THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADEX SCHEME AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research)
TRADEX SCHEME AMENDMENT BILL 2008

OUTLINE

Introduced in 2000, the objective of the Tradex Scheme is to allow for the importation of goods, without payment of customs duty or other taxes, provided the goods are subsequently exported, or incorporated in other goods that are exported.

The Tradex Scheme Amendment Bill 2008 (the Bill) will amend the Tradex Scheme Act 1999 (the Tradex Act) to implement Tradex related recommendations from the Review of the Tradex and Manufacturing in Bond Schemes and four post review proposals. The Bill does not implement the recommendations relating to the Manufacturing in Bond Scheme, which require amendment of the Customs Regulations 1926 (the Customs Regulations).

The Bill will decouple the Tradex Act from those provisions of the Customs Regulations that allow for the drawback of customs duty (the Drawback Regulations). The Bill will also improve the administration of the Tradex Scheme.

Decoupling the Tradex Act from the Drawback Regulations will enable the Tradex Scheme to remain consistent with the Drawback Regulations without being dependant on them. Both the Tradex and drawback programs are designed to provide relief from duties imposed by the Customs Tariff Act 1995 for imported goods that are subsequently exported, provided the goods are not inappropriately used or consumed while in Australia. This is consistent with the international taxation principle that duty should apply in the country of consumption.

There are subtle differences in the way the two programs operate. 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. 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 Act while in Australia. Exporters are the focus of the benefit under the Drawback Regulations. Importers are the focus of the benefit under the Tradex Scheme. These differences mean that the Drawback Regulations are not always expressed in a manner that is appropriate for the Tradex Scheme.

The retention of the direct link between the Tradex and drawback programs complicates the administration of the Tradex Scheme. Administration became even more challenging when the drawback provisions were amended in October 2006 to specifically restrict eligibility to exporters or their assignees.

Other amendments to the Act are aimed at improving the administration of the Tradex Scheme. They include changing the burden of proof for exportation of nominated goods, expanding the Secretary's power to revoke or suspend Tradex orders, removing the requirement for the approval of the Tradex application form to be a disallowable
instrument and providing a refund mechanism in the case of over payment of Tradex duty.

FINANCIAL IMPACT STATEMENT

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.
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NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause provides that the short title by which the Act may be cited is the Tradex Scheme Amendment Act 2008.

Clause 2 – Commencement

2. Subclause (1) provides that the commencement date for sections 1, 2 and 3, and anything in this Act not elsewhere covered by the table, is the day on which this Act receives Royal Assent. The date of commencement for amendments to the Tradex Scheme Amendment Act 2008 contained in Schedule 1 of the Act is a single day fixed by proclamation.

Clause 3 – Schedule

Schedule 1 – Amendments to Tradex Scheme Act 1999

3. This Schedule decouples the Tradex and drawback programs by removing direct links between the Tradex Scheme Act 1999 and the Drawback Regulations and introduces initiatives to improve the administration of the Tradex Scheme.

Item 1

4. This item removes the definition of Drawback Regulations as they will no longer be referred to in the amended act.

Item 2

5. This item removes the definition of Exempt Class of Goods as they will no longer be referred to in the amended act. Exempt Class of Goods refers to goods listed in the Tradex Scheme Regulations 2000 (the Tradex Regulations) that could not comply with some or all of the requirements of the Drawback Regulations, but were deemed suitable for Tradex.

6. Decoupling the two programs means that all of the prescribed requirements for Tradex are to be consolidated into the Tradex Regulations, and there is no longer a need to refer separately to goods that are exempt from the Drawback Regulations.

Item 3

7. This item removes the definition of Requirements of Drawback Regulations as they will no longer be referred to in the amended act.
Item 4

8. This item removes the requirement, when applying or holding a Tradex order, for the nominated goods to comply with the Drawback Regulations or to fall within an exempt class of goods. Nominated goods will now need to meet the requirements of the Tradex Regulations. The Tradex Regulations are to be amended to ensure similar core criteria to those applying in the Drawback Regulations.

Item 5

9. This item will ensure that, irrespective of when a Tradex order was issued, it will be subject to the requirements of the new provisions.

10. Tradex orders are issued for particular nominated goods and remain valid on a rolling basis as long as the holder of the order is importing and exporting those goods within the specified time. As such, all current Tradex orders will have been issued with regard to the Drawback Regulations. Those orders are not able to be withdrawn except under specific circumstances outlined in the Act. The amendment is intended to clarify the conditions under which a Tradex order will operate. The retrospective application of the new provisions will ensure that current Tradex order holders will benefit from those provisions.

