



Customs Tariff Amendment Bill (No. 1) 2005

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Law and Bills Digest Section

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Customs Tariff Amendment Bill (No. 1) 2005

Date Introduced: 10 March 2005

House: House of Representatives

Portfolio: Justice and Customs

Commencement: Formal provisions of the Customs Tariff Amendment Bill (No. 1) 2005 commence on Royal Assent. The measures contained in the Bill have various commencement dates, which are referred to in the Main Provisions section.

Purpose

Mainly consolidating several tariff proposals, the Customs Tariff Amendment Bill (No. 1) 2005 (the Bill) will make several changes to the *Customs Tariff Act 1995* (Customs Tariff Act), including changes to the tariffs for:

- oil and gas exploration equipment
- the herbicide Paraquat dichloride
- textile, clothing and footwear originating from the Forum Island Countries, and
- alcohol and tobacco products originating in the United States (US).

In addition, the Bill will make some technical amendments to the Customs Tariff Act.

Background

Customs Tariff Proposals

Several of the amendments proposed in Schedule 1 of the Bill are based on changes contained in Customs Tariff Proposals. These Customs Tariff Proposals initiate the imposition of customs duties with the usually undebated proposal becoming, by convention, the basis for the exaction.¹ The House of Representative's Guidelines to Procedure (Procedure), notes that:

Periodically, tariff proposals are consolidated by a customs tariff or excise tariff amendment bill, which incorporates the provisions of the motions previously moved into the appropriate Tariff Act. These bills are retrospective in operation to the date on which collection commenced.²

This Bill is, in parts, such a consolidation of various Customs Tariff Proposals.

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Background to the individual measures

The background to the individual measures is briefly addressed in relation to the discussion of the Main Provisions.

Main Provisions

Schedule 1, Part 1—Oil and gas exploration

Legislative history

The proposed amendment is based on changes moved as *Customs Tariff Proposal No. 6 (2003)*. The motion for this proposal was moved on 16 October 2003 and commenced operation from 18 October 2003.³ On 23 June 2004, the Government introduced the Customs Tariff Amendment (Oil, Gas and Other Measures) Bill 2004 to give the exaction a legislative basis.⁴ This bill, however, lapsed with prorogation of the 40th Parliament. To save the measure, a delegate of the Minister issued a notice under section 273EA of the *Customs Act 1901* whilst Parliament was prorogued. As required under this section, the proposed change was moved as item 3 of Schedule 1 of the Customs Tariff Proposal No. 1 (2004) on 1 December 2004 or the sixth sitting day after the notice was made.⁵

Purpose of the amendment

The amendment to the Customs Tariff Act will allow the duty-free entry of certain goods prescribed by by-laws which are used in connection with:

- the exploration for petroleum or natural gas, and
- the development of petroleum or natural gas wells in certain circumstances.

In its 2003-04 Budget papers, the federal government explained that the amendments are proposed to accommodate technological changes.⁶ The Explanatory Memorandum to this Bill repeats this point.⁷

Proposed amendment

Item 1 of the Bill will repeal the current item 22 of Schedule 4 of the Customs Tariff Act and substitute it with the proposed new item. After the substitution, certain goods used for the oil and gas exploration as prescribed by by-laws can enter Australia duty-free.

Commencement of the amendment

The provision will commence retrospectively on 18 October 2003.

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Comment

According to the Financial Impact Statement contained in the [Explanatory Memorandum](#), this measure will cost approximately \$220 000 per year in duty foregone.⁸

Schedule 1, Part 2—Paraquat dichloride

Legislative history

The proposed amendment is based on changes moved as *Customs Tariff Proposal No. 1 (2003)*. The motion for this proposal was moved on 27 March 2003 and commenced operation from 1 April 2003.⁹ On 19 February 2004, the Government introduced the Customs Tariff Amendment (Paraquat Dichloride) Bill 2004 to give the exaction a legislative basis.¹⁰ This bill, however, lapsed with prorogation of the 40th Parliament. A delegate of the Minister issued a notice under section 273EA of the *Customs Act 1901* whilst Parliament was prorogued. As required under this section, the proposed change was moved as item 3 of Schedule 1 of the Customs Tariff Proposal No. 1 (2004) on 1 December 2004 or the sixth sitting day after the notice was made.¹¹

Purpose of the amendment

The amendment will remove the current five per cent import duty imposed on the chemical herbicide Paraquat dichloride containing an additive that causes vomiting if the herbicide is accidentally ingested. These substances, called emetics, act as a safety feature.¹² Currently, other forms of Paraquat dichloride containing other safety features, for example stenching agents or colourings, do not attract such a duty. Accordingly, the measure will remove an anomaly in the treatment of Paraquat dichloride.

Proposed amendment

Items 2 and 3 of the Bill will amend Schedule 3 (Classification of goods and general and special rates of duty) of the Customs Tariff Act, stipulating that Paraquat dichloride containing an emetic for safety reasons is duty-free.

