INDUSTRY COMMISSION

THE COMMERCIAL TARIFF CONCESSION AND BY-LAW SYSTEMS

Report No. 9

8 March 1991

Australian Government Publishing Service

Canberra

ISBN 0 644 13999 4

Printed in Australia by P. J. GRILL, Commonwealth Government Printer, Canberra

INDUSTRY COMMISSION

Honourable P. J. Keating, M.P.
The Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with sections 7 and 54 of the *Industry Commission Act 1989*, we have pleasure in submitting to you the Commission's final report on the Commercial Tariff Concession and By-law Systems.

Yours sincerely

Gary R. Banks
Presiding Commissioner

Hylda A. Rolfe
Associate Commissioner

COMMISSIONER

Benjamin Offices, Chan Street,
Belconnen ACT Australia
PO Box 80, Belconnen ACT 2616
Telephone: 06 264 1144
Facsimile: 06 253 1662

The Commissioners wish to thank those staff members who assisted in the preparation of this report. The staff team was led by Bruce Gooday and Ian Bruce.

Terms of Reference

Commercial Tariff Concession and By-law Systems

I, **Paul John Keating,** Treasurer, in pursuance of Section 23 of the *Industries Assistance Commission Act 1973* hereby:

1. refer the following matter for inquiry and report within twelve months of the date of the receipt of this reference.

    - whether concessional entry not specified in Schedules 3 and 5 to the *Custom Tariff Act 1987* should be provided for imports into Australia and, if so, the appropriate framework for concessional entry and the circumstances in which it should be granted.

2. specify that the Commission report on the effect of the current Commercial Tariff Concession System on the development of efficient, internationally competitive Australian industries, and for the economy generally

3. specify that the Commission is free to hold public hearings in advance of releasing a draft report and to take evidence and make recommendations on any matters relevant to its inquiry under this reference.

[Received 8 March 1990.]

CONTENTS

BOXES

FIGURES

TABLES

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
CAN	*Australian Customs Notice*
ADA	Anti-Dumping Authority
ADJR	*Administrative Decisions (Judicial Review) Act 1977*
AFCO	Australian Federation of Consumer Organisations
AGPS	Australian Government Publishing Service
ALR	*Australian Law Reports*
ALRC	Australian Law Reform Council
AMIC	Australian Mining Industry Council
ANZCERTA	Australia-New Zealand Closer Economic Relations Trade Agreement
APEA	Australian Petroleum Exploration Association
API	American Petroleum Institute
APPM	Associated Pulp and Paper Mills
ARC	Administrative Review Council
ASIC	Australian Standard Industrial Classification
CAIA	Customs' Agents' Institute of Australia and Customs Agents' Federation of Australia
CBS	Commercial By-law System
CESA	Consumer Electronics Suppliers Association
CPI	Consumer price index
CTCO	Commercial Tariff Concession Order
CTCS	Commercial Tariff Concession System
Customs	Australian Customs Service
DITAC	Department of Industry, Technology and Commerce
EGS	Excluded Goods Schedule
ERA	Effective rate of assistance
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSE	Gross subsidy equivalent

HS	Harmonized Tariff System
IAC	Industries Assistance Commission
IO	Input-output
MCAE	Mining, construction and agricultural equipment
MTIA	Metal Trades Industry Association
NFF	National Farmers' Federation
NRA	Nominal rate of assistance on output
NRI	Nominal rate of assistance on inputs
NSE	Net subsidy equivalent
PATEFA	Printing and Allied Trades Employers' Federation of Australia
PET	Polyethylene teraphthalate (resin)
PMV	Passenger Motor Vehicle
SERA	Suitably equivalent, reasonably available
SMOS	Special Minister of State
TCF	Textiles, clothing and footwear
USITC	United States International Trade Commission
UVA	Unassisted value added

OVERVIEW AND RECOMMENDATIONS

OVERVIEW

Concessional entry for imports has been available in one form or another as long as the Tariff. The system was revamped in 1983, following an IAC report in 1982, and now consists of:

- the *Commercial Tariff Concession System* (CTCS) which provides for duty free entry of imports for which there are no domestic goods `serving similar functions'; and

- the *By-law system*, which provides for concessional entry in a range of situations where there may be competing local production.

In the terms of reference for this inquiry, the Government has essentially asked the Commission for advice:

- on whether concessional entry should be provided for certain imports; and, if so,

- within what framework and in what circumstances.

The inquiry was prompted partly by growing dissatisfaction with the operation of the CTCS, following cases in the Federal Court and their impact on the administration of the System. The reference is much broader, however, than the CTCS, covering the whole of the By-law system in Schedule 4 of the Customs *Tariff Act 1987*.

Among other things, Schedule 4 includes the so-called `Policy By-laws', one group of which is associated with the industry plans for textiles, clothing and footwear, passenger motor vehicles and tobacco. As indicated in its initial Issues Paper, the Commission decided not to make recommendations on these By-laws, given that they are just one element of broader assistance arrangements that are to be reviewed in their entirety; the Commission's report on the Automotive Industry was released in January 1991.

Role of the Tariff

The concession systems would not exist without the Tariff, and need to be consistent with its current role. The Tariff has changed from the relatively high, disparate and stable levels prevailing at the time of the IAC's 1982 report to a regime which now involves:

- substantial continuing general reductions in most tariffs, according to a `tops-down' rule; and
- separate planned reductions in assistance packages to the most highly assisted sectors.

The public hearings for this inquiry confirmed that the tariff debate today has largely moved on from whether protection should be substantially reduced, to the rate at which reductions should take place. Participants in the public hearings differed on this, with the Australian Mining Industry Council (AMIC), National Farmers' Federation (NFF) and some others arguing for `zero 2000' or earlier, and some manufacturing interests saying `not so low' or `not so fast'. But whether they advocated it or not, most participants at the hearings accepted that further substantial reductions were likely to occur post-1992 and appeared to have taken this into account in their planning (that is, they were adjusting already).

Implications for concessions

The current role of the Tariff has some important implications for concessions:

- they can now be seen as a means of simply getting to zero tariffs faster for some imports than others, rather than as a selective departure from a stable, high tariff;
- they extend an already large proportion (44 per cent by value) of imports which enter at zero substantive rates;
- in principle the CTCS is compatible with the gradual adjustment rule embodied in the general tariff reductions program, as it does not apply to competing imports;
- Policy By-laws can lead to more abrupt adjustment, but they should only be implemented following an Industry Commission inquiry, in which such matters can be considered;

- apart from its effects on the allocation of resources among industries, a decision to abolish existing concessions would create double adjustment pressures on industry, as reactivated tariffs would have to come down again anyway under the general reductions program;

- as tariffs decline, the benefits of concessions to users will diminish and any potential for distorting the structure of industry will decline also.

Economics of the CTCS

The Commission's advice about whether there should be concessional entry is based largely on how the System measures up against the policy guidelines in the Industry Commission legislation --in short, on the economy-wide effects.

The CTCS provides relief from nearly $1 billion in import duties annually, for the intuitively appealing reason that they serve no protective purpose, and are seen as discriminatory taxes. There would clearly need to be compelling arguments to justify the abolition of an entrenched and universally supported policy yielding income transfers of that order. In practice, the Commission's quantitative economic analysis provides no such argument; if anything, it goes the other way:

- the effective rates analysis (encompassing all sectors, not just manufacturing as in 1982) suggests that the CTCS has not widened assistance disparities; and

- the ORANI analysis indicates that, in the long run, removing concessions would lower GDP by around $900 million.

This empirical analysis is complemented by the need to avoid imposing a double adjustment burden on industry in the context of the general tariff reduction program. The economic benefits of retaining existing concessions also make it difficult to argue that the CTCS should not continue in the future. Indeed, with the descent of tariff ceilings, any remaining scope for the CTCS to widen disparities in industry assistance and lead to misallocation of resources must narrow further, allaying misgivings evident in the IAC's 1982 report.

Improving the CTCS

Although the Commission found no case for disbanding the CTCS, there is a strong case for improving its operation and making it more consistent with the current transitional role of the Tariff.

Core criteria and guidelines

The IAC recommended that the criteria in the CTCS for giving concessions stipulate that there be no domestic goods 'serving similar functions' that are made or 'capable of being made in the normal course of business' in Australia. The objective was to avoid eroding tariff protection to Australian industries. It was seen by the IAC as a practical and viable alternative to tests based on (hypothetical) market interaction. In the form envisaged by the IAC, the test remains compatible with the need to ensure that concessions do not jeopardise the current general program of tariff reductions.

Contrary to the IAC's intentions, however, definitions of the core criteria were included in the CTCS legislation, including one based on the technical expression 'cross elasticity of demand'. This test has been understandably hard for the Australian Customs Service (Customs) to apply, yet Federal Court judgments based on the legislation have given Customs no alternative.

In legislative amendments that were rejected in the Senate in December 1989, the Government proposed removing the definitions from the legislation and replacing them with gazetted Ministerial directions. The Commission agrees that the definitions should be removed from the legislation and that the guidelines -- with some important changes -- would provide a better basis for administering the CTCS in keeping with its objectives than currently exists.

Another change rejected by the Senate in December 1989 was a proposal to require Customs to broaden the range of goods to be assessed for each new CTCO beyond the goods specified by the applicant. The Commission is opposed to such a modification of the system, which could reduce the chances of CTCO applications being considered on their individual merits and impose unnecessary costs upon importers.

Revocations

The transitional nature of the tariff now virtually precludes it from having the 'anticipatory' protective role that it traditionally had. Yet the revocation mechanism of the CTCS is still based on the notion that an aspiring local producer of a good formerly only imported should have the benefit of any available tariff protection. Concessions have thus been made easy to revoke, with little warning to and no consultation with the user firms. Apart from the uncertainty which this engenders, if a new production activity really needs the substantive tariff to survive it is unlikely to be internationally competitive and efficient. And if the aspiring producer accepts that the tariff will disappear and does not need it, then it is simply a windfall in the meantime. The Commission accordingly believes that the revocation of CTCOs for the purpose of protecting new production activities is not consistent with the contemporary role of the Tariff.

Exclusions

An 'Excluded Goods Schedule' (EGS), listing (mainly) consumer goods ineligible for concessions, was included in the CTCS on IAC advice; this was largely for the sake of administrative convenience, given that many of the goods were perceived to be substitutes. In practice, the EGS has proven to be difficult to work with: it lacks sound criteria for its content, and adds yet another discriminatory element to Australia's tariff administration. The Commission's recommendations on interpretation of the core criteria would facilitate deletion of the EGS from the CTCS.

End-use provisions

One of the major features of the CTCS is the absence of provisions for concessions to be made specific to a particular use or user. The IAC had argued against them because of their potential to undermine assistance and distort production. While recognising that imports of certain goods may compete with local goods in some uses but not others, and hence, if quarantined to the latter, have no direct impact on resource allocation, the Commission considers that this still does not warrant changing the CTCS to encompass user specific concessions.

Such an approach would be almost impossible to translate into workable general criteria and would present great difficulties for those charged with administering the system. --There would be continuing pressure to extend such concessions to the point where they impinge on existing industries. --The Commission is thus opposed to providing end-use concessions through the CTCS. --For any compelling and significant individual cases, the option remains of handling them through the By-law system.

Dispute resolution

Many participants expressed dissatisfaction with current arrangements for dealing with disputes. These initially involve an internal Customs review, after which there are the options of an Industry Commission review on the merits or a Federal Court hearing on the legality of the decision process used by Customs. An Industry Commission review is hard to get and the Federal Court is both expensive and unable to substitute a decision for one made by Customs.

Of the various options for dealing with disputes, the Commission favours using the Administrative Appeals Tribunal (AAT). It is a relatively accessible avenue for redress; it can review on the merits and has demonstrated some capability for dealing with economic issues. An alternative is to provide easier access to the Industry Commission, but this would be inconsistent with its role.

Substantially adverse effect

A CTCO application can be refused (or revoked) if Customs becomes aware that the concession would have a 'substantially adverse effect' on the market for any goods produced in Australia. This optional criterion covers cases where inputs not serving similar functions can be used to produce competing products. While the rationale for such a criterion is consistent with the objectives of the CTCS, the Commission's judgement is that the decline in tariffs has made its practical significance minimal. When account is also taken of the considerable conceptual and administrative difficulties inherent in the test, it would now be better to remove it from the CTCS.

National interest

At present the Minister can refuse (but not grant) a CTCO on national interest grounds (for example, if a concession were to increase already high effective assistance to an activity). The provision has been used only once in seven years. Customs is not well placed to give such advice to the Minister, especially since it involves refusing applications which meet all the legislated criteria. Instead of recommending that the national interest provision be extended to include the making of a concession, as some participants suggested, the Commission proposes that it be removed altogether. Assistance levels are now considerably lower than they were when the CTCS was established, and the potential for individual concessions to cause significant distortions is also much reduced. -

Time limits

Under current arrangements a concession application is not necessarily terminated formally by a refusal. To provide a formal termination process, and to overcome the problems associated with protracted delays, the Commission recommends placing some time limits on the application and appeal procedures.

Policy By-laws

The By-law system contains a diverse range of concessions, most of which are distinct from the CTCS in their rationales and administrative processes. The system consists of Policy Items in Schedule 4 and 'instruments' made under those Items, akin to concession orders under the CTCS (Item 50). The Items can be roughly categorised by function into 'Community', 'Administrative' and 'Industry Policy' Items.

Industry Policy Items, unlike CTCOs, tend to be designed expressly to augment assistance to particular industries in situations where the CTCS criteria cannot be met. The Government said in its May 1988 Economic Statement that such concessions would play a larger part in the tariff reduction strategy. Since then, several new Items have been created.

Role

Unlike the CTCS, Policy Items are not constrained by the availability of competing local production. There are circumstances in which such concessions will clearly be beneficial, but there is also potential for them to disrupt existing industries, imposing more adjustment pressure than would occur under the general tariff reductions program. This makes it especially important that there be adequate public scrutiny of the process. At a minimum, a Commission inquiry should continue to be required when introducing, terminating or substantially amending Industry Policy Items.

Need for transparency

In practice the administration of the By-law system has been characterised by very low transparency and excessive discretion: it is often unclear who makes decisions and on what grounds. For example, guidelines for creating or changing Industry Policy Items have existed since at least September 1989, but they had not been made public until included in a submission to this inquiry.

Industry Commission involvement early in the process leading to the creation of Policy Items is of little value if, as the inquiry revealed, they are later worded so broadly or ambiguously as to provide little guidance to, or discipline for, administrators. Policy Items ought to state the Government's objectives for them and lay down explicit criteria for the making of their subordinate instruments. Consistency of interpretation would also be facilitated by providing an external review mechanism for decisions on particular instruments and their administration.

* * *

The Commission is conscious that its recommendations do not and cannot accommodate the particular concerns of all participants. Indeed some of the things that participants want the concession system to do -- such as providing lowest cost access to high quality or latest technology goods -- can really only be achieved by eliminating the Tariff itself. As the general tariff reductions program proceeds, therefore, these problems will diminish.

As tariffs generally decline, the cost of running the system will loom larger relative to the benefits of making additional concessions. A point may be reached short of

zero tariffs where it would be advisable to consider whether the concession system (if not the established concessions) should continue. However in such a situation -- with some two-thirds of imports entering at zero rates and a minority at a low uniform tariff level -- the more important question would be whether such a dual tariff structure should remain.

SUMMARY OF RECOMMENDATIONS

The Commercial Tariff Concession System (CTCS)

- The Industry Commission supports continuation of a commercial tariff concession system (section 4.4), with some modifications.

- `Goods serving similar functions' should remain as the core criterion. It should not be defined in terms of identity or cross elasticity as in present legislation; instead, Customs should have regard to a non-exhaustive list of considerations in legislation. (These are set out in section 5.1.)

- The Commission sees no benefit in constructing a market-based or competition-related test; `goods serving similar functions' and the list of legislated considerations are an administerable alternative (section 5.1).

- The Commission proposes that the existing definition of `capability to produce in the normal course of business' be replaced in the legislation by a (non-exhaustive) series of considerations to which Customs should have regard. (These are set out in section 5.2.)

- The `substantially adverse effect' criterion should be removed from the CTCS (section 5.3).

- The `national interest' criterion should be removed from the CTCS (section 5.3).

- The existing rules for local content and substantial process should be retained without change (section 6.1).

- The Excluded Goods Schedule should be abolished (section 6.2).

- End-use provisions should not be included in the CTCS (section 6.3).

- The legislation should be amended to remove the provisions which allow the Comptroller to revoke a Commercial Tariff Concession Order (CTCO) where local manufacture of, or capability to manufacture, the goods described in that CTCO develops after a concession is granted (section 6.4).

- The Government should not pursue its 1989 proposed amendments to s. 269C(1) of the Customs Act concerning the breadth of CTCO applications. Instead, a sensible alternative is for Customs to use *s.269C(2) in addition to* private applications (section 6.5).

- Customs' internal review mechanism should be retained (section 7.1).

- The Administrative Appeals Tribunal (AAT) should become the main venue for reviewing the merits of decisions to make, or refuse, individual CTCOs (section 7.1).

- Internal review by Customs should be mandatory before a CTCO matter can be brought before the AAT (section 7.1).

- It should be made clear in legislation that, without loss of operative date, there should be facility for a CTCO application to be reworded at the applicant's request, provided that the range of goods covered by the application does not expand (section 7.3).

- There should be legislated time limits on each of the processing stages of a CTCO application and, if no decision is made by the end of the nominated time for a particular stage, deeming provisions should come into effect (section 7.3).

- The receipt of a CTCO application, as well as Customs decisions (whether actual or deemed) on applications at both the prima facie and final stages of processing, should be notified in the *Commonwealth Gazette* (section 7.3).

- Customs should promptly gazette the names and addresses of local manufacturers whose prodcuction has caused an application for concessional entry under the CTCS to be refused. The criterion under which the application has been refused should also be noted (section 7.5).

- Customs should publish, to the extent possible, all tariff and quota rates and levels, substantive, preferential or concessional, in a consolidated form in sequence according to Australia's Harmonised Tariff System. Additional concessions should be published as part of the same document, so that, at any time, an interested person can readily ascertain the duty payable on particular goods (section 7.5).

The By-law system

The Commission supports retention of the By-law system, but recommends that it should be made more transparent, with less scope for administrative discretion.

- Industry Policy Items in Schedule 4 to the Customs Tariff Act should continue only to be introduced, revoked or substantially amended following inquiry and report by the Industry Commission (section 9.1).

- The Commission recommends that the Government's existing `general guidelines and principles to apply to Policy By-laws' be rewritten and confined to the making of Items. They should also be made publicly available (section 9.2).

- The new guidelines should include several elements (section 9.2):

  - Policy Items should be consistent with the Government's general policy guidelines for industry, as enunciated in s. 8 of the *Industry Commission Act 1989;*

  - Policy Items should not duplicate CTCS concessions;

  - Policy Items should only be made when they are the most appropriate mechanism;

  - A Policy Item should include clear statements of its objective, of its strategy to achieve that objective, and its intended ambit;

  - If instruments are to be made under it, a Policy Item should give clear criteria against which they are to be made, including product coverage, duration of application, the duty rate and the agency responsible for making them.

- Existing Policy Items should be revised to state the Government's objectives for them and lay down explicit criteria for the making of their subordinate instruments (section 9.2).

- Provided better legislated criteria are established, the jurisdiction of the AAT should be extended into appeals against administrative decisions relating to By-laws and Determinations made under Policy Items (section 9.2).

- Import concessions should be removed from the Supplementary Provisions to the `Working Tariff'; if the concessions are to be retained, they should be

transferred to Schedule 4 and subjected to the same disciplines as Industry Policy Items (section 9.4).

* * *

Several of the recommendations listed above are interdependent; the main complementary elements are summarised in chapter 10.

Part I: Background

1 INTRODUCTION

This report gives the Commission's recommendations form its inquiry into Australia's tariff concession systems. Preliminary findings were released in draft report ion October 1990. The Terms of Reference (which appear before the table of contents) essentially ask the Commission:

- whether concessional entry should be provided for certain imports; and if so
- within what framework and in what circumstances.

The Commission's report is the outcome of a public inquiry process in which some 320 submissions were received, of which 97 were presented at public hearings (see appendixes A and H). This information proved invaluable in assisting the Commission to understand the role, operation and effects of the concession systems, and it is grateful to all the participants.

What are tariff concessions?

Tariff concessions permit certain categories of imports to be brought into Australia at lower rates of duty (typically zero) than prescribed in the Customs Tariff. They have been in existence as long as the Tariff itself and, like the Tariff, have evolved considerably over time.

Tariff concessions have traditionally been known as 'by-laws' – meaning a legal device for reducing or eliminating duties according to specified criteria. The various types of goods and/ or users entitled to concessions are identified as Item in Schedule 4 to the *Customs Tariff Act 1987* (see appendix C).

These Items could be classified in carious ways. For present purposes, a major distinction should be drawn between those items (mainly Item 50) known as the Commercial Tariff Concession System (CTCS) and the rest, referred to in this report simply as 'the By-law system'.

The Commercial Tariff Concession System

The CTCS replaced the previous Commercial By-law System in 1983, following an Industries Assistance Commission inquiry and report (IAC 1982b). the original objective of the Commercial By-law System was to provide relief to manufacturers form tariffs on imported inputs and machinery, when there were no 'suitably equivalent, reasonably available' Australian goods. Over tie, the system has been extended and now includes a variety of imports used in final consumption. Under the CTCS, the basic criteria for granting concession changed – they are now granted for imports of goods in the absence of locally produced goods ' serving similar functions'. Once made, an Order under the CTCS provides concessional entry of the goods in question to all importers.

The By-law system

The other Items in Schedule 4 have a variety of rationales, from compliance with international treaties to those of a social and cultural nature. An important subset of these Items is commonly referred to as `Policy By-laws', although all Items could be said to give effect to Government policies of one kind or another. A distinguishing feature of Policy By-laws is that they may provide concessions confined to particular industries. For example, some Policy By-laws have been designed expressly for the mining and agricultural sectors, and others for industry plans in the manufacturing sector.

Reasons for the inquiry

The present inquiry was largely prompted by growing dissatisfaction with the operation of the CTCS. The IAC had occasion to examine aspects of the system in recent years, both in the context of industry-specific inquiries and in reports on concessions in dispute. Noting problems relating to the objectives of the system, as well as judicial interpretations and administrative discretion, the IAC first called for a public review of the CTCS in 1988 (IAC 1988a, 1988b and 1989a). In the August 1989 Budget, the Government indicated that it would initiate such an inquiry.

A series of Federal Court judgments in the 1980s had brought some of these problems to a head. They are discussed in the body of this report. The judgments, together with IAC reports, prompted the Government to seek to amend the CTCS legislation. A Bill to that effect, however, was rejected by the Senate in December 1989.

The Government announced in March 1990 that it had asked the Commission to undertake this inquiry under terms of reference which encompassed the complete range of concessional entry, rather than just the CTCS.

Scope of the inquiry

The Terms of Reference require the Commission to report on all concessional entry other than that specified in Schedules 3 and 5 of the *Customs Tariff Act 1987* (covering country preferences and quota rates of duty respectively). The Commission has taken this as referring primarily to Schedule 4 of the Act, although the reference also covers concessional entry for a few items under other arrangements, such as aircraft stores and goods mainly for diplomatic and similar purposes. (These are found in the Supplementary Provisions at the end of the 'Working Tariff', described in appendix C.)

Schedule 4 encompasses over 10 000 individual Commercial Tariff Concession Orders (CTCOs), mainly under Item 50, and some 256 By-law instruments under other Items.

As noted in the Issues Paper for this inquiry, the Commission found it necessary to draw some boundaries for itself in tackling this large field:

- First, it decided that no recommendations would be made concerning decisions about individual CTCOs and By-law instruments.

- Second, the Commission decided that it would not review in detail or make recommendations on concessions associated with the industry plans for passenger motor vehicles, textiles, clothing and footwear, and tobacco. Those concessions form an integral component of the industry plans, which have been set in place for specified periods and scheduled for separate reviews.

Although it draws substantially on individual experience for purposes of illustration, the main thrust of this report is directed to the general aspects of concessional entry schemes and their implementation.

Economic issues

The Government asked the Commission to report on 'how the CTCS affects the development of efficient, internationally competitive industries and the economy generally'. Analysis of the economic effects of the CTCS is clearly of major importance in deciding whether the system should be retained or modified. In practice, the Commission is required to consider these and other matters in relation to the By-law system as well as the CTCS. Section 8(1) of the *Industry Commission Act 1989* states that the Commission must have regard to the desire of the Government:

> (a) to encourage the development and growth of Australian industries that are efficient in their use of resources, self-reliant, enterprising, innovative and internationally competitive; and
>
> (b) to facilitate adjustment to structural changes in the economy and to ease social and economic hardships arising from those changes; and
>
> (c) to reduce regulation of industry (including regulation by the States and Territories) where this is consistent with social and economic goals of the Commonwealth Government; and
>
> (d) to recognise the interests of industries, consumers, and the community, likely to be affected by measures proposed by the Commission.

The CTCS and the By-law system potentially have some broad economic effects in common:

- both obviously reduce the costs of imported goods to those who purchase them, making the purchaser (firm, industry, household) better off;
- they extend the benefits of access to goods at world market prices beyond those who already benefit from zero substantive tariffs; and
- they help producers obtain access to capital equipment at world prices.

In other respects there are significant differences in the potential economic effects of different categories of concessions. In particular, the CTCS and By-law systems can have quite different implications for production patterns and the allocation of resources:

- an important difference is that CTCS concessions should apply only to imports which do not compete with locally produced goods; thus in principle they cannot directly affect the protection received by domestic activities -- in contrast, By-laws allow concessional entry for competing imports, reducing nominal assistance to local production;

- under the CTCS, neither the nature of the user industry nor its level of assistance is taken into account in decisions to grant concessions; and a CTCO once granted is available to all. Some important Policy By-laws, however, are specifically confined to nominated user industries or sectors; and

- the perceived degree of uncertainty associated with concessions also differs between the two systems. Many witnesses to this inquiry said that uncertainty about retaining a concession is much greater under the CTCS than under Policy By-laws. On the other hand, the CTCS appears to have clearer criteria for determining eligibility than some Policy By-laws, reducing uncertainty at the application stage.

Implementation

As with any government policy, tariff concession systems should be capable of being administered in such a way as to meet their objectives. The critical issues here are:

- the tests which have to be applied in judging eligibility for concessions;

- how much scope there should be for administrative discretion in making such decisions;

- procedures for dispute resolution;

- the demands on administrative resources; and

- the transparency of the overall process.

These issues are relevant to both the CTCS and the By-law system and there was a substantial and varied input from submissions on all of them. In relation to criteria, for example, there was much dissatisfaction with the wording of current CTCS legislation as well as about some of the substantive criteria themselves; for Policy By-laws, concerns were more often voiced about the *lack* of established criteria -- a question of transparency.

Administrative discretion is an inevitable feature of all tariff concession arrangements. In the case of Policy By-laws, scope for discretion has proven to be considerably wider than in the CTCS.

Finally, all of these issues are predicated on an understanding of what the Government wants to achieve with tariff concessions. The question of objectives is fundamental to this inquiry, a point emphasised by the Australian Customs Service (Customs) in its submission.

Structure of the report

The structure of this report has been largely predetermined by the dichotomy between the CTCS and the By-law system. These categories of concessions are dealt with respectively in Parts II and III. In each case, a run-down is given of the present system -- its legislative basis and how it operates -- followed by an evaluation of its economic effects and analysis of major issues to do with the design and functioning of the system. Part IV addresses other effects and the interdependencies between some of the Commission's recommendations.

Before embarking on an examination of the CTCS, however, it is necessary to consider an additional matter that is central to an analysis of tariff concessions, namely the role of the Tariff itself.

2 THE ROLE OF THE TARIFF

This is not primarily a report on the Tariff. But it would be impossible to respond adequately to the Terms of Reference without giving consideration to its role and effects, for the concession systems derive their existence from the Tariff. In 1975, a Green Paper on the tariff concession (by-law) system began with the same premise:

> The by-law system is an integral part of the tariff system, which is itself the major instrument of protection policy. Accordingly, there is a need for consistency between the principles of tariff setting and the principles guiding the operation of the by-law system (SMOS, 1975, p. 18).

Evolution of Tariff policy

The Tariff is a device for taxing imports. It raises import prices and thereby helps local producers compete. The principles of tariff setting in Australia have evolved considerably over time. Three main phases can be identified.

- From early this century to the late 1960s, tariff setting was largely tailor-made to the needs of particular industries and production activities. Any aspiring manufacturer could reasonably expect to receive the protection that was judged necessary to compete with imports, on the basis of inquiry and report by the Tariff Board.

- In the 1970s and early 1980s, as the adverse domestic effects of this approach were better understood, the objective became `a less complicated, lower and stable structure of protection' (IAC 1982a, p. 137). Tariff setting still largely occurred on a piecemeal or industry-by-industry basis, following public inquiry by the IAC, but there was a conscious effort to reduce disparities in assistance within and among industries, largely by bringing high tariffs down.

- A watershed for the current approach to Tariff policy was May 1988, when a tariff reduction program was initiated across all industries (except textiles, clothing and footwear, and passenger motor vehicles) to ceiling levels of 15 and 10 per cent by 1992. This is expected to be followed by further general

reductions and complemented by changes in the assistance packages to the 'Plan' industries. It has signalled the Government's determination to push substantive tariffs down to very low (if not zero) levels.

In practice, there was some overlapping in these Tariff policy phases. In particular, the seeds of the post-1988 approach were sown many years before. The report of the Vernon Committee (1965) was a first important questioning of the rationale behind needs-based Tariff policy. In the late 1960s, the Tariff Board began to publish estimates of the domestic costs and income transfers associated with Australia's highly disparate and fragmented structure of protection. In a series of reports, the Board (and then the IAC) spelt out the now familiar difficulties with this sort of government intervention:

- protection holds valuable resources in less productive uses, reducing the productiveness of the economy as a whole;
- its burden falls heavily on export industries, which cannot `pass it on' in competitive world markets -- thus suppressing trade and the growth opportunities it provides; and
- by reducing competitive pressure, it dulls the incentive to strive for efficiency within enterprises.

In 1973, the Government implemented a 25 per cent across-the-board tariff cut. This was partly reversed subsequently by selective increases in protection, notably the introduction of import quotas for passenger motor vehicles (PMV) and textiles, clothing and footwear (TCF). Through the 1970s there was a series of inquiries and reports which recognised the need to wean industry off protection. The Jackson Committee (1975, p. 9) called for a program `to facilitate the transition of industry towards a more internationally competitive structure which will survive and prosper under moderate to low tariff levels'. This sentiment was reaffirmed in the 1977 *White Paper on Manufacturing Industry* (which spoke of attaining `minimum levels of government support'). The Crawford Study Group (1979, p. 59) recommended that `a commitment be made to a general program of gradually reducing high levels of protection once economic circumstances permit'. And in 1981 the Government sent the IAC a reference asking it to identify options for achieving further general reductions in protection. The report (IAC 1982a) -- which gave several options, including one akin to the present tops-down approach -- was not acted on at that time.

The IAC argued in its 1982 report and elsewhere that the piecemeal approach to tariff setting was undesirable on several grounds. In particular, it was difficult to justify a substantial tariff reduction for a single industry when average assistance levels continued to be relatively high. The record shows that since 1970 the only significant reductions in average rates of assistance occurred through the general measures of 1973 and May 1988. In 1982, when the last public inquiry into tariff concessions took place, protection levels were still high by today's standards and quite uneven in incidence among industries (though disparities *within* industries had been reduced). With the lack of response by the Government to the Commission's report on general reductions in protection, it was reasonable at the time to assume that tariffs would remain at relatively high levels for the forseeable future.

That changed in May 1988. In announcing the program of tariff reductions in his Economic Statement, the Treasurer stated the Government's position:

> In the past, many of the so-called industry assistance arrangements introduced by successive governments have been anything but of assistance. Their legacy is a less flexible economy, too reliant on protection and regulation. The way forward for Australia is not to be closetted and sheltered, but to be open and dynamic, trading aggressively in the world... Accordingly, the Government will peel away more of this protection (Keating 1988, p. 16).

This message was reinforced by the Minister for Industry, Technology and Commerce:

> This decision speeds up the existing tariff review process and provides a predictable environment into the future. It is consistent with the Government's sustained efforts to reduce industry's reliance on inward-looking barrier protection, and to create internationally competitive industries (Button 1988b, p. 8).

It is now generally accepted within the community that protection is an obstacle to the development of efficient, internationally competitive industries specialising in those things which Australia does relatively well. For example, even before the current tariff reduction program was adopted, the Metal Trades Industry Association said:

> ... we must look to the development in Australia of an internationally competitive metal and engineering industry *regardless of size* (MTIA 1986, emphasis added).

Future tariff directions

The Governor-General, in his speech at the opening of Parliament on 8 May 1990, described the present Government's position on the future evolution of tariffs as follows:

> The current program of phased tariff reductions will be completed in 1992 and the Government already has indicated that further tariff reductions will occur beyond that time.

More recently, Senator Button said in Parliament:

> The Government has yet to determine future levels of tariff protection post-1992. Whatever they are, they will be down. Industry knows this; the motor vehicle industry knows this, and so on (Button 1990c, p. 1733).

Thus the debate today has largely moved on from the question of whether assistance should be substantially reduced, to the rate at which reductions should take place. There has been considerable debate on this latter point since the appearance of the Garnaut Report, which recommended that all protection be eliminated by the year 2000 (Garnaut 1989). In launching that report, the Prime Minister remarked that '... this recommendation is one with which I have considerable sympathy' (Hawke 1989).

The Federal Opposition's industry policy statement, released last year, pledges that a Coalition Government would phase out all forms of protection, also by a tops-down approach, 'so that by 2000 protection levels would be at most negligible'. The statement also pledges elimination of the assistance gaps between the textiles, clothing and footwear industries, the passenger motor vehicle industry, and the remainder of manufacturing industry (McLachlan 1990).

In submissions to this inquiry, some key participants from industry argued strongly for the attainment of zero tariff levels before the end of the century. For example, the Australian Mining Industry Council noted:

> The principle which underpins the Council's approach to industry policy and microeconomic reform is that further reduction in industry assistance should be undertaken across all sectors of the economy with the ultimate objective of removing all industry assistance by 1998 (Sub. 84).

The National Farmers Federation (NFF) argued at the public hearings that tariffs should be reduced 'as soon as humanly possible', observing that:

> ... it is probably possible to do it faster than Garnaut or 1998 if there is a community and government commitment to doing so, but it also ought to be achieved by focussing first on the most heavily assisted sectors (Transcript, pp. 1340-1).

Several other participants also advocated substantial further reductions in protection over the next decade. A number of manufacturers did not concur and the TCF Council said it had strong reservations about the desirability of such an outcome (Sub. 306, p. 2). Nevertheless, most agreed with the proposition that such reductions were likely to take place.

Adjustment

The tops-down approach to reducing tariffs is essentially an adjustment rule which imposes most pressure on the highly assisted industries. The Government's preference for this approach was explained by the Minister for Industry, Technology and Commerce as follows:

> A 'tops-down' approach has been adopted to general tariff reductions consistent with changes over the past few years. This approach is preferable to across-the-board options as it targets the most heavily protected industries and therefore reduces disparities in assistance between industries (Button 1988b, p. 7).

As emphasised by the NFF, in practice the May 1988 changes omitted the two most highly assisted sectors from the 15/10 tops-down rule. However, as Senator Button made clear in his remarks to the Senate, cited previously, these sectors can also expect to face further assistance reductions.

As noted, the majority of industry participants at the public hearings accepted the inevitability of further substantial tariff cuts and appeared to have taken this into account in formulating their investment and production strategies. It is also likely, given the recent debate, that industry generally attaches a significant probability to tariffs ultimately being reduced to zero and are building that expectation into their longer term planning.

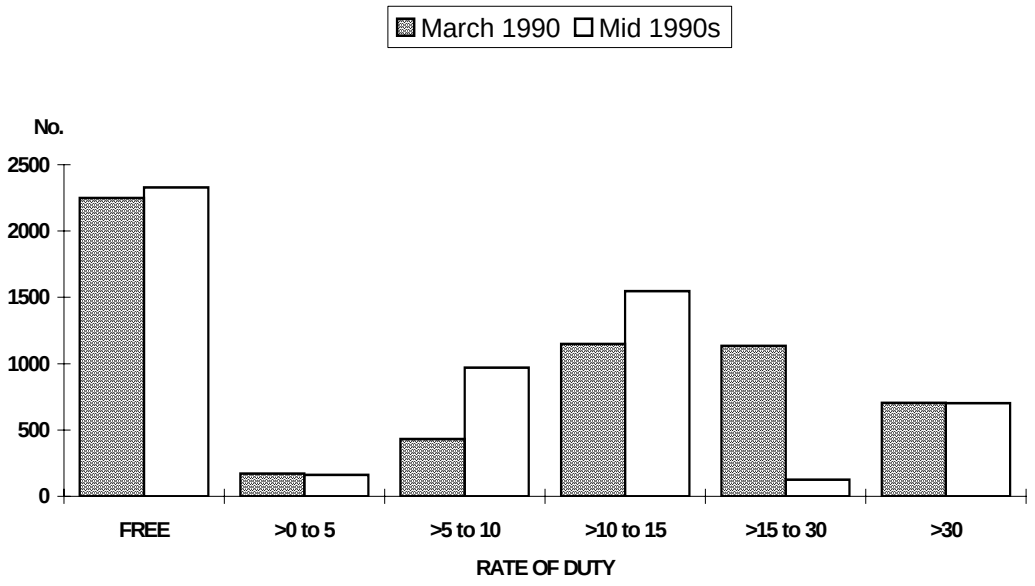
In the meantime, tariffs continue to provide (declining) levels of assistance determined by (a) what the tariff structure was before the general reductions began and (b) the speed of the tariff reduction program itself. As tariffs get lower, their

importance relative to other economic influences also declines. For example, several participants in the inquiry observed that recent exchange rate movements have swamped the Tariff's effects on their capacity to compete. Some participants also stressed the importance of other impediments to their competitiveness, notably transport and energy costs.

Structure of the Tariff

It is not always appreciated that there are many items in the Tariff which automatically permit duty-free entry of imports -- that is, they have substantive zero rates. About one-third of the 5800 items in Australia's Tariff are in that category (see figure 2.1). When goods entered at zero rates under concessional entry schemes are also taken into account, the majority of imports (around two-thirds by value) enter at zero rates of duty.

Figure 2.1: **Distribution of Tariff Items by rate of duty**



Source: Commission estimates based on Schedule 3 to the Customs Tariff Act.

Tariffs and Government revenue

The concession systems (excluding Industry Plan concessions) resulted in duty savings for industry and households of about $1.1 billion in 1989-90, compared with duty paid of $3.8 billion (see appendix D). The Commission noted in the Issues Paper circulated at the commencement of this inquiry that the amount of tariff revenue forgone by the Government is substantial. This prompted several participants to argue that the Tariff should not be seen as, or used for, an instrument of revenue.

The Tariff has in fact traditionally been a substantial source of government revenue (in 1988-89 it accounted for 4 per cent of total Commonwealth revenue) and this has no doubt been an important consideration at various times in its history. For example, a 'Primage Duty' came into force in 1930 and was not finally abandoned until 1980, following an IAC report (IAC 1978). Then in the 1979 'Mini-Budget', the Government of the time imposed a 2 per cent tariff on most imports previously admitted at zero rates, for the specific purpose of raising additional revenue; it operated for nine years.

At no time in the recent past, however, have budgetary considerations been upheld as an argument for maintaining tariff levels. The current direction of Tariff policy itself demonstrates that. Tariffs are a particularly distorting and costly means of raising revenue, even where applied at uniform rates. This was recognised by the Government when it eliminated the 2 per cent revenue duty following the May 1988 *Economic Statement*. Abolition of the duty had been recommended in an IAC report on export concessions (IAC 1987b).

Implications for concessional entry

The rationale for the general tops-down approach to tariff reform is that gradual reductions towards stated tariff benchmarks facilitate the adjustment of protected industries, while maximising efficiency gains in the meantime. Concessions could be seen as a departure from this approach, to the extent that they are a selective means of bringing tariffs down directly to zero. In practice, however, concessions are an orderly means of removing specific tariff-associated costs within a context of general tariff reductions, and are thus compatible with the transitional adjustment role for the Tariff. The CTCS has criteria which, at least in principle, only permit

tariffs to be waived in the absence of local production. In these circumstances, adjustment questions are either irrelevant or unimportant. The By-law system is less restrained in this respect, with greater potential to impose adjustment pressure on specific industries.

Because concessions are frequently applicable to inputs used by local manufacturers whose outputs are subject to the general tariff reduction program, a number of participants in the inquiry saw the existence of tariff concessions as ameliorating the adjustment pressures associated with the tariff reductions. For example, the representative of Pacific Dunlop argued at the public hearings:

> If industry is going to restructure to a stage where it can operate with no tariff assistance, or barrier assistance whatsoever, you have to give it a chance to do that. I think that having a commercial tariff system certainly helps. To take it away would certainly hinder that (Transcript, p. 1385).

An important consequence of the current program of reductions in tariffs is that cancellation of existing concessions -- one of the options under the first of the Terms of Reference -- would essentially create double adjustment pressures on industry as reactivated tariffs are brought down. A number of participants observed that in a situation in which tariffs are generally heading down, it would seem counter-productive to put them back up on some 20 per cent of Australia's imports.

This leads to a further implication. The transitional nature of the current Tariff virtually precludes it having the 'anticipatory' protective role that it once had. The CTCS as it stands, however, is based on the notion that a firm commencing to produce something which was previously only imported should have the benefit of any existing tariff assistance, and the revocation of concessions has accordingly been made automatic. (This aspect of the CTCS is considered in chapter 6.) Policy By-laws tend to be more durable, not having comparable provisions for revocation.

As tariffs decline, the value to recipients of concessions must also decline. More significantly, the lowering of tariff ceilings will reduce the scope for tariff concessions to change disparities in assistance among industries. This means that there is less chance than in the past of tariff concessions leading to an expansion of relatively unproductive activities at the expense of more efficient and productive ones.

Part II: The Commercial Tariff Concession System

3 THE PRECENT COMMERCIAL TARIFF CONCESSION SYSTEMS

3.1 Background to the CTCS

Australia's concessional arrangements date back to the Commonwealth Tariff of 1901. The original arrangements were used to assist existing industries by providing duty relief for imported goods where there was no comparable local production. This emphasis was apparent in the Treasurer's Budget Speech introducing the first Australian Tariff in 1901.

> Of course, we have put the highest duty upon the complete manufactured product and have imposed a lesser duty upon an article as it approached the raw material... When it cannot be produced locally it is admitted at a low rate, if not free (Treasurer 1901).

Since then the scope for gaining duty relief has been considerably broadened. In 1926 the criterion for concessional entry was relaxed to encompass goods 'of a class or kind not commercially manufactured in Australia'. The number of by-laws multiplied accordingly. In 1948 existing by-laws were rationalised by the adoption of a broad ranging by-law Item 449, which provided for by-law entry of 'materials and manufactures for use in manufacturing, industrial or resource development, public infrastructure or for other "essential purposes"'. Item 449 retained the 'class or kind' and 'commercial manufacture' criteria.

They were replaced in 1957 by a criterion which allowed for concessional entry in the absence of a 'suitably equivalent, reasonably available' (SERA) domestic substitute. The 'essential purposes' flavour remained until 1970 when it was dropped on the grounds that it had no relevance to tariff setting. Thus, at the time of the last major review of by-laws -- the 1982 IAC inquiry into the then Commercial By-law System (CBS) -- concessional entry was allowed for 'Goods, as prescribed by by-law, being goods a suitable equivalent of which that is the produce or manufacture of Australia is not reasonably available' (SERA without an essential purposes provision).

The current scheme, the CTCS, was introduced on 1 July 1983 following the Government's consideration of the IAC report on the Commercial By-law System (IAC 1982b). The new scheme was intended to improve tariff concession administration by introducing criteria more in line with the Government's industry policy intentions; by eliminating several types of concessions (the ad hoc, end-use under security, shortfall and fall-short varieties); and by broadening the applicability of concessions so that all importers would have access to the concession rather than just the applicant (as had often been the case under the CBS).

Only Australia and New Zealand have such extensive provisions for duty relief for goods which are not produced locally. (Appendix G has a discussion of overseas concession schemes.)

This chapter discusses the legislative basis and administrative procedures of the CTCS; the volume of decision making by Customs and its administration costs; and, finally, recent Federal Court judgments and the Government's attempts to amend the CTCS legislation.

3.2 Legislation

The legislative basis for the CTCS is provided by Part XVA of the *Customs Act 1901* (reproduced in appendix B2). The system provides for the establishment of a concession, called a Commercial Tariff Concession Order (CTCO) once certain criteria have been met.

Mandatory criteria and definitions

The core criteria of the CTCS enable a concession Order to be made unless:

- *goods serving similar functions* to the goods for which concessional entry is sought are made in Australia [s. 269C(1)(a)]; or
- *are capable of being made* in Australia by any person in *the normal course of* business [s. 269C(1)(b)].

Section 269B of the Customs Act contains several definitions of terms used in the CTCS legislation. The goods serving similar functions criterion is affected by most of these definitions, three of which are:

- Identical goods shall be taken to serve similar functions [s. 269B(3)].

- Goods shall be taken to serve similar functions to other goods unless the Comptroller is satisfied that, if both goods were readily available for sale throughout Australia, there would be no significant part of Australia in which there would be significant cross-elasticity of demand between the goods [s. 269B(4)].

- A person shall be taken to be capable of producing goods in the normal course of business if the person is prepared to accept orders for the supply of such goods that have been, or are to be, produced by him [s. 269B(7)].

The Government's Second Reading Speech when presenting the CTCS legislation stated:

> The key words in this criterion are 'serving similar functions' and new Section 269B(4) provides an interpretation of them. The test will be the degree of cross-elasticity of demand between the imported and Australian produced goods. In practical terms, this means that these Tariff Concessions will be decided by determining the effect that a reduced rate of duty will have on competition or potential competition between the local and imported goods. This will be based on a practical and realistic assessment of the market situation. The onus will be on the applicant for a Tariff Concession to identify the goods involved, the market for the goods and the degree of competition or potential competition between the imported goods and Australian-made goods (Brown 1983).

Administrative guidelines for interpretation have been published in the *Customs Manual* for the CTCS (Customs 1990c, pp. 7-9 and 14-17). These guidelines use key words from the Second Reading Speech, and cite relevant judicial interpretations as well as the IAC's explanation of `cross elasticity of demand' (IAC 1989a, appendix G).

Other definitions

If local manufacturers claim to be producing goods serving similar functions to goods for which concessional entry is sought, the locally produced goods are required to incorporate:

- at least 25 per cent *local content* by value of the factory or works cost [s. 269B(5)]; and

- at least *one substantial process* in Australia in their production [s. 269B(6)].

The substantial process provision was introduced at the IAC's suggestion, to prevent local finishing and packaging of materials or components imported concessionally from being grounds for refusing a concession on the finished goods (IAC 1982b, pp. 76-8 and 130). It dates back to 1977, and has always been seen as an adjunct to the 25 per cent local content rule.

Discretionary criteria

Customs may at its discretion decide not to grant a concession if it finds that were a CTCO to be made:

- there would be *a substantially adverse effect* on the market for any goods produced in Australia [s. 269E(1A)]; or
- it would not be in the *national interest* [s. 269E(1B)].

Substantially adverse effect

Section 269E(1A) provides that the Comptroller may refuse to make a concession order if of the opinion that it would be likely to have a substantially adverse effect on the market for any goods produced in Australia.

This criterion was recommended by the IAC to cover the case where quite dissimilar inputs can be used to make products which are nevertheless closely competitive, and where there would be an erosion of protection if a CTCO were to be made on such an input. The IAC advocated that the criterion should only be used in reaction to objections, rather than obliging Customs to consider whether substantially adverse effects may occur for every CTCO application (IAC 1982b, pp. 128-9). The criterion has rarely been applied (Sub. 155, p. 18).

National interest

Sub-sections 269E(1B)-(3) provide that the Minister may decide that the making of a concession order would not be in the national interest. The Minister must first be asked for such a decision by the Comptroller, and the grounds for determining what constitutes the national interest are the guidelines in sections 22(1) and (2) of the *Industries Assistance Commission Act 1973.*

Where the Minister decides to use this provision, the legislation provides that Customs must gazette a notice announcing the facts and giving the reasons for the refusal of the concession application. The national interest provision has been used only once (see section 5.3).

The Exclusions Schedule

Under the CTCS, a concession will not be granted for goods listed in an 'Exclusions Schedule' in the *Customs Regulations.*

The IAC recommended in 1982 that the categories of goods for which commercial concessions were habitually refused by Customs, because there was a wide production of competitive goods already made in Australia, should be more formally excluded. Customs Regulation 185 and related Schedule set out the list of exclusions (see appendix B4).

The Excluded Goods Schedule (EGS) mainly contains consumer goods like food, clothing, furniture, cosmetics, jewellery and works of art; but also includes motor vehicles and parts, and some industrial materials.

There have been few changes to the EGS since it was established. For the first years of the CTCS, the policy was to amend the EGS only after an IAC inquiry. In 1989 the Government decided that deletions from the Schedule could be made by the Minister for Industry, Technology and Commerce, who may also add items after consultation with appropriate Ministers (Customs 1989a).

3.3 Administrative procedures[1]

Applications

The onus of proof for a CTCO lies with the applicant, who must make a case based on information obtained from possible local manufacturers of goods serving similar functions. The application (lodged on Customs Form CTC1) must be supported by a statement assessing the extent of competition that exists, or would exist, in the market place.

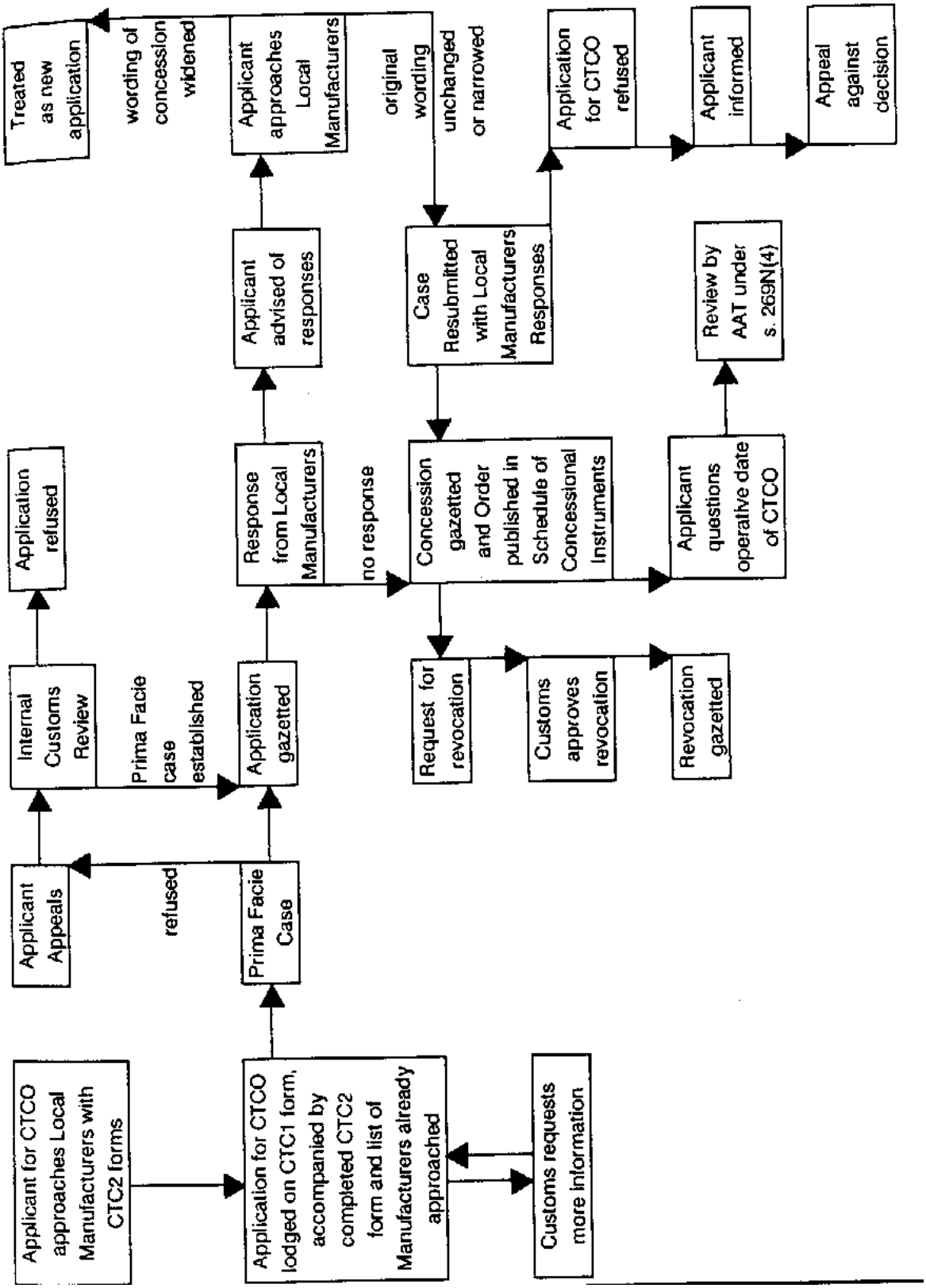
Local manufacturers are expected to reply (Customs Form CTC2) to the applicant within 28 days. Where claims are disputed, applicants are expected to resolve the issues directly with the manufacturer. Customs intervenes only after all attempts at resolution have failed.

If Customs is satisfied that a *prima facie* case for a concession is established, the proposed concession is notified in the *Commonwealth Gazette*. The initial gazettal is followed by a 28 day period in which manufacturers may object in writing to Customs. If there are no objections a tariff concession is granted, published in the *Gazette*, and consolidated in the *Schedule of Concessional Instruments.* Each concession is assigned an operative date, and once established, any importer can enter the particular class or kind of goods specified in the CTCO at concessional rates on or after that date.

Where an applicant disagrees with the operative date assigned to a concession by the Comptroller, he may approach the AAT to have the date changed. If the AAT determines that the wrong date has been cited in the Order, the AAT can make a new concession specifying the new operative date. The stages of the application process are shown in figure 3.1.

