



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
CANBERRA ACT 2600

8 November 2012

Mr Gary Banks
Chairman
Productivity Commission
GPO Box 1248
CANBERRA CITY ACT 2601

Mr Murray Sherwin CNZM
Chair
New Zealand Productivity Commission
PO Box 8036
Wellington 6143
NEW ZEALAND

Dear Chairs

I write in response to the Australian and New Zealand Productivity Commissions' Discussion Draft on *Strengthening trans-Tasman Economic Relations* (Draft Report) released on 18 September 2012. I would also like to take the opportunity to thank you for allowing us to comment on the Draft Report.

Australian New Zealand Closer Economic Relations Trade Agreement Rules of Origin

The Australian Customs and Border Protection Service (Customs and Border Protection) is responsible for the implementation and administration of Australia's obligations under the Rules of Origin (RoO) Chapter under preferential trade agreements. Customs and Border Protection is involved in the negotiation of RoO in all of Australia's bilateral, plurilateral and multilateral trade negotiations. Customs and Border Protection was also involved in the negotiation and implementation of the outcome of the review of the RoO Chapter and the associated product specific rules (PSR) in the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

Recommendation 4.6 of the Draft Report proposes that the RoO under ANZCERTA be waived for all items for which tariffs in Australia and New Zealand are at 5 percent or less. The draft report notes that while tariffs in both Australia and New Zealand have generally fallen to low levels and their protective value will continue to be eroded as further free trade deals take effect, they continue to generate costs, including administrative costs borne by the customs services and businesses, and distortions to production and consumption incentives. Accordingly, the draft report recommends that the RoO under ANZCERTA be waived for all items for which tariffs in Australia and New Zealand are at 5 percent or less. This would, in the Commission's view, reduce compliance and administrative costs for a significant proportion of trans-Tasman trade.

RoO are used to determine the country of origin for imported goods to ensure that the goods are either wholly obtained or produced completely in that country or the last substantial transformation of the goods took place in that country before that country is regarded as the country of origin. The proposed waiver of RoO for all items for which tariffs in Australia and New Zealand are at 5 percent or less would allow goods falling under that category to be transhipped through New Zealand to gain preferential tariff treatment upon entry into Australia. This may in turn result in trade diversion in the region and may affect the trade patterns in other countries.

Due to the possible trade distorting effect of the above proposal, Customs and Border Protection is of the view that the above proposal warrants careful reconsideration.

Implications for the anti-dumping and countervailing system

The proposal discussed above, as we understand it, does not appear to have any implications for Australia's anti-dumping and countervailing regime. The RoO under ANZCERTA are used to determine whether imported goods originate from the ANZCERTA trading partners for preferential duty purposes. Those RoO are not used to determine, for anti-dumping or countervailing purposes, the origin of the particular goods subject to the measures.

Further, transshipment is an issue already experienced in the anti-dumping and countervailing system. The proposal to change the CER RoO should not have any implication for the way we deal with transshipment cases, as long as all relevant shipping records remain available under any new proposal i.e. records that would be available to determine where the goods originated.

Australia-New Zealand Therapeutic Products Agency

Recommendation 4.4 of the Draft Report calls for the advancing of the implementation of the Australia-New Zealand Therapeutic Products Agency. The Draft Report concludes that a single regulator could be expected to reduce the costs of regulation, by creating economies of scale and removing duplication, and increase technical capability.

As the agency with responsibility for the security and integrity of Australia's borders, Customs and Border Protection works closely with the Australian Therapeutic Goods Administration (TGA) to detect and deter the movement of prohibited therapeutic goods.

Under the current legislative framework, Customs and Border Protection has the power to seize imports (whether for commercial or personal use) of certain drugs, medicines or certain therapeutic goods if the relevant permission has not been obtained. In cases where no exemption or authority exists in relation to goods, the *Therapeutic Goods Act 1989* provides that the TGA can notify the Customs and Border Protection Chief Executive Officer, in writing, that the TGA Secretary wishes the *Customs Act 1901* to apply to that importation. The goods will then be dealt with as prohibited imports.

Preparations for new therapeutic goods arrangements would need to provide clarity on matters such as whether the new regulator would take on the Commonwealth policy role for the goods in the *Customs (Prohibited Imports) Regulations 1956* which are currently included under the TGA.

The implementation of a single therapeutic products agency would require careful examination to maintain effective border control. Given Customs and Border Protection's role as the border enforcement agency, we will work with the relevant policy agencies to ensure a robust legislative and operational framework is put in place to implement a single trans-Tasman agency.

Smartgate arrangements

The Australian Customs and Border Protection Service supports the recommendation to progress the further roll out of SmartGate where it is cost-effective to do so. However it should be noted that:

- The focus of SmartGate investment in 2012-13 is on increasing usage rates by eligible travellers, increasing SmartGate capacity in Melbourne and Sydney, and trialling the extension of SmartGate eligibility to US Global Entry members.
- Customs and Border Protection is assessing the work required to develop a viable SmartGate departures solution and to trial the capability in an airport. A number of critical issues need to be overcome before a departures solution can be developed that fulfils all of Australia's border management requirements.

- Based on the current cost of SmartGate technology, the small number of travellers arriving at regional airports will make a cost/benefit case for investment of SmartGate capacity at these airports impossible to justify in comparison to the same investment at Australia's eight major international airports.

Australian Passenger Movement Charge

The Australian Customs and Border Protection Service notes the recommendation to reconfigure the PMC as a genuine user charge for border services and provides the following comments.

- Australia's Passenger Movement Charge (PMC) is currently a tax rather than a cost recovery charge.
- The Treasury has policy responsibility for assessing the report's recommendation to move to a cost recovery charge for passenger border services and should be asked to comment on this proposal.
- Australian Customs and Border Protection Service has the responsibility for the administration of the PMC. The introduction of a cost recovery charge would require new collection and administration arrangements to be established with industry, at a cost to all parties involved.

We suggest that the wording of this recommendation be clarified to make it clear that the report is not recommending differentiated cost-recovery rates on particular routes. We believe that the wording of the current recommendation could be misinterpreted as indicating that a specific cost-recovery charge should be implemented for the Australia-New Zealand route. Such a proposal would be difficult to justify and would potentially create a very complex charging arrangement once other destinations are also considered.

Yours sincerely,

Raelene Vivian
National Director
Cargo and Trade Division