Commencement of the amendment

The provision will commence retrospectively on 24 March 2003. This retrospective commencement date for the proposed legislation will precede the commencement date for the *Customs Tariff Proposal No. 1 (2003)*.

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Schedule 1, Part 3—Textile, Clothing and footwear

Legislative history

The proposed amendment is based on changes proposed in *Customs Tariff Proposal No. 1 (2004)*. The motion for this proposal was moved on 1 December 2004 and it commenced operation on 1 January 2005.¹³ The changes are based on an announcement made the Prime Minister, the Hon. John Howard, on 8 August 2004 during a doorstep interview in Samoa.¹⁴

Purpose of the amendment

The amendment will extend the preferential duty-free status for certain textiles, clothing and footwear products originating from the Forum Island Countries covered by the South Pacific Regional Trade and Economic Co-operation Agreement (Textile, Clothing and Footwear Provisions) Scheme (SPARTECA (TCF Provisions) scheme) for another seven years.¹⁵ The scheme was to expire on 31 December 2004 and will now end on 31 December 2011.

Proposed amendment

Item 4 of the Bill will substitute the current end date in item 68 of the Customs Tariff Act 1995 with the new end date '2011' for the duty-free status of the covered goods to reflect the extension of 7 years.

Commencement of the amendment

The provision will commence retrospectively on 1 January 2005.

Comment

The Australian government granted the Forum Island Countries preferential access to the Australian market with respect to certain textiles, clothing and footwear originating from these countries. This support has been described as important for the region. For example, it was noted that

SPARTECA was critical, for example, to the birth of the textile and garment industry in Fiji and the survival of small export sectors in most of the islands.¹⁶

However, there has also been some criticism of the scheme as it allegedly supports and protects inefficient local industries, keeping those industries alive at the discretion of the Australian government and its foreign policy.¹⁷

According to the Financial Impact Statement contained in the [Explanatory Memorandum](#), this measure will cost approximately \$1.2 million per year in duty foregone.¹⁸

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Schedule 1, Part 4—Country abbreviations

The amendments proposed in **items 5 and 6** of the Bill make technical amendments to the Customs Tariff Act with respect to the country abbreviations for Poland and Wake Island.

Schedule 1, Part 5—August 2004 indexation of US duty rates

Legislative history

The proposed amendment is based on tariff changes proposed in *Customs Tariff Proposal No. 1 (2004)* which commenced operation on 1 January 2005, immediately after the commencement of the Australia-US Free Trade Agreement.

Purpose of the amendment

The amendment will change the duty rates for products including alcohol and tobacco products that originated in the US in line with an increase in the Consumer Price Index in August 2004. The result of the amendments will be a tariff harmonisation between alcohol and tobacco products originating in the US and in other countries.¹⁹

Proposed amendments

Items 7 to 59 of the Bill will change the duty rates for products including alcohol and tobacco products that originated in the US in line with increase in the Consumer Price Index.

Commencement

The provision will commence retrospectively on 1 January 2005.

Schedule 1, Part 6—February 2005 indexation of US duty rates

Legislative history

The proposed amendment is based on changes proposed in *Customs Tariff Proposal No. 1 (2005)* which was gazetted under section 273EA of the Customs Act on 31 January 2005 to take effect from 1 February 2005. The proposal was subsequently tabled in Parliament on 16 February 2005.²⁰

Purpose of the amendment

The amendment will change the duty rates for alcohol and tobacco products originating in the US in line with an increase in the Australian Consumer Price Index in the last quarter of 2004.²¹

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Proposed amendments

Items 60 to 112 of the Bill will change the duty rates for products including alcohol and tobacco products that originated in the US in line with increase in the Consumer Price Index.

Commencement

The changes will commence retrospectively on 1 February 2005. They will ensure that the rates applicable to alcohol and tobacco goods originating in the US are tariffed at the same tariff rates as similar products originating in different countries.²²

Concluding Comments

As noted above, Customs Tariff Proposals initiate the imposition of customs as usually undebated measure which becomes, by convention, the basis for the exaction until the measure is properly enacted.²³ The exaction of monies without a legislative basis, however, is contrary to established constitutional principle. Professor Ratnapala has argued that:

The executive government cannot impose taxes except under the authority of an Act of Parliament. This is not expressly stated in the Constitution, but is an application of the most fundamental rule of constitutionalism—and indeed the basic proposition of every constitution properly so called.²⁴

With this in mind and given that some of the Customs Tariff Proposals date back to 2003, the question maybe asked how long Customs Tariff Proposals may exist or be valid.