[1] Further details on the administration of the CTCS are given in Customs (1990c).

Figure 3.1: **The application and revocation processes in the CTCS**



Revocations

A concession may be revoked when the criteria for concessional entry are no longer met [s. 269P(1)]. Most concessions are revoked after manufacturers are made aware of a CTCO or when a manufacturer wishes to extend a product range or commence production in an area covered by a concession (figure 3.1). Revocations are normally implemented without prior public notice, although in-transit provisions are available to importers [s. 269P(8), (9)]. They allow concessional entry for goods which are in transit at the time of the revocation for up to 28 days after the revocation.

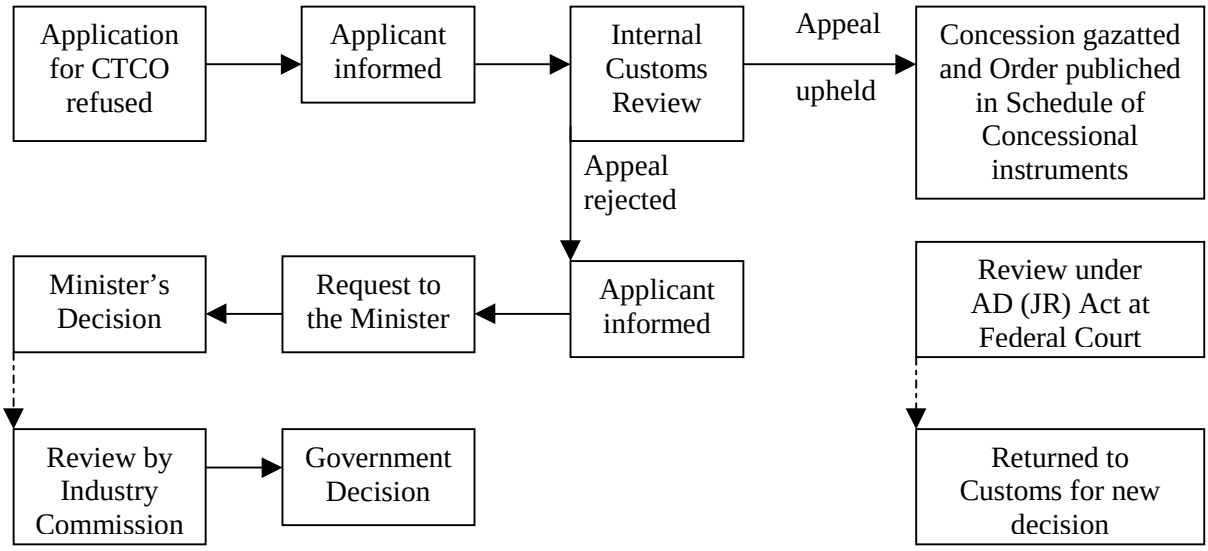
Where a CTCO covering a broad range of goods is revoked, there are provisions for a more narrowly specified CTCO, covering some of the goods, to be made effective from the day the original concession was revoked.

Appeals

Where an application for a CTCO is rejected, an appeal can be made to Customs to conduct an internal review. If still unsuccessful, the applicant may request the Minister to refer the matter to the Industry Commission, or seek redress before the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Access to the Court is available automatically, and is a legal process. But all the Federal Court can do is set aside a decision and refer the matter back to Customs. A reference to the Commission is at the discretion of the Minister. The Commission advises the Government in public and the Minister makes the decision. Only two CTCO refusals have been so referred (IAC 1989a). The appeal processes are shown in figure 3.2.

Figure 3.2: **Appeal processes in the CTCS**



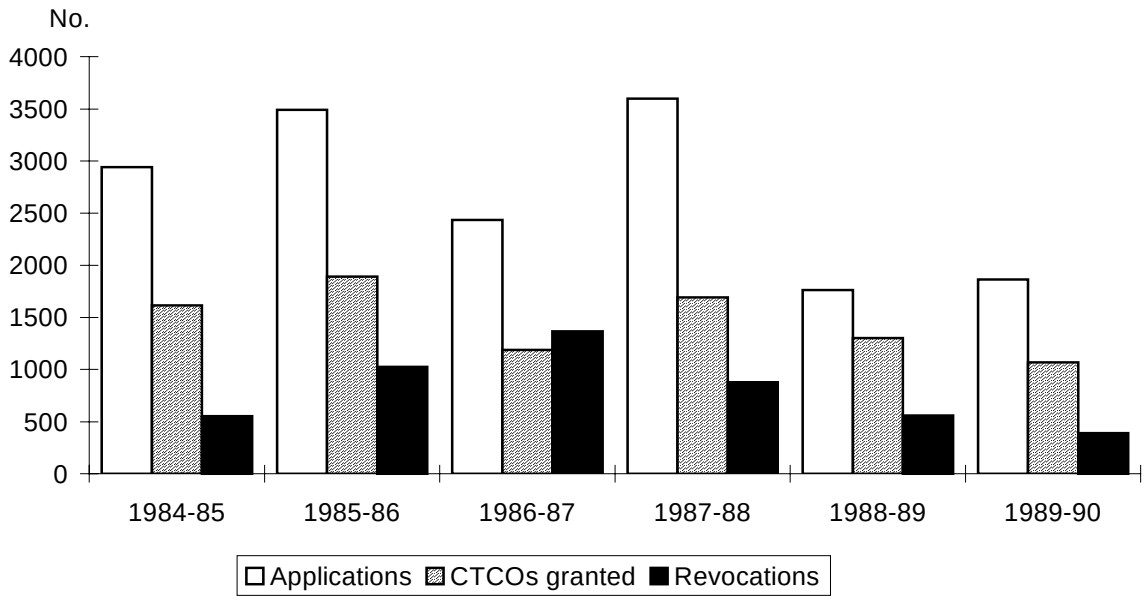
3.4 Use of the System

When the Government announced the implementation of the CTCS in place of the CBS it provided for a two year transition period ending 30 June 1985. During that period CBS concessions were reviewed under the CTCS criteria. Those that failed to meet the criteria were terminated on 30 June 1985. About 7500 Consolidated By-law references were converted into CTCOs. In addition, about 10 000 applications have been received since the commencement of the CTCS, resulting in a further 6000 concessions. Some 3000 have been revoked, leaving around 10 500 concessions in place. Customs has processed around 300 appeals (equivalent to 7 per cent of rejected applications).

CTCS activity levels were first recorded in their own right in 1984-85. Owing to variable processing times for applications, there may be lags in terms of the year the application was made and subsequent granting of a CTCO. According to Customs the minimum processing time for a CTCO application is 11 weeks, with the average around 28 weeks (Sub. 155, p. 27).

In 1989-90 there were 1864 applications. Around 1100 new CTCOs were made and 390 revoked. Figure 3.3 shows applications received and CTCOs made and revoked.

Figure 3.3: **Applications received and decisions taken by Customs on CTCOs: 1984-85 to 1989-90**



Source: Appendix table D6.

3.5 Administrative costs

The procedures outlined above impose costs on various groups in the community. Customs incurs costs in processing applications irrespective of the outcome. According to Customs, there are 36 departmental staff involved in processing, projects and technical services for tariff concessions and quotas. In 1989-90 the direct administration costs were about $2.1 million. Costs recovered from the sale of *the Schedule of Concessional Instruments and Gazettes amounted* to around $360 000 (Sub. 155, appendix C), all of which was paid to consolidated revenue.

These estimates do not include building and equipment allowances, legal costs in defending appeals or the greater administrative effort required by enforcement officers to ensure compliance with Customs' requirements for the entry of goods under tariff concessions. Processing costs generally ranged from about $700 to $1500 per application in the year to April 1990 (Sub. 155, appendix B3).

The system also imposes costs on applicants and local manufacturers, although in proceeding, applicants clearly anticipate that such costs will be lower than the benefits from concessions. (This aspect is discussed further in the next chapter.)

3.6 Problems

The CTCS was intended to overcome some of the problems inherent in its predecessor, the CBS. However, recent Federal Court judgments handed down following appeals by applicants [under the *Administrative Decisions (Judicial Review) Act* (ADJR)] have affected the operation of the system. These judgments have led to interpretations of CTCS criteria which appear to differ from the Government's original intentions for them. There are three key rulings:

(a) In *Davies Craig Pty Ltd v. Comptroller of Customs and others* (68 ALR 105), the Federal Court ruled that Customs had given the *words goods serving similar functions* their meaning in ordinary parlance and not the meaning attributed to them in s. 269B(4). The applicant subsequently approached the Minister seeking a reference to the IAC. The IAC (1989a, p. 26) found that no CTCO should be made. In its report the IAC made the following observation:

> Sub-sections 269B(3) and (4) of the Customs Act were presumably intended to clarify the terminology 'goods serving similar functions' and give proper effect to the Government's intention that Commercial Tariff Concessions should not significantly erode the protection afforded Australian-produced goods. The cases under review suggest that these sub-sections have obscured rather than clarified that objective.

(b) In *Amcor v. the Comptroller-General of Customs* (79 ALR 221), the Federal Court judgment limited the extent to which a local manufacturer could be considered to have a capability to produce in the normal course of business. Amcor applied for a CTCO for a paper making machine for making white papers. Customs noted that the only likely local manufacturer in that product area, Johns Perry Engineering, was prepared to accept an order for the paper machine. Customs accepted this and refused a CTCO.

The Court ruled that while Johns Perry may have manufactured a range of equipment, particularly components used in paper manufacture, for it to undertake such an order, even in conjunction with one or other companies, would be a 'special, exceptional or extraordinary' undertaking.

(c) In April 1989 another Federal Court judgment set aside a Customs decision. This case, *Corinthian Industries v. the Comptroller-General of Customs and others* (appeal under ADJR), revolved around a CTCO application for die-formed fibreboard door skins (outer panels for doors) imported from a number of countries.[2] Customs determined that the goods were door skins and that as door skins were manufactured in Australia, no concession order could be issued. The Court found, however, that Customs' reasoning 'rejected the applicant's description of the goods'. As Customs had accepted Corinthian's description as accurate and proper, it was obliged to apply s. 269B(3) (about identical goods) and s. 269B(4) (cross elasticity of demand) to that description. The Court ruled that Customs had examined the question of the identity of *function* rather than the identity of the good itself, emphasising that identity of an element such as function was not sufficient to satisfy s. 269B(3).

The effect of these judgments on the operation of the system has been described by Customs:

> Various conclusions were drawn by consultants and agents, and the initial apparent success of the Davies Craig and Amcor actions raised expectations that Customs would greatly change its position and that more concessions would be forthcoming. As applicants' causes were pressed harder without getting the expected successful results the dissatisfaction with the system grew and the long times taken to resolve these applications (or failure to satisfactorily resolve from an applicant's point of view) was also highlighted. (Sub. 155, p. 16.)

[2] The wording for the concession order submitted by Corinthian was: 'facings, door, incorporating not less than two die formed feature panels in concave and/or convex detail without joints with a principle field outlines having a profile formed depth of not less than 4mm, made from fibre building board having a nominal thickness of 3mm.'

Proposed legislative amendments

To overcome these problems, the Government introduced legislative amendments [the Customs and Excise Legislation Amendment Bill (No. 4) of 1989] intended to regain flexibility in administration of the scheme and address some of the issues highlighted in the Federal Court cases.

The major changes proposed in the legislation were the deletion of definitions of *particular goods, goods serving similar functions, and capable of being produced in the normal course of business. The meaning and application of goods serving similar functions, capable of being produced in the normal course of business, and substantially adverse effect* were to be guided by issued principles of interpretation (see chapter 5).

A further proposed amendment (to s. 269C) specified that the Comptroller could determine a class of goods that consists of (or includes some or all of) the goods specified in the CTCO application. That is, once a class of goods is established, the Comptroller would need to be satisfied that goods serving similar functions to the goods comprising the class are not produced, or capable of being produced, in Australia in the normal course of business. The Explanatory Memorandum to the Bill noted, in relation to this amendment, that:

> The regime currently contained in section 269C has been given a restrictive interpretation by the Federal Court in decisions such *as Corinthian Industries (Syd) Pty Ltd v Comptroller-General of Customs v others*, which have limited the scope of tariff concession orders to goods specified in an application. It was intended when the concession scheme was introduced in 1983 that the Comptroller have the power where necessary to make concession orders in terms wider or narrower than the terms specified in an application, and this clause makes the necessary amendments to the *Customs Act 1901* to give effect to that original intent.

The CTCS changes proposed in the Bill were defeated in the Senate in December 1989. The Opposition opposed the changes on the grounds that they would allow Customs too much discretion. It believed that the CTCS had developed into a workable system with a substantial volume of case law to guide people on matters of interpretation. Senator MacGibbon noted:

> He [Senator Coulter] has quoted from the IAC report No. 416 about the difficulty that the Industries Assistance Commission had with the word 'identical' and, quite clearly, the Australian Customs Service has the same problem with it... With the greatest of respect to

> the IAC and the ACS, it is not for them to interpret what the legislation means ... the ultimate arbiter is the courts of Australia (MacGibbon 1989).

The Opposition also noted the Government had foreshadowed an Industry Commission inquiry on the CTCS.

Australian Customs Notice 90/5

The failure of the proposed changes in the Senate, coupled with the Federal Court ruling on the Corinthian case, prompted Customs to reassess its method of considering CTCO applications. Customs interpreted the Corinthian decision to mean that CTCOs could only be approved for the particular goods identified in the application. It advised accordingly in *Australian Customs Notice 90/5*, issued on 28 December 1989 (Customs 1989b), that the Comptroller no longer had the power to either broaden or narrow the description contained in an application. It also noted that the description of the goods was the only basis for defining the coverage of a CTCO; accompanying descriptive material was not relevant. Consequently, when amendments to the description were required, Customs would refuse the original application.

The Notice declared that the operative date of any resultant concession would be the date of receipt of the resubmitted application, not the date of the original application. This removed the possibility of refunds in duty where such goods were entered before the new day of effect.

However, at the draft report hearings, Customs informed the Commission that it had obtained advice from the Attorney-General's Department regarding the amendment of CTCO applications.

> This advice leads Customs to conclude that it can allow the amendment of applications in various ways without always resulting in a new application and therefore a new operative date (Sub. 285, p. 9).

Australian Customs Notice 90/149 explains these changes, which allow amendments to be made which:

- correct errors in applications;
- more accurately or precisely define the goods which are the subject of applications;

- narrow the scope of applications; or
- make other unsubstantial changes that do not result in new applications (Customs 1990d).

What now?

While participants' support for retaining a concessional entry scheme was virtually unanimous, there were numerous concerns raised in relation to the interpretation, administration and operation of the present CTCS. These are addressed in detail later in this report. However, before addressing possible improvements to the operation of the scheme it is necessary to consider the more fundamental issue raised in the terms of reference; whether Australia should continue to have such a system at all. This is largely an economic question and is taken up in the next chapter.

4 ECONOMIC EFFECTS OF THE COMMERCIAL TARIFF CONCESSION SYSTEM

The terms of reference for this inquiry specify, among other things, that the Commission report on 'the effect of the CTCS on the development of efficient, internationally competitive Australian industries, and for the economy generally'. The Commission's statutory policy guidelines also require it to take into account the impact of the CTCS on industries, consumers and the community generally, in making its recommendations on the future of the scheme.

The CTCS benefits many firms and households by providing them, at least temporarily, with duty-free access to imported products that are not made locally. However, the provision of selective access to inputs at world prices, while retaining tariff protection on finished goods, could end up favouring relatively inefficient and uncompetitive industries. It is therefore necessary to look at the likely effects of the CTCS on the pattern of net assistance among industries in assessing the overall economic effects of the System. Before doing that, this chapter begins by examining the significance of the CTCS in relation to total imports, and identifying those activities which are likely to be the major beneficiaries.

4.1 Incidence of Import Concessions[1]

The value of imports into Australia in 1989-90 was about $55b, of which around 11.5 per cent entered duty-free under CTCOs. In 1988-89, nine per cent of imports entered under the By-law system (including Government imports). A further 43 per cent were entered at a zero substantive rate, and 34 per cent were entered subject to duty (see table 4.1). The total saving in duty under the CTCS was estimated at $962m in 1989-90, with the average rate of duty saved being around 15 per cent.

[1] More detail on the incidence of import concessions is contained in appendix D1.

Table 4.1: **Imports by Tariff category: 1988-89**

Tariff category	*Value*	*Share of total value*	*Duty paid*	*Average rate of duty paid*
	$m	%	$m	%
Free				
CTCOs	5 961	12.2	..	..
By-law[a]	4 462	9.1	..	..
Other free	21 480	43.9	..	..
Other concessions[b]	147	0.3	9	6.1
Normal/quota rates	16 881	34.5	3 870	22.9
Total imports	**48 931**	**100.0**	**3 879**	**7.9**

.. not applicable.

a Includes Government imports. b Includes dutiable entries under the CTCS and under By-laws.

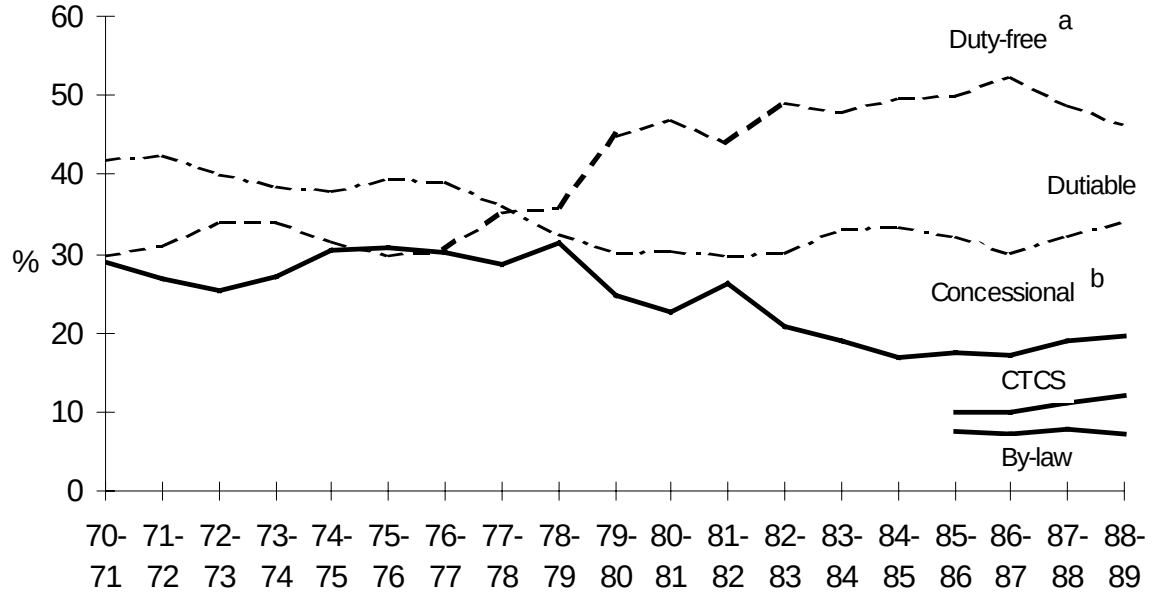
Source: ABS (1989a) and information supplied by ABS.

Over the last two decades, there has been a continuing downward trend in the proportion of imports subject to protective rates of duty and an increase in the proportion of imports entered at a zero substantive rate (trends were affected by a break in the series when Australia moved to the Harmonized Tariff System on 1 January 1988). The share of all concessional imports in total imports has declined, although there has been some increase since 1985-86. This has mainly reflected growth in CTCS imports -- the proportion of imports entered under By-law has remained relatively static (see figure 4.1).

Types of CTCS imports

CTCS imports are not distributed evenly through the Tariff. The distribution of CTCS imports among Tariff Divisions is shown in figure 4.2. In 1989-90 over half (by value) fell to two Tariff Divisions -- Division 85: Electrical machinery and appliances, and Division 84: Machinery and mechanical appliances (each around 26 per cent).

Figure 4.1: **Duty-free, By-law and dutiable imports (by value) as a proportion of all imports: 1970-71 to 1988-89**



[a] Imports subject to the two per cent revenue duty, which applied from July 1979 to May 1988, are treated as duty-free for the purposes of this figure. b Import statistics on the CTCS (which commenced in July 1983) were not recorded separately until 1985-86. From 1985-86 concessional imports are the sum of the CTCS and By-law lines.

Source: Appendix table D1.

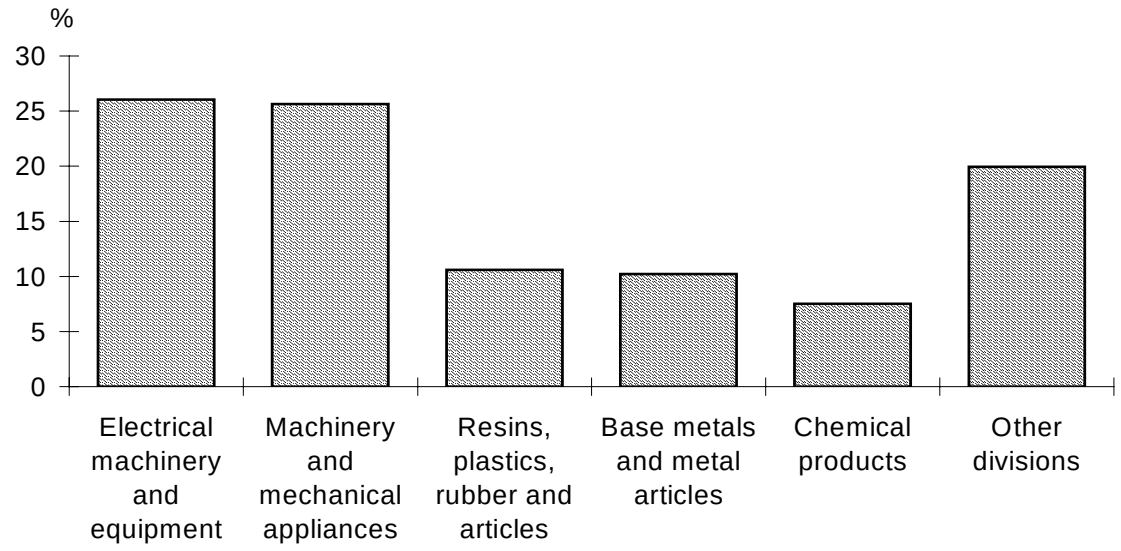
CTCS imports accounted for a major share of total imports in the following Tariff Divisions (see table D3):

- electrical machinery and equipment (30 per cent);
- base metals and metal articles (21 per cent);
- resins, plastics, rubber and articles thereof (21 per cent);
- machinery and mechanical appliances (15 per cent);
- miscellaneous manufactures (14 per cent); and

• chemical products (14 per cent).

There were no CTCS imports in five Tariff Divisions because of the operation of the Excluded Goods Schedule.

Figure 4.2: **Imports under CTCOs, by Tariff Division: 1989-90**



Source: Appendix table D3.

Use of CTCS imports

Information on use of CTCS imports is needed to evaluate the economic effects of the System. The information presented in the preceding section was collated by ascribing CTCS imports to the particular Tariff Division under which they were classified on entry to Australia. This does not, however, indicate which activities use and hence benefit from the CTCS. Indeed, *there is no comprehensive information on the use of concessional imports by different industries.* The ABS does not collect it and past experience has shown that Customs incurred substantial administrative costs when it attempted to monitor concessions by end use.

The Commission has used detailed input-output data to assess the effects of these concessions (ABS 1990a). The ABS classifies all domestic production and all imports into commodity groups and estimates the usage of each of these commodity groups by each input-output industry and category of final demand. By classifying import clearance data to commodity groups, it is possible to determine the value of duty concessions for each group (giving the average percentage by which prices would have been higher for that group in the absence of the concessions). The price estimates have been combined with usage estimates derived by making the assumption that concessional imports are used in the same proportions as were imports in 1983-84 of the commodity group to which they are classified.

For example, suppose there is a commodity group for imports of construction machinery and, in the absence of concessions, average prices paid for those imports would be 10 per cent higher. If the building industry is estimated to use $100m of imported construction equipment, then the estimated duty saving to the building industry from concessions on construction machinery would be $10m. (Further details of these estimates are presented in appendix E.)

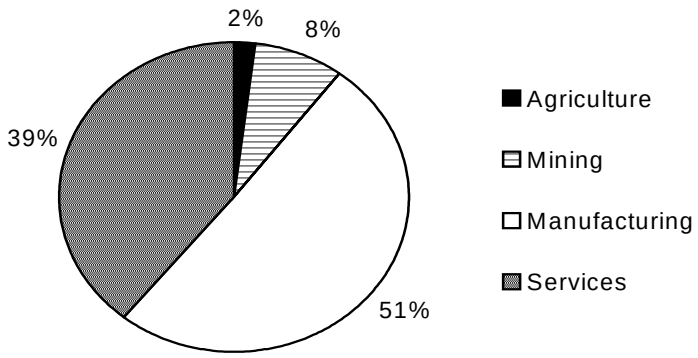
This approach tends to distribute the duty savings from concessions more widely than might be realistic. The use of concessional imports of a commodity might be concentrated among only a few user industries; for example, where the concessions apply to specialised machinery. Hence, allocating concessions on the basis of use of that commodity group, including use by final consumers, will affect the estimates of duty savings to users. Despite these problems, this is the best methodology available to the Commission.

The Commission estimates that, assuming all the duty savings of CTCS imports were fully passed on to users, 82 per cent of total duty savings would have gone to industrial users and the remaining 18 per cent to final consumption in 1989-90. (The estimate for CTCS imports entering final consumption is an upper limit. Given the eligibility criteria of the CTCS, in particular the predominance of consumer goods in the Excluded Goods Schedule, the proportion of CTCS imports allocated to consumer goods is likely to be overstated.) The duty savings calculated to be received by individual industries depend on the use of different imported

commodities by each industry and on the duties that would otherwise apply to the goods in each commodity group. On the basis of the Commission's estimates, manufacturing would account for around half of the duty savings attributable to CTCS imports. The services sector would also be a significant beneficiary, whereas mining and agriculture would have relatively small shares.

These results are depicted in figure 4.3, which presents a breakdown of the sectoral duty savings estimates.

Figure 4.3: **Estimates of CTCS duty savings, by sector: 1989-90**



Source: Appendix E.

4.2 The economy-wide effects of the CTCS

The CTCS provides relief from nearly $1 billion in import duties annually, for the intuitively appealing reason that they serve no protective purpose, and are seen as particularly discriminatory taxes on inputs. Compelling arguments would be needed for the Commission to recommend the abolition of an entrenched, and almost universally supported, policy that is yielding income transfers of that order.

In line with the inquiry's terms of reference, the Commission has attempted to quantify the impact of the CTCS on the economy, and its implications for the

development of efficient internationally competitive industries. Two complementary approaches have been adopted, using:

- estimates of effective rates of assistance and the dispersion of that assistance across the economy; and
- simulations using the ORANI model of the Australian economy.

The former is a *partial* equilibrium approach which enables comparisons to be made of the relative assistance afforded different activities and hence their capacity to compete for resources. It gives an indication of whether the CTCS improves or reduces efficiency in resource use, using data at a highly disaggregated level.

The ORANI simulations, which employ a *general* equilibrium framework, provide estimates of these assistance effects on prices and industry outputs, and hence indicate the likely net impact of the CTCS on the Australian economy -- including GDP, employment and trade.

The effective rate analysis and the ORANI simulations compare the current situation with that which would prevail in the absence of a CTCS. Thus, there is a presumption that abolition of the CTCS would equate to the removal of CTCOs currently in force. This need not be the case: it would be possible to discontinue the scheme whilst leaving all existing concession orders intact, and this point is discussed later. In the meantime, this section treats the System as synonymous with existing CTCOs in presenting the empirical results.

Effects of the CTCS on resource allocation

There was little comment offered by participants on the economy-wide impact of concession systems. CESA provided a partial equilibrium analysis of the effects of tariff concessions. It noted that:

> Like tariffs, CTCs also involve income transfers between importers, consumers and the Government. But different to tariffs, they are without any production effect because there are no locally-produced competing goods. Because there is no local industry, the tariff is without any protective purpose. The analysis shows that, *when considered in isolation,* tariff exemptions lead to a net economic benefit to society through the gain in consumer surplus (a transfer from government revenue and the recovery of the 'deadweight loss'). (Sub. 60, p. 14, emphasis added.)

The Pharmaceutical Industry Group (discussed below) also commented on the resource allocation issues associated with tariff concessions (Sub. 86, pp. 4-8).

As indicated above, an important question relating to tariff concessions is whether they improve or impair efficiency in the use of the community's resources -- or, put simply, the productivity of the economy. Looking just at nominal tariffs does not give the whole story, as CESA itself recognised, and can be very misleading. Analysis using effective rates is more revealing, as it takes into consideration the effects of tariffs (and other forms of assistance) on the goods produced as well as tariffs on the materials used by a producer.

Tariff protection imposes a tax on competing imports, and so enables the local industry to sell its output at a higher price than would otherwise apply. Tariff protection of goods used as production inputs has an effect similar to a tax. Tariff concessions applying to inputs remove the tax (the tariff) that would otherwise apply to an input, thereby increasing the effective assistance to an activity. Therefore, every tariff concession granted to an imported input will increase the using activity's effective assistance (see appendix E, box E2).

While tariff concessions increase effective assistance, of greater relevance is their effects on *relative* levels of assistance, as this influences the industries into which resources go. Wide variations in effective assistance between activities are indicative of resources being allocated to less efficient uses, especially where activities use similar processes and compete for similar resources.

Whether the increases in effective protection arising from the existence of the CTCS lead to more or less efficient use of the community's resources overall is a difficult empirical question. Two possibilities present themselves. If CTCS imports have predominantly favoured activities that are already highly assisted -- thus enabling them to have an even greater command over resources -- then the concessions are likely to be an impediment to a more efficient industry structure. In such a case, removal of concessions would reduce disparities by bringing the effective assistance of recipients down closer to the average. On the other hand, if tariff concessions were mainly used by lightly assisted activities, they would tend to improve economic efficiency, by allowing those industries to compete for resources on a stronger basis.

As Customs is not required to take into consideration the effect of concessions on resource allocation, CTCS imports could benefit highly or lightly assisted activities.

The Pharmaceutical Industry Group commented on the potential for the CTCS to distort resource allocation through its influence on effective assistance. It noted:

> ... to argue for the abandonment of the system on these grounds is akin to recommending that all free substantive rates be increased to (say) some 'average' tariff level in order to remove distortions. This thinking seems to ignore the fact that distortions arise from the imposition of tariffs, rather than from their removal (Sub. 86, p. 4).

In fact rather than increasing free substantive rates to some 'average' level, the Government has signalled its intention to seek greater uniformity through general reductions in tariff levels. In this context it is proper that the resource allocation effects of the CTCS be explored in case greater economy-wide gains could be achieved through reliance on tariff reductions only, rather than a dual approach of tariff reductions and tariff concessions.

The effect of the CTCS on effective assistance (and dispersions in that assistance) was estimated by comparing the current situation with that which would prevail if the CTCS did not exist (see table 4.2). The results suggest that removal of the CTCS would lead to a small decline in effective assistance across all industries.

The Commission's estimates suggest that the CTCS has not affected disparities in assistance (measured by standard deviations in effective rates) to any great extent -- either amongst industries overall, or within sectors. In all cases the effect of the CTCS on the standard deviation of effective assistance was so small as to be insignificant.

Further analysis which relates the assumed usage of CTCS imports by industries to their effective assistance (presented in appendix E), suggests that although highly assisted activities receive a significant proportion of CTCOs, they are not large in value added terms. Conversely, industries with effective assistance between -10 and 15 per cent account for 95 per cent of unassisted value added and use 71 per cent of CTCOs. Again, this suggests that the incidence of the CTCS is greater among lightly assisted activities.

Table 4.2: **Effective rates of assistance and the CTCS: 1989-90**

Sector	*Effective rates*		*Disparities*	
	with CTCS	*without CTCS*	*with CTCS*	*without CTCS*
	%	%	% point	% point
Agriculture	-0.5	-0.5	2.1	2.1
Mining	-1.7	-1.9	1.3	1.4
Manufacturing	21.5	20.8	36.2	36.0
Services	-2.5	-2.6	2.4	2.5
All industries	**1.2**	**1.0**	**16.5**	**16.3**

Source: Commission estimates. See appendix E.

The effect of concessions on resource allocation was also examined by the IAC (1982b, p. 52). Given the different assistance environment at that time, particularly the much higher tariffs, it is not surprising that the IAC's analysis yielded somewhat different results. The IAC noted that concessions accrued disproportionately to manufacturing, which received higher levels of assistance than mining and rural activities. It concluded that on average, the relationship was one of greater use of Commercial By-law concessions associated with higher effective rates of assistance.

Thus in 1982 the IAC came to the tentative conclusion that Commercial By-law concessions predominantly favoured the more highly assisted activities. There is no longer evidence to support that conclusion. If anything the available evidence points in the opposite direction. There are three reasons for this apparent divergence.

First, in the previous inquiry the measurement of assistance effects was restricted to the manufacturing sector. Assessment of the effects relative to other sectors was limited to a qualitative judgment. The methodology available for the present study allowed the effect of concessions to be estimated on an economy-wide basis.

Second, the terms of reference for the 1982 inquiry encompassed the Commercial By-law System. The CBS included concessional imports which are now covered by the provisions of the PMV and TCF Manufacturing Plans. The present analysis excludes consideration of Policy By-law imports under both of those plans, which relate to the most highly assisted industries in the Australian economy: in 1989-90 the average effective rate of assistance for all manufacturing was 16 per cent, but the estimated effective rates for Plan activities excluded from the Commission's analysis, were: motor vehicles, 119 per cent; textiles, 78 per cent; clothing, 177 per cent; and footwear, 238 per cent.

Finally, the pattern of overall assistance at the time of the IAC report was markedly different from that prevailing today. Tariffs have undergone substantial reductions via declining industry benchmarks and more recently through general reductions. Consequently, excluding Plan activities, there has been compression in disparities all round. The potential for CTCS imports to affect resource allocation adversely has therefore been significantly reduced.

Wider economic effects of the CTCS

The Commission estimated the economy-wide effects of removing the stock of existing CTCOs through simulations using the ORANI model of the Australian economy. Details of the estimates and the key assumptions adopted for the simulations are reported in appendix F, which includes some additional simulations and sensitivity analysis.[2]

Table 4.3 summarises the results of the following simulations:

- the short-run and longer-run effects of removing all the CTCOs that existed in 1988-89; and
- the longer-run effects of removal of all assistance to manufacturing.

The first two simulations enable an assessment of the sensitivity of the results to assumptions about the extent to which industry's capital stocks can vary. The last simulation is included for purposes of comparison.

[2] Appendix F includes simulations of the removal of all CTCOs and non-Plan By-laws and reports estimated changes in output at the industry level.

Table 4.3: **Estimated economy-wide impact of removal of all CTCOs and assistance to manufacturing: 1988-89 Tariff levels** (percentage changes)

Variable	*Short-run effects of removal of all CTCOs*	*Long-run effects of removal of:*	
		CTCOs	*Manufacturing assistance*
GDP	-0.1	-0.3	0.9
Household consumption	0[a]	-0.1	0.7
Investment	0[a]	-0.8	2.1
Volume of exports	-0.3	-0.3	5.8
Volume of imports	0.2	-0.3	6.0
Consumer price index	0.3	-0.1	-1.8
Real wages	0[a]	-0.4	1.5
Employment	-0.1	..	0.1

.. negligible change. [a] Held constant by assumption.

Source: Commission estimates -- see appendix F.

Short-run effects of removal of all CTCOs

With protective tariffs at 1988-89 levels, the removal of concessions is estimated to have an adverse effect on the Australian economy in the short run.

Prices and inflation

Most concessions apply to inputs into further production, and so concessional entry lowers production costs for the recipient activities. The effect on prices will vary according to the prevailing market conditions faced by the beneficiaries. For example, where competition is weak, producers may simply record greater profitability or pass on some of the benefit in the form of higher wages or improved conditions for employees. Where competition is stronger, the benefits of input cost reductions are more likely to flow through to consumers. Activities dependent on concessions for their viability will absorb at least some of the cost savings

themselves and/or become better able to accommodate adjustment pressure (for example, perhaps from tariff reductions on the firm's outputs as noted in chapter 2).

The ORANI simulations suggest that if all CTCOs were removed, the general level of prices would increase by around 0.3 per cent. This increase would be mainly due to the direct effects of higher prices for imports previously entered concessionally and the indirect effects of higher prices for other intermediate inputs (table 4.3).

This outcome is to be expected, as the most obvious effect of tariff concessions is to reduce the costs of eligible imported goods. Indeed, most participants identified the direct benefits in terms of relief from import duties. Australia Post, for example, claimed that in the absence of concessions, it would face added costs of up to $0.8 million per annum and the BHP Steel Group said that duty waived on its imports during the year to April 1990 amounted to about $34m from the CTCS and $1m from By-laws. The Australian Sugar Milling Council said:

> There is a benefit to the user of the imported input, in that it pays a lower cost for its inputs; but in no way should this be construed as a form of assistance to industry; consumers benefit from lower prices. (Sub. 212, p. 5).

The increased prices for imports arising from removal of the CTCS might be expected to have a 'once and for all' impact on the CPI because only a continuing expansion or contraction of concessional entry should affect the rate of inflation. However, a 'once and for all' price increase could induce increases in wage costs. This latter effect is captured in the simulation as nominal wages are linked to the ORANI index of consumer prices. These price increases may be offset to some extent because profit margins for some industries would be squeezed in the short run, to allow them to continue to export or to compete with imports.

Trade

Despite the squeeze on profits, the volume of exports is projected to fall by 0.3 per cent whereas imports would increase by 0.2 per cent. These effects are unsurprising. Many Australian exporters are price takers on world markets. They cannot pass on cost increases resulting directly or indirectly from the loss of tariff concessions. This reduces the profitability of exporting and would result in some reduction in export levels. Some import-competing activities would also become less competitive if they had to pay more for their foreign inputs that had previously

come in under concessional arrangements. Moreover, tariffs affect competition between sectors of the economy for basic resources and divert them toward more highly assisted activities. This point was raised by AMIC, which contended that:

> Failure to have access to the Tariff Concession System and By-law Arrangements would increase the costs of many export and import competing industries in Australia, reducing international competitiveness. Rather than constituting the provision of offsetting or (second best) assistance, the provision of tariff relief under these circumstances involves the removal of the original distortion. (Sub. 84, p. i.)

Output and employment

If the CTCS were disbanded, it is estimated that, in the short run, real GDP would decline by about 0.1 per cent (about $320 million in 1989-90 dollars). The GDP result reflects changes in the balance of trade. Employment is estimated to fall by about 0.1 per cent. Since it is assumed in this short-run simulation that capital stocks remain fixed for each industry, employment is shown as taking the brunt of any decline in activity.

In summary, the effects of removal of the CTCS would be inflationary in the short run. With competitiveness reduced, import levels would rise and exports fall and, as a consequence, there would be less output and employment.

Long-run effects of removal of the CTCS

In the long-run simulations, which allow the economy to adjust to the cost-raising effects of removing the CTCS, the estimates show that such action would have a depressive effect on the Australian economy (table 4.3).

The long-run scenario assumes that industries' profit rates would return to earlier levels, as adversely affected industries adjusted their output levels by reducing capital stocks and labour usage. Real wages are estimated to decline by about 0.4 per cent. This would occur because the aggregate supply of labour is assumed to be very inelastic -- consequently, the reduced demand for labour would have a greater impact on wages than on employment levels. The reduction in wage costs would offset the cost-increasing impact of removal of the CTCS, and the CPI would fall by 0.1 per cent.

The effect on economic activity would be more pronounced than in the short-run -- GDP would decline by about 0.3 per cent, or around $925 million (in 1989-90 dollars). In turn, real investment and household consumption would also decline. Exports would decline by about 0.3 per cent. Furthermore, owing to the projected decline in economic activity, imports would decline by a similar percentage.

Removing assistance to manufacturing

The estimated effects of removing manufacturing assistance are included in table 4.3 to provide some comparison with the losses from removing the CTCS. The magnitude of the changes is relatively large, with a substantial reduction in the general price level (nearly 2 per cent) and an increase in GDP of nearly one per cent. The volume of trade would increase (around 6 per cent for both imports and exports). Investment would also increase, as would household consumption, real wages and employment.

When compared with these impacts, the tariff reductions achieved through the CTCS offer smaller but still significant gains.

4.3 Other effects of concessions

This section canvasses other economic aspects of concessions which have not been discussed previously, drawing on matters raised by participants during the course of the inquiry.

Participation costs

The direct 'administrative costs' of the CTCS were noted in chapter 3. However, the CTCS can impose costs beyond those which are readily identifiable in Customs administration. An important category of cost, which the Commission's economy-wide analyses do not capture, is the diversion of effort and managerial time in seeking, or resisting, the grant of a concession.

Apart from the costs willingly incurred by the applicant, costs are imposed on those firms implicated in the CTCO process, which are required to respond to

questionnaires and queries from Customs and concession applicants. All parties may be subject to further costs should there be an appeal against the Customs decision. For example, BHP informed the Commission that John Lysaght (Australia) Ltd, a respondent to a concession application, incurred costs of $15 000 during the recent Commission inquiry into concessional entry of aluminised steel for use in mufflers and exhaust systems (Sub. 73, p. 17).

As tariffs are further reduced, the benefits from retaining a CTCS relative to these costs will also decline. Importers could be expected to continue to seek concessions as long as their own identified private costs are less than expected benefits. At a *maximum*, the total costs to the applicant could theoretically be similar in value to the duty saved through the CTCS, because firms could be expected to pursue concessions up to the point where potential benefits virtually equal the cost of obtaining them.

This means that, at some point as the Tariff descends (and the value of individual concessions also descends), it is likely that the total administrative and private costs of the CTCS to all parties involved would exceed the benefits to additional recipients.

Double adjustment costs

Every change in tariff policy, whether concerned with substantive tariffs or concession systems, imposes adjustment costs on industry. Removal of existing CTCOs, in an environment of general reductions in protection, would have two effects:

(a) the reactivation of existing tariffs; and

(b) the subsequent (substantive) reduction of those tariffs.

Industries presently benefiting from CTCOs would thus be subject to double adjustment from their removal, which would reinstate a tariff impost of nearly $1 billion annually, only to remove it again bit by bit under the current 'tops-down' strategy. It also follows that any protective effect of reinstating these tariffs would only be temporary and is unlikely to encourage efficient, internationally competitive industries.

Were the CTCS abolished, these double adjustment costs could be averted by retaining existing concessions.

Effects on consumers

Tariffs raise the prices paid by final consumers (households) and reduce the amount of goods which they can purchase unless they get compensating increases in income. It is not straight forward to evaluate the overall effects that tariff concessions have on households. Taken in isolation, as CESA emphasised, tariff concessions remove some of the initial price distortion, thereby making households better off (Sub. 60). These consumption gains are sometimes overlooked when empirical work focuses only on the production effects of concessions.

Looked at more broadly, households gain directly from concessions on final goods - though the EGS acts to limit these gains as it declares many such goods to be ineligible for CTCOs - and indirectly via lower-priced domestically-produced goods that incorporate inputs which have been imported concessionally. The ORANI analysis reported in section 4.2 and appendix F suggests that, in the short run, tariff concessions lower consumer prices on average by 0.3 per cent. But whether households are better off also depends on income and employment effects. In the longer run, tariff concessions are estimated to have positive effects on wages and employment and to raise the real level of household consumption by around 0.1 per cent.

Uncertainty and investment

Uncertainty is a feature of the CTCS. Decisions to grant and particularly to revoke concessions can be made and implemented relatively quickly. Producers cannot be certain that concessions on their imported inputs will be granted, or continue. Similarly, the risk of losing a CTCO, or the danger that a competitor may gain one, can reduce the attractiveness of an investment. APEA said:

> ... there is the constant uncertainty associated with the ability of a domestic company to overturn the concession (without proving capacity to produce) and to put the onus back on the petroleum industry to re-establish its case; in addition to the cost of re-establishing the case, there is the direct cost of tariffs in the interim. (Sub. 184, p. I.)

The NFF noted that the uncertainty aspects of the CTCS were a one-way street.

> At present the unpredictability and the associated risk lies almost entirely on the side of the user. The assisted manufacturer has almost entirely predictable conditions, in which tariff protection can be invoked at will. (Sub. 185, p. 14.)

Nevertheless, the uncertainty associated with the CTCS needs to be placed in some perspective. Business operates in an inherently uncertain environment, of which the CTCS is but one element. CESA stated that the private sector is characterised by risk, uncertainty and reward. Apart from the vagaries of the competitive market, Australia's exchange rate adds a further element of uncertainty to business decision-making. Nevertheless, while uncertainty is a feature of the economic environment, it should not be unnecessarily induced by government policy.

Technology transfer

Concessions can enable overseas technologies to become available to local producers at world market prices, thereby saving the expense of costly research. Obsolete plant and equipment can be scrapped in favour of more capital-intensive techniques. Many participants drew attention to these advantages. For example, the Chemical Confederation of Australia said:

> Concessions granted on capital equipment imports facilitate the introduction of new technology into the manufacturing process when new investments are undertaken. In some cases the concession is of such significance to decide in favour of Australia rather than other countries when new investments are planned. (Sub. 108, p. i.)

Without concessions, tariffs may impede the introduction of new (and appropriate) technology. Deloitte Trade and Customs said that:

> ... in many cases, the necessity of paying the substantive duty will encourage (at the least) the postponement of equipment replacement. If taken to the extreme, this may result in eventual obsolescence of the local capital equipment. (Sub. 170, p. 14.)

However, in some cases concessions may be inimical to the development of advanced technology by Australian industry. Concessions may retard local industry by reducing the assistance afforded activities which have the ability to produce improved technologies.

While there is no doubt that concessions provide some local companies with cheaper access to state-of-the-art technology, any benefit accruing to a local firm from new technology associated with a CTCO is delivered in a fortuitous manner.

In this regard, the CTCS can only provide a discriminatory means of achieving technological transfer. If the CTCS were to operate otherwise, its administrators would be required to make very difficult judgments about whether particular products constitute genuine technological improvements and how long that will continue to be the case. Similar considerations apply in the case of 'high quality' goods.

In short, the Commission considers that the CTCS cannot be modified satisfactorily to overcome tariff-induced problems with the transfer of new technology into Australia.

4.4 Assessment

The CTCS has a pervasive influence on the Australian economy. About 12 per cent of imports are entered under the scheme and, by ameliorating the taxation effects of tariffs, it resulted in duty savings of nearly one billion dollars in 1989-90. Since the vast majority of CTCS imports are used by industries as intermediate or capital inputs, the scheme clearly reduces production costs (without, in principle, reducing protection to any existing industry).

By allowing access to imported inputs at world prices, within a tariff environment in which many industries are still protected from import competition, the CTCS increases effective assistance to the recipient activities. (At the same time, the continuing general program of tariff reductions is reducing effective assistance by lowering tariffs on outputs.)

Available evidence suggests that the CTCS has had little influence on the pattern of assistance among industries. On that basis it cannot be said to have adversely affected resource allocation. Moreover, the Commission's economy-wide simulations indicate that removal of the existing concessions would cause annual GDP to decline by about $300 million in the short run, and by nearly $900 million in the long run.

Clearly there is no economic justification for removing existing concessions (CTCOs), especially in view of the double adjustment costs that this would imply in the context of the tariff reductions program.

The economic performance of the CTCS also makes it difficult to argue that there should be no concession system in the future. Although the limited effect of existing concessions on assistance disparities may be fortuitous, it nevertheless creates a presumption that the system is not biased in favour of highly assisted activities. Indeed, with tariffs declining annually, there will be less scope for adverse resource allocation effects from the CTCS in the future.

The 'flow' of new CTCOs in recent times has been around 10 per cent of the 'stock'. If this continues, and the gains are proportional to those afforded by existing concessions, then at present tariff levels the CTCS would provide incremental GDP gains each year of around $100 million. As tariffs decline further, however, the administration and 'participation' costs of the System will loom larger in relation to the benefits from additional concessions, and at some point the value of continuing the CTCS (if not the established concessions) may need to be reassessed.

In the meantime, in an era where the Government has signalled the continued reduction of tariff protection in Australia, the Commission can find no case for terminating a tariff concession system which alleviates taxes on production inputs and other goods in a wide area of economic activity.

The Commission accordingly recommends continuation of a system of commercial tariff concessions.

* * *

That being stated, all is not well with the existing System. The next three chapters look at what can be done to improve it. The Commission's approach is based on:

- the Government's general policy guidelines for the Commission;
- the need for the CTCS to be consistent with the current role of the Tariff; and
- the objectives for the effective and efficient administration of the CTCS that the IAC (1982b, pp. 86-7) enunciated; namely that the CTCS should:

- be simple to administer;
- be easily understood and predictable;
- produce consistent results;
- operate at minimum administrative cost;
- operate quickly and enable speedy decision making;
- be open to public scrutiny;
- provide incentives for compliance; and
- provide an independent avenue for appeal.

5 IMPROVING THE CTCS CRITERIA

Like the Tariff to which it relates, the CTCS can have a substantial impact on the income of importers and local industries. As already noted, the Commission received much evidence about the value of the CTCS to particular firms, which in some cases totalled many millions of dollars annually.

The marked income distributional consequences of tariffs, like taxes generally, have long been recognised as requiring Parliamentary scrutiny and control. Counsel to the CAIA provided the inquiry with the following extract from the *Great Statute* of 1660:

> ... no rates can be imposed upon merchandise imported or exported by subjects or aliens, but by the common consent of Parliament. (Sub. 74, p. D7.)

CTCS (and By-law) decisions are not individually scrutinised by Parliament, but are delegated decisions, based on criteria which Parliament considers appropriate. In principle, those criteria should ensure that administrative decisions are consistent with the will of Parliament. This can include the exercise of discretion, even within fairly broad standards, if Parliament considers it appropriate. But there should be no ambiguity or inconsistency in those standards.

The recent legal and administrative history of the CTCS, as it has emerged from evidence received by the Commission in this inquiry, suggests strongly that the existing legislative criteria are not adequately meeting this test.

The 'core' criteria of the CTCS are whether goods:

- *serving similar functions* to the goods for which concessional entry is sought are made in Australia; or
- *are capable of being made* in Australia in the *normal course of business.* (See appendix B2.)

Each of these criteria has been beset by considerable problems of interpretation, highlighted by the Federal Court cases mentioned in section 3.6. `Goods serving similar functions' has been a particular source of difficulty, not so much because of the expression itself, but because of the way it has been defined in the Act. It is

worth looking at this matter in some detail, as it goes to the heart of the role and purpose of the CTCS -- section 5.1 addresses it, and section 5.2 discusses the 'capability' core criterion.

The CTCS also has two 'discretionary' criteria: whether the making of a CTCO would have a *substantially adverse effect* on the market for any goods produced in Australia; and whether the making of a particular CTCO would not be in the *national interest.* These optional tests are dealt with in section 5.3.

5.1 Goods serving similar functions

Like other basic features of the CTCS, this criterion was proposed by the IAC in its 1982 report. It replaced the former criterion that concessions could be given where there were no 'suitably equivalent or reasonably available' (SERA) domestically produced goods. Interpreted literally, the latter criterion was considered to be at odds with the Government's objective that concessions not undermine tariff protection to Australian industries (IAC 1982b, p. 123). In practice, Customs was not required by the law to give concessions to goods which met the criterion, and had generally interpreted it in a way calculated not to undermine industry protection. Thus it might be concluded that the legislative criteria of the time were inappropriate, but the wide discretion they permitted had fortuitously resolved the problem. The situation today is in some respects the opposite.

Objectives

The IAC took care in designing the test of 'goods serving similar functions' to ensure that assistance to existing domestic industries was not reduced by concessional entry. In the industry policy context of the time, the IAC was concerned that tariffs set for particular industries through the public inquiry process -- taking into account the structure of the Tariff generally -- should not be undermined.

Although the role of the Tariff has since changed, the IAC's view of when concessions should be granted remains broadly appropriate. While the potential to distort resource allocation is less than in 1982, concessions which suddenly reduce assistance to existing industries would nevertheless be at odds with the

Government's current approach to Tariff reform, which emphasises the gradual and predictable nature of the tariff reduction program. To the extent that they selectively imposed unexpected adjustment on established producers, concessions would depart from the perceived ground rules for reform, and could erode community support for the general reductions program itself.

Thus the rationale for a test which does not disturb existing tariff protection to established Australian industries remains. The question is whether the present criteria meet what is required.

The case for 'goods serving similar functions'

If the rationale of the concession scheme is to provide relief from tariffs which serve no protective purpose, then the logical test to apply in assessing concessions is one which best indicates the protective effect of the tariffs in question. *Conceptually* this would involve some measure of the market interaction between imports and locally produced goods.

The IAC considered this, but had misgivings about its practicality:

> The interaction in the market between two goods -- in economic terms the cross elasticity of demand -- varies across a continuous spectrum from virtually nil to almost complete ... The issue involved in considering commercial by-law is to determine a point on this spectrum at which it is possible to say that the interaction between the goods is so small as to be negligible.
>
> Even if it were possible to measure this interaction accurately, and the Commission does not believe it to be possible in all cases, the problem then arises that the measurement must reflect an average for all consumers. ... the perception of substitutability between goods is essentially subjective. (IAC 1982b, p.119.)

The IAC opted instead for a test based on the *functions* of the goods, as something that could be more readily understood and applied.

> Use of the word 'functions' ensures consideration beyond the *characteristics* of the imported products to the *operations* which the product has to perform. The word 'similar' has been chosen because it stresses the *likeness* between things and implies that some differences may

be overlooked. Thus the term 'serving similar functions' goes beyond the specific requirements of the applicant to encompass *broader categories of demand.* (IAC 1982b, p. 123.)

The advantage of a 'functionality' test of that kind is that it can be applied by Customs officials on the basis of available information about the characteristics of goods and what purpose they serve. The test is also relatively 'safe', from the perspective of protecting domestic industry, and this was encouraged by IAC remarks that it should encompass broad categories of demand.

