



## Tradex Scheme Amendment Bill 2008

Paula Pyburne  
Law and Bills Digest Section

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## Tradex Scheme Amendment Bill 2008

**Date introduced:** 21 February 2008

**House:** House of Representatives

**Portfolio:** Innovation, Industry, Science and Research

**Commencement:** Sections 1-3 on the day of Royal Assent. For all other provisions, on a day to be fixed by Proclamation, or six months after the date of Royal Assent, whichever is the earlier.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

To amend the *Tradex Scheme Act 1999* (Tradex Scheme Act) to remove direct links to the Drawback Regulations<sup>1</sup> and improve the administration of the Tradex Scheme.

### History of the Bill

The Tradex Scheme Amendment Bill 2007 (the 2007 Bill) was introduced into the 41<sup>st</sup> Parliament on 20 September 2007. There had been no debate on the Bill and the Bill had not been passed when the Parliament was prorogued in October 2007. As a result, the 2007 Bill lapsed.

This current Bill was introduced in the same form and without any alteration to the 2007 Bill.

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1. Section 4 of the Tradex Scheme Act defines ‘drawback regulations’ as regulations in force under section 168 of the *Customs Act 1901*.

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## Background

### The introduction of Tradex

In his [Investing for Growth](#) industry statement, made in 1997, the former Prime Minister stated:

A key driving force behind the growth of world trade in manufactures is an increasing globalisation of corporate production strategies. As a result, various components of final goods tend to be traded several times, with value adding occurring in a number of different locations around the world.

This phenomenon is fostering investment in ‘hub’ activities. Our proximity to the rapidly growing Asian economies and other advantages such as low outbound cargo costs, makes Australia well placed to attract this type of investment and to become a regional base for distribution and manufacturing operations.

The competitiveness of the customs regime is an important factor in fostering hub activities. In reviewing Australia’s customs regime, it is necessary to take account of the internationally recognised principle that goods should be taxed only in the country in which they are consumed. There is also a need to ensure that compliance costs incurred by companies in importing and exporting goods are minimised. Australia’s performance in relation to these two aspects of competitiveness can be improved.

To address these concerns the Government will consolidate the existing duty drawback and tariff export concession schemes into one integrated and simplified scheme—TRADEX. It will provide export oriented businesses with streamlined customs procedures, reduced compliance costs and improved access to relief from customs duty and sales tax on imported products that are re-exported or used as inputs to exports.<sup>2</sup>

The Explanatory Memorandum states that the Bill will implement the Tradex related recommendation from the Review of the Tradex and Manufacturing in Bond Schemes.<sup>3</sup> At the time of writing this Digest the Review has not been published.

### How Tradex works

Tradex is an Australian Government Scheme which commenced on 24 June 2000. It provides up-front exemptions from customs duty and GST on imported goods that are intended for direct export or imported goods that are used, lost or wasted in the manufacture of other goods that are exported later on.

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2. Investing for Growth, *Industry statement*, Commonwealth of Australia, 1997, pp. 55-56.
  3. Explanatory Memorandum, p. 2.

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Normally, importers of goods destined for export later on would have to pay duty and GST at the time of import. Before the Tradex scheme was introduced those importers had to claim a refund ('drawback') after exporting the goods.

Under Tradex, duty and GST are exempted up-front. For example, if goods normally attract 5% customs duty and 10% GST, a Tradex order means an up-front saving of 15% on the value of the imported goods when they first arrive in Australia.<sup>4</sup>

### What is Duty Drawback?

Duty Drawback allows the following:

- a repayment of import duty on imported goods after they are exported provided the goods have not been used in the manufacture of goods or subjected to a process or treatment or, after their importation, used for a purpose other than being inspected or exhibited
- a repayment of import duty on imported goods that are used in the manufacture of other goods for export, or that were subjected to a process or treatment in Australia for the purpose of producing manufactured goods which are exported. Associated loss or wastage in the manufacture may also be allowed upon the exportation of the manufactured goods
- a repayment of import duty for imported goods that have been mixed with like goods produced in Australia and the mixture or part of the mixture is used in the manufacture or treatment of other goods which are subsequently exported. The amount of drawback allowed is a fair and reasonable amount considering:
  - the amount of import duty that was paid on imported goods contained in the mixture
  - the quantity of the mixture that has been lost or wasted or has been used otherwise than in the manufacture or treatment of goods for exportation, and
  - the amount of drawback of import duty that has previously been paid on the exportation of goods in the manufacture or treatment on which part of the mixture was used.<sup>5</sup>

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4. Information contained in the Tradex Scheme Fact Sheet on the AusIndustry web site <http://www.ausindustry.gov.au/content/content.cfm?ObjectID=C105FB50-C5D6-4924-BCA9B9CCCF507306&L2Parent=aeb901e5-7cb8-4143-a3bf33b2423f9da6&L3Parent=B4DC4A88-436E-452F-B1AB4C4D3AFE220E> accessed on 22 February 2008.
  5. [Tradex guidelines](#) 2004 p. 2.

