



EXECUTIVE MINUTE

on

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT REPORT No. 449

*Regional Development Australia Fund, Military Equipment Disposal and Tariff Concessions
– Review of Auditor General’s Reports Nos 1-23 (2014-15) on 11 August 2015*

General comments

Recommendation No. 7 of the Joint Committee on Public Accounts and Audit’s (JCPAA’s) report on *Regional Development Australia Fund, Military Equipment Disposal and Tariff Concessions – Review of Auditor General’s Reports Nos 1-23 (2014-15) (Report No. 449)* recommended that:

“the Department of Immigration and Border Protection report back to the Joint Committee of Public Accounts and Audit, within six months of the tabling of this report, on its continued progress implementing the Australian National Audit Office (ANAO) recommendations in Report No. 20 (2014-15)¹”.

The Department of Immigration and Border Protection (the Department) has made significant progress in implementing the ANAO’s recommendations in relation to the administration of the Tariff Concession System (TCS). Recommendations have either been fully implemented or are in the process of being implemented. The Department will fully implement the ANAO’s recommendations by 2016-17.

This Executive Minute provides an update to the JCPAA on the Department’s progress in implementing the ANAO’s recommendations.

Response to the recommendations

1. ANAO Recommendation No. 1, paragraph 2.35

To build a greater awareness and promote the Tariff Concession System, the ANAO recommends that the Australian Customs and Border Protection Service:

- a) develops a Tariff Concession System communications strategy, in consultation with the Department of Industry, aimed at increasing system awareness, with a particular focus on local manufacturer engagement;
- b) reviews the strategy periodically to inform the ongoing targeting and refinement of communication activities; and
- c) reviews the appropriateness and accessibility of Tariff Concession System information that is currently made available to stakeholders.

¹ Report No. 449, page xviii refers.

Progress update

Strategy

In November 2015, the Department launched an *Industry Engagement Strategy 2020* (Engagement Strategy) to enhance stakeholder engagement with industry sectors, including domestic producers and manufacturers². The Engagement Strategy provides a framework for engagement and consultation between the Department and industry on a broad range of policy, operational and regulatory issues. The principles for engagement are clear strategic direction, effective communication, partnership and collaboration, and responsive action.

The Engagement Strategy will establish a new industry website portal with information tailored for specific industry sectors. This portal will be co-designed with industry, and will be continuously improved to provide a user-friendly resource with up-to-date information. The Department has chosen *Domestic Producers and Manufacturers* as the first industry sector website to be developed, and expects this to be operational during 2016.

The Engagement Strategy will be supported by a specific communications strategy developed for the TCS, with a particular focus on local manufacturer engagement. The TCS specific communication strategy has been drafted by the Department. This strategy will improve the quality and navigability of information for domestic manufacturers on the Department's website, enhance engagement with industry associations and expand opportunities for stakeholders to provide feedback. It will also better inform stakeholders of their legislative responsibilities when applying to have Tariff Concession Orders (TCOs) made or revoked. The Department will review its TCS specific communication strategy on an annual basis.

Website

The website portal will be used by the Department to implement its communication strategy for the TCS, in consultation with the Department of Industry, Innovation and Science (DIIS). This portal will:

- improve quality of information for domestic manufacturers, with additional guidance on legislative concepts such as corresponding use and substitutability;
- explain the absence of a market test;
- provide up-to-date listings of decisions where the Comptroller-General of Customs has revoked, or refused to make, TCOs;
- contain listings of judicial guidance that has been provided through cases at the Federal Court;
- provide information on programmes administered by other Commonwealth agencies, together with providing links to State Government agencies that provide different types of assistance to manufacturers;
- include information on how to access the *Commonwealth of Australia: Tariff Concession Gazette*, which records all decisions made by the Comptroller-General of Customs; and
- ensure information on the TCS is accessible to a broad range of stakeholders.

Subject to technical requirements, the portal will also seek to improve the capability to search the website for details of TCOs in specific industry sectors such as steel, rubber and aluminium – this acknowledges that with more than 15,000 TCOs in existence, it is difficult for new entrants to the TCS to easily identify TCOs that are relevant.

Engagement - feedback

² *Industry Engagement Strategy 2020* is available on the Department's website at www.border.gov.au.

The Department, in addition to considering observations by the ANAO, consulted individuals working in manufacturing, state and commonwealth government departments (such as DIIS), and the Industry Capability Network in a number of states to develop the TCS communications strategy. This feedback made it clear that manufacturers in trade-exposed industries still regarded the five per cent duty protection as being beneficial, especially during competitive tenders where contracts could be won or lost on small cost differences. This feedback noted that many manufacturers were also importers who valued the TCS for its ability to reduce input costs. Manufacturers also sought details on export programmes operated by the Commonwealth. Some stakeholders were unsure about the meaning of legislative concepts such as corresponding use, and/or whether a market test still existed. Some stakeholders were concerned that the current design of the Department website made it difficult for them to access information. In implementing the TCS communication strategy, the Department will provide responses to this stakeholder feedback, primarily through the new industry portal. This will ensure that information on the TCS is appropriate, relevant and accessible to stakeholders, especially local industry.

The Department's TCS work area engages regularly with stakeholders, particularly through regular site visits annually to manufacturers' premises when making decisions on whether to make or refuse a TCO. The work area also deals with up to 300 trade-related enquiries each year that come direct, or are referred by other agencies. The Department's Engagement Strategy seeks to systemise this feedback to build business improvement.

