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## Customs Amendment Bill (No. 1) 2003

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Customs Amendment Bill (No. 1) 2003

Brendan Bailey  
Law and Bills Digest Group  
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# Customs Amendment Bill (No. 1) 2003

**Date Introduced:** 15 May 2003

**House:** Representatives

**Portfolio:** Justice and Customs

**Commencement:** On the day on which the Act receives the Royal Assent except for Schedule 1 amendments relating to Least Developed Countries (LDCs) and East Timor<sup>1</sup> which commence on 1 July 2003. Schedule 2 relates to the Singapore-Australia Free Trade Agreement (SAFTA) and the amendments commence on the day on which SAFTA enters into force.

## Purpose

The purpose of the Bill is to amend the *Customs Act 1901* to allow preferential duty treatment (i.e. duty free) for the importation of goods that are the produce or manufacture of LDCs and East Timor, and by Singapore under trade liberalisation initiatives.

## Background

### Least Developed Countries and East Timor

On 25 October 2002, the Prime Minister, the Hon. John Howard MP, announced at the APEC Leaders CEO Summit in Los Cabos that Australia will grant tariff and quota free access for 50 of the world's poorest countries.<sup>2</sup> These are referred to as Least Developed Countries (LDCs) and they include countries such as Bangladesh, Cambodia and many parts of sub-Saharan Africa.

East Timor is yet to be formally classified as a LDC but Australia has included it in the Bill. East Timor separated from Indonesia on 26 October 1999 and after a period of civil unrest, which was brought under control by United Nations peacekeepers, became an independent nation on 20 May 2002. Until East Timor is able to rebuild its infrastructure and obtain revenue from oil and gas resources in the Timor Sea it will remain one of the poorest countries in the world in economic terms.

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The initiative confirms Australia's commitment to the integration of these countries into world economy by facilitating market access. Australia announced publicly that it would implement the initiative for LDCs and East Timor by 1 July 2003.<sup>3</sup>

## Singapore-Australia Free Trade Agreement

The Singapore–Australia Free Trade Agreement (SAFTA) is a bilateral agreement that provides Singapore and Australia with more liberal access to each other's goods, services and investment markets.

SAFTA was signed on 17 February 2003 and tabled in Parliament on 4 March 2003. SAFTA is expected to come into force in the financial year 2003-04, subject to Australia's treaty process and the exchange of diplomatic letters.

The Joint Standing Committee on Treaties examined witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department at a meeting of the Committee in Canberra on 24 March 2003. The evidence taken includes the view that the treaty will significantly improve the competitive position for Australian service providers and provide greater protection to Australian investors operating in Singapore.<sup>4</sup>

The Government of Singapore has publicly welcomed the treaty and has noted that:

SAFTA enhances business opportunities in both countries and stimulates greater two-way investment.<sup>5</sup>

The Government of Singapore stated that bilateral trade between Australia and Singapore totalled about S\$ 9.9 billion (A\$8.6 billion) in 2002 and is expected to grow in the coming years.<sup>6</sup>

Features of SAFTA<sup>7</sup> include:

- elimination of tariffs on all imports (e.g. duty free entry for Australian beer and stout into Singapore);
- no export subsidies or safeguard measures against each other's goods;
- for most goods, a 50% value added rule of origin to satisfy country of origin (e.g. Singapore has Indonesian and Malaysian inputs in some of its products) and a 30% rule for a limited number of goods such as certain electrical and electronic items;
- closer cooperation in Customs procedures and enhanced liaison with each country's trading community;
- non-discriminatory national treatment in tendering for government business;

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- cooperation to protect intellectual property rights (e.g. preventing the export of goods that infringe copyright or trade marks);
- exemption for procurement policies in relation to industry development, including measures to assist small and medium enterprises and the promotion of employment and training opportunities for indigenous people;
- Singapore's environmental services sector will be open to Australian businesses (with some restrictions in the areas of waste management and hazardous waste);
- removal of certain quantitative and market access restrictions on service suppliers; these measures will improve access (and the easing of some residency requirements) for Australian financial, legal, other professional, investment services and telecommunications;
- the recognition of more Australian tertiary education courses (such as law) as available to Singaporean students attending those courses in Australian institutions; and
- a commitment by both governments to address anti-competitive business practices.