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## The difference between the schemes

Drawback Regulations provide for the **return of duties paid** on imported goods if and when those goods are exported, provided the goods were not inappropriately used or consumed while in Australia. Exporters are the focus of the benefit under the Drawback Regulations.<sup>6</sup>

The Tradex Scheme provides access to **up front duty exemption** for imported goods intended to be exported. It also establishes liability to Tradex duty should the goods fail to be exported, or should they be used or consumed contrary to the Tradex Scheme Act while in Australia. Importers are the focus of the benefit under the Tradex Scheme.<sup>7</sup>

## Financial implications

The recommendations and proposals are expected to have no significant impact on revenue. The changes are of an administrative nature and, while they are designed to improve the administration of Tradex, they are not expected to generate significant savings.

## Main provisions

The main provisions are contained in Schedule 1.

**Items 1-3** amend section 4 of the existing Tradex Scheme Act by removing the following definitions:

- ‘drawback regulations’
- ‘exempt class of goods’, and
- ‘requirements of the Drawback Regulations’.

The purpose of this Bill is to remove the direct links between the Tradex Scheme Act and the Drawback Regulations. As a result, these terms will no longer be referred to in the Tradex Scheme Act.

**Item 4** amends existing paragraph 5(1)(b) of the Tradex Scheme Act by repealing the requirement that nominated goods comply with the Drawback Regulations or that the goods are included in an exempt class of goods, and inserting **proposed paragraph 5(1)(b)** which merely requires that the nominated goods meet the requirement of

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6. Explanatory Memorandum, p. 2.

7. *ibid.*

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regulations made for the purposes of the paragraph. Those regulations are the Tradex Regulations which are concurrently being amended.<sup>8</sup>

**Item 5** is an application provision which provides that the above amendment to subsection 5(1) of the Tradex Scheme Act will apply to both:

- an application that has been made but not determined before the commencement of Schedule 1, and
- an application made on or after the commencement of Schedule 1.

Existing subsection 5(2) sets out the ‘core criteria’ for a person who holds a tradex order. **Item 6** repeals the existing paragraph 5(2)(b) which requires that the Drawback Regulations are complied with, and substitutes **proposed paragraph 5(2)(b)** which merely requires that the regulations which have been made for the purposes of the paragraph have been met. These changes to the core criteria for holding a tradex order will apply in relation to nominated goods exported on or after the commencement of Schedule 1: **item 7**.

Existing paragraph 10(3)(b) provides that the Secretary may require an applicant to give the Secretary notice in writing of the measures that the applicant for a tradex order proposes to take to ensure that the requirements of the Drawback Regulations will be complied with. **Item 8** omits the reference to the Drawback Regulations and inserts a requirement that the provisions of the Tradex Regulations will be met in relation to the nominated goods. This a consequential amendment of the separation of the regulations.

**Item 9** amends existing subsection 11(1) to omit the requirement that, if the Secretary is satisfied with certain matters, then the Secretary must make an order stating that the nominated goods are eligible to be entered under item 21A of Schedule 4 of the *Customs Tariff Act 1995*. The reason is that, under the proposed amendments, nominated goods will automatically be covered by item 21A and the Secretary simply has to specify the nominated goods that comply.<sup>9</sup>

**Item 10** repeals the existing subsection 11(8) which provides that a tradex order is not a statutory rule. This is a technical amendment to remove a redundant section of the Tradex Scheme Act. The redundancy was caused by the enactment of the *Legislative Instruments Act 2003*.<sup>10</sup>

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8. Explanatory Memorandum, paragraph 8.

9. *ibid.*, paragraph 14.

10. *ibid.*, paragraph 15.

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**Items 11 and 12** amend the numbering of existing section 16 which allows the Secretary to give notice to the holder of a tradex order to show cause why the tradex order should not be *revoked* where a ‘disqualifying circumstance’<sup>11</sup> exists.

**Item 13** inserts **proposed subsection 16(2)** which allows the Secretary to give notice to the holder of a tradex order in circumstances where the Secretary believes that the goods are not going to be exported. Upon receipt of the notice, the holder of the tradex order will have 28 days in which to provide evidence to the contrary. The Secretary has the power to extend the period either before or after the end of the period: subsection 43(2).

Existing section 17 of the Tradex Scheme Act provides for the *suspension* of a tradex order. **Item 14** amends **paragraph 17(1)(b)** to provide for an additional ground on which to suspend a tradex order, being that the holder does not intend to export the goods.

**Items 15 to 18** amend the existing section 19 which relates to the revocation of a tradex order.

**Item 17** inserts **proposed subsection 19(1A)** which empowers the Secretary to revoke a tradex order where:

- the Secretary has given the holder of the tradex order a notice under subsection 16(2), and
- the holder does not satisfy the Secretary within the specified period that they intend to export the goods referred to in the notice.

