



## Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]

**It should be noted that the name of the Bill as introduced on 22 July 2009 is Customs Tariff Amendment (2009 Measures No. 1) Bill 2009.**

**The Bill is not identical to the earlier bill of the same name, introduced in the House of Representatives on 11 February 2009, but is identical to the bill (which included amendments made by the Government in the House of Representatives on 25 February 2009) which was rejected by the Senate on 18 March 2009. The addition of the reference [No. 2] has been made by the Department of the House of Representatives Table Office to indicate that the Bill is introduced for a second time.**

Paula Pyburne  
Law and Bills Digest Section

### Contents

Purpose . . . . .	2
Background . . . . .	2
Financial implications . . . . .	3
Main provisions . . . . .	4
Schedule 1 . . . . .	4
Schedule 2 . . . . .	4
Schedule 3 . . . . .	5

## Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]

**Date introduced:** 22 June 2009

**House:** House of Representatives

**Portfolio:** Home Affairs

**Commencement:** Sections 1–3 on the day of Royal Assent; Schedule 1 on 27 April 2008; Schedule 3 on the later of the day after Royal Assent or 1 July 2009; and Schedule 2 on the latest of the day after Royal Assent, the day after the *Excise Tariff Amendment (2009 No. 1) Act 2009* receives Royal Assent or 1 July 2009. However the provisions contained in Schedule 2 will not commence if the *Excise Tariff Amendment (2009 No. 1) Act 2009* does not receive Royal Assent.

**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

The purpose of the Bill is to amend the *Customs Tariff Act 1995* (the Customs Tariff Act) to:

- increase the excise-equivalent customs duty rate applying to ‘other excisable beverages not exceeding ten per cent by volume of alcohol’ from \$39.36 to \$66.67 per litre of alcohol from 27 April 2008 and
- ensure that products which mimic spirit-based ready-to-drink beverages (RTDs) are subject to the same tax rate as RTDs.

### Background

For all information about the background to the Bill see the [Bills Digest](#) for the Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2].<sup>1</sup>

As with the Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 the original form of this Bill was amended in the House of Representatives by the Government on 25

---

1. Matthew Thomas, Paula Pyburne and Kirsty Magarey, ‘Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]’, *Bills Digest* no. 180, 2008-09, Canberra 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd180.pdf>.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

February 2009. The amended form of this Bill was debated in the Senate during the period 11–18 March 2009. On 18 March 2009 the Senate rejected the amended Bill.

The current Bill is in identical terms to the amended Bill which was debated in and rejected by the Senate on 18 March 2009.

## Financial implications

According to the Explanatory Memorandum financial implications of the increased tax on certain alcoholic beverages not exceeding 10 per cent by volume of alcohol (both through excise and excise-equivalent customs tariff increases) is predicted to be:<sup>2</sup>

<i>Revenue</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
Australian Taxation Office	Nil	\$31.79m	\$254.68m	\$259.89m	\$264.96m
Australian Customs Service	Nil	\$36.65m	\$144.26m	\$109.61m	\$132.94m
<b>Impact on fiscal balance</b>	<b>Nil</b>	<b>\$68.44m</b>	<b>\$398.93m</b>	<b>\$369.5m</b>	<b>\$397.9m</b>

Similarly, financial implications of the amendment to the definition of beer and grape wine product is predicted to be:<sup>3</sup>

<i>Revenue</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
Impact on fiscal balance	Nil	Nil	\$30m	\$30m	\$30m

- 
2. Explanatory Memorandum, Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2] and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2], p. 3.
  3. Explanatory Memorandum, p. 4.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Main provisions

### Schedule 1

**Items 1–11** of Schedule 1 of the Bill amend Column 3 (the rates of duty column) in Schedule 3 of the Customs Tariff Act so that the rates accord with the *Excise Tariff Act 1921* (Excise Tariff Act).

**Items 12–22** amend Column 3 in Schedule 5 of the Customs Tariff Act to show that the rate of duty for various beverages originating from the US is \$66.67 per litre of alcohol.

**Items 23–33** amend Column 3 in Schedule 6 of the Customs Tariff Act to show that the rate of duty for various beverages originating from Thailand is \$66.67 per litre of alcohol.

### Schedule 2

**Item 3** of **Schedule 2** of the Bill repeals the existing Additional Notes in Chapter 22 of Schedule 3 of the Customs Tariff Act and substitutes the proposed definition of ‘*beer*’ which is in the same terms as the proposed definition to be substituted in the Excise Tariff Act. This amendment is intended to achieve the purpose of ensuring that products which mimic spirit-based RTDs are subject to the same tax rate as RTDs.

