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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF AMENDMENT BILL (NO. 5) 1997

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Customs and Consumer Affairs,
the Hon Warren Truss MP)

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CUSTOMS TARIFF AMENDMENT BILL (NO. 5) 1997

OUTLINE

The purpose of the Customs Tariff Amendment Bill (No. 5) 1997 (the Amendment Act) is to introduce a new method of calculating the safety net surcharge component of the customs duty on certain tobacco and tobacco products.

On 5 August 1997, the High Court gave judgment in the cases of *Ngo Ngo Ha v State of New South Wales* and *Walter Hammond and Associates P/L v State of New South Wales*. The decision invalidated the New South Wales tobacco business franchise fees and cast considerable doubt upon the constitutional validity of other State and Territory business franchise fees on tobacco, alcohol and some petroleum products. In order to protect State and Territory revenues following this decision, the Commonwealth agreed to a safety net, part of which involved increases in customs and excise duties on certain tobacco products of \$167 per kilogram, with effect from 7 August 1997.

At the time these increases were implemented, the Commonwealth Government was aware of the effect that changing from a value-based franchise fee system to a weight based system would have on the tobacco industry. For example, some manufacturers produce lighter cigarettes by weight than others and the calculation of duty rates by weight has the potential to advantage some manufacturers over others. Following the High Court decision, the States and Territories held discussions with the industry and have agreed to a revised level of taxation and new arrangements for the levying of the surcharge. These new arrangements will ensure that the effect of the safety net on the manufacturers of the different tobacco and tobacco products is as close as possible to effect of the business franchise fees which applied prior to the High Court decision. All of the States and Territories have requested the Commonwealth to implement these new arrangements.

These new arrangements involve the replacement of \$167 per kilogram weight based surcharge safety net arrangements with the options of:

- a hybrid rate, based on a combination of a weight based rate per kilogram and 50.32% of the gazetted wholesale list price for a particular product; or
- a solely weight based duty rate only where no wholesale list price has been gazetted.

The new method of calculating the customs duty on these products was implemented immediately by the publication of a notice in the Commonwealth *Gazette* in accordance with section 273EA of the *Customs Act 1901* (the Customs Act). This notice was published on 16 September 1997 and took effect on and from 17 September 1997. This Amendment Bill will formally incorporate these changes into the *Customs Tariff Act 1995*.

Identical changes to the method of calculating excise duty on certain tobacco and tobacco products are proposed in the Excise Tariff Amendment Bill (No. 5) 1997.

FINANCIAL IMPACT STATEMENT

The new method of calculating the customs and excise duty on certain tobacco and tobacco products is expected to raise \$2.973 billion in a full year which is a decrease of \$288 million from the revenue estimated to result from the original measures implemented on 7 August 1997. This lower target is part of the request by the States and Territories to implement these arrangements.

All of the revenues collected under this Amendment Act and the Excise Tariff Amendment Bill (No. 5) 1997, however, will continue to be returned to the States and Territories under the provisions of the *States Grants (General Purposes) Act 1994*, less any administrative costs incurred by the Commonwealth.

Therefore, the financial impact on the Commonwealth Budget is neutral.

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NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Bill to be cited as the "*Customs Tariff Amendment Act (No. 5) 1997*".

Clause 2 - Commencement

Subclause 2(1) provides that, subject to subclause 2(2), the Bill is to commence on the day on which it receives the Royal Assent.

Subclause 2(2) provides for the amendments in Schedule 1 to be taken to have commenced on and from 17 September 1997. The amendments in Schedule 1 propose the changes in the method of calculating the customs duty on certain tobacco and tobacco products which form part of the Commonwealth safety net to protect State and Territory revenues.

The changes to the method of calculating the customs duty on these products were implemented immediately by the publication of a notice in the *Gazette* in accordance with section 273EA of the *Customs Act 1901*. This notice was published on 16 September 1997 and took effect on and from 17 September 1997. The amendments set out in Schedule 1, which formally incorporate these changes into the *Customs Tariff Act 1995* (the Customs Tariff Act), are therefore proposed to take effect on and from that same day.

Clause 3 - Schedule(s)

This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in the Schedule (in this case the Customs Tariff Act only) is amended in accordance with the applicable items of the Schedule. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

Schedule 1 - Amendment of the *Customs Tariff Act 1995*

Item 1 - Subsection 19(1)(Table)

This item amends section 19 of the Customs Tariff Act by repealing and substituting the Table in subsection 19(1).

The repeal and substitution of the Table will make consequential changes to the Customs Tariff subheadings and their equivalent Excise Tariff Items referred to in the Table which have been omitted and substituted as a result of amendments in this Bill and the Excise Tariff Amendment Bill (No. 5) 1997. Section 19 of the Customs Tariff Act provides for the application of the Consumer Price Index adjustments to goods covered by the subheadings and items in the Table in subsection 19(1).

Item 2 - Subheadings 2402.10.00 and 2402.20.00 in Schedule 3

This item omits subheadings 2402.10.00 and 2402.20.00 in Schedule 3 and substitutes new subheadings to introduce the new method of calculating the customs duty on cigars, cheroots, cigarillos and cigarettes containing tobacco.

Subheading 2402.10.00, which applies to cigars, cheroots and cigarillos containing tobacco, is to be split into new subheadings 2402.10.10 and 2402.10.90.