According to the Explanatory Memorandum this will enable tradex orders to be revoked where holders do not intend to export the goods and are using the scheme to defer duty payment.<sup>12</sup>

Under section 9 of the Tradex Scheme Act, the Secretary must keep a Register of Tradex Orders. The Secretary must notify the holder of a tradex order of the particulars that have been entered on to the Register in respect of the order: existing subsection 9(5). If a change occurs in any of those particulars, the holder of the tradex order must notify the Secretary of the nature of the changes within 14 days of the date that they occur.

**Item 18** inserts **proposed section 19A** which will allow the Secretary to revoke a tradex order in circumstances where, after reasonable efforts have been made to contact the holder of a tradex order, they cannot be contacted.

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11. Section 6 of the Tradex Scheme Act defines ‘disqualifying circumstance’ as being where, the core criteria for holder a tradex order were not complied with, a person gave information or a document for the purpose of obtaining a tradex order which was false or misleading in a material particular, the person was ineligible to apply for, or hold, the order and where the person has failed to pay tradex duty in respect of nominated goods.

12. *ibid.*, paragraph 23.

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**Items 19 to 24** amend section 21 which deals with liability to pay tradex duty in certain circumstances.

Existing subsection 21(2) states that the holder of a tradex order is liable to pay tradex duty in respect of certain goods. The goods are described in **proposed subsection 21(1)** as:

- goods that are nominated goods in respect of tradex order, whether that order is current or has been suspended or revoked, and which were imported before the date of suspension or revocation

where

- the goods are consumed or used by the holder of the tradex order in Australia or
- the goods are disposed of, or otherwise dealt with in any way by the holder of the tradex order for the purpose of being consumed or used by a person in Australia or
- a requirement of the regulations is not met in relation to the goods,
- the goods are not exported within the time required by paragraph 5(2)(c) of the Tradex Scheme Act.<sup>13</sup>

In essence, where imported goods have obtained the benefit of a tradex order (that is, they have entered Australia without paying customs duty or GST), they remain liable for tradex duty if they fail to meet tradex requirements.<sup>14</sup>

**Item 22** repeals the existing paragraph 21(3)(c) which provides that tradex duty is payable within 28 days after a day on which the Drawback Regulations are not complied with and substitutes **proposed paragraph 21(3)(c)** which provides that tradex duty is payable within 28 days of a date on which a requirement of the Tradex regulations is not met. As with item 13, the Secretary has the power to extend the period either before or after the end of the period: subsection 43(2).

**Item 24** inserts a new definition of ‘holder’ into existing subsection 21(6) so that a holder includes a person who is the holder of a suspended or revoked tradex order.

A tradex order covers imported goods that are subsequently exported. The holder of a tradex order can import goods, duty and tax free relying upon that order, only if the holder has a reasonable expectation that the goods will be exported. If, in reality, the goods are not exported, the holder of the tradex order is liable for tradex duty. Under the existing Tradex Scheme Act, the onus is on the Commonwealth to prove that there has been no export.

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13. Every export of nominated goods must occur within one year after their entry.

14. Explanatory Memorandum, paragraph 25.

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In order to do so, the Commonwealth must check every export declaration during a period to confirm that the holder of the tradex order has not, in fact, exported the goods which are the subject of the tradex order.<sup>15</sup>

That being the case, **item 27** inserts **proposed section 40A** which effectively reverses the onus of proof so that the holder of the tradex order must prove that the goods have been exported rather than the Commonwealth having to prove that they have not. The rationale for this reversal is that the evidence that goods have been exported is in the knowledge of the defendant, not the prosecution, in such matters. **Proposed subsection 40A(2)** empowers the Secretary to give a copy of an evidentiary certificate to the holder of the tradex order.

Existing section 28 of the Tradex Scheme Act provides that a person is guilty of an offence if the person is liable to pay tradex duty in respect of goods and fails to pay the duty within a specified period. Where a person is being prosecuted by the Commonwealth under section 28, the evidentiary certificate issued under **proposed section 40A** is prima facie evidence of the matters which are set out in the certificate in relation to the goods for which duty is alleged to be payable.

**Item 28** inserts **proposed section 42A** which allows for an amount of tradex duty which has been overpaid by a person to be refunded, upon request, by the Commonwealth. **Proposed subsection 42A** requires that the request for refund be made in writing, within four years of the date of the overpayment. An overpayment may occur where duty is paid in the expectation that goods will not be exported, during the prescribed period, but the goods are subsequently exported.<sup>16</sup>

**Item 31** repeals existing subsection 44(2) of the Tradex Scheme Act which states that an approval by the Secretary of a form is a disallowable instrument. This provision pre-dates the *Legislative Instruments Act 2003* and is not consistent with how other approved forms and applications for concessional entry are treated.<sup>17</sup>

## Concluding comments

As already stated, the Bill is said to implement the recommendations from the Review of the Tradex and Manufacturing in Bond Schemes. Unfortunately, as the outcomes of the Review were not published, it is not possible to comment on whether the Bill achieves this purpose. Nevertheless the Bill does not appear to be contentious.

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15. *ibid.*, paragraph 37.

16. Explanatory Memorandum, paragraph 39.

17. *ibid.*, paragraph 43.

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