

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 98

Senator Ludwig asked the following question in writing on 25 May 2006:

1. With regards to previous advice given by Customs in relation to the Tomson (aka Visalyak) case, can Customs confirm that there were in total seven instances of Customs detention of clothing and footwear between 1987 and 1988:

- a) 17 July 1987 shipment of apparel from the Steady Export Co in Thailand detained by Customs in Sydney.
- b) 29 July 1987 shipment of apparel from Gold Vincent & Co in Hong Kong arrives in Sydney detained by Customs 31 July 1987.
- c) 7 August 1987 shipment of apparel from Winelux Enterprise Co in Taiwan arrives in Sydney detained by Customs 10 August 1987.
- d) 24 September 1987 shipment of apparel from New Calcutta Store in Thailand arrives in Sydney detained by Customs 29 September 1987.
- e) 1 December 1987 shipment of footwear and apparel from Genuine Quality Trading Co in Thailand arrives in Sydney detained by Customs on 9 December 1987.
- f) 27 March 1988 shipment of apparel from Thai Facilities of Wear & Co in Thailand arrives in Sydney detained by Customs 30 March 1988.
- g) 28 March 1988 shipment of apparel from Cameron Trading Co in Hong Kong arrives in Sydney detained by Customs on 7 April 1988?

2. a) Can Customs confirm that the subsequent prosecution of Mr Tomson was based on the following imports:

Import	Minimum Averred value
<u>Steady Export Co</u>	<u>\$2,462.83</u>
<u>Gold Vincent & Co</u>	<u>\$16,970.05*</u>
<u>Winelux Enterprise Co</u>	<u>\$8,758.52</u>
<u>New Calcutta Store</u>	<u>\$3,892.91^</u>
<u>Cameron Trading Co</u>	<u>\$21,716.78*</u>

* = converted from Hong Kong Dollars to AUD at 19/05/2006 prices

^ = converted from US Dollars to AUD at 19/05/2006 prices

Total AUD value: \$53,801.09

b) Is the estimate of minimum averred value correct?

3. In relation to the other two shipments of clothing:

Thai Facilities of Wear & Co
Genuine Quality Trading Co

- a) What was the value of these goods averred by Customs?
- b) What was the value of these goods declared by Tomson?
- c) Were any charges brought?
- d) Were these shipments released to Mr Tomson, and if so when?
- e) If they were not returned was Mr Tomson compensated for loss?

4. The prosecution

- a) Why did Tomson's prosecution take approximately four years to bring to court?
- b) What happened to the goods detained during that time?
- c) Is it correct that, despite sending two officers overseas to look for evidence against Tomson, the evidence was so insubstantial that the DPP determined that there was insufficient evidence to sustain a criminal prosecution?
- d) Is it correct that the DPP advised on 11 December 1990 in regards this case for a Customs prosecution to be pursued instead, via the Australian Government Solicitor?
- e) Is it correct this was done to allow the prosecution to use averments?
- f) Averments are where the prosecution simply claims that certain facts are true, and does not then have to provide any evidence to substantiate them, is that correct?
- g) Is it correct that after a legal process that took almost two years to complete, the magistrate threw the case out? Were all charges dismissed?
- h) Is it correct that on the 27th of June 1995, the Magistrate Connors handed down his decision on the Tomson case at the Sutherland Local Court, finding;
in relation to the falsity of the invoices, Magistrate Connors found the prosecution did not prove beyond a reasonable doubt that the price paid was false.
the defendants took no part in the preparation of the overseas documents nor did they submit those documents to the various overseas authorities.
There was no significant oral evidence before the court as to the relationship between the overseas document and the invoice presented to Customs.
The expert witness testimony offered to assist the prosecution in support of its averments was not directly relevant to Tomson's circumstances, given the witness was engaged in importation of higher quality product .
it was not proved beyond reasonable doubt that the price which had been paid for the goods was false.
both defendants were entitled to have each information dismissed.
- i) Is it also correct that in 1997 a single judge of the NSW Supreme Court found that the factual matrix of the case was well summarised by the magistrate.
- j) When the charges were dismissed, why weren't the goods returned to Tomson, or their value equivalent plus interest?

