Minutes

Trade and Goods Compliance Advisory Group (CAG)

Meeting Four – Thursday 8 December 2016
Canberra, Australian Capital Territory

List of organisations represented is located at Attachment A.

Meeting commenced at 10:30am.

Agenda Item 1 - Welcome and introduction
Led by acting Commander, Customs Compliance Branch (CCB) - Australian Border Force (ABF)

- The members were welcomed to the fourth meeting and final meeting of the year for the CAG.
- The members were thanked for taking time out of their busy schedules and that the ABF appreciated the efforts of industry members.
- The members were advised that as per communication prior to the meeting, the ABF would be seeking nominations for the six non-industry association positions on the CAG.
  - Industry members wanted it noted that it is their belief that 12 months is not a long enough period for membership and could contribute to a loss of momentum.
  - The ABF advised that the intent of the limited tenure is to ensure that a broader range of industry members are provided with an opportunity to participate and that the Department/ABF is exposed to a wider range of views.
- Thanks were again given to the non-industry association members for their contributions to the CAG.

Agenda Item 2 – Outstanding action items
Led by acting Superintendent, Compliance Coordination and Engagement, CCB – ABF

- Updated Action Item table available at Attachment B.
Action Item 10 – Closed – Fit and Proper assessments were discussed at the National Committee on Trade Facilitation (NCTF) and further discussed at the Department of Immigration and Border Protection’s (the Department) Industry Summit.

Action Item 11 - CAG members were advised of publication of minutes and will be advised of future publications.

Action Item 12 – Closed - Advice regarding the use of pro-forma invoices has been included in the fourth edition of the Goods Compliance Update.

Action Item 13 – Closed - Advice provided in Department of Immigration and Border Protection Notice (DIBPN) 2013/46 is consistent with current advice on pro-forma invoices. The DIBPN will be updated as part of the project to update all the DIBPNs into html (current status: all DIBPNs up to mid-2003 have been updated).

Action Item 14 – Closed – the majority of Departmental forms should now be updated. Industry members are requested to advise the Department if they encounter forms that have out-dated branding.

Action Item 15 – Closed – no responses received. Initiatives aimed at improving the compliance controls for depots and warehouses, including national consistency, are currently being conducted by the ABF.

Action Item 16 – Closed – The Guidance on minor errors or discrepancies on Certificates of Origin obtained for purposes of the China – Australia Free Trade Agreement paper was circulated, commented on and published.

Action Item 17 – Open – the Department is developing a table outlining the refund periods under each Free Trade Agreement (FTA).

**Agenda Item 3 – Review and update of the Terms of Reference**

*Led by acting Superintendent, Compliance Coordination and Engagement, CCB – ABF*

- The CAG was advised that amendments to the Terms of Reference were being tabled at this meeting.
- The amendments to the Terms of Reference were predominantly administrative, though included the emphasis that draft documents shared with members for consultation were not for broader circulation, unless otherwise specified.
- All members of the CAG endorsed the amended Terms of Reference.

**Agenda Item 4 – Trade and Goods Compliance Update**

*Led by acting Superintendent, Compliance Coordination and Engagement, CCB – ABF*

- The CAG was advised that the Goods Compliance Update will be published imminently. The focus of this edition will include:
  - Asbestos;
  - Recent enhancements on the Department’s website for tariff classification and Tariff Concession Orders (TCOs);
- Legislative changes for Harmonised System codes and the Expanded Information Technology Agreement;
  - United States of America bound air cargo security arrangements;
  - Australian Trusted Trader;
  - Updates on Free Trade Agreements; and
  - Reminder on obligations for brokers and operators of depots and warehouses.

- The members were reminded that the compliance areas of focus of the ABF for 2016 have been:
  - Cargo reporting timeliness and accuracy;
  - Valuation;
  - TCOs; and
  - Misuse of Self-Assessed Clearance declarations.

- The members were advised that recent analysis has identified indicators of non-compliance in the following areas:
  - Underbond movement requests;
  - Claims for the Enhanced Project By-Law Scheme; and
  - Item 34 concession for aircraft parts, materials and test equipment.

- These have been added to the ABF’s areas of focus and articles on these topics will be included in the upcoming Goods Compliance Update.

- Members were advised that the ABF would be applying similar treatments to these compliance areas of focus as they had to the initial areas of focus, such as increased communication and engagement with industry and the development of improved guidance material.

- Industry members advised that they have noticed and increase in compliance activity on imported cider and requested that the ABF’s communication and engagement approach be applied to this issue.

- Members of the CAG were provided with a breakdown of INS infringements for the 2016/2017 financial year to date.

