



**AUSTRALIAN
CUSTOMS SERVICE**

**Australian Customs Dumping Notice
No.2000/60**

CUSTOMS ACT 1901

MINISTERIAL GUIDELINES - SECTION 269TAC(5E)

**PRICE CONTROL SITUATION IN RELATION TO AN ECONOMY
IN TRANSITION**

The Minister for Justice and Customs has issued the following guidelines in relation to a price control situation in an economy in transition.

Procedure

Relevant producers or exporters in an economy in transition are to be advised they have the opportunity to submit claims to establish that a price control situation does not apply to the goods under consideration. Such claims are to be framed in the context of answers to questions contained within the exporter's questionnaire. These questions are to reflect the criteria referred to below.

The onus will be on the relevant producer or exporter to provide the information to show that a price control situation does not exist.

Failure by the producer or exporter to materially and substantially respond to the questions in the exporter's questionnaire relating to a price control situation will be treated as confirmation that such a situation exists.

Mandatory criteria

I will be satisfied that a price control situation exists in relation to the goods under consideration if any one of the following four (4) criteria (A to D) is not met:

- (A) Decisions of the relevant producers or exporters relating to prices, costs, inputs, sales and investments are made in response to market signals and without significant state interference.

In considering this criterion I must be satisfied as to *each* of the following factors:

- (i) that genuinely private companies or parties hold the majority shareholding of the relevant producer or exporter;
 - (ii) that state or provincial officials appearing on the board or in key management positions are in a clear minority;
 - (iii) that the relevant producer or exporter has the guaranteed freedom to carry on business activities as evidenced by the following:
 - (a) there is no restriction on selling on the domestic market,
 - (b) the right to do business cannot be withdrawn outside proper contractual terms, and
 - (c) in the case of joint venture companies, profits can be exported and capital invested can be repatriated; and
 - (iv) that major production inputs of the relevant producer or exporter are not supplied by state owned or controlled enterprises at prices which do not substantially reflect free market conditions. Inputs shall include, inter alia, raw materials, labour, energy and technology costs.
- (B) One clear set of basic accounting records is kept by the relevant producer or exporter and is independently audited and is maintained in accordance with either generally accepted accounting principles in the country of export or in line with international accounting standards.
- (C) The production costs and financial situation of the relevant producer or exporter are not subject to any significant distortions carried over from the non-market economy system.
- (D) The relevant producer or exporter is subject to bankruptcy and property laws, which guarantee legal certainty and stability.

Other factors

In considering whether a price control situation exists, regard may also be had to the following factors:

- (1) The relevant producer or exporter of the goods under consideration forms part of a broader market or sector in which the presence of a State owned enterprise or enterprises has influenced prices.
- (2) The supply of utilities should be guaranteed on the basis of contracts that reflect normal commercial terms and prices which are generally available throughout the economy.

- (3) The land on which facilities of the company are built should be rented from the State at conditions comparable to those in a market economy country (eg. Proper contractual leases).
- (4) The company should have the right to hire and dismiss employees and the right to fix salaries.

SUE PITMAN
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