New subheading 2402.10.10 applies to cigars, cheroots and cigarillos of a kind for which the Chief Executive Officer of Customs (CEO) has declared a wholesale list price by instrument in writing published in the *Gazette*. The rate of duty that applies to these products is \$86.92 per kilogram and 50.32% of the wholesale list price. The safety net surcharge component of this customs duty rate is the hybrid rate of 50.32% of the wholesale list price and \$2.65 per kilogram. The balance of the amount per kilogram is the customs duty which applied to these products prior to the safety net being implemented, currently \$84.27 per kilogram.

New subheading 2402.10.90 applies to cigars, cheroots and cigarillos where the CEO has not declared a wholesale list price. The rate of duty that applies to these products is \$232.17 per kilogram, which is a reduction from the initial safety net rate of \$251.27 per kilogram. The safety net surcharge component of this rate of customs duty is \$147.90 per kilogram, which is a reduction of \$19.10 per kilogram from the initial safety net rate \$167 per kilogram. The balance of this rate is the customs duty which applied to these products prior to the safety net being implemented, currently \$84.27 per kilogram.

Subheading 2402.20.00, which applies to cigarettes containing tobacco, is to be split into new subheadings 2402.20.10, 2402.20.91 and 2402.20.99.

New subheading 2402.20.10 applies to cigarettes containing tobacco of a kind for which the CEO has declared a wholesale list price by instrument in writing published in the *Gazette*. The rate of duty that applies to these products is \$86.92 per kilogram and 50.32% of the wholesale list price. The safety net surcharge component of this

customs duty rate is the hybrid rate of 50.32% of the wholesale list price and \$2.65 per kilogram. The balance of the amount per kilogram is the customs duty which applied to these products prior to the safety net being implemented, currently \$84.27 per kilogram.

A declaration by the CEO of wholesale list prices of certain cigarettes was published in the *Gazette* on 17 September 1997.

New subheading 2402.20.91 applies to cigarettes containing tobacco where the CEO has not declared a wholesale list price and where there of no more than 1,200 cigarettes per kilogram. The rate of duty that applies to these products is \$232.17 per kilogram, which is a reduction from the initial safety net rate of \$251.27 per kilogram. The safety net surcharge component of this rate of customs duty is \$147.90 per kilogram, which is a reduction of \$19.10 per kilogram from the initial safety net rate of \$167 per kilogram.

New subheading 2402.20.99 applies to cigarettes containing tobacco where the CEO has not declared a wholesale list price and where there are more than 1,200 cigarettes per kilogram. The rate of duty that applies to these products is \$350.00 per kilogram and the safety net surcharge component of this rate of customs duty is \$265.73 per kilogram.

The balance of both these rates is the customs duty which applied to these products prior to the safety net being implemented, currently \$84.27 per kilogram.

Item 3 - Subheading 2403.10.00 in Schedule 3

This item omits subheading 2403.10.00 in Schedule 3 and substitutes new subheadings to introduce the new method of calculating the customs duty on smoking tobacco. Subheading 2403.10.00 is to be split into new subheadings 2403.10.20 and 2403.10.80.

New subheading 2403.10.20 applies to smoking tobacco of a kind for which the CEO has declared a wholesale list price by instrument in writing published in the *Gazette*. The rate of duty that applies to this product is \$86.92 per kilogram and 50.32% of the wholesale list price. The safety net surcharge component of this customs duty rate is the hybrid rate of 50.32% of the wholesale list price and \$2.65 per kilogram. The balance of the amount per kilogram is the customs duty which applied to this product prior to the safety net being implemented, currently \$84.27 per kilogram.

A declaration by the CEO of wholesale list prices of certain tobacco was published in the *Gazette* on 17 September 1997.

New subheading 2403.10.80 applies to smoking tobacco where the CEO has not declared a wholesale list price. The rate of duty that applies to this products is \$232.17 per kilogram, which is a reduction from the initial safety net rate of \$251.27 per kilogram. The safety net surcharge component of this rate of customs duty is \$147.90 per kilogram, which is a reduction of \$19.10 per kilogram from the initial safety net rate of \$167 per kilogram. The balance of this rate is the customs duty

which applied to this product prior to the safety net being implemented, currently \$84.27 per kilogram.

Item 4 - Subheading 2403.99.90 in Schedule 3

This item omits subheading 2403.99.90 in Schedule 3 and substitutes new subheadings to introduce the new method of calculating the customs duty on other tobacco such as chewing tobacco. Subheading 2403.99.90 is to be split into new subheadings 2403.99.91 and 2403.99.99.

New subheading 2403.99.91 applies to other tobacco of a kind for which the CEO has declared a wholesale list price by instrument in writing published in the *Gazette*. The rate of duty that applies to this product is the same as the rate that applies to smoking tobacco where the wholesale list price has been declared.

New subheading 2403.99.99 applies to other tobacco where the CEO has not declared a wholesale list price. The rate of duty that applies to this product is also the same as the rate that applies to smoking tobacco where the wholesale list price has not been declared.

Item 5 - Savings provision

This item sets out a savings provision in relation to declarations which are made by the CEO for the purposes of the new subheadings. The effect of the savings provisions is that declarations which are made for the purposes of Chapter 24 of the Schedule 3 to the Customs Tariff Act as proposed to be altered are to be taken to have been made as if the Customs Tariff Act had been altered at the time they were made.

Item 6 - Application

This item provides for the changes to the method of calculation of the duty proposed in this Bill to apply to goods entered for home consumption on or after the commencement of the Bill.

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