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Customs Tariff Amendment Bill (No. 1) 2002

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No. 146 2001-02

Customs Tariff Amendment Bill (No. 1) 2002

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# Customs Tariff Amendment Bill (No. 1) 2002

**Date Introduced:** 21 March 2002

**House:** House of Representatives

**Portfolio:** Justice and Customs

**Commencement:** Refer to the 'Main Provisions' section of this Digest

## Purpose

The major amendments proposed by the Bill:

- insert a new subsection 7(3) into the *Customs Tariff Act 1995* to specify that a reference in the Interpretation Rules to “Notes” includes a reference to 'Additional Notes';
- insert a new Additional Note into Schedule 3 of the *Customs Tariff Act 1995* to specify that “salsas” are to classified in heading 2103; and
- insert the phasing rate of duty for imports of used or second hand passenger motor vehicles (PMVs) from 1 January 2005.

## Background

As there is no one central theme to the amendments proposed by this Bill, a brief background to the major amendments is contained in the 'Main Provisions' section of this Digest.

## Main Provisions

**Item 1 of Schedule 1** of the Bill inserts a **new subsection 7(3)** in the *Customs Tariff Act 1995* which provides that a reference in the Interpretation Rules to Notes includes a reference to Additional Notes.

Section 7 of Schedule 1 of the *Customs Tariff Act 1995* provides:

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(1) The Interpretation Rules must be used for working out the tariff classification under which goods are classified.

(2) If the letters "NSA" are specified in relation to a description of goods in the second column of a subheading of a heading, the goods described do not include any goods *prima facie* classified under a preceding subheading of that heading whose second column begins with the same number of dashes as the first-mentioned subheading.

The Interpretation Rules, which are contained in Schedule 2 of the *Customs Tariff Act 1995*, are important because they form the basis for the classification of goods.

As noted in the *Explanatory Memorandum* to the Bill,<sup>1</sup> the Interpretation Rules specify that the classification of goods must be determined with reference to a relevant section or chapter note.

Additional notes are inserted into the Customs Tariff by the Commonwealth and are intended to have the same force as chapter notes. Additional notes are commonly included as a consequence of court decisions for the purpose of clarifying the classification of goods.

An example of an additional note can be found in Chapter 28 of Schedule 3 of the *Customs Tariff Act 1995* which deals with inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes. The additional note provides:

1. Notwithstanding Note 1 to this Chapter, the following products are classified in this Chapter even when they are not separate chemical elements nor separate chemically defined compounds:

- (a) Colloidal sulphur (2802.00.00);
- (b) Carbon blacks (2803.00.00);
- (c) Oleum (2807.00.00);
- (d) Sulphonitric acids (2808.00.00);
- (e) Polyphosphoric acids (2809);
- (f) Phosphorus trisulphide (2813);
- (g) Earth colours containing 70% or more by weight of combined iron evaluated as  $\text{Fe}_2\text{O}_3$  (2821);
- (h) Commercial cobalt oxides (2822.00.00);
- (ij) Red lead and orange lead (2824);
- (k) Commercial calcium hypochlorite (2828);
- (l) Polysulphides (2830);
- (m) Dithionites and sulfoxylates, stabilised with organic substances (2831);
- (n) Polyphosphates (2835);
- (o) Commercial ammonium carbonate containing ammonium carbamate (2836);
- (p) Commercial alkali metal silicates (2839);
- (q) Colloidal precious metals and amalgams of precious metals (2843);

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- (r) Radioactive elements, radioactive isotopes, or compounds (inorganic or organic) and mixtures containing these substances (2844);
- (s) Other isotopes (2845);
- (t) Compounds, inorganic or organic, of rare-earth metals, of yttrium or of scandium or of mixtures of these metals (2846);
- (u) Liquid air and compressed air, amalgams other than amalgams of precious metals (2851.00.00).

The rationale given by the Government in its Explanatory Memorandum to the Bill is that the legality of:

...Australian Additional Notes vis-à-vis the international Section and Chapter Notes was raised in a recent case before the Administrative Appeals Tribunal. Although Customs decision in that matter was affirmed, it was considered prudent to amend section 7(3) to prevent future legal challenges of this nature.<sup>2</sup>

**Item 2 of Schedule 1** of the Bill inserts a new Additional Note into Chapter 21 of Schedule 3 of the *Customs Tariff Act 1995* that specifies that salsas are to be classified in heading 2103.

Items classified under heading 2103 are sauces and preparations therefore; mixed condiments and mixed seasonings, mustard flour and meal and prepared mustard.

Salsa is quintessentially a hot sauce used in Tex Mex foods (Texan/Mexican). Descended from mortar-pounded salsas of traditional Mexican kitchens, salsas have become a savoury fixture of what is known as Tex-Mex cuisine.

Salsa sauces are varied. Serrano and jalepeño peppers, once the long standby of salsa sauce, now compete alongside bright, very hot habanero peppers. Traditional vegetable components such as roasted red tomatoes and tomatillos are not commonly replaced by sweet corn or tropical fruits such as mango, papaya, or even tart apple. Fresh herbs and familiar spices (fragrant cilantro, garlic, and earthy cumin) are now routinely substituted for flavours.

Even within the accepted boundaries of traditional Mexican cooking, hot sauce variations are nearly unlimited in both flavour and diversity. Smooth simmered salsas based on the smoked chipotle or rich chilli *pasillas*. Fresh-chopped *salsas crudas* are flavoured with achiote, lime, and coarsely-chopped serranos. *Arbol*, *guajillo*, or *cascabel* are in a fresh, dried, or home-grown form.