The IAC recognised that the expression, 'goods serving similar functions', while more appropriate to industry policy objectives than the SERA test, was capable of different interpretations. Citing the example of a bulldozer and a shovel as goods that might be supposed to both serve the function of digging earth (an example repeated by witnesses in the present inquiry) the IAC emphasised the need to bear in mind what was 'practical and realistic in Australia today'. The IAC provided a range of 'case studies' illustrating how to apply the tests.

Though the IAC did not spell it out, what its case studies were intended to do was to provide guidance to Customs to interpret 'goods serving similar functions' such that the range of concessions granted would come close to that which the market-based concepts would in theory require.

Problems with legislative definitions

What the IAC's use of case studies also underlined was that the core criteria were not self-sufficient; they needed guidelines for interpretation. It was not explicit about how any such guidelines should be promulgated. In the event, the Government chose to provide legislative definitions and the whole process was eventually brought under the ambit of the Federal Court -- putting the selected definitions under a legal spotlight.

Given the IAC's concerns, there is some irony in the fact that the legislation used as the principal definition of whether goods serve similar functions, the theoretical concept 'cross elasticity of demand'. That is, the legislation specifies that goods shall be taken to serve similar functions if they are identical, or unless the Comptroller is satisfied that 'there would be no significant part of Australia in

which there would be significant cross elasticity of demand between the goods' (see chapter 3 and appendix B).

The Federal Court reasonably interpreted this to mean that if imports are not identical to Australian goods, then a decision about whether they 'serve similar functions' depends exclusively on the cross elasticity of demand. Since the majority of concession applications would not be granted if there were identical domestic goods available, for practical purposes the 'normal' meaning of this core criterion, as described in the passage quoted from the IAC (1982b, p. 123), was lost. (One participant's characterisation of what happened is presented in box 5.1.)

Box 5.1: **A Cat and Dog Act ?**

'The similar function test is not really there, because it is -- I liken it to this: it is like an act of parliament called the Dog Act, and it might deal with dogs, and it has all these regulations about keeping dogs on a leash, and other things, and then in the definitions it might say, "A dog is not a dog; a dog means a cat, "so in fact what it is talking about is cats. The point here is that the similar function test is not there; it is only identity of goods or cross-elasticity of demand'.

Source: CESA, Transcript p. 1792.

The Parliamentary debate on the CTCS legislation in 1983 foreshadowed some of the problems with the way this core criterion was defined. Senator Peter Rae said:

> I am concerned because the new test will be the degree of 'cross-elasticity of demand' between the imported and the Australian produced goods. When we begin to import into legislation what amounts to jargon, we are starting to go down a track that we may one day regret taking. The term 'cross-elasticity of demand' may be of significance in economic debates between economists, or people who have the enthusiasm to pursue the jargon of economics. It is almost like returning to the practice of incorporating Latin maxims in our legislation rather than expressing it in words which may be understood by the average citizen. (Rae 1983.)

These words have stood the test of time. Indeed, not only the average citizen, but applicants and Customs itself have had difficulties in trying to work with the term. The IAC, in its review of two particular CTCO decisions, concluded:

> The requirement ... that Customs satisfy itself that there would be no significant cross-elasticity of demand ... can, in practice, only be applied qualitatively. ... it cannot be measured in prospective market situations or with respect to the closely specified goods which are usually the subject of CTCO applications. The best that can be done is to make a judgment about circumstances likely to pertain in the market place, taking into account all relevant available information. In the Commission's view, the wording of s. 269B(4) [and 269B(3)] now encourages confusion rather than precision in assessing whether goods serve similar functions. (IAC 1989a, p. 26.)

The difficulty of applying the cross-elasticity test has inevitably meant that it has not always been used. The Federal Court has understandably taken the view that it *should* be and this has (equally understandably) caused difficulties for those Customs officers charged with making the decisions. This was borne out further during the hearings. For example, one participant made the following observation on his firm's experience:

> ... we have gone to the trouble at times of presenting a very detailed cross elasticity demand analysis to the tariff concessions branch and they have just looked at the figure and the survey data and the equations we have put in and said, 'Well, we don't understand any of that. Sorry, we can't adjudicate on it.' (Cramb, Transcript p. 1806.)

The Law Council of Australia, in its submission, was also critical of the present legislative definition:

> One of the difficulties inherent in the present system is that the sole determinant of similarity of function is that of 'significant cross elasticity of demand between the goods' which is an economic test of the market place involving a number of academic considerations that Customs officers are not trained to deal with. ... Alternative criteria which are expressed in readily understandable English should be prescribed in legislation. (Sub. 64, pp. 8-9.)

The Council recommended that cross elasticity be replaced by a 'series of readily understandable criteria ... that can be used as guidelines for making the determination ...' (Transcript, p. 866).

The Government's proposed guidelines

A set of guidelines was in fact proposed by the Government (Customs 1989a). They are reproduced later in box 5.2. The Government intended to adopt these guidelines after passage of the Customs and Excise Legislation Amendment Bill (No. 4) 1989 ('the Amendment Bill'), which sought to delete the definitions of 'particular goods', 'goods serving similar functions' and 'capable of being produced in the normal course of business'. However, these parts of the Bill were rejected in the Senate in December 1989.

There was little comment on the guidelines in submissions for the initial round of public hearings. Customs said that the proposed guidelines originated in discussions with DITAC in which 'we were trying to get back to the intent of the 1982 IAC report' (Transcript, pp. 987-8). In its draft report, the Commission noted that the guidelines had indeed picked up some of the key phrases used by the IAC in describing what 'goods serving similar functions' means and seemed to provide a much improved basis for consistent decision making, particularly if used in conjunction with the IAC's illustrative case studies.

The majority of participants made no comment on this assessment in the draft report and thus might be assumed to have had no objection, or at least no strong objection. Of those who addressed the issue, however, about two-thirds expressed opposition to the proposals. There were two sets of arguments: those to do with the words (or concepts) used, and those relating to the replacement of legislative provisions with Ministerial directions. The Commission had the opportunity in the draft report hearings to explore the various arguments at length and has subsequently given considerable additional thought to these important matters in formulating its final recommendations.

It is appropriate to deal with the second set of arguments first, as they involve principles that go beyond the particular choice of criteria or guidelines.

Legislative or 'administrative' guidelines?

In the Amendment Bill, the Government proposed removing the definitions associated with the core criteria altogether and replacing them with Ministerial directions. In the Second Reading Speech it was observed:

> These definitions have proven to be a source of contention and have forced administrators to interpret the legislation more narrowly than the Government intended. (Simmons 1989, p. 2406.)

In the Senate, the Government argued that:

> We had set down the legal words to mean certain things, but we have found them not to mean those things. (Cook 1989, p. 4587.)

The vigorous debate in that chamber turned on both the appropriateness of the existing definitions and whether, if they were defective as it seemed, they should not merely be replaced with more appropriate ones.

> Are there not other criteria which could be set up and put into place far more simply than the large number of amendments sought in this legislation? Has consideration been given to other criteria that might not be open to woolly interpretation? (Coulter 1989, p. 4588.)

A number of those participants in this inquiry who addressed the issues favoured the use of administrative guidelines, generally on the grounds that it was impossible to be precise and comprehensive in legislation, and that Customs discretion should not be fettered by legalistic interpretations.

The Law Council, however, argued that such guidelines would 'lead to inconsistency in interpretation and application and commercial uncertainty for participants in the system' (Sub. 64, p. 3). Their interpretation was supported by others. Counsel for the CAIA argued:

> In my view, there is no reason, except for an inability to express what is desired, why [administrative] guidelines should be used. The practice ... appears to be a comparatively recent attempt to further emasculate parliamentary control, and prevent appeals to the courts. (Sub. 74, pp. D7-8.)

It became clear in the draft report hearings, however, that some critics of this approach had not appreciated the extent to which the guidelines as proposed by the Government were to be subject to scrutiny and control. This may be attributable in part to the term '*administrative* guidelines'. The Bill had in fact provided for Ministerial directions to be advertised publicly in the Gazette, to be tabled in Parliament, and subject to disallowance by either House.

The Commission had also said in its draft report that it was not opposed to the promulgation of guidelines by Ministerial directions provided that the Commission's other recommendation that the AAT be established was accepted. In

discussions with the Administrative Review Council (ARC) at the hearings, however, it became clear that the Federal Court would have had just as much jurisdiction over Ministerial directions as if they were in the Act.

The ARC's submission presented some compelling arguments in favour of the legislative route, which warrant being quoted at length:

> ... One purpose of an Act of Parliament is to provide all elements of the framework for the administration of a regulatory scheme such as the CTCS. All essential parts of the decision-making criteria should be contained in the primary legislation and not divided between the primary legislation and any subordinate instrument. Explanatory material can be included in other instruments but the central test for grant and rejection in a regulatory scheme such as the CTCS should be contained in the Customs Act itself. On this view the definitional material should remain in the Act and there should be a more concerted attempt to ensure the definitions are not ambiguous or otherwise inappropriate.
>
> The approach proposed in the draft report carries the following difficulties:
>
> - access -- users will be required to obtain two instruments, in addition to amendments to either of them, to understand the rules;
> - complexity -- where the central working parts of a legislative rule are in separate documents, interpretation is more difficult;
> - incompleteness -- if the guidelines were disallowed, this could leave the legislation silent on the meaning of concepts used in the Act; and
> - frustration of the parliamentary process -- where separate documents are used to state a rule the consequences of disallowance of guidelines may make disallowance impractical and thereby prevent meaningful parliamentary consideration of the guidelines. (Sub. 307, p. 5.)

The Commission is convinced by these arguments that any substantive interpretation of the core criteria should be *legislated.* In addition, the Commission accepts the ARC's view that such guidelines should be *non-exhaustive:*

> If this approach is followed, a list of factors to guide decision-makers should be included in the Customs Act itself ... Given that flexibility is needed in the administration of the system for CTCOs, the list should be an open list. (Sub. 307, p. 6.)

This should not of course preclude the administration from providing further explanatory material in the Customs Manual. But this document should contain only derivative and more superficial material having no legal status.

A 'market test' as the core criterion?

The second set of arguments had to do with the appropriateness of (a) the core criterion of 'goods serving similar functions' and (b) the proposed guidelines supporting it. On the first matter, a number of participants argued that 'goods serving similar functions' should be replaced by a 'competition' test. The logic of this position was approximately as follows:

- the present legislative scheme has made the current core criterion redundant in its `ordinary parlance' sense;
- all the weight is placed on `significant cross elasticity of demand', which the Court has essentially interpreted as whether concessional goods `compete in the market place' with Australian goods;
- this test is (conceptually) more in accordance with the objective of giving concessions where the tariff has no protective effect;
- therefore it would be better all round if a market-based test replaced `goods serving similar functions' and became the sole criterion for determining concessions.

It would be difficult to disagree with the first three steps in this argument. However, the concluding step ignores that `goods serving similar functions' was chosen in the first place precisely to avoid having to apply a competition or other market-based test. The sequence just described has occurred because `goods serving similar functions' has not been permitted in legislation to apply as the IAC had intended (and, presumably, as the Government itself had envisaged -- as evidenced by the 1989 Amendment Bill and the views of Ministers previously cited).

The Commission's concern is not primarily with the use of technical expressions, such as `cross elasticity of demand'. The fundamental difficulty is that the underlying economic concepts, even when expressed plainly and well understood, cannot be an operable basis for administrative decisions.

Participants' suggestions for market-based tests included: 'goods significantly competitive with the particular goods'; 'significant price competition'; 'compete in the same market'; 'substantial adverse effect on the market for Australian goods'; and 'demonstrable (negative) effect on the sale of locally produced goods' (see Appendix H). Arguments against the use of such tests were given by the IAC (1982b) as noted previously, and have been considered afresh by the Commission. The critical points are:

- none of the tests are directly observable -- they relate to a market interaction contingent upon the (future) removal of the tariff, reducing the scope for empirical assessments (the Commission saw no encouraging examples in this inquiry);

- decisions inevitably require subjective evaluation of the hypothetical responses of individuals;

- judgments also have to be made about the *aggregate* impact of individual responses -- very few concessions could be granted if no effect at all was permitted;

- it is necessary to decide what degree of market interaction would undermine the protective effect of the tariff (ie what is `significant', or `demonstrable', or `substantial'?);

- market-based tests also create an incentive for applicants to `overspecify' the goods they require, because the more narrowly the market is defined, the more chance there is of `demonstrating' that there would be negligible interaction with domestic production -- typified by the PVC foam blocks case discussed in IAC (1989a).

In addition, each of the above suggestions for a core criterion has particular difficulties of its own. For example, both `competition', and `market' are abstract concepts, requiring considerable definition, apart from guidance about how to judge whether the criterion, once defined, is satisfied. Competition can relate to the supply or demand sides of a market, and it has a particular meaning within trade practices legislation which is not appropriate in this area. Markets, as discussed later, rarely have neat boundaries and more commonly merge with one another. Indeed functionality is generally seen as the best way of defining the market relevant to a particular concession application.

The adverse effect tests are reminiscent of 'material injury' in the anti-dumping legislation. Customs and the Anti-Dumping Authority (ADA) have had considerable difficulty coming to terms with that elusive concept (ADA 1989). The number of cases is far greater in the concessions area and there would be the additional difficulty of dealing almost entirely with threat of injury, which is more elusive still.

In practice, as Customs has noted in a separate submission on '*Competition as the sole criterion for CTCOs':* 'the current system is operating on competition as the core criterion, although consideration is naturally given to functionality to help define markets' (Sub. 308, p. 4). That submission confirms the misgivings already expressed about the administerability of such a criterion. For example, Customs saw a need for price thresholds as a tangible device for making decisions according to the degree of competition. But while this would undoubtedly make administration easier once the price benchmark is known, there is no sound basis for choosing such key prices. Indeed the very approach assumes away the problem for which it is designed to deal -- that is, measuring price elasticity. It is relative, not absolute prices that influence substitution in demand and relative prices are a moving target.

The Commission can see no economic case for providing a concession to high price/quality items when items of lower quality and price are produced in Australia. Price and quality interact in a complex continuum. While there may be little or no direct market interaction between the extremes of this continuum, there almost certainly will be across ranges in between. Tariffs are set so as to be neutral with respect to quality differences. In part this is for ease of administration, but there is also economic logic in avoiding distortion of choice within a product range by altering relative prices. Indeed, one of the economic advantages of *ad valorem* tariffs over quantitative import restrictions is that the latter can result in an upgrading of the quality mix of imports, forcing domestic producers to stay in the low quality end of the market.

Some of the concessions already granted by Customs under the cross elasticity clause seem questionable. Customs provided the Commission with the details of one decision relating to secateurs, in which those with a 'by-pass action', or with 'top clearance groove' and 'moulded handles' were refused a concession, whereas those with the additional specified features of a stainless steel and/or teflon coated blade were prima facie gazetted (Sub. 285, Attachment A). This curious outcome

would presumably not have happened if Customs had been free to apply a commonsense interpretation of whether the goods served 'similar functions'. This and other examples provided by Customs (and other participants) suggest to the Commission that Customs is more likely to make decisions consistent with the objectives of the CTCS if it is not obliged to use and confine itself to market-based tests.

Improving the guidelines

The Commission's re-thinking of these issues thus reaffirms the IAC's position in opting for 'goods serving similar functions'. Properly interpreted, it encompasses all the situations in which concessions should be granted on theoretical grounds. While it lacks the theoretical rigour of an 'elasticity', the theoretical concept is in practice not administerable directly, so the comparison is irrelevant. 'Goods serving similar functions' is the best proxy available.

As noted, the IAC's approach was to illustrate how 'goods serving similar functions' should be applied and leave Customs free to do so, without formal legislative guidance. The Commission can understand how that may have been perceived by some as giving Customs excessive discretion. But this would have been constrained in time by Federal Court interpretation and it seems unlikely that any such interpretation could have caused difficulty comparable to that from the definitions that found their way into the legislation.

Nevertheless, legal history now dictates that something replaces those definitions. As stated earlier, the Commission sees this as being a (non-exhaustive) list of things to which Customs should have regard. Their purpose is to provide guidance about how broadly or narrowly 'similar functions' should be interpreted in particular cases -- so as to minimise the number of concessions refused which in theory should have been granted (because they would not undermine the Tariff).

Only a few participants commented on the substance of the Government's proposed guidelines, shown in box 5.2. The CAIA was opposed to the whole approach, as it preferred to retain the existing definitions. The Commission has already explained

why it sees little merit in that position. Others accepted the idea of having interpretative guidelines (though preferring them to appear in legislation), but differed about their content.

Box 5.2: **The Government's proposed guidelines for interpreting 'goods serving similar functions'**

(a) The fundamental tests of this phrase are whether Australian made goods are capable of fulfilling a similar function to the imported goods and/or whether the local goods and imported goods compete in the same market.

(b) The phrase is to be interpreted to encompass broad categories of demand. The specific product preferences of the importer are not relevant in determining whether goods serve similar functions.

(c) In consideration of alternative methods of performing 'similar functions' regard must be had to what is practical and realistic.

(d) The term 'similar' stresses the likeness between goods and implies that some differences may be overlooked.

(e) Where the goods under consideration have a number of uses, the general functions are to be taken into account as well as the specialist uses.

(f) The decision on how broadly 'function' should be interpreted must depend on the conditions prevailing in the markets for the goods concerned. If Australian production of a class of goods is widespread and relatively comprehensive, a broader interpretation is to be applied. If the production is very narrow and specialized, a concession is less likely to distort consumer choice, and a narrower interpretation is to be applied.

Source: Customs (1989a).

Some attention was devoted in the hearings to the first guideline. CESA's draft report submission took exception to it, arguing:

> It in effect says that 'function' and/or competition is the criteria. This is clearly most uncertain -- is it 'and', or is it 'or' in any particular case? What is the balance of 'function' as compared with 'compete'. (Sub. 278, p. 1.)

CESA went on to propose that the first half of the guideline be deleted, so that the 'deciding criteria is, as currently, price competition ...'

Under the approach of putting substantive interpretation in the legislation, it would in fact be redundant to include the first half of this guideline anyway. But retaining the second half has problems as well. First, using the expression 'the fundamental test' would seem to unnecessarily restrict Customs' discretion once again. More importantly, it would be requiring Customs to assess 'competition in the market', which it should not be obliged to do. Even placing it as just one test among others would make it no easier to apply as a test. That is why 'goods serving similar functions' was chosen -- to avoid that need. (In terms of CESA's analogy in box 5.1, what the Commission would like to do is to let the 'dog bark'.)

Nevertheless, those participants who expressed concern that a broad functionality test might lead Customs to refuse some concessions that would not erode tariff protection have a point. A competition test has the advantage of focussing attention on what is conceptually involved. But other guidelines should be able to do that, narrowing down the interpretation of 'similar functions', without bringing the problems associated with such a test.

The rest of the Government's guidelines in box 5.2 were taken almost word-for-word from IAC (1982b). They were clearly never intended to be inserted into legislation in that form -- though, as the ARC observed, as Ministerial directions they would have been scrutinised by the Federal Court anyway. The Commission lacks the skills to provide precise legal drafting suggestions and will confine its remarks to the principles, or 'heads of consideration' that should be taken into account in revising these guidelines.

- Reference in the *second guideline* to `broad categories of demand' was objected to by the CAIA on the basis that it should be left to the `applicant to determine how broadly or narrowly he wishes to describe his goods'. The Commission agrees with this view (see section 6.5) and considers the expression `broad categories of demand' to be potentially confusing in this respect. What it is really referring to is conveyed by the second sentence on the irrelevance of the specific product preferences of the importer, although `insufficient' would be better than `not relevant'. Just keeping that part should also allay some of the concern of North Broken Hill Peko Ltd that the ACS would `only consider applications on a quite broad functional basis instead of giving much needed and practical flexibility to the system...' (Sub. 277, p. 3).

- In effect this latter requirement is precisely what *guideline (c)* is intended to do, in stating that `regard must be had to what is practical and realistic'. Some participants rightly considered this to be a subjective notion (Subs. 286 and 299). Cramb saw it as nevertheless performing a useful role, in encouraging local producers and Customs to be more conscious of current market realities. The Commission agrees, given that it is just one among several guidelines. In its 1982 report, the IAC spoke of what is practical and realistic `in Australia today'; Cramb proposed adding instead the words `in the market place'. Perhaps a better way of focussing this guideline would be to ask whether it would be practical and realistic `to substitute a local product for the imported one'. This would help count out such combinations as `shovels and bulldozers' and reduce the prospect of concessions being refused for consumer goods that serve different functions.

- *Guideline (d)* merely defines the word `similar' and would add nothing to the substance of legislation, although it could be a useful reminder in the Customs Manual.

- *Guideline (e)* on taking account of the general functions as well as specialist uses of goods, was also considered to be superfluous by KPMG Peat Marwick, on the grounds that 'goods subject of the application must be tested against all goods produced locally for any use' (Sub. 286, p. 4). However, it would seem desirable to draw attention to this distinction as it has considerable practical importance. Tariff concessions granted on the basis of a particular user's function could obviously reduce protection to local industry where the goods serve broader functions as well.

- *The final guideline* in its present form is confusing, as it relates the choice of `function' to breadth of production. Recast in terms of use, rather than production, it makes more sense, but it is questionable whether it adds anything to the preceding guideline.

Given the legislative history, Cramb's suggestion for an additional guideline to the effect that `competition can occur between goods which are not identical or which do not fall within the same tariff classifications' is valuable. Such a guideline should relate to similarity of *function*, however, rather than competition.

Recommendations

While not offering precise legislative wording, the Commission emphasises the following principles with regard to the core criterion of goods serving similar functions:

- **`goods serving similar functions' should remain as the core criterion;**
- **but it should not be defined in terms of identity or cross elasticity as in present legislation;**
- **instead, Customs should have regard to a (non-exhaustive) list of considerations set out in legislation** (that is, Customs would be obliged to at least take these into account, but could consider other things as well);
- **the legislation should address the following:**
  - **the insufficiency of the specific product preferences of the applicant (importer) in determining whether goods serve similar functions;**
  - **consideration of whether it would be practical and realistic to substitute local product for the imported one;**
  - **consideration of general as well as specialist uses; and**
  - **recognition that goods which are not identical or which do not fall within the same tariff classification may serve similar functions;**
- **the Commission sees no benefit in including a market-based or competition-related test for which `goods serving similar functions' and the above guidelines are an administerable alternative.**

This would permit Customs to choose an interpretation of 'goods serving similar functions' that is based on its meaning in ordinary parlance and is appropriate to the particular goods in a concession application. Given the existing legislative scheme and court interpretations based on it, it is important that this fundamental requirement be clearly set out in legislation.

It should also be emphasised that under the legislative scheme proposed by the Commission, Customs should be able to take into account any information or analysis that is pertinent to its decision. (This could include elasticity estimates.)

It may be objected that, compared to existing legislation, this scheme provides excessive discretion to Customs. On the contrary, the Commission considers that the CTCS will prove unworkable unless it explicitly provides more discretion than currently applies. The Commission also considers that its external review recommendations (discussed later in section 7.1) will provide an effective discipline that decisions are taken on their merits, and are seen to be.

5.2 Capable of being produced in the normal course of business

This second core criterion is used in situations where the local manufacturer is not currently producing the item for which a concession order is sought, but claims to be able to do so. Its inclusion was justified by the IAC in the following terms:

> The Commission is of the view that produced or manufactured in Australia should also be considered to include situations where the local industry has the capability to produce the goods under normal Australian business conditions. Thus, if a product is normally manufactured to order in Australia, a local producer would not be expected to produce a prototype to demonstrate his capability to produce, even if the comparable product overseas is manufactured for stock. For goods which are regarded in Australia as 'stock' items, mere capacity to produce would not be regarded as sufficient. (IAC 1982b, p. 130.)

However the expressions 'capability' and 'normal course of business' seem to have raised as many questions as they answer.

Following the same scheme as for the interpretation of 'goods serving similar functions', the Government included a single legislative definition for interpreting this criterion: namely the preparedness of the intending local suppliers to accept orders in the normal course of business [s. 269B(7)]. A number of participants argued that this test was inadequate, as the only way of really finding out whether a manufacturer could do what he alleged was to place an order.

Cramb Consulting Group Pty Ltd suggested that judgment will always be necessary in interpreting 'normal course of business' and considered the Federal Court's 1988 judgment in *Amcor versus Customs* contains the most definitive interpretation (Sub.

133, p. 16). The CAIA suggested that the same judgment had largely resolved the interpretation of 'capability' (Sub. 74, p. 20). The judgment included the following statements:

> [It] is implicit in the requirement of preparedness to accept orders for particular goods in the normal course of business that the supplier has an ability in the normal course of business to attract such orders ... The supplier must be prepared to accept orders in a competitive environment and therefore to supply the goods of acceptable quality, at a competitive price, within a reasonable time and to comply with any other obligations placed upon suppliers of such goods in the normal course of trade.

Accordingly, an exceptional or extraordinary departure from the range and character of orders which the supplier accepted may imply ... that the acceptance of such an order was not in the ordinary course of business ... (Davies, Morling and Gummow JJ 1988, p. 20.)

Commenting on the interpretation, Ernst and Young suggested that s. 269B(7) be amended as follows to place greater onus on local manufacturers:

> For the purposes of this Part, a person shall be taken to be capable of producing goods in the normal course of business if, in the normal course of business, he has the *physical and technical capabilities* to accept orders for the supply of such goods that have been, are being, or are to be, produced by him within a *reasonable period* and at a reasonable, *competitive price.* (Sub. 32, p. 9.)

In the 1989 Amendment Bill, the Government had proposed deleting the legislative definition altogether and replacing it with interpretative guidelines issued as Ministerial directions (see box 5.3). The guidelines are basically in line with the IAC's 1982 views on how the 'capability to produce' criterion should be used.

Some participants expressed concern that the core criteria take no account of quality or safety (for example, Woodside Offshore Petroleum Pty Ltd, Sub. 61). This can be particularly difficult in cases where international standards require the use of equipment which local manufacturers are, in fact, unable to produce. While the Commission's proposals for the 'goods serving similar functions' criterion should reduce some of this difficulty under the CTCS, it considers that changes to the 'capability to produce' criterion are not warranted to address the problem. As discussed in the draft report, objective quality tests could be very expensive to administer. Instead, the matter of recognising standards should come under the scope of the By-law system.

At the draft report hearings, there was relatively little comment on the core criterion itself although there was general support for replacing s. 269B(7) with expanded guidance, and for including the new guidelines within the legislation.

Box 5.3: **The Government's 1989 proposed guidelines for interpreting 'capable of being produced in the normal course of business'**

(a) This phrase is to be interpreted in the light of ordinary Australian manufacturing practice. It includes situations where manufacture to order of the category of product within the industry is the norm in Australia. If a product is normally manufactured to order in Australia, a local producer would not be expected to produce a prototype to demonstrate his capability to produce, even if the comparable product overseas is manufactured for stock.

(b) For goods which are regarded in Australia as 'stock' items, mere capacity to produce would not be regarded as sufficient to refuse a CTCO.

(c) There should be a reasonable expectation that a local firm could produce the good with regard to factors such as past production performance and technical capabilities before this becomes a basis for rejecting a concession.

(d) Preparedness to accept orders will also be considered an indication of capability to produce goods in the normal course of business.

(e) Inability of local supply to meet demand fully, i.e., shortfall and fallshort situations, shall not constitute a basis for a CTCO.

Source: Customs (1989a).

There is little doubt that the expression 'capable of being produced in the normal course of business' requires interpretation. The Federal Court has provided an interpretation of the existing legislation, as just noted, and the Government has proposed replacement guidelines of its own (shown above). The Commission sees its role as clarifying the economic principles at stake in any legislative amendments. Consistent with its position on interpretation of the 'goods serving similar functions' criterion, the Commission considers that any substantive guidelines should appear in the legislation itself, with more derivative material in the Customs Manual, and that the list of considerations should be an open one.

The rationale for a 'capability to produce' clause is to prevent concessions being given which reduce protection to existing production activities. As the IAC suggested, production activities can involve making things to order, as much as making things for 'stock'. (Perhaps the best example is industrial machinery, the particular characteristics of which often depend on the requirements of the purchaser.)

The underlying question, as with the system more generally, is whether Australian firms would have their tariff protection eroded if concessions were granted. If production of such an item goes beyond the firm's activities -- that is, it has never produced goods of that kind to order before, it has no obvious capability to produce them, and/or it has not advertised for such business -- then the firm could hardly be affected by the loss of the tariff (a tariff it had never used). Refusing a concession in such circumstances would amount to retaining anticipatory, rather than actual protection, and would be inconsistent with the present role of the Tariff.

Some implications of this for the Government's 1989 proposed guidelines in box 5.3 are as follows:

- The first *two guidelines* understate the role of the `made to order' nature of the goods relevant to the capability criterion. This criterion applies only to such situations, and this could be stated in one guideline. [The point in guideline (a) about prototypes is obvious when seen in this light.]

- *Guideline (c)* seems consistent with the main considerations of the Federal Court in the 1988 judgment. The absence of such a test would mean having no basis for evaluating claims of capability to produce and, inevitably, refusing to make some CTCOs which would have no effect on local producers.

- Preparedness to accept orders *[guideline (d)]* should never be a sufficient condition in itself for rejecting a concession -- even with the necessary qualification that such preparedness should obtain at the time the CTCO application is made. The existing legislation speaks of preparedness to accept orders *in the normal course of business,* which conveys something more. But this is not a helpful definition as it again begs the question of what that phrase means, as the Amcor judgments show.

- Fluctuations in supply and demand conditions which give rise to fall-short and shortfall situations *[guideline (e)]* are a normal feature of any market and do not warrant concessional entry of imports under the CTCS. Moreover, concessions available under such conditions would not be consistent with the reduced grounds for revocations proposed by the Commission in section 6.4.

As already noted, the Government's 1989 proposed guidelines do not extend to consideration of price, quality or timeliness. Cramb regarded these features as `absolutely essential to the assessment of capability to produce in the normal course of business, since they are factors "normal" in making purchasing decisions' (Sub. 279, p. 5). North Broken Hill Pty Ltd suggested that a guideline of this nature would be particularly important for very specialised equipment for major projects (Sub. 277, p. 4). It is difficult to disagree with this in principle, given that concessions should only be refused where the local firm has an ability to attract orders.

However, in practice it is extremely difficult to know on the basis of such considerations whether the tariff effectively serves a protective role or not. That is the basis for using a functionality test, as discussed previously. It is significant that the Amcor judgment itself, while referring to these factors, was in fact based more on considerations covered by guideline (c) in box 5.3. The Commission therefore stands by its view, and that expressed by the IAC in 1982, that guidelines specifically dealing with price or quality would not be helpful.

In its submission on the draft report, Nufarm Ltd considered that if guideline (c) could contain the word `reasonable', then `a reasonable period of time' should also be amenable to inclusion in the guidelines (Sub. 297, p. 6). The Commission considers that this concept could be helpful. While time is a continuum -- and it is difficult, therefore, to know where to `draw the line' -- it is at least clearly measurable, unlike `price/quality'. A time-based test would play a useful role in sorting out those firms that accept orders, but cannot deliver until they have geared up for what is essentially a new activity, contrary to the objectives of the system under the current role of the Tariff. The test would also help prevent such problems arising under the scheme for revocations proposed by the Commission (see section 6.4 and chapter 10).

Recommendation

The Commission agrees with participants that 'capability to produce in the normal course of business' is not adequately defined in the legislation. It recommends that **the existing definition should be replaced in the legislation by a series of (non-exhaustive) considerations to which Customs should have regard.** The basis for these should be:

- **the capability test applies only to those goods which have to be made to order in Australia;**
- **preparedness to accept orders at the time of the CTCO application should not be sufficient to refuse a concession;**
- **there should be a reasonable expectation that a local firm could produce the good and supply it within a reasonable period of time, having regard to factors including its past production performance and technical capabilities; and**
- **inability of local supply to meet demand fully should not constitute a basis for granting a CTCO.**

5.3 Discretionary criteria

In addition to the core criteria, which are mandatory in that an application must be tested against them before a concession can be granted, Customs may at its discretion decide not to grant a concession if it finds that:

- there would be *a substantially adverse effect* on the market for any goods produced in Australia; or
- it would not be in the *national interest.*

Both criteria were added to the legislation at the suggestion of the IAC, which noted:

> The Commission regards these further considerations as crucial if any substantial reduction in the potential for conflict between the effects of by-law and assistance decisions is to be achieved. (IAC 1982b, p. 122.)

What the IAC was hoping to introduce into the CTCS through these provisions, was a means of preventing untoward effects that the system could otherwise have on resource allocation because of the absence of economy-wide considerations from the core criteria. In practice both provisions have been seldom used and basic issues raised in the inquiry are (a) whether they are capable of being administered as intended, and (b) whether they are still worth having.

Substantially adverse effect

Although its intent is not spelt out in the legislation, the 'substantially adverse effect' provision was designed to cover the case where inputs not serving similar functions can be used to make products which are closely competitive, and where there would be an erosion of protection for an existing industry were a CTCO to be made for one of the product's inputs. The IAC observed that concessions:

> ... can provide a substantial market advantage to a product incorporating an imported intermediate component or material relative to a product fully produced in Australia where the cost of the intermediate is a large proportion of the total cost to make and sell. The market for various forms of packaging provides many examples of this type. (IAC 1982b, p. 128.)

It gave the example of a concession granted on polyethylene-coated paperboard, which was alleged by glass bottle manufacturers to have reduced their share of the milk container market.

The IAC's arguments for having the criterion remain valid in principle. The objective of the CTCS today is to give concessions only where they do not erode existing tariff protection -- departing from the program of general tariff reductions. While the effects to which the criterion relates are indirect, they could in theory be of greater significance sometimes than the direct effects of granting a concession in error.

In practice, however, the likelihood of this happening is considerably reduced now compared to when the IAC made its 1982 report. As already noted, tariff levels are generally much lower and less disparate than they were. In most cases, the removal of a tariff of 15 per cent or less (the highest rates on most inputs by 1992, the average being around five per cent) is unlikely to provide a substantial price

advantage for the recipients relative to other domestic producers (although it may significantly raise their effective rates of protection). Nevertheless the prospect cannot be ruled out. The clause has continued to be invoked, if only rarely, in recent years.

It was largely on the basis that the clause may be of some continuing, though diminishing, relevance that the Commission's draft report suggested that it should not be deleted, and gave support to the Government's proposal to provide some guidelines for interpreting it (shown in box 5.4).

Box 5.4: **The Government's 1989 proposed guidelines for interpreting 'substantially adverse effect '**

(a) This clause may apply to activities not closely related to the activities for which a concession is sought, and can apply to components of the goods for which concession is sought.

(b) It is expected that consideration of the substantially adverse effect criterion would normally be at the request of local manufacturers in response to concession applications or an existing concession order. However, if the ACS is aware that substantially adverse effect may result from the issue of a specific CTCO, they would be expected to advise the appropriate manufacturers.

(c) Indicators which may be relevant in seeking to determine adverse effect include a decline or likely decline in the market available to Australian products, or in production, sales or profits.

(d) Adverse effect by itself is not sufficient cause to refuse or revoke a concession. Whether the effects are 'substantial' will vary from case to case.

Source: Customs (1989a).

While there was little dispute or even comment on this recommendation in subsequent submissions and hearings, considerable attention was given to the general question of appropriate criteria for the CTCS. The Commission has concluded that 'substantially adverse effect' (together with other tests based on market interaction) would be inappropriate as a *core* criterion, for reasons already explained. The question now arises as to whether it can nevertheless play a useful role in this context.

The Pharmaceutical Industry Group considered the 'substantially adverse effect' criterion to be largely redundant. The Group said that they had difficulty imagining any circumstance where there could be no significant positive cross elasticity and yet an adverse effect on a market for any goods made in Australia, and recommended that the criterion be deleted (Sub. 86, pp. 23-7). The Commission has recommended the removal of the cross elasticity test, however, and the core criteria would not encompass indirect effects. The Australian Coal Association also recommended the test be removed, on the grounds that it is 'invalid', vague in its application and of questionable value, and it conflicts with the core criteria (Sub. 268, p. 4).

On closer examination 'substantially adverse effect' is indeed vague as a concept and very hard to apply. Its inclusion was justified by the need to avoid (indirect) tariff erosion. The adjective 'substantial' was presumably chosen because any concession is likely to have some indirect effect -- it could never be ruled out. But what degree of adverse effect corresponds to the objective of avoiding undermining somebody's tariff protection? To return to a point made previously, there will be a continuous range of 'adverse effects', however measured, from zero upwards. There is no answer to the question as to where, in principle, the line should be drawn. This makes the test very hard to apply.

Then there is the issue of how an 'adverse effect' should be measured. Customs submitted that declining or predicted reductions of sales or profits are indicators which may be relevant in determining whether an adverse effect has occurred or will occur. It suggested that such indicators are difficult to establish prospectively, and that a further problem lies in determining whether an adverse effect is 'substantial'. Customs advocated the gazettal of Ministerial guidelines to overcome its administrative problems and to aid transparency (Sub. 155, p. 24). The guidelines, shown in Box 5.4, are not intended to be strict criteria which must be met before a CTCO could be granted or refused, but to provide an indication of relevant factors for consideration.

The Commission considers it unlikely that these guidelines could resolve the difficulties Customs faces in applying this test. *Guideline (c)* is the key one and the only one that could usefully be drawn on in legislation. This would then be comparable to the way 'material injury' from dumping is treated in s. 269TAE of the Customs Act. But that approach has done little to clarify the 'material injury' concept, and Ministerial directions based on an ADA (1989) report were found necessary to provide further clarification. As already noted, the concept remains elusive despite these efforts to pin it down.

For retrospective decisions, where a manufacturer discovers some time after a concession is granted that he is being adversely effected, the only concrete indicators are production and sales (value). But even here there is the major difficulty of distinguishing cause and effect. Production and sales can decline for various reasons other than a distant tariff change and disentangling the separate impact of concessions would be difficult even for an applied economist. When decisions have to be made *prospectively*, as would be the case at the time of a concession application, the difficulties multiply.

These sorts of problems can be overcome in the core criteria by using a 'functionality' test. But that option does not really exist here, because what is involved are goods which do *not* serve similar functions to those for which a concession is sought.

The IAC recognised these difficulties, but its concern about the significance of indirect tariff erosion, given the much higher tariffs prevailing at the time, nevertheless led it to recommend that the clause be introduced. To make it more manageable for Customs, however, the IAC also recommended that it not be a mandatory test and that Customs not seek to apply it except in response to claims from local manufacturers.

While the rationale for a 'substantially adverse effect' test remains consistent with the CTCS in principle, the Commission's judgment is that its relevance has diminished to the point of marginality with the decline in tariffs. In these circumstances, the considerable conceptual and practical difficulties in applying the test in any constructive way suggest that it is no longer worth having.

The Commission accordingly recommends that the 'substantially adverse effect' provision be removed from the CTCS.

National interest

In proposing the inclusion of a national interest clause in its 1982 report, the IAC noted that there could be occasions where an application for a concession may meet the core criteria, but where granting it would clearly be contrary to (other) objectives of industry policy. The IAC (1982b) gave the example of an already highly assisted activity seeking a concession on a major input. It anticipated that the criterion would be seldom invoked, and then mainly as a result of reports by the IAC itself.

In practice, only one CTCO application has ever been refused on national interest grounds (carbonising base tissue from New Zealand), and this for the quite different reason that the ANZCERTA treaty precluded it (Sub. 155, p. 19). The fact that the clause has never been used as the IAC intended is, on reflection, unsurprising. Customs is not well placed to make judgments involving economy-wide considerations, especially where they necessitate overturning decisions which meet all the legislated criteria.

Since December 1989, the national interest power has been vested in the Minister (one of the few amendments to be passed) and that would seem more appropriate. However, there remain considerable difficulties in the way of invoking the clause as the IAC had intended. A judgment about whether a particular concession would be contrary to the broader national interest would need to be informed by a public inquiry, especially when the stakes are high for the applicant. However, with tariffs getting lower on average each year, it is becoming less likely that the economy-wide gains from refusing an individual CTCO would warrant the cost of holding such an inquiry. And information on which to base such a judgment is no longer likely to emerge as a by-product of a somewhat broader Commission inquiry as, in the present tariff policy environment, industry-specific inquiries of that kind are not commonly undertaken.

Participants generally expressed no strong views about what should be done with the national interest clause. CESA and some others recommended that the provision be dropped but that, if retained, it should be made symmetric by also allowing the *making* of CTCOs in the national interest, and that Customs should be given this power (Sub. 60, p. 40).

Widening the national interest provision to override refusals would have the virtue of consistency, but it would face the same practical difficulties and would further complicate the administration of the CTCS. The Commission favours making the System simpler. (The By-law system remains a vehicle for the *granting*, on national interest grounds, of import concessions that do not meet the CTCS criteria -- see Part III.)

Rather than extend the 'national interest' provision, therefore, the Commission recommends that the clause be removed altogether.

In recommending the removal of both optional criteria from the CTCS, the Commission is not suggesting that the IAC (1982b) had advocated the wrong approach at that time. Since 1982 the role of the Tariff has changed significantly, and this must have implications for the CTCS. The Commission's judgment is that any adverse (indirect) impacts from the making of individual concessions are now of such minimal consequence, with tariffs declining to historically low levels, that the considerable administrative difficulties they present are not worth the effort.

6 IMPROVING THE COVERAGE OF THE CTCS

In addition to the central criteria just discussed, the CTCS contains a number of important provisions relating to its 'coverage'. These include such matters as what local firms it protects, what goods are eligible for CTCOs, and when concessions should be revoked -- the subject of this chapter.

6.1 Definition of 'made in Australia'

The core criteria of the CTCS refer to goods which are made in Australia. It is thus necessary to have a workable definition of local production so that the system can be administered. Under existing arrangements, goods claimed to serve similar functions to items for which concessional entry is sought must:

- have at least 25 per cent local content by value of the factory or works cost; and
- be made using at least one substantial process in Australia.

Recognising that some rule is necessary, participants' submissions about defining Australian production centred on the local content rule, but also addressed whether other criteria, such as market share or `commercially sustainable production', should be included.

Local content

For the purpose of defining local production, the selection of a local content level at anything less than 100 per cent is necessarily arbitrary. Whatever level is selected will allow scope for dispute as to whether it is too high or too low and, for those goods at the local content margin, eligibility to qualify as `made in Australia' will change as input prices and exchange rates change. Compliance with a local content rule is difficult to monitor.

Many participants commented on this aspect of the CTCS, and most argued that the 25 per cent level is too low and suggested that it be raised. Their arguments centred

on what they regarded as the undesirability of low value-added, 'screwdriver' assembly operations. The Commission was told that some firms have exploited the 25 per cent rule by deliberately arranging their affairs to achieve it, and then blocking other producers' access to competing imports at world prices. Monsanto Australia Ltd submitted that the minimal content rule encourages local producers to restrict investment in local manufacturing, to the detriment of all other industry participants, including those with substantially higher local content levels.

Du Pont (Australia) Pty Ltd submitted that it is essential to ensure the system is not held to ransom by 'backyard' operators lacking substantial manufacturing facilities and capital investment (Sub. 141, p. 7). Monsanto considered that manufacturers with minimal capital investment can exert a disproportionately high level of influence and cost upon the importing community and consumers (Sub. 181, pp. 4-8).

Clearly, whatever level of local content is chosen, there will be scope for firms to adjust their production or investment strategies accordingly. There is no general economic justification for preferring high over low local content for a given tariff regime. There could be cases, for example, where assembly operations are an appropriate and efficient use of resources.

Many participants suggested that the local content level specified in the CTCS be raised to 50 per cent. It was put to the Commission that this would bring the CTCS into line with the rules of origin in s. 151 of the *Customs Act 1901* under the Australian trade agreements with New Zealand, Papua New Guinea and the Forum Islands, and the preference system for imports from Developing Countries. For example, Kawasaki Motors Pty Ltd stated that it seems logical that the same reasons which dictated the selection of the 50 per cent figure in respect of trans-Tasman trade should similarly be introduced into the CTCS (Sub. 163, p. 5). (A 25 per cent rule applies in Australia's anti-dumping legislation, but that was apparently based on the CTCS.) Few participants wanted the present local manufacture rules to remain.

The Commission's draft report argued for no change to the scheme's benchmark level of local content. It was apparent that the reasoning failed to convince some participants as many continued to favour a 50 per cent rule. For example, AMIC stated that:

> Where mistakes have been made in the past it is appropriate to take remedial action. The CTCS local content rule is clearly such a situation (Sub. 260, p. 6).

While AMIC is clearly of the view that the 25 per cent rule was a mistake, the Commission believes that as *any* level of local content would constitute an arbitrary rule; there is no right or wrong figure.

Denis Gilmour (Sub. 296, p. 1) suggested that New Zealand content be deemed Australian content for the purposes of the 25 per cent rule. This is beyond the scope of this inquiry and is more a matter for negotiation between the two Governments.

Determination of Local Content

In response to the draft report, some participants sought to increase the local content requirement through changing the current approach to the derivation of factory costs and overhead expenses. Nufarm's view was that the value of materials should be subject to more stringent definition and administration by requiring that input materials' origins should be subject to the same definitional requirements as the product for which a CTCO is sought (Sub. 297, p. 9).

For purposes of illustration, assume the output of a firm is books and the primary input, paper, is sourced domestically but made using an imported paper-making machine. Under current rules, Customs would be satisfied that the paper was local content. Under the proposal put by Nufarm, not all of the value of the paper would be ascribed as being local content. The Commission is not attracted to this proposal. It would make the CTCS much more complex, especially where firms are using several inputs. Moreover, input-output information is only published infrequently and at a higher level of aggregation than individual CTCO applications.

APEA (Sub. 276, p. 2) and Woodside Offshore Petroleum Pty Ltd (Sub. 288, p. 4) requested either an increase in the local content rule to 50 per cent or that the Australian overhead component be withdrawn from the determination of local content. Nufarm, which was also concerned that firms could rearrange expense items, requested a more stringent definition of factory cost -- particularly factory overhead expense.

The Commission notes that s. 269S of the Customs Act allows Customs to determine how firms (particularly multiproduct firms) are to determine works cost, factory overheads and the value of labour and materials of Australia (see Appendix B2), but no such directions have yet been gazetted. In view of the concerns expressed by witnesses in relation to the present requirements concerning the level of Australian content, there may be merit in Customs reviewing its current practice to ensure that the intent of the legislation is pursued.

Substantial process

There was less comment on the 'substantial process' provision which accompanies the local content criterion. It gives Customs some discretion in determining whether or not goods are 'made' in Australia, although Recochem (Australia), the company which indirectly led to the provision (see IAC 1977 and 1982, p. 77), stated that Customs had yet to exercise its judgment on what constituted a 'substantial process' (Sub. 166, p. 5).

APPM said that Customs generally adopted a relatively liberal interpretation, and suggested that the substantial process rule be amended to exclude simple conversion operations (APPM, Sub. 116). The rule helps to prevent abuse of the System at the existing level of local content.

Market share

Some participants suggested that the market share of a local manufacturer should be taken into account in assessing whether it qualifies as an objector to a CTCO application. At present a firm supplying less than one per cent of the Australian market can block a concession worth many times the value of the firm's gross output (see box 6.1). For example, Monsanto Australia Ltd stated that there have been instances where local manufacturers have manipulated the CTCS by producing at one to two per cent of capacity, representing only 0.00001 to 0.005 per cent of the domestic market. It suggested that a demonstrated capacity to produce *one* unit of product effectively satisfies the CTCS definition of Australian production.

Box 6.1: **The market share problem**

In its submission of 13 June 1990 (Sub. 60), CESA mentioned the one Australian, single employee, audio turntable producer who does all his own work to produce a few dozen turntables each year. However, while almost 100 per cent of the market is met from imports, his existence and objection to a proposed CTCO resulted in Australian importers paying over $560 000 in 1989-90 in tariff duty (under Tariff Item 8519.39). CESA made it clear that this amount far exceeded the value of the turntables made by the local producer.

Monsanto noted that there is no requirement in the CTCS that Australian-produced goods be made on a 'commercial' basis. The company suggested that, in order for goods to be properly and fairly described as being produced in Australia, production levels must be 'commercially sustainable', relevant to capacity, and be related 'realistically' to market demand (Sub. 181, pp. 4-8, and Sub. 294). Apart from the market definition problem (discussed below), the Commission considers that Monsanto's proposals would make the CTCS complicated, and slow and expensive to administer. Because of the shifts in costs and in the demand for many products which can occur over relatively short periods of time, a CTCS using this rule would also be unlikely to produce consistent results.

Cramb (Sub. 279) and Rover Mowers (Sub. 287) favoured the establishment of an 'insignificant supply' concept so that only companies with more than an insignificant role in the market could participate in the consideration of applications for a concession. AMIC simply advocated that firms should achieve a 10 per cent or a $1 million market share threshold to be eligible to object to the grant of concessions.

It should be noted that there is no economic basis for making judgments about an appropriate market share threshold for local producers. The cost of a given rate of tariff protection to the community as a whole does not generally rise as market share of domestic producers falls.

A further difficulty with these proposals is that they provide no guidance on the problems of defining 'the market'. Indeed, there are significant problems now with the interpretation of 'the market' in the CTCS (see box 6.2). Rules based on market share, or even absolute sales value, are difficult to administer because of problems

of defining the precise boundaries of a market, and of fluctuations in market size and share over relatively short periods of time. Such criteria would certainly be more difficult to administer than the current 25 per cent and substantial process rules and, as noted in section 4.4, a principle for modification of the CTCS should be simplicity in administration.

Box 6.2: **The market definition problem**

In 1985, Davies Craig Pty Ltd applied for a CTCO for DC flat electric motors (12-27 Volts, up to 150 Watt output) for use in the manufacture of motor vehicle cooling fan assemblies. The company manufactured automotive air conditioning and engine cooling fans and shrouds in Australia, using DC electric motors which were mainly sourced from abroad. Customs refused to make a CTCO in this case, and the decision was eventually reviewed by the IAC. One of the issues in that inquiry was the delineation of the market for which the concession was sought. Davies Craig maintained that it supplied flat motors to the auto air conditioning market, the aftermarket, and the export market, all of which it claimed were separate from the original equipment market supplied by the local producer of conventional long electric motors. Davies Craig maintained there was virtually no cross-elasticity of demand between these markets.

The existence of the Government's Passenger Motor Vehicle Manufacturing Plan was cited as evidence of general recognition of the separate markets. Components imported for use as replacement parts or for aftermarket purposes are ineligible for concessional entry under the PMV Plan By-law (Item 41A). This administrative delineation of markets had an obvious effect on the treatment of Davies Craig's imports, but it could not be used as a basis for allowing a CTCO. The IAC found that the issue to be addressed was whether a reduction in the price, equivalent to the tariff duty, of imported flat motors relative to the price of Australian-produced conventional motors would result in significant substitution of the imported flat motors for the domestic product.

Source: IAC (1989a), pp. 19-24.

Assessment

The Commission has not identified a better criterion than some level of local content for the purpose of determining whether goods are made in Australia. It is not convinced that alternative or supplementary criteria such as market share would be an improvement, but recognises that the substantial process provision helps to prevent abuse of the system at the existing level of local content.

The setting of 25 per cent as the local content threshold for defining Australian production in the CTCS was an arbitrary decision, at least by any economic criterion, and any change to that rate would also be arbitrary. Had this inquiry been concerned with establishing rather than reviewing the CTCS, the Commission may have come up with a different number. However, as the scheme has been operating for some time with the 25 per cent rule, there could be no benefit in changing to another arbitrary rule at this stage.

A pattern of production and imports has developed under the 25 per cent rate and any change would incur adjustment costs. If the rate were increased to 50 per cent as suggested by participants, many existing manufacturers would not qualify as objectors to CTCO applications even though they now qualify under the existing 25 per cent rule. In effect they would lose the protective effect of the existing tariff, contrary to the general approach of the scheme -- that it will not be detrimental to existing local producers.

The Commission recommends that the existing rules for local content and substantial process should be retained without change.

6.2 Exclusions

A concession may not be granted for goods listed in the 'Exclusions Schedule' to the *Customs Regulations* (see appendix B4). Under the Excluded Goods Schedule (EGS) whole classes of goods are declared ineligible for CTCOs.

The Schedule was established following the 1982 IAC inquiry into the Commercial By-law System. Its purpose was to improve the administrative efficiency of the concession scheme. It was intended that the list of excluded goods would comprise certain classes of goods for which concessional entry had been consistently rejected because Australian production allegedly provided a continuum of products from

which consumers could choose. It appears that the EGS has been loosely interpreted as being mainly applicable to 'consumer' goods.

The Schedule also provides a mechanism for excluding goods affected by other industry policies, such as goods to which local content schemes and the like apply.

Administrative experience

It is not clear in practice that the introduction of the EGS improved the administrative efficiency of the concession scheme. It certainly increased its complexity. Most Items excluded from concessions have exceptions to the exclusions so that now there are provisions for:

- tariffs;
- concessions to tariffs;
- exclusions from concessions to tariffs; and
- exceptions to exclusions from concessions to tariffs.

The EGS has created some anomalies. For example, in its 1988 inquiry into Precious Metals, Gems and Jewellery, the IAC was told that certain diamond blanks used in industrial applications were ineligible for a CTCO because of an exclusion which applied to costume jewellery.

In the present inquiry, LDS General Services Pty Ltd, an importer of special types of religious undergarments, complained of its inability to seek a CTCO because of the EGS, and provided evidence which it claimed demonstrated that the scheme was being administered selectively (Sub. 121). LDS contended that the current system is inequitable, unworkable and not administratively efficient.

In its submission on the draft report, Customs responded by drawing attention to the Government's proposed guidelines for interpreting `goods serving similar functions', which state that specific product preferences of the importer are not relevant in determining whether goods serve similar functions. Customs indicated the existence of the EGS saves a dispute being entered into on such matters. (The effect of the present legislation, however, is to require a test based on cross-

elasticity of demand, which would presumably be more favourable to LDS). In a broader comment, Customs claimed that, given the present coverage of the EGS, the number of anomalies is minimal (Sub. 285, p. 5).

Participants' views

Participants' views on whether there should be an EGS and the rationale for such a provision varied widely. Customs argued for its retention and extension, and provided the Commission with a list of more than 100 additional products it wished to be considered for inclusion in the EGS. The list is based on operational difficulties it has had in recent years (p. 31 and appendix M of Sub. 155).

