

**SENATE STANDING COMMITTEE ON FOREIGN
AFFAIRS, DEFENCE AND TRADE**

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

Submission by the Australian Customs Service

Preamble

On Thursday 14 September, in Report No. 10 of 2006, the Selection of Bills Committee recommended that the provisions of the Customs Amendment (2007 Harmonized System Changes) Bill 2006 and Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 be referred immediately to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 9 October 2006.

The reasons for referral/principal issues for consideration were to examine the proposed changes to the harmonized system and tariff amendments and to ensure that there are no possible unintended consequences of the proposed changes.

On Friday 15 September, the Inquiry Secretary wrote to the Australian Customs Service (Customs) inviting a written submission on the bills. The Committee has requested that the submission be lodged as soon as possible, preferably by 25 September 2006.

Customs Tariff Amendment (Harmonized System Changes) Bill 2006

Background

1. Australia is a signatory to the International Convention on the Harmonized Commodity Description and Coding System (HS Convention), which implements the Harmonized Commodity Description and Coding System (more commonly referred to as the Harmonized System or the HS). The HS Convention came into force for Australia on 1 January 1988. There are currently 124 Contracting Parties to the HS Convention.
2. The HS is a structured nomenclature comprising a series of 4-digit headings, most of which are then divided into 6-digit subheadings. This structure reflects the manner in which the HS was developed. First, by the deliberate creation of 4-digit headings to accommodate particular groupings of related products, and secondly, by the subdivision of these headings to provide separate treatment for the more important trade products included in the headings. At the same time, the total scope of all related subheadings, taken together, is exactly the same as that for the relevant heading at the immediately higher level. For subheadings there is a minimum volume of trade threshold of US\$50 million. The exception to this principle is where there is a need to monitor or regulate the trade in a particular good *eg* a hazardous chemical. In such cases subheadings may not meet the minimum volume of trade threshold.
3. The HS was designed and developed as a core system so that countries and organizations adopting it could make further subdivisions (national subdivisions) according to their particular needs. While the HS is primarily a unique way of identifying and coding merchandise in order to facilitate international trade, Contracting Parties may use the HS as a basis for the collection of customs duties and statistical information on imported and exported goods.
4. The HS can be used by Customs administrations, statisticians, transporters, freight forwarders etc 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.

5. The HS provides a legal and logical structure within which the headings and subheadings are grouped in 96 Chapters, the latter being 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.
6. In Australia, the HS based classifications are contained in the *Customs Tariff Act 1995* (the Customs Tariff) for imported goods and the Australian Harmonized Export Commodity Classification (AHECC) for exported goods. The Customs Tariff is an 8-digit classification, with the 4 and 6-digit international classifications supplemented by an additional 2 digits for the domestic imposition of customs duties. The AHECC is based on the 6-digit international classification, supplemented by an additional 2 digits for statistical purposes.

Why make these changes?

7. Under the HS Convention, the HS is developed and maintained by the World Customs Organisation (WCO) and is subject to periodic review. HS2007 represents the third review, with two previous reviews being implemented in 1996 and 2002. The Recommendation to implement HS2007 on 1 January 2007 was passed by the WCO Policy Commission on 26 June 2004.
8. The present review has focussed on deleting those headings and subheadings where there is a low volume of trade. HS2007 also amends the HS to reflect changes in industry practices and technological developments that have occurred since the last review.
9. Importantly, a number of the 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. 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.
10. The amendments to the HS, and as a consequence to Australia's Customs Tariff and AHECC, will result in the separate identification of many hazardous chemicals and pesticides. This will allow regulatory agencies in Australia to readily identify and monitor the types of chemicals and pesticides being declared.
11. Amendments to the HS are proposed and discussed at a technical level at the WCO by the Harmonized System Committee. Most amendments are agreed by consensus, although some specific decisions are voted upon. Australian Customs attends the meetings of the Harmonized System Committee and seeks the views of policy departments, major industry groups and other stakeholders prior to each meeting.

Why implement by 1 January 2007?

