a client are less, however, if a TA is required, perhaps because of the value of the consignment or client instructions, then given the time taken to process a Tariff Advice by the ABF, it is not always feasible to await the outcome of the TA and a new concession application may therefore be required. This is because TCOs must be operative as at the date the goods are entered for Customs. Most importers are not proactive and consider applying for a TCO only in the time leading up to goods arrival. Given the speed of airfreight and the 5-10 days transit time from Asia by seafreight, not much more time is available in many cases. The ABF do not acknowledge this.

The identification and then use of an existing TCO is reliant upon IDM being received from the client sufficient to lodge a TA to confirm tariff classification and then compliance with the TCO. This timing is not generally within the control of the customs broker / applicant.

Recommendation

The ABF accepts that as a result of processing delays and fast shipment times it is sometimes necessary to lodge TAs and TCO applications for goods at the same time and that such actions be permitted.

3. Tariff Classification of TCOs to operate as a Tariff Ruling

The ABF suggest that prior to lodging a TCO application, applicants should obtain a Tariff Advice (“TA”) to determine the tariff classification of the subject goods. A TA is, in brief, an administrative system of the regulator that provides certainty in tariff classification and protection from penalties. It can be relied upon until withdrawn, provided full and correct information is provided with the application.

The current turnaround time for TAs is about 30 days from lodgement, but this timing may be significantly extended on occasion by NTAC’s workload / staffing limitations. If an appeal is necessary, the review may take 6 months or more. The time frame between making application for a TCO and its finalisation is then a further 3-

6 months. Suggesting TAs be submitted prior to lodgement of application for TCO is not therefore either commercially viable or realistic.

Recommendation

1. **The Freight & Trade Alliance (FTA) suggests that the confirmation of a given tariff classification on a TCO application should have the same regulatory standing as a decision on a Tariff Advice, particularly as the same Tariff officers undertake both tasks. It is difficult for industry to accept, as claimed, that Tariff Officers give less time and effort to one type of tariff classification over another given the importance of correct classification.**
2. **Further, we suggest that as the Delegate has accepted the TCO wording the TCO when made should then be deemed to apply to the subject goods and operate as a Tariff Ruling. This is especially important in the refund application process when further duplication of effort is often unnecessarily required in satisfying Refunds section that the TCO applies.**

This also prevents later redline or monitoring audits determining that the tariff classification and/or TCO nominated does not apply to the subject goods. In this circumstance the goods can have the shortpaid duty called up and the importer can therefore be subject to significant penalties.

Incorrect tariff classification decisions also have the following effects:

- (a) Duplication of efforts and/or creation of additional TCOs
- (b) Rekeying of TCOs to correct tariff classification.
- (c) Additional work for TCO section and industry
- (d) Additional costs to industry
- (e) Incorrect tariff information reported to the Bureau of Statistics
- (f) No protection to the importer as the tariff classification given or confirmed by the ABF does not operate as a TA. This is especially the problem when a change made by NTAC to the tariff classification on a TCO application is later determined to be incorrect by a monitoring team or red line lodgement.

4. TCO wording

The role and expertise of the TCO section is in the use of the TCO system, which includes the wording of the legislated instrument.

It is therefore of ongoing and serious concern to industry that the staff of the NTAC still suggest amendments to the wording of a proposed TCO and that amendment is then accepted by TCO section. NTAC's role we are told is tariff classification, which is a separate skill to the next step of drafting or interpreting a proposed TCO wording. If NTAC are as busy as we are advised, then this additional task should cease.

Industry remains concerned at the level of training in tariff classification, experience in and understanding of commercial matters, and the use, interpretation and application of TCOs of some NTAC officers.

Recommendation

1. **That NTAC be again advised that the application of proposed TCO wording is the responsibility of TARCON, not NTAC.**

5. Amendment of TCO wording by TARCON

It is accepted by Industry that having lodged a TCO application the ABF Tariff Concession section (TARCON) will then attempt to change or amend that wording in some way. These amendments often appear irrelevant and/or unnecessary and are generally regarded by industry as for error recording for justification.