The rationale for the proposed amendment given by the Government in the *Explanatory Memorandum* to the Bill is that:

The classification of “salsas”, a kind of sauce, has been the subject of dispute for some years. Following advice from the World Customs Organization that these goods are correctly classified in heading 2103 in the Harmonized System (HS), as they have the characteristics of a sauce, this Additional note will ensure Australia’s treatment of these goods is consistent with international practice.<sup>3</sup>

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**Item 3 of Schedule 1** of the Bill inserts the phasing rate of duty for imports of used or second hand passenger motor vehicles (PMVs) from 1 January 2005.

As noted in the Government's *Explanatory Memorandum* to the Bill, the proposed amendment corrects an omission from the *Customs Tariff Amendment (ACIS Implementation) Act 1999*.<sup>4</sup> Further, as stated in the Second Reading Speech to the Bill:

The Customs Tariff Amendment (ACIS Implementation) Act 1999 legislated phasing rates of duty for PMV's and components but not for second hand vehicles covered by item 59. Without this amendment, new PMV's would be subject to a duty rate of 10% post 2005, but second hand vehicles 15%.<sup>5</sup>

#### Commencement

The amendments proposed by **Schedule 1** commence 14 days after the Bill receives Royal Assent.

The amendments proposed by **Schedules 2 and 3** of the Bill correct, for the most part, typographical errors and omissions derived principally from amendments contained in *Customs Tariff Amendment Act (No. 5) 2001*.

The amendments made by the *Customs Tariff Amendment Act (No. 5) 2001* gave effect to Australia's obligations under the International Convention on the Harmonized Commodity Description and Coding System (the HS Convention). The major amendments made by that Act provided new headings and subheadings and separately identified new tariff products.

The amendments proposed by the *Customs Tariff Amendment Act (No. 5) 2001* resulted from the second review of the Harmonized Commodity Description and Coding System.

The Harmonized Commodity Description and Coding System, commonly known as the Harmonized System or HS, is a multipurpose goods nomenclature or language used as the basis for Customs tariffs and of the compilation of trade statistics around the globe.

The HS was developed by the World Customs Organization (WCO) and was implemented on 1 January 1988 through the HS Convention. The HS is maintained by the WCO through the Harmonized System Committee, which is composed of representatives of parties to the HS Convention.

The HS operates as a global language and code for transportable goods in international trade. Approximately 170 countries and economies use the HS for Customs tariffs and trade statistics. This accounts for more than 98 per cent of world trade. HS is used by governments, international organisations and the private sector for diverse purposes including:

- trade policies

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- monitoring of controlled goods
- rules of origin
- freight tariffs
- transport statistics
- internal taxes
- quota controls, and
- economic research and analysis.

The HS is an international six-digit commodity classification developed under the auspices of the Customs Cooperation Council. Individual countries have extended it to ten digits for customs purposes, and to 8 digits for export purposes.

Under the HS goods are classified by what they are, and not according to their stage of fabrication, use, or origin. The HS nomenclature, or language, is structured by economic activity or component material. For example, animals and animal products are found in one section whilst machinery and mechanical appliances which are grouped by function are found in another. The nomenclature is divided into 21 sections each of which group together goods produced in the same sector of the economy. Each section is comprised of one or more chapters, with the entire nomenclature comprising 97 chapters. Chapters I to XV (except XII) are grouped by biological genus or by the component material from which articles are made from. For those chapters in which goods are grouped by raw material, a vertical structure is used in which articles are classified according to their degree of processing.

The WCO monitors the application of HS with the objective of achieving the greatest measure of certainty and uniformity in the global classification of goods. The Harmonized System Explanatory Notes prepared by the Harmonized System Committee are the official interpretation of the HS. The HS Committee meets twice yearly to resolve classification questions and disputes. Determinations of the HS Committee are available on the internet through the WCO web site on [www.wcoomd.org](http://www.wcoomd.org).

The HS is periodically updated. Updates are prepared in the form of amendments to the HS Convention adopted by member states. Member states are obliged under the Convention to implement the amendments on the date scheduled for their coming into force. To date the HS has been amended twice. The first time was in 1992 and those amendments consisted primarily of editorial amendments. The second amendments came into operation on 1 January 1996 and incorporated major changes affecting approximately 10 per cent of the HS nomenclature.

The amendments made by *Customs Tariff Amendment Act (No. 5) 2001* represented the results of the second major review of the HS. The HS Review Sub-Committee comprising

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experts from national administrations and international organizations carried out this work. The recommendations of the second major review were adopted by the WCO in June 1999. Australia along with other parties to the Convention were required to implement the changes into its customs tariff arrangements with effect from 1 January 2002.

The changes recommended by the WCO introduced amendments to 57 of the HS system's 97 chapters. The most extensive changes related to:

- fruit and vegetable preparation
- chemicals, pharmaceutical products
- rubber
- leather
- wood and paper products
- knitted or crocheted fabrics
- miscellaneous non-ferrous base metals
- machinery, and
- electrical equipment.

#### Commencement

The amendments proposed by Schedules 2 and 3 are taken to have commenced immediately after the commencement of the *Customs Tariff Amendment Act (No. 5) 2001*, that is, 1 January 2002.

## Endnotes

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- 1 *Explanatory Memorandum*, Customs Tariff Amendment Bill (No. 1) 2002, p. 4.
- 2 *ibid.*
- 3 *ibid.*
- 4 *ibid.*
- 5 Second Reading Speech on the Introduction of Customs Tariff Amendment Bill (No. 1) 2002, *House Hansard*, 21 March 2002, p. 1846

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