The rules governing Customs Tariff Proposals are contained in the *Customs Act 1901* (Customs Act). However, the Customs Act does not stipulate how long a Customs Tariff Proposal may last without implementing legislation. Only the House of Representatives Practice (Practice) suggests that the lifespan of a proposal, and therewith its validity, is limited to the periods set out in section 226 of the *Customs Act 1901*. This provision stipulates the circumstances and period of time during which customs officers are immune from actions brought against them in relation to the exaction based on the Customs Tariff Proposal. The Practice states that a proposal may only be valid:

- until the close of a parliamentary session in which a customs or excise tariff or tariff alteration is moved, or until the expiry of 12 months, whichever happens first; or
- where a notice of a tariff proposal has been published in the Gazette, under section 273EA of the Customs Act [...], within seven sitting days of the House or six months from the date of publication of the notice, whichever happens first. Where the details of the notice are subsequently proposed in the Parliament within seven sitting days, the protection outlined in the [bullet above] applies.²⁵

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This view is ultimately based on the possible enforceability of the exaction without proper legislative foundation. However, this is not the only possible interpretation of the above legislation and the issue has not been comprehensively determined either by the legislator or the judiciary.

Endnotes

- 1 Department of the House of Representatives, '[House of Representatives Practice](#)', 4th edition, Canberra, 2001, p. 420.
- 2 Department of the House of Representatives, '[Guide to procedures](#)', Canberra, August 1999, p. 73.
- 3 The Hon. P. Slipper, Parliamentary Secretary to the Minister for Finance and Administration, '[Customs Tariff Proposal No. 6 \(2003\)](#)', motion moved on 16 October 2003.
- 4 No Bills Digest has been prepared with respect to this bill.
- 5 The Hon. G. Hunt, Parliamentary Secretary to the Minister for the Environment and Heritage, '[Customs Tariff Proposal No. 1 \(2004\)](#)', motion moved 1 December 2004.
- 6 The Hon P. Costello, Treasurer, and the Hon. N Minchin, Minister for Finance and Administration, 'Policy Decisions taken since the 2003-04 Budget—Revenue Measures', Budget 2003-04, Midyear Economic Forecast, [Appendix A](#), Canberra, December 2003.
- 7 [Explanatory Memorandum](#) to the Customs Tariff Amendment Bill (No. 1) 2005, p. 6.
- 8 [Explanatory Memorandum](#), *ibid.*, p. 3.
- 9 The Hon. P. Slipper, Parliamentary Secretary to the Minister for Finance and Administration, '[Customs Tariff Proposal No. 6 \(2003\)](#)', motion moved on 16 October 2003.
- 10 B. Bailey, 'Customs Tariff Amendment (Paraquat Dichloride) Bill 2004', [Bills Digest](#), no. 96, Department of Parliamentary Library, Canberra, 2003-04.
- 11 The Hon. G. Hunt, Parliamentary Secretary to the Minister for the Environment and Heritage, '[Customs Tariff Proposal No. 1 \(2004\)](#)', motion moved 1 December 2004.
- 12 The herbicide Paraquat Dichloride is highly toxic to humans, especially when ingested orally. For further information see B. Bailey, *op. cit.*, p. 2 and Food and Agriculture Organisation of the United Nations, 'FAO Specifications and Evaluations for Agricultural Pesticides, Paraquat Dichloride', Report, Rome, 2003, available at http://www.fao.org/WAICENT/FAOINFO/AGRICULT/AGP/AGPP/Pesticid/Specs/Pdf/Final_Paraquat_%20Specs_%202003.pdf, accessed 14 March 2005.
- 13 The Hon. G. Hunt, Parliamentary Secretary to the Minister for the Environment and Heritage, '[Customs Tariff Proposal No. 1 \(2004\)](#)', motion moved 1 December 2004.
- 14 The Hon. J. Howard, The Prime Minister of Australia, *Subject: Pacific Islands Forum; Australia's role in the region; US Free Trade Agreement*, [Doorstop interview](#), Samoa,

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- 8 August 2004. See also: The Hon. J. Howard, Fiji: *Support For Textiles, Clothing And Footwear*, [media release](#), no. 1059, Canberra, 8 August 2004
- 15 [Explanatory Memorandum](#), op. cit., p. 8.
- 16 A. Yakabi, Australia's new foreign policy in the Pacific region, [speech](#) delivered at the Conference of the German Pacific Network, Hamburg, 26-27 November 2004.
- 17 See, for example, with respect to the Fijian textile industry: A. Oxley, 'Nursing Fiji to economic sickness', ITS Trade Reporter, August 2004, available at http://www.tradestrategies.com.au/docs/ITS_Trade_Reporter_August_2004.htm, accessed 14 March 2005.
- 18 [Explanatory Memorandum](#), op. cit., p. 3.
- 19 [Explanatory Memorandum](#), op. cit., p. 10.
- 20 The Hon. G. Hunt, Parliamentary Secretary to the Minister for the Environment and Heritage, 'Customs Tariff Proposal No. 1 (2005)', motion moved 16 February 2005.
- 21 [Explanatory Memorandum](#), op. cit., p. 10.
- 22 [Explanatory Memorandum](#), op. cit., p. 11.
- 23 [House of Representatives Practice](#), op. cit. p. 420.
- 24 S Ratnapala, 'Australian Constitutional Law, Foundations and Theory', Oxford University Press, Melbourne, 2002, p. 242.
- 25 [House of Representatives Practice](#), op. cit., p. 421.

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