

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

c/o legcon.sen@aph.gov.au

Re: Customs Amendment (Smuggled Tobacco) Bill 2012

Dear Committee Secretary,

As the representatives of the three tobacco manufacturing companies in Australia - British American Tobacco Australia (BATA), Philip Morris Limited (PML) and Imperial Tobacco Australia (ITA) - we welcome the opportunity to make a written submission to the Senate Legal and Constitutional Affairs Committee's (the Committee) Inquiry into the *Customs Amendment (Smuggled Tobacco) Bill 2012* (the Bill).

We strongly support the Bill and we encourage the Committee to recommend that the Senate pass it.

Ordinarily tobacco smuggling offences have been prosecuted through general smuggling provisions contained in the *Customs Act 1901*. These general smuggling provisions have been inadequate in deterring tobacco smuggling activity because of their relatively low penalties, amounting to a maximum of five times the duty evaded.

Combined with a relatively low level risk of detection at the border, incentives to engage in tobacco smuggling activity have remained relatively high. Criminal penalties for tobacco smuggling offences are therefore necessary to provide a significant deterrent to this activity in Australia.

The imposition of a maximum penalty of ten years imprisonment in combination with existing financial penalties is therefore strongly supported by the three tobacco manufacturing companies in Australia.

We congratulate the Government on introducing this important amendment and undertake to continue our work with the Federal Government towards tackling tobacco smuggling in this country.

Further, we believe that the current magnitude of the tobacco smuggling problem in Australia also justifies the need for the Bill and its passage through the Australian Parliament.

One of the most significant threats tobacco smuggling presents is its links to organised crime and the risk of bribery and corruption of government officials.

Evidence reported by the Australian Crime Commission (ACC) in 2011 found that organised crime has been linked to the “importation of counterfeit cigarettes and loose tobacco.”¹ The ACC also notes that recent excise increases are likely to have played a role in attracting additional organised crime groups to the illegal market. The ACC stated that:

“The successful interdiction of illicit tobacco products at the border, the high illicit profits and increases in the excise duty on tobacco products are likely to increasingly attract organised crime groups to the illicit tobacco market.”²

In 2012, the Australian Integrity Commissioner reported that Australia is a profitable market for criminal networks engaged in the illegal tobacco trade. The Commissioner stated that:

“...there are profits to be made in Australia for criminal groups that trade in goods such as illicit tobacco and border controlled drugs. We are a lucrative target for organised criminal gangs from overseas.”³

The Australian Transaction Reports and Analysis Centre (2009) also identified suspected offences of tobacco smuggling at Australia’s airports and ports.⁴

Further, direct evidence has also emerged concerning:

- tobacco smugglers offering bribes of up to \$200,000 to a Commonwealth official at the Sydney cargo terminal (September 2011);
- a former Australian Federal policeman turned Australian Taxation Office investigator was jailed for receiving money, first class travel and other gratuities from members of the illegal tobacco trade (March 2012);
- More than two dozen Australian Customs and Border Protection officials are under investigation by law enforcement agencies for corruption and misconduct (March 2012); and

¹ Australian Crime Commission, “Organised Crime in Australia 2011,” pg.18
<http://www.crimecommission.gov.au/publications/organised-crime-australia/organised-crime-australia-2011-report>

² Ibid

³ *Canberra Times*, 7 February 2012, “The fragile global economy will test our staff’s integrity,” Philip Moss, Australian Integrity Commissioner, pg.20

⁴ Australian Transaction Reports and Analysis Centre (2009) Submission to the Parliamentary Joint Committee on the Australian Crime Commission – Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime, pg.4.

- Criminal syndicates have been exploiting flaws in the Australian Customs and Border Protection Service's Integrated Cargo System.

Attachment A provides further details on each of these cases.

"Organised" criminal activity by definition means the nature of activity is not trivial and involves economies of scale. While there may be a perception within government that tobacco smuggling is not a major threat⁵, for the reasons outlined in this submission, the evidence to date demonstrates that tobacco smuggling is in fact a significant problem.

We therefore recommend that the Bill be passed through the Australian Parliament.

An industry commissioned report by Deloitte (2012) into the "Illicit trade of tobacco in Australia" also confirms that illegal tobacco is a significant problem. The report found that the illicit market in Australia "for 2011 is estimated to total 2.264 million kilograms of tobacco, which is equivalent to 13.4% of the estimated legal tobacco market".⁶ This represents forgone tobacco excise revenue of approximately \$1 billion based on current excise rates.

In our view an appropriate measurement of the illegal tobacco market size is critical in informing resource and policy decisions. We will continue to advocate for a robust and agreed methodology by which to achieve this through our membership of the Tobacco Industry Forum.

