

The Senate

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Standing Committee on  
Foreign Affairs, Defence and Trade

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Customs Amendment (2007 Harmonized  
System Changes) Bill 2006 [Provisions]

Customs Tariff Amendment (2007  
Harmonized System Changes) Bill 2006  
[Provisions]

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# Chapter 1

## Introduction

### Background

1.1 On 14 September 2006, the Senate referred the provisions of the Customs Amendment (2007 Harmonized System Changes) Bill 2006 and the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 to the Senate Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report by 9 October 2006.

1.2 The Customs Amendment (2007 Harmonized System Changes) Bill 2006 seeks to amend the *Customs Act 1901* to enable the Chief Executive Officer of the Australian Customs Service to revoke approximately 700 Tariff Concession Orders (TCOs) and replace them with approximately 1200 new TCOs. A TCO may be issued on imported goods where equivalent substitutable goods are not produced in Australia. A TCO may also be granted to allow the duty-free entry of goods into Australia. These changes are complementary to the amendments contained in the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, and will ensure the seamless application of TCOs to goods imported before and after 1 January 2007.

1.3 The Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 seeks to amend various classifications of goods contained in schedules to the *Customs Tariff Act 1995*. The bill is designed to implement revised Australian customs tariff classifications resulting from agreed changes to the international Harmonized Commodity Description and Coding System.

### Conduct of the inquiry

1.4 The committee advertised the inquiry in the Australian newspaper on 16, 19 and 27 September 2006, and invited written submissions by 25 September. Details of the inquiry, the bills and associated documents were placed on the committee's website. The committee also wrote to a number of organisations and stakeholder groups. In examining the bills, the committee was particularly interested in examining any unintended consequences of the proposed changes.

1.5 The committee received two submissions, from the Australian Law Council and from the Australian Customs Service. Given the small number of submissions received for this inquiry, the committee resolved not to hold a public hearing. Instead, it placed seven questions on notice to Customs, some of which are based on issues raised in the Law Council submission. Due to the short timeframe between the provision of answers and the reporting date, the committee agreed to extend the reporting date to 11 October.

1.6 Some of the answers provided by Customs are considered by the committee in Chapter 2, especially those which respond to concerns raised by the Law Council. To

assist the Senate in its consideration of the bills, Appendix 2 of the report presents the questions on notice asked by the committee and the corresponding answers provided by Customs.



# Chapter 2

## Overview and areas of concern

2.1 This chapter explains the main provisions of each bill, briefly outlines areas of concern raised in the Australian Law Council submission and considers Customs' response which was provided to the committee as answers to questions on notice.

### Main provisions

#### *Customs Amendment (2007 Harmonized System Changes) Bill 2006*

2.2 Section 269SD of the Customs Act deals with the revocation of Tariff Concession Orders (TCOs) at the 'initiative' of Customs. The drafting of subsection 269SD of the Customs Act currently allows the Chief Executive Officer (CEO) of Customs to revoke a TCO, and issue a replacement TCO, only *after* the classification change has come into force. According to the Explanatory Memorandum to this bill:

This means that the CEO could only exercise this power after 1 January 2007. Therefore, in order to ensure the seamless application of TCOs to goods before and after 1 January 2007, and to avoid any uncertainty as to the application of TCOs to goods, it is proposed to amend the Customs Act to give the CEO the power to revoke a TCO, and make a replacement TCO, as a result of a tariff classification change prior to the tariff classification change taking effect. Current TCOs would be revoked with effect from 1 January 2007 and the new TCOs would also take effect from that day.<sup>1</sup>

2.3 The bill inserts a new subsection 269SD(2A) into the Customs Act to enable the CEO of Customs to make an order revoking a TCO and to make a new TCO in respect of the goods *before* the relevant tariff classifications take effect on 1 January 2007. In short, were Parliament to pass the bill, affected TCOs could be revoked or made between Royal Assent and 1 January 2007.

2.4 As stated in Chapter 1, these new powers are required to enable the CEO of Customs to revoke approximately 700 TCOs affected by the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 and replace them with approximately 1200 new TCOs.

2.5 The bill inserts two new items at subsection 269SE(2) and 273GA(1)(s) which deal, respectively, with the notification requirements for various decisions related to TCOs and decisions that are subject to review by the Administrative Appeals Tribunal (AAT). By including a reference to new subsection 269SD(2A) in subsection 269SE(2), the CEO of Customs will be required to inform all interested parties of decisions to make new TCOs, by notice published in the Gazette. Reference to new

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1 Customs Amendment (2007 Harmonized System Changes) Bill 2006, Explanatory Memorandum, p.5

subsection 269SD(2A) in paragraph 273GA(1)(s) will extend the jurisdiction of the AAT to the decisions of the CEO under new subsection 269SD(2A).<sup>2</sup>

### ***Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006***

2.6 Schedule 1 of the bill contains almost 600 items, almost all of which repeal or substitute new classifications of goods. Item 599 provides that the new classifications will come into force on 1 January 2007.

2.7 The amendments to the customs tariff will implement changes resulting from the third review (HS2007) of the Harmonized Commodity Description and Coding System (HS) conducted by the World Customs Organization (WCO). According to the Explanatory Memorandum to this bill:

The 2007 HS changes are spread throughout the Customs Tariff and have at least some impact on most industries and commodity groups. In some cases, for example plywood, veneered panels and related products of heading 4412, the resulting domestic tariff structure is complex. However, the established rules of tariff classification will continue to apply and the description of those goods will simply lead to classification in a different tariff subheading.<sup>3</sup>

2.8 The two previous reviews were implemented in 1996 and 2002. The WCO's recommendation to implement HS2007 on 1 January 2007 was passed by the WCO Policy Commission on 26 June 2004.

