



Customs Tariff Amendment (Incorporation of Proposals) Bill 2009

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Law and Bills Digest Section

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Customs Tariff Amendment (Incorporation of Proposals) Bill 2009

Date introduced: 22 October 2009

House: House of Representatives

Portfolio: Home Affairs

Commencement: Sections 1 to 3 commence on the day of Royal Assent, Schedule 1 commences on 1 January 2009, Schedule 2 on 6 March 2009 and Schedule 3 on 28 August 2009.

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 *Customs Tariff Act 1995* (the Act) to incorporate

- an additional item into Schedule 4 of the Act concerning concessional rates of duty (Customs Tariff Proposal No. 1) 2009 (motor vehicle manufacture),
- increased rates of tariff incorporated into Schedule 7 (Chilean originating goods) contained in the Customs Tariff Proposals (No. 2) 2009 (Alcopops and tobacco-Chilean goods)
- amendments to rates of duty contained in Customs Tariff Proposals (No. 4) 2009 (beer and wine).

Background

Basis of policy commitment

Customs Tariff Proposals and Excise Tariff Proposals

Alterations proposed to the *Customs Tariff Act 1995* and the *Excise Tariff Act 1921* are done by means of excise and customs tariff proposals which are introduced and tabled in Parliament.

The Australian House Practice explains that changes to customs and excise tariffs require a mechanism whereby changes to the tariffs can be applied quickly. To initiate changes by means of introducing a bill into Parliament would be impractical because of the time

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processes involved in passing a bill through Parliament. 'Such measures (proposals) are generally introduced by way of motion in the form of customs tariff and excise tariff proposals. These, as proposals dealing with taxation may be submitted to the House without notice.'¹ The collection of duty commences as the House Practice states, on the authority of an unresolved motion, and this has been accepted as a convention.²

The Bill validating the imposition of the tariff changes retrospectively apply the changes to the date that the tariff changes commenced by means of the Customs Tariff Proposal. There has been some controversy relating to the arrangements of tabling tariff proposals to be later validated by legislation which is subsequently rejected and requires a return of the funds collected.

The Proposals and the Passage of the Validating Legislation

The Customs Tariff Proposal (No. 1) 2008 (alcopops) and the Excise Tariff Proposal (No. 1) 2008 (alcopops) were tabled on 13 May 2008. The validating legislation was introduced in February 2009 but was subsequently rejected in the Senate. For a detailed coverage of the background to these and the subsequent Bills which ultimately passed see the following:

Customs Tariff Amendment (2009 Measures No. 1) Bill 2009

Excise Tariff Amendment (2009 Measures No. 1) Bill – [bills digest](#)³

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

Excise Tariff Amendment (2009 Measures No. 1) Bill [No. 2] – [bills digest](#)⁴

Customs Tariff Validation Bill 2009

Excise Tariff Validation Bill 2009– [bills digest](#)⁵

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1. I C Harris editor, House of Representatives Practice, 5th edn, p. 428.
 2. *ibid.*
 3. M Thomas and P Pyburne, *Excise Tariff Amendment (2009 Measures No. 1) Bill 2009, Customs Tariff Amendment (2009 Measures No. 1)*, Bills digest, nos. 100-101, 2008-09, Parliamentary Library, Canberra, 2009 viewed on 16 November 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd101.pdf>
 4. P Pyburne, *Customs Tariff Amendment (2009 Measures No.1) [No. 2]*, no.181, 2008-09, Parliamentary Library, Canberra, 2009, viewed 16 November 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd181.pdf>
 5. P Pyburne, *Customs Tariff Validation Bill 2009, Excise Tariff Validation Bill 2009*, nos. 166-167, Parliamentary Library, Canberra, 2009, viewed 16 November 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd101.p df>

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Chronology

For a chronology of the customs and excise tariff proposals and validating legislation see attached appendix.

Committee consideration

Senate Scrutiny of Bills Committee

The Bill has been examined by the Senate Scrutiny of Bills Committee and the Committee commented in the Alert Digest on the retrospective commencement provisions. They stated that items 2, 3 and 4 of the commencement table have retrospective commencement provisions. The Committee as a matter of practice ‘draws attention to a bill that seeks to have a retrospective impact and will comment adversely where such a bill has a detrimental effect on people.’⁶ However in the case of this Bill, the Committee commented on the clear explanation provided by the Explanatory Memorandum of the process employed in altering the *Customs Tariff Act 1995*. It explained that because of the short timeframe for effecting changes to the Act, Customs Tariff Proposals are used to effect such changes quickly which cannot be done through a Customs Tariff Amendment Bill.

The explanatory memorandum also explains that the commencement provisions reflect those of the relevant Customs Tariff Proposal and, since there is a time lag between the tabling of a Proposal in the House of Representatives and the passage of the associated bill through the Parliament, the commencement provisions of the bill are necessarily retrospective.

The Committee had no further comment to make on the bill.

The Current Bill

The Bill proposes to incorporate the changes contained in Customs Tariff Proposals (No. 1) 2009 (goods for motor vehicle manufacture), Customs Tariff Proposal (No. 2) (alcohol and tobacco-Chilean goods) and Customs Tariff Proposal (No. 4) (beer and wine). The majority of the changes proposed in Schedules 2 and 3 of the Bill concern amendments to the *Classification of goods and general and special rates of duty and Chilean originating goods*.

