



OUR REF:

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29 December 2003 BY:.....

The Committee Secretary  
House of Representatives Standing Committee on  
Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

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Dear Secretary,

**Inquiry Into Averment Provisions in Customs Legislation -  
Submission on Behalf of Peter Tomson**

At the conclusion of the hearing in this matter conducted on 24 July 2003, the Deputy Chair, Mr Murphy, asked me if I wished to make any observations regarding the written and oral evidence presented that day by the Australian Customs Service (ACS). I replied that I would like to look at the transcript before responding.

I have now had the opportunity to examine the material presented by the ACS on 24 July 2003. My overall impression is that the ACS has been entirely disingenuous in its response to the issues raised on behalf of Mr Tomson. Its submissions distort and misrepresent the truth in relation to many of the matters raised, and seek to maintain the fiction that the prosecution of Mr Tomson was both proper and soundly based. Its response, in effect, has been to demonise Mr Tomson without providing any genuine answer to the allegations of wrongdoing raised in relation to the conduct of the officers involved in the prosecution of Mr Tomson.

Prior to the next hearing in this inquiry, I will forward to the Committee a comprehensive rebuttal of the matters raised by the ACS in its abovementioned submissions. In the interim, I wish to make two points to illustrate my assertion that the ACS has not been honest in its dealings with either the Parliament or this Committee in responding to the issues raised on behalf of Mr Tomson.

1. **Response to Questions on Notice**

The first point relates to the manner in which the ACS has prepared replies for the Minister in response to Questions on Notice in the House of Representatives. Mr Tomson's Federal member is the Member for Werriwa, Mr Latham (now Leader of the Federal Opposition).

On 18 February 2002, Mr Latham asked (inter alia) -

"How many officers that provided evidence before the Midford inquiry were also involved in the Tomson case and what positions did they hold within the ACS?"

The Minister's reply (prepared no doubt by the ACS) was -

"Two, a Director and a Chief Inspector."

See Attachment 1.

The truth of the matter is that five of the ACS officers involved in the Midford inquiry were also involved in the Tomson case. The officers in question were -

- Frank Kelly, Comptroller-General of Customs
- Richard Miller, Senior Assistant Secretary, Legal Services Component
- Brian Bissaker, National Manager Investigation
- John Locker, Director Investigation NSW
- Phillip Paraggio, Chief Inspector Investigation NSW

I will produce on request copies of correspondence taken from the Tomson case files that prove the accuracy of my above statement.

I also pose the rhetorical question in relation to this aspect of the matter that, if the ACS cannot be trusted to tell the truth in relation to even the simplest elements of this case, how can it expect to be trusted or believed in relation to anything it might say in respect of matters of substance?

2. Proof of a Second Payment in Relation to Each of the Shipments from Thailand

The ACS prosecution case in relation to the two shipments of goods from Thailand was that, in respect of each shipment, two payments were made for the goods. The two payments were claimed to comprise the sum in Australian currency shown in the invoice produced to the ACS at the time of importation, and a second sum in US currency shown in an invoice presented to the Thai Customs authorities.

The defence case in relation to each shipment was that -

- the only sum paid for the goods was the amount shown in the invoice presented to the ACS
- the invoice presented to the Thai Customs showing a value in US currency was not evidence of a second payment for the goods at all, and that the document itself was nothing more than a legitimate bank document brought into existence in compliance with the foreign exchange laws of Thailand.

Please note Section C.2.3.1 on pages 22 and 23 of my original submission to this inquiry dealing with foreign exchange controls in Thailand and the use of exchange control forms EC 61 and EC 71.

Attached at Attachments 2, 3, 4 and 5 are copies of letters from Mr J Locker, Director Investigation to various persons in Thailand.

Attachment 2 is a copy of a letter dated 7 April 1989 to a Deputy Director of the Bank of Thailand. This letter is of particular significance. It refers to the fact that the Thai Customs authorities had earlier provided the ACS with certain of the forms EC 61 relating to past export transactions involving Mr Tomson, and requested the production of additional forms EC 61 and EC 71 for a list of specified export transactions.