Customs said it had difficulty in applying the core criteria for the CTCS to what it described as 'consumer goods', because of its view that there existed a broad consumer market in which all goods compete for the consumer dollar. Under this interpretation of a market, a diverse range of goods are essentially considered to be substitutes. Customs' view is reflected in its list of proposed additions to the EGS, which includes such diverse goods as microwave ovens, hair dryers and turntables. However, that list also contains some items for which concessions have already been made, presumably on the basis of the absence of competition with Australian goods.

Customs reiterated its view that the EGS should be retained, in its submission on the draft report, because of the administrative problems abolition would generate (Sub. 285, pp. 4-7). Customs said there have been no problems in implementing and maintaining the EGS and the present avenue for changing the listed goods has proven adequate.

North Broken Hill Peko believed that the Commission had understated Custom's concerns that the abolition will lead to a wave of applications and increased conflicts (Sub. 277, p. 4). Similarly, Calsonic said that abolition 'may increase the administrative burden on the already overloaded Tariff Concessions Branch within the ACS' (Sub. 291, p. 6).

Although it prefers the retention of the EGS, Customs suggested that the objectives of the EGS could possibly be met by an alternative approach which would pre-empt the initial spate of applications expected on removal of the EGS. This would involve Customs using its existing power to deem applications for CTCOs and then

refusing them. Internal Customs reviews and external appeals to the AAT would then be possible (see sections 7.1 and 7.2).

Participants in addition to Customs advocated the retention of an EGS. Crown Equipment Pty Ltd asked that it be retained and widened to help achieve what it saw as the primary purpose of the CTCS, namely to assist local producers, and not aid 'importers' (Sub. 12, p. 33). The Australian Chamber of Manufactures and the Confederation of Western Australian Industry, in submissions on the draft report, advocated retention of the EGS as they considered it was never intended that consumer goods be covered by the CTCS (Sub. 263, p. 4; Sub. 317, p. 1). Neither position accords with the principles underlying the scheme.

A number of participants supported the dismantling of the EGS. Among them, CESA and Hudson O'Leary & Associates rejected Customs' view of a broad consumer market and advocated that access to the CTCS should be open to all products and all industries. The general case in favour of abolition was supported by the view that if the CTCS criteria were more effective and the system soundly administered, an EGS would be rendered superfluous. (See also PATEFA, Sub. 281, p. 7.)

Assessment

The reasons for an EGS lie somewhere between administrative convenience for Customs and a leaning to exclude consumer goods from concessional entry. No combination of these reasons is in accord with the policy guidelines under which the Commission operates. Indeed, the existence of the EGS is directly at odds with the Commission's obligation to recommend reductions to regulation of industry where this is consistent with the social and economic goals of the Commonwealth Government, and its obligation to recognise the interests of consumers.

The Commission does not accept Customs' view that all goods which compete for the consumer dollar are so closely substitutable that they fall within a class of goods, none of which would qualify for a concession under the appropriate CTCS criteria. That is, it is not valid to speak of diverse household appliances, say, as all serving similar functions; it should be practical and realistic to substitute one for the

other. However, the Commission acknowledges that, in the absence of the EGS, difficult decisions would have to be made by Customs in some individual cases, especially under the current legislative criteria for granting concessions.

There is no obvious reason why the CTCS should be quarantined to production inputs. The rationale for the scheme is broader than that, being based on the avoidance of any unnecessary tariff imposts where they serve no protective purpose. In many cases there would be consumption benefits in extending the application of the scheme.

The EGS adds a further discriminatory element to Australia's tariff administration. It discriminates against products which might otherwise have gained a concession, and it confers a special benefit on some manufacturers in that it insulates them from even having to respond to a CTCO application. The EGS has generated its own set of administrative difficulties and there has been dissatisfaction with the procedures for changing the list of exclusions. The schedule of products excluded, which appears to be ad hoc and arbitrary, has created anomalies in the Tariff.

An EGS is neither necessary nor desirable to support other industry assistance arrangements. A properly legislated and soundly administered CTCS should be adequate for that purpose.

The Commission recommends the abolition of the EGS and that all goods be eligible for consideration for CTCOs.

This recommendation does not presume that all the goods under the current EGS would or should be accorded concessional entry, but removing the bar to consideration of such concessions will allow all imported goods to have an equal opportunity to be tested against the scheme's criteria. In some cases, local production will differ from that which led Customs to recommend inclusion of particular goods on the EGS (prior to inception of the CTCS). In other cases, the changes recommended to the core criteria of the scheme may permit concessional entry of certain goods now excluded from consideration.

Removing the EGS might lead to an initial spate of CTCO applications. However applying for a CTCO is not costless, even if no intermediaries are involved. And a few test applications would indicate to importers whether a concession application is likely to succeed. The Commission would expect that Customs would take

sensible and proper administrative steps to advise intending applicants of the new ground rules and, to that end, Customs might usefully revise and extend its advisory literature.

The alternative suggested by Customs, of gazetting descriptions of goods for which applications for CTCOs have been deemed to have been refused, is not favoured by the Commission as it would be arbitrary and could not cater for the sorts of issues that individual applicants could be expected to raise with Customs on particular matters.

6.3 End-use provisions

Background

The Commercial By-law system which preceded the CTCS contained many concessions which were specific to a particular use or even to a nominated user. Typically they would take the form '... for use in the manufacture of ...', and in order to ensure compliance with the end-use condition, Customs could require the user to comply with security arrangements, hence the expression 'end use under security By-laws'.

In the 1982 report, the IAC recommended that the new concession system to replace Commercial By-laws make no provision for end use. Its arguments were based on the economic effects of such by-laws and on administrative considerations. Briefly, the IAC saw end-use concessions as having a high potential to erode assistance and encourage a less productive industry structure, with this being compounded by significant administrative difficulties and high policing costs.

The IAC (1982b, p. 154) recommended, and the Government accepted, that further requests for end-use concessions be dealt with separately from the CTCS as requests for Policy By-laws, to be subjected to IAC inquiry and report.

The IAC suggested that existing end-use by-laws should be handled by allowing beneficiaries the opportunity to justify their concessions under the CTCS criteria. For the two-year transition period to the CTCS, which ended in mid-1985, Customs estimated that about ten per cent of 'end-use, under security concessions' were

considered for conversion to CTCOs with rewording, and that the remainder either lapsed or were examined by DITAC as candidates for Policy By-laws.

At the public hearings, the Commission was advised of the alleged continued existence of some end-use CTCOs by Deloitte, who furnished the Commission with a selection of pages from the *Schedule of Concessional Instruments* from before the adoption of the Harmonised Tariff System. These show that concessions referring to end use have indeed been made under the CTCS (Transcript, pp. 1449-50). Generally, they were made during the transition period, and appear to be rewritten by-laws from before 1983. However, on closer inspection, a number of these concessions have end-use descriptions merely as a means of more effectively identifying the goods. Like all CTCOs, they are universal concessions without any restriction on use.

Outboard Marine Corporation (Australia) Pty Ltd requested that processing guidelines for CTCO applications should explicitly permit reference to end use in the description of the goods as an aid to identification and to facilitate CTCS administration (Sub. 269). For example, the expression 'of a kind used for' could be used (*ibid.*, p. 7). The Commission has no difficulty with this proposition.

Advocates of (re-)introducing commercial tariff concessions with 'end-use under security' provisions argue that, since the CTCS aims to provide relief from the Tariff in circumstances which are not detrimental to existing domestic producers, provision for end-use concessions would be consistent with that general rationale. The Commission was given a few examples of activities which appeared to be disadvantaged by being unable to obtain a CTCO for essential inputs, even though local producers who object to a general concession would support one conditioned by end use. One instance involved seamless steel pipes were imported to transport liquefied natural gas. Welded pipes are made locally, but they cannot withstand the cryogenically low temperatures in this task. Even though the local manufacturer did not object to an end-use concession, it maintained its objection to a CTCO because of the commercial impact that duty-free imports of seamless pipe could have on sales of locally made pipe.

Administrative issues

At the most general level, the difficulty of accommodating concessions based on end-use can be related to the nature of the Tariff itself. The Tariff is structured by reference to the physical characteristics of goods, rather than the attributes of the end user of the goods. It is difficult to envisage how a feasible document could be constructed on the latter basis, having regard to the wide variety of import user activities in Australia.

Customs opposed general re-introduction of end-use concessions because of administrative difficulties and costs, and because of the scope they provide for abuse of the concession system (Sub. 155, p. 8). At the initial public hearings, Customs contended that end-use concessions were virtually impossible to administer effectively. In a supplementary submission Customs claimed that the granting of an end-use concession raises expectations that certain end uses are to be further favoured, and that the approved end-uses could be extended if pressure were applied (Sub. 237, p. 6). It suggested that the number of approved end uses would grow without a commensurate increase in resources to contain abuse.

It was put to Customs that its administrative difficulties with end use could be reduced by placing the onus on the user, who would pay the tariff up front and then be eligible for a refund after demonstrating that use of the goods had been consistent with the concession's provisions. This approach was supported by the Australian Chamber of Manufactures, in its submission on the draft report (Sub. 263, pp. 3-4). Customs said it found the suggestion more attractive than its own proposal to the ALRC (which involved notification of any diversion of goods, and payment obligations) but noted that difficulties in defining the end use would remain (Transcript, pp. 939-40).

A number of participants disputed Customs' claim that end-use concessions are virtually impossible to administer. The BHP Steel Group, WR Grace Australia Ltd and Deloitte International Trade and Customs advocated extension of the 200 per cent penalty provisions to cover end-use concession users. They considered that this, coupled with post-entry commodity audits, would be a sufficient deterrent to potential abusers of an end-use concession system (Sub. 73, pp. 3, 20; Sub. 45, pp. 1-4, and Sub. 255, pp. 4-6). On the potential for use of external auditors, WR Grace Australia Ltd contrasted the attitude of Customs with that of the Tax Office (Transcript, p. 1520).

Assessment

The Commission accepts that duties may well be levied on some imports which, in particular applications, do not compete with domestic production and, if confined to those uses, the removal of duty would have no effect on local sales. In that sense, such end-use concessions would in theory have little to distinguish them from other concessions in their economic effects.

In the present inquiry, attention was directed to one case where it seemed clear that end-use concessions would not erode the assistance of any local manufacturer, would relieve other manufacturers of substantial duty payments, and would be simple to administer. Other such cases may exist. But this does not justify the *general* introduction of such concessions.

The administrative problems raised by Customs are not insignificant. Even with an audit-and-penalty approach, end-use concessions would still require monitoring costs that do not arise with CTCOs. In part the problem is one of scale. Customs is currently administering By-law end-use concessions, but would clearly have difficulty administering a large number of end-use CTCOs. Nevertheless, the suggestions made by inquiry participants would make Custom's 'policeman role' much more feasible. The Commission's view is that the monitoring and enforcement of end use is not the main difficulty with having such provisions. The real objections arise in the earlier phase involving assessment of applications and its broader implications.

One major obstacle is that concessions for specific uses are often in practice concessions for specific users. Such concessions require much more consideration than can be gained from the administration of the generalised criteria that govern the CTCS. This is because the economic effects of the concessions on the local producers and users of similar goods not used for the applicant's purpose, and on other users of the goods in question, need to be taken properly into account in each case. In particular, there needs to be careful assessment of whether the concession, if granted, would tend to narrow the available markets for the locally-produced goods.

This would be complicated by the obvious incentive for producers to adopt strategies enabling them to benefit from end-use concessions. One such strategy would be to find ways of designing production technology around particular imported components or inputs, thus 'proving' (*ex post*) that local products do not compete in that end use. Another would be to work on the 'cosmetics' of an

application, couching it in terms of a specialised end use. While such activities in themselves would be socially unproductive (costly) and thus better avoided, in some cases they could well prove to be privately profitable (successful), with adverse consequences for local producers.

Rather than consideration of general rules intended to apply in the absence of relevant local manufacture, the circumstances of the case are probably the most important determinant in each proposal for concessions based on end use that was brought to the attention of the Commission. They are best analysed in a process which has a clear policy component stated for that case, such as would pertain if the Commission's recommendations relating to the making of Policy By-law Items are adopted; the CTCS procedure is not suited to such a process, and its modification for that purpose is not warranted when the Policy By-law system is available (see Part III).

6.4 Revocations

In their initial submissions, many participants complained about the ease with which often hard-won concessions could be lost, once a manufacturer or potential manufacturer made his activities known to Customs. Many were of the view that very little evidence was needed to substantiate a manufacturer's claim, and often less than was required to oppose a concession application in the first place. Some suggested that revocations occurred without reference to any criteria.

In reality the Act specifies that the Comptroller may (at his discretion) revoke a concession if he becomes satisfied that an application for the same goods would no longer be approved. However, concern to protect commercially confidential information often means that the importer does not find out the exact reasons for a revocation and this has no doubt exacerbated suspicions voiced in the hearings that 'a mere telephone call' suffices to achieve revocation.

The current situation in which concessions could be revoked without notice or consultation was criticised by many participants (see box 6.3). The MTIA stated that the sudden revocation of a CTCO can impact severely on a local manufacturer reliant on the concessional entry of imported materials (Sub 159, p. 19). The

commercial uncertainty engendered by abrupt revocation was said to be particularly detrimental to users of large capital equipment.

Box 6.3: **Bicycle frames**

A CTCO which existed for certain components for bicycle frames was revoked at the request of a company claiming local manufacture of the goods covered by the concession. The user of the former CTCO, the largest Australian producer of bicycles, contacted the objector, and learnt that the company could only physically make two of the ten components covered. Of those two, the objector required minimum orders in quantities greater than the total annual Australian market.

The concession was repromulgated after eight months, with an amended wording to satisfy the objector. It was suggested that the disruption to the bicycle manufacturer would not have occurred if the claims of the objector had been verified. (Of course, had there been ten CTCOs in the first place, only two would have been revoked, based on the core criteria of the current CTCS.)

Source: Fliway Tariff and Trade Services Pty Ltd, Sub. 62, pp. 10-11 and Transcript, p. 1174.

A number of proposals were made for reducing this disruption and uncertainty:

- Counsel for the CAIA argued that to achieve balance, notification should be required before revoking a concession, in the same way that it is needed before making one (Sub. 74, p. D12).

- Esso Australia Ltd recommended there be a right of appeal prior to revocation (Sub. 128, p. 1).

- The MTIA advocated opening the process to public scrutiny via gazettal of requests for revocation, giving contact details for the objector and allowing interested parties to respond.

- MTIA also recommended a minimum period of 90 days after initial gazettal before revocation could take place (Sub 159, pp. 19-23).

- Others argued that concessions should have a minimum life, such as two years, as well as pre-notification of intended revocation.

The general thrust of these proposals has merit. The question naturally arises as to why provisions along these lines were not required in the first place. The answer presumably has to do with the hitherto perceived role of the concession system as a temporary favour to importers pending establishment of Australian import-competing manufacture. The system is structured so that the importer must show why the tariff should not apply; the local producer does not have to show why it should. Adjustment costs to importers have thus been subordinated to the aspirations of manufacturers, many of whom are also importers in their own right, having the option to obtain concessional entry for imported inputs while at the same time using their local producer status to cause Customs to deny, or revoke, concessions on goods which compete with their output.

This approach sits oddly with the current role of the Tariff, which is being generally reduced in a manner designed to facilitate the adjustment of protected industries to an environment in which there is minimal assistance. The transitional nature of the Tariff virtually precludes it from also performing its former `anticipatory' protective role. And the double adjustment problems noted in section 4.3 will be lessened if the grounds for revoking CTCOs are narrowed.

The inconsistency between revocations in the CTCS and the Government's current approach to protection policy was identified by a number of participants in this inquiry, and had been raised by AMIC in its submission to the IAC inquiry into the mining, construction and agricultural equipment industries:

> Assistance policy is designed to support existing operations. It is not designed to encourage new manufacturing effort in areas that have to be supported. It therefore follows that, given the TCO arrangements which are only put in place when no Australian manufacturing of a particular product is occurring, it would be appropriate that a TCO once approved should not be subject to removal or revocation. If no manufacture of the goods currently occurs, we should discourage industry from moving into uneconomic areas. (IAC 1988b, p. 105.)

AMIC restated its position in the present inquiry, arguing that CTCOs, once made, should be 'bound'. The NFF took a similar position:

> While tariffs are being phased down and policy aims to develop efficient self-reliant industry, it is inconsistent to remove a concession order to grant assistance to a new manufacturing activity. (Sub. 185, p. 13.)

In the current environment, revocations disrupt existing producers in order to provide protection to a 'new' producer. But this protection can only be temporary. Granting it seems undesirable on two counts: if the protection is really needed, the activity is unlikely to be consistent with the Government's policy for development of industries that are self-reliant and internationally competitive. Alternatively, if the protection is not needed, and the investment is based on an expected negligible tariff in the future (as is more likely) then the tariff would be a virtual windfall (economic 'rent') in the meantime anyway, harming the producer who had lost the concession, without having any real impact on production elsewhere.

The logic of a no-revocation approach to tariff concessions in conjunction with the phasing-out of tariffs was recognised in 1975 in the Green Paper on By-law Policy (SMOS 1975, p. 21).

> To the extent that it is more difficult to change a rate of duty applying to goods under substantive classifications than to make or revoke By-laws for those goods, the free trade approach would favour the replacement of the By-law system by a set of zero substantive rates. The free trade approach opposes the way By-laws can be cancelled under the present By-law system and substantive rates reinstated.

In its report on Mining, Construction and Agricultural Equipment, the IAC also concluded that a no-revocation system was appropriate in the context of long-term tariff removal, stating that this issue was best resolved within a general review of the CTCS (IAC 1988b, p. 106).

As implied in the above quotation, removing scope for revocations would be equivalent to setting the substantive rates for existing concession items at Free. But that would not be an aberration in the Tariff because one-third of rates are already at Free, and in value terms two-thirds of all imports enter at zero rates of duty. Each new concession would simply represent a further step in that direction.

A consequence of making concessions irrevocable is that some potential low-cost activities facing tariffs on their inputs would have no scope to have similar tariffs

reintroduced for their output. But those same circumstances apply to manufacturers of products for which the tariff is substantively Free. In neither case do manufacturers suffer from non-availability of a tariff they have not used. In any event, with tariffs generally declining, any problems of this kind would only be temporary.

There may also be an impact on the approval rate of new concession applications. As the IAC (1988b) noted, irrevocable concessions would generate a more conservative and cautious approach by local manufacturers when assessing their capability of producing a product, and Customs itself might adopt a more cautious approach. The Australian Paint Manufacturers' Association said that, while in favour of making CTCOs irrevocable because it gives the importer/user greater visibility and confidence in planning, these benefits could be more than outweighed by the greater difficulty applicants will face in trying to obtain agreement from local manufacturers to concession applications (Sub 283, p. 2).

This need not be the case. So long as the criteria and guidelines are appropriate and there is provision for appeal to the AAT, non-revocation should not prevent each application from being assessed on its merits.

Comments on the Draft Report

The Commission's draft recommendation was to remove the provision by which CTCOs can be revoked on grounds of new local production. As with the other draft recommendations, the bulk of participants had no comment, and presumably were not opposed to the Commission's suggestions. Of those who did comment on this matter, most either opposed it or asked the Commission to reconsider its stance.

Some participants opposed the granting of irrevocable concessions on the grounds it would make Customs the 'setter' of substantive rates, rather than merely administering a scheme for concessional entry as at present. Customs also considered this to be an implication of the Commission's draft recommendation. To meet this concern, it proposed separating the process of granting a concession from that of making it irrevocable:

> TCOs which have exhausted the appeal provisions and have been in place for, say, nine months could be laid before the Parliament for confirmation that they shall not thereafter be

> revoked. This process would allow time for adequate practical experience of the consequences of free rates of duty on the markets for Australian products. (Sub. 297, p. 8.)

This approach is based on the long-standing philosophy that Parliament should not delegate substantive tariff setting to the administration, noted in chapter 5. Non-revocation (in the absence of 'error') would *de facto* amount to such a delegation. Given the unavoidable discretion involved in setting legislative standards for decisions on concessions, some conern about delegating this power to Customs may be warranted. However, with the Tariff declining in significance as a differential tax on industry, and with criteria that leave the 'benefit of the doubt' with local manufacturers, the Commission believes that such a delegation could be appropriate. It would of course always be within Parliament's power to overturn a decision by Customs, in the unlikely event that it was considered desirable to provide (temporary) tariff protection to some new activity.

There was some speculation from participants in the hearings about what the Commission's draft recommendation to reduce the scope for revocations implied for concessions granted in error. There were essentially two types of concerns raised. The first and larger group, which included Customs (Sub 285, p. 7), requested that some revocation provisions be retained:

- to deal with concessions granted in error;
- to enable concessions to be reworded where they do not reflect the intention of the applicant when lodging the application; and
- to remove obsolete or redundant concessions.

The Commission had always intended that this be the case. Cancellation of concessions in such cases ensures the intentions of the scheme are not thwarted, and the *Schedule of Concessional Instruments* (or its replacement) is kept accurate and to minimum size.

The second group sought to have all existing concessions reviewed before being made irrevocable, on the grounds that some local manufacturers may not have opposed the concession applications at the time they were lodged, intending to have the resulting concessions revoked some time in the future. (See, for example, Australian Synthetic Rubber Co Ltd, Transcript, p. 1509, and Cramb Consulting Group Pty Ltd, Transcript, p. 1826).

This is only an issue if the local manufacturer's objection at the time the application was under consideration would have resulted in refusal of the application. Under the current system, that would require the local manufacturer to have been producing (or capable of producing) the goods described in the *application at the time* it was lodged. If that capability had been disclosed by the manufacturer in response to the CTC2 Form and its associated procedures, or there were no inquiries made of the manufacturer, then the concession was made in error, and Customs should remain obliged to cancel it (but not with retrospective effect). However, if the manufacturer failed to describe its production or capability when approached by the applicant, it is difficult to see why this should be cause for cancellation of a CTCO.

The Commission can also see no reason for all existing concessions to be reviewed before being made irrevocable. Instead, it should be left to local manufacturers to approach Customs to have existing CTCOs cancelled when they have proof that the concessions were made in error.

The Commission recommends that the legislation be amended to remove the provisions which allow the Comptroller to revoke a CTCO where local manufacture of, or capability to manufacture, the goods described in that CTCO, develops <u>after</u> a concession is granted.

6.5 Breadth of CTCOs

Background

Customs' practice in implementing the CTCS owes a lot to its prior administration of the Commercial By-law System and its interpretation of the law by reference to the IAC's 1982 Report. One effect was that, for several years, Customs sought wherever it could to broaden the coverage of the CTCOs it made beyond the terms specified for them by applicants.

The first IAC review of CTCS decisions found that there were some problems with this practice.

> The effect of interpretations by the Federal Court of 'identical goods' [s. 269B(3)] and the Attorney-General's Department's opinion is that the Act and Regulations confer no power on

> Customs to change the description of a class or kind of goods provided in a CTCO application ... The legislation would appear to enable, if not encourage, applicants to specify their CTCO applications in narrow terms exclusively to suit their commercial interest. The Commission doubts that the end result of such practices would necessarily be different than under previous arrangements, because an artificially narrow description designed to be compatible with s. 269B(3) would still encounter problems with s. 269B(4) and, conceivably, with s. 269E ... The processes involved in administering the system, however, would be more fragmented and cumbersome, as would processing of imports under CTCOs. [IAC 1989a, p. 26.]

This passage, the IAC's action in publishing the legal opinion, and the Corinthian Doors judgment, led the Government to propose some significant changes to the CTCS legislation in its Customs and Excise Legislation Amendment (No. 4) Bill of 1989. The key proposals were to remove the definition of 'particular goods' from s. 269B(1), and to replace s. 269C(1) with these words (new words are bold, old words omitted are struck through):

> Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of ~~particular~~ goods, is satisfied**, in respect of a class of goods that consists of or includes some or all of those goods,** that:
>
> (a) goods serving similar functions to the ~~particular~~ goods **comprising the class** are not produced in Australia; and
>
> (b) goods serving similar functions to the ~~particular~~ goods **comprising the class** are not capable of being produced in Australia by any person in the normal course of business;
>
> the Comptroller ~~shall~~ **must** make a written order, declaring that the particular goods **comprising the class ~~are~~ to be** goods to which a prescribed item specified in the order ~~applies~~ **relates.**

The Government's Second Reading Speech spelt out the Government's intentions for this change:

> ... as the Federal Court has determined in Corinthian Industries that the existing legislation limits the scope of a concession order to the particular goods that are the subject of an application, legislative amendments are necessary to enable commercial tariff concession orders to be issued in relation to the relevant class of goods rather than the narrowly specified products sometimes described in applications. [Simmons (1989), p. 2406.]

Parliamentary debate on the proposed CTCS changes focussed mainly on other matters, namely the use of guidelines. But there was some comment relevant to the breadth of concessions and KPMG Peat Marwick has claimed this was, in fact, the main point of contention with the Bill (Sub. 286, p. 2).

Participants' views

Relatively little was put to the Commission on the issue of broadening CTCO applications, either before or after the Draft Report. The main commentator was KPMG Peat Marwick, who said in its first submission that:

> In more recent times a trend was emerging wherein the ACS would first determine a class of goods then make its decision without having regard for the relevance of the decision to the *particular goods* for which the application was originally made. An example of this action is included in Attachment A. In that example the delegate stated that, although the application was for particular electric mitre saws, the class of goods to be considered was 'saws'. (Sub. 190, p. 16.)

The company noted, while Customs had abandoned the practices of insisting that CTCO applications must relate to classes of goods and that of unilaterally altering the scope of requested concessions (as per ACN 90/5), the 1989 Amendment Bill had been aimed at restoring those practices and validating all concession orders previously made (Sub. 190, pp. 14, 16-17). KPMG Peat Marwick observed that:

> ... the Comptroller had, and continues to have through the provisions of subsection 269J(2), the power to consider the making of an order for a class of goods if he believes one worthy of consideration. (*ibid.*, p. 17.)

The company recommended that:

- provision continue to be made for application to be made and considered for particular goods *specified* in an application (*ibid.*, p. 25); and
- provision be made for the Comptroller to propose an order for a class of goods which includes the particular goods subject of an application; that an objection to a concession for a class of goods should not automatically rule out a concession for the particular goods subject of an application; and that provision continue to exist for concessions for specific goods where a concession for a class of goods is inappropriate (ibid., pp. 26-27; see also Transcript, p. 1271).

KPMG Peat Marwick also noted that no actions have been taken since the 1989 Amendment Bill was rejected to invalidate concessions previously made (Sub. 286, p. 2).

AEEMA and the AEIA recommended that, subject to consent from local manufacturers, Customs may widen the description of the particular goods and that, where such changes are made, the date of application be unaffected (p. 4 of Subs. 270 and 271). The MTIA made a similar suggestion in cases where it becomes evident to Customs that a broader range of items than those covered by the application are in fact not made in Australia or capable of being made here in the normal course of business (Sub. 282, p. 9, Transcript, pp. 1996-7).

The Commission recommends that the Government not pursue its proposed amendments of 1989 to s. 269C(1) of the Customs Act. Instead, it finds that use by Customs of s. 269J(2) in addition to private applications seems a sensible alternative. This approach will eliminate the problem of private CTCO applicants awaiting (and partly funding) publicly-inspired consideration of wider concessions, and it should ensure that applications are properly evaluated on their individual merits.

6.6 Multiple Tariff Classifications for CTCOs

The issue of multiple tariff classifications for CTCOs was raised by the Law Council of Australia (Transcript, pp. 1496-1502, 1543-5). It concerns the use by Customs of tariff classifications in determining which goods are eligible for entry under a CTCO and which goods are not.

All goods entering Australia are assigned a tariff classification. This classification is a numerical link to a section or subsection of the Tariff which most accurately describes the goods being entered. Under Customs Regulation 181, applicants for CTCOs are required to specify the tariff classification that applies to the goods described in their application. The applicant may suggest a tariff classification in his application, or he may approach Customs for a 'tariff classifications advice'. The tariff classification is used by Customs and others to index concessions and to help identify those goods the applicant intends to import under a concession.

Tariff classifications can create problems for those seeking to use existing concessions. When someone other than an applicant seeks to import goods under an existing CTCO, based on the description of goods given in that concession, Customs will refuse to enter the goods concessionally if it would normally enter them under a different part of the Tariff to that which was cited in the CTC1 form. Customs may not have considered these goods when processing the application, and cannot be sure that they satisfy the CTCS criteria.

Under these circumstances, the importer can only obtain duty relief by applying for a new concession (using the same description as that given in the existing concession, but citing a new tariff classification). In some cases this will be only a formality in the sense that no existing local producers make, or have the capability to make, goods serving similar functions to the goods described in the new application as interpreted under the new tariff classification. In such cases, Customs should allow the new CTCO to operate from the same date as the original concession (much as in the cases now covered by s. 269N(6) of the Customs Act).

At the draft report hearings, the Law Council suggested formally breaking the link between concessions and tariff classifications (Transcript, p. 1502). But to do so with existing concessions could allow the concessional entry of goods which do not satisfy the CTCS criteria.

7 IMPROVING THE CTCS ADMINISTRATION

This chapter is concerned with improving the operational efficiency of the future CTCS. Dispute resolution arrangements are addressed first, followed by the question of what standard of proof is appropriate in the CTCS and then consideration of operative dates and processing times for CTCO applications. A further section discusses the issue of fees for use of the scheme, and the chapter concludes with an appraisal of some transparency issues.

7.1 Dispute resolution

There are good reasons for providing appropriate avenues of appeal against CTCO decisions, including:

- appeal processes help ensure that discretion is properly exercised, within the standards laid down -- in other words, that decisions accord with the expectations of Parliament;

- given the interests at stake, applicants and other interested parties need to be able to satisfy themselves that they have not been unfairly or incorrectly dealt with.

Du Pont (Australia) Pty Ltd cited the costs that can occur if applicants decide to discontinue CTCO action in the face of objections from local manufacturers and concerns about the high cost of pursuing disputes without clear guidelines for their resolution (Sub. 141, p. B1).

The current dispute resolution forums include Customs, the Federal Court, the Industry Commission and in some cases the AAT (as described in chapter 3).

In addition to Customs' internal procedures, it is desirable that there be an external avenue of review of Customs decisions on individual CTCO matters, and that it be reasonably accessible, easy to use and able to make determinations in its own right. The absence of this avenue at present has probably led to some pent-up demand,

and it may be that some cases would not have gone before the Federal Court had there been such an alternative.

Customs' procedures

A number of participants asked that Customs be required to make greater use of meetings between opposing parties prior to making its decision in contentious cases (for example, Australian Chamber of Manufactures, Sub. 72, p. 15). CESA recommended that all Customs decisions on CTCOs be conveyed to interested parties, together with detailed reviewable written reasons (Sub. 60, p. 38).

While some participants saw a continuing role for Customs' internal review mechanism, many considered that it should be replaced by an improved external mechanism. Some noted that there is too little external discipline placed on Customs to administer the CTCS properly.

The Law Council of Australia was not particularly keen on internal reviews, at least when they are a substitute for more transparent and independent external reviews (Transcript, pp. 1493-4). The Law Council suggested a definite period be set for the conduct of the internal review, with the absence of a decision by then to be regarded as having endorsed the original decision (Sub. 264, pp. 3-4).

In its submission on the Commission's draft report, Customs suggested that a single internal review would seem adequate if the AAT becomes the external appeal body for the CTCS (Sub. 285, p. 11).

The Federal Court

Some important litigation which has been taken to the Federal Court has itself led to difficulties in the operation of the CTCS. However, that situation has arisen because of inadequacies in the drafting of the legislation in combination with the limited avenues for appeal that have been available in practice to aggrieved applicants. The Federal Court is not a dispute resolution forum. It can set aside a Customs decision but cannot put a new decision in its place.

In its submission on behalf of the Pharmaceutical Industry Group, Deloitte International Trade & Customs Consultancy Pty Ltd discussed the result of 'successful' appeals to the Federal Court, when the matter is referred back to Customs for consideration according to law. It claimed that Customs reconsiders the case under a different section of the Act and then reports that the initial decision to reject the application, while based on the wrong criterion, was in fact correct. Under these circumstances, Deloitte submitted, 'winning' in the Federal Court represents a hollow victory (see Sub. 86).

The Commission finds no justification for removing the CTCS from the purview of the Administrative Decisions (Judicial Review) Act, but does not consider the Federal Court to be appropriate for general resolution of disputes arising from refusal of a CTCO application.

Industry Commission

In the absence of any other review body, the current arrangement whereby the Minister decides whether to refer a CTCO dispute to the Commission is appropriate, although there has clearly been a case made for more explicit public guidelines on the circumstances under which the Minister should act.

Some participants suggested that access to the Industry Commission is too difficult and time-consuming. On the other hand, several participants favoured retaining the Commission as at least one avenue of review of individual CTCO decisions, but with improved access and possibly with administrative fees to contribute to costs and to ensure the Commission is not inundated with frivolous claims (for example, Fliway Tariff and Trade Services Pty Ltd, Sub. 62, p. 13).

The Commission has considered its own position in relation to CTCS disputes, in response to a widely supported view that the AAT take a role instead (discussed below). The Industry Commission has a much wider range of responsibilities than did the IAC, embracing all aspects of microeconomic reform, and consequently matters of individual CTCOs have a lower level of relevance to its responsibilities than they had for the IAC.

Individual CTCO decisions are not matters of great national importance and it is questionable whether costly national public inquiries should be used to resolve disputes about them. The Industry Commission is in the business of giving public advice to the Commonwealth Government on major industry policy and regulatory issues on the basis of economy-wide, economic efficiency criteria. It is not a forum which would be appropriately opened to privately sponsored reviews.

A wider role for the AAT

As noted in chapter 3, the AAT now plays a role in resolving only a limited range of CTCS disputes. The CAIA submitted to the first IAC review of CTCO refusals that the AAT should be available to scrutinise Customs' refusals, rather than an internal review section within Customs (IAC 1989a, p. 69). This view has been maintained in the present inquiry, with support from many participants, including many customs agents and trade consultants and the Law Council of Australia.

The CAIA advocated recourse to the AAT or a similar independent authority partly because bringing the parties in the dispute together often resolves many issues without the need to proceed further (Sub. 74, p. 16). The Australian Chamber of Manufactures recommended references to the AAT should be on merit, and noted that the AAT now has referral authority to the Federal Court on difficult legal issues (Sub. 72, p. 14). Connor Anderson Customs submitted the AAT has a proven track record in dispute resolution in matters of tariff classification and valuation which 'in the end, reduce to matters of interpretation no different to matters relevant in Tariff Concession decisions' (Sub. 78, p. 7).

Participants contended that the AAT is a relatively informal, flexible and inexpensive process, that its preliminary conferences are often very useful, and that it has a track record on economic matters and can access economic expertise. The Commission accordingly made a draft recommendation that the AAT should have the role of external review of the merits of disputed CTCO decisions.

Customs saw some logic in the Commission's draft recommendation for AAT review, but noted that it could impose a considerable workload on officers to appear before the Tribunal, prepare a case and brief counsel. Customs had an unusual view

about its relationship with the AAT under the proposed review arrangements, as it *also* considered it would have to 'ensure local manufacturers (many of whom may be small) have their position properly presented' (Sub. 285, p. 10). It saw this role as being particularly important in a system where there are no revocations (Transcript, p. 1673), and that it would inevitably become a defender of local manufacturers' positions, rather than defending its own position, even though it cannot be a winner or a loser in such cases (*ibid.*, p. 1729). At one point Customs also inferred it would be expected to step in where there were a large number of small producers who could not organise themselves to ensure the proper presentation of their case (*ibid.*, p. 1731).

This view appeared to hinge on whether the AAT review is of the case on its merits alone, or whether it is an examination of Customs' decision. Customs clearly preferred the latter course even though it felt it would want to defend at least some of its decisions (*ibid.*, pp. 1725-7). In the Commission's view, Customs should have no role in external appeals other than representing itself.

The Administrative Review Council (ARC) considered that the AAT would be suitable for review of CTCOs on the merits, being essentially administrative instruments, not legislative ones (Sub. 307, pp. 1, 6-9). At the draft report hearings, the ARC stated that the normal role of the AAT:

> is to hear the matter on the merits, on all of the facts and everything that is available at the time of the decision and to make the decision again ... occasionally we have had it put to us that the facts ought to be frozen in time, as it were, at the time of the first decision. We have normally resisted that ...
>
> But in relation to the CTCOs it seems to me that when the AAT is going to reviewing those decisions it makes that decision afresh and will take all the material that was before the original decision-maker and later material that has come light in between that decision and the time the AAT gets it. (Transcript, pp. 1850-1.)

Deloitte disagreed with the Commission's view that the AAT is relatively cheap and accessible, suggesting the plaintiff's costs would be at least $35 000 and that there can be lags of over 12 months (Sub. 255, pp. 1-2 and Sub. 298). The representative of Outboard Marine said at the hearings that in the 30 AAT cases he had been

involved in, his firm's costs would not be a fifth of the $30 000 to $50 000 that Deloitte claimed (Transcript, p. 1614).

NBH Peko echoed Deloitte's concerns about the AAT's cost and accessibility. It stated:

> The AAT has now become mainly the province of specialist lawyers and advocates in Customs matters and dispute resolution times can be quite lengthy. Put in this context, any significant increase in caseload (as will most certainly occur if the ICs recommendations are implemented) will increase dispute resolution times and costs. (Sub. 277, p. 7).

When the question of expertise was put to the ARC, it stated that the AAT can be constituted however it needs to be (Transcript, p. 1851). When asked about resources, the Council had the opportunity to say if the AAT would need more, but did not do so (*ibid.*, p. 1853). As to waiting times, the President of the ARC pointed out that the AAT inherited 90 000 cases from the Taxation Boards of Review and has been very busy over the last couple of years clearing this backlog. Those cases have now been cleared. Further, the Tribunal's preliminary conference procedure despatches more of its cases than go to hearing (*ibid.*, pp. 1854, 1856). For a case that does go to hearing, under normal conditions with both parties anxious to clear the matter, it should be heard within six to 12 months. The AAT system (and perhaps any system) can be further delayed if one of the parties drags its feet (*ibid.*, p. 1854).

Review by some other body

Some participants submitted that the review process should be based instead on Anti-Dumping Authority (ADA) procedures with meetings convened by an agency independent of Customs and a decision made by the Minister, and that there then be opportunity for appeal to the AAT.

The ARC had this to say about a non-AAT review body:

> I would certainly oppose the idea of setting up yet another review body unless you were really persuaded that there was no other way out. The whole rationale for the AAT ... was to provide a centralised review body capable of operating at a consistent level of principle right across the public sector, doing away with the endless array of individual tribunals that characterise most other Westminster systems.

> We are admired by other countries with similar systems of government for what we have done with the tribunal system and it would be of serious concern to the council if that were to fragment to any great degree. (Transcript, p. 1857).

The Commission agrees that the AAT is preferable to a specialist review body.

Recommendations

The internal review mechanism within Customs has been effective in overcoming, at relatively low cost, some erroneous decisions, and should be retained.

The AAT should become the main venue for reviewing the merits of decisions to make, or refuse, individual CTCOs. The Commission would hope that most cases could be despatched within six months, given the commercial interests at stake.

Internal review by Customs should be mandatory before a CTCO matter can be brought before the AAT.

The Industry Commission would remain a source of policy advice in general, which may include matters relating to CTCOs, and AAT decisions would be subject to review by higher courts.

7.2 Satisfying the Comptroller

The Cramb Consulting Group argued on a number of occasions in this inquiry against the requirement in Part XVA of the *Customs Act 1901* that the Comptroller be 'satisfied' about various things before decisions can be made.

> (T)he use of the phrase relating to satisfying the Comptroller introduces an additional test by establishing in the minds of Customs delegates a requirement for being satisfied that was never intended by Parliament. (Sub. 279, p. 10.)

Cramb noted that the AAT has drawn attention to the problems created by this requirement, and it provided the Commission with a decision regarding *Cherry Lane Pty Ltd and Collector of Customs (Vic) (*AAT 1986). That case had to do with

whether certain imported fabrics were 'handicrafts' and therefore entitled to a preferential rate of duty.

Customs declared that it was not satisfied that the goods met the necessary requirements (that is, hand made without the aid of powered machinery). The AAT, following extensive deliberations, concluded that while there was considerable indirect evidence that appropriate handicraft methods had been used, the expression 'satisfying the Comptroller' meant more than the civil standard of 'a preponderance of probability' and amounted to the much stronger requirement of 'satisfied beyond reasonable doubt', which applied in the Criminal Law. On this basis it reluctantly reaffirmed Customs decision:

> We should say that we have reached that conclusion with regret. We are well aware that we are in effect finding that the provision with which we are concerned is unworkable. But we see no escape from the meaning of the expression parliament has chosen to use. (Attachment to Sub. 205, paragraph 62.)

The Commission is not in a position to comment on the legal meaning of words. However, it believes that individual concession orders are not of sufficient moment -- the consequences of error not so extreme -- that the Comptroller must be satisfied 'beyond reasonable doubt' before gazetting one. The CTCS, after all, is there to remove those tariffs that constitute an unnecessary impost on the Australian community. While the onus should be on the applicant, in changing the status quo, to prove his case, Customs should grant a *concession where the weight of evidence favours the applicant.* In cases where the evidence is finely balanced or unclear, however, the benefit of the doubt should rest with local producers.

In practice, it would seem from the large number of concession orders that continue to be granted, that Customs has generally adopted this common-sense approach. (This may or may not apply to the cases that Cramb had in mind, as details were not available). The Commission also understands that subsequent decisions of the AAT have found the term 'satisfy' to be a weaker test than in the Cherry Lane interpretation, and that the Federal Court has found likewise (Transcript, p. 1825). In that event, any problem would appear to have been largely resolved. If not, a formulation should be found for expressing the standard of proof in the CTCS which accords with the Commission's view of what is appropriate.

7.3 Operative dates and processing times

Under the present arrangements the date from which a concession is operative is 28 days prior to the lodgement of the relevant application. This retrospective period provides time for an application to be lodged after imported goods have been cleared by Customs and duty paid. For a successful application, duty is waived and refunds of any duty paid may accrue from the date of effect of the concession order. In the normal course of events the average time which elapses between lodgement of an application and approval of a concession is six months.

Dissatisfaction with the above arrangements occurs when the time between application and approval extends well beyond the six month average, and when an application is re-submitted following an initial refusal. In the case of resubmitted applications, the operative date of any subsequent approval has been 28 days prior to the date of the resubmission, the original application date being lost with the refusal. As noted in chapter 3, this became a critical issue when Customs advised in *Australian Customs Notice 90/5*, issued on 28 December 1989, that it did not have the power to amend an applicant's description of a good, with the effect that if an amendment was required, Customs would refuse the application (Customs 1989b). Many participants complained about this practice.

Customs advised the Commission in its submission on the draft report that it had recently obtained additional advice from the Attorney-General's Department in relation to the amendment of CTCO applications. This led Customs to conclude that it can allow the amendment of applications in various ways without always resulting in a new application and therefore a new operative date. Customs changed its practice to adopt this approach in December 1990 (Customs 1990d).

Participants' views

A general request of participants was that 'minor' changes in the wording of a proposed CTCO should be possible without loss of the operative date (for example, Australian Chamber of Manufactures, Sub. 72, pp. 13-14 and BHP Steel Group, Sub 73, p. 21), although some suggested that a much longer retrospective period would overcome the problem. The CAIA suggested that a 180 day period would be

appropriate (Sub. 259, p. 3). Although the difficulty now appears to have been resolved by Customs' new approach, Customs said it would prefer the situation regarding the amendment of CTCO applications to be properly clarified and clearly stated in legislation (Sub. 285, p. 9).

The Law Council of Australia, in arguing for a procedural framework of legislative origin for the concession system, said that:

> Under the present system the procedure for processing applications is largely at the discretion of the Australian Customs Service. There is no fixed timetable for considering an application or responding to objections by local manufacturers, nor is there any specific procedure for establishing the merits or otherwise of objections to the making of an application. (Sub. 64, p. 2.)

In some cases, when the process of evaluating an application becomes protracted, the payment of import duty is made in the normal course of business and any subsequent refund of duty paid following eventual approval can represent a windfall profit for the importer. In the recent domestic microwave ovens case the operative date was some three years prior to the date of eventual approval of the concession, and a refund of $48.3m accrued to importers. Customs objected to the payout on the grounds that in the intervening period the ovens had been sold to consumers at duty-paid prices, with no prospect of the refunds being passed on.

Rover Mowers, in a submission on the draft report, said that it is inappropriate to establish a general proposition against windfall gains on the one example of microwave ovens. Many companies have provided goods to purchasers on a duty-free basis because of competitive pressures or the expectation of receiving concessions (Sub. 287, p. 2). Cramb said consideration of concession applications for capital equipment may take years to finalise, owing to the nature of the equipment, lead time and size of purchase, and argued that there was no justification for an artificial restriction on the ability to seek refunds under these circumstances (Sub. 279, p. 7).

The Commission is not proposing that there be no refund of duty following the granting of a concession, nor that there should be specific limits on the size of refunds. Rather, time limits for processing are suggested below which ought to reduce greatly the scope for long delays.

In the draft report the Commission proposed that an application be deemed to be refused if a decision by Customs has not been made within 60 days of its initial gazettal. Such deeming would enable the applicant to formally appeal a 'decision', instead of perpetuating the present open-ended arrangement. In order to ensure that a case can finally be decided one way or the other, the Commission also proposed that any appeal against a Customs decision (or deemed decision) be made within 90 days.

The first proposal was criticised by most of those participants who addressed the issue. For one thing, participants generally considered that 60 days would not be long enough [for example, see Fliway (Sub. 274, pp. 3-4), and Nufarm (Sub. 297, p. 19)]. Several suggested 90 days would be more appropriate. Others had more fundamental objections. The MTIA said that it 'firmly believes that there should be no such time limit on applications which are being actively progressed' (Sub. 282, p. 10).

Although there was broad support for some system of time limits, some participants suggested that by proposing time limits on certain stages of processing but not others, the Commission may not achieve its objective of streamlining the total operation [for example, Fliway (Sub. 274, pp. 2-3) and CESA (Sub. 278, pp. 2-3)]. Customs said 'the process which takes the longest time is that from application to prima facie gazettal. Unless some time limit is imposed in this process the average time to make CTCO's will not reduce' (Sub. 285, p. 10).

The Commission's proposal that a deemed decision be a refusal proved to be particularly controversial. Some considered that allowing Customs to have recourse to a deemed refusal would constitute an unjustified abrogation of its responsibilities. The Australian Coal Association said 'Administrators and decision-makers are expected to make decisions, and should not be able to avoid that responsibility, or pass responsibility to others' (Sub. 268, p. 5). Several considered that a deemed acceptance would be more appropriate than a deemed refusal [for example, AMIC (Sub. 260, p. 9), and Hudson, O'Leary and Associates (Sub. 272, p. 7)].

The Commission's other draft proposal on timing -- that appeals against a Customs decision, or deemed decision, should be lodged within 90 days of notification -- was more generally supported by participants. MIM Holdings Ltd, for example, said that it had 'no difficulty with requiring appeals against refusals to be lodged within 90 days of that refusal, as this will keep all aspects of an application current' (Sub. 265, p. 6). A couple considered 90 days to be excessive, given that a decision about

whether or not to appeal could usually be quickly made. Cramb suggested that 30 to 60 days would be adequate (Transcript, p. 1824). Customs favoured an 'appeal period of 56 days which is the current period for requesting a statement of reasons and then lodging an appeal' (Sub. 285, p. 10).

Assessment

There has been some uncertainty about whether Customs can make minor changes to applications without the need to decline the original application and start again, with consequent loss of scope for refund of duty paid. This is particularly important in the case of a one-off import of a piece of capital equipment. The latest approach adopted by Customs appears to have overcome most objections raised by participants, but there has been uncertainty in the past about the correct legal position. **The Commission thus recommends that it be made clear in the legislation that, without loss of effective date, there should be facility for a CTCO application to be reworded at the applicant's request, provided that the range of goods covered by the application does not expand.**

A retrospective period allowing for an operative date 28 days prior to the lodgement of an application provides an adequate opportunity to initiate an application once a decision to import has been made. The Commission does not intend to recommend a change to this provision.

However, it is apparent from the evidence received that action should be taken to streamline the processing of concessions. Moreover, the application process should have a legally finite life and not be open ended as at present. An unsuccessful application can currently lie dormant for several years before being reinstated as an active application, with any subsequent refund being related to the original date of effect.

There is a case for limiting the scope for windfall gains accruing to intermediaries. The reason for maintaining a concession system is the benefit it confers on users of the imported products in the form of lower prices. If there continue to be lengthy delays in the approval of applications, the efficacy of paying refunds on goods sold through retail outlets must be questioned. Classifying imports as retail goods or

otherwise would be practically impossible. The solution lies in better procedures for processing applications and limits on their currency, rather than directly limiting refunds.

The Commission recommends that there be legislated time limits on each of the application processing stages and, if no decision is made by the end of the nominated time for a particular stage, that deeming provisions come into effect. The Commission also recommends that the receipt of an application, as well as Customs' decisions on applications (whether actual or deemed) at both the prima facie and final stages of processing, be notified in the Commonwealth Gazette.

Deeming is merely intended to help keep the process moving and to allow particularly difficult cases to be resolved more promptly. To resolve an impasse during the latter stages of processing, a deemed *refusal* is considered more appropriate than a deemed acceptance. A refusal would ensure that a CTCO does not interfere with the Government's objective for the Tariff of providing (admittedly transient) assistance to local production. Moreover, unless a convincing case is made for change, there are advantages in maintaining the status quo in individual cases. A deemed refusal of an application for a concession would not mean the loss of operative date. As with an actual refusal, recourse could then be made to the appeal system without loss of operative date.

Conversely, at the end of the initial stage -- that of the applicant establishing a prima facie case -- the Commission considers that the benefit of any doubt should be in favour of the applicant and a deemed *acceptance* is suggested. Concessions confer benefits on the community (see chapter 4) and they should not be lightly dismissed at the outset before they have been thoroughly debated and assessed.

Gazettal is recommended to ensure the system is open to public scrutiny and to alert those sections of the community which may be affected by any proposed concession. Initial gazettal of the application should follow pre-screening by Customs (which may result in re-wording if the applicant agrees), and should include the date of receipt of the application.

Implementation of the Commission's proposals in chapter 5 for changes to the way the core criteria are applied, together with the dispute resolution procedures proposed later, should also facilitate the more rapid processing of applications.

The Commission suggests that time limits and deeming provisions along the following lines would be appropriate:

- Customs' pre-screening procedure continue, with a time limit of 14 days for checking whether the substantive tariff is zero, whether the goods are already covered by a concession and whether the proposed wording includes brand names;

- a prima facie case should be deemed to be made if Customs has not decided the matter within 120 days of the gazetted date of its receipt of the application for a concession (which will reduce the scope for requiring applicants to keep sending CTC2 forms out over long and indefinite periods of time);

- if an objection is made following the gazettal of an acceptance (or deemed acceptance) of a prima facie case, it be lodged with supporting details within with 28 days: if there is no objection within 28 days, the concession is granted and gazetted;

- if a decision on all objections received has not been made by Customs within 90 days of the prima facie case having been accepted (or deemed to have been accepted), the application for a concession be deemed to be refused;

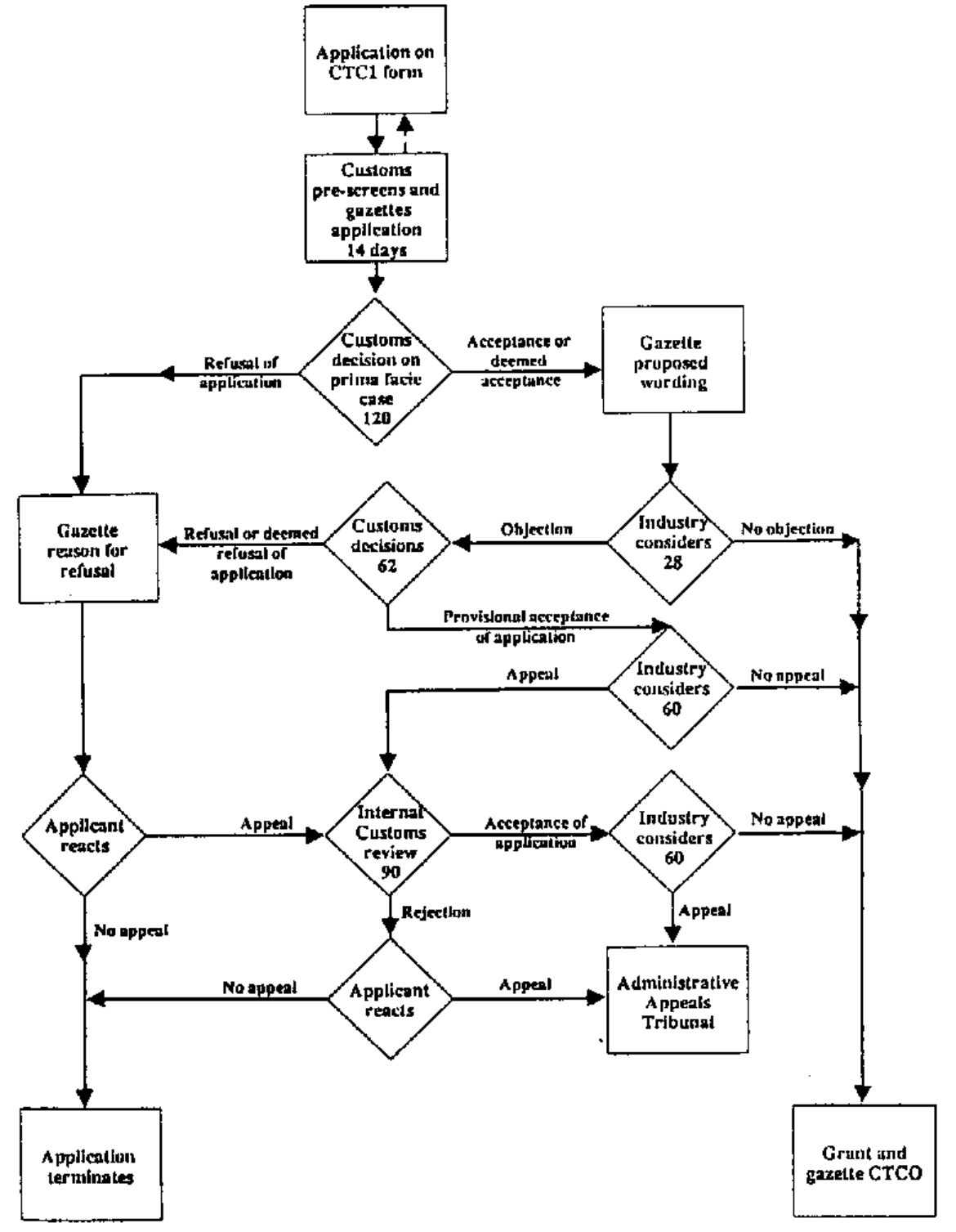
- appeals to Customs for an internal review of a refusal or deemed refusal be lodged within 60 days of notification of the decision;

- if Customs has not made a decision on an internal review within 90 days of receipt of the appeal, the application for a concession be deemed to be refused; and

- appeals to the AAT only follow an internal review by Customs and be lodged within 60 days of notification of the Customs decision on the internal review.