5. The House of Reps Standing Committee on Legal and Constitutional Affairs tabled its report in May 2004, and the Government tabled its response on May 2006. Recommendation 6 of the report includes:

"the Committee recommends that Mr Tomson receive compensation for commercial losses directly attributable to the seizure of goods and to the lapse of time before the resolution of the costs issue between the parties in 1998."

Duncan Kerr dissented, NOT rejecting the desirability of Mr Tomson receiving compensation, but instead determining that the Committee was not in the best position to assess compensation and instead recommended an independent assessment.

With regard to the Government's response to the committee report;

- a) What was the reason for delay in tabling the report?
- b) Did the agreed legal costs settlement of 1998 cover the detained goods?
- c) How was this process established?
- d) What was the basis of the settlement (please provide details)?

- e) What legislative remedies were available to Tomson that he did not use?
- f) On what basis does Customs maintain that the confidential material caused Mr Tomson to abandon court proceedings in 1998?
- g) Regarding the independent Counsel:
 - a. How was this process established?
 - b. Was the process adopted agreed by both parties (if so when, specify agreement)?
 - c. How was the counsel selected, and who selected counsel?
 - d. Was the selected counsel agreed by both parties?
 - e. Was there an agreement in place? (please provide details).
 - f. Did both parties agree to be bound by the decision of counsel?
 - g. Who payed for the assessment performed by counsel?
 - h. Who did Counsel report to?
 - i. Was the independent counsel provided with the confidential material that Customs alleges caused Tomson's legal case to fold?
 - j. Has Tomson (or his counsel) been provided with a copy of that material? If so, was any rebuttal offered (please supply)?
 - k. Did Tomson (or his counsel) refuse to co-operate with the independent counsel?
 - l. If so, were any reasons given for that (specify)?

- 6. a) Does Customs concede it owes anything at all to Tomson?
- b) Are there any internal Customs mechanisms still available to Tomson in terms of asking for compensation?

- 7. a) With regards to the Tomson case, can you please provide to the Committee all documents associated with that case including all internal and external correspondence, subsequent to the dismissal of charges; including, but not limited to:
 - any documents and records of meetings in negotiations with Mr Rodda or any other of Mr Tomson's representatives.
 - any minutes relating to the meeting with the Department of Finance and Administration concerning the Act of Grace payment.

For any document that cannot be provided, can you please supply a name and reference for the document and why it may not be provided?

- 8. Given that the Department of Finance and Administration has now rejected an Act of Grace payment, and that the Government has announced its decision on the Committee's recommendations, is the Government now intending to negotiate a settlement with Mr Tomson and his representatives or is this matter now closed from the Government's point of view? What is the official answer?

The answer to the honourable senator's question is as follows:

A response to each of the details contained within the honourable senator's questions would require a significant investment of time and people.

Substantial information on the Tomson case was provided to the House of Representatives Standing Committee on Legal and Constitutional Affairs during its inquiry into *Modern-day usage of averments in Customs prosecutions*. Further, this case has been independently reviewed twice and further considered by the Department of Finance and Administration when assessing the merits of an Act of Grace application for compensation. These reviews found nothing to substantiate claims that Customs prosecution was malicious.

Mr Tomson has not provided particulars that demonstrate the connection between the prosecution and any claimed commercial losses.

It is therefore not reasonable to revisit this matter in such detail. Copies of Customs submissions to the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry are available on the committee web site.

The submissions provided are:

- Initial Submission: House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Averments Provisions in Australian Customs Legislation Australian Customs Service Submission (May 2003).
- Submission 4.1: Supplementary statement by the Australian Customs Service to the House of Representatives Standing Committee on Legal and Constitutional Affairs (Undated).
- Submission 4.2: Supplementary submission by the Australian Customs Service to the House of Representatives Standing Committee on Legal and Constitutional Affairs (21 July 2003).
- Submission 4.3: Supplementary submission – responses to questions from the Committee (Dec 2003)
- Submission 4.4: Supplementary submission by the Australian Customs Service to the House of Representatives Standing Committee on Legal and Constitutional Affairs (6 February 2004).
- Submission 4.5: Supplementary submission - Inquiry into averment provisions in Australian Customs legislation (April 2004).
- Submission 4.6: Supplementary submission by the Australian Customs Service to the House of Representatives Standing Committee on Legal and Constitutional Affairs (7 May 2004).