### Financial Implications from Tariff Reduction

The cost of removing tariffs on imports from LDCs and East Timor is expected to be a maximum of \$2.5 million per annum. The estimated reduced revenue collection arising from SAFTA is expected to be \$30 million for each of the first two years and rising marginally after that.<sup>8</sup> The offset to revenue loss is progress in international trade liberalisation and economic support for LDCs.

### Necessary Passage of the Legislation

A failure to pass this Bill would impact on the preferential access to Australia by LDCs scheduled to commence on 1 July 2003. Australia's commitment to assist LDCs is consistent with the Doha Ministerial Declaration in November 2001 that stated that World Trade Organisation members should work towards duty-free access for LDCs.

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## Main Provisions

### Schedule 1—Least Development Countries

World Trade Organisation members, such as Australia, have made a commitment to work towards duty-free access by Least Developed Countries (LDCs) of goods that are the produce or manufacture of LDCs.

**Item 3** amends section 153D of the *Customs Act 1901* to provide a special rule that allows a LDC to include materials that are inputs (e.g. raw materials or components) imported from a 'Developing Country' and received at a factory in an LDC in that LDC's manufactured goods. The amendment recognises that, generally, allowable costs of these inputs will be 25% of the total factory cost of the goods claimed to be manufactured in the LDC. This special rule will apply even where the 25% cost of inputs from a developing country is exceeded.

**Item 4** limits the application of the existing 'Inland freight rule' in subsection 153D(3) of the *Customs Act 1901* to Papua New Guinea or a Forum Island Country. This rule recognises as 'allowable expenditure' the cost of inland freight within Papua New Guinea or a Forum Island Country where that freight relates to movement of materials from a port or airport to a factory or plant where the materials are used in the manufacture of goods.

**Item 5** inserts a **New section 153NA** into the *Customs Act 1901*. The proposed new section 153NA contains the rules of origin for goods manufactured in an LDC. To satisfy the rule, the goods must have the last process of their manufacture in the LDC and the allowable factory cost must be at least 50%. The 'allowable factory costs' means the sum of allowable expenditure of the factory on:

- materials; and
- labour; and
- overheads.

### Schedule 2—Singapore–Australia Free Trade Agreement (SAFTA)

SAFTA is a free trade agreement that provides Singapore and Australia with more liberal access to each other's goods, services and investment markets.

**Item 2** inserts a **New Division 4A** into Part VI of the *Customs Act 1901*. Part VI deals with the exportation of goods from Australia. The new Division 4A will regulate the exportation of goods from Australia to Singapore to ensure that the goods that are exported comply with SAFTA. Compliance will enable the exporter to obtain preferential treatment under SAFTA.

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A proposed **new section 126AA** provides a power to make regulations that set out declaration requirements and procedures that exporters must satisfy concerning the goods which are claimed to be the produce or manufacture of Australia and which are exported to Singapore under SAFTA.

**New section 126AB** provides a power to make regulations that impose obligations for Australian producers, manufacturers and exporters to maintain records that relate to goods exported to Singapore under SAFTA. **New section 126AC** will empower an authorised officer to inspect the records and to also disclose details to the relevant authority in Singapore to verify claims made about the goods. **New section 126AD** empowers an authorised officer to ask questions of an exporter, producer or manufacturer concerning goods falling within SAFTA and to disclose such answers to the relevant authority in Singapore. There are already provisions in the *Customs Act 1901* that create an offence for failing to answer a relevant question (section 243SA) or to produce a relevant record (section 243SB).