- Members were also advised of recent asbestos statistics regarding our recent border activities:
  - Since the ABF was stood up on 1 July 2015 to December 5 2016, the ABF have directed 372 consignments to be tested for asbestos with 20 positive detections to date; and
  - Since 1 July 2016 to December 5 2016, the ABF have directed 255 consignments to be tested for asbestos with 7 positive detections to date.

- Industry members inquired whether the ABF could release the names of suppliers of goods that have been detected as containing asbestos at the border.
  - The ABF advised this is unlikely due to sensitivities regarding ongoing investigations

- Industry members requested that they be advised of which tariff classifications and countries of origin attract the community protection question in the Integrated Cargo System (ICS).
The ABF advised that the information is able to be extracted from the ICS and that industry should contact their software providers.

- Industry members advised the CAG that they had experienced difficulties in getting in contact with the appropriate area in the ABF to discuss the status of imports that have been stopped at the border due to the suspicion that they may contain asbestos.

**Action:** ABF to consider whether a communications and engagement strategy needs to be developed in relation to compliance activity on imported cider.

**Action:** ABF to investigate whether it can release the names of suppliers of goods that have been detected as containing asbestos at the border.

**Action:** ABF to provide advice on how industry can extract tariff classifications and countries of origin that are attracting the community protection question for asbestos in the ICS.

**Action:** Industry members to provide details on the circumstances where they experienced difficulty when contacting the ABF.

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**Agenda Item 5 – Trade Policy Update**

*Led by acting Assistant Secretary, Trade and Customs Branch – The Department*

- The CAG members were provided with a detailed summary of recent legislative changes.
  - Changes included amendments to the Customs Act and other legislation for prohibited exports, Australian Trusted Trader, the Import Processing Charge, TCOs, and Amendments to the Customs Tariff Legislation to reflect changes to the enhanced project bylaws scheme and other miscellaneous amendments.
  - The Commerce (Imports) Regulations 1940 are due to sunset and replacement regulations are being drafted.

- Industry members voiced their concerns regarding the proposed changes to legislation relevant to the Tariff Concession System (TCS) – and the recent approach by Government agencies in general to the TCS.
  - It was agreed by CAG members that the CAG does not have the scope to address industry’s concerns regarding the TCS. It was agreed that the National Committee on Trade Facilitation (NCTF) would be a more appropriate forum to commence discussions in this area.

- The CAG were advised of other regulatory review processes and activities being undertaken by the Department or other Commonwealth agencies, including:
  - Working on strengthening tobacco offences;
  - GST low value measure;
  - Productivity Commission Inquiry into Australia’s Intellectual Property Arrangements;
  - Changes to Trade Marks Act and associated legislation to allow electronic seizures for IP & Norfolk Island Reforms; and
  - Review of the mandatory safety standard for disposable cigarette lighters being undertaken by the ACCC.
• CAG members discussed the following areas of policy:
  o Value of the Taxable Importation (VoTI)
    ▪ The term ‘material extent’ is not new and was taken from the previous DIBPN on VoTI (ACN 2005/23) and placed into the recently published DIBPN 2016/33. CAG members were advised that there has been no change to the interpretation of ‘material extent’ as a result of the recently published DIBPN and that the term facilitates judgement on a case-by-case basis for both parties.
    ▪ A number of members referred to research undertaken that indicates that the previously used 0.25 per cent as per Australian Customs Notice 1990/71 can be considered a soundly based estimate. It was agreed that if there is the evidence to support that 0.25 per cent is soundly based then this amount could be used as per the DIBPN.
  o Definition of ‘Owner’ and the compliance approach for the purposes of revenue recovery and duty demands
    ▪ CAG members were advised that a revised draft of DIBPN 2016/13 will be circulated prior to finalisation.
  o Organised Crime Act
    ▪ CAG members were advised that the current priority for the Department is to address issues regarding port infrastructure due to the financial ramifications in this environment.
  o Licensing Review
    ▪ CAG members were advised that it is anticipated that a final report on the Licensing Review will be provided to the ABF Commissioner in March 2017.
  o Harmonized Commodity Description and Coding System (HS)
    ▪ CAG members were advised that approximately 400 Tariff Advices (TAs), 340 TCOs and 10 precedents will be affected by the changes to HS codes.
    ▪ CAG members were advised that the Department is preparing a DIBPN which will include a concordance table for TCOs impacted by these changes, and provide advice on TAs, precedents and statistical changes being implemented by the Australian Bureau of Statistics.
    ▪ Industry may apply for new TAs for rulings affected by changes to HS codes after 1 January. These applications will be prioritised by the ABF.