Attachments 3, 4 and 5 are copies of letters to an officer of the Thai Customs Department. Reference is made in the letters at Attachments 3 and 4 to documents which were to be obtained from the Bank of Thailand. The letter at Attachment 5 acknowledges receipt of "the bank documents". These letters bear the dates 24 April 1989, 23 May 1989 and 21 August 1989 respectively.

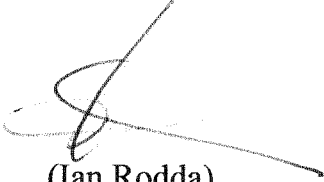
I believe that some at least of the "bank documents" referred to in these letters are the same documents subsequently tendered during Mr Tomson's trial as proof of a "second payment" for the goods.

It is plain from this correspondence that the ACS was well aware, from early 1989 onwards, that the documents it subsequently relied on as proof of a second payment for the goods were in fact genuine bank documents as claimed by Mr Tomson in his defence. It is simply beyond belief that the ACS would have requested particular documents by reference to their internal identification numbers (i.e., EC 61 and EC 71) without having a clear understanding of the true nature, significance and purpose of these documents.

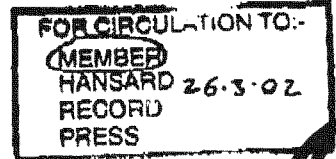
The ACS has claimed in response to my allegations regarding its conduct of the Tomson prosecution that there is no evidence that any officers were involved in a conspiracy to pervert the course of justice.

I respectfully disagree, and point to Attachments 2, 3, 4 and 5 as an appropriate starting point for a proper investigation into those allegations.

Yours faithfully  
Rodda Castle & Co

A handwritten signature in black ink, appearing to be 'Ian Rodda', written over a horizontal line.

(Ian Rodda)  
Director



**MINISTER FOR JUSTICE AND CUSTOMS**  
**HOUSE OF REPRESENTATIVES QUESTION**  
**(QUESTION NO. 146)**

Mr Latham asked the Minister representing the Minister for Justice and Customs, upon notice, on 18 February 2002:

- (1) Further to the Minister's answer to question No. 2586 (Hansard, 6 August 2001, page 29234) concerning the Peter Tomson case, (a) was the magistrate's decision that a *prima facie* had been established based on averments sworn by the Australian Customs Service (ACS) to initiate the proceedings and (b) were these averments subsequently shown to be false.
- (2) How many officers that provided evidence before the Midford inquiry were also involved in the Tomson case and what positions did they hold within the ACS.
- (3) What are the terms of reference for the review of the Tomson case by Counsel.
- (4) What guarantee can the Minister give to the independence of a review Commissioned by Customs itself.
- (5) Can the Minister guarantee that all relevant ACS information will be placed before Counsel.
- (6) Will Mr Tomson be interviewed by Counsel.
- (7) When does the Minister expect Counsel's review to be completed.

Mr Daryl Williams –The Minister for Justice and Customs has provided the following answer to the honourable member's question:

- (1) (a) The transcript of the proceedings indicates that the Court found a *prima facie* case "...on the evidence contained in the documents and the evidence from ..(not transcribable)..." The documents available to the Magistrate included averments sworn by officers of the Australian Customs Service. It appears clear that the Magistrate's decision that there was a *prima facie* case was not based on averments alone.
- (b) No. Before finding a *prima facie* case existed, the Magistrate had ruled that some of the Customs averments dealt with questions of law not of fact and required them to be amended or disregarded.