2.9 The HS has been developed and maintained by the WCO. It is described by the WCO as a 'multipurpose international product nomenclature' comprising 5000 commodity groups, each identified by a six digit code, arranged in a legal and logical structure. It is supported by well-defined rules to achieve uniformity.<sup>4</sup> The HS is governed by the International Convention on the Harmonized Commodity Description and Coding System and reviewed by the WCO approximately every five years. The Convention came into force for Australia on 1 January 1988.

2.10 The Australian Customs Service submission noted that the HS provides a legal and logical structure within which the headings and subheadings are grouped in 96 Chapters, which are arranged in 21 sections: 'The headings and subheadings of the HS are also accompanied by Interpretative Rules and the section, Chapter and Subheading Notes, which form an integral part of the system for uniformly classifying goods'.<sup>5</sup> The HS is used by more than 190 countries and economies as a basis for their

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2 *ibid.*

3 Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, Explanatory Memorandum, p.3

4 See [http://www.wcoomd.org/ie/En/Topics\\_Issues/topics\\_issues.html](http://www.wcoomd.org/ie/En/Topics_Issues/topics_issues.html)

5 Australian Customs Service, *Submission 2*, p.2

Customs Tariffs and for the collection of international trade statistics. According to Customs:

The HS can be used by Customs administrations, statisticians, transporters, freight forwarders...for a variety of purposes. Among the more important uses of the HS are the following:

- as a basis for the collection of customs duties or internal taxes;
- as a basis for the collection of international trade statistics;
- as a basis for rules of origin;
- as a basis for trade negotiations (eg at the WTO, or bilateral/plurilateral Free Trade Agreements);
- for transport or freight rates and statistics;
- for the monitoring of controlled goods (eg hazardous wastes, narcotics, chemical weapons, ozone layer depleting substances, endangered species); and
- as a vital element of border controls and procedures, including risk assessment, information technology and compliance.<sup>6</sup>

2.11 According to information published by the WCO, the HS:

...is also used extensively by governments, international organizations and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis. The HS is thus a universal economic language and code for goods, and an indispensable tool for international trade.<sup>7</sup>

2.12 The Explanatory Memorandum to this bill noted that:

The third review has focused on deleting those headings and subheadings where there are low levels of international trade, amending the system to reflect changes in industry practice and technological developments and providing new subheadings, to allow signatory parties to separately identify new products as certain narcotic substances.<sup>8</sup>

2.13 The Bills Digest noted that in addition to technology changes, evolutions in trade patterns and various administrative updating, the proposed changes are necessary '...to assist in the monitoring and control of various commodities to which

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6 *ibid.*, p.1

7 See [http://www.wcoomd.org/ie/En/Topics\\_Issues/topics\\_issues.html](http://www.wcoomd.org/ie/En/Topics_Issues/topics_issues.html)

8 Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, Explanatory Memorandum, p.2

various environment and other international agreements apply'.<sup>9</sup> The Customs submission elaborated by noting that a number of amendments brought about by HS2007, particularly in the area of organic and inorganic chemicals, have been implemented as a result of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention). The submission further observed:

Australia signed this Convention in July 1999 and ratified it on 20 May 2004. The core of the Rotterdam Convention is the facilitation of information exchange, ensuring that governments have the information they require about hazardous chemicals, in order to assess risks and to take informed decisions on chemical imports and exports.<sup>10</sup>

2.14 As a result of the changes to the Customs Tariff, 700 existing TCOs will be revoked and replaced with approximately 1200 new TCOs.

2.15 The Customs submission noted that amendments to the HS are proposed and discussed at a technical level at the WCO by the Harmonized System Committee. While most amendments are agreed by consensus, some specific decisions are voted on. Australian Customs attends the meetings of the committee and seeks the views of policy departments, major industry groups and other stakeholders prior to each meeting.<sup>11</sup> Customs further informed the committee that:

No Contracting party (including Australia) lodged objections with the World Customs Organization (WCO) during the six months to 12 January 2005. This is because the amendments had been proposed and discussed at a technical level in meetings of the WCO's Harmonized System Committee during the five years since the previous HS review. The International Chamber of Commerce has observer status on this Committee.

...

As no Contracting Party objected to the proposed HS2007 amendments, under Article 16 of the Convention the changes at four-digit (heading) and six-digit levels were deemed to have been accepted.<sup>12</sup>

2.16 The Attorney-General in his second reading speech noted that the HS is a hierarchical system that uniquely identifies all traded goods and commodities. It is used uniformly throughout most of the world. The goods and commodity classifications used by Australia have been based on the HS since 1988 and are contained in the Customs Tariff for imports and the Harmonized Export Commodity Classification for exports. The Attorney-General stated that the bill ensures, to the greatest extent possible: 'the preservation of existing duty rates and levels of tariff

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9 Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, *Bills Digest*, No. 24, 2006-07, Department of the Parliamentary Library, 13 September 2006, p.3

10 Australian Customs Service, *Submission 2*, p.2

11 *ibid.*

12 Australian Customs Service, Answer to Question on Notice No.1, 9 October 2006, p.2

protection for Australian industries and margins or preference accorded to Australia's trading partners'.<sup>13</sup>

2.17 However, as noted by the Australian Customs Service submissions, it has not been possible to preserve existing duty rates for the following groups of goods which are imported in very small quantities:

- certain plywood and veneered panels containing bamboo. The general rate of duty will increase from Free to 5 per cent;
- certain forms of carbonising base paper imported from Canada. The duty rate applicable will fall from 5 per cent to either Free or 2.5 per cent, depending on the exact nature of the goods;
- carbonising paper imported from certain developing countries. The preferential rate will increase from 4 per cent to 5 per cent or decrease to free, depending on the exact nature of the goods; and
- adhesive paper classified in heading 4823. The general rate of duty of 5 per cent is preserved.<sup>14</sup>

2.18 The bill also contains amendments which are relevant to the Australia-US Free Trade Agreement and the Thailand-Australia Free Trade Agreement. Under both agreements, there is no customs duty payable for imported goods originating in the United States and Thailand unless a rate of customs duty is specifically provided for relevant goods originating in these countries under schedules 5 and 6 of the *Customs Tariff Act 1995*. The bill ensures that the duty applicable to those products that are affected by the classification changes remain unchanged.