The proposed definition sets a combination of minimum limits on bitterness and maximum limits on sugar content that must be present in the final beverage. Amongst other things, ‘*beer*’:

- can contain hops, extracts of hops or other bitters such that it has international bitterness units of not less than 4.0: **proposed paragraph (b)**
- but only must not contain more than 4 per cent weight of sugars:<sup>4</sup> **proposed paragraph (c)**
- must not have had artificial sweetener added to it: **proposed paragraph (d)**
- may have added to it at any time other substances, including flavours<sup>5</sup> but any substance which contains alcohol must not add more than 0.5 per cent to the total volume of the final beverage: **proposed paragraph (e)**, and
- will contain more than 1.15 per cent by volume of alcohol: **proposed paragraph (g)**.

**Items 5, 6, 8 and 9** of **Schedule 2** of the Bill make consequential amendments so that references to ‘*beer*’ in other parts of the Customs Tariff Act reflect the proposed definition.

---

4. **Item 2** of **Schedule 2** defines ‘sugar’ as monosaccharide or disaccharide.

5. For example chilli or lime: Explanatory Memorandum, p. 11.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Section 19 of the Customs Tariff Act allows customs rates of duty for certain alcohol and tobacco products to be adjusted automatically, twice yearly. The section contains a table of customs headings which correspond to the excise item for the same product. The table therefore, links the excise rate to the excise-equivalent customs rate for each of those products.

**Items 7, 11, 13 and 15 of Schedule 2** amend customs headings so that the excise-equivalent rate of customs duty for certain beverages is increased to \$69.16 per litre of alcohol. The Government increased the excise and excise-equivalent customs duty rate applying to ‘other excisable beverages not exceeding 10 per cent by volume of alcohol’ (alcopops) from \$39.36 per litre of alcohol content’ to \$66.67 per litre of alcohol content on and from 27 April 2008. This rate was increased to \$68.54 per litre of alcohol content on 1 August 2008 and increased again to \$69.16 per litre of alcohol content on 2 February 2009 as a result of the bi-annual indexation of excise and excise-equivalent customs duty rates.

### Schedule 3

The Customs Tariff Act does not contain a definition of ‘*wine*’. Instead that term is defined in section 33–1 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WETA). That Act broadly provides that ‘wine’ includes beverages fermented from any fruit or vegetable and includes alcoholic products such as fruit wines or vegetable wines, cider, perry, mead, sake, grape wine and grape wine products.

The term ‘*grape wine products*’ is also defined at section 31–3 of the WETA so that it is a beverage containing 70 per cent grape wine. The remaining amount (up to 30 per cent) can contain flavours, although there are some limits on the type and use of ethyl alcohol. The Customs Tariff Act contains a definition of ‘*grape wine products*’ in the same terms.

Some examples of ‘grape wine products’ are wine cocktails, flavoured wines and Irish style cream drinks, including wine creams. According to the Explanatory Memorandum,

with a combination of flavourings or ingredients a grape wine product could be produced to resemble a spirit-based ready-to-drink beverage product... [which] could be subject to significantly less tax than the RTD product.<sup>6</sup>

**Item 2** repeals the Additional Note in Chapter 22 of Schedule 3 of the Customs Tariff Act which contains that definition and substitutes the proposed definition of ‘*grape wine products*’. Amongst other things a ‘grape wine product’ will be a grape wine-based beverage that:

- has not had added to it the flavour of any alcoholic beverage (other than wine): **proposed paragraph 4(a)**, and

---

6. Explanatory Memorandum, p. 15.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- if the beverage has had ethyl alcohol added, the ethyl alcohol must comply with certain statutory requirements including that the ethyl alcohol must not add more than one percentage point to the alcoholic strength by volume of the beverage: **proposed paragraph 4(b)**.

**Item 2** also inserts a definition of *'wine'* which will encompass grape wine, cider or perry, fruit or vegetable wine, mead and sake: **proposed Additional Note 4A**.

**Proposed Additional Note 4B** contains a definition of *'grape wine-based beverage'* which:

- is not grape wine, but contains at least 700 ml of grape wine per litre: **proposed paragraph 4B(a)**
- has not had ethyl alcohol from any source except grape spirit or alcohol used in preparing vegetable extracts added to it: **proposed paragraph 4B(b)**, and
- has an alcoholic strength by volume of at least 8 per cent volume but not exceeding 22 per cent volume: **proposed paragraph 4B(c)**.

The effect of these definitional changes is that certain imported beverages which were previously subject to the WETA, will instead be subject to rates of customs duty equivalent to those applicable under the Excise Tariff Act.

**Items 3–6** update the rate of duty payable to \$69.16 per litre of alcohol content to reflect the bi-annual indexation of excise and excise-equivalent customs duty rates.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

---

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: [web.library@aph.gov.au](mailto:web.library@aph.gov.au). Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

---

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2434.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*