Figure 7.1 sets out the proposed steps to be followed by an importer applying for a concession.

Figure 7.1: **Proposed handling and review mechanisms for CTCO applications**[a]



Numbers refer to time limits in days. Excludes review by the Federal Court.

7.4 Fees

At present there are no fees levied on those who benefit from the CTCS, although clearly identifiable costs are associated with applying for and using a Concession Order. Some participants saw the present 'free' system as encouraging over-use of the CTCS, and the Commission is aware of complaints from local manufacturers responding to CTC2 forms that some applicants are merely testing the water at Customs' and the local manufacturer's expense. The benefit which a successful application confers on an importer provides an incentive to seek a concession for any good for which the expected benefits exceed the costs of the application.

One reason given for the imposition of fees was therefore to deter 'frivolous' applications and so relieve Customs and local manufacturers of unnecessary expense (Australian Electrical and Electronic Manufacturers' Association Ltd, Sub. 270, p. 5). In 1988-89 Customs' average processing cost for a new CTCO was $888.

The level of application fee suggested varied widely. CESA proposed a $5000 fee; the CAIA said that a fee to cover Customs' average processing cost of $888 would be unacceptably high; and Commercial Customs Service Pty Ltd suggested that $250 would be appropriate.

Some participants proposed fees for other reasons. The Australian Paint Manufacturers' Federation Inc. was interested in reducing administrative delays and suggested that fees for *successful* applications should be introduced -- although that would not deter the frivolous applications referred to above. Commercial Customs Services advocated an annual fee of $500 for listing on Customs' Manufacturers Index, which would be mandatory for firms seeking refusal or revocation of an order. Coal and Allied Operations Pty Ltd asked that no fees be payable for CTCO applications, but that there be a fee for reviewing CTCO decisions (Sub. 127, pp. 1, 3). The company's request was based on its experience that applicants already incur significant costs in negotiating concessions and the observation that concessions, once granted, are available to all.

Not all participants favoured fees. Customs submitted that imposing fees would run counter to the philosophy behind the CTCS and the Government's objective to minimise costs to industry (p. 25 and appendix F of Sub. 155). Polaroid Australia

Pty Ltd opposed any further financial burden being placed on applicants and suggested that Customs' costs equitably represented the public interest including that of industry (Sub. 55, p. 8).

Assessment

The considerations associated with the imposition of fees for using the CTCS can be presented in two quite different ways:

- One view is that the CTCS provides successful applicants with a benefit which is only available to those users of goods for which there is no local production. Customs provides this selective service free of charge and this is not consistent with moves to introduce a user pays principle for users and beneficiaries of Government services.

- The other view is that tariffs are a charge. The CTCS is a legitimate means of providing justified relief from this charge. It would seem anomalous to be required to pay a charge to remove a charge.

On the question of charging for the establishment of a new CTCO, the Commission accepts that a substantial charge would deter the so-called frivolous application, but is concerned that a fee high enough for that purpose might discriminate against small importers. (It is questionable in any case whether importers with a low expectation of a successful application would proceed anyway, given the costs involved.) Consistent with its recommendation to abolish the Excluded Goods Schedule, the Commission is keen to make the scheme universally accessible. Although there may be an initial rush of applications following the abolition of that Schedule, the Commission does not regard that possibility as sufficient reason to introduce fees.

Most of the cost of administering the CTCS relates to the routine clearance of imports under existing CTCOs. If there is concern to offset those costs the obvious solution is to charge a fixed amount for each concessional import clearance. But this would represent a selective administrative charge, there being no equivalent charge for the clearance of imports not subject to Concession Orders, or for other services provided by Customs. The Commission does not favour the imposition of fees on such a selective basis and suggests that if cost recovery is being considered for the operation of the Australian Customs Service, the whole range of Customs'

activities should be taken into account. So too should the issue of whether governments should charge to collect a tax (in the case where non-zero tariffs apply), or charge not to collect a tax (in the case of concessions).

7.5 Transparency

'Transparency' is here taken to refer to the ease with which the reasons for and effects of public administration decisions can be understood by interested parties within the community. Some matters affecting the transparency of the CTCS were dealt with in the previous chapters, especially those relating to the legislation of guidelines (chapter 5) and to revocations (section 6.4).

Issues

At one level, the CTCS has a high degree of transparency due to its legislation and regulations together with Customs' publication of its administration manual (Customs 1990c). In addition there are:

- the *Tariff Concessions* edition of the Commonwealth *Gazette;*
- the *Schedule of Concessional Instruments* (SCI), which brings together all import concessions made under Schedule 4 of the Customs Tariff Act and is updated regularly;
- associated *Tariff Concession Approval Notices* and *Revocation Notices* are published with each update;
- statistical information presented in Customs' annual reports; and
- information about changes to the system presented in *Australian Customs Notices* (there were 1169 subscribers to these notices in November 1990).

Although the CTCS itself is highly transparent, documentation associated with particular import concessions is not well co-ordinated with the Tariff. In particular, it is now necessary to look in nine places to discern the tariff rate that applies to a particular import. [Schedules 3 and 5 of the Customs Tariff Act, the Supplementary

Provisions at the end of the 'Working Tariff' (Customs 1990b), and each of the six parts of the *Schedule of Concessional Instruments*.]

Australia's current publications relating to import duty arrangements are so fragmented that they may present a barrier to trade in themselves. These publications may be used by firms wishing to export to Australia, as well as providing details of assistance measures to interested members of the Australian community. The view of some participants that publishing 10 000 highly specific concessions separately from almost 6000 Tariff Items reduces complexity is not well founded. The fact is that, for practical purposes, Australia has around 16 000 tariff items.

Participants raised some transparency issues in relation to the CTCS, although they were minor in comparison to comment on the By-law system. Advanced Technology Laboratories said it had encountered difficulty in obtaining CTCOs because there has been no mechanism by which it could challenge the local manufacturers' opinions or, at least, force a round table conference (Sub. 192, p. 3). The Commission's recommendations on dispute resolution address this difficulty (see section 7.1).

APPM Paper Division made several suggestions, including that Customs publish annually usage statistics of each CTCO to increase transparency and aid monitoring by local manufacturers (Sub. 116, p. ix). Such statistics would be costly to collect and publish, however, and of little use to the wider community. Provision now exists for interested potential users of statistics to acquire them from the Australian Bureau of Statistics on a user-pays basis.

APPM also argued that the organisation of Schedule 4 and its various parts could be significantly improved for easier reference (*ibid.*, p. 37), but noted that the further step of incorporating all product-specific concessions into the Tariff could be difficult, since New Zealand has apparently abandoned plans to do so. The company said the New Zealand Government's reasons included the complexity of the task, the enormous increase in the size of the Tariff and strong opposition from industry (*ibid.*, p. 38). The New Zealand Government had sought in 1989 to increase the transparency of its tariff concession system by making permanent those concessions which had been in existence for five years, by imposing a minimum currency of one year for new concessions and with other changes (see appendix G).

In contrast, BHP Steel Group found the transparency of separate substantive rates, Policy By-laws and the SCI to be more than adequate. The company commented that separation ensures clarity of intent by not submerging one within the other (Sub. 73, p. 15). Tetra Pak Pty Ltd was also against incorporation of CTCOs with the Tariff because 'the benefits of tariff simplification are arguably already lost' (Sub. 53, p. 12).

Fliway Tariff and Trade Services Pty Ltd gave limited support to the Commission's draft recommendations for rationalisation of the structure of the 'Working Tariff'. The company saw merit in combining Parts 2-6 of the SCI with Schedule 4 and the Supplementary Provisions into a single document.

While Fliway did note that the SCI is currently designed to interleave with the Working Tariff published by Customs, 'so that to some extent a single document is in place', it did not agree with the proposal to combine Schedule 3 with Part 1 of the SCI as 'it will only increase the complexity of the document and that the only way to achieve transparency in a complex tariff is to only have a single rate of duty' (Sub. 274, pp. 7-9). Australia's tariff arrangements are already complex, and they are needlessly complicated further by being laid out in too many places.

Some participants submitted that the Commission presumed that an interested person has the ability to determine the duty payable on particular goods. Certainly the Commission believes that this should be so, instead of the present arrangements which are confusing and which continually fail the ARC's access criterion for legal rules (Sub. 307, p. 5).

Recommendations

The Commission recommends that Customs gazettes the names and addresses of local manufacturers whose production has caused an application for concessional entry to have been refused. The basis of refusal should also be noted.

This recommendation applies to refusals of applications which have wording which complies with Customs' standard requirements, whether the proposed wording of such concessions has been gazetted already or not.

The Commission further recommends that Customs publish, to the extent possible, all tariff and quota rates and levels, substantive, preferential or concessional, in a consolidated form in sequence according to Australia's Harmonised Tariff System. Additional concessions should be published as part of the same document, so that, at any time, an interested person can ascertain as simply as possible the duty payable on particular goods. This recommendation need not affect the structure of the Customs Tariff Act.

Part III: The By-law System

THE PRESENT BY-LAW SYSTEM

8.1 Background

The By-law system -- meaning those concessions in Schedule 4 of the *Customs Tariff Act 1987* other than the CTCS -- has a long history. Its origins go back to the first Commonwealth Customs Tariff, which took effect in October 1901. The Customs Tariff Act included provision for concessional entry under 'departmental by-laws'. Categories of goods which are still permitted entry under concessions originating at that time include goods for the disabled (Item 12), goods imported by passengers and crews (Item 15) and theatrical costumes and properties (Item 28A). All the items in Schedule 4 and their backgrounds are set out in appendix C1.

The term 'By-law system', as used in this report, does not cover concessional entry under Schedule 3 (which is not under reference) or the Supplementary Provisions (which are discussed in sections 8.4 and 9.4).

The terminology used for the various measures within the By-law system differed among many of the organisations and companies which participated in the inquiry and can be a source of confusion; in particular, the term 'by-law' was used to indicate a variety of specific and general measures. In this chapter 'Policy Item' refers to a description in Schedule 4 which sets out a concession, usually in broad terms. In most cases, the specific coverage of each of those concessions is documented separately in the *Schedule of Concessional Instruments*. Instruments are created by Customs issuing 'By-laws' and 'Determinations' under the authority of Policy Items.

The making of 'By-laws' and 'Determinations' within the By-law system in some ways parallels the making of CTCOs under the CTCS; indeed, CTCOs are actually instruments in the *Schedule of Concessional Instruments* made under particular Policy Items -- Nos. 10, 11, 19 and especially 50.

There are another 59 Policy Items in the Schedule and 48 of these specify that instruments may be made under them. Policy Items 1 and 13 were repealed on 1

October 1990. Item 1 covered Commonwealth Government imports and Item 13 covered imports by defence contractors under the Australian Industry Participation program. A new Policy Item has recently been created. The Minister for Industry, Technology and Commerce announced in August 1990 that aluminised steel for manufacture of car mufflers would be granted concessional entry (Button 1990a). This decision followed an IAC report which recommended against concessional entry (IAC 1989b). Policy Item 51, which gives effect to this concession, was introduced in August 1990 (Sub. 247).

The existence of Schedule 4 complies with the recommendations of an IAC report on 'Customs Tariff Simplification' (IAC 1981). In that report, the Commission recommended that, in addition to the sections of the Customs Tariff Act, the Australian Tariff should include a Concessional Schedule, as well as Interpretative Rules and a Principal Schedule.

8.2 Existing Policy Items

Policy Items cover a miscellaneous collection of goods and user categories which have been granted concessional entry for a variety of purposes. The information on Policy Items in appendix C reveals the diverse range of goods covered by the concessions and the multiplicity of objectives they are intended to serve. It also shows the variety of ways in which goods are specified in Schedule 4. Some goods are comprehensively described, some are expressed in terms of end use, and some are nominated by reference to other documents.

The Policy Items do not fit neatly into categories. However, for present purposes they can usefully be classified into three general groups: 'Community', 'Administrative' and 'Industry Policy' Items.

Community Items

Some Items can be seen as promoting broad community objectives, such as social or cultural development. This category includes several Policy Items used to give effect to international agreements, treaties and conventions, including Item 4 (scientific goods covered by an agreement), Item 8 (goods imported under Status of

Forces agreements) and Item 9 (goods under the Australia-New Guinea Treaty). It is difficult to envisage such international agreements being as easily accommodated by alternative administrative arrangements.

Other Items have apparently been created for social reasons. Examples are Item 12 (goods for the disabled) and Item 35A (cigarettes for medical or scientific research). Others are apparently included on cultural grounds, such as 28A (theatrical costumes and properties) and 28B (ethnic costumes).

Administrative Items

A second group of Policy Items provide a convenient means of overcoming administrative difficulties. For example, Item 18 provides for duty free entry of imports replaced or returning from repair under warranty overseas. Goods imported for repair or alteration and intended for export fall within the scope of Item 21 and are granted duty free entry. The necessity for an importer to dismantle capital equipment and ship certain components separately (thereby gaining the benefit of a CTCO on part of the equipment) is obviated by the terms of Item 47. Item 15 covers goods, such as personal effects, imported by passengers and crews of ships and aircraft.

Certain Items were created to provide a convenient way to comply with, or overcome anomalies resulting from, the Harmonized Tariff which was introduced in 1988. Examples of this are Item 34 (goods imported in containers which will be exported) and Item 48 (special attachments for machines for working metal).

Other Items in this grouping were introduced as a means of catering for end-use concessions following the phasing out of such provisions from commercial tariff concessions in the mid-1980s, for example, Item 29 (goods for use as prototypes).

Industry Policy Items

An Item can be created when the Government considers that concessional entry is justified for certain types of goods on industry policy grounds but the CTCS criteria

cannot be met. For convenience, these Items are termed 'Industry Policy Items' in this chapter.

The Minister for Industry, Technology and Commerce stated in May 1988:

> The Government believes that decisions where judgements have to be made concerning the effect on assistance to Australian industry, are better made by the Government through provision of policy by-laws rather than by modifying the parameters of the Commercial Tariff Concession System. By-laws also allow the Government to provide concessions targeted to achieve specific industry goals in a way not possible within the Commercial Tariff Concession System. (Button 1988b.)

The reason By-laws are seen as a more effective means of achieving an industry policy objective is that they can go beyond the CTCS in scope and coverage. Industry Policy Items can apply to imported goods which are also manufactured locally, whereas CTCOs can only be made when there is no competitive local production. Further, Items can have specific end-use provisions whereas CTCOs cannot.

In the Issues Paper released at the commencement of this inquiry, the Commission ruled out making any recommendations which would interfere with the assistance arrangements in the industry Plans for passenger motor vehicles, textiles, clothing and footwear, and tobacco. These Plans, which incorporate By-laws made under Industry Policy Items, have been established for set periods. The provisions of the Passenger Motor Vehicle Manufacturing Plan have recently been reviewed by the Industry Commission (and it has been recommended that its associated By-laws be retained). The Textiles, Clothing and Footwear Plan is to be reviewed and the Tobacco Plan arrangements are due to expire in October 1995.

8.3 Mechanisms for change

The By-law system operates at two levels, with Policy Items in Schedule 4 outlining the goods granted concessional entry, and instruments providing the details separately. The mechanism for change is quite different at these two levels.

Policy Items

A Policy Item can only be created or altered by Parliament, as an amendment to Schedule 4 of the *Customs Tariff Act 1987*. The amendment to Schedule 4 may be incorporated subject to the proviso 'as prescribed by by-law'. Over three-quarters of the Policy Items include these words and they are particularly common for Industry Policy Items. This wording means that Customs has the power to make a 'By-law' or 'Determination' which is not shown in Schedule 4 but which spells out the details of the Policy Item.

An Industry Commission inquiry generally has to be undertaken before an Item can be created, substantially amended or deleted. This stems from the requirement under s. 10 of the *Industry Commission Act 1989* (and previously under s. 23 of the *Industries Assistance Commission Act 1973*) relating to changes to import duties (see appendix B1). As an example, Item 38A (polyesters and polyamides in primary forms) was created following IAC reports on the chemicals and plastics industries (IAC 1985a, 1986b). Another example is Item 39C (fliptop cigarette package paperboard), introduced following the report on 'Pulp, Paper, Paper Products and Printing Industries' (IAC 1987c).

There are some avenues for making administrative changes which maintain policy intent without involving recourse to the Commission. Section 12 of the Industry Commission Act provides for a number of situations such as correcting anomalies, errors or ambiguities in the Customs Tariff Act, or responding to a decision by a court or tribunal. Section 12 of that Act also permits action, without an Industry Commission inquiry, that is necessary to carry out the policy of the Government in relation to international trade agreements. The Minister also has authority under some other legislation, such as *the Textiles Clothing and Footwear Development Act 1988,* to make amendments under certain circumstances.

The Minister for Industry, Technology and Commerce stated in May 1988 that greater use would be made of the By-law system in those cases where CTCS criteria are not met but strong grounds for concessional entry exist. The Minister also reaffirmed the role of the Commission in creating Policy Items. He said :

> Policy by-laws will, however, only be granted after formal consideration of the issues by the Industries Assistance Commission. Guidelines will be established to ensure that policy by-laws meet clear Government objectives. (Button, 1988b.)

As noted in the introduction to this report, the Commissions' guidelines and procedures ensure public scrutiny of the issues and the consideration of economy-wide implications. However, decisions by the Government following a Commission report, including decisions on Policy Items, need not accord with the course of action proposed by the Commission. The Government must consider, but it is not obliged to follow, the Commission's recommendations. There is no requirement for the Government to state its reasons for putting a Policy Item in place when the Commission has recommended otherwise.

Once the Government has made a policy decision, the department implementing the decision has responsibility for developing the wording of the new Policy Item. The Department of Industry, Technology and Commerce (DITAC) is often the department which has the major role to play in the development of new Policy Items before they are introduced into Parliament by the Government. DITAC is guided by 'General Guidelines and Principles to Apply to Policy By-laws', which are discussed in the next chapter. (These guidelines also play a role in the drawing up of new instruments.) Customs plays a part in developing new Policy Items only to the extent that advice is required on the appropriateness and operability of the proposed wording.

Revocation of Policy Items mostly results from an amendment of *the Customs Tariff Act 1987*. Some Items have 'sunset clauses' under which the termination date is specified in Schedule 4. The revocation procedure is much less automatic and much more time-consuming than under the CTCS. There are no provisions for regular review of Policy Items.

Instruments

Instruments provide operating detail for the implementation of Policy Items. There is a separate document published by Customs called the *Schedule of Concessional Instruments* in which the various instruments are collected. The Schedule is the reference document for customs agents making entries and Customs officers administering the Tariff at points of entry into Australia.

Parts II to VI of the *Schedule of Concessional Instruments* cover the By-law system (Part I covers the CTCS).[1] Instruments under the By-law system in this document currently number 256 (excluding those arising from Item 43 under which concessional entry is permitted for specific consignments). The number of By-laws under each Policy Item is shown in appendix table C1.

Customs makes an instrument either by issuing a 'By-law' or a 'Determination'. The power to do so derives from Part XVI of the *Customs Act 1901*. Sections 271 and 273(1) of the Act provide the authority to make By-laws and Determinations respectively (see appendix B3). The By-laws are made for 'goods or a class or kind of goods' while the Determinations are made for 'particular goods'. A By-law is used for a concession with general application and a Determination for more specific, limited importations.

The By-laws made under s. 271 must be published in a Government *Gazette* and have no effect until this is done. The Determinations made under s. 273(1) take effect from the time of determination and must be published in the *Gazette* as soon as practicable after that time.

Section 12 of the *Industry Commission Act 1989* provides for the making of By-laws and Determinations under the *Customs Act 1901* without the matter being referred to the Industry Commission. The new instruments are generally made when new Policy Items to which they relate are created. DITAC stated that 'General Guidelines and Principles to Apply to Policy By-laws', discussed in the next chapter, are pertinent to instruments as well as to Items (Sub. 247).

[1] Part II covers 'Instruments not keyed to an item in Schedule 3 to the Customs Tariff but for which tariff classification of the goods must be determined and shown on the entry for home consumption'; Part III covers 'Instruments not keyed to an item in Schedule 3 to the Customs Tariff and in respect of which a nominal tariff classification need only be shown on the entry for home consumption'; Part IV covers 'Textile Clothing and Footwear Policy By-Laws'; Part V covers 'Policy By-Laws or Determinations Issued Under Section 271 or 273 of the Customs Act'; and VI covers Instruments to which 'End-Use provisions apply'.

Customs stated that it can introduce, amend or revoke By-law instruments, but the advice of the appropriate policy departments is sought in this process, as they must advise on the industry policy effects of any changes.

DITAC informed the Commission that instruments are rarely changed. Minor amendments such as tightening of wording have occurred through Ministerial consultation. In addition, authority has been delegated in relation to several industries (for example, textiles, clothing and footwear, passenger motor vehicles, mining and agricultural equipment) for minor alterations to be made or coverage extended without an Industry Commission inquiry or consultation with other Ministers. In some cases, the Minister has been permitted by Cabinet to create an instrument if there is no change in policy intent but merely an alteration in the mechanics of the policy. Further, if new products are developed which make existing wording obsolete or inappropriate and difficult for Customs to administer, amendments can be handled by Ministerial consultation, where relevant Ministers agree.

Special procedures apply, and much comment was received from participants, in the case of Policy Items 43 (components of certain machinery), 45 (goods for mining), 46 (goods for agriculture) and 47 (goods ineligible for CTCOs because they are incorporated in equipment). These Items have broad coverage and the Government has provided that changes to the *Schedule of Concessional Instruments* can be made without Industry Commission involvement. Approval for imports is at the discretion of the Minister in the case of Item 43 (under which specific consignments are granted concessional entry), and jointly at staff level in DITAC and Customs for Items 45, 46 and 47. Once agreement has been reached on creating or changing an instrument in the Schedule, administration is handled by Customs.

8.4 Supplementary Provisions

The Commission has interpreted the Terms of Reference of this inquiry to be principally about concessional entry under Schedule 4 of *the Customs Tariff Act 1987*. However, the Terms of Reference go beyond that as they cover concessional entry 'not specified in Schedules 3 and 5' of the Act. Consequently, they

encompass concessional entry of goods under certain other Acts, Customs Regulations and arrangements. Details of the goods covered by these other avenues for concessional entry are brought together in the 'Supplementary Provisions', which are set out at the end of the 'Working Tariff' (Customs 1990b). Customs said that the Supplementary Provisions are administrative measures, and have no legislative force. The Supplementary Provisions are set out in full in appendix C2.

Customs stated that the purpose of the Supplementary Provisions is to:

- provide for a rate of duty on certain goods where legislation other than the *Customs Tariff Act 1987* specifies such rates; or
- provide nominal Tariff headings or treatment codes to enable statistics to be compiled on certain imports where such a detailed split is not provided by the *Customs Tariff Act 1987*.

Not all the Items in the Supplementary Provisions are relevant to this inquiry. Customs has advised that Supplementary Items 120, 121 and 122 are in the process of being revoked. Several other Supplementary Items do not provide for entry at concessional rates of duty (Items 114, 115, 117, 125, 126 and 201-203). These Items are not discussed further in this report.

A group of Supplementary Items which are under reference, because they permit concessional entry of imports, covers goods for use by diplomatic missions/consular posts and staff/family members (Item 101-105). A further Item covers goods imported by certain people associated with international organisations (Item 106) and another, goods associated with the *Murray-Darling Basin Act 1983* (Item 107). Imports which are to be exported within 12 months are covered by Supplementary Item 111 and certain aircraft stores by Item 112. Materials imported for manufacture into products in licensed warehouses have also been provided for in the Supplementary Provisions (Item 113).

Supplementary Item 110 deserves special mention. This Item in effect allows duty free entry of fuel oil for the Greenvale Nickel Project at Yabulu, Queensland in accordance with a 1983 government decision. The fuel oil used by Greenvale is not used as an energy source but as a chemical reductant in the refining process.

* * *

The foregoing is the Commission's understanding of the present operation of the By-law system and the Supplementary Provisions. Gaining an appreciation of these

arrangements was hampered by the relatively limited information provided in submissions compared with the wealth of information on the CTCS. It was also hampered by the lack of public documentation of the system, especially in a consolidated form. Only limited information on how the system works is available and this has to be gleaned from Acts, occasional media releases and Customs Notices. Consequently there was confusion among participants over matters such as whether or not there are government guidelines for creating Items and instruments. This lack of transparency is a central issue to be discussed in the following chapter.

9 IMPROVING THE BY-LAW SYSTEM

Having set out the Commission's understanding of how the By-law system works, this chapter focuses on some key issues relating to its role and operation.

The Terms of Reference specifically ask the Commission to report on the effect of the CTCS on the development of efficient, internationally competitive Australian industries and for the economy generally. The detailed results of that exercise are presented in chapter 4. However, when assessing the incidence and economic effects of the CTCS, the Commission also looked at the effects on the economy of the non-Plan By-laws, as modelled by ORANI (see appendix F). The economy-wide effects of the policy concessions were modelled as being similar to, but much smaller than, the effects of the CTCS. In aggregate, the non-Plan By-laws saved import duty payments of just over $100m in 1989-90, compared with almost $1 billion saved by the CTCS (see appendix D).

9.1 The role of the By-law system

In May 1988 the Government announced that it intended to make greater use of Policy By-laws where the CTCS criteria are not met but where there are strong grounds for concessional entry (Button 1988b, p. 9). In its submission to this inquiry, Customs supported the retention of a discretionary By-law system 'to provide the Government with a mechanism to be able to target assistance in special cases'. Nearly all participants who commented on the By-law system supported its continuation, although some were critical of aspects of its structure and operation. Many of the submissions on the Commission's draft report included comments on the By-law system, as that report provided an outline of the system and proposals to which participants could respond.

The By-law system, like the CTCS, provides importers with access to imports at world prices, but in most other respects the two systems are quite different.

Competition with local production

Whereas the CTCS provides import concessions only in those cases where goods performing similar functions are not produced and are not capable of being produced in Australia, the By-law system permits duty-free entry of imports that compete with Australian production. In so doing, the By-law system has potential to reduce the assistance available to local industries, and so may affect their ability to compete with imports -- a possibility that should not arise in the case of the CTCS. The extent and significance of that are functions of the level of the relevant tariff. As tariffs decline this effect diminishes accordingly.

Duty-free entry under the By-law system may be assumed to be compatible with the Government's current tariff reform program to the extent that there is Government control over and public scrutiny of the system. This is needed to ensure that no undue and unintended disturbance is caused to existing industries by the system.

End use

The By-law system differs from the CTCS in having scope for end-use provisions (although policy concessions can be made without such provisions). There was a good deal of support among participants for Policy By-laws which allow end-use provisions. Crown Equipment Pty Ltd stated that end-use Policy By-laws provide flexibility and the 'ability to fine tune decisions to correct anomalies' (Sub. 12, p. 12). Not all participants found Policy By-laws to be a particularly suitable means of tariff relief. The Publishers' Group gave some support to replacing By-laws with substantive duty-free rates, at least for certain paper and paperboard products (Sub. 132, p. 6). The Group went on to suggest that 'all paper, including that used for books, should be available on a duty free basis, even if this means loss of the Bounty' (*ibid*., p. 9).

In its response to the draft report, Customs reiterated its objections to end-use By-laws on the grounds of administrative problems with policing (Sub. 285, p. 17). When asked about substituting the use of approved auditors by importers for the administration of securities by Customs, it said 'that would make end-use concessions less unattractive than they are now'. Customs also noted that it had

suggested to the Australian Law Reform Commission (ALRC) that a system of administrative penalties be introduced instead of securities, and that the ALRC had adopted the suggestion (Transcript, p. 1902; see also ALRC 1990, pp. 136-7). As noted in section 5.5, there would also appear to be some room for greater reliance on private auditors in import administration. When taken together with the ALRC proposals, administration of end-use requirements in By-laws would clearly become less burdensome. With an audit-and-penalty regime there should be less reluctance to refer consideration of possible new end-use Policy Items to the Commission. Consequently, there is a presumption that more end-use By-laws should be made in future than would otherwise have been the case.

In a submission on the draft report, KPMG Peat Marwick said that scope exists for the introduction of a new Item in Schedule 4 to the Customs Tariff for making By-laws and Determinations where a CTCO would be (otherwise) appropriate for particular goods for specific applications (Sub. 286, pp. 9-10). Subsequently, in response to requests from the Commission at the public hearings, KPMG Peat Marwick (Sub. 304), Deloitte (Sub. 298) and Ronald C Fisher Trade Consultants (Sub. 300) submitted suggested wording for a hypothetical end-use Item in Schedule 4. If there were to be such an Item, the wording submitted by KPMG Peat Marwick could possibly form the basis of the Item although any wording would have to be carefully considered and assessed before action was taken. Customs commented that there are several conditions which would need to apply to a concession of this type, for example revocation conditions should be the same as for CTCOs (Sub. 320, p. 2). Any such Item would also have to comply with the principles and guidelines for Policy Items developed later in this chapter.

In section 5.5 the Commission explained why it does not support end-use concessions within the CTCS. A generalised end-use concession within the By-law system is considered inappropriate for basically the same reasons. However, in an individual case where there is a compelling reason the possibility should remain that end-use provisions can be introduced under an appropriate Policy Item. This would arise where the concession was a significant one in value and would clearly not disadvantage producers competing in other end uses as, for example, might well apply in the case of seamless pipe for liquefied natural gas (see section 6.3).

Revocation

There are no standard, formal provisions for revoking Policy By-laws. This is of considerable commercial significance to some users. For example, Woodside Offshore Petroleum Pty Ltd stated that users 'can plan projects with an acceptable level of confidence that their investment in innovative technology will not be jeopardised by the revocation of concessions prior to importation' (Sub. 61, p. 2).

Rules

There are also very few formal rules for the making of new Policy By-laws. While there was a good deal of support for Policy By-laws among participants, some expressed a desire for clearer rules for their creation and application. For example, the National Farmers Federation stated that:

> The By-law system is a logical and necessary adjunct to the CTCS to overcome anomalies and inequities and to allow a policy direction to be exercised over the systems and initiated by Government. ... The Government should make a clear statement of the circumstances in which By-laws are to be used. (Sub. 185, p. 15.)

APPM Paper Division noted the need for a full public inquiry by the Industry Commission before significant increases in the use of policy concessions because of 'the long-term nature of policy by-laws and difficulty in removing or changing them' (Sub. 116, p. 24).

Assessment

The By-law system can play a useful part in tariff reform. It provides a vehicle for adjustments to the Tariff on national interest grounds where substantive tariff reform is not practical. Specifically, the By-law system can be targeted to improve economic efficiency in a way that is not possible using the restricted role of the CTCS. Significant end-use anomalies can be dealt with, and limited duration concessions can be readily implemented.

The real test of the efficacy of the By-law system in performing these roles lies in the process by which the tariff concessions are created and implemented. Because

the By-law system can affect an existing industry in much the same way as can a selective tariff reduction, it needs to be handled with care and subjected to adequate public scrutiny.

The Commission's main concerns about the By-law system relate to its lack of transparency and scope for administrative discretion, especially in the making of new instruments. These issues are addressed in section 9.2.

At a minimum, a public inquiry and report by the Industry Commission should continue to precede the introduction, revocation or substantial amendment of Industry Policy Items.

Commission inquiries appear to have been harder to obtain, however, than should be necessary (see box 9.1). The Commission suggests that access to it for inquiries on policy concessions need not be so narrow. Nevertheless, Item-level issues referred to the Commission should be matters of policy rather than problems of administration or individual circumstance.

9.2 Creating and changing By-laws

The mechanisms by which new Policy Items and instruments are created, and existing ones changed, are critical features of the system. Participants alleged that a virtue of the system is its flexibility. The CAIA said that the concession arrangements through Items such as 22, 30, 31 and 39A provide the Government with 'flexibility in pursuing political objectives by providing encouragement for specific industries'. Similarly, KPMG Peat Marwick said of the By-law system:

> We do not dispute the right of Parliament to provide means for government to waive customs duty in any circumstance it considers appropriate. ... the ability to take this action adds much needed flexibility to the tariff (Sub. 190, p. 5).

Some participants suggested that the By-law system could be more flexible. Cramb Consulting Group Pty Ltd said 'the Government's approach to by-law applications in recent years has virtually eliminated the use of policy by-laws as a flexible alternative element of the concessional arrangements available to Australian industry.' (Sub. 133, p. 16.) It cited the difficulty of establishing a strong case on industry policy grounds and then overcoming the 'substantial hurdle' of a Commission inquiry.

Box 9.1: **Seamless Tubing**

The Commission was provided with an example of an unsuccessful attempt to obtain a new Schedule 4 Item. Woodside Offshore Petroleum Pty Ltd held a meeting with DITAC personnel in July 1985, when it was confirmed that end-use provisions for imports of seamless tubing would not be allowed within the CTCS and that there was a strong case for an IAC reference to establish a Policy By-law. Woodside requested an IAC inquiry. DITAC refused the request in November 1985 and Woodside requested a re-appraisal of the decision. DITAC responded in January 1986 outlining the options it was considering:

- granting a policy by-law without IAC reference;
- referral to the Steel Industry Authority; or
- an IAC inquiry.

DITAC informed Woodside of its decision on these options in February 1987. Woodside was told that there would not be a referral to the IAC because, of the eight previous references for end-use By-laws, only one had been approved. Government policy was said to be to encourage industry groups, not segments of an industry, and Woodside's request `was not of sufficient size to warrant action because of the impact it may have on the metals industry in total'.

Source: Woodside Offshore Petroleum Pty Ltd, Sub. 61, pp. 12-14.

Flexibility in itself need not be a desirable attribute. While it can prevent the system becoming embroiled in disputes, as has occurred with the CTCS, it can be at the cost of greater administrative discretion than is warranted. The fewer the public rules and guidelines, the greater the scope for such discretion. And without rules which are open to public scrutiny, there is scope for misunderstanding and abuse.

Guidelines for making Policy Items

When developing a new Industry Policy Item for the Government to introduce in Parliament, DITAC plays a major role and is guided by Cabinet-approved 'General Guidelines and Principles to Apply to Policy By-laws'. The role of Customs in the process is to advise on whether the wording of a proposed Policy Item can be administered; later, of course, Customs has the job of administering the Item when it is incorporated in Schedule 4.

In its submission on the draft report, Customs said that it views the 'General Guidelines' as a working tool within DITAC to assist industry policy areas in considering the appropriateness of making a policy by-law as opposed to other industry assistance measures (Sub. 285, p. 17).

There was little comment on the 'General Guidelines' during the initial round of hearings, which is hardly surprising given that most participants would have been unaware of their existence. For example, Coal and Allied Operations Pty Ltd noted that Schedule 4 By-laws are determined in a non-public manner by industry consultation with the policy sections of DITAC and Customs. The company requested that publicly available criteria be developed (Sub. 127, p. 25). Similarly, KPMG Peat Marwick called for the purpose, legal basis and criteria for all concessional arrangements to be identified and published (Sub. 190, p. 9).

At the public hearings, however, Cramb Consulting Group Pty Ltd stated:

> But there are policy guidelines, administrative guidelines for policy by-laws, that nobody knows about. I think that is a shocking system from the point of view of public administration (Transcript, p. 1073).

Cramb later provided the Commission with a copy of the guidelines reproduced in box 9.2 (from Sub. 205). They have not been officially released by the Department, although DITAC has confirmed that they have been in force since 4 September 1989 (Sub. 247). The Department also confirmed that the guidelines are pertinent to the creation of new instruments as well as Items. The Commission draws attention to s. 10 of the *Freedom of Information Act 1982*, which provides that administrative guidelines, if unpublished, may not be used 'to the detriment of any person'.

Box 9.2: **The Government's general guidelines and principles to apply to Policy By-laws**

For the purposes of these guidelines, a *policy by-law* is made to an item in Schedule 4 of the Customs Tariff which reflects a decision by the Government to provide concessional entry for specified imported goods on industry policy grounds where special circumstances exist. The details of the concession are spelled out in the Schedule of Concessional Instruments. It is not intended that every guideline would be met before a PBL would be considered, but rather that broad industry policy considerations reflected in the guidelines would be taken into account.

(a) the provision of policy by-laws is to be regarded as a last resort; all other options (for example, Commercial Tariff Concessions, export concessions) should first be explored

(b) policy by-laws should assist the Government to achieve clear objectives in a particular industry area. They would be granted in the context of the Government's decision on an Industries Assistance Commission (IAC) report

(c) policy by-laws would not normally be granted on inputs to industry which have effective rates of assistance already significantly higher than the manufacturing average

(d) *policy by-laws* could be granted to all imports of a particular product, and not necessarily for specific end-use only

(e) policy by-laws should not normally be enterprise-specific

(f) the case for granting policy by-laws would need to be made in terms of how such by-laws would contribute to the achievement or maintenance of a more internationally competitive, export oriented and innovative industry

(g) the emphasis in considering policy by-laws would be on inputs to industry including capital goods for use in production processes

(h) gains to a particular industry from policy by-laws should outweigh identifiable losses or disadvantages on the part of other areas of industry

(i) policy by-laws would rarely, if ever, be granted simply to sustain firms or industries in competitive difficulties; they should aim to encourage self-help and to contribute to sustainable competitive advantage

(j) policy by-laws would not normally be granted to enable industry to accommodate fluctuations in supply and demand; temporary assistance provisions within the IAC Act 1973 exist to deal with such circumstances

(k) in issuing policy by-laws, the Government should give consideration to the desirability of specifying a time limit on its operation and whether there should be a review of its effectiveness in achieving industry policy goals after an appropriate period of time.

The lack of public awareness of the guidelines may be of less concern at the stage of creating Policy Items, which have to go through public inquiry as well as Parliamentary procedures, than in the creation of instruments, where there is little or no public scrutiny. Nevertheless there is still the undesirable situation that those 'in the know' can make more effective representations for new Policy Items than those (the majority) who have been ignorant of the guidelines.

Need for better guidelines

Apart from their lack of transparency, the Government's guidelines fall well short of being a useful set of rules for the purpose of establishing new Policy Items in Schedule 4 of the Customs Tariff Act. They are vague and repetitious and do not exert significant discipline, an attribute that is fairly elemental to any rule.

Further, it is difficult to see how the guidelines relate to some of the Policy Items currently in Schedule 4. For example, the motor vehicles, textiles and clothing Items all increase the effective assistance to industries which enjoy effective assistance well in excess of the average for manufacturing from their output protection alone. This stands directly in contrast with guideline (c), which in any case is not particularly useful because some low-cost industry may be helped by the promulgation of a Policy Item on an input even though another industry, which uses the same input, has an already high effective assistance rate further increased. Guideline (j) relates to the temporary assistance provisions in the previous IAC legislation which do not appear in the Industry Commission Act.

Recommendations

The Commission recommends that the guidelines be rewritten and related just to the making of Items. They should also be made publicly available. The guidelines on making Policy Items, particularly Industry Policy Items, should include several elements.

- **Policy Items should be consistent with the Government's general policy guidelines for industry, as enunciated in s. 8 of the Industry Commission Act** (and reproduced in appendix B1). In a submission on the draft report the

Australian Vice-Chancellors' Committee advocated the broadening of this recommendation to encompass Government policy generally (including policy on science, technology, education, employment and training) rather than industry policy specifically (Sub. 303, p. 2). The Commission considers that it would be more appropriate for the government to take these other considerations into account as it sees fit when making decisions on individual Policy Items.

- **Policy Items should not duplicate CTCS concessions.** Policy Items are specifically for allowing concessional importation despite the existence of local production which, for the purposes of the CTCS, serves similar functions to those imports.

- **Policy Items should only be made where they are the most appropriate mechanism.** The Policy Item is not a panacea, and will often be less suitable than direct tariff removal or the granting of a subsidy. DITAC noted that it currently generally considers policy concessions only as a last resort after all other tariff options such as tariff reductions or CTCOs had been determined to be inappropriate (Sub. 247, p. 4).

- **A Policy Item should include clear statements of its objective, of its strategy to achieve that objective, and its intended ambit.** Ultimately, it is the rationale presented to Parliament that is important in the decision to make a new Policy Item and, when made, the Item should clearly state its rationale for existence.

- **If instruments are to be made under it, a Policy Item should give clear criteria against which they are to be made, including product coverage, duration of application, the duty rate and the agency responsible for making them.** Customs contended that, although this information is desirable, it would be impractical to include it in the legislation because it would be too lengthy and would require legal definitions and phrases `which may not necessarily clarify the issues for ordinary people.' (Sub. 285, p. 14.) Customs' preferred approach is to include this information in *Australian Customs Notices* or press releases. The Commission considers that approach would be inadequate.

Such a set of guidelines should form a standard for appraising existing Items as well as proposed measures. The existing Policy Items generally fall well short of the required standard; section 9.3 discusses some of the more recently created Items in this light. In contrast, the CTCS Items fare much better. Item 50, the main CTCS

Item, has a whole Division of the Customs Act directing the making, altering and revocation of CTCOs. But for many Policy Items there is no clear mechanism of public appeal for review of instruments, the instruments are made on scant criteria, and are often announced with retrospectivity, despite the existence of local producers making goods serving similar functions who might well be disadvantaged by their introduction.

Existing Policy Items in Schedule 4 should be revised to state the Government's objectives for them and lay down explicit criteria for the making of their subordinate instruments.

Instruments

As already observed, most of the Commission's concerns about By-law system instruments relate to transparency and administrative discretion. Transparency in decision making on industry assistance matters is vital. In its absence, suspicion of patronage can arise and little-known avenues can provide benefits to the lucky few.

Guidelines for making instruments

Lack of transparency loomed large with participants as an issue on the making of instruments. For example, Hudson O'Leary and Associates observed that 'uncertainty and selectivity remain obstacles to industries endeavouring to avail themselves of this type of concession, although not to the same extent as with CTCOs' (Sub. 65, p. 15). However, the company considered that the absence of legal criteria for making new By-laws is appropriate providing there is Industry Commission involvement in framing recommendations to Government, especially where new concessions are to be made disregarding local availability (*ibid*., pp. 28, 31).

Schedule 4 Items are made by Parliament following public inquiries. But where they allow the creation of subordinate instruments, there is often too much discretion, and insufficient direction, given to the officials who make the instruments (see box 9.3). There should be clear legislated criteria for the making of policy concession instruments.

Box 9.3: **Difficulties in obtaining Item 47 concessions**

Plastech Industries Pty Ltd stated in its submission that:

> Plastech applied ... in September 1989 for concessional entry under Item 47 ... The application has still not been processed. We have been advised by Customs that the reason for its failure to make a decision ... is that no guidelines have been devised as yet for the processing of such applications (Sub. 123, pp. 20-1).

The company's claim contrasts sharply with the statement by Customs that 'There are no administrative problems with item 47' (Sub. 155, App. N). Customs later stated that Plastech's request lapsed in July 1990 - subsequent to the initial round of hearings - when a tariff interpretation dispute was resolved in Plastech's favour (Sub. 285, p. 15).

In a discussion on the apparent lack of guidelines, a representative of Coal and Allied Operations Pty Ltd was asked what he would do if the company wanted an entry under Item 47. The reply was:

> if it were perhaps in the area of light engineering you would call up [a particular officer] in the engineering area of DITAC and you would present to him some rationale as to why item 47 should be extended. ... that would be, I guess, your starting point. Customs may have some input in there in terms of whether or not the proposed amendment, if it was to be accepted, could be administered, but ... I believe that they are essentially industry policy issues that determine the scope of those particular concessions (Transcript, p. 473).

Inconsistent interpretation

There were several instances of participants complaining of inconsistent interpretation of instruments. For example, APEA members referred to differences between Customs collectorates in the interpretation of 'workover' equipment in an Item 22 instrument (Sub. 184, pp. 8-9). In its submission on the draft report, Customs said that Item 22 is extremely difficult to administer (Sub. 285, p. 15).

Customs noted difficulties with definitions, interpretation and potential for abuse in the administration of instruments (Sub. 155, p. 34). Several of the problems are

being addressed by Customs rather than being matters for consideration in this inquiry. Overall, however, Customs stated that provided the instruments are adequately defined, administration of them is relatively uncomplicated (*ibid*., p. 35).

Review

At the level of individual instruments, there is no provision for review of administrative decisions to create, alter or remove instruments. For example:

- APPM Paper Division expressed concern at the instruments allowing concessional entry of paper competing with its products. It claimed it was not consulted about the wording of the By-law on coated magazine papers as finally decided by DITAC and Customs, which resulted in a far wider product coverage, it claimed, than the Government had originally intended for Item 39A (Sub. 116, pp. 13-16). Customs responded by saying the wording of the By-law accurately reflects the decision made by Government and the making of By-laws is not necessarily aimed at being company specific, but rather is aimed at an industry (Sub. 285, p. 16). The Publishers' Group said that in its experience there had not been a lack of public scrutiny of By-laws nor had changes been made to concessions without public reference (Sub. 280, p. 3).

- Item 43 Determinations are typically gazetted only with the following information:

  - the last day of effect;

  - the fact that various tariff items may apply; and

  - a vague description of the goods, for example `goods for use in a liquefied natural gas project'.

- Local producers, and other interested parties, have no idea what goods are to be entered under such instruments. Being *Determinations*, the goods may already be in transit or have entered Australia by the time the instrument is published. In response to the comments in the draft report on the vagueness of Determination descriptions, APEA and Woodside Offshore Petroleum claimed that a general

description is inevitable in Determinations for Item 43 (Sub. 276, pp. 2-3 and Sub. 288, p. 5). Woodside said that the project or equipment has been approved as a 'single functional unit' and as such the individual shipments have lost their identities and have become 'components' for that project or that item of equipment. Customs also defended the lack of detail in Item 43 gazettals (see section 9.3).

- Some By-laws made under Items 45 and 46 have no explicit provision for exemptions where there is local manufacture, which is apparently contrary to the Government's intention that these concessional Items are not to apply where the goods are made in Australia in the normal course of business (Button 1989b). Customs promulgated 21 new By-laws under these Items on 14 March 1990, none of which contained such provisions. Some of the new By-laws were back-dated to apply from 1 July 1989 (Customs 1990f). The Commission noted in its draft report that it is possible that DITAC had already established that there was no local production before the instruments were promulgated. Customs subsequently confirmed that this is so (Sub. 285, p. 21). But the point the Commission makes is that there is no transparency in the process.

The Commission believes that there would be advantages in having a standing forum for local manufacturers to appeal against such decisions.

In its draft report the Commission suggested that the Administrative Appeals Tribunal (AAT) would be the appropriate body to handle appeals against decisions on individual instruments made under Policy Items in the By-law system. Customs disagreed with this proposal saying that the purpose of the system is to provide a mechanism for implementing Government policies that cannot be accommodated through the CTCS or by changing tariff rates. An appeals body with the power to substitute decisions should not be deciding Government policy, Customs said (Sub. 285, pp. 14, 19).

The Administrative Review Council also responded to the Commission's draft report proposal, taking the view that By-laws are not suitable for merit review as By-law instruments are more legislative than administrative (Sub. 307). However, consideration could be given to allowing merit review of Determinations by the AAT if all essential criteria governing the making of Determinations were inserted in the *Customs Act.*

The Commission has recommended that each Policy Item include a clear statement of objective, the strategy to achieve that objective and the Item's intended ambit. A further recommendation is that if instruments are to be made under an Item, the Item should specify clear criteria against which the instruments are to be made. The Commission considers that, in addition to new Policy Items complying with these rules, existing Items should also be redrafted to satisfy them as many currently fall well short of the proposed standard.

If this approach were adopted, the Commission envisages that most of the legislative and all of the policy character of By-laws will be transferred to the Item level. By-laws (as well as Determinations) would then be largely administrative in nature. In these circumstances, the Commission considers the merit of administrative decisions relating to both By-laws and Determinations should be reviewable, and the AAT would be the appropriate body to carry out such reviews.

Therefore, the Commission recommends that, **provided better legislated criteria are established, the jurisdiction of the AAT should be extended into appeals against administrative decisions relating to By-laws and Determinations made under Policy Items.** (The Commission has previously stated that it also favours making the AAT the main venue for reviewing the merits of decisions on CTCOs.)

Coexistence of By-laws and Determinations

As already explained, Customs legislation allows either By-laws or Determinations to be made under most Policy Items in Schedule 4 of the Customs Tariff Act. By-laws may apply to a 'class or kind of goods' whereas Determinations pertain to 'particular goods' (see appendix B3). Further, a Determination has effect from the time it is made, but a By-law only comes into force when it is gazetted.[1] But Determinations must be gazetted as soon as practicable, and By-laws are made to apply retrospectively from time to time.

KPMG Peat Marwick suggested that any intended instrument be gazetted prior to coming into force (that is, effectively end the use of Determinations), and that

[1] Even though By-laws can be made retrospectively, the constraint that By-laws do not come into force until they are promulgated has led Customs to publish some in the Government Notices or Special editions of the *Commonwealth of Australia Gazette*, instead of the *Tariff Concessions* edition. Subscribers to the *Tariff Concessions* edition therefore do not see all the By-laws when they come into force. The situation is partly rectified, though not from a potential objector's viewpoint, by Customs' publication of the Schedule of Concessional Instruments, which is updated every week or so and which contains all By-laws.

decision makers be obliged to have regard to the relevant comments of local industry in deciding whether to make a new instrument (Sub. 190, p. 10). Customs responded to this suggestion by saying that, apart from increased delays in the introduction of concessions, the majority of Items are not tied to local production and the concerns of local manufacturers are therefore not relevant to the decision making process (Sub. 285, p. 16).

The IAC, in its 1982 report on the Commercial By-law System, could see no justification for maintaining the distinction between By-laws and Determinations (IAC 1982b, p. 131). However, Item 43, under which Determinations are now often issued, was not introduced until 1988, some years after the IAC expressed that view.

Prior to the release of the draft report on this inquiry, the Commission received only limited evidence on the relative merits of By-laws and Determinations. The Commission said in the draft report that it had doubts about the value of retaining Determinations and had not received much information from participants in support of this type of instrument. The idea was put forward of having one type of Schedule 4 instrument, and that this be in By-law form.

Customs said in response that Determinations are used for very specific, very important purposes. Item 43 (under which Determinations are commonly issued) is about shipments of components arriving on specified ships from nominated suppliers at different times, and to issue a By-law would invite abuse. Customs indicated that Determinations cover components for specific end-uses, and issuing a By-law would present an opportunity for people wanting to import that component for any end-use, which would necessitate end-use checks by Customs with the waste of resources they entail. The assistance afforded a local manufacturer of the component could be put in jeopardy by such a By-law, although the concession was

only intended to apply to a one-off shipment of that component (as part of a split consignment) for a particular purpose.

Customs further said that a Determination is specific to an importer, a ship and a quantity and enables a quick, comprehensive control system to be used. An additional difficulty in using By-laws instead of Determinations was said to be:

> Each Determination can cover a large number of invoices each invoice having up to 20 lines. For By-laws to have been used for Item 43 approvals granted so far the ACS would have needed to issue (at very considerable expense, estimated at $100 000) at least 1000 new pages of concessional instruments, each of which would NOT have wide use (normally once only). (Sub. 285, p. 21.)

In view of the further information received, the Commission now supports the continued use of Determinations in such circumstances.

Amending existing instruments

Participants have had difficulty in getting instruments amended. For example, Colan Products approached Customs for an addition to the exemptions list for an instrument made under Item 31 (which covers aircraft parts) to remove concessional entry of a good serving similar functions to one of the company's products. Six months later, Customs informed the company that this was a matter for DITAC. DITAC in turn suggested that Colan Products raise the matter at this inquiry. Colan asked:

> How do we amend the exclusions to this By-law to incorporate products manufactured by us? What is the criterion that excludes other locally made products and not ours? How were the exemptions to this by-law determined and what were the processes? (Sub. 188, p. 32).

Customs responded to the claim of delay in Colan Products' case by saying it was partially due to the need for it to contact other parties to clarify the situation and to obtain legal advice before referring the matter to DITAC (Sub. 285, p. 16).

Colan Products requested that criteria be set for exclusions from By-laws or amendments to allow for technical change or the entry of new Australian producers (Sub. 188, p. 8). Some beneficiaries of concessions took a contrary view. Esso asked 'what is the usefulness of a By-law if it contains a multitude of exclusions, of items vital to the national or infant industry?' (Sub. 128, p. 1).

Clearly, there is a need for some readily accessible and public mechanism by which local producers can establish whether, in creating a concession instrument in the By-law system, the Government has intended to expose their products to import competition at world prices, or whether the Government has simply overlooked them. In the latter case, the outcome would presumably be the writing in of an exemption under the instrument.

9.3 Issues on particular Policy Items

Most Schedule 4 Items under scrutiny in this inquiry are not controversial and many have been created following public inquiries (see appendix C). This section does not attempt to travel over that territory again. Rather, it seeks to illustrate the importance of the principles just developed to the main concerns raised by participants on particular Policy Items. These concerns fall into four groups: the recently created Items 43 and 45-7, the Florence Agreement and its Nairobi Protocol, and Customs' requests and suggestions.

Recently created Items

Several participants commented on Items 43 and 45-7, and on instruments made under them. These Items are relatively broad in scope and are more open-ended than most other Items, and their administration was the subject of considerable comment by participants. They were all created following Government consideration of the IAC's report on the Mining, Construction and Agricultural Equipment industries, although none of them were recommended by the IAC (1988b). Along with Items 48 and 49, which only became operative on the last day of 1989, they were also the first Policy Items to have been legislated since the Government's May 1988 Statement (Button 1988b). Although their administration was sometimes commented on unfavourably, participants generally supported the principle of there being such Items.