12. As a Contracting Party to the HS Convention, Australia is required to implement the HS2007 changes from 1 January 2007. The HS Convention sets out the procedures for amending the Annex. Article 16 of the Convention specifies that amendments be deemed to be accepted by Contracting Parties six months after the Secretary General's notification of the amendments, provided there is no objection outstanding. The operation of these provisions is to establish a 'tacit approval' method for all amendments to the Annex.
13. No Contracting Party objected to the proposed HS2007 changes, and most signatories to the HS Convention, including Australia's major trading partners, such as Japan, the United States and the European Union, have reported that they will implement the required changes on that date.
14. Failure to meet the 1 January 2007 deadline would be contrary to Australia's international obligations under the HS Convention. It would also place Australia out of step with other countries that are signatories to the HS Convention. It would create a situation where, in some cases, the 6-digit code used by Australia to identify particular goods would be different from the HS code used by Australia's trading partners. Differences between the numbers used to classify goods could lead to confusion for importers and exporters when processing goods through Customs, which in turn, could result in delays. The proposed amendments seek to avoid possible confusion and subsequent delays.

What is the impact of these changes?

15. The Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 (the Bill) represents some 1,200 amendments to the Customs Tariff Schedules, affecting approximately 20 percent of tariff headings and subheadings, emanating from the 600 changes to the international HS2007.
16. The Bill has been designed to give effect to the HS2007 changes while maintaining, to the greatest extent possible, existing levels of tariff protection and margins of tariff preference accorded to Australia's trading partners. Where necessary, the option available to Contracting Parties under the HS to create new domestic tariff splits at the 7 and 8 digit levels has been used by Australia to preserve duty rates and margins of preference.

It has not, however, been possible to preserve existing duty rates for the following small groups of goods:

- (i) For certain plywood and veneered panels containing bamboo, the general rate of duty will increase from Free to 5% on implementation of these changes. The total declared value of importations for goods potentially affected by this change was only \$1,350 in the three years to 30 June 2005.

- (ii) For certain carbonising base paper, the general rate of duty is preserved. However, if imported from Canada, the duty rate applicable to these goods will fall from 5% to either Free or 2.5% depending on the exact nature of the goods. There were no importations of these goods from Canada in the past three years.
 - (iii) For carbonising base paper imported from certain developing countries, the preferential rate will increase from 4% to either 5% or decrease to Free, depending on the exact nature of the goods. The total amount of customs duty paid on importations of these goods from developing countries in the three years to 30 June 2005 was only approximately \$500.
 - (iv) For adhesive paper classified in heading 4823, the general rate of duty of 5% is preserved. Currently goods imported from Canada under heading 4823 are also dutiable at 5%, however, on implementation of these proposed changes, these goods will attract a Free rate of duty. The total amount of customs duty paid in respect of this class of goods from Canada was approximately \$42,000 in the three years to 30 June 2005. This is an estimate of the maximum potential impact, the effect may be somewhat less depending on the character of the actual goods currently imported under heading 4823. The Department of Industry, Tourism and Resources has identified that importations of these goods from Canada represent less than 5% of the total import market and that the proposed changes are therefore not likely to materially affect the market for these goods.
17. Australia's Free Trade Agreements (FTAs) with Singapore, Thailand and the United States were negotiated under the HS2002 system. As a result, nomenclature changes need to be made to some of the annexes to these FTAs that refer to specific tariff line items in order to ensure the FTAs reflect the 2007 classifications.
18. The United States, Singapore and Thailand are all Contracting Parties to the HS Convention and will be making equivalent changes to their domestic tariff schedules. The United States and Singapore intend to implement the HS2007 changes on 1 January 2007. Thailand is unlikely to meet this deadline for a number of reasons including current political uncertainty and the need to harmonise changes to their domestic tariff schedule with those of their ASEAN neighbours.
19. The HS2007 amendments to Australia's FTAs are in the process of being progressively tabled and submitted for JSCOT consideration. The amendments are being tabled as agreement is reached with our FTA partners on each relevant annex. The amendments have not been able to be tabled at the same time because of differences between Australia's Parliamentary timeframe for tabling the FTA amendments and the comparable timeframes of our FTA partners.

20. Schedule 6 of the Australian Customs Tariff implements Australia's tariff obligations under the Australia-Thailand Free Trade Agreement (TAFTA). The Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 amends Schedule 6 to ensure TAFTA will reflect the 2007 version of the HS on 1 January 2007. As noted above, Australia and Thailand have been unable to formally sign off on the final versions of the relevant TAFTA Annexes although agreement has been reached at the senior officials level. Australia, however, intends to implement the Australian HS2007 changes to Schedule 6 to the *Customs Tariff Act 1995* to meet our international obligations under the HS Convention. We are working with our FTA partners to ensure Australia meets both its FTA and HS Convention obligations.

How will Customs address any errors that are identified as having an impact on rates of customs duty applicable to particular goods?

