



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SIXTH REPORT

OF

2006

16 August 2006

SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SIXTH REPORT

OF

2006

16 August 2006

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator A McEwen
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT OF 2006

The Committee presents its Sixth Report of 2006 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bill which contains provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Customs Legislation Amendment (Modernising Import Controls
and Other Measures) Bill 2006

Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 7 of 2006*. The Minister for Justice and Customs responded to the Committee's comments in a letter dated 15 August 2006. A copy of the letter is attached to this report.

Extract from Alert Digest No. 7 of 2006

Introduced into the Senate on 21 June 2006

Portfolio: Justice and Customs

Background

Schedule 1 of this bill amends the *Customs Act 1901* to provide Customs officers with additional powers to deal with certain prescribed prohibited imports, including:

- voluntary surrender of goods that have not been concealed;
- grant of post-importation permissions rather than automatic seizure of goods; and
- the introduction of a new scheme for the issue of infringement notices in lieu of prosecution for offences relating to prohibited imports and border security related offences.

Schedule 1 also contains application provisions to ensure that each of these sets of provisions do not have retrospective effect.

Schedule 2 of the bill amends the Act to incorporate changes to Certificates of Origin requirements under Articles 11 and 12 of Chapter 3 of the Singapore-Australia Free Trade Agreement. The bill contains application provisions in relation to goods claimed to be the produce or manufacture of Singapore.

Uncertainty of commencement Schedule 2

Item 5 in the table to subclause 2(1) of this bill provides for the amendments proposed in Schedule 2 to commence on the later of the date of Assent to the bill and the day on which Articles 11 and 12 of Chapter 3 of the Singapore-Australia Free Trade Agreement come into force for Australia. The item goes on to require the Minister for Justice and Customs to announce by *Gazette* notice the day on which those Articles come into force. The Committee notes that the item also provides that the amendments proposed in Schedule 2 ‘do not commence at all if the event mentioned in paragraph (b) [ie, the coming into force of Articles 11 and 12] does not occur.’

The Committee is wary of provisions which link commencement to an uncertain event and would generally expect to see a fixed date (or period of time) by which that event must occur to trigger commencement. The Committee therefore **seeks the Minister’s advice** as to whether Item 5 of the table might be amended to include a requirement for the Minister to announce by *Gazette* notice that the Articles will not come into force, in the event that the Singapore-Australia Free Trade Agreement does not come into force.

Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.

Relevant extract from the response from the Minister

I am writing in response to the Scrutiny of Bills Alert Digest No. 7 of 2006, which contained comments on the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* (the Bill). These comments relate to item 5 of the table in subclause 2(1) of the Bill, which provides for the commencement of Schedule 2 to the Bill. The provisions in Schedule 2 amend the *Customs Act 1901* to incorporate changes to Articles 11 and 12 of the Singapore-Australia Free Trade Agreement (the SAFTA).

The Committee proposed an amendment to item 5 of the table to include a requirement for me to announce by *Gazette* notice that the Articles will not come into force, in the event that the SAFTA amendment does not come into force. With respect to the Committee’s proposal, I offer the following information for its further consideration.

As the Committee would be aware, the SAFTA has already entered into force. Item 5 of the table refers to the amended Articles 11 and 12 of the SAFTA ‘...as re-tabled in the House of Representatives on 31 May 2005...’, that formed part of a package of amendments agreed to in the first Ministerial review of the SAFTA in 2004. This package of amendments was referred to the Joint Standing Committee on Treaties, which recommended binding treaty action be taken [Report 66 of August 2005]. The procedure for the entry into force of these amendments is an exchange of notes between the Government and the Government of Singapore, confirming the completion of the Parties’ respective domestic legal procedures.

In the case of the amended Articles 11 and 12 of the SAFTA, the exchange of notes cannot occur until Schedule 2 of the Bill that implements these Articles has received the Royal Assent. By contrast, the other amendments in the review package did not require legislative implementation and have all entered into force through the exchange of notes procedure. Subject to successful parliamentary passage of the proposed amendments, it is the Government’s intention to proceed without delay on the exchange of notes with the Government of Singapore for amended Articles 11, once the Bill has received the Royal Assent. In this respect, the Government does not regard the commencement of the amended Articles as an uncertain event.

I have copied this letter to the Ministers for Trade and Foreign Affairs. Officials of our agencies are available to provide any further clarification.

The Committee thanks the Minister for this response.

Robert Ray
Chair



RECEIVED

15 AUG 2006

Standing C'ttee
for the Scrutiny of Bills

SENATOR THE HON. CHRISTOPHER ELLISON

Minister for Justice and Customs
Senator for Western Australia
Manager of Government Business in the Senate

Ministerial No. 90180

15 AUG 2006

Senator the Hon Robert Ray
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

I am writing in response to the Scrutiny of Bills Alert Digest No. 7 of 2006, dated 9 August 2006, which contained comments on the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006* (the Bill). These comments relate to item 5 of the table in subclause 2(1) of the Bill, which provides for the commencement of Schedule 2 to the Bill. The provisions in Schedule 2 amend the *Customs Act 1901* to incorporate changes to Articles 11 and 12 of the Singapore-Australia Free Trade Agreement (the SAFTA).

The Committee proposed an amendment to item 5 of the table to include a requirement for me to announce by Gazette notice that the Articles will not come into force, in the event that the SAFTA amendment does not come into force. With respect to the Committee's proposal, I offer the following information for its further consideration.

As the Committee would be aware, the SAFTA has already entered into force. Item 5 of the table refers to the amended Articles 11 and 12 of the SAFTA '... as re-tabled in the House of Representatives on 31 May 2005...', that formed part of a package of amendments agreed to in the first Ministerial review of the SAFTA in 2004. This package of amendments was referred to the Joint Standing Committee on Treaties, which recommended binding treaty action be taken [Report 66 of August 2005]. The procedure for the entry into force of these amendments is an exchange of notes between the Government and the Government of Singapore, confirming the completion of the Parties' respective domestic legal procedures.

In the case of the amended Articles 11 and 12 of the SAFTA, the exchange of notes cannot occur until Schedule 2 of the Bill that implements these Articles has received the Royal Assent. By contrast, the other amendments in the review package did not require legislative implementation and have all entered into force through the exchange of notes procedure. Subject to successful parliamentary passage of the

proposed amendments, it is the Government's intention to proceed without delay on the exchange of notes with the Government of Singapore for amended Articles 11, once the Bill has received the Royal Assent. In this respect, the Government does not regard the commencement of the amended Articles as an uncertain event.

I have copied this letter to the Ministers for Trade and Foreign Affairs. Officials of our agencies are available to provide any further clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Ellison". The signature is fluid and cursive, with the first name "Chris" written in a larger, more prominent script than the last name "Ellison".

CHRIS ELLISON
Senator for Western Australia