2. Recommendation No. 2, paragraph 3.47

To improve the transparency and accountability of the Tariff Concession Order decision-making process, the ANAO recommends that the Australian Customs and Border Protection Service strengthens its guidance to assessment officers and reinforces the importance of documenting key decisions.

Progress update

Improved guidance for decision-makers

The Department has implemented improved guidance for officers making decisions on TCOs. These improvements include ensuring that reasons for decisions are clearly documented at every stage of the decision-making process, that the principles of administrative decision-making are understood, and that guidance for delegates reflects judicial guidance from relevant decisions of the Federal Court. The improved guidance will ensure that TCO decision makers are accountable, and that reasons for decisions are transparent and well understood. Examples of specific guidance improvements include:

- requirement that a statement of reasons is provided when an application is accepted as valid, and again when a TCO is made or refused; and
- updated the pre-screening checklist for new applications to include any known risk factors.

To ensure that staff involved in the administration of the TCS clearly understood the system and the decision-making process several workshops were held to address:

- interpreting the relevant legislation - to reinforce that TCOs need to be worded generically, and not in a way that reflects the end-use of the product. These outcomes will be finalised through updated Instructions and Guidelines that reflect recent case law and which build on previous guidance for delegates; and

- principles of administrative decision-making when assessing applications. The relevant Instruction and Guideline in relation to this issue has been reissued.

The Department also regularly holds workshops that include discussions on judicial guidance through relevant decisions of the Federal Court.

In 2016-17, further work will continue to update administrative guidance information (which is an iterative process) that will continue through to the end of 2016-17, including:

- a review of sample letters that TCO applicants are encouraged to send to manufacturers before lodging applications;
- additional guidance for officers where research by applicants is not conclusive;
- arms-length consideration on internal review; and
- additional Instructions and Guidelines on revocations of TCOs that are unused.

3. Recommendation No. 3, paragraph 5.57

To better support the delivery and oversight of compliance activities directed at managing the risk of Tariff Concession Order misuse, the ANAO recommends that the Australian Customs and Border Protection Service:

- a) strengthen its approach to the management of compliance data to better inform its monitoring and reporting of compliance activities;**
- b) develops an appropriate set of performance indicators and regularly assesses its performance against these to determine the effectiveness of its compliance program.**

Progress update

New compliance branch

The Department has acknowledged the need for a central point for the delivery and oversight of the Customs compliance programme to ensure an appropriate organisational focus is maintained on identifying and addressing the range of Customs compliance related risks, including those associated with the misuse of TCOs. A dedicated Customs Compliance Branch (CCB) was stood up within the Australian Border Force (ABF) on 1 July 2015.

Addressing TCO risk

Within the CCB, work has commenced that will address the ANAO's observations and recommendations in relation to managing the risk of TCO misuse, including:

- *Developing a national Customs compliance planning and risk management framework that aligns with broader Departmental and ABF risk management and planning processes.* The CCB is developing a comprehensive understanding of compliance risk areas and vulnerabilities, and a national programme of compliance activity is being developed to address these accordingly. This programme will cover the spectrum of Customs compliance risks and identify Key Performance Indicators (KPIs) to assess the effectiveness of compliance treatments. The risk management framework will cover the spectrum of Customs compliance risks and identify KPIs for assessment of the effectiveness of compliance treatments. These KPIs span community protection risk treatment, revenue protection assurance activity, and overall legislative compliance. Appropriate KPIs are benchmarked through the Compliance Monitoring Program, an independently developed sampling program that provides an overall baseline against which the effectiveness of targeted activity can be assessed.

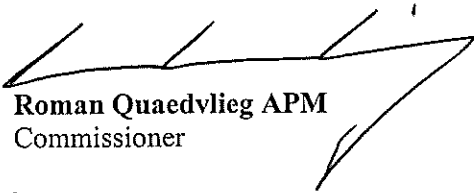
- *The establishment of a centralised monitoring and evaluation capability.* A centralised monitoring and evaluation capability is being established to deliver regular reporting on the effectiveness of the national programme. This capability will have national oversight of Customs compliance data quality and consistency, and will deliver regular national program effectiveness reporting to the executive group. Reporting will focus on tracking the outcomes of Customs compliance activities against KPIs, as well as informing understanding of the effectiveness of the overall programme. The Compliance Monitoring and Evaluation section has recently been established within the CCB - technical and human resource acquisition has commenced.
- *The incorporation of Revenue and Trade Crime Taskforce activities within CCB.* The transition of functions undertaken within the Taskforce to CCB will deliver an enduring capability for the identification, treatment and monitoring of misuse of TCOs. One of the key programmes of work of the Taskforce is the development of a Tariff Analysis Model, an analytics driven assessment of risk and compliance specifically in relation to tariff concessions.

The work programme above is expected to provide a clear view of national compliance activity in relation to TCO misuse, monitoring and treatment, with regular reporting to key stakeholders established by 1 July 2016.

Other issues

The ANAO suggested there was merit in concluding negotiation of a TCS schedule attached to the Memorandum of Understanding (MOU) between the agencies.

The Department is holding discussions with DIIS to renew a MOU within 2015-16. This agreement will also finalise the schedule between both departments that outlines each department's role and responsibility for the administration of the TCS.



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Commissioner

12 January 2016