### **Areas of concern**

2.19 The committee majority notes that the Australian Customs Service submission acknowledged that the large number of changes to tariff classifications resulting from HS2007 might, in turn, result in an unintended change to the duty treatment of a particular good. However, in the event such an error was identified, Customs would rely on a Customs Tariff Proposal which the Government can introduce in the House of Representatives without notice. According to the Customs submissions:

The moving of a Customs Tariff Proposal is normally treated as a formal procedure for the purpose of initiating the collection of a duty. Collection of duties is commenced on authority of an unresolved motion, and that has been accepted by convention...<sup>15</sup>

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13 The Hon. Mr Philip Ruddock, Second Reading Speech, Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, p.2

14 Australian Customs Service, *Submission 2*, pp.3-4

15 *ibid.*, p.5

2.20 In the event that Parliament is prorogued, dissolved or adjourned for a period of time exceeding seven days, Notice of a Customs Tariff Proposal may be published in the Gazette by the Chief Executive Officer of Customs. The Proposal is deemed to have effect from the time specified in the Notice. It is normal for a Customs Tariff Amendment Bill to be introduced in the Parliament at a later time to consolidate the outstanding Customs Tariff Proposal.

2.21 Other areas of concern were raised in a submission by the Customs and International Transactions Committee (Customs Committee) of the Business Law Section of the Law Council of Australia. The submission provided commentary on three separate issues. First, the Law Council is concerned about the timing of the bills' introduction in the Parliament, given that they contain significant amendments and technical changes to the Customs Tariff. It believes that Customs may not have had enough resources to implement the amendments contained in the bills. In the light of this concern, the Law Council submission recommended that the committee ask Customs:

- for a timetable setting out the process since the resolution of the WCO to adopt the HS20007 changes, and the preparation of materials to implement the changes to the HS in the Customs Tariff; and
- if adequate resources were provided by the Government to enable it to implement the HS2007 changes in a timely and comprehensive manner.<sup>16</sup>

2.22 Second, the Law Council holds the view that Customs has a history of not consulting sufficiently with stakeholders about significant proposed legislative changes. In relation to the current bills, the Law Council submission speculated that Customs may not have consulted widely enough or in a timely manner, especially with stakeholders likely to be affected by the proposed changes. The submission raised a particular concern that the current level of dissemination of information regarding the amendments may not have been adequate. The Law Council also referred to other customs amendment bills recently introduced in the Parliament and examined by the Senate's Legal and Constitutional Affairs Legislation Committee, which apparently were not subject to an adequate consultative process by Customs.

2.23 A final area of concern relates to the potential liability for incorrect information on reports provided to Customs. The liability could range from an infringement notice, prosecution for a strict liability offence or prosecution in circumstances where Customs believes that there has been a deliberate or reckless fraud or misstatement. Given the potential for importers and customs brokers to make inadvertent errors by using 'outdated' information in reporting to Customs, the Law Council submission strongly recommended that:

...Customs provide a moratorium period (for example, 6 months) during which no importers, customs broker or other person making a report to

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16 Law Council of Australia, *Submission 1*, pp.2-3

Customs will face any liability in terms of infringement notice or strict liability prosecution if the error which exposes them to liability to Customs arises from the changes effected by the Bills.<sup>17</sup>

2.24 The submission noted further that a moratorium may assist in preventing any unintended consequences, arising from legislative oversight or otherwise, which may not become apparent for some time.

### **Comment**

2.25 The committee majority believes that the Custom Tariff Proposal mechanism referred to in paragraphs 2.19 and 2.20 provides an adequate safeguard against errors which might affect the rate of customs duty applicable to particular goods. It agrees with Customs that it is unnecessary for the proposed legislation to include a provision to enable the CEO of Customs to make orders or regulations to overcome any unintended consequences.<sup>18</sup> The Customs submission noted that in implementing the 800 changes to the Customs Tariff following the second review of the HS in 2002, Customs identified one error that resulted in a higher rate of duty being applied to fur-lined leather mittens. This error was apparently corrected by a Customs Tariff Amendment Bill, which was backdated to the commencement date of the changes.

2.26 The committee does not accept the Law Council's criticism that Customs may not have consulted widely enough or in a timely manner, especially with stakeholders likely to be affected by the proposed changes. The committee is satisfied that extensive consultation has taken place with relevant government departments and, where necessary, with industry associations. As noted by the Explanatory Memorandum to the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006:

As a result of these consultations, the Bill has been designed to give effect to the HS changes while maintaining, to the greatest possible extent, existing levels of tariff protection and margins of tariff preference accorded to Australia's trading partners.<sup>19</sup>

2.27 The committee notes in particular the detailed answer provided by Customs in response to a question on notice about the process which Customs had followed since the resolution of the WCO to adopt the HS2007 changes:

At the outset Customs would like to affirm its commitment to providing timely advice to importers or their agents about forecast changes in the regulatory environment. In administering Customs laws, these responsibilities are shared with policy agencies. In adopting changes to international conventions, there is obviously a balance to be struck between