Item 43: Split consignments

In the past, complete goods imported in split consignments incurred duty at the rate applicable to the various components. However, the duty on the components was sometimes far higher than the duty the complete good would have incurred. Item 43 was introduced in August 1988, with effect from the beginning of 1988, to reduce costs to industry by making the imported components dutiable at the rate applicable to the complete good as a functional unit (Button 1988a).

The Item reads:

> Goods, as prescribed by by-law, being original components of machinery classified under a heading or subheading of chapter 84, 85 or 90 of Schedule 3.

The Item satisfies some of the Commission's five guidelines presented in section 8.2, but it falls down on the last two: there is no statement of its objective or strategy; there are no parameters beyond product coverage to limit the discretion of officials making Item 43 instruments; and no agency is made specifically responsible. This situation has been partly redressed by Customs, which has enunciated the aim of Item 43:

> The prime aim of the split consignment provisions is to minimise the input costs for industrial projects assisting in the development of internationally competitive industries in Australia while at the same time encouraging maximum involvement of competitive Australian industry by applying the split consignment provisions to parts of a functional unit where the balance of the unit is being manufactured in Australia. (Customs 1990e, p. 4.)

In its statement on the draft report, Customs further stated that the Item 43 arrangement is to the very great advantage of local manufacturers as project managers can now incorporate local components which, under the previous rules, would have rendered the project liable to higher rates of duty (Sub. 285, p. 20).

There was broad support among participants for this Item, although many had unfavourable comments about the process by which *instruments* subordinate to it are made:

> ... the system lacks transparency. No action is taken to inform Australian industry that determinations are being considered or the precise details of determinations which have been made. (KPMG Peat Marwick, Sub. 190, p. 6.)

Customs made a number of points regarding lack of detail in Gazette notices for Item 43 Determinations. They said that objection from local manufacturers will simply have no effect, and as Item 43 is not part of the CTCS, gazettal is a legal requirement and not a method of drawing objections. Further, Customs said to increase the detail will not necessarily increase transparency as the goods the local manufacturers are concerned about may still be lost within broader detail (Sub. 285, p. 20). As previously mentioned, APEA and Woodside Offshore Petroleum indicated that they consider it is inescapable that an Item 43 Determination will contain a non-specific description (Sub. 276 and 288).

While the administration of this Item has had some teething troubles, Customs suggested that *Australian Customs Notice 90/64* had clarified the application of Item 43 and introduced streamlined procedures (Customs 1990e). However, the procedures remain unnecessarily complicated: submissions for instruments under Item 43 are processed by Customs and DITAC with recommendations presented to the Minister for Industry, Technology and Commerce who makes the decision on eligibility. Determinations are then issued for individual consignments (Customs, appendix N of Sub. 155). In some cases, the approval may apply to imports made over a long period of time, or for an import which is to be made some years later (Transcript, p. 1028).

Items 45 and 46: Goods designed for use in mining and agriculture

The wording of these Items is especially broad:

> 45: Goods designed for use in the mining industry, as prescribed by by-law.
>
> 46: Goods designed for use in the agricultural industry, as prescribed by by-law.

These Items, along with Item 47, were introduced by the Government in 1989. The Government's announcement emphasised that the measures were designed to boost Australia's main export industries by lowering their costs. The Government also stated that the concessions would not apply where equipment is made in Australia in the normal course of business. This is, of course, close to one of the two core criteria of the CTCS. The other CTCS core criterion, relating to the capability of

local manufacturers to make goods serving similar functions, was not specified in the Government's announcement (Button 1989b).

Customs, in its submission on the draft report, said that the criterion 'not made in the normal course of business' for Item 45 is not meant in the CTCS meaning of the term. If the goods are 'stock' items overseas, then a concession is considered appropriate if no Australian manufacturer carries them as a 'stock' item. If the goods are not a 'stock' item overseas, then a concession is considered appropriate if they have not been produced in Australia in the previous one or two years (Sub. 285, p. 22).

There was some criticism of the coverage of Item 45. The Australian Coal Association claimed that the range of equipment covered is very limited and does not accommodate the full range of mining equipment now in use in Australia. It suggested that the Item be expanded to cover all capital equipment required for coal recovery and coal preparation (Sub. 66, p. 10). Customs said of this Item:

> The by-laws written to this item are well defined in describing specific goods for concessional entry. However, problems arise with identifying goods as designed for use in the mining industry when industry seek to add goods to the concession. (appendix N of Sub. 155.)

Customs made a similar comment on Item 46.

In its submission on the draft report, Customs said in response to the Coal Association's comment on the need for expansion that there is no policy which allows Item 45 to cover all capital equipment in any particular industry, and only goods which are not made in the normal course of business can be covered by Item 45. Customs then went on to say that it is prepared to examine proposed additions to Item 45 which would be considered in conjunction with DITAC (Sub. 285, p. 16).

AMIC noted that the removal of import duty from equipment covered by Item 45 discourages the establishment of new inefficient production based on the available level of protection (Sub. 84, p. 10). There can be no doubt about this, but such an effect begs the question of why the substantive tariff rates on these goods were not dropped to zero. Commenting on the establishment of Items 43 and 45-7, DITAC submitted that:

> Some of the [policy concessions] established under these items would be better handled by tariff changes, but are not because of the lengthy and costly process to achieve that change or

> because the goods to be accorded duty free entry would lead to undue fragmentation of the tariff. (Sub. 247, p. 6.)

The Commission expressed doubts in its draft report about whether either of these reasons could apply to Items 45 or 46, and drew attention to its comments therein on the current fragmentation of the Tariff. Customs said in response that the principal reason for not putting the goods directly to substantive free rates was that the Government wished to grant duty-free entry to equipment covered by an IAC report (IAC 1988b) and many of the goods could not be limited to mining and agricultural uses (Sub. 285, p. 22).

Like most policy concessions, Items 45 and 46 have created some apparent inequities in addition to those imposed by the Tariff. The Australian Electronics Industry Association raised the wider issue of why goods used in mining and agriculture, but not other sectors, are provided with duty-free entry. The Association considered that the principles of these policies should be considered more broadly and applied to other industries (Sub. 38, p. 14 and Sub. 271, p. 6). In the same vein, A F Gason Pty Ltd suggested that if farm machinery and tractors are going to come into Australia duty free, then manufacturers of farm machinery and tractors should also be able to import any parts of these products free of duty (Sub. 4). Subsequently, By-law No. 9040031 was made under Item 46 and gazetted on 29 August 1990, allowing duty-free entry of certain components for use in the manufacture or assembly of agricultural tractors. However, this constitutes assistance for tractor production, not for agriculture which the Policy Item is specifically intended to assist. Not all the benefits of the By-law would flow on to the agricultural sector, and nothing in Parliament's wording directs Item 46 to provide assistance to the tractor-making industry.

Customs said Items 45 and 46 are currently being jointly examined by DITAC and Customs to address problems, to put into place an agreed application process and to define more clearly the intent and boundaries of the two Items (Sub. 285, p. 22).

These Items raise questions about the referral of assistance matters for public inquiry prior to taking action -- in this instance, the Government introduced the concessions based on a report that did not address assistance to agriculture or mining (IAC 1988b). The Items themselves are worded to include import-

competing mining and agricultural activities as well as the export-oriented industries that the Government had announced that it intended to aid. Given the indiscriminate application of the concessions, substantive tariff reform might have been, and might remain, more appropriate.

Items 45 and 46 satisfy some of the Commission's guidelines presented in section 9.2, but not others. Considerable analysis would be required to determine whether they comply with the Government's general policy guidelines for industry. The Items certainly do not meet the last two of the Commission's guidelines: there is no statement of objectives or strategy; there are no parameters beyond a vague direction to limit the discretion of officials making instruments; and no agency is made specifically responsible.

Item 47: Goods including components ineligible for CTCOs

Item 47 provides concessional entry for goods which would otherwise be ineligible for a CTCO because they incorporate or are imported with other equipment. Its wording is:

> Goods, as prescribed by by-law, being machinery that incorporates, or is imported with, other goods which render the machinery ineligible for a current Commercial Tariff Concession Order made under Part XVA of the *Customs Act 1901*.

Introducing this Item, the Government announced that it had:

> ... decided to allow complete capital equipment duty free entry under the Policy By-law System where a Tariff Concession has been granted for items of capital equipment with the exclusion of parts that could be made in Australia.
>
> This will enable importers of such equipment to avoid the current costly process of removing components excluded from the Tariff Concession Order from the capital equipment concerned, shipping these components separately or obtaining them locally, in order to obtain the benefit of the duty free concession for the balance of the equipment. (Button 1989b, p. 3.)

There were few substantial criticisms of this Item, although there were comments on its administration. For example, the Australian Coal Association and MIM Holdings claimed that Customs has yet to develop or be provided with any clear

administrative guidelines (Sub. 268, p. 8 and Sub. 265, p. 7). As of July 1990 only one instrument had been issued under Item 47, though several were issued later in the inquiry.

Trade Consultants (Australia) Pty Ltd criticised Item 47 for enabling components to be entered duty free despite there being local component production, and claimed the policy is obscure, the coverage is unclear and the parameters guiding the decisions are not adequately stated. Trade Consultants claimed that the problem is exacerbated in a country such as Australia, with small markets, because manufacturers tend to commence operations by producing components, before later extending production to complete machines (Sub. 284, pp. 4-6).

KPMG Peat Marwick submitted that, while Item 47 is invaluable in overcoming artificial restrictions in the CTCS, it should not be necessary. The requirement of the CTCS to consider 'the particular goods' should be sufficient to prevent such arbitrary exclusions. As already stated, the Commission considers that Policy Items should not duplicate the CTCS.

The company went on to say that, although Item 47 is limited to a particular segment of the Tariff (a claim later denied by Customs [Sub. 285, p. 22]), its legal scope is boundless and its underlying policy is obscure. Under the circumstances, KPMG Peat Marwick believed the administration is imposing on itself unnecessary burdens in attending to requests for by-laws made pursuant to the legal framework of the Item (Sub. 190, pp. 7-8). The Item does not meet the Commission's requirement for clear statements of objectives, strategy or coverage, nor does it prescribe parameters for the making of concessional instruments. It is by no means clear that Item 47 is the most appropriate mechanism for handling components of goods entered under CTCOs.

The basis for this Item seems to be certain inflexibilities in Customs' procedures for clearing imports into Australia. Its operation could act to reduce the difficulty with which complex machinery is assessed for duty. But its existence basically conflicts with the intent of the Tariff-CTCS mechanism, since it allows goods to be imported duty free even though goods serving similar functions are made in Australia. It would have been simpler, and more transparent, if the Government had just removed the substantive duties on the machinery in question. These problems are likely to become more obvious with time, and especially once the administration of the Item is bedded down.

In the public hearings for this inquiry it became clear that DITAC, not Customs, decides what machinery actually qualifies under Item 47 (Transcript, p. 933). Connor Anderson Customs Pty Ltd noted that 'there are obviously technical constraints on the implementing department which are not known or not understood by the policy-making department and conversely ...' (Sub. 208, p. 3). The Commission draws attention to its view that each Item should unambiguously allocate responsibility for administration to a single agency.

Florence Agreement and Nairobi Protocol

On 13 June 1990, the Commonwealth announced its intention to accede to the 1950 UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials (the Florence Agreement), and the Protocol to the Agreement adopted in Nairobi in 1976 (Button 1990b). Parties to the Florence Agreement undertake not to apply duties (or other charges) on the importation of certain educational, scientific or cultural goods.

The Government intends to amend the Tariff prior to the accession to these treaties. The framework for these amendments includes:

- duty to be reduced to free on various goods in Schedule 3 (covering books, publications, documents, works of art, collectors pieces, visual and auditory materials, and certain goods for the blind); and

- By-laws to be introduced under new Policy Items in Schedule 4 permitting duty free entry of certain goods (scientific equipment and goods for the blind and people with other disabilities).

To give effect to the Government's decision a DITAC-Customs Working Party was established which sought public comment on its draft Schedule 4 Items and By-laws.

Some participants had comments on the Agreement. The Publisher's Group provided the Commission with a copy of its submission to the Working Party where it stated:

> For the industry to remain viable and internationally competitive, where no assistance is being provided to its output, it is essential that the industry is able to access all its inputs and capital requirements at world prices, untaxed or subjected to tariffs. We therefore believe

> that it is incumbent on the Government ... that it either agree to be bound by Annex H to the protocol or provide a commitment to the industry that tariffs will not be imposed on its inputs or the plant and machinery necessary to produce publications in Australia (Sub. 280, Attachment p. 4).[2]

The Group requested the adoption of a substantive duty free regime for paper and all other inputs at the time of the formal acceding to the Florence Agreement. This type of 'compensation' to maintain relativities in input and output duty regimes was also raised by Plastech Industries (see box 9.4).

The Plastech case indicates the potential for a change in duty on a particular product to impact on the manufacture of other products, and raises questions about transparency. The Commission recognises that section 12 of its Act (see appendix B1) allows that trade agreements can be dealt with outside the purview of the Commission. However, the issues discussed in box 9.4 (ie the possibility of granting duty relief for Plastech to offset the effect of any duty relief that may be provided to the recording industry to mitigate the impact of the Florence Agreement) would more appropriately be treated in an open public inquiry process subject to publicly stated industry policy guidelines rather than by an administrative Working Party.

Customs' requests and suggestions

The most comprehensive submission on particular Schedule 4 Policy Items came from Customs, which made specific recommendations on 14 Items. These are listed in table 9.1. Several of Customs' suggestions are matters it merely wished to inform the Commission it was intending to address itself, while others are more substantial.

[2] Annex H includes materials and machines used for processing paper pulp used in the production of books and publications.

Box 9.4: **The Florence Agreement and its flow-on effects**

To give effect to the Florence agreement, recorded audio cassettes are to be entered free of duty. To offset this, the recording industry has applied to the Government for removal of tariffs on all its material inputs. According to Plastech Industries Pty Ltd, the only Australian manufacturer of C-zero audio cassettes which are an input into the recording industry, this action would have serious implications for it. Consequently, Plastech is seeking a policy by-law for its own principal input -- plastic resins used in the manufacture of C-zero cassettes -- to maintain its viability (Sub. 273).

Thus, solving the problems for the recording industry from accession to the Florence Agreement has repercussions on Plastech -- a local manufacturer not *directly* affected by that Agreement. This example highlights the flow on effects arising from selective tariff changes.

At the public hearings, Plastech was asked if it had informed the Working Party of the difficulties it faced if the Government did provide offsetting duty relief on inputs for the recording industry. Plastech's representative said:

> They promised to do something about it by way of submission to Cabinet ... what we suggested of course was that we really ought to have a reference to the Industry Commission to consider what sort of assistance, if any was appropriate for C zero manufacture within the context of this decision, and they just laughed and said, 'Well, you've got no chance of getting a reference to the Commission' and the issue itself is not of such significance that it would justify the tying up of the Commission's resources and the expense of the inquiry (Transcript, p. 1594).

Items 14 and 22 appear to contain the CTCS core criteria and the question arises as to whether they should continue to exist separately from the CTCS. As noted above, the Commission sees the By-law system as being inappropriate in cases which the CTCS can handle. In the case of Item 22, Customs said deletion should follow suitable transitional arrangements (Sub. 285, p. 13).

Table 9.1: **Summary of Customs' Intentions for Schedule 4 Items**

5	Trade Commissioners	Possible removal
6	Trade Commissioners	Possible removal
14	Tertiary institutions	Repeal and expose to CTCS
18	Warranty repairs & replacements	Allow instruments to be made to define 'specific warranty'
19	Repairs	Allow instruments to be made, to define contentious terms
20	Repairs and renovations	Allow instruments to be made, to define 'altered identity'
22	Oil exploration	Repeal and expose to CTCS and Item 45
23	Donations and bequests	Develop definitional guidelines
27	Handicrafts	Consider cancellation
28B	Ethnic costumes	Develop definitional guidelines
31	Aircraft parts	Refer to DITAC
32	Goods of negligible value	Regular update of dollar amounts
39A	Magazine paper	Ensure consistent interpretation
42A	Vessel parts	Clarify Government's intention and possibly rewrite concession

Sources: Customs, appendix N of Sub. 155, Sub. 285, and Transcript, p. 1873.

The Australian Vice-Chancellors' Committee opposed the repeal of Item 14 and said such a step would lead to significant cost increases for universities if individual CTCOs were required for all imports (Sub. 303, pp. 1-2). Several participants requested the retention of Item 22. Woodside Offshore Petroleum and APEA estimated that removal of Item 22 would result in 9000 CTCO applications which would cost Customs $9 million to process (Sub. 288, p. 2 and Sub. 276, p. 3). Customs said that in practice there would not be many concessions under Item 22 that would be able to meet the conditions of the CTCS (Sub. 285, p. 13).

Customs' suggestions to clarify the wording of several Items accord with the Commission's preference for Items to contain clear statements of objectives, strategies and coverage. Similarly, allowing instruments to be made under some Items which do not now have the provision 'as prescribed by by-law' would be consistent with the Commission's approach if those instruments are open to an external review mechanism.

9.4 Supplementary Provisions

There was virtually no comment from participants on the import concessions contained in the Supplementary Provisions, apart from Customs, which indicated its intentions for certain Items (see table 9.2). The main reason for this may be the relatively low level of use that most of the Supplementary Items have had: about $62m per annum in total by customs value, $50m of which is accounted for by Items 110 and 111 (see appendix table C2).

The Commission is concerned that such concessions suffer from very low transparency. Their existence is contrary to the Government's earlier acceptance of an IAC recommendation that all import concessions be brought together in a single schedule to the *Customs Tariff Act* (IAC 1981).

Table 9.2: Summary of Customs' Intentions for Supplementary Items

101-5	Diplomatic and consular privileges	Move to Schedule 4 to replace Item 4
106	International organisations	Move to Schedule 4
111	Certain goods intended for re-export	Retain due to high usage
112	Aircraft stores	Remove due to low usage
113	Raw materials manufactured in bond	Delete as redundant

Source: Customs, appendix N of Sub. 155.

No import concessions should exist among the Supplementary Provisions; if the concessions are to be retained, they should be transferred to Schedule 4 and subjected to the same disciplines as Industry Policy Items. After this was proposed in the draft report, Customs said that it is not appropriate to transfer to Schedule 4 those Items in the Supplementary Provisions which merely provide a mechanism for identifying duty concessions contained in other Acts or where the measure contained in the Supplementary Provisions is not a concession (Sub. 285, p. 14). It is not the Commission's intention that this recommendation apply to Supplementary Items which do not provide for entry at concessional rates of duty, as they do not provide assistance nor are they of as much interest to importers.

Despite Customs' comments, the Commission still considers it desirable to transfer to Schedule 4 all those Items which provide for concessional entry and which are to be retained.

Part IV: Concluding Observations

10 CONCLUDING OBSERVATIONS

The Commission's recommendations on the future operation of the CTCS and the By-law system have a common objective: to improve the openness, clarity and consistency of the concession systems, such that they enhance the performance of the economy as a whole. The Commission has also been concerned to simplify the administration of the systems, without providing undue scope for administrative discretion.

Nevertheless, as the IAC recognised in its 1982 report, there is an inescapable element of discretion associated with the administration of any tariff concession system. Attempts to be precise in framing legislative standards can make the systems unworkable. But this does not mean that discretion should be unfettered or the standards ambiguous. The Commission has sought to steer a course between these extremes.

The CTCS is a complex and interactive system and inevitably some of the Commission's recommendations are mutually dependent. In particular, the following interactions are emphasised.

- The recommendation to discontinue revocations for new production is central to the Commission's strategy for reform of the CTCS. Were such revocations to remain despite the arguments in this report, a system of publication of revocation proposals and provision for appeal would need to be initiated, parallel to the processes recommended for refused CTCO applications. Consideration would also need to be given to a minimum period of operation for CTCOs (for example, two years) and a period of notice before gazetted revocations were effective (for example, six months). The problem of assessing whether local firms qualify as objectors when market conditions change would also become relevant again. The Commission believes that abolition of revocations for new production is clearly the superior option.

- Customs expressed concern that the `capability' test, which is among the more difficult areas of CTCS administration, will play an increased role if there are reduced grounds for revocations, as manufacturers `seek to ensure that CTCOs do not remove assistance to *potential* expansion of their activities' (Sub. 285, p.

8, emphasis added). While this may be so, the Commission believes that its recommendations on guidelines should facilitate the denial of such ambit claims: the question is whether firms are now capable of supplying goods to order within a reasonable period of time. Customs also referred to the prospect of firms setting up 'short run *ad hoc* production of a few items' (*ibid*.). But there would in practice be little likelihood of firms going to the expense of gearing up to produce something unless there is some prospect of selling it at market prices. And if they did produce, they would clearly have demonstrated their capability, and concessions should accordingly be refused.

- If the present legislative definitions were to remain, the Commission's recommendation to delete the Excluded Goods Schedule would pose considerable difficulties for Customs and the EGS may be better left in place.

- If despite the arguments in this report, end-use provisions were to be imposed on the CTCS, the Commission's recommendations on the core criteria and guidelines would become largely irrelevant.

The Commission is conscious that its recommendations do not and cannot accommodate the particular concerns of all participants. In some cases, they relate to difficulties that applicants or others have had with particular concessions within the CTCS or the By-law system. In order to respond adequately to the terms of reference, the Commission has intentionally taken a broader approach to the role and operation of the concession systems. (Nevertheless, information about the experiences of participants made an important contribution to the Commission's understanding of the issues.)

In other cases, some of the things that participants want the concession systems to do can only be effectively done by eliminating the Tariff itself. These include legitimate concerns about: end-use situations in which local producers do not compete; the need for Australian industry to have access to the latest technology at lowest cost; the problem of `backyarders' with minuscule market share denying users the benefit of world market prices; and the general question of quality and price differentials between locally produced and imported goods. These problems are intrinsic to the Tariff and cannot be handled through the CTCS without making it a vehicle for effectively compromising the present general program of tariff reductions. They will in any case diminish in importance as the tariff reductions proceed.

The Commission has also given some consideration to the social and environmental aspects of its recommendations, as required by the *Industry Commission Act 1989*. Not surprisingly, given the nature of the inquiry, such matters were not prominent among the issues raised by participants. A few participants suggested that concessional imports help provide employment within Australia. But it is more likely that such arrangements, like the Tariff itself, would affect the *distribution* of employment among industries rather than the aggregate level. This is supported by the results from the Commission's economic modelling reported in chapter 4.

Some participants requested special import concessions for recycling or pollution control equipment, or for 'environmentally friendly' goods. Pollution control equipment which meets high standards can be mandatory for some activities, and witnesses stated that Australian governments have frequently set tight timetables for introducing such equipment. The Commission's recommendations would facilitate the access of all such goods under the concession systems, but make no special provision for them. Indeed, this could not be done through the CTCS without changing its essential nature. Such arrangements could be accommodated within the By-law system if they were judged to be in the national interest, although there are other instruments available to government that should more effectively meet environmental objectives.

* * *

As tariffs decline, the benefits to users of concessions decline commensurately and a point may be reached, short of zero tariffs, where remaining benefits to users are outweighed by the costs of administration and of compliance by local producers. If the tariff reductions were to stop at some relatively low level, it would thus be advisable to consider whether the concession system should continue (though it would still be sensible to retain existing concessions). However, in such a situation -- with some two-thirds of imports entering at zero rates and a minority at a low uniform tariff level -- the more important question would be whether such a dual tariff structure should remain.

Appendices

Appendix A: CONDUCT OF THE INQUIRY

Following receipt of the reference on 8 March 1990, the Commission advertised the commencement of the inquiry in the press and despatched circulars to industry organisations, domestic producers, importers, users and others likely to have an interest in participating in the inquiry. A copy of the initial circular was also delivered with the *Tariff Concessions Gazette* to subscribers.

A second circular was despatched calling for submissions by 5 June and announcing the timing and venues of the initial round of public hearings. Participants and other interested parties were sent an issues paper and a brochure outlining the Commission's inquiry procedures. Further circulars were dispatched in July and October giving participants the opportunity to obtain and comment on other submissions.

The Commission conducted several visits and meetings with participants during the inquiry. In chronological order, these were:

Australian Customs Service

Shell

BHP Steel Group

Department of Industry, Technology and Commerce

Australian Petroleum Exploration Association Ltd

Customs Agents' Institute of Australia

Consumer Electronics Suppliers' Association

Australian Mining Industry Council

ACI Glass and Plastic Packaging Division

KPMG Peat Marwick

Metal Trades Industry Association

Administrative Review Council secretariat

Consumer Electronics Suppliers' Association

Administrative Review Council secretariat

An initial round of public hearings was held in Sydney (19-22 June), Melbourne (26-29 June) and Canberra (3-4 and 10-11 July). A total of 75 participants put their views at these hearings. A second round of hearings was held after the release of the draft report in Melbourne (21 November), Sydney (28 November) and Canberra (4-6 December). A total of 23 participants commented on the draft report at these hearings. Participants who made a submission to the inquiry are listed in appendix H.

Copies of submissions can be obtained from:

Xerox Copy Centre
PO Box 1154
FYSHWICK ACT 2609
Phone (06) 285 7166
Fax (06) 285 7163

Transcripts of the public hearing can be ordered from:

Spark and Cannon
33 King William Street
ADELAIDE SA 5000
Phone (08) 212 3699
Fax (08) 211 7347

Appendix B:RELEVANT LEGISLATION AND REGULATIONS

B1 Industry Commission Act 1990[1]

General policy guidelines for Commission

8. (1) In the performance of its functions, the Commission must have regard to the desire of the Commonwealth Government:

(a) to encourage the development and growth of Australian industries that are efficient in their use of resources, self-reliant, enterprising, innovative and internationally competitive; and

(b) to facilitate adjustment to structural changes in the economy and to ease social and economic hardships arising from those changes; and

(c) to reduce regulation of industry (including regulation by the States and Territories) where this is consistent with the social and economic goals of the Commonwealth Government; and

(d) to recognise the interests of industries, consumers, and the community, likely to be affected by measures proposed by the Commission.

(2) In the performance of its functions, the Commission must also have regard to any other matters notified to it in writing by the Minister.

(3) This section does not apply to a question whether a Commercial Tariff Concession Order should have been made or revoked, being a question arising from a request made under subsection 269R (1) or (2) of the Customs Act 1901.

1 Only relevant sections and clauses of the Act are reproduced here.

(4) Where a matter is referred to the Commission for inquiry and report, the Commission must also inquire into, and, in the same report, report on, the social and environmental consequences of any recommendation it makes.

Ministers not to take certain action relating to industry

10. (1) A Minister of State of the Commonwealth or a delegate of such a Minister must not take any action referred to in section 11 unless the action is taken within 12 months after the Minister administering this Act has received, or last received, as the case requires, a report of the Commission in relation to the matter.

Actions subject to section 10 restrictions

11. (1) Except as provided in section 12, section 10 applies to action in respect of any of the following matters:

(a) the imposition, removal, increase or reduction of duties on goods imported into Australia.

Actions exempt from Section 10

12. (1) Section 10 does not apply to action in respect of the imposition, removal, increase or reduction of duties on goods imported into Australia, if:

(a) the action is necessary:

(i) to correct anomalies, errors or ambiguities in the *Customs Tariff Act 1987;* or

(ii) to correct an error in the implementation of a decision of the Commonwealth Government in respect of the matter in respect of which the action is taken; and

(b) the Minister administering this Act approves the action in writing.

. . .

(3) Section 10 does not apply to action to provide assistance to an industry in accordance with, or for the purposes of, Part XVA of the Customs Act 1901.

. . .

(6) Section 10 does not apply to:

. . .

(b) the making of a by-law under the *Customs Act 1901* or a determination under section 273 of that Act.

. . .

(7) Section 10 does not apply to action that is necessary to carry out the policy of the Commonwealth Government:

(a) in relation to, or in relation to negotiations for, bilateral or multilateral trade agreements; or

(b) in relation to tariff preferences for developing countries.

B2 Part XVA of the Customs Act 1901: Commercial Tariff Concession Orders

Interpretation

269B. (1) In this Part, unless the contrary intention appears:

'application' means an application made under section 269G for a concession order;

'concession order' means a Commercial Tariff Concession Order provided for by section 269C;

'days' includes Sundays and holidays;

'particular goods' includes goods included in a particular class or kind of goods;

'prescribed item' means an item in Schedule 4 to the *Customs Tariff Act 1987* that is expressed to apply to goods that a Commercial Tariff Concession Order declares are goods to which the item applies;

'repair', in relation to goods, includes renovate.

(2) A reference in this Part to the *Customs Tariff Act 1987* shall be read as including a reference to that Act as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.

(3) For the purposes of this Part, identical goods shall be taken to serve similar functions.

(4) Without limiting sub-section (3), for the purposes of this Part, goods shall be taken to serve similar functions to other goods unless the Comptroller is satisfied that, if both goods were readily available for sale throughout Australia, there would be no significant part of Australia in which there would be significant cross elasticity of demand between the goods.

(5) For the purposes of this Part, goods, other than unmanufactured raw products, shall not be taken to have been produced in Australia unless:

(a) the goods were wholly or partly manufactured in Australia; and

(b) not less than 1/4 of the factory or works cost of the goods is represented by the sum of:

(i) the value of labour of Australia;

(ii) the value of materials of Australia; and

(iii) the factory overhead expenses incurred in Australia in respect of the goods.

(6) For the purposes of this Part, goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(7) For the purposes of this Part, a person shall be taken to be capable of producing goods in the normal course of business if, in the normal course of business, he is prepared to accept orders for the supply of such goods that have been, are being, or are to be, produced by him.

(8) For the purposes of this Part, a person shall be taken to be capable of repairing particular goods in the normal course of business if, in the normal course of business, the person is prepared to accept orders to repair those goods.

Commercial Tariff Concession Orders

269C. (1) Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of particular goods, is satisfied that:

(a) goods serving similar functions to the particular goods are not produced in Australia; and

(b) goods serving similar functions to the particular goods are not capable of being produced in Australia by any person in the normal course of business, the Comptroller shall make a written order, declaring that the particular goods are goods to which a prescribed item specified in the order applies.

(1A) Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of particular goods, is satisfied that there is no person in Australia who is capable of repairing the particular goods in the normal course of business, the Comptroller shall make a written order declaring that the particular goods sent out of Australia in order to be repaired are goods to which a prescribed item specified in the order applies.

(1B) Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of good (in this sub-section referred to as the 'relevant goods') included in a particular class or kind of goods is satisfied that:

(a) when the relevant goods are in a particular condition they would need to be repaired; and

(b) when the relevant goods are in that condition there is no person in Australia who is capable of repairing the relevant goods in the normal course of business,

the Comptroller shall make a written order declaring that the relevant goods sent out of Australia when in that condition in order to be repaired are goods to which a prescribed item specified in the order applies.

(1C) An order provided for by sub-section (1), (1A) or (1B) is to be known as a Commercial Tariff Concession Order.

(2) Where, by virtue of a concession order, particular goods are goods to which a particular prescribed item applies, nothing in this Part shall be taken to prevent the making of another concession order that declares, or of other concession orders that declare, that other particular goods are also goods to which that prescribed item applies.

(3) A reference in paragraph (1)(a) or (b) to 'the particular goods' shall, in the case of particular goods of which there are classes or kinds, be read as including a reference to goods included in a class or kind of the particular goods.

Concession orders not to apply to prescribed goods

269D. (1) The Comptroller shall not make a concession order in respect of particular goods that are particular goods, or some of particular goods, declared by the regulations to be goods in respect of which such an order shall not be mad (if any).

(2) Without limiting the generality of sub-section (1), a declaration by regulations for the purposes of that sub-section may be a declaration by reference to goods to which a particular item, sub-item, paragraph or sub-paragraph in Schedule 3 to the *Customs Tariff Act 1987* applies at a particular time;

Comptroller may refuse to make certain concession orders

269E. (1) The Comptroller may, in his or her discretion, refuse to make a concession order under sub-section 269C(1) in respect of particular goods if, in his or her opinion, the making of the order would be likely to have a substantially adverse effect on the market for any goods produced in Australia.

(1A) The Comptroller may, in his or her discretion, refuse to make a concession order under sub-section 269C(1A) or (1B) in respect of particular goods if, in his or her opinion, the making of the order would be likely to have a substantially adverse effect on the market for any goods produced, for any work carried out, or for any services provided, in Australia.

(1B) Where, in the opinion of the Comptroller, after having regard to the matters referred to in subsection (2), the making of a concession order under subsection 269C may not be in the national interest, the Comptroller must refer the application for the concession order to the Minister so that the Minister can determine that matter.

(1C) Where a particular application for a concession order is referred to the Minister and the Minister determines that the making of the order is not in the national interest:

(a) the Minister must inform the Comptroller, in writing, to that effect and give the Comptroller a statement of the reasons why he or she has so determined; and

(b) the Comptroller, upon being so informed, must refuse to make that order.

(2) The Comptroller, in considering for the purposes of paragraph (1)(b) or (1A)(b) whether the making of a concession order in respect of particular goods would not be in the national interest, shall have regard to the matters to which the Industries Assistance Commission is required to have regard under sub-sections 22(1) and (2) of the *Industries Assistance Commission Act 1973* and may have regard to any other matters (whether or not of the same kind as the first-mentioned matters) that he considers relevant.

(3) Where the Comptroller refuses to make a concession order in respect of particular goods because the Minister has determined that the making of the order is not in the national interest, the Comptroller shall publish in the *Gazette* a notice:

(a) stating that he has refused to make a concession order for which an application has been made;

(b) specifying the particular goods;

(c) stating that the Comptroller has refused to make the order because the Minister has determined that the making of the order would not be in the national interest; and

(d) setting out the Minister's reasons for so determining.

Concession orders not to contravene international agreements

269F. Where the Comptroller is satisfied that, in accordance with the obligations of Australia under an agreemen (including a treaty or convention) between Australia and another country or other countries, the rate of duty by reference to which the duty in respect of particular goods (which may be particular goods that are not the produce or manufacture of a particular country) is to be ascertained is not to be less than a particular minimum rate, the Comptroller shall not make a concession order that would result in a contravention of those obligations.

Applications for concession orders

269G. (1)A person may make an application in writing to the Comptroller for a concession order in respect of particular goods specified in the application.

(2) An application:

(a) shall contain such particulars as are prescribed; and

(b) shall be lodged with the Comptroller:

(i) in a prescribed manner;

(ii) on a day other than a Sunday, a Saturday or a prescribed holiday; and

(iii) at a time that is between prescribed hours.

(3) Except where an application is lodged in such a prescribed manner that the date on which it is lodged is automatically recorded, the Comptroller shall, in a prescribed manner, give the applicant an acknowledgment, in writing, of the lodging of the application specifying the date on which it was lodged.

(4) Where:

(a) an application is lodged on a day immediately following a day, or 2 or more consecutive days, on which applications may not be lodged; and

(b) the application states that, if it had been permissible to do so, the application would have been lodged on that earlier day or on such of those earlier days as is specified in the application,

the application shall, for the purposes of sub-section (5), be deemed to have been lodged with the Comptroller on the earlier day or on the specified earlier day, as the case may be.

(5) An application shall, for the purposes of this Part, be taken to have been made on the date on which it was lodged with the Comptroller.

Notice of applications

269H. (1) A person may give to the Comptroller a notice in writing that he proposes to make an application for a concession order in respect of particular goods specified in the notice.

(2) A notice under sub-section (1):

(a) shall contain such particulars as are prescribed; and

(b) shall be given to the Comptroller:

(i) in a prescribed manner; and

(ii) on a day on which, and at a time at which, applications may be lodged.

(3) Except where a notice under sub-section (1) is given in such a prescribed manner that the date on which it is given is automatically recorded, the Comptroller shall, in a prescribed manner, give the person who gave the notice an acknowledgement, in writing, of the giving of the notice specifying the date on which it was given.

(4) Where:

(a) a notice under sub-section (1) is given on a day immediately following a day, or 2 or more consecutive days, on which such notices may not be given; and

(b) the notice states that, if it had been permissible to do so, the notice would have been given on that earlier day or on such of those earlier days as is specified in the notice,

the notice shall, for the purposes of sub-section 269N(3), be deemed to have been given on the earlier day or on the specified earlier day, as the case may be.

Applications deemed to be made

269J. (1) Where the Industries Assistance Commission makes a report to the Minister in accordance with the *Industries Assistance Commission Act 1973* (other than a report resulting from a request under sub-section 269R(1)) that contains a recommendation that a concession order should be made in respect of particular goods, an application under section 269G for a concession order in respect of those particular goods shall be deemed to have been made on a date that the Comptroller considers to be appropriate.

(2) Where the Comptroller declares, in writing, that he is of the opinion that it is desirable that consideration should be given to the making of a concession order in respect of particular goods, an application under section 269G for a concession order in respect of those goods shall be deemed to have been made on the date on which he makes the declaration.

Refusal of applications

269K. (1) Where the Comptroller decides not to make a concession order for which an application, other than an application deemed to have been made under

sub-section 269J(1) or (2), has been made (whether or not a notice referred to in section 269L in relation to the application has been published), he shall, in a prescribed manner, give the applicant notice, in writing, of the decision.

(2) The giving of a notice under sub-section (1) in respect of a concession order does not prevent the Comptroller giving further consideration to the application or applications for that concession order or reversing the decision by reason of which the notice was given.

Orders not to be made without notice of application etc.

269L. The Comptroller shall not make a concession order (not being an order dealt with in a report by the Industries Assistance Commission or the Temporary Assistance Authority or an order under sub-section 269P (10)) unless he has:

(a) published in the *Gazette* a notice:

(i) stating that an application for the order has been made;

(ii) specifying the particular goods to which the application relates; and

(iii) inviting any persons who consider that there are reasons why the order should not be made to submit, in a manner specified in the notice, particulars, in writing, of these reasons to the Comptroller within 28 days after the date of the publication of the notice; and

(b) considered any relevant particulars submitted in response to the invitation referred to in sub-paragraph (a)(iii).

Publication of concession orders

269M. (1) A concession order shall be published in the *Gazette* as soon as practicable after it is made.

(2) Any failure to comply with the requirements of sub-section (1) in relation to a concession order shall not be taken to affect the validity of the concession order.

Application of concession orders

269N. (1) A concession order (not being an order made under subsection 269P(10)) in respect of particular goods shall be deemed to have come into effect on such day before the making of the order as is specified in the order.

(2) Subject to sub-sections 269P(7) and (8), a concession order applies in relation to the particular goods to which it relates that are first entered for home consumption on or after the day it comes into effect.

(3) Subject to subsections (4), (6) and (7), the day to be specified in a concession order for the purposes of subsection (1) is the day occurring 28 days before the day on which the application for the order was made.

(3A) Where the Comptroller, at the time of making a decision in respect of an application for a concession order, is of the opinion:

(a) that he or she would not have been satisfied as required by subsection 269C(1) or (1A) or (1B), whichever is applicable, had the Comptroller been required to decide the matter on a day 28 days before the day on which the application was actually made; and

(b) that he or she would have become so satisfied on a later day (in this subsection called the 'production cessation day') occurring before the making of the first-mentioned decision;

the Comptroller must make a concession order arising from that application but the day to be specified in the order for the purposes of subsection (1) is the production cessation day.

(3B) Where the Comptroller, at the time of making a decision in respect of an application for a concession order, is of the opinion:

(a) that he or she would have been satisfied as required by subsection 269C(1) or (1A) or (1B), whichever is applicable, had the Comptroller been required to decide the matter on a day 28 days before the day on which the application was actually made; and

(b) that he or she would have ceased to be so satisfied on a later day (in this subsection called the **'production commencement day'**) occurring before the making of the first-mentioned decision;

the Comptroller must make a concession order arising from that application but the order has effect only until the end of the day before the production commencement day.

(4) Subject to sub-sections (6) and (7), where , in relation to a concession order in respect of particular goods, the Comptroller is satisfied (whether by reason of an

application under sub-section (5) or otherwise) that the applicant for the order delayed taking steps to obtain a concession order in relation to those goods by reason of an officer having done, or failed to do, any act or thing, the date to be specified in the order for the purposes of sub-section (1) shall be the date that the Comptroller considers would have been the date that would have been specified if the delay had not occurred.

(5) An applicant for a concession order may, in the application for the order, apply to the Comptroller to consider whether he should perform his duty under sub-section (4) in relation to the order, setting out particulars in support of his application under this sub-section.

(6) Subject to sub-section (7), where:

(a) the Comptroller proposes to make a concession order; and

(b) there are 2 or more applications for the order,

the day to be specified in the order for the purposes of sub-section (1) shall be the earliest day that, in accordance with sub-section (3) or (4), would have been required to be so specified by reason of an application referred to in paragraph (b).

(7) Where:

(a) a concession order relates to particular goods to which an earlier concession order that has been revoked under sub-section 269P(1) also related; and

(b) the Comptroller is satisfied that the earlier order should not have been revoked,

the day to be specified in the order for the purposes of sub-section (1) shall be the day on which the revocation of the earlier order came into effect.

Revocation of concession orders

269P. (1) Where the Comptroller becomes satisfied at any time during which a concession order in respect of particular goods is in force that, if:

(a) that order were not in force at that time; and

(b) an application were to be made at that time for a concession order in respect of the particular goods,

a concession order, or a concession order specifying the item that is specified in the first-mentioned concession order, would not be made in respect of the particular goods (whether by reason that the order would relate to all the particular goods , to goods included in a class of the particular goods or otherwise), the Comptroller may, in his discretion, by order in writing revoke the first-mentioned concession order.

(2) The circumstances in which the Comptroller may exercise his discretion under sub-section (1) not to revoke a concession order include, but are not limited to, the case where he considers that the revocation of the concession order would give an unfair advantage to any person.

(2A) Where the Comptroller becomes satisfied that a concession order that is in force has become obsolete, the Comptroller may, by order in writing, revoke the concession order.

(2B) Where the Comptroller becomes satisfied that, because of an amendment of a Customs Tariff or otherwise, a concession order was not, on and after a particular day (which may be the day on which the concession order came into effect) a concession order in respect of the particular goods in respect of which it was intended to make the concession order, the Comptroller may, by order in writing, revoke the concession order.

(2C) A revocation under sub-section (2B) of a concession order comes into effect on the date specified in the order of revocation, not being a date earlier than the date of the making of the order.

(3) A revocation under sub-section (1) or (2A) comes into effect on the date on which the order of revocation is made.

(4) Where a concession order is revoked under sub-section (1), (2A) or (2B), a notice of revocation shall be published in the *Gazette* as soon as is practicable after the making of the order of revocation.

(5) Any failure to comply with the requirements of sub-section (4) in relation to the revocation of a concession order shall not be taken to affect the validity of the revocation.

(6) Where a declaration by regulations for the purposes of sub-section 269D(1) is made that applies to particular goods to which a concession order relates

(whether all the particular goods, goods in a class of the particular goods or otherwise), that concession order shall be taken to be revoked and that revocation comes into effect on the date on which those regulations came into effect.

(7) Subject to sub-section (8), where a concession order is revoked under sub-section (1), (2A) or (2B) or by virtue of sub-section (6), the concession order ceases to apply in relation to particular goods entered for home consumption on or after the date on which the revocation comes into effect.

(8) Notwithstanding the revocation under sub-section (1), (2A) or (2B) or by virtue of sub-section (6) of a concession order in respect of particular goods, the concession order continues to apply in relation to:

(a) particular goods that:

(i) were imported into Australia on or before the date on which the revocation came into effect; and

(ii) are entered for home consumption, before, on, or within 28 days after, that date; and

(b) particular goods that:

(i) were in transit to Australia on that date; and

(ii) are entered for home consumption before, on, or within 28 days after, the date on which they were imported into Australia.

(9) For the purposes of sub-paragraph (8)(b)(i), goods shall be taken to be in transit to Australia if, and only if, they have left for direct shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported.

(10) Where:

(a) a concession order in respect of particular goods is revoked under sub-section (1) or by virtue of sub-section (6); and

(b) the Comptroller is satisfied that the order was revoked by reason that it related to some of those prescribed goods (whether goods included in a class of those particular goods or otherwise) but would not have been revoked if it had related only to the remainder of those particular goods;

the Comptroller shall make a written order declaring that particular goods being that remainder of the first-mentioned particular goods, are goods to which the prescribed item that was specified in the revoked concession order applies, and the order so made shall be deemed to be a concession order that came into effect on the date on which the revocation of the revoked concession order came into effect, which date shall be specified in the order under this sub-section.

(11) Where a concession order is revoked under sub-section (2B), the Comptroller shall make a written order declaring that particular goods, being the particular goods in respect of which it was intended to make the revoked concession order, are goods to which the prescribed item that was specified in the revoked concession order applies, and the order so made shall be deemed to be a concession order that came into effect on the earliest date on which the revoked concession order was not a concession order in respect of the particular goods in respect of which it was intended to make the revoked concession order, which date shall be specified in the order under this sub-section.

Concession orders not to be Statutory Rules

269Q. An order under this Part shall not be deemed to be a statutory rule within the meaning of the Statutory Rules Publication Act 1903.

Matters may be referred to Industries Assistance Commission

269R. (1) Where the Comptroller:

(a) makes a concession order (not being an order under sub-section 269P(10)); or

(b) decides not to make a concession order for which an application has been made (not being an application deemed to have been made under sub-section 269J(1) or (2)), otherwise than by reason of the operation of paragraph 269E(1)(b);

a person whose interests are affected by the making of the order, or the decision not to make the order, as the case may be, may request the Minister, in writing, to refer to the Industries Assistance Commission the question whether the order should have been made.

(2) Where the Comptroller revokes a concession order under sub-section 269P(1), a person whose interests are affected by the revocation may request the Minister, in writing, to refer to the Industries Assistance Commission the question whether the concession order should have been revoked.

(3) Nothing in this Part or in the *Industries Assistance Commission Act 1973* shall be taken to require the Minister to:

(a) comply with any request made under this section to refer any question to the Industries Assistance Commission; or

(b) act in accordance with any report made to him by the Industries Assistance Commission as the result of the referral under this section of any question.

Factory and works cost

269S. (1) For the purposes of this Part, the Comptroller may, by instrument in writing published in the *Gazette*:

(a) direct that the factory or works cost of goods is to be determined in a specified manner; and

(b) direct that the value of labour of Australia, the value of materials of Australia or the factory overhead expenses incurred in Australia in respect of goods is to be determined in a specified manner,

and those directions shall have effect accordingly.

(2) The provisions of section 48 (other than paragraphs (1)(a) and (b) and sub-section (2)), 48A, 48B, 49 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to directions given under this section as if:

(a) references in those provisions to regulations were references to directions; and

(b) references in those provisions to the repeal of a regulation were references to the revocation of a direction.

B3 By-law Provisions in the Customs Act 1901

Comptroller may make by-laws

271. Where:

(a) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; or

(b) under an item of a Customs Tariff, or a proposed item of a Customs Tariff, any matter or thing is expressed to be, or is to be determined, as prescribed or defined by by-law,

the Comptroller may subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

By-laws specifying goods

272. The Comptroller may specify in a by-law made for the purposes of an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law:

(a) the goods, or the class or kind of goods, to which that item or proposed item applies;

(b) the conditions, if any, subject to which that item or proposed item applies to those goods or to goods included in that class or kind of goods; and

(c) such other matters as are necessary to determine the goods to which that item or proposed item applies.

Determinations

273. (1) The Comptroller may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-laws shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.

(2) The Comptroller may make a determination under the last preceding sub-section for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he has made a by-law for the purposes of that item or proposed item.

(3) Where, under this section, the Comptroller determines that an item, or a proposed item, of a Customs tariff shall apply, or shall be deemed to have applied, to goods, that item or proposed item shall, subject to this Part and to the conditions, if any, specified in the determination, apply or be deemed to have applied, to those goods as if those goods were specified in a by-law made for the purposes of that item or proposed item and in force on the day on which those goods are or were entered for home consumption.

By-laws and determinations for purposes of repealed items

273A. The Comptroller may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

Publication of by laws and notification of determinations

273B. (1) A by-law made under this Part:

(a) shall be published in the *Gazette*, and has no force until so published;

(b) shall, subject to this Part:

(i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or

(ii) have effect or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law; and

(c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act 1903-1939.*

(2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify:

(a) the kind of goods to which the determination applies;

(b) the conditions, if any, specified in the determination; and

(c) the item or proposed item for the purposes of which the determination was made.

Retrospective by-laws and determinations not to increase duty

273C. This Part does not authorize the making of a by-law or determination which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette* or the

determination is made, as the case may be, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

By-laws and determinations for purposes of proposals

273D. Where:

(a) a by-law or determination is made for the purposes of a Customs Tariff proposed in the Parliament or of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament; and

(b) the proposed Customs Tariff becomes a Customs Tariff or the proposed alteration is made, as the case may be,

the by-law or determination shall have the effect for the purposes of that Customs Tariff or of that Customs tariff as so altered, as the case may be, as if the by-law or determination had been made for those purposes and the proposed Customs Tariff or the Customs Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law or determination was made.

B4 Customs Regulations 181 to 185 and the Exclusions Schedule

Interpretation of regulations 181, 182 and 183

180. In regulations 181, 182 and 183, **'application'**, 'concession order', 'particular goods' and **'repair'** have the meanings they have in Part XVA of the Act.

Application: particulars prescribed

181. (1) For the purposes of paragraph 269G(2)(a) of the Act, the following particulars are prescribed in respect of any application for a concession order in respect of particular goods:

(a) the name of the applicant and any other relevant name under which he trades;

(b) the business address of the applicant, not being an address of a post office box or bag service;

(c) where the applicant requests that communications concerning the application be sent to him at an address other than that prescribed by paragraph (b) -- that other address;

(d) a description that adequately identifies the goods;

(e) where a document describes or illustrates the goods -- that document;

(f) where it is reasonable to describe the goods by reference to a sample -- a fair sample of the goods;

(g) where in the normal course of business the goods are described by reference to their chemical composition -- a description of that composition;

(h) where in the normal course of business the goods are described by reference to technical data -- those data;

(j) a description of the function that the goods normally serve;

(k) a description of any other function that the goods serve or may reasonably be employed or adapted to serve;

(m) the tariff classification that applies to the goods;

(n) the rate of duty that applies to the goods by virtue of that classification;

(p) where the application is for an order provided for by subsection 269C(1) of the Act -- the name and business address of each person with whom the applicant has communicated in writing for the purpose of determining whether the person produces, or is capable of producing, in Australia in the normal course of business, goods that serve the function referred to in paragraph (j);

(q) a copy of each communication sent by the applicant to a person for the purpose referred to in paragraph (p);

(r) the original of each reply received by the applicant to each communication referred to in paragraph (q);

(s) where the application is for an order provided for by sub-section 269C(1) of the Act -- the extent of any competition that would exist between the goods and similar goods that a person produces, or is capable of producing, in Australia in the normal course of business, if the goods were imported;

(t) where the application is for an order provided for by sub-section 269C(1) of the Act and the goods are proposed to be manufactured in Australia into other goods -- the extent of any competition that would exist between those other goods and goods (similar to those other goods) that a person produces, or is capable of producing, in Australia in the normal course of business, if those other goods were so manufactured;

(ta) where the application is for an order provided for by subsection 269C(1A) or (1B) of the Act:

(i) a description of the repairs to be made to the goods;

(ii) the name and business address of each person in Australia with whom the applicant has communicated in writing for the purpose of determining whether the person is capable of repairing the goods in the normal course of business;

(iii) a copy of each communication sent by the applicant to a person for the purpose referred to in subparagraph (ii);

(iv) the original of each reply received by the applicant to each communication referred to in subparagraph (iii); and

(v) the extent to which the goods are capable of being repaired by a person in Australia in the normal course of business; and

(u) a description that the applicant considers would adequately identify the goods for the purposes of the making of a concession order.

(2) For the purposes of sub-paragraph 269G(2)(b)(i) of the Act, an application shall be lodged with the Comptroller:

(a) at the office of the Customs in Canberra, as a prepaid postal article;

(b) at the office of the Customs in Canberra, by telex message, facsimile message or telegram addressed to the Comptroller; or

(c) where an individual lodges it in person -- by delivering it to the Manager of the Tariff Concession and Quota Branch of the Customs in Canberra or with a person whom the individual believes on reasonable grounds to be acting on behalf of that Assistant Comptroller-General.

(3) For the purposes of sub-paragraph 269G(2)(b)(ii) of the Act, a prescribed holiday is any day that is a holiday for the Australian Public Service in Canberra.

(4) For the purposes of sub-paragraph 269G(2)(b)(iii) of the Act, the prescribed hours of a day for lodgement of an application with the Comptroller are at the normal working hours of the Australian Public Service in Canberra for that day.

(5) For the purposes of sub-section 269G(3) of the Act, the lodging of an application shall be acknowledged by telex message or telegram or by prepaying and posting an advice to the applicant at the address provided by him under paragraph (1)(b) or (c), as the case requires, being a telex message, telegram or an advice setting out the reference number given to the application by Customs.

Notices under subsection 269H of the Act: matters prescribed

182. (1) For the purposes of paragraph 269H(2)(A) of the Act, the following particulars are prescribed in respect of a notice given by a person under sub-section 269H(1) of the Act that he proposes to make an application for a concession order in respect of particular goods:

(a) the name of the applicant and any other relevant name under which he trades;

(b) a business address of the applicant, not being an address of a post office box or bag service;

(c) where the applicant requests that communications concerning the application be sent to him at an address other than that prescribed by paragraph (b): that other address; and

(d) a description that adequately identifies the goods.

(2) For the purposes of sub-paragraph 269H(2)(b)(i) of the Act, a notice under sub-section 269H(1) of the Act shall be given to the Comptroller by:

(a) lodging it at the office of the Customs in Canberra, as a prepaid postal article;

(b) lodging it at the office of the Customs in Canberra, by telex message, facsimile message or telegram addressed to the Comptroller; or

(c) where an individual lodges it in person: by delivering it to the Assistant Comptroller-General of the Tariff Concession and Quota Branch of the Customs in Canberra or with a person whom the individual believes on reasonable grounds to be acting on behalf of that Assistant Comptroller-General.