- (2) Two, a Director and a Chief Inspector.
- (3) Customs advises that the instructions to Counsel were: "It would be appreciated if you would consider the material submitted by Messrs Barwick, Boitano Lawyers and the other material enclosed. Customs seeks your advice whether there is any substance in the allegations made and if further examination is warranted."
- (4) The request for review of material was made to Customs by Barwick, Boitano Lawyers on behalf of Mr Tomson. In view of allegations made in the material provided by Barwick, Boitano Lawyers, Customs considered it prudent that the material be independently examined and a report be forwarded to Customs. Counsel had no previous involvement with this matter and his independence and integrity are not in question.
- (5) Customs advises that all the material placed before the Court in the Tomson matter along with the associated case files was made available to Counsel.
- (6) Counsel did not indicate any need to interview Mr Tomson.
- (7) Counsel provided his report to Customs on 24 September 2001. On the basis of the available material and the absence of further information from Mr Tomson's solicitors, Counsel concluded that the allegations were baseless and incapable of being particularised. On 7 December 2001 Customs advised Mr Tomson's legal representatives of Counsel's conclusions and provided a copy of a summary of those conclusions.



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# Australian Customs Service

Reply to the Collector of Customs

Quote: N88/7987

G.P.O. Box 8  
SYDNEY, 2001

Telephone

(02) 226 5800

Fax: 226 5995

226 5896  
Telex: 121882  
73909

7th April, 1989.

Mr. Chetthavee Charoenpitaks  
Deputy Director  
Exchange Control Department  
Bank of Thailand  
Bangkok  
THAILAND

Dear Mr. Chetthavee

I refer to the visit of Mr. Grausam and myself to your office on Thursday 17th February last, in the company of Mr. Prajak Jantaratim of the Thailand Customs Department.

The Customs Department of Thailand has provided us with a number of the Exchange Control Form 61 references that are required to enable you to obtain your bank's copies of the E.C.61 forms and the E.C.71 forms.

There are still some E.C. form 61 references to be provided by the Customs Department of Thailand and these should be provided at a later date.

As agreed in our discussions, I hereby formally request that the Bank of Thailand obtain copies of the E.C.71 forms and E.C.61 forms for the following references:

<u>No. of E.C.61</u>	<u>Date</u>
P.N. 27/3259 (Bangkok Bank Ltd)	24/8/1984
P.N. 27/4590 (Bangkok Bank Ltd)	29/11/1984
021 0685 0000700 (Bangkok Bank Ltd)	8/2/1985
021 0685 0000698 (Bangkok Bank Ltd)	8/2/1985
021 0685 0000777 (Bangkok Bank Ltd)	14/2/1985
021 0685 0003922 (Bangkok Bank Ltd)	9/8/1985
021 0685 0003914 (Bangkok Bank Ltd)	9/8/1985
021 0685 0002228 (Bangkok Bank Ltd)	17/5/1985
021 0685 0002142 (Bangkok Bank Ltd)	14/5/1985
021 0685 0005282 (Bangkok Bank Ltd)	14/10/1985
021 0685 0005462 (Bangkok Bank Ltd)	/10/1985
021 0686 0000007 (Bangkok Bank Ltd)	/1/1986
021 0686 0000323 (Bangkok Bank Ltd)	23/1/1986
021 0686 0000464 (Bangkok Bank Ltd)	30/1/1986
021 0686 0000684 (Bangkok Bank Ltd)	13/2/1986
P.N. 86/1337 (Bangkok Bank Ltd)	/3/1986

File No.: N88/7987 cont.

<u>No. of E.C.61</u>	<u>Date</u>
021 0686 0002303 (Bangkok Bank Ltd)	27/5/1986
021 0686 0003862 (Bangkok Bank Ltd)	3/10/1986
P.N. 86/4414 (Bangkok Bank Ltd)	7/11/1986
021 0686 0004934 (Bangkok Bank Ltd)	12/12/1986
021 0687 0000194 (Bangkok Bank Ltd)	13/1/1987
021 0687 0000385 (Bangkok Bank Ltd)	23/1/1987
021 0687 0001548 (Bangkok Bank Ltd)	/4/1987
021 0187 0026894 (Bangkok Bank Ltd)	22/9/1987.
049 07886 102856 Thai Farmers Bank Ltd	25/3/1988.