APPENDIX - Continued

Recommendation

If it's not broken, and is legal, don't fix it. It takes industry time to review suggested amendments and refer them to importers/ overseas manufacturers for acceptance and with commentary as required.

Further, careful review of any suggested amendment to the wording is also generally required as it is not uncommon for such suggested amendments to change the meaning of the TCO and thereby exclude goods for which the coverage was sought.

6. Strict compliance

TCOs must STRICTLY describe the goods as imported but what is a "strict" description has become fogged since the decision in Toro. As in this case, the ABF interpretation of TCOs and the wording or expressions used changes over time, which means industry can be uncertain of coverage or clarity, especially given AAT decisions over the last few years. ABF staff changes and rotation also mean that the history of some matters is lost within the Department.

For example, in the past many TCOs written used the term "comprising" followed by a non-exhaustive list of components. When made, these TCOs were phrased this way at the direction of an officer of Customs and/or the then TCO guidelines, as well as Manual 13 (TCO wording). Industry remains concerned that existing TCOs expose users to post or penalty action resulting from any changes in practice by the regulator.

For example, in *Becker Vale Pty Ltd v Chief Executive Officer of Customs* [2015] FCA 525, Yates J cited Toro and proposed that this reasoning supported a construction of "comprising" that exhaustively states the essential components".

In reading the decision in *Becker Vale* TCOs must include a full description, and this full description must include the components".

Recommendation

- 1. The FTA seeks further guidance from ABF as to what are considered to be "essential components" by the regulator, given the ongoing confusion caused in industry by AAT decisions, and the regulators actions in monitoring audits and in TCO wording. We note here that the Administrative Appeals Tribunal (AAT) exists to provide a merits review of an administrative decision. Its role is to consider afresh the facts, law and policy relating to that decision. It affirms, sets aside or varies the decision under review. Its decisions are however NOT PRECEDENT and relate only to the merits of that case. Such a decision does not bind later AAT decisions. Indeed, one wonders why the regulator chooses therefore to follow only one case (Toro) when the majority of decisions in these matters support the "more than" principle.**
- 2. ABF monitoring officers appear to target companies using TCOs if they consider that the TCO does not fully describe the goods according to current requirements. A full description of the goods is of course a requirement of the application under s.269H but the interpretation of what is a "full description" has changed, Examples include a glass candlestick with a small decorative brass band around it not being eligible for a TCO for glass candlesticks because the candlestick was both glass and brass. Another example is brake motors. These are motors with brakes. They are still a motor, but existing TCOs do not in general also specify the "brake" and so we understand imports have been refused TCO coverage. Does it then follow that a motor with a gearbox is also not eligible for TCOs for motors? The Legal Notes to the Customs Tariff Act 1995 specify that the motor and gearbox are to be classified as a motor. The ABF have in the past advised that in this instance as the electric motor had a gearbox attached it was in fact more than the full description of the goods in the TCO and the TCO would then not apply.**

Until the decision in Toro, TCOs that properly described goods that were "more than" as described were accepted as being covered provided that the essential nature of the subject goods was as described and of course did not change the tariff classification of those goods. This is no longer the

case, and our opinion is that it exposes many companies, including the original applicants for concessions.

3. **As long as industry has clear, concise and consistent Guidelines it can meet regulatory needs. What is of concern to industry is where Guidelines change, and no formal advice of change(s) is issued or in relation to those which are given these lack clarity and understanding.**

7. Objections to TCO applications

While we are assured that the ABF visit potential Australian manufacturers it is reasonable to suppose that the officers lack both accounting training and the technical expertise to differentiate one machine's capabilities or functions from another. No details are provided as to how often this occurs. No details are provided of the appellant until the revocation decision is gazetted, and we understand that this may not always occur.

Recommendation

We therefore request that the previous practice of notifying industry of the objector be included in the gazette notification as per earlier practices.