(3) For the purposes of sub-section 269H(3) of the Act, a notice given by a person under sub-section 269H(1) of the Act shall be acknowledged by telex message or telegram or by prepaying and posting an advice to him at the address provided by him under paragraph (1)(b) or (c), as the case requires, being a telex message, telegram or an advice setting out the reference number given to the notice by Customs.

Prescribed manner of giving notice under sub-section 269K(1) of the Act

183. For the purposes of sub-section 269K(1) of the Act, a notice under that sub-section to an applicant referred to in that sub-section shall be given by telex or telegram or by prepaying and posting it to him at the address provided by him under paragraph 181(1)(b) or (c), as the case requires.

Prescribed period for purposes of subsection 269TF(1) of the Act

183A. For the purposes of subsection 269TF(1) of the Act, the prescribed period in relation to a decision of the Comptroller is the period ending at the expiry of 30 days after notification of that decision.

Interpretation of regulation 185 and Schedule 2

184. (1) In regulation 185, **'application'**, **'concession order'** and **'particular goods'** have the meanings they have in Part XVA of the Act.

(2) Sub-sections 269B(2), (3), (4), (5), (6), (7) and (8) of the Act have the same effect for the purposes of regulation 185 and Schedule 2 as they have for the purposes of Part XVA of the Act.

(3) A reference in regulation 185 and Schedule 2 to a heading or a subheading is a reference to a heading or a subheading, as the case may be, in Schedule 3 to the *Customs Tariff Act 1987* and includes a reference to any subheading listed under such a heading or subheading.

Restrictions on concession orders

185. For the purposes of subsection 269D(1) of the Act, the particular goods in respect of which a concession order shall not be made are goods classified under a heading or subheading referred to in Column 2 of an item in Schedule 2 other than any goods described in Column 3 of that item in that Schedule.

SCHEDULE 2: GOODS IN RESPECT OF WHICH CONCESSION ORDERS SHALL NOT BE MADE[2]

Item	Description
1, 3	Dairy produce, birds eggs, natural honey, edible products of animal origin not elsewhere specified, vegetable products, animal or vegetable fats and oils and their cleavage products, prepared edible fats, animal or vegetable waxes. Except for linoxyn.
2	Margarine. Except for mould release preparations.
4	Industrial monocarboxylic fatty acids, industrial fatty alcohols. Except for acid oils from refining.
6	Prepared foodstuffs, beverages, spirits and vinegars, tobacco and manufactured tobacco substitutes.
7, 8	Perfumes, toilet waters, beauty or make-up preparations for the skin, nails, hair, oral and dental hygiene, shaving, bathing, and deodorants, deodorisers and depilatories. Except for cleaning, disinfecting, lubricating or conditioning solutions or tablets for artificial eyes or contact lenses.
9	Garments of plastics and polymers.
10	Clothing and apparel of vulcanised rubber. Except for gloves, mittens and mitts of the work type.
11	Clothing of leather and composite leather. Except for gloves, mittens and mitts of the work type.
12	Apparel of paper, paper pulp, cellulose wadding or cellulose fibres. Except for urinary incontinence pants.
13-19	Articles of apparel and clothing accessories, knitted or crocheted.

[2] For transparency, this presentation of the Excluded Goods Schedule is in expanded form, relative to the Schedule which appears in the Regulations. In particular, the descriptions do not appear in the Regulations, and are not to be interpreted as having such status.

Except for urinary incontinence pants, babies' napkins, gloves, mittens and mitts of the work type, and gloves mittens and mitts not elastic or rubberised.

20-28 Articles of apparel and clothing accessories, not knitted or crocheted.

Except for loggers' safety trousers, babies' napkins, bullet proof body armour, and stockings, socks and sockettes.

29, 30 Footwear, gaiters and the like and parts of such articles.

Except for ski-boots and cross-country ski footwear (item 29), parts for ski-boots and cross-country ski footwear, and wooden shanks for boots, shoes or slippers (item 30).

31-33 Hats and other headgear.

34 Statuettes and other ornamental ceramic articles.

35 Jewellery, goldsmiths' and silversmiths' wares and other articles (excluding coin).

36 Other imitation jewellery.

Except for goods, other than of ceramic.

37 Statuettes and other ornaments of base metal.

38 Public transport-type motor vehicles, other passenger motor vehicles and snowfield vehicles.

Except for vehicles having a gross vehicle weight of more than 2.72 tonnes.

39 Motor vehicles for transporting goods.

Except for vehicles having a gross vehicle weight of more than 2.72 tonnes, rock buggies, dumpers, shuttle dumpers, tailgate dumpers and the like.

40 Chassis fitted with engines.

Except for goods, other than chassis fitted with engines for motor vehicles having a gross vehicle weight of not more than 2.72 tonnes and classified under heading 8702, 8703 or 8704.

41 Bodies for motor vehicles.

Except for goods, other than bodies (including cabs) for motor vehicles having a gross vehicle weight of not more than 2.72 tonnes and classified under heading 8702, 8703 or 8704.

42 Parts and accessories for motor vehicles.

Except for goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross vehicle weight of not more than 2.72 tonnes.

43 Watch straps, bands and bracelets of or clad with precious metal.

44 Other watch straps, bracelets or bands, not of base metal.

Except for goods, other than:

(a) goods consisting of, or incorporating, natural or cultured pearls, precious or semi-precious stones (whether natural, synthetic or reconstituted); and

(b) goods of leather or of composition leather.

45-47 Seats and parts for seats, excluding seats for aircraft and/or motor vehicles.

Except for seats of stone, slate, cement, concrete, artificial stone, or of asbestos cement, cellulose fibre-cement or the like (item 46), and parts for seats of stone, slate, cement, concrete, artificial stone, or of asbestos cement, cellulose fibre-cement or the like (item 47).

48 Other furniture and parts for furniture.

Except for furniture and parts thereof, of stone, slate, cement, concrete, artificial stone, or of asbestos cement, cellulose fibre-cement or the like.

49-53 Ceiling and wall lights, other than for lighting public open spaces and thoroughfares; table, desk, bedside and floorstanding lamps; electric, non-electric and other lamps and light fittings.

Except for goods, other than of ceramic (items 49 - 52) and parts, other than of ceramic (item 53).

54 Powder-puffs and pads for applying cosmetics or toilet preparations.

Except for goods, other than goods of precious metal or metal clad with precious metal.

55 Works of art executed entirely by hand, except for paintings, drawings and pastels.

Except for goods, other than:

(a) collages and similar decorative plaques made from goods classified under headings 0603 or 0604; and

(b) statuettes and other ornaments.

Appendix C: CONCESSIONAL ITEMS

This appendix presents information on the wording, value, usage and origins of Australia's import concessions. Section C1 covers the Items in Schedule 4 to the *Customs Tariff Act 1987*, while section C2 covers the Supplementary Provisions which Customs publishes at the end of the 'Working Tariff' (Customs 1990b). The information in this appendix is derived from Appendix N of Customs' first submission (No. 155), which also notes administrative problems and gives Customs' suggestions for change.

C1 SCHEDULE 4 ITEMS

Table C1 summarises Schedule 4, including the number of instruments made under each Item (and published in the Schedule of Concessional Instruments), duty rates, and the value of import clearances in the year to 25 Feb. 1990.

Twenty-one Items have been introduced following Government decisions after public inquiries (Items 12, 14, 15, 17, 18, 20, 30, 31, 36A-39C, 43, 45-47 and 51). Eleven Items favour particular end users and/or give effect to international treaties and cover broad product ranges (Items 1A, 3-9 and 23-25). Nine were ruled out of detailed consideration at the outset of this inquiry because they are part of sectoral plans (35B, 35C and 40A-41A). Four cover the CTCS (10, 11, 19 and 50), and two have recently been revoked (1 and 13). The other Items are a miscellaneous group with their own peculiarities.

The rest of this section gives detailed descriptions of the background to and official wording of each Item.

Table C1: **Items in Schedule 4 of the Customs Tariff Act 1987**

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
1	Goods owned by the Commonwealth for use by Departments, authorities and public bodies.	1	Free	569 589
1A	Goods owned by the Commonwealth which it is in the national interest to exempt from duty.		Free	456
3	Goods intended for official use of the Governor - General, a State Governor, or members of their families.		Free	259
4	(a) Goods owned and officially used by a a foreign government. (b) Goods used under cooperative science and technology agreements/arrangements between Australia and Foreign Governments.	2	Free	22 965
5	Goods used officially in Australia by Trade Commissioners who are not Australian citizens or residents, and who are not engaged in a profession, business or occupation.	1	Free	1
6	Goods used officially in Australia by Trade Commissioners who do not meet the criteria in Item 5 that are goods approved by the Comptroller.		Free	19
7	(a) Goods for use by an international organisation under an international agreement between Australia and foreign governments. (b) Goods used officially or personally by an official of an international organisation that paragraph (a) applies to.	1	Free	742
8	Goods imported under Status of Forces agreements.	3	Free	6 238
9	Goods to which Article 16 of the Australia - Papua New Guinea Treaty applies.	1	Free	Nil

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
10	Goods, that a CTCO declares are goods to which this Item applies, being goods the subject of an agreement between Australia and New Zealand.		5% DC: 5% NZ: Free	1 122
11	Goods, that a CTCO declares are goods to which this Item applies, being goods the subject of an agreement between Canada and Australia.		5% DC: 5% CAN: Free	695
12	Goods specially designed for the use of blind, deaf or dumb persons.	14	Free	1 522
13	Goods used in an Australian Industry Involvement Scheme: (a) raw materials or components used as inputs in goods which will become the property of the Commonwealth; (b) raw materials or inputs into goods exported under a formal Defence Offset Program; (c) tools and specialised test equipment for the support of Defence material or for use under a formal offset program which will become the property of the Commonwealth.	35	Free	314 768
14	Goods for use as components or materials in research at a tertiary institution, as approved by the Comptroller.		Free	15 478
15	Goods imported by passengers and crews of ships and aircraft, including: • items purchased inward duty-free; • personal effects, furniture or household goods; • goods sent or brought in by members of the Australian Defence Force stationed outside Australia; and • goods imported by members of Canadian, New Zealand or UK Forces.	4	Free	2 143

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
17	Goods exported from Australia which are returned without their identity being changed.		Free	393 010
18	Goods repaired or replaced under warranty.		Free	97 015
19	Goods sent overseas for repair, declared under a CTCO provided by subsection 269C 1(A) or 1(B).		Free	3 569
20	Goods exported for repair and renovation, whose identity remains unchanged by the repair: • value of goods before repair or renovation; • value of materials, labour and other charges involved in repairing the goods.		 Free The rate of duty for the good set out in Schedule 3	3 617
21	Goods imported for repair, alteration or industrial processing, intending to be exported.	9	Free	131 766
22	Goods used in petroleum or natural gas exploration.	3	Free	79 948
23	(a) Goods donated or bequeathed by people, companies or organisations outside Australia to organisations in Australia for philanthropic work. (b) Goods donated or bequeathed to the public or to a public institution. (c) Printed matter intended for deposit or exhibition in a public institution.	61	Free	484
24	Goods bequeathed to individuals within Australia.	1	Free	425
25	Trophies, prizes, medallions, decorations or certificates awarded outside Australia, or sent for presentation or competition in Australia.	1	Free	137

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
26	Pictorial illustrations for educational purposes.		Free	266
27	Handicrafts.	1	Free	32 162
28A	Theatrical costumes and properties.	1	Free	363
28B	Traditional Ethnic costumes.		Free	46
29	Goods for use as prototypes.		Free	544
30	Robots and parts and accessories.	1	Free	6 083
31	Goods for use in or in connection with aircraft.	5	Free	120 455
32	Goods including: goods of insubstantial value; goods attracting insubstantial duty; samples of negligible value; calendars, catalogues, price lists, overseas travel literature etc.	15	Free	1 562
34	Goods imported on or in containers, where the containers will be exported without being put to further use:	4		8 045
	(a) the goods on or in the containers;		The rate of duty the goods would incur if imported separately	
	(b) the containers.		Free	
35A	Tobacco etc. for medical/scientific research.		Free	..
35B*	Unmanufactured tobacco and tobacco refuse, for use with Australian leaf, by a registered manufacturer in the manufacture of cigarettes or fine cut tobacco.	3	$0.47/kg DC: $0.47/kg less 5%	56 237

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
35C*	Unmanufactured tobacco and tobacco refuse, for use with Australian leaf, by a registered manufacturer in the manufacture of tobacco (other than snuff, cigarettes or fine cut tobacco suitable for cigarettes).	3	$0.33/kg DC: $0.33/kg less 5%	1 542
36A	Photographic grade gelatin.		Free	3 111
36B	Chemicals including alcohols, hydrocarbons aldehydes, halides, peroxides, solvents and thinners imported on or before 31 December 1991.	36	Free	143 036
37A	Photographic plates or film, other than cinematographic film.	11	Free	1 572
37B	Caustic soda for use in the production of alumina, or in the processing of rare earth compounds and metals imported on or before 31 December 1991.		Free	310 376
38A	Polyesters and polyamides in primary forms	10	Free	45 840
39A	Printing paper for the production of magazines, newspapers, periodicals, posters and other printing matter classified within Chapter 49 of the Tariff.	10	Free	158 856
39B	Clay coated paperboard for the manufacture manufacture of aseptic liquid packaging.	10	Free	11 104
39C	Fliptop cigarette package paper and paperboard.	1	Free	2 243
40A*	Woven fabrics of silk, cotton, man-made fibres and synthetic fibres.	10	Free	503 002
40B*	Yarns, other than wool carpet yarns.	1	Free	411 114
40C*	Bed and kitchen linens, curtains, other furnishing and made-up articles entered for home consumption on or before 30 June 1995.	2	Free	3 638

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
40D*	Woven fabrics of silk, cotton, man-made fibres and synthetic fibres entered for home consumption on or before 30 June 1995.		40% DC: 35%	3 928
40E*	Plastics, woven fabrics and pile fabrics of 3 synthetic and artificial yarns, impregnated, coated or laminated with synthetic or artificial plastic materials entered for home consumption on or before 30 June 1995.		8% DC: 3%	4 078
40F*	Carpets and other textile floor coverings, tufted, whether or not made up.	1	Free	529
41A*	Motor vehicles: • vehicle components, including sub-assemblies for use in the manufacture of motor vehicles; • goods used in testing, quality control, manufacturing evaluation or engineering development of passenger motor vehicles or components under the PMV Plan.	25	Free	1 987 132
41B	Vehicles over 30 years of age.		Free	7 121
42A	Goods for use in the construction, modification or repair of vessels exceeding 150 gross construction tonnes.	1	Free	12 581
42B	(a) New Zealand owned and registered vessels operating in Australian waters to replace New Zealand vessels currently operating in Australian waters;		Free	Nil
	(b) New Zealand owned and registered vessels allowed to operate in Australian waters for a period not exceeding six months.		Free	Nil
43	Goods imported in split consignments. consignments.	1[b]	The rate of duty applying to the machine of which the goods are a component	150 046

Table C1: **Items in Schedule 4 of the** *Customs Tariff Act 1987* (cont.)

Item	*Description Instruments*	*No. of Rate*[a]	*Duty*	*Customs Value Year to 25 Feb. 1990*
				$'000
44	Goods used to manufacture excisable goods.		See Text	12 493
45	Goods designed for use in mining.	8	Free	35 310
46	Goods designed for use in agriculture.	13	Free	6 827
47	Goods which are ineligible for a CTCO because they incorporate or are imported with other equipment.	1	Free	26 877
48	Tool holders, work holders, dividing heads and other specialist attachments for machines for working metal.	1	Free	44
49	Parts for machines for cutting metal which incorporate a computer controller.	1	Free	Nil
50	Goods that a CTCO declares are goods to goods to which this Item applies.	10 500	Free	5 622 140[c]
51	Aluminised steel classified under 7210.60.00 or 7212.50.00 in Schedule 3 for use in the manufacture of automotive muffler exhaust systems and components, as prescribed by By-law.	1	Free	[d]
	TOTAL	**10 756**		**11 336 271**

.. Less than $1000. * Refers to By-laws covered by the Textiles, Passenger Motor Vehicles or Tobacco Plans. The Commission does not intend to review the assistance provided by these Items in this Inquiry. a Unless specifically mentioned, rates for New Zealand (NZ), Canada (CAN) and Developing Countries (DC) are free. b Many determinations have also been made under Item 43. c The figure for Item 50 is the value of imports under CTCOs for the period 1988-89. d This Item was promulgated on 29 August 1990.

Source: Customs, appendix N of Sub. No. 155.

ITEM 1

Goods that, at the time they are entered for home consumption, are owned by the Commonwealth and are not intended to be used for the purposes of trade, being:

(a) goods for use by a Department within the meaning of *the Public Service Act 1922* prescribed by by-law in relation to those goods; or

(b) goods for use by an authority or body established for a purpose of the Commonwealth, being an authority or body prescribed by by-law in relation to those goods.

Background

The Government recently announced the repeal of this Item from 1 October 1990 (Department of Administrative Services and Purchasing Reform Group 1990).

ITEM 1A

Goods that, at the time they are entered for home consumption, are owned by the Commonwealth and exemption from duty of which is, in the opinion of the Minister, in the national interest.

Background

This Item came from Item 370 (B) around 1942. In 1956 it became Item 2, in 1974 Item 1, and 1987 Item 1A. The wording has remained consistent throughout the history of the Item.

ITEM 3

Goods that, at the time they are entered for home consumption, are intended for the official use of:

(a) the Governor-General;

(b) the Governor of a State; or

(c) a member of the family of the Governor-General or the Governor of a State.

Background

This Item dates back to 1920 where a provision under Items 371 and 372 appeared for articles imported or purchased in bond for the official use of the Governor-General and State Governors with a Free rate of duty. Items 371 and 372 were amended in 1946 to include goods for personal use of the Governor-General and State Governors and also included members of their families and staff members who were not Australian Citizens. Item 372 (State Governor provisions) was amalgamated into Item 371 in 1963.

The provision for concessional entry for goods for personal use was deleted from Item 3 in 1986.

ITEM 4

Goods, as prescribed by by-law:

(a) that, at the time they are entered for home consumption, are:

(i) owned by the government of a country other than Australia; and

(ii) intended for the official use of that government and are not intended to be used for the purposes of trade; or

(b) of a scientific nature that are covered by an agreement or arrangement between the Australian Government and the government of another country on co- operation in the field of science and technology.

Background

This Item has its origin in the special exemptions applying to Division XVI of the Customs Act which came into effect on 8 October 1901. The wording of the special exemption read 'articles imported by or being the property of the Commonwealth'. This wording was transferred to Item 424 in 1907 and then to Item 370 in 1920. In

1928 Item 370 added in the requirement that the goods not be used for the purposes of trade. In 1976 Item 370(c) became Item 4 and the part that applies to the scientific/technological agreement was inserted.

ITEM 5

Goods, as prescribed by by-law, that are, at the time they are entered for home consumption, intended for the official use of a Trade Commissioner in Australia of any country, being a person who is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation.

Background

Item 5 has been present in various forms as far back as 1921 where provision was made under the then Tariff Item 373 for articles for official use of Trade Commissioners. The Tariff Board (1926) looked into whether provision should be made under 373 for Trade Commissioners' personal effects. This resulted in 373 being split into (A) for official use and (B) for personal use was implemented on 22 September 1988.

Act 63 of 1972 made amendments to the then Items 5, 6, 6A. All Trade Commissioners up to 1955 were members of Embassy staff and thus entitled to diplomatic privileges. After 1955 some Trade Commissioners received diplomatic privileges whilst others lost them. With the passing of the Diplomatic and Consular Privileges and Immunities Act, their status became obscure. Customs continued to give them privileges, the Sales Tax Act however did not grant concessions for goods for personal use.

ITEM 6

Goods that are:

(a) at the time they are entered for home consumption, intended for the official use of a Trade Commissioner in Australia of any country, being a Trade Commissioner to whom Item 5 does not apply;

(b) declared by that Trade Commissioner, in writing, to be for such official use; and

(c) goods, or are included in a class of goods, approved by the Comptroller for the purposes of this Item.

ITEM 7

Goods, as prescribed by by-law, that are:

(a) for the official use of an international organisation established by agreement between Australia and another country or between Australia and other countries; or

(b) for the official or personal use of an official of an international organisation referred to in paragraph (a).

Background

This Item dates back to 1962 when the wording for Item 373(F) allowed for goods for the official use of an international organisation or for the official or personal use of an official thereof. The wording remained with a few minor changes, until 1983 when the then Item 10 had the reference to 'agreements' inserted as the result of a review of the provisions relating to goods imported by international organisations.

ITEM 8

Goods, as prescribed by by-law, that are for use by or for sale to persons the subject of a Status of Forces Agreement between Australia and another country or between Australia and other countries.

Background

The origin of this Item dates back to 1963 when the Status of Forces Agreement (SOFA) was tabled in Parliament. On 17 May 1963 this Item came into existence

as Item 372 and remained in place until 1983, when it became Item 11 and then in 1988 Item 8. The context of the original wording has remained the same.

ITEM 9

Goods, as prescribed by by-law, in relation to which the Customs procedures of the Commonwealth are to be applied in the manner mentioned in Article 16 of the *Treaty between Australia and the Independent State of Papua New Guinea* that was signed at Sydney on 18 December 1978.

Background

This Item was introduced to remove tariffs on traditional goods traded between the indigenous peoples of Australia and Papua New Guinea. It came from Item 20 on 1 January 1988. Item 20 originated on 15 February 1985 as a result of the *Torres Strait Treaty (miscellaneous amendments) Act 1984.*

ITEM 10

Goods, that a CTCO declares are goods to which this Item applies, being goods the subject of an agreement (including a treaty or convention) between Australia and New Zealand.

Background

This Item was created to implement Articles 4.11 (C) and (D) of ANZCERTA. Under the Item, Australia may maintain a margin of preference of at least 5 per cent on imports from New Zealand of goods of significant trade interest to New Zealand, when reducing normal or general tariffs, either substantively, or by by-law or concession.

ITEM 11

Goods, that a CTCO declares are goods to which this Item applies, being goods the subject of an agreement (including a treaty or convention) between Canada and Australia.

Background

This Item was created to implement Article VII of the Canada Australia Free Trade Agreement. Under this Article, the Australian Government, acting on a request from the Canadian Government, may reinstate a margin of preference for certain goods imported to Australia from Canada, when that margin was removed through the granting of a CTCO or by-law.

ITEM 12

Goods, as prescribed by by-law, specially designed for the use of blind, deaf or dumb persons.

Background

This Item dates back to 1901 where it is listed in the special exemptions under Division XVI of the Customs Act as 'Articles specially designed and imported for the use of the blind, deaf, and dumb, when imported by governing bodies of public institutions having the care thereof'. In 1920 it became Item 368, then in 1928 Item 368(A), in 1961 Item 455(A), in 1965 Item 18 and finally in 1988, Item 12. In addition, there is a Table listing specific goods which can be imported duty free by anyone. This Item was reviewed recently by the Industry Commission (1990), which has recommended that the Item be simplified, and that the Table of specific concessions be deleted from Item 12 and transferred to Item 50.

ITEM 13

Goods, as prescribed by by-law, that are for use in connection with an Australian Industry Involvement program approved by the Commonwealth, as follows:

(a) raw materials or components that are to be used as inputs in the production or manufacture of further goods that will ultimately become the property of the Commonwealth of Australia;

(b) raw materials or components that are to be used as inputs in the production or manufacture of further goods that will ultimately be exported under a formal Defence Offset Program; or

(c) tools and specialised test equipment for the support of Defence material or for use under a formal Offset Program and which will eventually become the property of the Commonwealth of Australia.

Background

The Government recently announced the repeal of this Item from 1 October 1990 (Department of Administrative Services and Purchasing Reform Group 1990).

ITEM 14

Goods:

(a) that are for use as components or materials in a research programme or project at an institution that is a tertiary institution for the purposes of the *Employment, Education and Training Act 1988;*

(b) that are not goods:

(i) imported by or for a tertiary institution to which the Comptroller has directed the Item shall not apply;

(ii) for use in a class or kind of research programme or project to which the Comptroller has directed the Item shall not apply; or

(iii) in respect to which the Comptroller is of the opinion that goods that serve similar functions are produced in Australia or are capable of being produced in Australia by any person in the normal course of business; and

(c) in respect to which the Vice-Chancellor or other executive officer approved by the Comptroller of that tertiary institution, as the case may be, has complied with such conditions as are stipulated by the Comptroller.

Background

This Item first appeared as Item 23 on 16 March 1973 to provide for duty free admission of certain goods for universities and colleges of advanced education. The wording of this Item has altered since its creation in 1973. On 1 July 1985 Item 23 was omitted as a result of the introduction of the CTCS in 1983. A two year phasing out period was allowed for some Items, one of which was Item 23 which the IAC recommended be terminated. The IAC (1982b) recommended that Item 23 be recast to apply to goods covered by the Florence Agreement rather than to certain goods for specified purposes in a limited range of institutions. Item 54 was introduced on 1 July 1983, and it became Item 14 on 1 January 1988.

ITEM 15

Goods, as prescribed by by-law, being:

(a) goods imported by passengers or members of the crew of ships or aircraft;

(b) goods that:

(i) at the time they are approved for delivery for home consumption, are the property of a person who has arrived in Australia on an inter-national flight within the meaning of Section 96B of the *Customs Act 1901*; and

(ii) were purchased by that person in an inwards duty free shop within the meaning of that section;

(c) goods, brought into, or sent to, Australia by such members of the Defence Force stationed outside Australia as are prescribed by by-law;

(d) goods imported by members of the forces of Canada, New Zealand or the United Kingdom; or

(e) passengers' personal effects, furniture or household goods.

Background

This Item dates back to 1901 where special exemptions provided for passengers' household effects. In 1907, Item 433 was created for passengers' personal effects. In 1949, the Item was split into 409(A), 409(B)(1), and 409(B)(2) with a restricted value for the goods and the requirement that the person importing them had used the goods for at least 12 months prior to importation.

In 1965, Item 14 and 15 catered for these goods, and then in 1966 Item 14 was deleted. The Defence Force provision was added in 1967 and in 1968 the crew members of ships or aircraft were included. The wording and provisions have altered over the period of existence of this Item. The Item was reworded following an IAC report (1985b).

ITEM 17

Goods, or parts of goods, that have been exported from Australia otherwise than for repair or renovation and are returned without their identity having been altered, not being goods in respect of which:

(a) any duties, taxes or charges of the Commonwealth were payable at or prior to the date of exportation but which had not been paid and an amount equal to the sum of such duties, taxes or charges has not been paid to the Commonwealth since the date the goods were exported from Australia; or

(b) drawback or refund of any duties, taxes or charges of the Commonwealth was paid when the goods were exported from Australia and an amount equal to such drawback or refund has not been paid to the Commonwealth since the date the goods were exported from Australia.

Background

The current wording of Item 17 resulted from an IAC report (1984b). That inquiry resulted from the IAC's earlier recommendation that a reference be sent to the IAC covering all the re-importation Items (IAC 1982b).

ITEM 18

Goods, being:

(a) goods or parts of goods previously imported into Australia and returned after repair overseas free of charge in accordance with the provisions of a specific warranty applicable to the previously imported goods; or

(b) goods supplied free of charge under the provisions of a specific warranty applicable to:

(i) goods previously imported into Australia; or

(ii) goods in respect of which the replacement goods form a part, where t the goods being replaced:

- are of no commercial value or have been or will be exported or destroyed;

- will not, if exported, be reimported under any provision in this Schedule; and

- are not goods in respect of which drawback or refund of any duties, taxes or charges of the Commonwealth was paid.

Background

Item 18 originated as Item 30 on 22 November 1985 when a new warranty provision allowed goods and parts of goods duty free entry when the goods had been sent overseas and repaired or replaced under warranty. This new provision was introduced following a public inquiry by the IAC (1984b).

ITEM 19

Goods that a Commercial Tariff Concession Order provided for by subsection 269C (1A) of the *Customs Act 1901* declares are goods to which this Item applies, being goods the identity of which has not been altered since the date the goods were exported from Australia.

Background

The Re-import Concessions date back to 1907 when a provision in Item 439 existed for 'goods that had been passed by the Customs and subsequently sent out of the Commonwealth for repairs which in the opinion of the Minister cannot be reasonably done in the Commonwealth may upon re-introduction as prescribed by Departmental by-laws, be admitted upon payment of duty on the dutiable value only of any repairs or additions to the goods'.

By 1920 splits had occurred to the above Item to allow for the return of Australian goods and drawback provisions. In 1956, a provision for re-imported second hand goods for PNG residents was introduced, as was Item 400(B) which allowed importation of goods for repair or alteration and intended to be returned to the country of importation.

In 1965, Items 30 and 31 allowed for re-importation of goods sent overseas for repair, alteration or renovation that could not be undertaken in Australia or the United Kingdom. Item 30 allowed for re-importation of goods sent to the manufacturer, while Item 31 catered for the remainder. Item 31 was converted from an 'as prescribed by by-law' criterion to a CTCS criterion following an IAC inquiry (IAC 1984b). With the adoption of the Harmonized Tariff System (HS), this Item then became Item 19.

ITEM 20

Goods (not being goods to which Item 18 or 19 applies):

(a) that have been exported from Australia for repair or renovation;

(b) the identity of which has not been altered since the date the goods were exported from Australia; and

(c) on which, under Schedule 3, duty is ascertained by reference to a percentage of the value of the goods.

Background

The current wording of this Item following a recommendation in IAC (1984b). Again, these concessions date back to 1907 as stated in the background to Item 19, with splits occurring to the original Item to allow for re-importation of repaired goods. This Item became Item 32 in 1965 and allowed for prescribed goods to be re-imported after being sent outside Australia for repair, alteration or renovation that could not be performed in Australia. This wording continued until 22 November 1985 when the alteration of goods was omitted and the stipulation that the identity of the goods had not altered since exportation was inserted.

ITEM 21

Goods, as prescribed by by-law, that are imported for repair, alteration or industrial processing and are intended to be exported.

Background

The intent of the wording of this Item has remained unaltered since 1958 when the 'industrial processing' criterion was included in the terms of Item 400(B) to enable expansion of Australian Industry and removal of the criterion that the goods were to be returned to the exporting country. This Item has been in existence since 1956.

ITEM 22

Goods, as prescribed by by-law as follows:

(a) that are for use in connection with the exploration for petroleum or natural gas;

(b) that are for use in connection with the development of petroleum or natural gas wells to the stage where a well-head assembly is attached, other than goods for, or for use in connection with, controlling, treating, conveying or storing petroleum or natural gas after leaving the well-head assembly;

other than goods that serve similar functions to those that are produced in Australia or are capable of being produced in Australia by any person in the normal course of business.

Background

This concession was originally introduced in 1964 as an administrative concession to the petroleum exploration industry in the form of a standing by-law under Item 19 to overcome the time consuming and costly commercial by-law system operating at that time and was to cover equipment designed and imported for oil exploration. From 1967, the concession became subject to local manufacture restrictions. In 1979, when Item 19 became subject to the 2 per cent revenue raising duty, this concession was transferred to Item 41 to retain duty free status. In 1985, an attempt to convert the concession to the CTCS was aborted due to perceived workload and time constraint problems. It reverted to a policy by-law under Item 52, subject to the CTCS criteria.

In January 1988, the concession was transferred to Item 22 with the HS. In July 1988, the 2 per cent revenue raising duty was removed from Item 50 (the successor to Item 19 and concessional Item for CTCOs) and Item 22 was subsequently flagged for review.

ITEM 23

Goods, being:

(a) goods, as prescribed by by-law, that have been donated or bequeathed by a person, company or organisation domiciled or established outside Australia to an organisation established in Australia for the purposes of performing work of a philanthropic nature;

(b) goods, as prescribed by by-law, that have been donated or bequeathed to the public or to a public institution; or

(c) printed matter, including printed pictures and photographs, the property of any public institution and intended for deposit or exhibition therein.

Background

Parts (a) and (b) are based on a concession available since 1921 and both require a by-law to be made before they can be used. There is no policy by-law for (a) -- however 'ad-hoc' determinations may be made. The policy by-law to (b) is conditioned to the CTCS local manufacture criteria (security not required) -- however, ad-hoc determinations can also be made to cover 'genuine' donations or bequests which may be produced in Australia. Part (c)'s origins are not clear -- it first appeared in 1974 and does not require a by-law for use.

Part (b) covers approximately two-thirds of the imports and Part (c) one third. There have been two 'ad-hoc' importations.

ITEM 24

Goods, as prescribed by by-law, that are not intended to be sold or to be used for purposes of trade and became the property of the importer under the will or the intestacy of a deceased person at a time when the importer was resident or established in Australia.

Background

This concession was introduced some time before 1965. The policy by-law to the Item is worded as above, to the satisfaction of the Collector. Security is not required.

ITEM 25

Goods, as prescribed by by-law, being:

(a) trophies won outside Australia;

(b) decorations, medallions or certificates awarded, or to be awarded, outside Australia and sent from outside Australia to persons within Australia; or

(c) trophies or prizes sent by donors resident outside Australia for presentation or competition in Australia.

Background

Originated in the 1902 Tariff as Item 139 allowing 'Free' admission of 'Trophies won abroad'. Subsequently extended to cover 'decorations' (1908), 'medallions and certificates' (1921), and 'prizes' (1933). The concession has remained unaltered, in principle, since then.

ITEM 26

Pictorial illustrations for teaching purposes in universities, colleges, schools or public institutions.

Background

This concession derives from Item 412 of 1902. It has not changed significantly since then and does not require a by-law or determination.

ITEM 27

Handicrafts, as prescribed by by-law.

Background

This Item was originally established as a 'cottage industries concession', and became operative on 12 April 1966. The Concession was reviewed in 1973 and a Government decision was taken to implement a new concession as 'handicrafts' from 1 July 1974.

The textiles and clothing concession was introduced as a result of TCF Plan in 1982. The reason for this was 'to give aid to Developing Countries without undermining Australian Industry'.

ITEM 28A

Theatrical costumes and properties, as prescribed by by-law.

Background

This Item dates back to 1901 where provisions were made in the Special Exemptions to Division XVI of the Customs Act for it. In 1907, it became Item 437, in 1920, Item 421, in 1965, Item 37 and in 1988, Item 28. The Item has had minor changes over this period of time but the intent of the wording has remained the same.

ITEM 28B

Goods, being traditional costumes that are authentic and characteristic in design and made from traditional materials in the country of origin of the tradition, imported by groups established for the purpose of performing in those traditional costumes.

Background

This Item was introduced on 22 June 1988 when Item 28 was split into 28A and 28B to allow the duty free admission of national or traditional costumes imported by recognised ethnic groups.

ITEM 29

Goods, for use as a prototype, as prescribed by by-law.

Background

This Item came from Item 58, which was created on 1 July 1985. Item 58 was created as a result of the implementation of the CTCS which meant that by-laws with specific end-use provisions would terminate on 1 July 1985. Prior to Item 58, a prototype by-law existed with end-use conditions and the Government decided to continue this as a policy by-law.

ITEM 30

Robots, as defined by by-law, and parts and accessories suitable for use solely or principally with such robots.

Background

Item 30 came from Item 63. Item 63 was created on 1 July 1985 as a result of the Government's decision on IAC (1984a). This Item allows for concessional entry of robots and parts and accessories used solely or principally with them.

ITEM 31

Goods for use in, or in connection with, aircraft, as prescribed by by-law.

Background

In response to IAC (1986a), the Government decided to continue existing concessional arrangements on aircraft parts and equipment until 1 January 1989, in anticipation of a Cabinet Committee review into the CTCO System. The Government later endorsed the continuation of the concession until it has considered this report.

ITEM 32

Goods, as prescribed by by-law, being:

(a) goods on which no duty is payable and in respect of which, in the opinion of the Comptroller, the value is insubstantial;

(b) goods in respect of which, in the opinion of the Comptroller, the amount of duty that, but for this Item, would be payable and the value are insubstantial;

(c) samples of negligible value; or

(d) calendars, catalogues, overseas travel literature, price lists and other printed matter.

Background

The present Item 32 is a direct translation from Item 35 in the pre-Harmonized-Tariff concessions Schedule. Certain samples (mostly of textiles) were admissible duty free under an unspecified heading from the first *Customs Tariff Act* (No. 14 of 1902). Samples containing price lists were dutiable at the rates applicable to the goods of which the samples were a part. The 1933-52 *Tariff Guide* indicates that the same conditions still applied then.

Item 404 was inserted into the Customs Tariff in November 1956 to fulfil Australia's obligations to the *International Convention to Facilitate the Importation of Commercial Samples and Advertising Material.* The Item read -- 'Samples which, in the opinion of the Minister, are of negligible value and which are to be used for promoting orders for the importation of goods of the kind represented by the samples, as prescribed by Departmental by-laws'.

The Item was amended in 1957 to 'Samples which, in the opinion of the Minister, are of negligible value, as prescribed by by-law'. This was to allow Australian manufacturers to import samples for use as production models. In 1962 the scope of the Item was broadened by the insertion of the words 'and other consumable goods' after 'Samples'. Item 404 was directly translated as Item 35 of the Brussels Tariff in 1965 and read -- 'Goods, including samples, of negligible value, as prescribed by by-law'. *Customs Tariff Proposals* No. 16 of July 1967 extended the Item to cover -- 'Goods, including samples, of negligible value, as prescribed by by-law; goods, as prescribed by by-law, on which duty is, in the opinion of the Minister, negligible'.

Item 338(C) was introduced into the Customs Tariff in 1931 to allow duty free entry of 'Posters, pamphlets and the like, depicting places beyond the Commonwealth, which are published by overseas government tourist bureaus, railway authorities and such organisations'.

A new Item 338(D) was introduced in 1934 to allow trade catalogues and price lists not designed to advertise the sale of goods by any person, firm or company in Australia, when sent to Australia in single copies not exceeding one copy per company not being for distribution. In November 1956 the wording was changed to 'catalogues, price lists and printed matter not designed to advertise the hire or sale of goods by, or the services to, any person in Australia, as prescribed by Departmental by-laws'.

On implementation of the Brussels Tariff in 1965, Items 338(C) and 338(D) translated as:

338(D) Calendars, (including calendar blocks) of paper or paperboard, as prescribed by by-law -- to 49.10.1

338(C) Overseas travel literature and printed matter, as prescribed by by-law -- to 49.11.3

338(D) Catalogues, price lists and other printed matter, as prescribed by by-law -- to 49.11.04

The Government decided that certain printed matter would be included in Item 35 of Schedule 2 (the then concessions schedule) following a public inquiry (Tariff Board 1973).

Item 35 was amended on 30 May 1975 to include goods which could not be interpreted as being of 'negligible' value or attracting a 'negligible' amount of duty. The Item was transferred to Part I of Schedule 2 on 1 January 1982. On simplification of the Customs Tariff a year later it was moved to Part I of Schedule 4. In June 1985, 'Comptroller' was substituted for 'Minister' in the wording of the Item. On implementation of the HS on 1 January 1988, it became Item 32 in Part II of Schedule 4 with no change of wording.

ITEM 34

Goods imported on or in containers, being containers that will be exported without being put to any other use, as prescribed by by-law.

Background

This Item came into force on 1 January 1988, to allow for the duty free entry of containers designed for repetitive use, in accordance with Rule 5 (b) of Schedule 2 of the Harmonized Customs Tariff (Customs 1990b).

Rule 5 (b) states '... packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.'

ITEM 35A

Tobacco, cigars, cigarettes or snuff, in quantities approved by the Comptroller, for use in a medical or other scientific research programme approved by the Comptroller.

Background

This Item came from Item 14 on 1 January 1988. The only change to the wording was when 'Comptroller' was substituted for 'Minister' in 1985. Prior to 1 January 1983 the provision for this wording was contained in Tariff Item 24.02.500, which originated in 1972 as the result of a Budget decision.

This Item is used by the Australian Government Analytical Laboratories to obtain duty free cigarettes for research purposes. The quantities involved are relatively minor and administration poses no difficulties to the Customs.

ITEM 35B

Unmanufactured tobacco and tobacco refuse classified under 2401.10.12, 2401.20.12 or 2401.30.00 of Schedule 3, as prescribed by by-law, being:

(a) for use by a person who is a manufacturer for the purposes of the Excise Act 1901, and also the holder of a certificate issued by the Comptroller for the purposes of this Item; and

(b) for use in the manufacture of cigarettes or of fine cut tobacco suitable for the manufacture of cigarettes, being cigarettes of fine cut tobacco that will contain Australian grown tobacco leaf;

entered for home consumption on or before 30 September 1995.

Background

Duties on imported tobacco leaf date back prior to federation. In 1936 duties were lowered on the tariff items that used imported leaf with specified proportions of Australian leaf, in an effort to encourage the use of Australian leaf. Then in 1938 the required percentage of Australian leaf was increased for these Items.

In 1972, tariff item 24.01.21 allowed for importation of tobacco for use with Australian grown tobacco as prescribed by by-law. The provisions of 24.01.21 were transferred to Schedule 4 with the creation of Item 35B when the HS was adopted. This occurred as the result of the Government's decision to remove 'as prescribed by by-law' provisions from Schedule 3 of the Tariff.

Item 35B is an administrative mechanism whereby approved manufacturers import unmanufactured tobacco and tobacco refuse at concessional rates for inclusion with Australian tobacco in excisable cigarettes and tobacco. This system has been operating for a number of years and poses no administrative difficulties. This Item was considered by the IAC (1987d) and as a result, will terminate on 1 October 1995.

ITEM 35C

Unmanufactured tobacco and tobacco refuse classified under 2401.10.13, 2401.20.13 or 2401.30.00 of Schedule 3, as prescribed by by-law, being:

(a) for use by a person who is a manufacturer for the purposes of the Excise Act 1901, and also the holder of a certificate issued by the Comptroller for the purposes of this Item; and

(b) for use in the manufacture of tobacco (other than snuff, cigarettes or fine cut tobacco suitable for the manufacture of cigarettes) being tobacco that will contain Australian grown tobacco leaf;

entered for home consumption on or before 30 September 1995.

Background

This Item originated from tariff item 24.01.22 on 1 January 1988 with the introduction of Harmonization. 24.01.22 was an 'as prescribed by by-law' Schedule 3 classification. The same background offered for Item 35B applies to Item 35C. This sectoral Item was the subject of an IAC inquiry (1987d) and will automatically terminate on 1 October 1995.

ITEM 36A

Goods classified under 3503.00.10 of Schedule 3, as prescribed by by-law.

Background

The continuation of concessional entry for photographic grade gelatine in the form of a policy by-law was made as part of the Government's decision on IAC (1986b).

ITEM 36B

Goods, as prescribed by by-law, classified under a heading or subheading of Schedule 3 specified in the Table below, entered for home consumption on or before 31 December 1991.

1519.30.00	2905.14.00	2912.60.00	3701.30.00	3702.91.00
2827.20.00	2905.16.00	2915.39.10	3701.91.00	3702.92.00
2835.23.00	2905.17.00	2915.70.00	3701.99.00	3702.93.00
2836.20.00	2905.19.10	2915.90.00	3702.32.00	3702.94.00
2903.40.10	2905.29.00	2921.45.00	3702.39.00	3702.95.00
2905.12.00	2905.39.00	3503.00.10	3702.44.00	3814.00.00

Background

This Item was created on 1 January 1988 to cover goods which were previously catered for by 'end-use under security' by-laws. This Item was implemented

following the Government's decision on IAC (1985a and 1986b), and at the date of implementation attracted a duty rate of 2 per cent. On 1 July 1988 a Free rate of duty was substituted following the Government's May Economic Statement.

ITEM 37A

Goods classified under 3705 of Schedule 3, as prescribed by by-law.

Background

Item 37A resulted from the implementation of the Government's decision on IAC recommendations (IAC 1985a and 1986b). Previous Schedule 3 by-laws were converted to policy by-laws under this Item on 1 January 1988. Prior to 1 February 1987 tariff classification 37.05.1 had provided an 'as prescribed by by-law' category. Subsequently, 37.05.1 was deleted and a new Item 40 was created which read 'Goods to which 28.17 or 37.05 in Schedule 3 applies, as prescribed by by-law'. This Item catered for seven by-laws that were previously covered by 37.05.1.

ITEM 37B

Goods classified under 2815.1 of Schedule 3, as prescribed by by-law, entered for home consumption on or before 31 December 1991.

Background

Item 37B was implemented on 1 January 1988 to allow duty free entry of caustic soda for use in the production of alumina or the processing of rare earth compounds and metals. This resulted from implementation of the Government's decision on IAC recommendations (IAC 1985a and 1986b). Prior to 1 January 1988 provision for this concession was made via Item 40 which was introduced on 1 February 1987, again, as a result of the above inquiry.

ITEM 38A

Goods classified under 3907.60.00, 3907.9 or 3908 of Schedule 3, as prescribed by by-law

Background

This Item was created on 1 January 1988 to cover goods which were previously catered for by 'end-use under security' by-laws. The Item was implemented following the Government's decision on IAC recommendations (IAC 1985a and 1986b), and at the date of implementation attracted a duty rate of 2 per cent . On 1 July 1988 a Free rate of duty was substituted following the Government's May Economic Statement.

ITEM 39A

Printing paper for use in the production of magazines, newspapers, periodicals, posters and other printed matter of a kind that, if imported, would be classified within Chapter 49, as prescribed by by-law.

Background

The current Item 39A resulted from the Government's decision on IAC recommendations (IAC 1987c). A new policy by-law was written to Item 39A to allow for the duty free entry of all coated paper used for magazine production.

ITEM 39B

Clay coated paperboard for use in the manufacture of aseptic liquid packaging, as prescribed by by-law.

Background

Item 39B was a new concessional Item created on 1 January 1988 as a result of the Government's decision on IAC recommendations (IAC 1987c).

ITEM 39C

Paper and paperboard for use in the manufacture of flip-top cigarette packaging, as prescribed by by-law.

Background

Item 39C was a new concessional Item created on 1 January 1988 as a result of the Government's decision on IAC recommendations (IAC 1987c).

ITEM 40A

Fabrics, as prescribed by by-law, being fabrics classified under a heading of Schedule 3 specified in the Table below:

5007	5211	5512	5516
5208	5212	5513	5903
5209	5407	5514	5907.00.00
5210	5408	5515	6002

Background

This current Item came from Item 43 on 1 January 1988 when the HS was adopted. Item 43 was created on 1 January 1982 as a result of the Government's decision on IAC recommendations (IAC 1980). This Item was created to cover the policy by-laws that had previously been included in the then Schedule 1 of the Tariff.

ITEM 40B

Yarns, other than wool carpet yarns, for use otherwise than in the further manufacture of yarns, as prescribed by by-law.

Background

Item 40B came from Item 40C on 1 March 1989. Item 40C was created on 1 January 1988, implementing the Government's continuing sectoral policy in respect of the textiles, clothing and footwear industries.

ITEM 40C

Industrial crafts, as prescribed by by-law, as follows:

(a) bed linen;

(b) bed spreads;

(c) cushion covers;

(d) facewashers (other than goods of knitted or crocheted terry towelling or similar knitted terry fabrics);

(e) placemats;

(f) quilts;

(g) serviettes;

(h) table linen;

being goods classified under a heading of Schedule 3 specified in the Table below, entered for home consumption on or before 30 June 1995.

6302 6303 6304 6307

Background

This Item was introduced on 1 March 1989 as part of the Government's new arrangements for handicraft textiles and clothing. The goods covered by Item 40C

would not have met the handicraft definition, therefore a new 'industrial crafts' concession was established to allow goods meeting a restrictive definition quota and duty free treatment. The Textiles, Clothing and Footwear Development Authority monitors entry of importations.

ITEM 40D

Fabrics, as prescribed by by-law, being fabrics classified under a heading of Schedule 3 specified in the Table below, entered for home consumption on or before 30 June 1995:

5208	5212	5512	5515
5210	5407	5513	5516
5211	5408	5514	

Background

This Item was introduced on 1 January 1989 and was previously part of Item 40A. The Government introduced it to rectify an anomaly which arose following implementation of the TCF Plan, in response to IAC (1986c). Item 40D retains the 40 per cent base quota duty rate for cotton sheeting, which had been replaced by a free rate when the goods were part of Item 40A.

ITEM 40E

Fabrics, as prescribed by by-law, being fabrics classified under a heading of Schedule 3 specified in the Table below, entered for home consumption on or before 30 June 1995:

3921	5512	5515	6001
5407	5513	5516	
5408	5514	5903	

Background

This Item was created on 1 March 1989 from Items 40A and 40B (part) and forms part of the post-1988 assistance arrangements for the textile clothing and footwear

industries. Item 40E rectifies anomalies which arose following implementation of IAC (1986c).

ITEM 40F

Goods classified under 5703 of Schedule 3, as prescribed by by-law.

Background

This Item, previously Item 40D was created on 1 March 1989 when the validation period for Item 40D expired on 28 February 1989. The by-law reads 'Hand tufted goods made by non-powered tufting machines held in the hand'.

ITEM 41A

Goods, as prescribed by by-law, being

(a) vehicles classified under

8703.21.10, 8703.24.10, 8703.33.10, or
8703.22.10, 8703.31.10, 8703.90.10, 8704.31.10
8703.23.10, 8703.32.10 8704.21.10, of Schedule 3;

(b) vehicle components, including vehicle components imported with and forming part of vehicles that are not assembled or are not further assembled than a stage that constitutes a sub-assembly, for use as original components in the assembly or manufacture of:

(i) vehicles of a kind which, if imported, would be classified under

8701.20.00 8702 8704
8701.90.20 8703 or 8705 of Schedule 3; or

(ii) trailers and semi-trailers for articulated vehicles, being trailers and semi-trailers of a kind which, if imported, would be classified under

8716.31 8716.39 or 8716.40 of Schedule 3; or

(c) goods that are for use in the testing, quality control, manufacturing evaluation or engineering development of passenger motor vehicles or motor vehicle components manufactured under the plan known as the Passenger Motor Vehicle Manufacturing Plan.

Background

This Item came from Item 24 when the HS was adopted. Prior to Harmonization the Item existed in various forms of wording to allow for the Government's policy on this sectoral area. Changes have been made to this Item to accommodate the various assistance packages the Government has implemented.

ITEM 41B

Vehicles of an age of 30 years or more, being:

(a) utilities or pick-ups classified under 8704.21.91 or 8704.31.91 of Schedule 3; or

(b) vehicles classified under

8703.21.10	8703.31.10	8704.21.10
8703.22.10	8703.32.10	or
8703.23.10	8703.33.10	8704.31.10
8703.24.10	8703.90.10	of Schedule 3

Background

This Item was previously Item 26 which was originally introduced on 1 April 1976 to allow for the Government's decision for duty free entry of vehicles of an age of 30 years or more. It became Item 41B on 1 January 1988 and then on 13 April 1988 it was consequentially amended as a result of an amendment to the Passenger Motor Vehicle Manufacturing Plan to abolish tariff quotas and amend tariff rates on certain vehicles.

ITEM 42A

Goods, as prescribed by by-law, for use in the construction, modification or repair of vessels of a kind which, if imported, would be classified under a subheading of Schedule 3 specified in the Table below:

8901.10.90	8902.00.90	8904.00.90
8901.20.90	8903.91.90	8905.10.90
8901.30.90	8903.92.90	8905.20.90
8901.90.90	8903.99.90	8906.00.90

Background

In October 1984 the Government approved the removal of the 2 per cent revenue duty on ships' parts. Item 56 was introduced to implement this decision. It provided for ships' parts normally dutiable at 2 per cent or less to be imported duty free. It appears that the intention of this decision was taken to be that parts for use in the construction or modification of ships should be duty free.

When the existing Item 19 by-law on ships' parts lapsed on 1 July 1985, many ships parts became dutiable at normal rates, thus excluding them from Item 56. The Government subsequently reinstated the concession as Item 25 with the by-law prescribed to this Item following the wording of the old Item 19 by-law.

ITEM 42B

Goods, as prescribed by by-law, being:

(a) goods, the produce or manufacture of New Zealand; or

(b) ships that are registered in New Zealand and owned by persons resident in New Zealand, being ships:

(i) for use in Australian waters in replacement of ships registered in New Zealand and owned by persons resident in New Zealand; or

(ii) for use for any other purpose for a period not exceeding 6 months from the date of commencement of the operation of the particular ship in Australian waters.

Background

This Item came from Item 13 in Part 9 of Schedule 4 to the simplified tariff and can be traced with certainty back to 1 July 1974 when Item 13 appeared in Schedule 2 to the *Customs Tariff Act 1974*. As far as can be ascertained the Item was inserted as part of the Australia New Zealand Free Trade Agreement (NAFTA).

The wording has not changed since implementation, except that on Harmonization the words 'goods, the produce or manufacture of New Zealand; or' were omitted but were re-inserted by the Customs Tariff Act 1988 the operative date being backdated to 1 January 1988.

ITEM 43

Goods, as prescribed by by-law, being original components of machinery classified under a heading or subheading in Chapter 84, 85 or 90 of Schedule 3.

Background

Item 43 covers goods imported in split consignments. It was implemented in November 1988 to reduce costs to industry and remove the anomaly whereby complete goods imported in split consignments were being duty rated at unit rates applicable to the various componentry (Button 1988a). Under Item 43 the imported goods are dutiable at the rate of duty applicable to the complete goods as a functional unit. Submissions for Item 43 are processed by the Customs and DITAC with recommendations presented to the Minister for Industry, Technology and Commerce who makes the decision on eligibility. Determinations are then issued for individual consignments.

A recent *Australian Customs Notice* has clarified the application of Item 43 and introduced streamlined administrative procedures (Customs 1990e).

ITEM 44

Goods, being goods classified under a subheading specified in column 1 of the Table to Section 26 of this Act, for use in the manufacture of excisable goods in terms of Section 24 of the *Excise Act 1901*.

Rate of Duty Payable

The difference between the rate of duty set out in the third column of a subheading so specified and the rate of duty for the excise Item specified in column 2 of the Table to section 26 of this Act opposite to that subheading set out in the third column of that Item in the Schedule to the *Excise Tariff Act 1921*.