21. Customs has undertaken a large number of proof reading exercises to reduce the possibility of errors occurring. In addition, the HS2007 concordance has been published to expose the changes to the various stakeholders. Customs has also provided a copy of the HS2007 concordance to a number of Government agencies that have some policy responsibility in relation to the HS2007 exercise. However, the number of changes to tariff classifications resulting from HS2007 is substantial and the task is a large and complex one. Should an error be identified that results in an unintended change to the duty treatment of a particular good, Customs would rely on the Customs Tariff Proposal or Customs Notice mechanism, the procedures for which are set out below.
22. Once an error was identified, assuming Parliament was sitting, the Government could introduce a motion in the form of a Customs Tariff Proposal, which may be submitted to the House of Representatives without notice. 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).
23. When the Parliament is prorogued or when the House has expired by effluxion of time or been dissolved or is adjourned for a period of time exceeding seven days, a Notice of a Customs Tariff Proposal may be published by the Chief Executive Officer of Customs in the Gazette. The Tariff Proposal is deemed to have effect as from such time after the publication of the Notice 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.
24. A Customs Tariff Amendment Bill is usually introduced at an appropriate later time to consolidate the outstanding Tariff Proposals introduced into the House of Representatives. These Bills are retrospective in operation, but reflect 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.

25. Similarly, if an error were identified after 1 January 2007, which resulted in importers inadvertently paying a higher rate of customs duty on goods that, prior to the introduction of HS2007 amendments, paid a lower or free rate of duty, 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.
26. 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 effective date, only on introduction of the Proposal or Notice into the House of Representatives or the date of publication of the Notice. In this case, Customs would not seek the recovery of any duty short levied (underpaid) between 1 January 2007 and the date the error was corrected by the Customs Tariff Proposal or Notice.
27. In implementing the 800 changes to the Customs Tariff as a result of 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 corrected by a Customs Tariff Amendment Bill, which was backdated until the commencement date of the HS2002 changes, 1 January 2002. This allowed any affected party to make a claim for refund of the overpaid duty.

Customs Amendment (2007 Harmonized System Changes) Bill 2006

Background

28. The purpose of this Bill is to amend the *Customs Act 1901* to enable the Chief Executive Officer (CEO) of Customs to revoke approximately 700 Tariff Concession Orders (TCOs) that will be affected by the proposed amendments to the *Customs Tariff Act 1995* contained in the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006. Approximately 1,200 new TCOs will be required to be made, to replace the 700 TCOs that will be revoked.
29. Tariff Concession Orders provide a free rate of customs duty to specific imported goods where there are no substitutable domestically produced goods.
30. As a result of the changes to the Customs Tariff brought about by HS2007, the tariff classifications associated with some 700 or so TCOs will no longer be current. It will therefore be necessary to revoke these TCOs and replace them with new TCOs that include the correct tariff classification.
31. At the present time the CEO can revoke a TCO, and make a replacement TCO, as a result of a change in tariff classification only after that change has taken effect. In the current scenario, this means that, in the absence of legislative change, the CEO could exercise this power only after 1 January 2007.

32. In order to provide a seamless transition for TCOs that are impacted by the HS2007 changes and to avoid any uncertainty as to the application of TCOs to particular goods so that all changes can take effect from 1 January 2007, it is proposed to amend the *Customs Act 1901*. This proposed amendment would allow the CEO to revoke a TCO and make a replacement TCO that is the result of a change of tariff classification, in anticipation of the date of effect of the changed tariff classification, but with effect from the intended date. In short, should the legislation pass the Parliament, affected TCOs could be revoked or made between Royal Assent and 1 January 2007.

How is Customs notifying affected parties about these changes?

33. While the changes to TCOs are significant, as is the potential impact to Customs' clients, Customs is endeavouring to provide a seamless transition into HS2007 and its associated changes. In this regard, Customs has already published a concordance of changes to tariff classifications between HS2002 and HS2007, both electronically on the Customs website and in hard copy.
34. By the end of September 2006, Customs intends to provide a list of the TCOs that are to be revoked, as well as a concordance between those TCOs to be revoked and their replacement TCOs. Customs has also begun publishing a series of Australian Customs Notices in relation to the changes to the HS. These notices provide technical updates as well as contact points for any questions that may arise from affected parties. In addition, Customs will be advertising in national newspapers and industry publications.
35. Customs will also be liaising with providers of the computer software that is used by many customs' brokers and importers to report and declare goods through Customs. Software providers will receive electronic concordances as well as regular updates of changes to Tariff Concession Orders, Tariff Advices and Tariff Precedents.