We recommend the Committee will consider various other measures to manage the problem, such as:

1. Creating and publishing measures that annually report the number of convictions made as a direct result of the Bill;
2. Developing an education program for enforcement agencies to ensure awareness of the new law and their related powers;
3. Increasing overall levels of monitoring and enforcement at the border to ensure the risk of detection is high; and
4. Delivering a public education campaign to increase awareness of the new law and the risks associated with smuggling, conveying or possessing illegal tobacco.

⁵ Attorney General, The Hon Nicola Roxon MP, states that "To date, tobacco smuggling has not represented a major threat in Australia" refer The Hon. Nicola Roxon MP, Attorney General (2012) "Tougher Tobacco Smuggling Laws Introduced" Media Release, 28 June 2012

⁶ Deloitte, "Illicit trade of tobacco in Australia: Report for 2011", May 2012, pg.1 The report can be downloaded at:
[http://www.bataustralia.com/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO8RG8JK/\\$FILE/medMD8TWTX9.pdf?openement](http://www.bataustralia.com/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO8RG8JK/$FILE/medMD8TWTX9.pdf?openement)

We would appreciate the Committee's consideration of these recommendations as part of its report to the Senate.

We would like to thank the Committee for their time in considering our submission and should the Committee require any further information you can contact us directly on the phone numbers provided below.

We also request that you circulate this submission, under Parliamentary privilege, to all members of the Committee.

Yours sincerely,

David Crow
Area Director, Australasia &
Managing Director, Australia
British American Tobacco Australia Limited

Laurent Boissart
Managing Director
Philip Morris Limited

Melvin Ruigrok
General Manager Australasia
Imperial Tobacco Australia Limited

**EVIDENCE OF CORRUPTION AND ORGANISED CRIME
CONNECTED WITH TOBACCO SMUGGLING**

September 2011

- 60 tonnes of tobacco and 25 million counterfeit cigarettes were seized during a border operation targeting illegal importation and bribery. Walid and Bilal Afiouny “have been charged with offering five bribes of between \$1000 to \$200,000 to a Commonwealth official at a Sydney cargo terminal”. These imports alone had “the potential to defraud the Commonwealth of more than \$35 million.”⁷

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- “A former Australian Federal policeman turned Australian Taxation Office investigator has been jailed for receiving money, first class travel and other gratuities during corrupt dealings with the illegal tobacco industry.”⁸ Philip James Roper assisted and tipped off criminals involved in the ‘chop chop’ trade between 2001 and 2003. Mr Roper has since been “sentenced to two-and-a-half years in jail for corruption.”⁹
- More than two dozen Australian border security officials are under investigation for “helping organised crime syndicates smuggle multi-million dollar shipments of illicit drugs and other contraband into Australia”. The *Canberra Times* reported that “Taskforce Polaris - a joint state and federal inquiry into maritime organised crime in NSW - is investigating more than 20 allegations involving corrupt government officials, including Customs employees and licensed Customs brokers” and that “The nation's corruption watchdog has received more than 50 files on suspected corruption involving customs officials since early 2011.”¹⁰
- “Crime syndicates are exploiting flaws in a federal government computer system that have enabled them to learn if shipping containers holding their drugs are being scanned and searched by authorities”. Media has reported that a “confidential maritime ‘vulnerabilities’ paper compiled by state and federal policing agencies about corruption and organised crime in the shipping sector identifies the computer system as a big problem.”¹¹

⁷ *The Daily Telegraph*, 3 September 2011, “Brothers bailed over tobacco charges”
http://www.news.com.au/brothers-bailed-over-tobacco-charges/story-e6freuzi-1226128508177?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+newscomau%2Fnewscomau%2FNEWS.com.au+%7C+NSW%2FACT%29

⁸ *Herald Sun*, 19 March 2012, “Tax office investigator jailed for taking gratuities”, Paul Anderson,
<http://www.news.com.au/tax-office-investigator-jailed-for-taking-gratuities/story-fn7x8me2-1226303773192>

⁹ *ABC News*, 19 March 2012, “Former ATO investigator jailed for corruption”, Sarah Farnsworth,
<http://www.abc.net.au/news/2012-03-19/former-tax-office-investigator-jailed-for-corruption/3898560>

¹⁰ *The Canberra Times*, 28 March 2012, “Drugs cloud on Customs Officials”, Nick McKenzie, Richard Baker,
<http://www.canberratimes.com.au/national/drugs-cloud-on-customs-officials-20120327-1vwx4.html>

¹¹ *The Sydney Morning Herald*, 29 March 2012 “Crime syndicates can track container searches”, Richard Baker and Nick McKenzie, <http://www.smh.com.au/it-pro/government-it/crime-syndicates-can-track-container-searches-20120328-1vyth.html>