The Explanatory Memorandum explains that the *Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008* was assented to on 27 November

6. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 13, 28 October 2009, pp.29-30.

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2008 and commenced on 6 March 2009. The passing of that legislation implemented Australia's tariff commitments under the Australian-Chile Free Trade Agreement.⁷

Financial implications

The Explanatory Memorandum states that the measures in the Bill have no financial impact.⁸

Main provisions

Schedule 1—Customs Tariff Proposal (No. 1) 2009

Item 1 incorporates a **new item 41H** into Schedule 4 of the *Customs Tariff Act 1995* (proposed in Customs Tariff Proposal (No. 1)). Schedule 4 relates to concessional rates of duty and this change will provide for a concessional rate to apply to goods used in motor vehicle design or engineering relating to testing, quality control, manufacturing evaluation or engineering development.

Schedule 2—Customs Tariff Proposal (No. 2) 2009

Items 1 to 53 increase the rates of duty in accordance with Customs Tariff Proposal (No. 2) which implements increases in rates of duty as a result of movements in the February 2009 Consumer Price Index. The Explanatory Memorandum states that these increased rates apply to 'increased rates of excise equivalent customs duty applicable to certain spirit-based alcoholic beverages, also known as 'ready-to-drink' beverages or 'alcopops.' These changes also ensure that the customs duty on alcohol and tobacco products imported from Chile are in line with duty imposed on these types of products from other countries. The *Customs Tariff Amendment (2009 Measures No. 1) Act 2009* which received Royal Assent on 27 August 2009, allowed the higher rates of duty to be incorporated in the *Customs Tariff Act 1995*.

Schedule 3—Customs Tariff Proposal (No. 4) 2009

Customs Tariff Proposal (No. 4) proposes the following changes to the *Customs Tariff Act 1995*:

- Schedule 3—Classification of goods and general and special rates of duty **items 1-8**,

7. Explanatory Memorandum, Customs Tariff Amendment (Incorporation of Proposals) Bill 2009, p. 5.

8. *ibid*, p.2.

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- Schedule 5–US originating goods **items 9-16**,
- Schedule 6–Thai originating goods **items 16-24**, and
- Schedule 7–Chilean originating goods **items 25-32**.

The Explanatory Memorandum states that the Government announced in the 2009-10 Budget that ‘it would alter the taxation definitions of beer and grape wine product to ensure that these goods that mimic spirit based products are taxed as a spirit product.’⁹

Movements in the CPI in relation to these products rose in the June quarter. These increases took effect as from 1 August 2009. At that point the Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 was still being debated in Parliament.¹⁰ This Bill now proposes to amend the *Customs Tariff Act 1995* in relation to those increases.

9. *ibid*, p. 7.

10. The history of these bills can be found in the respective bills digests links which have been included above.

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Appendix

Chronology

2008

Customs Tariff Proposal (No. 1 alcopops) 2008

Excise Tariff Proposal (No. 1 alcopops) 2008 Tabled on 13/5/08.

2009

Customs Tariff Proposal (No. 1 motor vehicle goods) Tabled 11/2/09

Customs Tariff Proposal (No. 2 alcopops –Chilean goods Feb09 CPI) Tabled 25/2/09

Customs Tariff Proposal (No. 3 alcopops- June09 CPI) Tabled 12/5/09

Excise Tariff Proposal (No. 1 alcopops) Tabled 12/5/09

Customs Tariff Proposal (No. 4 definitions of beer and grape wine product)
Tabled 16/9/09

Customs Tariff Amendment (2009 Measures No. 1) Bill 2009

Excise Tariff Amendment (2009 Measures No. 1) Bill 2009

| | | | |
|--------------------------|------------|---------|----------------|
| House of Representatives | Introduced | 11/2/09 | Passed 25/2/09 |
|--------------------------|------------|---------|----------------|

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|--------|------------|---------|--------------------------------------|
| Senate | Introduced | 11/3/09 | Negatived at 3 rd reading |
|--------|------------|---------|--------------------------------------|

Rejected by the Senate 18/3/09

Customs Tariff Validation Bill 2009

This Bill proposed the validation of customs duties demanded or collected before 14 May 2009 to ensure that the duties were lawfully imposed and collected.

| | | |
|--------------------------|--------------------|----------------|
| House of Representatives | Introduced 12/5/09 | Passed 12/5/09 |
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| | | |
|--------|--------------------|----------------|
| Senate | Introduced 12/5/09 | Passed 13/5/09 |
|--------|--------------------|----------------|

Assent 13/5/09 Act No. 29 2009

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

Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 (No. 2)

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|--------------------------|----------------------------------|---------|----------------|
| House of Representatives | Introduced | 22/6/09 | Passed 22/6/09 |
| Senate | Introduced | 23/6/09 | Passed 13/8/09 |
| Assent 27/8/09 | Act No. 74 2009 (Customs Tariff) | | |
| Assent 27/8/09 | Act No. 73 2009 (Excise Tariff) | | |

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