



28 April 2017

Dr Richard Chadwick  
General Manager Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Mr Chadwick

Thank you for inviting the Department of Immigration and Border Protection (the Department) to make a submission on British American Tobacco Australia Limited & Ors's submission made on 15 March 2017 in response to the draft determination for authorisation A91550.

The Department would like to take this opportunity to comment on a number of statements made in the submission.

At paragraph 1.3, the application states "The application for authorisation enjoys strong support from a number of significant retailer organisations and has not been opposed by the Department of Immigration and Border Protection, being the agency responsible for front-line law enforcement against illicit tobacco". The Department advises that responsibility for front-line enforcement against illicit tobacco is shared between a number of Commonwealth and state and territory authorities. In the Commonwealth, this includes the Australian Taxation Office, the Australia Competition and Consumer Commission, the Department of Health as well as the Department. The Department is responsible for illicit tobacco at the border, and works with a range of authorities ahead of and post-border. Our operational focus is on strengthening the border and combatting the involvement of serious and organised crime in illicit tobacco. State and territory authorities are responsible for tobacco being sold at retail outlets in their jurisdictions, including illicit tobacco.

The Department has previously noted that it hoped to be in a position to share further details about proposed legislative reforms during this round of consultation on the request for authorisation A91550. The proposed legislative changes aim to resolve the proof of origin issue; this requires the prosecution to establish whether tobacco was imported or domestically produced, which can be difficult to prove in some circumstances. They also aim to amend the *Customs Act 1901* to include a new tobacco smuggling offence based on recklessness, and increase the penalties for the tobacco offences in the *Excise Act 1901* to provide for consistency with the existing tobacco smuggling penalties. Together, these reforms will increase the range of enforcement options available for illicit tobacco offences. These amendments are under development and we are unable to provide any further details at this time.

The Department would appreciate the opportunity to consult with you further as your assessment of the application progresses. The Department's contact for this matter is Sasha Billett, Director Trade Revenue Policy who can be contacted at [sasha.billett@border.gov.au](mailto:sasha.billett@border.gov.au) or on (02) 6264 3388.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Chandler', with a long horizontal flourish extending to the right.

Andrew Chandler  
Acting First Assistant Secretary Traveller, Customs and Industry Policy Division  
Policy Group