Item 6

11. This item will ensure that the core criteria for a person holding a Tradex order is no longer required to meet the requirements of the Drawback Regulations. The Tradex order holder will need to comply with the requirements of the Tradex Regulations. The Tradex Regulations are being concurrently amended to ensure similar core criteria to those applying in the Drawback Regulations.

Item 7

12. This item provides that the changes to the core criteria for holding a Tradex order will apply to goods that are imported on or after the introduction of these amendments.

Item 8

13. This item will ensure that, when applying for a Tradex order, applicants are no longer required to meet the requirements of the Drawback Regulations. The Tradex order applicant will need to comply with the requirements of the Tradex Regulations. The Tradex Regulations are being concurrently amended to ensure similar core criteria to those applying in the Drawback Regulations.

Item 9

14. This item will ensure that, when making a Tradex order, the Secretary no longer needs to state that those nominated goods which meet the core criteria for the
granting of a Tradex order are eligible to be entered under item 21A of Schedule 4 to the **Customs Tariff Act 1995**. If the Secretary grants a Tradex order, the nominated goods would automatically be covered by item 21A. Provided the nominated goods were not otherwise duty free, they would be eligible to enter under that item by the application of the **Customs Tariff Act 1995**. As the nominated goods would be covered by item 21A, whether or not they were eligible to enter under that item, Goods and Services Tax (GST) would not be payable on those goods by the application of 42-5 of the **A New Tax System (Goods and Services Tax) Act 1999**.

**Item 10**

15. This item is a technical amendment that will remove a redundant subsection of the Act which currently states a Tradex order is not a statutory rule. The **Statutory Rules Publications Act 1903** was repealed by the **Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003**. Also, an instrument prescribing or approving a form is exempt from being a disallowable instrument under Part 1 of Schedule 1 of the **Legislative Instruments Regulations 2004**.

**Item 11**

16. This item corrects the numbering for section 16 of the Act to enable Item 13 to be included.

**Item 12**

17. This item corrects the numbering in the note for section 16 of the Act to enable Item 13 to be included.

**Item 13**

18. This item provides the Secretary with the power to provide a Tradex order holder with a written notice where the Secretary believes the goods are not going to be exported. The purpose of the notice will be to seek evidence that the holder intends to export the nominated goods. The Secretary currently has the power to seek such evidence in the case where a disqualifying circumstance exists, but not when it is suspected that exportations will not take place.

19. This section will provide the Tradex order holder with an opportunity to produce the necessary evidence. It will also enable action to be taken against Tradex order holders who, while not giving rise to a disqualifying circumstance, have no intention to export (eg, those who might attempt to use the Tradex Scheme to defer duty payment).

**Item 14**

20. This item will extend the Secretary's power to suspend a Tradex order to circumstances where the Secretary believes the holder does not intend to export the goods. This section will provide the holder with an opportunity to produce the
necessary evidence. It will also enable action to be taken against Tradex order holders who do not meet a disqualifying circumstance, but have no intention to export the goods.

**Item 15**

21. This item corrects the numbering in the Act to ensure that a notice given to a Tradex order holder is done so under the correct provision of section 16.

**Item 16**

22. This item redrafts a note on the right for a decision to revoke a Tradex order to be reviewable as outlined in section 39. It does not change the right or conditions for that review.

**Item 17**

23. This item gives the Secretary the power to revoke a Tradex order in circumstances where the holder has been given notice to show cause why the Tradex order should not be revoked, but has failed to satisfy the Secretary that the holder intends to export the goods referred to in the notice. The basis for the notice can be a holder committing a disqualifying circumstance or the Secretary believing the holder does not intend to export the goods. This will enable the revocation of Tradex orders where holders have no intention to export the goods and are using the scheme to defer duty payment.

**Item 18**

24. This item will extend the Secretary’s power to revoke a Tradex order to situations where the holder cannot be contacted, despite reasonable attempts to do so. It outlines the conditions under which this can occur and the administrative procedures to be followed when revoking an order for this reason. It is a current requirement of the scheme that Tradex order holders notify changes in registered particulars, which includes their contact details.

**Item 19**

25. This item ensures that if a Tradex order is suspended or revoked, any goods imported under that order prior to that suspension or revocation continue to be subject to the requirements of the Act with respect to the liability for Tradex duty. That is, where imported goods have obtained the benefit of the Tradex order (ie have entered Australia without paying customs duty or GST), they remain liable for Tradex duty if they fail to meet Tradex requirements. Goods that have not had the benefit of the Tradex order (ie goods that enter Australia after revocation or suspension and in respect of which customs duty and/or GST were paid) are not liable to Tradex duty.
26. The circumstances under which Tradex duty is liable remain unaltered except for the removal of the link to the Drawback Regulations as part of the decoupling of Tradex from drawback. The Tradex Regulations are being concurrently amended to ensure similar criteria to those applying in the Drawback Regulations.