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17 *ibid.*, p.4

18 Australian Customs Service, Answer to Question on Notice No.7, 9 October 2006, p.10

19 Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006, Explanatory Memorandum, p.2

giving early notice about changes where possible, and providing up-to-date and accurate information that reflects the Government's policy intentions, and takes account of Parliamentary processes.<sup>20</sup>

2.28 Customs advised the committee that it had taken the following key actions to provide more detailed advice to importers about the impending changes:

- regular dialogue with industry groups as changes have been gradually developed through the WCO;
- consultation with Australian policy agencies;
- careful development of Australian-based tariff classification changes so that duty rates are maintained where practicable, and import reporting is not unnecessarily complex;
- publishing the 2002 and 2007 proposed classification concordances to coincide with introduction into Parliament of the related legislation;
- establishment of an HS2007 section on Customs website, with links to all key documents;
- circulation of Australian Customs Notices about key issues;
- setting up a project team which acts as a contact point on HS2007; and
- planned additional communication, subject to successful passage of the Bills.<sup>21</sup>

2.29 The committee is satisfied that Customs is currently endeavouring to provide a seamless transition into HS2007 and its associated changes by notifying affected parties about the proposed changes. Evidence to the committee clearly shows that Customs had consulted with policy agencies and industry groups at an early stage when issues were being considered by the WCO's HS Committee. Customs advised the committee that following the introduction of the bills in the Parliament on 7 September 2006, it formally informed interested parties of the pending changes. Customs issued Australian Customs Notice (ACN) 2006/44 about the proposed HS amendments and ACN 2006/45 about changes to Tariff Concession Orders, Tariff Advices and Precedents, and Origin Advice Rulings. Both ACN's are available on the Customs website and provide directions to the HS2007 information page.<sup>22</sup>

2.30 The submission from Customs advised that it had undertaken a large number of proof reading exercises to reduce the possibility of errors occurring, and had already published a concordance of changes to tariff classifications between HS2002 and HS2007, both electronically on the Customs website and in hard copy.<sup>23</sup>

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20 Australian Customs Service, Answer to Question on Notice No.2, 9 October 2006, p.3

21 *ibid.*

22 *ibid.*, p.5

23 Australian Customs Service, *Submission 2*, p.5



2.31 In answers to question on notice, Customs provided detailed responses to the suggestion by the Law Council that importers and customs brokers are at risk of liability for making incorrect statements, and that Customs provide a six-month moratorium for inadvertent errors made by importers. Customs argued persuasively that the risk of liability has been overstated and that a moratorium is not appropriate in the light of the existing legislated Infringement Notice Scheme (INS) that deals with non-compliance:

The Infringement Notice Scheme...Guidelines (a legislative instrument tabled in Parliament) provide the importer or customs broker with some protection from penalties issues under that scheme. A decision to issue an infringement notice can only be made by a delegate of the CEO of Customs. A judgement is made in each case based on the individual circumstances of the case. The delegate of the CEO may exercise discretion in this process, including whether an offence occurred as a result of legislative change or a reliance on Customs advice.<sup>24</sup>

2.32 The committee emphasises that the INS Guidelines provide importers and customs brokers with protection from penalty by requiring a delegate of the CEO of Customs to consider a number of factors, including the significance of the breach, any effort made to comply, reliance on Customs advice, and reasons beyond the person's control.

2.33 Customs advised that the Customs Act contains two legislative defences to liability for a false and misleading statement: the 'amberline' defence and the 'voluntary disclosure' defence:

These defences can protect importers and their customs brokers from liability where they are awaiting a tariff advice. For example, penalties may not apply in certain circumstances where a person specifies uncertainty as to the accuracy of information included (or omitted)—that person will not be considered to have committed an offence if the statement as incorrect.<sup>25</sup>

## Conclusion

2.34 The committee believes that passage of these bills through the Parliament is important to ensure that Australia, as a signatory to the International Convention on the Harmonized System, implements the changes that resulted from the WC's third review of the Harmonized System. The committee notes in particular that the bills will ensure the preservation of existing duty rates and levels of tariff protection for Australian industries and margins of preference accorded to Australia's trading partners.

2.35 In considering the bills, the committee has taken into consideration the concerns raised by the Australian Law Council in its submission. However, it believes

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24 Australian Customs Service, Answer to Question on Notice No.4, 9 October 2006, p.7

25 *ibid.*

that the concerns are too speculative and broad and the submission draws conclusions which are not supported by any concrete evidence. The committee believes that Customs has satisfactorily addressed all of the concerns raised by the Law Council in written answers provided to questions on notice (see Appendix 2).

### **Recommendation**

**2.36 The committee recommends that these bills be passed without amendment.**

SENATOR DAVID JOHNSTON  
CHAIR

## **ADDITIONAL COMMENTS BY LABOR SENATORS**

Labor Senators are concerned that submitters and potential submitters may not have been given enough time to consider the legislation against the background of the administrative scheme. Customs have not afforded details of the consultation which they indicate has taken place with industry although there appears to have been extensive consultation with other Government departments.

This represents an increasing trend of Government-directed short (or extremely short) Senate inquiry processes. The result is inevitably that often highly technical bills such as these see less public scrutiny and less input from affected industry.

It should be kept in mind that the details of the changes have only been made public since the introduction of the Bills early in September with full implementation expected in January 2007.

The Howard Government would be well reminded that the prime task of business operators is actually working, running and growing their businesses, not making hurried submissions to Senate inquiries with last-minute notice.

In confecting short turn-arounds for committee hearings into legislation that directly affects the day-to-day operations of industry, the Government is in effect ensuring the voice of industry is not heard.

Labor Senators therefore call on the Government to give enough time for reasonable inquiry and reasonable notice so that business and the wider community are adequately able to participate in the Senate committee process.