We request that the copies then be held by you.

When the copies have been gathered and are available for us to copy could you please advise Thai Customs who will advise us.

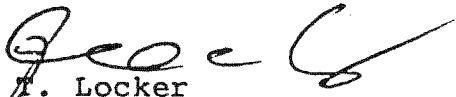
I shall take the opportunity to telephone or fax you in about one week to see how the request is progressing.

I will advise Mr. Surachai of the Thailand Customs Department that you have commenced obtaining the required exchange control forms.

I wish to thank you for your facilitation and generous assistance during our visit to your office.

We appreciate the size of the task involved and thank you for your continued assistance and I send you my best wishes.

Yours sincerely,

  
J. J. Locker  
Director  
INVESTIGATIONS





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# Australian Customs Service

Reply to the Collector of Customs

Quote: N88/7987

G.P.O. Box 8  
SYDNEY, 2001

Telephone

(02)2265800

Fax: 226 5995

Fax: (02)2265896

Telex: 121882  
73909

27th April, 1989.

Mr. Surachai Saphavichaikul  
Director  
Tax Refund and Export Promotion Division  
Customs Department  
Bangkok  
THAILAND

Dear Mr Surachai

I hope you and Mr. Prajak are both well.

I have received the copies of documents you faxed as a result of my last request and I appreciate the promptness of your response.

I have been speaking to Mr. Chetthavee of the Bank of Thailand and he has advised that he has some copies of the banking documents which relate to the references given to us by Mr. Prajak.

Unfortunately, it appears that Mr. Chetthavee can only give us banking documents for 1987 and 1988 as the others have been destroyed.

Mr. Chetthavee does not wish to fax copies of these documents directly to us. He has informed me that he prefers to give the documents to the Thai Customs Department who can then send these documents to us.

I would like to request, if possible, that these copies of the banking documents be obtained from Mr. Chetthavee and then be faxed to me so that I will have a better understanding of their relevance to us.

I again wish to thank you for your continued assistance and look forward to your continuing co-operation.

With best wishes I remain,

Yours sincerely

  
J T LOSKER  
DIRECTOR  
INVESTIGATION



# Australian Customs Service

Reply to the Collector of Customs

Quote: N88/7987

G.P.O. Box 8  
SYDNEY, 2001

Telephone

(02) 226 5800

Fax: 226 5995

Fax: (02) 226 5896

Telex: 121882  
73909

23 May 1989

Mr. Surachai Saphavichaikul  
Director  
Tax Refund and Export Promotion Division  
Customs Department  
Bangkok  
THAILAND

Dear Mr. Surachai

I wish to refer to my previous letter dated 27 April 1989.

At the time of writing this letter I had not received any copies of documents which I was hoping could be obtained from Mr. Chetthavee of the Bank of Thailand.

I also have not received any more numbers of the Exchange Control Forms 61 I have requested.


I trust there are no problems with giving me this information as it will enhance our investigation effort in respect of this matter.

If there are any difficulties that I may be able to assist you with, please let me know.

I look forward to your continued assistance.

With thanks and best wishes I remain.

Yours Sincerely

  
J.T. Locker  
Director  
INVESTIGATION



# Australian Customs Service

Reply to the Collector of Customs

G.P.O. Box 8  
SYDNEY, 2001

Fax: 226 5995

Quote:

N88/7987

Telephone (02) 226 5800

Telex: 121882  
73909

FAX (02) 226 5896

Mr Surachai Saphavichaikul  
Director  
Tax Refund and Export Promotion Division  
Customs Department  
Bangkok  
THAILAND

21 August 1989

Dear Mr Surachai,

Thank you for the copies of the bank documents which Mr Prajak sent to me.  
The documents are most useful.

I will further advise you of my plans in the near future.

With best wishes to yourself and Mr Prajak, I remain,

Yours sincerely

  
J. P. Lecker  
Director  
INVESTIGATIONS