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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Customs Legislation (Economies in  
Transition) Amendment Bill 1997**

**EXPLANATORY MEMORANDUM**

*Circulated by authority of Hon. Simon Crean, MP*

## **CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 1997**

### **OUTLINE**

The purpose of this Bill is to amend the *Customs Act 1901*.

The amendments deal with the determination of normal values of allegedly dumped goods from developing countries that are in the process of transition to a market economy.

On 12 March 1997 the then Minister for Small Business and Consumer Affairs made a statement on these matters.

The government introduced its own measure on these matters on 25 June.

# **Customs Legislation (Economies in Transition) Amendment Bill 1997**

## **Notes on Clauses**

### **Clause 1 - Short title**

This clause provides that the short title of the Act would be *Customs Legislation (Economies in Transition) Amendment Act 1997*.

### **Clause 2 - Commencement**

Subclause (1) provides that the Act would come into operation on a day to be fixed by Proclamation. This would allow the Government to ensure that necessary regulations can be made to complement the provisions of the bill.

This provision is subject to the standard provision which would mean automatic commencement 6 months after Royal Assent, even if a proclamation has not been issued for the commencement of the provision (subclause 2(2)).

### **Clause 3 - Schedule**

This clause is the formal enabling provision for the Schedule of this Act. It provides that the *Customs Act 1901* is amended in accordance with the provisions of the applicable items of the Schedule.

## **SCHEDULE - AMENDMENT OF THE CUSTOMS ACT 1901**

### **Item 1**

This item inserts new subsections (5D) to (5G) into section 269 TAC of the Customs Act.

Section 269TAC of the *Customs Act 1901* provides for the assessment of the '*normal value*' of imported goods, for the purpose of determining whether the goods have been exported to Australia at less than that value (thereby dumped).

The new subsections 269TAC(5D), (5E), (5F) and (5G) set out the special approach Customs and the Anti-Dumping Authority (the Authority) may use in determining normal values for allegedly dumped goods from countries that are in the process of transition to a market economy.

The structure of section 269TAC has been described as establishing a hierarchy of methodologies by which normal values are determined. Investigating authorities must progressively work through each of the prescribed methodologies until a point is reached at which a normal value can be determined.

Until the latter part of last year subsection 296TAC(4) was utilised by investigating authorities to ascertain normal values for goods exported from economies in transition, for example China, by reference to information obtained in a "*surrogate*" country. In November of last year Customs obtained legal advice as to the scope of subsection 269TAC(4). That advice confirmed that the section was severely limited in its application. Its stringent tests require that the Government of the country of export has at least a substantial monopoly of all of the trade of the country - not just in terms of the goods under investigation, AND must also substantially influence the domestic price of all goods in that country.

Therefore, although the governments of economies which are in a state of transition from a command economy to a market economy may still maintain controls over the domestic selling prices of a significant number of sensitive products, it cannot be said that the extent of the control falls within the ambit of subsection 296TAC(4). Clearly, in such economies the government has moved from a position in which it maintained a substantial monopoly over all of the trade of the country.

As subsection 296TAC(4) can have no further application to economies which are considered to be in transition from a command economy to a

market economy, the determination of the normal values for exports from such economies, as a matter of law, must be made in accordance with the remaining provisions of section 269TAC. These provisions do not distinguish between "*market economies*" and those which are considered to be "*in transition*". Therefore, normal values for exports from economies which are considered to be in transition from a command economy to a market economy must be ascertained by the application of the same methodologies that are required to be applied in the ascertainment of normal values for exports from countries such as the United States of America and Germany. That is, there is presently no flexibility available for investigating authorities to treat exports from economies which are in transition differently from exports from other countries.

Investigating authorities require the flexibility to proceed to a methodology similar to that provided in s. 269TAC(6) (ie have regard to all relevant information) as soon as they are satisfied that the domestic selling prices of the goods under consideration are subject to government control. The proposed amendment therefore aims to confer such flexibility upon Customs and the Authority.

### **Item 3 - Subsection 269TAC(6)**

This item effects a consequential amendment to subsection 269TAC(6), the existing "all relevant information" provision, to exclude its application when new subsection (5D) applies.

### **Item 4 - After subsection 269TAC(7)**

This item introduces new subsection 269TAC(7A) which allows the Minister to continue to use other provisions in section 269TAC [other than subsections (4) and (5)] in relation to other goods exported to Australia from a particular country where the new subsection (5D) applies to certain goods exported from that country. This provision reflects the policy that the focus of new subsection (5D) is not on the overall status or classification of the economy in the country of export but on the domestic selling prices of the goods under consideration when these prices are subject to government control or substantial control.

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