



Australian Government
Australian Customs Service

**SUBMISSION TO THE
SENATE LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE INQUIRY INTO THE
CUSTOMS LEGISLATION AMENDMENT (MODERNISING IMPORT
CONTROLS AND OTHER MEASURES) BILL 2006
JULY 2006**

Introduction

This submission is made by the Australian Customs Service in relation to the referral by the Selection of Bills Committee of the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* to the Legal and Constitutional Legislation Committee.

It is understood that the bill has been referred to the Legal and Constitutional Legislation Committee to check against the findings of the Booz Allen Hamilton review of the Integrated Cargo System and to consider in light of recent changes to the Trade Modernisation Legislation and the Accredited Client Program. This submission is made to assist the Legal and Constitutional Legislation Committee with its deliberations.

Background

The purpose of the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* is to amend the *Customs Act 1901* to:

- allow a person to surrender certain prohibited imports that have not been concealed;
- allow for the granting of post-importation permissions for certain prohibited imports;
- allow infringement notices to be served for certain offences including importing certain prohibited imports, and border security related offences; and
- reflect the new Certificate of Origin requirements for the Singapore-Australia Free Trade Agreement.

The Booz Allen Hamilton review was commissioned by the CEO of Customs to examine the implementation of the Integrated Cargo System (ICS) and lessons to be learned for the future. It recommended a range of actions that Customs is now implementing in consultation with industry and with other relevant government agencies. Some of these recommendations relate to general areas for improvement (for example, new industry consultative processes and end to end testing of new systems); others relate specifically to the commercial air and sea cargo environments and the ICS (for example, the ongoing program of work to improve usability of the system and examining new approaches to cargo reporting).

The import control measures in the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments.

The *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* will not make any systems changes affecting external users of Customs systems, and will have no impact on the operation of the Accredited Client Program.

Import Controls

Passengers to Australia import a significant number of items that are controlled under the *Customs (Prohibited Imports) Regulations 1956* (the Regulations). There is a wide range of items controlled under the Regulations, from high risk goods such as narcotic drugs, child abuse material and military style weapons to lower risk community and consumer protection related items such as flick knives, blow pipes and toys with a painted coating which exceeds legislated standards for heavy metals content.

Presently, all prohibited items that are imported must be seized, regardless of their perceived threat to the community. This is a time-consuming and resource intensive process, impacting on the efficiency of Customs operations at airports. Customs is proposing the introduction of a regime that will provide sanctions appropriate to the level of threat to the community and which will reduce the time spent by Customs officers on administration and the level of post-seizure claims made on seized items.

This proposed amendment establishes a tiered response to the importation of prohibited items, allowing for voluntary surrender of the goods, payment of an infringement notice or the seeking of a post-importation permission, rather than automatic seizure of the goods. However, seizure will still be utilised for those higher value and more serious prohibited items.

Surrender Bins

The proposed surrender bin scheme would allow a Customs officer to provide the owner of certain prohibited imports, as defined by regulation, with an option to surrender the goods rather than have the goods seized.

The surrender regime will only apply in Customs controlled areas within an airport, and only for those prohibited items that have not been concealed by the passenger. The scheme does not extend to dutiable goods.

A consent form, which includes the passenger's details, signature and a list of the surrendered items must be signed at the point of surrender. The signing of this form by the passenger is determined to be the point of surrender and at this point the title of the goods passes to the Commonwealth. If the owner of the goods surrenders the items, it is deemed that the goods have been surrendered for disposal.

A person who surrenders an item will not be liable for an offence against the Customs Act, and Customs will have no power to take further action.

Infringement Notice Scheme (INS)

The infringement notice scheme applies to the importation of certain concealed prohibited items and other border security offences, such as the use of a camera in the Customs controlled area.

Importation of certain prohibited items:

An infringement notice will be issued to those passengers who attempt to import a certain prescribed prohibited item by concealing the item, or have regularly attempted to import prohibited items. Payment of the infringement notice will remove liability for the offence.

The passenger must pay the infringement notice before leaving the Customs controlled area to remove liability for the offence. The proposed model requires the Customs officer to accompany the passenger to the duty collection area while the notice is paid. This is necessary because payment of the notice results in a transfer of title of the goods to the Commonwealth. Should the passenger choose not to pay the infringement notice before leaving the Customs controlled area, the goods will automatically be seized and Customs may prosecute the person for the offence.

Use of electronic devices in the Customs controlled area:

An infringement notice may be issued to people who use electronic devices in the Customs controlled area and fail to comply with a direction from Customs not to use the device. The person issued with the notice will have 28 days to pay the notice. Payment of the infringement notice will remove liability for the offence. However if the person fails to pay the notice within 28 days Customs may prosecute the person for the offence.

Postal environment:

An infringement notice may also be issued for certain prohibited items imported through the postal system. Surrendering the goods will not be an option available in this environment.

The infringement notice will be issued at the same time as the seizure notice. The infringement notice will provide 28 days to pay the notice and the seizure notice provides 30 days to make a claim for the return of the goods. However, these time periods will run concurrently.

Singapore-Australia Free Trade Agreement Amendments

The Singapore-Australia Free Trade Agreement (SAFTA) provided for Ministerial review of the SAFTA one year after entry into force and biennially thereafter. The first Ministerial Review meeting took place in July 2004.

Under current Articles 11 and 12 of Chapter 3 of the SAFTA, a Certificate of Origin can be used for multiple shipments of goods to which that Certificate relates within two years of its issue, provided that the first shipment occurs within the first year of issue. By contrast, an accompanying Declaration must be made for every shipment of the relevant goods. Further, both the Certificate of Origin and Declaration must be issued or made and possessed by the importer before the goods to which these documents relate are exported.

Approaches to Australian Customs by both Australian importers and Singaporean exporters raised administrative difficulties with regard to preparation of the Certificate of Origin. For example, before exportation of bulk goods from Singapore, the Certificate of Origin could not be properly prepared to cover all of the goods in a given shipment as the exact volumes were not known until after loading. The problem was exacerbated in circumstances where goods were loaded after-hours or on weekends.

The proposed amendments to the *Customs Act 1901* would enable a Certificate of Origin to be used for a single shipment (provided it is used within a year of its issue) or for multiple shipments (provided the shipments occur within two years of its issue and the first shipment occurred within the first year). The proposed amendments would also require both the Certificate of Origin and Declaration, if required, to be issued and possessed by the importer before the goods to which the documents relate are entered for home consumption in the territory of the importing Party. This provides more time for the Certificate of Origin and the Declaration to be obtained.

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