SENATOR STEVE HUTCHINS  
DEPUTY CHAIR

SENATOR MARK BISHOP

SENATOR JOHN HOGG



# Appendix 1

## Public submissions

- P1 Law Council of Australia
- P2 Australian Customs Service



## **Appendix 2**

Senate Standing Committee on Foreign Affairs, Defence and Trade

**Inquiry into the provisions of the Customs Tariff Amendment (2007  
Harmonized System Changes) Bill 2006 and the Customs Amendment  
(2007 Harmonized System Changes) Bill 2006**

**Response to Questions on Notice for the Australian Customs Service**

**Inquiry into the provisions of the Customs Tariff Amendment  
(2007 Harmonized System Changes) Bill 2006 and the Customs Amendment  
(2007 Harmonized System Changes) Bill 2006**

**Questions on Notice for the Australian Customs Service**

1. *The committee understands that member countries of the International Convention on the Harmonized Commodity Description and Coding System may notify the Secretary-General of the World Customs Organization of an objection to a Harmonized System change within six months of being officially notified of that change.*

- *Did Australia make any official objections to the amendments brought about by the latest review (HS2007)?*
- *If objections were raised, what were they and what was the response from the WCO?*

**Response**

The Committee's understanding of the HS amendment process is correct. As Customs mentioned briefly in paragraphs 12 and 13 of its Submission of 25 September 2006 to the Committee, Contracting Parties to the HS Convention – including Australia – had six months to lodge objections after the Secretary General's 14 July 2004 notification of proposed amendments to the Convention's Annex.

The Annex sets out the 'Harmonized System Nomenclature' – including the General Rules for the Interpretation of the HS; Section, Chapter and Subheading Notes; and the headings and subheadings. Each heading is identified by four digits – the first two indicating the Chapter number and the second two showing the numerical order in which the heading appears within that Chapter. Heading numbers are shown in the first column of the Convention's Annex. The second column contains the six-digit codes for the HS, and the third column contains the texts of the headings and subheadings.

No Contracting Party (including Australia) lodged objections with the World Customs Organization (WCO) during the six months to 12 January 2005. This is because the amendments had been proposed and discussed at a technical level in meetings of the WCO's Harmonized System Committee during the five years since the previous HS review. The International Chamber of Commerce has observer status on this Committee.

Most HS amendments are agreed by consensus among member countries, although some specific decisions are voted on. The Australian Customs Service attends meetings of the HS Committee, and seeks views about specific topics from Australian policy departments, major industry groups and other stakeholders before each meeting. HS Committee decisions are then submitted to WCO's Council, and at its meeting in June 2004 the Council adopted the proposed 2007 changes.

As no Contracting Party objected to the proposed HS2007 amendments, under Article 16 of the Convention the changes at four-digit (heading) and six-digit levels were deemed to have been accepted.

On 19 January 2005 WCO's Secretary General notified Australia that the amendments would therefore enter into force on 1 January 2007, and that under Article 16(5) of the Convention, Contracting Parties would need to amend their Customs tariff and statistical nomenclature to conform with the HS changes.



2. *The Law Council of Australia submission raised a concern that Customs may not have had enough resources to provide advance notice of the changes proposed by these bills at an earlier stage. In the light of this concern, can Customs:*

- *provide the committee with a timetable setting out the process it has followed since the resolution of the WCO to adopt the HS2007 changes;*
- *advise what materials Customs prepared in order to implement the changes to the Harmonized System in the Customs Tariff; and*
- *inform the committee of any additional resources which the Government made available to enable Customs to implement the HS2007 changes in a timely and comprehensive manner.*

## **Response**

At the outset Customs would like to affirm its commitment to providing timely advice to importers or their agents about forecast changes in the regulatory environment. In administering Customs laws, these responsibilities are shared with policy agencies. In adopting changes to international conventions, there is obviously a balance to be struck between giving early notice about changes where possible, and providing up-to-date and accurate information that reflects the Government's policy intentions, and takes account of Parliamentary processes.

As the 2007 changes are the outcome of a third five-yearly review of tariff classifications, there was an expectation on the part of industry that changes were likely to be implemented on 1 January 2007. The WCO maintains a website [[www.wcoomd.org](http://www.wcoomd.org)] that informs any interested party about progress on HS changes. However, Customs has taken the following key actions to provide more detailed advice to importers about the impending changes:

- regular dialogue with industry groups as changes have been gradually developed through the WCO;
- consultation with Australian policy agencies;
- careful development of Australian-based tariff classification changes so that duty rates are maintained where practicable, and import reporting is not unnecessarily complex;
- publishing the 2002 and 2007 proposed classification concordances to coincide with introduction into Parliament of the related legislation;
- establishment of an HS2007 section on Customs website, with links to all key documents;
- circulation of Australian Customs Notices about key issues;
- setting up a project team which acts as a contact point on HS2007; and
- planned additional communication, subject to successful passage of the Bills.

In March 2005 the first draft of the WCO's correlation table – which sets out the affected current (2002) HS Nomenclature at the six-digit level and compares them with the 2007 changes, with explanatory remarks – was made available to Contracting Parties to the HS Convention. Customs commenced the translation of the WCO correlations into Australia's 8-digit domestic tariff classifications during the following months.

In December 2005 the final draft of the WCO correlation table was made available to Contracting Parties, and was published on the WCO website on 19 December 2005. In February 2006, at a meeting convened in Canberra, Customs provided its first draft of Australia's (2002 to 2007) concordance to relevant Government Departments and Agencies – including the Departments of Foreign Affairs and Trade, Industry, Tourism and Resources, Agriculture, Fisheries

and Forestry, and the Australian Bureau of Statistics. Customs also consulted the Treasury in relation to duty rate issues.