**Item 3** inserts a new Division 1B into Part VIII of the *Customs Act 1901*. This new Division contains the rules of origin requirements applicable under SAFTA for goods claimed to be the produce or manufacture of Singapore. Proposed **New section 153U** expressly states the purpose for the proposed new Division 1B.

For goods to satisfy a claim under the SAFTA preference that they are the produce or manufacture of Singapore, those goods must be accompanied by a 'Certificate of Origin'—see proposed **new section 153VE**. The relevant authority that issues the Certificate of Origin in each country is set-out in Annexe 2A of SAFTA. In the case of Singapore, the issuers of a Certificate of Origin are International Enterprise Singapore and any other body authorised by the Government of Singapore (subject to the agreement of Australia).

The reference to 'CEO' (starting with the **New section 152UC**) is to the Chief Executive Officer of Customs.

Broadly stated, goods imported from Singapore into Australia will satisfy the SAFTA preference if they are wholly produced or manufactured in Singapore. Goods 'partly manufactured' in Singapore may still qualify under SAFTA if the local content is not less than 50% of the total cost to manufacture the goods (i.e. see proposed **New section 153VB**). For a limited range of electrical and electronic goods, a 30% rule will apply.<sup>9</sup>

**New section 153VC** enables both the 50% and 30% rule to be reduced by 2%, respectively, where the Chief Executive Officer of Customs is satisfied and determines in writing that the goods would have satisfied the rule had not unforeseen circumstances occurred and that the unforeseen circumstances are unlikely to continue.

**New section 153VD** empowers the Chief Executive Officer of Customs to determine, by notice in the *Gazette* that the 50% and 30% rules may be varied for a period of time where the Chief Executive Officer of Customs is satisfied that exceptional circumstances apply.

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**New section 153VF** applies exclusions from SAFTA preference goods that are, in reality, simply consigned through Singapore and are not the produce or manufacturer of Singapore.

**New sections 153W to 153WC** provide the components and rules that are used to calculate the allowable cost/expenditure on materials, labour and overheads for goods partly manufactured in Singapore for which duty free entry into Australia is claimed under SAFTA.

## Concluding Comments

The reduction in revenue from allowing duty free importation of goods from LDCs, East Timor and Singapore is noted but the trade-off is the improvement in international relations between Australia and these countries. In a time of international tension and uncertainty measures such as these are commendable. In the case of SAFTA, the benefits of trade liberalisation will assist Australian businesses to operate more easily in the Singapore market.

## Endnotes

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- 1 As a courtesy, it is noted that the nation of East Timor prefers the name Timor L'Este (also expressed as Timor-Leste). See the comments of Mr K. W. Wilkie MP, Second Reading debate in the House of Representatives, *Debates*, 5 March 2003, p. 12299
- 2 The Hon. John Howard MP, Prime Minister, 'Tariff-Free Access for the World's Poorest Countries', *Media Release*, 25 October 2002.
- 3 *ibid.*
- 4 Joint Standing Committee on Treaties, *Hansard* (Proof), 24 March 2003: p. 2 of the transcript.
- 5 See the statement of the Government of Singapore, 'Mr George Yeo, Minister for Trade and Industry, Singapore, at the Signing Ceremony of the Singapore-Australia Free Trade Agreement on 17 February 2003' on [www.mti.gov.sg](http://www.mti.gov.sg).
- 6 *ibid.*
- 7 The full text of SAFTA is publicly available on the government web sites of Australia and Singapore (see [www.dfat.gov.au](http://www.dfat.gov.au) and [www.mti.gov.sg](http://www.mti.gov.sg)).
- 8 *Explanatory Memorandum*, Customs Amendment Bill (No. 1) 2003, p. 12.
- 9 The identification of 'electrical and electronic goods' is drawn from the Minister's Second Reading Speech delivered on 15 May 2003. The actual list of goods is specified in Annex 2D of SAFTA but the list comprises a table of 8 digit tariff classification.

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