• Industry members voiced their concerns with the approach that the Department (including the ABF) have taken to consultation. Industry members felt that their comments and suggestions are not being considered and that the process appears to be “window dressing.”

**Action:** The Department to provide update on HS related changes

**Action:** The Department to provide advice on whether preloading can occur in the ICS for goods arriving after 1 January 2017

**Action:** The Department to advise whether the definition of “substantial” was amended as part of amendments to sections 269D and 269E of the *Customs Act 1901* (Customs Act).
Action: CAG to formally notify the NCTF that it is the trading industry’s view that the current approach to the TCS by Government agencies is not supportive of trade.

Action: The Department to circulate a DIBPN on replacement regulations for the Commerce (Imports) Regulations 1940 for comment.

Action: The Department/ABF to close the loop and provide feedback to CAG on how comments were considered and assessed.

Action: NCTF Secretariat to update CAG on outcomes of discussions with the Department of Innovation, Industry and Science/Anti-Dumping Commission on advance rulings in anti-dumping matters.

**Agenda Item 6 – Free Trade Agreements**

*Led by Superintendent, Trade and Goods Operational Policy, CCB – ABF*

All FTAs

- The Department provided members with an update on the progress of discussions with countries that have FTAs in place with Australia regarding HS code changes.

Australia United States Free Trade Agreement (AUSFTA)

- The CAG was advised by the ABF that recent compliance audit activities have identified that there have been claims for preferential treatment under AUSFTA that do not meet the rules of origin requirements of the agreement.

China Australia Free Trade Agreement (ChAFTA)

- The ABF provided CAG with the latest ChAFTA related statistics, since 1 July 2016:
  - 100 per cent of 439 email and 112 phone enquiries were responded to on time.
  - 98.3 per cent of verification requests have been processed within the service standard.
  - 100 per cent of 100 advance ruling requests in relation to 17,769 products have been processed within the service standard.

- Industry members were also provided with the following advice:
  - Be wary of and avoid fraudulent Certificates of Origin (COOs)
  - In accordance with the published guidelines on minor errors and discrepancies, COOs that have discrepancies due to exporters trying to circumvent Chinese exporting requirements are not viewed as minor discrepancies. The Department is continuing to work with DFAT on how this can be addressed.
  - Close analysis of the minor errors and discrepancies guidelines, and earlier presentations by the Department on this issue, confirm that there has been no change in the Department’s policy regarding the approach to minor errors or discrepancies.
  - Origin Advice is valid for five years.
  - A COO is not invalid if some lines of a COO do not match the import declaration. Only lines that do not match are invalid and the lines that match can still claim preferential treatment.
  - Both the application for an Advance Ruling on Origin and any DOOs issued on the basis of that advice must state the HS code for those goods.
Industry members asked what work the ABF was doing to respond to queries on a recent case in the NSW Court of Criminal Appeal (R (Cth) v Rapolti; R (Cth) v Russell; R (Cth) v Speedy Corporation Pty Limited [2016] NSWCCA 264 (25 November 2016)) regarding the collection of evidence.

Due to time constraints, the ABF advised that they are happy to take the issue of minor discrepancies off line for further discussion.

Action: ABF to provide an update to the CAG next meeting on what actions it plans to undertake in response to issues that were raised in a recent case in the NSW Court of Criminal Appeal regarding the collection of evidence.

Action: ABF to arrange for further discussion of minor discrepancies offline.

Agenda Item 7 – Voluntary Disclosures

Led by Superintendent, Trade and Goods Operational Policy, CCB - ABF

Industry members were advised that a voluntary disclosure could be made through an amendment of a declaration in the ICS or through written communication to the ABF in the form of a statement.

CAG Members were advised that the ABF has not changed its approach or interpretation regarding voluntary disclosures.

Industry members requested that the Department review the voluntary disclosure provisions of FTAs to ensure they are considered when determining whether a disclosure is voluntary or not. For example, under AUSFTA a disclosure is viewed as voluntary even after audit activity has commenced.

- The ABF referred to the ABF’s Approach to Trade and Goods Compliance which states that the ABF take into account factors such as cooperation and disclosure when considering the appropriate compliance response.

- Further, industry members were advised that the clause under AUSFTA regarding voluntary disclosures is included in the guidance materials for officers. The guidance sets out the circumstances under which an infringement notice should not be issued consistent with AUSFTA.

Due to time constraints, the ABF advised that they are happy to discuss voluntary disclosures offline.

Action: ABF to arrange for further discussion of voluntary disclosures offline.

Other business and meeting close

Led by acting Commander CCB – ABF

Industry members asked what the ABF was doing regarding inconsistency in the application of compliance controls for depots and warehouses.