**Item 20**

27. This item corrects the reference in paragraph 21(3)(a) with respect to subsection 21(1).

**Item 21**

28. This item corrects the reference in paragraph 21(3)(b) with respect to subsection 21(1).

**Item 22**

29. This item will ensure that the timing for the payment of Tradex duty is not linked to the requirements of the Drawback Regulations. The Tradex duty payments will need to meet the requirements of the Tradex Regulations. The Tradex Regulations are being concurrently amended to ensure similar core criteria to those applying in the Drawback Regulations.

**Item 23**

30. This item corrects the reference in paragraph 21(3)(d) with respect to subsection 21(1).

**Item 24**

31. This item ensures that, with respect to the liability to pay a Tradex duty, the holder of the Tradex order continues to be the holder after an order is suspended or revoked. This ensures that holders of suspended or revoked Tradex orders are still subject to the conditions of the Act.

**Item 25**

32. This item adds additional references in paragraph 39(2)(b) with respect to sections 19 and 19A.

**Item 26**

33. This item adds additional references in paragraph 40(d) with respect to sections 19 and 19A.

**Item 27**

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34. This item will create an evidentiary certificate provision that shifts the onus of proving compliance with new paragraph 21(1)(f) of the Act (formerly paragraph 21(1)(d)).

35. Currently, if Tradex duty is unpaid by a Tradex order holder, and a prosecution begins under existing section 28, the burden of proving that duty was payable rests with the Commonwealth. After the amendments, if a certificate is issued, the defendant will have the burden of proving that the goods were exported as required and, as a consequence, duty is not payable.

36. A Tradex order covers imported goods that are subsequently exported (including those used as inputs to manufacture or the like). A Tradex order holder can import goods duty and tax free relying upon that order only if the holder has a reasonable expectation that the goods would be exported. If, in reality, the goods are not exported, the holder is liable for Tradex duty. In these circumstances, it is reasonable to expect the Tradex order holder to be aware of each element of the supply chain within Australia for those goods it imports under the Tradex order so it can prove export. In fact, it is a core criterion for applying for or for holding a Tradex order that adequate record-keeping and accounting systems are in place with respect to the nominated goods until they are exported.

37. Under current legislation, if faced with an uncooperative Tradex order holder, the Commonwealth would need to prove there has been no export. It is very difficult in any situation to prove a negative. In this case, there are added complications. Tradex order holders are not necessarily the exporters of the goods and there may be a number of people in the production chain. In proving there has been no export, the Commonwealth would have to identify all the goods contained in every export declaration line and trace back their source materials, to see if any of the goods were imported under the Tradex order in question. This can prove difficult, as according to advice from Australian Customs Service, in financial year 2006-07 there were about 2.8 million export declaration lines.

38. In light of the relative ease with which the Tradex order holder can prove export, compared with the Commonwealth, section 40A has been included to shift the burden of proof to the holder of the Tradex order.

**Item 28**

39. This item will allow the refund of overpaid Tradex duty. For example, Tradex duty may have been paid under the expectation that the goods would not be exported during the prescribed period, but the goods may have subsequently been exported. Similarly, there may be instances where the Tradex order holder has incorrectly calculated the amount of Tradex duty owing on goods. In both circumstances, the refund of overpaid Tradex duty would be reasonable.

40. Currently the Act contains no provisions for refunds of Tradex duty. Complex administrative processes need to be pursued to compensate Tradex order holders in these situations. This item will ensure the Tradex duty refunds will be made available in an efficient manner.
**Item 29**

41. This item corrects the reference in subsection 43 (4) with respect to subsection 16(1).

**Item 30**

42. This item will correct the numbering with respect to section 44 once subsection 44(2) is removed.

**Item 31**

43. This item will remove the current situation, where approval of the Tradex application form by the Department's Secretary is a disallowable instrument. This provision pre-dates the *Legislative Instrument (Transitional Provisions and Consequential Amendments) Act 2003*. Also, an instrument prescribing or approving a form is exempt from being a disallowable instrument under Part 1 of Schedule 1 of the *Legislative Instruments Regulations 2004*. Hence, the current Tradex requirement is not consistent with how other approved forms and applications for concessional entry are treated and should be removed.

44. This item will maintain the requirement for the Secretary to approve the form, but remove the requirement for that approval to be a disallowable instrument. This proposal will simplify and speed up procedures for adapting the application form to suit the needs of the Tradex Scheme and its clients, as and when required.