Since that time Australia's concordance has been updated in minor ways – the final version being published on Customs' website on 13 September 2006 to reflect the content of the Customs Amendment (2007 Harmonized System Changes Bill) 2006 (the Customs Tariff Bill) that had been introduced into Parliament the previous week. Customs has continued to consult with policy departments and agencies in relation to their stakeholder and client interests.

On 24 March 2006 Customs provided drafting instructions to the Office of Parliamentary Counsel (OPC) to reflect the 1,200 changes that are contained in the Customs Tariff Bill. The first draft of the Bill was provided to Customs in May 2006, and after multiple proof-reading and editorial changes, the Bill was finalised in late-August 2006 for consideration by relevant Ministers. The Explanatory Memorandum for the Bill was prepared by Customs in consultation with policy agencies.

Customs has established a separate part of its internet website for HS2007 matters. The website contains the following material:

- the Customs Tariff Bill and the Customs Amendment (2007 Harmonized System Changes Bill) 2006;
- the related Explanatory Memorandums;
- the Concordance;
- Australian Customs Notices setting out the proposed process for implementation, subject to passage of the legislation.

Although the legislative changes were prepared within existing resources, Customs set aside specific funds from 1 July 2006 to establish a small team within Trade Branch – the HS2007 Implementation Project. Led by a Director, the team comprises some staff within the Branch who have responsibility for tariff classification, Tariff Concession Orders, Tariff Advices and Precedents. The team draws on the expertise of Customs' regional tariff staff, and some recently retired tariff officers.

Free Trade Agreement administration aspects of HS2007 (rules of origin, preferential duty rates) have been managed within Trade Branch's Valuation and Origin Section, in consultation with the Departments of Foreign Affairs and Trade, and Industry, Tourism and Resources. Trade Branch also liaises closely with other Branches within Customs (such as Compliance Branch, Cargo Branch, Cargo Systems Branch and Intelligence Branch) in respect of their regulatory or administrative responsibilities – such as cargo reporting, declarations by importers or their agents, information technology impacts, and risk assessment.

In July 2006 the HS2007 Implementation Project team commenced an analysis of existing Tariff Concessions Orders (TCOs) to identify those that will require revocation and re-issue as a result of the amendments contained in the Customs Tariff Bill. This process is expected to be completed by the end of October 2006. (Customs currently estimates that about 750 existing TCOs will need to be revoked and replaced with approximately 1,000 new TCOs).

As mentioned in the recent Australian Customs Notices, more information will be provided to interested parties as soon as this process is complete – including a concordance of existing and proposed replacement TCOs for the use of Customs clients. The other related Bill recently

introduced into Parliament – the Customs Amendment (2007 Harmonized System Changes) Bill 2006 (TCO Bill) – would allow anticipatory changes to be made to affected TCOs between the date of Royal Assent and 1 January 2007. In 2002, under the current legislation, this process was not able to be completed until after the HS2002 classification changes took effect, so successful passage of the TCO Bill would allow more timely implementation than occurred in 2002.

Funds have been set aside for the printing and publication of new tariff and tariff concessions working pages, used by importers and/or their agents. Funds have also been provided for expenses related to the provision of newspaper advertisements and information sessions in capital cities around Australia in the coming months.

3. *Your submission states that Customs is endeavouring to provide a "seamless transition" into HS2007 and its associated changes by consulting parties about the proposed changes. Describe the process by which Customs has consulted with industry stakeholders about the proposed amendments, especially customs brokers, importers and exporters? How widely, and by what methods, has information been disseminated to relevant affected parties?*

## **Response**

As mentioned in response to question 1, where there are significant changes proposed as part of the five-year HS review process, Customs consults policy agencies and industry groups at an early stage when issues are being considered by the WCO's HS Committee.

As an example: in 2001-2002 Australian Customs participated in a WCO project to examine and update certain of the Explanatory Notes (ENs) to the HS and recommend any changes. Australia undertook to examine and update the ENs for high technology goods (eg information technology and telecommunications equipment), classified in Chapters 85 and 90 of the HS. This involved significant consultation with relevant industry groups in Australia including the Australian Electrical and Electronic Manufacturers Association and the Australian Information Industry Association.

Many of the issues raised by the industry groups that could not be resolved through amendment to the ENs were referred to a WCO working party set up to examine changes to the HS. This in turn led to significant changes to Chapters 85 and 90 as part of HS2007. Consultation with industry groups and bodies continued throughout this process.

During the preparation of the Australian 8-digit classifications and related duty rates, Customs also sought advice on technical aspects of the proposed changes from relevant industry associations, including in consultation with the Department of Industry, Tourism and Resources. Any discussions were based on the Government's intention that implementation of the HS2007 changes within Australian legislation should, to the greatest extent possible, preserve duty rates and margins of tariff preference.

Following introduction of the legislation in Parliament on 7 September 2006, Customs formally informed interested parties of the pending changes through the processes outlined below.

On 13 September 2006, Customs issued Australian Customs Notice 2006/44 about the proposed HS amendments, and ACN 2006/45 about changes to Tariff Concession Orders, Tariff Advices and Precedents, and Origin Advice Rulings. Both ACNs are available on the Customs website [[www.customs.gov.au](http://www.customs.gov.au)] and provide directions to the HS2007 information page.

The HS2007 information page contains links to all available information on the proposed tariff changes – including a copy of the legislation, the associated Explanatory Memorandums and a concordance showing linked current and proposed post-January 2007 tariff classifications. This page will also be used to provide advice about the revocation and reissue of Tariff Concession Orders, the voiding of and application for Tariff Advices, and the replacement of Tariff Precedents affected by the changes.

