



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Ave
CANBERRA ACT 2601

25 July 2012

The Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Bryant,

Thank you for your letter of 16 July 2012 advising that a number of submitters to the Committee's Inquiry into the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 have made reference to the Australian Customs and Border Protection Service (Customs and Border Protection) and inviting a submission from Customs and Border Protection.

In summary, the position of submitters who refer to Customs and Border Protection is that the passage of the Bill will confirm in legislation the disconnect between transfer pricing rules for income tax purposes and those for customs valuation purposes. The submitters further submit that the retrospective application to 2004 of the amendments could mean that price adjustments for purposes that result in an increase in income tax on profits may be out of time for customs duty refund applications (generally 4 years) in relation to the imported goods the subject of the price adjusted transactions.

Customs and Border Protection considers that the factual analysis of the submitters in relation to the disconnect between the tax and customs rules and the availability of refunds is accurate.

Customs and Border Protection would not, however, support any amendments to Customs valuation rules, which are consistent with Australia's obligations under the World Trade Organization (WTO) Customs Valuation Agreement.

Customs and Border Protection refers the Committee to the short entry at pages 84 to 86 of the WTO publication *A Handbook on the WTO Customs Valuation Agreement*¹ as a useful guide to the treatment of transfer pricing in a customs valuation context.

Yours sincerely

Sharon Nyakuengama
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Cargo and Trade Division

¹ Rosenow and O'Shea, 2010, Cambridge University Press