"Simple Assembly Operations" are excluded from grounds for objecting to/revoking a TCO vide s.269D (3) (d). We suggest that guidance be provided on the meaning of this term. It is some members' experience that some companies who appear to only assemble imported components leverage this piece of the legislation for competitive and commercial advantage over other industry sections and competitors.

8. Information requirements in making a TCO objection.

It is onerous and costly for companies lodging numerous objections or revocation requests to provide costing information and examples of sales invoices for each request.

Recommendation

Once the information is provided the ABF systems should allow them to use information on pricing and manufacturing costs from earlier submissions and within a prescribed time frame, rather than requiring new data each time.

9. Revocation of TCOs

Over the last few years, the ABF has initiated the revocation of many TCOs. Many of these older revocations were because a more generic TCO was available that was deemed to cover the goods. This appears to be in conflict with the guidelines in Toro that a "full description" must be provided.

Recommendation

We seek clarification on the divergence between NTAC interpretations of TCOs as against the TCO section.

We understand that the NTAC are very narrowly applying TCO's with a heavy reliance on the Toro case that advises *"To fit the TCO description precisely means that the goods must have no more or no less of the characteristics set out in the description"*.

Clarification is required, as interpretation of TCO wording is proving challenging for industry given these anomalies.

10. Impact of TCO revocation and reissue on refunds

ABF current policy is that if a TCO is revoked under s.269SD (1AA) no replacement TCO need be made and if it is, it need not be from the operative date of the revoked TCO.



APPENDIX - Continued

The objective of the Tariff Concession System was stated in *Vestas - Australian Wind Technology Pty Limited and Chief Executive Officer of Customs [2015] AATA 348 (21 May 2015)* as “*It is now more accurate to say the object of the systems is to ensure that industry is not taxed by a tariff where it is serving no protective function. It is clear from s 269C and its place in the scheme of Part XVA, that Parliament has decided that a tariff serves no protective function where there are no goods serving similar functions, and so no substitutable goods, made by Australian industry in the normal course of business.*”

Industry therefore queries why the practice of revoking and reissuing TCOs under s.269 SD (2) changed, thereby denying refunds to legitimate importers of goods in conflict with the stated intent of the TCO scheme?

s.269SD (2)

(2) *If the CEO is satisfied that:*

- (a) *because of an amendment of a Customs tariff; or*
- (b) *having regard to a decision of a court or of the Administrative Appeals Tribunal; or*
- (c) *having regard to **written advice on the matter** given by an officer of Customs;*

the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO has not, with effect from a particular day, applied to those goods, the CEO must:

- (d) *make an order revoking the TCO with effect from that day; and*
- (e) *make a new TCO in respect of the goods with effect from the revocation.*

(4) *The particular day referred to in subsection (2) may be the day on which the TCO that is revoked came into force or a later day.*

Recommendation

That replacement TCOs be operative from the operative date of the revoked TCO where legislative (not policy) provisions permit, such as where typographical errors have been made.

11. Tariff decisions by Refunds and Monitoring Officers

A customs broker’s involvement in monitoring audits generally occurs once their client is notified of such action or, if they do not tell the customs broker, being sent a copy of the audit report or draft report by the client. (A customs broker can however also be audited)

Monitoring audits have a purpose, but the officers often have relatively little training in tariff and in general no technical expertise in the industry reviewed. They are, however, under current guidelines empowered to issue what amounts to a formal classification decision on the tariff classification of goods and/or the application of a particular TCO. The only response to this is to reply with an appeal to Tariff. This is unsatisfactory and the industry remains concerned about the conduct and independence of such reviews and the validity of some decisions made.

Recommendation

- 1. That NTAC be the only ABF section empowered to make formal tariff classification rulings.**
- 2. That a TCO having been made for nominated goods and a refund application lodged for the same goods be sufficient evidence that the TCO applies to the goods, provided TCO IDM is provided.**