- The ABF advised it had established an internal Supply Chain Integrity Community of Practice.

- A key focus of the Community of Practice is to enable greater levels of national consistency in the application of compliance controls for depots and warehouses.

Meeting concluded at 1.30pm
Next meeting is scheduled for March 2017 (tentative) at a venue yet to be determined.
### Attendees

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<thead>
<tr>
<th>Attendees</th>
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<tr>
<td>Australian Border Force (chair and secretariat)</td>
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<td>Department of Immigration and Border Protection</td>
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<td>Conference on Asia Pacific Express Carriers</td>
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<td>Customs Broker and Forwarders Council of Australia</td>
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<td>Australian Federation of International Forwarders</td>
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<td>Kuehne + Nagel</td>
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<td>APC Logistics</td>
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<td>Clemenger International Freight</td>
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<td>Export Council of Australia, Gadens, Food and Beverage Importers Association</td>
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### Apologies

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<tr>
<td>Agility</td>
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<td>Freight and Trade Alliance</td>
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## Action Items

<table>
<thead>
<tr>
<th>No.</th>
<th>Action Item</th>
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<tbody>
<tr>
<td>1</td>
<td>Customs Compliance Branch - Australian Border Force (CCB) to develop and distribute issues papers to the Compliance Advisory Group (CAG) on compliance for s77G depots and TCOs</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
</tr>
<tr>
<td>2</td>
<td>Industry representatives of the CAG to provide recommendations to CCB on industry members that should be contacted for the initial consultations for the Approach to Trade and Goods Compliance through <a href="mailto:goodscompliance@border.gov.au">goodscompliance@border.gov.au</a></td>
<td>Industry</td>
<td>Closed</td>
</tr>
<tr>
<td>3</td>
<td>Compliance measures for the China and Australian Free Trade Agreement (ChAFTA) to be included in the agenda for the next meeting.</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
</tr>
<tr>
<td>4</td>
<td>CCB to provide further breakdown of infringements issued under the INS in the next edition of the Goods Compliance Update.</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
</tr>
<tr>
<td>5</td>
<td>The ABF’s Approach to Trade and Goods Compliance to be included on the agenda for the third meeting of the CAG</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
</tr>
<tr>
<td>6</td>
<td>Include further Tariff Concession Orders (TCO) information in the next Goods Compliance Update</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
</tr>
<tr>
<td>7</td>
<td>Conduct Targeted Reviews of TCOs to ensure they are still valid and appropriate.</td>
<td>Superintendent, Tariff Concession Administration</td>
<td>Closed</td>
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**Comment:** An ongoing program exists to target TCOs to ensure they are still valid and appropriate. In the last financial year, a total of 804 TCOs were revoked at the initiative of the Comptroller-General of Customs. This was the largest reduction of the TCO population for a decade. A total of 141 have been revoked in the current financial year.
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<td>8</td>
<td>Depot Licensing compliance will be carried over on the agenda for the next meeting.</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
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<tr>
<td>9</td>
<td>Provide advice on ’fit and proper’ assessments for contractors.</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
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<tr>
<td>10</td>
<td>Request inclusion of ‘fit and proper’ assessments by ABF, the Office of Transport Security and on the Agenda for National Committee on Trade Facilitation</td>
<td>Secretariat</td>
<td>Closed</td>
</tr>
<tr>
<td>11</td>
<td>CCB to advise CAG members when minutes are published online</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
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<td>12</td>
<td>CCB to include advice on the use of pro-forma invoices in the next edition of the Goods Compliance Update</td>
<td>Superintendent, Compliance Coordination and Engagement</td>
<td>Closed</td>
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<td>13</td>
<td>The Department and ABF to review and consider reissuing content covered by DIBPN 2013/46</td>
<td>Superintendent, Trade and Goods Operational Policy</td>
<td>Closed</td>
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<tr>
<td>14</td>
<td>Department to provide advice to clarify the status and relevance of forms relied on by industry</td>
<td>Director, Trade Policy, Department</td>
<td>Closed</td>
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<tr>
<td>15</td>
<td>CAG members to provide specific examples of the difficulties they have faced regarding licenced premises compliance controls</td>
<td>Industry representatives</td>
<td>Closed</td>
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<td>Examples can be sent to <a href="mailto:goodscompliance@border.gov.au">goodscompliance@border.gov.au</a></td>
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<td>16</td>
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<td>All</td>
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<tr>
<td>16</td>
<td>Refund period requirements of every FTA to be included in the agenda for the next CAG</td>
<td>Director, Trade Policy, Department</td>
<td>Open</td>
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