Copies of the documents contained on the website are available to Customs clients, on e-mail request, to an address specified in the ACNs mentioned above. There will be broadcast messages made available on Customs' Integrated Cargo System (ICS), drawing the attention of importers and their agents to the proposed changes. ICS also has a facility that allows Customs to identify clients who routinely import goods likely to be affected by the HS2007 changes, and regular messages will be supplied on-line to those clients when they import those goods over the coming months.

Customs clients are also invited to forward specific queries on the HS2007 changes to the address specified in the notice. We have received a low but steady level of inquiries through this avenue since the ACNs were published.

Due to the confidential nature of Origin Advice Rulings Customs will be corresponding directly with a small number of clients who may be affected by the HS2007 changes and therefore require new Advice Rulings. Customs will also be contacting clients who have received Tariff Advices for specific importations, in case they would be voided as a result of the HS2007 changes and replacement Tariff Advices might be needed for future importations.

In consultation with Customs, the Australian Bureau of Statistics is also preparing new statistical codes, where required, for amended or newly created tariff classifications. The proposed new statistical codes are available on the ABS website [[www.abs.gov.au](http://www.abs.gov.au)] and interested parties have been invited to provide comments to the ABS by 6 October 2006.

Customs proposes to hold information sessions in respect of the HS changes, in capital cities around Australia. Details of these sessions will be published in major metropolitan newspapers and circulated more widely, including through Customs National Consultative Committee members.

Subject to successful passage of the legislation, revised hard-copy Customs Tariff 'working pages' incorporating the HS changes and new statistical codes will be printed and distributed to Customs clients.

4. *Australian Customs Notice 2006/45 indicates that tariff advices affected by the HS2007 changes will lapse and that revised tariff advices cannot be lodged until after 1 January 2007. Is it the case that importers and their customs brokers will therefore be at risk of liability for incorrect statements without being able to rely on the protections in a tariff advice?*

## **Response**

Customs' Compliance Philosophy is to improve the level of voluntary compliance by clients within the broader context of managing the security and integrity of Australia's borders, which includes the prevention of the illegal movement of cargo across our borders and the collection of revenue on border related transactions.

In performing this role Customs believes that the correct and timely reporting of information relating to cargo is crucial to the smooth movement of goods into the marketplace and for our efforts in identifying suspect transactions and cargo. With this in mind Customs and industry have worked closely together in recent years to achieve improved reporting and compliance. Customs has encouraged a regime of voluntary compliance through education, examination and feedback.

There is a legislated Infringement Notice Scheme that deals with non-compliance. The Infringement Notice Scheme (INS) Guidelines (a legislative instrument tabled in Parliament) provide the importer or customs broker with some protection from penalties issued under that scheme. A decision to issue an infringement notice can only be made by a delegate of the CEO of Customs. A judgement is made in each case based on the individual circumstances of the case. The delegate of the CEO may exercise discretion in this process, including whether an offence occurred as a result of recent legislative change or a reliance on Customs advice.

The INS Guidelines provide the importer or customs broker with protection from penalty by requiring a delegate of the Chief Executive Officer of Customs to consider the:

- significance of the breach;
- effort/attempt to comply;
- any reliance on Customs advice; and
- reasons beyond the person's control.

The *Customs Act 1901* (the Act) also contains two legislative defences to liability for a false and misleading statement – the 'amberline' defence and the voluntary disclosure defence. These defences can protect importers and their customs brokers from liability where they are awaiting a tariff advice. For example, penalties may not apply in certain circumstances where a person specifies uncertainty as to the accuracy of information included (or omitted) – that person will not be considered to have committed an offence if the statement was incorrect.

In a self-assessment environment for import declarations, false and misleading statement offences are generally identified by Customs some time after the goods were first entered for home consumption. Therefore, once an importer or customs broker has received a tariff advice indicating that goods have previously been entered in error, it should be possible to voluntarily disclose to Customs those entries in error and not be liable for the offence of a false and misleading statement.

It should be noted that Customs is disseminating all information about the proposed changes as it becomes available, including information concerning the voiding and replacement of Tariff Advices, to affected parties. Customs would expect those parties to take that information into account when entering imported goods from 1 January 2007.

5. *Why has Customs set a deadline of 6 October 2006 for comments to be provided on changes to the statistical codes being drafted by the Australian Bureau of Statistics, to reflect the HS2007 changes? How does this deadline give interested parties enough time to properly advise Customs of concerns they may have?*

## **Response**

The Australian Bureau of Statistics (ABS) set the deadline of 6 October 2006 for comments to be provided on changes to the statistical codes being drafted by the ABS.

This deadline ensures that the ABS will have sufficient time to consider any comments and provide Customs with final statistical codes in time for the classifications to be advised to exporters, importers, their agents and statistical users for a 1 January 2007 implementation.

The majority of the statistical codes proposed by the ABS were released on the ABS website on 20 September with the remainder released on 25 September. The timing proposed by the ABS was advised in a discussion paper *ABS Implementation in January 2007 of Revisions to International Trade Classifications, 2007* (ABS Cat. no. 5368.0.55.005) released on 9 June 2006. The availability of this information paper was announced in relevant ABS publications and the Foreign trade theme page of the ABS website and was notified to clients receiving detailed statistical information.

The ABS approach to determining the statistical codes differed significantly from that used with the introduction of Harmonized System 2002, in that, the ABS approach for HS2007 was to maintain the existing statistical codes in the Customs Tariff and AHECC where possible.

The discussion paper mentioned above contained the following statement:

#### **USER OPPORTUNITY TO REVIEW STATISTICAL CODE CHANGES**

As the ABS is intending to maintain current statistical codes wherever possible, the ABS will generally not consult clients as part of this review. However, the ABS will appreciate feedback on any apparent errors in the statistical codes or concordances.

The ABS will progressively issue proposed changes to the 8-digit export statistical codes from August 2006 and then provide a limited period for interested parties to provide feedback. A similar process will be followed for the 10-digit import statistical codes, once Customs has released the 8-digit tariff items.

After the consultation period, the final new classifications will be made available progressively on the ABS website, so importers, exporters and their agents and statistical users can update their systems. It is expected that these will be available by mid to late November 2006. [Subsequent note: this is dependent on the passage of the related Customs' legislation through Parliament].

The above timing did not provide a long period for comment but the impact on statistical codes was not anticipated to be large and no requests for additional timing have been received. Any such requests would have been considered on a case-by-case basis.

While a longer period for feedback on errors may have been desirable, there were several constraints including when the statistical codes could be made public; the time required to ensure the classifications and relevant systems were updated by 1 January; and the need to ensure that the statistical codes reflected the latest concordances provided by Customs based on concordances from the World Customs Organisation.

In relation to the first point, the statistical codes could not be released before the Customs Tariff Bill was tabled in Parliament, which occurred on 7 September 2006, as

the import statistical codes can not be interpreted without the additional 2 digits used for the domestic imposition of customs duties detailed in that Bill. In relation to the third point, the draft Customs 8-digit concordance was substantially complete by the end of March 2006 but minor amendments continued to be made up to the time that the related Customs Tariff Bill was introduced into Parliament, and the draft concordance was published on the Customs website.

6. *The Law Council of Australia submission argued that Customs should provide a six-month moratorium for importers and customs brokers to prevent them being held liable for inadvertent errors and for using "outdated" information in reporting to Customs as a result of the proposed changes.*

- *What is Customs' view on the idea of a moratorium?*
- *Why doesn't the legislation contain a provision which explicitly enables Customs to exercise discretion as to whether or not action is taken against a person who makes an inadvertent error in reporting to Customs?*
- *What is Customs' response to the argument that a moratorium may provide some protection from adverse consequences which might result in financial penalties for imports and customs brokers?*

## **Response**

As identified in the answer to Question 4, the two offences under the Act that would apply to 'inadvertent errors' would be:

- a false and misleading statement resulting in a loss of duty (section 243T of the Act); and
- a false and misleading statement not resulting in a loss of duty (section 243U of the Act).

The answer to Question 4 explains the mechanisms in place to provide protections to importers and customs brokers. Customs does not consider a moratorium to be appropriate for this situation.

Under subsection 243ZA(1) of the Customs Act, it is a requirement that the Chief Executive Officer of Customs develop written guidelines in respect of the administration of the infringement notice scheme. As identified in the answer to Question 4, these guidelines must be considered when exercising powers in relation to the Infringement Notice Scheme.

Discretion currently exists in the legislation, as it is not mandatory for an infringement notice to be served in relation to an offence. The Infringement Notice Guidelines adequately enable such a discretion to be exercised.

Customs does not believe that a moratorium will be able to afford importers and customs brokers any better protection than is already available.

7. *The committee is concerned about any unintended consequences of the proposed amendments, which may not arise for some time. What is your response to the argument that the proposed legislation include a provision which enables the CEO of Customs to make such orders or regulations as are necessary to overcome any unintended consequences?*

## **Response**

In respect of the amendments contained in the Customs Tariff Bill - if an error was identified, and Parliament was sitting, the Government could introduce a Customs Tariff Proposal into the House

of Representatives to correct the error. The moving of a Customs Tariff Proposal is normally treated as a formal procedure for the purpose of initiating the collection of a duty. Collection of duties is commenced on authority of an unresolved motion, and this has been accepted by convention (House of Representatives Practice, Fourth Edition, 2001).

In the event an error is detected when Parliament is not sitting, a Notice of a Customs Tariff Proposal may be published by the CEO of Customs in the Gazette, to correct the error. The Notice is deemed to have effect from such time, after its publication in the Gazette, as specified in the Notice. Any Customs Tariff Proposal given notice in this way must be proposed in the Parliament within seven sitting days of the next meeting of the House of Representatives.

A Customs Tariff Amendment Bill is introduced at an appropriate later time to incorporate outstanding Tariff Proposals. These Bills are necessarily retrospective in nature, reflecting the dates of effect set out in each Tariff Proposal.

If an error were identified before 1 January 2007, *ie* before any importations were impacted by an incorrect rate of duty, the Customs Tariff Proposal or Notice mechanism could be applied, with a date of effect of 1 January 2007.

Similarly, if an error were identified after 1 January 2007, which resulted in importers paying a higher rate of customs duty on goods than that paid prior to the introduction of HS2007, the Customs Tariff Proposal or Notice would be applied with a date of effect of 1 January 2007. This would allow importers to claim refunds for any affected consignments.

If, however, an error were identified after 1 January 2007 that resulted in importers paying a lower rate of customs duty on goods than that paid prior to the introduction of HS2007, the Customs Tariff Proposal or Notice could only be applied with a prospective date of effect. In this case, Customs would not seek the recovery of any duty shortpaid between 1 January 2007 and the date the error was corrected by the Customs Tariff Proposal or Notice.

In respect of TCOs, existing provisions under section 269SD of the Act allow the CEO to revoke and reissue TCOs where the tariff classification is incorrect or has been changed. Therefore, should a TCO be revoked or reissued incorrectly under proposed new subsection 269SD(2A), existing provisions would allow that error to be corrected with effect from 1 January 2007.

Customs is of the view that provisions already exist to ensure that inadvertent errors made in translating tariff classifications and TCOs as a result of HS2007 do not adversely impact on importers. Therefore, it is unnecessary for the proposed legislation to include a provision to enable the CEO of Customs to make orders or regulations to overcome any unintended consequences.