Background

This Item was inserted on 1 July 1989 to overcome an anomaly caused by the repeal of Section 6G of the *Excise Tariff Act 1921*. Section 6G allowed importers of goods which were intended to be used in the manufacture of prescribed excisable products to defer payment of the customs duty and pay the total at the time the excisable products were entered for home consumption. The insertion of Item 44 has allowed for more efficient and effective collection of customs duty by collecting the industry protection element prior to the goods being used in the manufacture of the excisable products, the excise duty being collected on entry of the products for home consumption.

ITEM 45

Goods designed for use in the mining industry, as prescribed by by-law.

Background

Item 45 covers specified or prescribed goods designed for use in the mining industry which are not made in Australia during the normal course of business. It was implemented following the 1988 May Economic Statement intending to reduce

costs to the mining sector (Button 1989b). The IAC had earlier reported on assistance to the MCAE industries (IAC 1988b). The by-laws written to this Item are well defined in describing specific goods for concessional entry. However, problems arise with identifying goods as designed for use in mining when the industry seeks to add goods to the concession.

ITEM 46

Goods designed for use in the agricultural industry, as prescribed by by-law.

Background

Item 46 covers specified or prescribed goods designed for use in the agricultural industry which are not made in Australia during the normal course of business. It was implemented following the 1988 May Economic Statement intending to reduce costs to the agricultural sector (Button 1989b). The IAC had earlier reported on assistance to the MCAE industries (IAC 1988b). The by-laws written to this Item are well defined in describing specific goods for concessional entry. However, problems arise with identifying goods as designed for use in the agricultural industry when industry seek to add goods to the concession.

ITEM 47

Goods, as prescribed by by-law, being machinery that incorporates, or is imported with, other goods which render the machinery ineligible for a current Commercial Tariff Concession Order made under Part XVA of the *Customs Act 1901*.

Background

Item 47 covers complete goods that fail to qualify for a CTCO because it excludes certain componentry. It was implemented following the 1988 May Economic Statement (Button 1989b). The IAC had earlier reported on assistance to the MCAE industries (IAC 1988b). There must be an extant CTCO in place for Item

47 to be available. Item 47 removes the necessity for an importer to dismantle his goods and ship certain components separately. The Item only applies to capital equipment and does not include consumer type goods.

ITEM 48

Parts and accessories, as prescribed by by-law, of a kind which, is imported, would be classified under a subheading of Schedule 3 specified in the Table below, for use in the manufacture or assembly of machines for working metal:

8466.10.00 8466.30.00 8466.94.00
8466.20.00 8466.93.00

Background

This Item was inserted, operative 31 December 1989, to correct an anomaly which arose following the introduction of the Harmonized Tariff on 1 January 1988.

ITEM 49

Parts, as prescribed by by-law, of a kind which, if imported, would be classified under a subheading of Schedule 3 specified in the Table below, of machines incorporating a computer controller:

8468.90.00 8479.90.00 8515.90.00

Background

This Item was inserted, operative 31 December 1989, to correct an anomaly which arose following the introduction of the Harmonized Tariff on 1 January 1988.

ITEM 50

Goods that a CTCO declares are goods to which this Item applies.

Background

This Item is used to implement the CTCS.

ITEM 51

Aluminised steel classified under 7210.60.00 or 7212.50.00 in Schedule 3 for use in the manufacture of automotive muffler exhaust systems and components, as prescribed by by-law.

Background

This Item was introduced via a Customs Tariff proposal tabled in Parliament on 23 August 1990. A single by-law was promulgated under this Item on 29 August. The Item was introduced to implement the Government's decision on the entry of aluminised steel. The IAC had earlier reported on the concessional entry of aluminised steel (IAC 1989b).

C2 CONCESSIONAL SUPPLEMENTARY PROVISIONS

These provisions exist to:

(i) provide for a rate of duty on certain goods where legislation other than the *Customs Tariff Act 1987* specifies such rates; or

(ii) provide nominal Tariff headings or treatment codes to enable statistics to be compiled on certain imports where such a detailed split is not provided by the *Customs Tariff Act 1987.*

Customs submitted that the Supplementary Provisions are administrative measures, and have no legislative force. Table C2 sets out the concessional Supplementary Provisions in summary form.

Table C2: **Items in the Concessional Supplementary Provisions to the 'Working Tariff'***

Item	*Description*	*Customs Value Year to 25 February 1990*
		$'000
101	Goods for official or personal use in a diplomatic mission by diplomatic staff.	6 787
102	Goods for official or personal use in a diplomatic mission by administrative and technical staff.	357
103	Goods for official or personal use in a consular post by consular heads or staff.	4 342
104	Goods for official or personal use in a consular post by administrative and technical staff.	250
105	Goods for official use in a consular post, to which Item 103 does not apply.	2
106	Goods for official use in an eligible international organisation or for official or personal use by a holder of high office in an international organisation.	55
107	Goods imported by a contracting Government or a constructing authority, as defined in the *River Murray Waters Act 1983.*	..
110	Fuel oil imported for certain end uses.	18 148
111	Aircraft, vessels and other craft arriving under their own power.	32 176
112	Aircraft stores.	1
113	Raw materials used for manufacturing in bond.	Nil
	TOTAL	**62 118**

* All rates for Concessional Supplementary Provisions are Free. .. Less than $1000.
Source: Customs, Sub. No. 155, Appendix N.

ITEM 101

Goods that, at the time they are entered for home consumption, are intended for:

(a) the official use of a diplomatic mission in Australia of any country;

(b) the personal use of a person who is:

(i) the head of such a mission; or

(ii) a member of the diplomatic staff of such a mission, being a person who is not an Australian citizen and who is not permanently resident in Australia or in a Territory; or

(c) the personal use of a member of the family of a person referred to in paragraph (b), being a member of the family who forms part of the household of the person and is not an Australian citizen.

ITEM 102

Goods that:

(a) are, at the time they are entered for home consumption, intended for the personal use of:

(i) a member of the administrative and technical staff of a diplomatic mission, in Australia, of any country, being a person who is not an Australian citizen and is not permanently resident in Australia or in a Territory; or

(ii) a member of the family of a person referred to in sub-paragraph (i), being a member of the family who forms part of the household of the person, is not an Australian citizen and is not permanently resident in Australia or in a Territory; and

(b) are imported at the time when the member of the administrative and technical staff first takes up duty at the diplomatic mission, in Australia, of that country.

ITEM 103

Goods that are, at the time they are entered for home consumption, intended for:

(a) the official use of a consular post in Australia of any country, being a consular post the head of which is a person who is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation;

(b) the personal use of a person who is the head of a consular post in Australia of any county or, not being the head of such a post, is entrusted in the capacity of a consular officer with the exercise of consular functions at such a post being a person who is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation; or

(c) the personal use of a member of the family of a person referred to in paragraph (a) or (b), being a member of the family who forms part of the household of the person, is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not engaged in a profession, business or occupation.

ITEM 104

Goods that:

(a) are, at the time they are entered for home consumption, intended for the personal use of a person who is employed in the administrative or technical service of a consular post in Australia of any country, being a consular post the head of which is a person who is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation; and

(b) are imported at the time when that person first takes up duty at a consular post in Australia of that country.

ITEM 105

Goods that:

(a) are, at the time they are entered for home consumption, intended for the official use of a consular post in Australia of any country, being a consular post to which Item 103 does not apply;

(b) are declared by that person in writing, to be for such official use; and

(c) are goods, or are included in a class of goods, approved by the Minister for the purposes of this Item.

Background to Items 101-105

These Items specify duty free entry of goods for use by diplomatic missions and consulates, and staff and family members thereof. They have much broader coverage than Item 4 of Schedule 4, and provide a means of acceding to the Government's international agreements on diplomatic and consular privileges.

Separating the concession into five Items enables easy extraction of statistics on imports by different groups.

ITEM 106

Goods that:

(a) are, at the time they are entered for home consumption, intended for:

(i) the official use of an organisation which is an international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* applies;

(ii) the personal use of a person appointed to a high office in an international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* applies, being a person who is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation;

(iii) the personal use of a member of the family of a person referred to in sub-paragraph (ii), being a member of the family who forms part of the

household of the person and is not an Australian citizen, is not ordinarily resident in Australia or in a Territory and is not otherwise engaged in a profession, business or occupation; or

(b) consist of the furniture or effects of an official of an international organisation to which the International Organisations (Privileges and Immunities) Act 1963 applies, being goods that are imported at or about the time when the official takes up office in Australia.

Background

This Item specifies duty free entry of goods imported by certain persons associated with an organisation to which the *International Organisations (Privileges and Immunities) Act 1963* applies. It overlaps with Item 7 of Schedule 4, but it extends it to family members of officials employed by international organisations.

Eligible international organisations are listed in the Australian Customs Service Manuals: Volume 7, *Import Control*, and Volume 10, *Inland Services.*

ITEM 107

Goods, being goods that, at the time they are entered for home consumption, are, for the purposes of the *River Murray Waters Act 1983*, owned by:

(a) a 'Contracting Government'; or

(b) a 'Constructing Authority', not being The River Murray Commission, appointed for purposes of construction authorised under the Agreement to the *River Murray Waters Act 1983.*

Background

This Item provides duty free entry of goods owned by a 'Contracting Government' or a 'Constructing Authority' in the terms of the *Murray-Darling Basin Act 1983.*

Entries are to be accompanied by certification signed by a responsible officer nominated by each Authority or Government.

ITEM 110

Goods, being goods entered in accordance with the provisions of *Customs Regulation 126 (m).*

Background

This Item provides duty free entry of fuel oil imported for certain end uses as specified in *Customs Regulation 126 (m),* specifically; the importer

(i) 'will use the fuel oil at a place that is not a natural gas area within the meaning of section 3A of the *Liquefied Petroleum Gas (Grants) Act 1980;* and

(ii) will use the fuel oil in the chemical reduction in herreshoff type roasters of oxides and other compounds of nickel and cobalt in lateritic nickel ore to produce elemental nickel and cobalt.'

No public inquiry by the IAC preceded the making of this concession. It originated as a result of a Government decision in December 1983 which agreed to allow duty free importation of oil for the Greenvale Nickel Project at Yabulu, Queensland.

The Commission sought more information about the concession from Customs. An excise duty of 1.872 cents per litre had been imposed on fuel oil in 1983, and Greenvale had sought exemption because its use of fuel oil was not for energy, but as a chemical reductant. Customs stated that the fuel oil used by Greenvale differs from other fuel oils in common use in Australia in that it has low volatility and a sulphur content of up to 3.5 per cent. It is marketed by the sole producer, Shell, as 'Shell product No. 571 -- Greenvale Nickel Grade' (Sub. 237, p.9).

ITEM 111

Goods entered under Section 162 of the *Customs Act 1901.*

Background

Item 111 covers certain goods which are imported and intended for export. These goods are allowed in duty-free, subject to the giving of security or undertaking of payment for duty.

According to *Customs Regulation 124,* Item 111 allows traveller's samples, wedding presents, certain goods for use at public exhibition or entertainment, and 'goods imported for assembly or other industrial purposes approved by the Collector' to enter duty free if imported by tourists or temporary residents.

Its industrial processing provision overlaps with Item 21 of Schedule 4, and the provisions for tourists overlap partly with Item 15.

ITEM 112

Aircraft stores dealt with under section 129 of the *Customs Act 1901*, *Customs Regulation 106* or Customs Manuals, Volume 2, Sub-Section 2/6/5 including goods for Royal New Zealand Courier Service.

Background

This Item relates to goods approved by the Collector to be taken on board as aircraft stores.

ITEM 113

Raw material manufactured in bond and entered for home consumption at a rate assessed according to Customs Regulation 72.

Background

This Item is intended to allow duty free entry of imported raw materials to be manufactured into finished products in licensed warehouses.

As a result of a Cabinet Decision in late 1989, the *Customs and Excise Legislation Amendment Act (No. 4) 1990* amended the Customs Act to remove any reference to 'manufacturing' in bond and replace it with 'blending'. This amendment terminated

existing manufacturing in bond arrangements while still allowing blending of spirits in bond to continue. As such, it has probably rendered Item 113 technically redundant.

Appendix D: SOME RELEVANT STATISTICS

D1 Incidence of import concessions

The value of imports cleared for home consumption in Australia in 1989-90 was nearly $55 billion, of which 11.5 per cent entered duty-free under CTCOs. In 1988-89, the value of imports cleared was nearly $49 billion, of which 12 per cent entered duty-free under CTCOs and 9 per cent entered duty-free under By-laws.[1] A further 44 per cent of imports were entered at a zero substantive rate. In 1988-89, duty was paid on only 35 per cent of imports (see Table D1).

The proportion of imports cleared under CTCOs has increased slowly since the system's introduction in 1983. The proportion of imports under By-laws has fluctuated markedly over the same period. Trends in duty-free imports and dutiable imports are harder to determine because of the adoption of the Harmonized Tariff System on 1 January 1988.

Imports cleared in 1988-89, broken down by substantive rates of duty, are shown in Table D2. Of those imports cleared at ad valorem tariff rates:

- 51 per cent entered at rates of 10 - 20 per cent;
- 27 per cent entered at rates of 20 - 30 per cent; and
- 9 per cent entered at rates of under 10 per cent.

The value of imports in 1988-89 is shown by Tariff rates in Figure D1. If there were no import concessions, all imports would have been cleared as shown by the white bars. The Figure shows that imports at a zero rate of duty were increased by 49 per cent through the operation of the CTCS and the concessional By-laws in Schedule 4 of the Tariff.

[1] Including imports by the Government under both Plan and non-Plan By-laws.

Table D1: **Duty Free, By-Law and Dutiable Imports as a Proportion of All Imports: 1970-71 to 1989-90**

Year ended 30 June	*All imports*	*Duty free*	*By-law*	*Tariff Concession*	*Dutiable*[a]
	$m	%	%	%	%
1971	4014	29.9	28.9	na	41.9
1972	3976	31.0	26.7	na	42.4
1973	4133	34.1	25.2	na	40.1
1974	6015	34.1	27.2	na	38.7
1975	7976	31.6	30.5	na	38.0
1976	8175	30.0	30.8	na	39.6
1977	10 306	30.5	30.3	na	39.3
1978	11 112	35.2	28.7	na	36.1
1979	13 663	35.8	31.5	na	32.7
1980	16 068	44.9	24.8	na	30.3
1981	18 800	46.9	22.6	na	30.5
1982	22 836	44.0	26.3	na	29.7
1983	21 792	49.0	20.8	na	30.2
1984	23 952	47.8	18.9	na	33.3
1985	29 907	49.6	16.9	na	33.6
1986	35 377	50.2	7.6	9.9	32.2
1987	38 025	52.5	7.2	10.1	30.2
1988	41 782	48.8	7.8	11.1	32.3
1989	48 931	43.9	9.4[b]	12.2	34.5
1990	54 670	NA	NA	11.5	NA

na Not applicable. NA Not yet available. a For imports between 1979-80 and 1987-88, this includes goods subject to the two per cent revenue duty introduced on 1 July 1979 and abolished on 1 July 1988. b Includes imports under By-laws on which duty was paid.
Sources: ABS (1989a,b).

Table D2: **CTCO and Non-concessional Imports Cleared, By Substantive Rate of Duty: 1988-89**

Rate of Duty	*Non-concessional Imports*			*Imports Under Schedule 4 (a)*	
	Value	*Duty Collected*	*Proportion of Duty Collected*	*Value*	*Duty Collected*
	$m	*$m*	*%*	*$m*	*$m*
Free	21 480	-	-	10 423	-
Ad-valorem Rates					
Less than 10%	1499	89	3	46	1
10% and less than 20%	8376	1319	39	-	
20% and less than 30%	4385	961	29	-	-
30% and less than 40%	243	82	2	-	-
40% and less than 50%	1377	576	17	-	-
50% and above	559	333	10	-	-
Total Ad-valorem Rates	16 439	3360	-	87	6
Other than Ad-valorem rates	442	510	-	60	3
Total	**38 361**	**3870**	**100**	**10 570**	**9**

- Not applicable. a Includes imports under all CTCOs and all By-laws.
Source: ABS (1989a).

Goods imported under the CTCS

Imports cleared under CTCOs in 1989-90, classified by Tariff Division are given in Table D3. Just over 26 per cent of all imports under the CTCS were classified to 'Electrical machinery and equipment' and nearly 26 per cent were classified to 'Machinery and mechanical appliances'. Imports under CTCOs accounted for 30 per cent of total imports classified to 'Electric machinery and equipment' and over 20 per cent of total imports classified to each of 'Base metals and metal articles' and 'Resins, plastics, rubber and articles thereof'.

Figure D1 : Value of imports, by Tariff rates : 1988-89

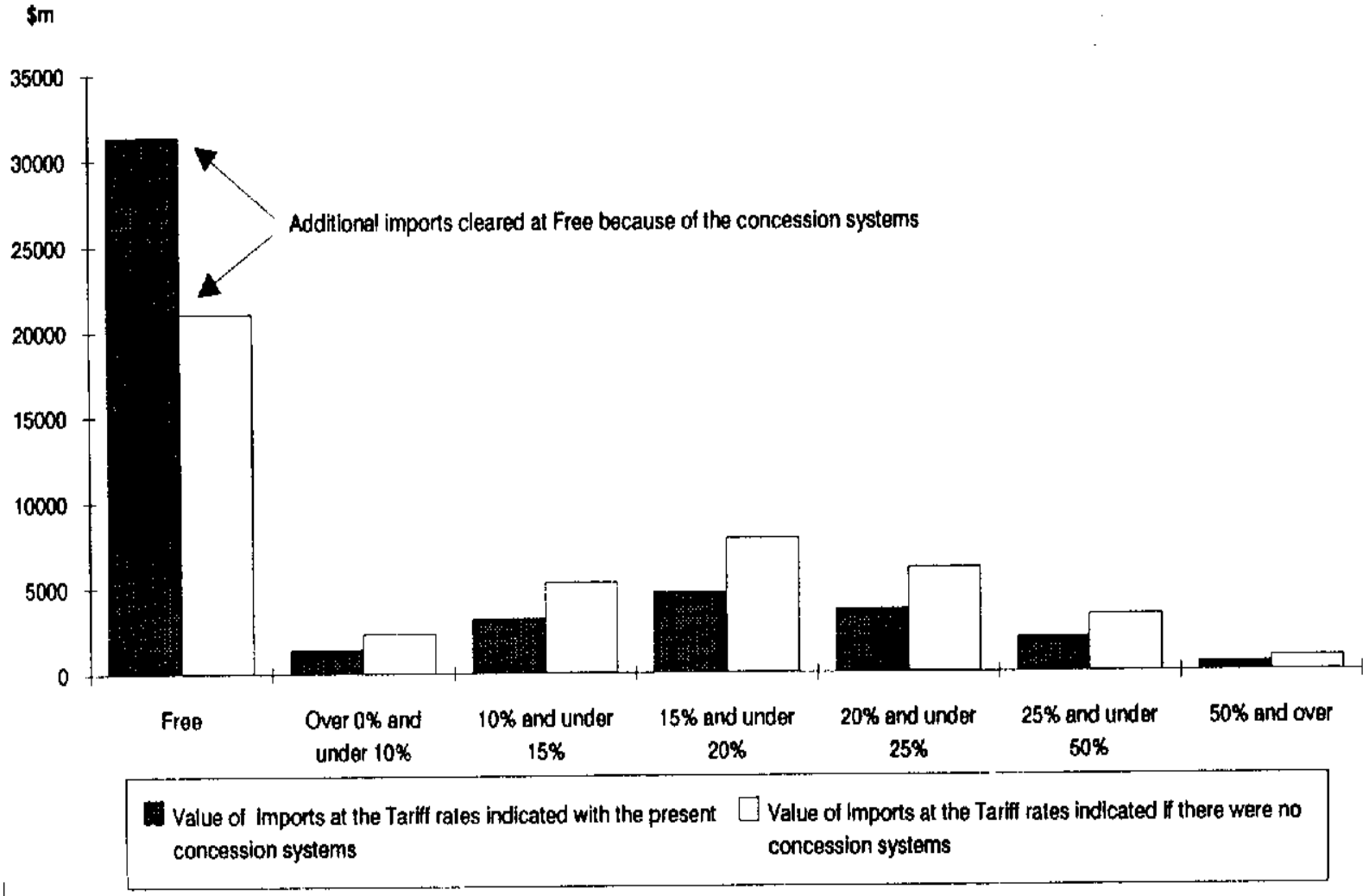


Table D3: **Imports Cleared Under CTCOs and All Imports Cleared, By Tariff Division: 1989-90**

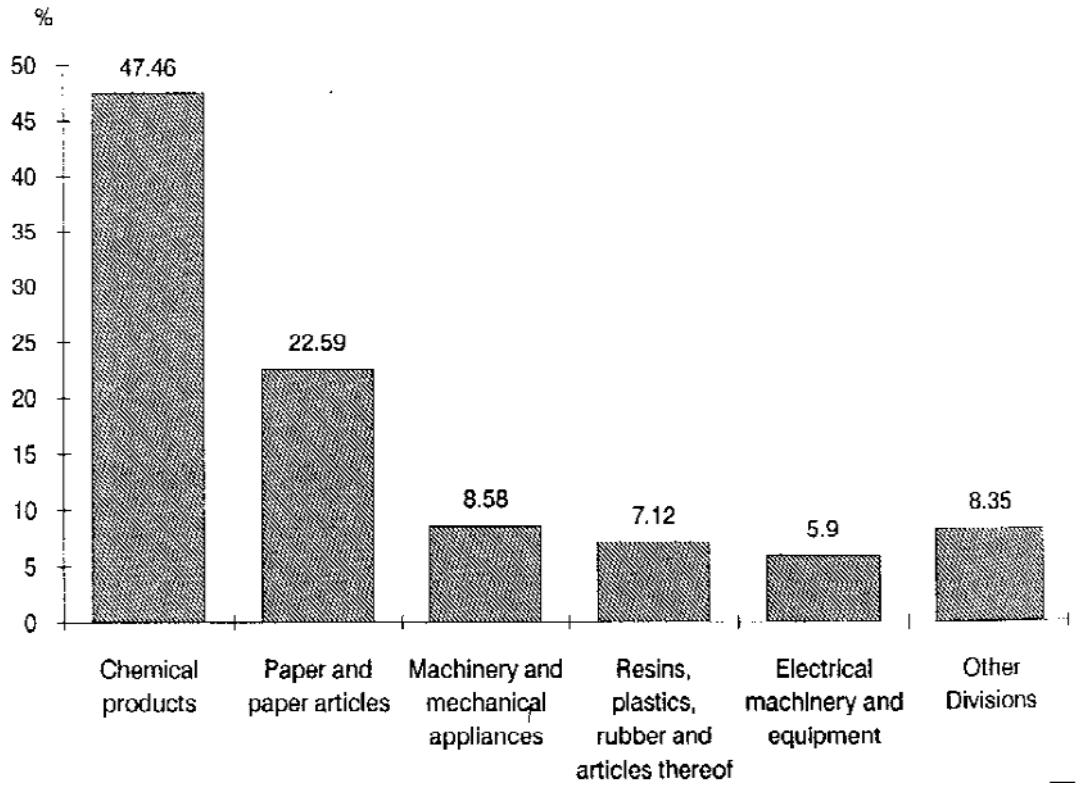
Tariff Division	*CTCO imports*			*Average rate of duty forgone*	*Proportion of all imports*	*Value of all imports*
	Value	*Proportion of all CTCO imports*	*Saving in duty*			
	$m	*%*	*$m*	*%*	*%*	*$m*
Electrical machinery and equipment	1637	26.09	294	18	29.93	5469
Machinery and mechanical appliances	1607	25.60	255	16	14.80	10 860
Resins, plastics, rubber and articles thereof	666	10.62	89	13	20.61	3231
Base metals and metal articles	643	10.25	86	13	21.32	3016
Chemical products	472	7.52	47	10	13.92	3391
Vehicles, aircraft, transport equipment	273	4.36	52	19	3.02	9036
Optical, photographic and precision equipment	232	3.70	32	14	11.38	2039
Paper and paper articles	155	2.46	20	13	6.02	2575
Articles of stone, glass or ceramics	115	1.83	15	13	11.07	1039
Textiles and textile articles	66	1.06	17	26	2.16	3052
Miscellaneous manufactures	31	0.49	5	18	14.35	216
Wood and wooden articles	14	0.23	1	7	1.52	919
Footwear, headgear etc.	10	0.15	2	24	2.14	468
Mineral products	8	0.12	..	13	0.25	3256
Arms and ammunition	2	0.04	..	18	3.70	54
Hides, leather and travel goods	1	0.02	..	15	0.24	416
Precious stones and jewellery	..	0.01	..	21	0.05	778
Prepared foodstuffs, beverages and tobacco	Nil	-	-	-	-	1587
Animal products	Nil	-	-	-	-	425
Vegetable products	Nil	-	-	-	-	343
Animal and vegetable oils, fats and waxes	Nil	-	-	-	-	156
Works of art, antiques	Nil	-	-	-	-	1
Unallocated	343	5.47	51	15	14.63	2344
All Divisions	**6276**	**100.00**	**962**	**15**	**11.48**	**54 670**

.. Under $1m. - Not applicable.
Sources: ABS (1990b) and Commission estimates.

Goods imported under non-Plan By-laws

Table D4 shows import clearances under non-Plan By-laws in 1989-90, classified by Tariff Division. Over 47 per cent of imports cleared under non-Plan By-laws were classified to 'Chemical products', and almost 23 per cent were classified to 'Paper and paper articles' (See also figure D2). Imports cleared under By-laws relative to total imports cleared were significant in the 'Chemical products' and 'Arms and ammunition' classifications (12 per cent and 11 per cent respectively).

Figure D2: **Import Clearances under non-Plan By-laws, By Tariff Division: 1989-90**



Source: ABS (1990b).

Table D4: **Imports Cleared Under non-Plan By-laws and All Imports Cleared, By Tariff Division: 1989-90**

Tariff Division	*Non-Plan By-law imports*					*Value of all imports*
	Value	*Proportion of all By-law imports*	*Saving in duty*	*Average rate of duty forgone*	*Proportion of all imports*	
	$m	*%*	*$m*	*%*	*%*	*$m*
Chemical products	415	47.46	31	8	12.24	3391
Paper and paper articles	197	22.59	30	15	7.65	2575
Machinery and mechanical appliances	75	8.58	13	7	0.69	10 860
Resins, plastics, rubber and articles thereof	62	7.12	8	12	1.92	3231
Electrical machinery and equipment	52	5.90	11	20	0.95	5469
Vehicles, aircraft, transport equipment	30	3.48	7	24	0.33	9036
Base metals and metal articles	9	1.09	2	17	0.30	3016
Optical, photographic and precision equipment	7	0.77	1	15	0.34	2039
Animal and vegetable oils, fats and waxes	7	0.78	1	15	4.49	156
Arms and ammunition	6	0.66	1	18	11.11	54
Textiles and textile articles	3	0.32	2	61	0.10	3052
Articles of stone, glass or ceramics	1	0.09	..	18	0.10	1039
Footwear, headgear etc.	..	0.02	..	88	0.05	468
Hides, leather and travel goods	..	0.01	..	17	0.03	416
Miscellaneous manufactures	..	0.01	..	18	0.05	216
Mineral products	Nil	-	-	-	-	3256
Prepared foodstuffs, beverages and tobacco	Nil	-	..	6	-	1587
Wood and wooden articles	Nil	-	..	14	-	919
Precious stones and jewellery	Nil	-	-	-	-	778
Animal products	Nil	-	-	-	-	425
Vegetable products	Nil	-	-	-	-	343
Works of art, antiques	Nil	-	-	-	-	1
Unallocated	10	1.09	1	13	0.43	2344
All Divisions	**874**	**100.00**	**107**	**12**	**1.60**	**54 670**

.. Under $1m. - Not applicable.
Sources: ABS (1990b) and Commission estimates.

D2 Administration Statistics (see Table D5)

Under the Consolidated By-law Reference system (CBR), applications for concessional entry fell sharply from over 10 000 in 1980-81 to under 2500 in 1983-84, the year the CTCS was introduced. Following the introduction of the CTCS, applications rose initially, then declined sharply, just before Harmonization. Customs noted that Harmonization resulted in about 8000 new CTCOs and an increase in the number of applications for CTCOs (Customs 1990a). The number of applications received annually since then has remained reasonably constant. Customs received 1864 applications in 1989-90.

Following the receipt of a CTCO application, Customs delegates consider whether the application warrants further consideration. If it does so, and a prima facie case is established, the application is published in the *Tariff Concessions Gazette.* The proportion of applications gazetted to applications received has declined only marginally since the introduction of the CTCS. One could expect this proportion to decline, as applicants become more familiar with the criteria for granting CTCOs, and hence come to recognise which applications would initially be refused. Conversely, given the range of goods to which CTCOs may apply, potential applicants may make duplicate applications to those which have already been refused. Or they may fail to define adequately a good within the terms of the criteria, so as to avoid comparisons with locally produced goods of a similar description, but which are not substitutable in the desired application.

The numbers of new CTCOs granted, in absolute terms, rose initially, then fell, (disregarding the impact of Harmonization). Since Harmonization, however, the proportion of applications resulting in new CTCOs being gazetted has risen. The reasons for this could be:

- greater familiarity of applicants with the operation and administration of the system;
- better descriptions of the goods in question; and
- that most goods which are clearly eligible or clearly ineligible for entry under a CTCO have already been identified, leaving only new goods, to which the CTCS criteria have not yet been applied, and, goods for which there is some degree of doubt as to whether they are eligible for entry under a CTCO or not.

Table D5: **Applications Received and Decisions Taken By Customs on Consolidated By-law References (CBRs) and CTCOs: 1980-81 to 1989-90**

Year ended 30 June	*CBR Appns Received*	*New CBRs Granted*	*CBRs Refused a, b*	*Total CBRs in Force*	*CTCO Appns Received*	*Prima Facie Cases Established*	*New CTCOs Granted*	*CTCOs Revoked*
1981	10 218	8492	457	5958	na	na	na	na
1982	6602	4844	379	7165	na	na	na	na
1983	4530	2876	247	7962	na	na	na	na
1984	2422	1051	142	na	na	na	na	na
1985	na	na	na	na	2941	1395	1613	551
1986	na	na	na	na	3494	1635	1889	1026
1987	na	na	na	na	2435	1095	1186	1366
1988	na	na	na	na	3598	1357	1691	878
1989	na	na	na	na	1762	1390	1304	559
1990	na	na	na	na	1864	1565	1067	388

na Not applicable. a In addition to applications formally refused, many applications were rejected by Customs due to non-compliance with the administrative requirements and procedures. b In 1983-84, 2422 applications for Consolidated By-law References were received, and some 7500 CBRs were converted into CTCOs. In its 1986-87 Annual Report, Customs noted that there were 9000 CTCOs before conversion to the Harmonised Coding System.

Sources: Customs (1990a) and Sub. Nos. 155 and 285.

Appendix E: ASSISTANCE EFFECTS OF IMPORT CONCESSIONS

This appendix contains an assessment of the effects of CTCOs and non-Plan By-laws on industry assistance in 1989-90.

CTCOs are intended to provide duty-free entry for imports where there are no domestically produced goods serving similar functions. Under this condition, the concessions should have no direct impact on the price of domestically produced goods. However, by removing the taxing effect of tariffs that would otherwise apply, they lower costs to industries using the concessional items as inputs. In this way, use of CTCOs increases effective assistance to using industries.

Non-Plan By-laws are usually granted to goods for which there are domestically produced goods serving similar functions (which prevent the granting of CTCOs). Therefore, unlike CTCOs, they can have a direct effect on the price of domestically produced goods as well as imported goods. As a result, non-Plan By-laws lower both assistance to outputs and the taxing effect of tariffs on inputs -- making their impact on effective assistance uncertain.

The effects of CTCOs and non-Plan By-laws on assistance are modelled by moving from the current situation with tariffs and the concessions system to the (hypothetical) situation of no concessional entry but with the Tariff still in place. The method of deriving assistance estimates is presented in Section E1, followed by estimates of the usage and assistance effects of import concessions for 1989-90 in Section E2.

E1 ASSISTANCE MEASUREMENT METHODOLOGY

The Commission has developed a new assistance measurement system for this inquiry, which allows the effects of CTCOs and non-Plan By-laws to be estimated on an economy-wide basis.[1] This is achieved by estimating the effects on input

[1] In the IAC's report on the Commercial By-law System, the analysis of assistance effects was limited to the manufacturing sector (IAC 1982b).

costs of removing concessional entry arrangements for imports, and then comparing assistance estimates with and without concessional entry.

Determination of price effects

In the new assistance measurement system, inputs to each industry are divided into four basic categories: domestic intermediate, imported intermediate, domestic capital and imported capital. Both categories of imported inputs are considered to be composed of (a) goods which are substitutable with locally produced goods, and (b) other goods which are not readily substitutable with locally produced goods (and hence which are eligible for concessional entry under the CTCS).

Data sources

The price effects of tariffs on imported goods were derived from official trade data (ABS 1990b) and the Customs Tariff. The price effects of tariffs on domestically produced goods were derived from the Commission's ASIC-based manufacturing assistance system and the Customs Tariff. The structure of input usage by industries was derived from input-output (IO) data.

The IO data base employed adopted the classification of industries used by the Industries Assistance Commission (IAC) in its Mining, Construction and Agricultural Equipment (MCAE) industries inquiry.[2] The MCAE classification was preferred to the standard IO classification because it gives more disaggregated data for the industries which are major beneficiaries of CTCOs (Machinery and equipment, and Basic metals and Mining). The overall IO table in the MCAE classification contains 80 commodity groups and 78 industry groups. In this Appendix, references to commodities and industries should be interpreted to mean commodity and industry groups.

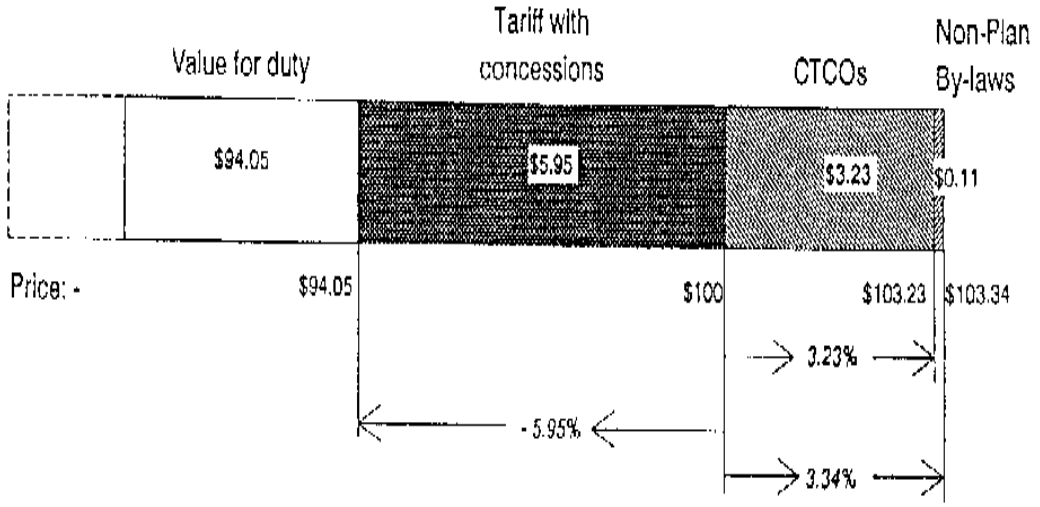
[2] MCAE industries are basically 4-digit ASIC industries with some aggregation. This classification was developed for the MCAE inquiry (see IAC 1988b).

Price measurement

Estimates of the price effects of tariffs and CTCOs on imports were made using import data and the Customs Tariff at the detailed (8-digit) tariff item level. Where tariffs applied, the General Tariff rate was assumed to be the operative rate influencing prices. For goods to which quotas apply, the tariff equivalent was estimated using tender quota premiums. In the case of concessional imports, the duty payable without concessions was calculated from General Tariff rates.[3] The duty concessions received are then calculated by subtracting the actual duty paid from the duty payable in the absence of concessions.

Tariff items are allocated to an ASIC commodity on the basis of the industry in which the imports would have been produced had they been produced in Australia, and then to the corresponding IO commodity. The value of imports, the value of duty without concessions, and the value of duty with concessions are aggregated to IO commodity level. These data are then used to estimate the price lowering effect of removing the tariff and the price raising effect of removing concessions. The estimation of the price effects is represented diagrammatically in Figure E1.

Figure E1: **Derivation of price effects**



[3] Quotas only operate within industry Plans and are assumed not to apply to concessional imports, since goods entering under CTCOs (by definition) do not compete with domestically produced goods.

In Figure E1, the price of the commodity under the tariff with concessions is assumed to be $100. Removing the tariff would reduce the price to $94.05, a drop of 5.95 per cent. On the other hand, removing CTCOs would raise the price to $103.23, an increase of 3.23 per cent. Removing all concessions, (that is, CTCOs and non-Plan By-laws) would raise the price to $103.34, an increase of 3.34 per cent. Price effects of this order are estimated to occur for Electronic and electrical equipment (Commodity group 55 -- see Table E2).

The removal of CTCOs would add directly to the price of imported inputs but (by definition) not directly to the price of *domestically produced* inputs and outputs.[4] In contrast, a change to the level of duty on substitutable imports, say under a Policy By-law, would affect not only the price of imported goods, but also the price of domestic goods by enabling producers of the domestic commodities to price up to the imported substitute.

It is assumed that the proportional change in the price of each tradable domestic good is the same as that for an equivalent import. This rule has been applied at as fine a level of disaggregation as is possible. At the MCAE commodity level, the effect of tariffs on the average price of imported and domestic goods should differ, because the composition of imports and domestic production differs. For manufacturing and agriculture, data available on domestic production from the Commission's general assistance measurement systems has allowed separate estimation of the price effects for domestic and imported goods. For mining and services, however, data limitations prevented this, and the proportional change in domestic price is assumed to be equal to the proportional change in average import price at the MCAE commodity level.

Structure of input usage

The pattern of concessional input usage by industries is required for determining the effects of the price changes due to concessional arrangements on the cost of inputs to user industries. Unfortunately, comprehensive information is not available on the use of concessional imports by different industries and final demands. However, the ABS input-output data base provides information about the use of all imports of a commodity (as distinct from just concessional imports) by different industries and

[4] Prices of domestically produced inputs and outputs may be indirectly affected by the overall increase in prices which would follow removal of the CTCS. Such indirect effects are beyond the scope of this study.

for final demand (ABS 1990a). In absence of better information, the assumption has been adopted in this Appendix that industries and final demand use imports of concessional goods within a commodity group in the same proportions as all imports of that commodity group. The effect of this is that duty savings accruing to a commodity group will be distributed in proportion to usage of goods from that commodity group (see box E1).

Box E1: **Assignment of duty savings**

Suppose the following duty savings from the usage of CTCOs accrue to Commodity groups A and B:

Commodity group	*Total value of imports*	*Price effect of concessions*	*Implied duty savings*
A	$800m	12%	$96m
B	$200m	2%	$4m
TOTAL	$1000m		$100m

An Industry which uses $100m of *imported* inputs from Commodity group A and $50m from Commodity group B would be assigned duty savings in the following way:

Commodity group	*Value of imports*	*Price effect of concessions*	*Assigned duty savings*
A	$100m	12%	$12m
B	$50m	2%	$1m
TOTAL	$150m		$13m

This approach assumes that the relationship between a particular industry's use of concessional imports and its use of all imports from a commodity group is the same as the average for all firms. In practice, a firm's imports within a commodity group might not include any concessional imports, or could be exclusively concessional imports. Further, the tariffs actually being waived on a firm's concessional imports may be different from the average tariff being waived on concessional imports within that commodity group. At the aggregated level of an Industry group, however, the averaging assumption adopted is more reasonable.

Derivation of the assistance estimates

The estimation method applied is partial equilibrium. It depicts the initial price effects of the changes in assistance, but does not show the changes in production and consumption induced by those relative price changes. These effects -- derived from the Commission's ORANI model -- are given in Appendix F.

Estimation of assistance has been confined to the effects of border interventions. As such, it excludes the effects of domestic pricing arrangements applying to agriculture, bounty assistance applying to manufacturing, and assistance to value adding factors (eg, tax concessions on income or research and development). Whilst by far the majority of assistance occurs at the border, non-border assistance is of considerable importance in the case of agriculture. Consequently, assistance estimates for some agricultural activities would be significantly understated. However, this would not significantly distort estimates of the *changes* in assistance which would result from removing concessional arrangements.

Because available data are for the existing tariff with concessions, assistance effects were estimated as changes from that base (see Figure E1). Thus estimates for the assistance effect of the Tariff (with concessions) were derived by applying the price effects of *removing* the existing tariff to the IO data.

Similarly, estimates for the effect of concessions on industry assistance were identified by estimating the tax on industry inputs which would result from the removal of concessions.[5] This taxing effect from *removing* concessions is

[5] The technique for estimating the effect of CTCOs on final demand is described at the end of Section E1.

equivalent to the estimated duty presently saved by waiving tariffs on concessional imports. Estimates were derived by applying the price effects of removing the concessions to the IO data.[6] The methodology for estimating the effective rates of assistance with and without CTCOs is presented diagrammatically in Figure E2.

Assistance to output

Although (by definition) assistance to output is not affected by CTCOs, estimates of that assistance are needed to compute the effective rates of assistance (ERAs) with and without CTCOs. The estimated domestic price effects of the tariff were multiplied by the value of domestically produced goods absorbed in the domestic market to give the gross subsidy equivalent on output (GSE). Only the price of that part of the output which is absorbed in the domestic market is assumed to be affected by the tariff: export prices are assumed to be determined on world markets. The average nominal rate of assistance on industry output was then obtained by dividing the GSE by the total value of unassisted output (ie, by assisted output less the GSE).

Assistance to inputs

With CTCOs

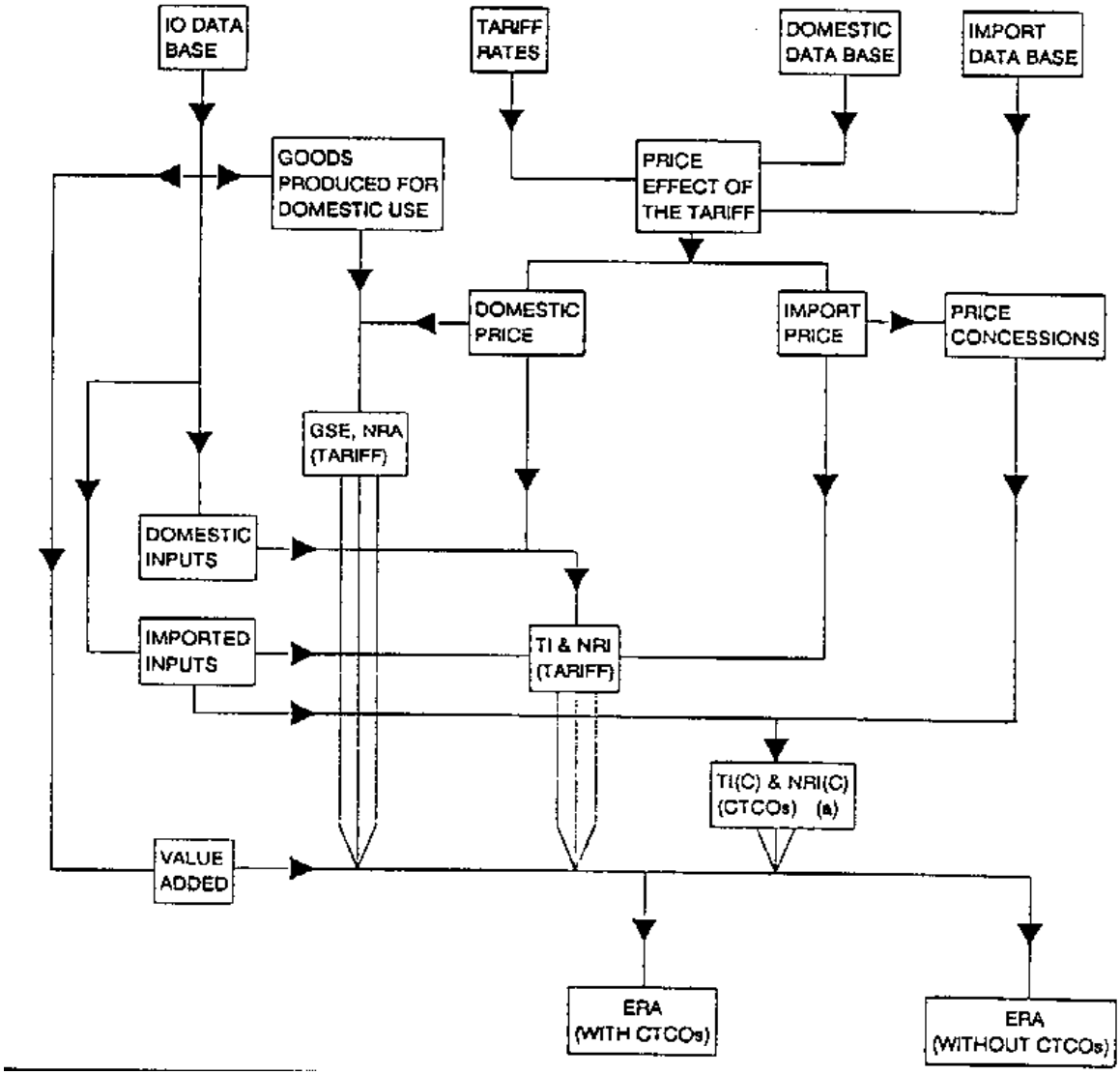
Assistance to inputs represents the taxing effect of the tariff on the user industry and was derived in the same way as assistance to output. Inputs were classified into four categories: domestic intermediate, imported intermediate, domestic capital and imported capital inputs. For capital inputs, price was measured as the market return to capital stocks.

For each of these four categories of inputs, the value of each commodity used was multiplied by the respective price effect of the tariff. This gives the tax equivalent imposed on the using industry for that commodity for that input category. These

[6] The IO data are valued inclusive of the effects of existing tariff and concessional arrangements. Inputs are valued at market prices, including margins. Outputs and value added are at basic values, excluding margins.

effects were then aggregated to determine the total tax equivalent faced by each industry on its usage of intermediate and capital inputs. The average nominal rate of assistance on inputs (NRI) was then obtained by dividing the gross tax equivalents by the unassisted value of inputs. This whole procedure was repeated for each industry.

Figure E2: **Assistance estimation procedure**



a TI(c) and NRI(c) stand for gross tax and nominal rate of tax, respectively, on inputs due to removal of CTCOs.

Without CTCOs

The tax equivalent of the costs which would be imposed on an industry by the Tariff in the absence of CTCOs was estimated by adding the taxing effect on inputs from removing CTCOs to the existing tax on inputs. The taxing effect from removing CTCOs is equivalent to the duty savings enjoyed from CTCOs under the existing regime. The price concessions applicable to each commodity were multiplied by the value of the industry's imports of that commodity. For example, in the case of an industry using inputs from Electronic and electrical equipment (Commodity group 55), multiplying the price concession of 3.23 per cent by the value of imports from that commodity group used by the industry, in the relevant input categories would give the tax equivalent of removing CTCOs on that commodity to that industry for that input category. The process was applied for each industry and category of final demand. The taxing effect of removing CTCOs is greater for those using relatively more imports from the commodities to which significant duty savings attach.

The change in NRI is determined by dividing the taxing effect from removing concessions by the value of inputs. As commodities entering under CTCOs are assumed not to be produced domestically, their price change is assumed not to affect the price of domestic inputs.

Net assistance to industries

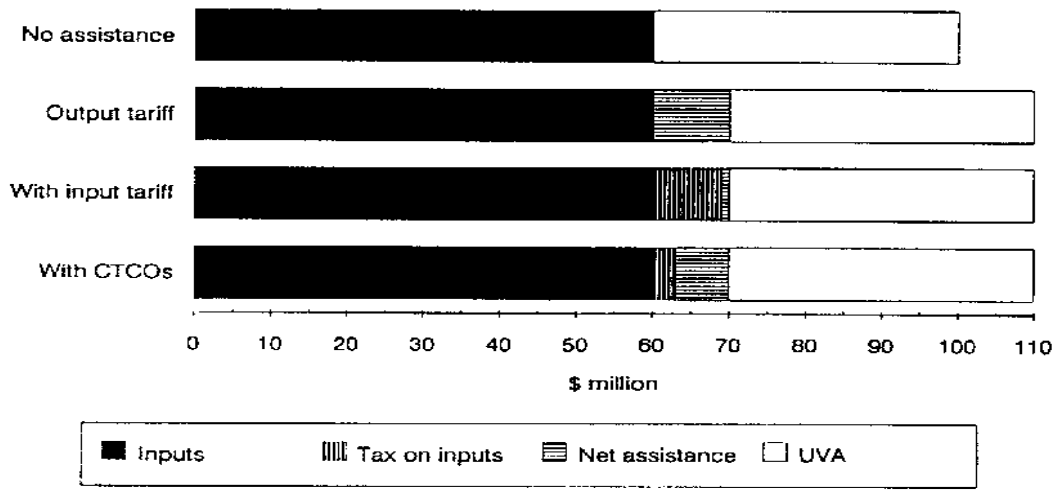
The next stage is to determine the net assistance to industries resulting from the effect of the price changes on outputs and inputs. This is termed the net subsidy equivalent (NSE). The procedure adopted is presented in box E2.

With CTCOs

The NSE of the tariff with concessions was derived for each industry by deducting the tax on inputs from the gross subsidy on outputs. For any one industry, the NSE of the tariff was then divided by the unassisted value added (UVA) to estimate the ERA for that industry.

Box E2: **How CTCOs increase assistance**

CTCOs increase net (or effective) assistance by reducing the taxing effect of tariffs on inputs. The following diagram demonstrates this for a lightly assisted industry.



The first bar depicts the situation without any tariffs. Total output is $100m, $60m being used to purchase material and capital inputs, with the remaining $40m going to value adding factors. The second bar shows the effect of 10 per cent tariff on the industry's output. An additional $10m becomes available for value adding factors. If there were no tariff on the industry's inputs, its effective rate would be 25 per cent -- the percentage increase in value added.

The third bar shows the net effect on value added of a 15 per cent tariff on inputs when combined with the 10 per cent tariff on outputs. Of the $10m available from the output tariff, $9m now goes to pay for the more expensive inputs, leaving only $1m of net assistance to value adding factors. Value added only increases to $41m, giving an effective rate of 2.5 per cent.

The fourth bar shows the effect of CTCOs worth $6m. The tax on inputs falls to $3m and net assistance rises to $7m, increasing the effective rate to 17.5 per cent.

Without CTCOs

To calculate the NSE for each industry if there were no CTCS, the tax effect of removing CTCOs was subtracted from the NSE of the tariff. The ERA was then obtained by dividing the corresponding NSE by UVA.

Assistance disparities

Disparities in ERAs among industries and sectors, with and without CTCOs, were then calculated. Assistance disparities were measured by a statistical measure of dispersion -- the standard deviation. The standard deviation is an indicator of the extent of variation of individual values from their weighted average. Assistance disparities with and without CTCOs were then compared to determine the effect on disparities in assistance from removing CTCOs.

The effect of CTCOs on final demands

Not all imports entering under tariff concessions are used as inputs by industry. The taxing effect of removing CTCOs on final consumption was determined by multiplying the price-raising effects of the removal of the concession by the value of imports for final consumption. These values of the taxing effect of removing CTCOs were summed by commodity to give the change in consumer tax equivalent (CTE).

E2 Usage and assistance effects of import concessions

Concessional imports

Of the $54 670 million total imports in 1989-90, goods with a value of $7150 million (13 per cent) were granted concessional entry under CTCOs and non-Plan By-laws (see Table E1). Imports accorded concessional entry under CTCOs constitute two-thirds of those concessional imports.

Almost all concessional imports are manufactured products. Of the commodity groupings into which imports have been classified for this study, the Electronic and electrical equipment (commodity 55) had the greatest value of CTCO imports, $1690.3 million, which accounted for 27 per cent of the total. The commodity group for which imports coming in under CTCOs make up the highest proportion is Railway rolling stock (commodity 52), with 35 per cent.

Table E1:**Value of imports and share of concessional imports: 1989-90a**

		Value of imports[b]			*Share of imports*	
Commodity group	*No.*	*All*	*CTCO*	*Total concess*[c]	*CTCO*	*Total concess*
		$ million			*Per cent*	
Wool	1	0.0	0.0	0.0	0.0	0.0
Sheep	2	0.0	0.0	0.0	0.0	0.0
Wheat	3	0.0	0.0	0.0	0.0	0.0
Barley	4	0.0	0.0	0.0	0.0	0.0
Other cereals	5	21.4	0.0	0.0	0.0	0.0
Meat cattle	6	0.0	0.0	0.0	0.0	0.0
Milk cattle and pigs	7	.	0.0	0.0	0.0	0.0
Other farming (cane fruit & nuts)	8	123.1	0.0	0.0	0.0	0.0
Other farming (vegs, oil seeds & tob)	9	94.9	0.0	0.0	0.0	0.0
Poultry	10	.	0.0	0.0	0.0	0.0
Services to agriculture	11	0.0	0.0	0.0	0.0	0.0
Forestry and logging	12	5.7	0.0	0.0	0.0	0.0
Fishing and hunting	13	28.9	0.0	0.0	0.0	0.0
Ferrous metal ores	14	88.2	0.0	0.0	0.0	0.0
Bauxite	15	4.1	0.0	0.0	0.0	0.0
Copper ores	16	8.2	0.0	0.0	0.0	0.0
Gold ores	17	0.0	0.0	0.0	0.0	0.0
Mineral sands	18	2.7	0.0	0.0	0.0	0.0
Nickel ores	19	.	0.0	0.0	0.0	0.0
Silver-lead-zinc ores	20	36.6	0.0	0.0	0.0	0.0
Tin ores	21	.	0.0	0.0	0.0	0.0
Uranium ores	22	0.0	0.0	0.0	0.0	0.0
Non-ferrous metal ores nec	23	2.8	0.0	0.0	0.0	0.0
Black coal	24	14.3	0.0	0.0	0.0	0.0
Brown coal	25	.	0.0	0.0	0.0	0.0

Table E1: **Value of imports and share of concessional imports: 1989-90** (continued)[a]

Commodity group	No.	Value of imports[b] All	Total[c] CTCO	Total concess	Share of imports CTCO	Total concess
		$ million			Per cent	
Crude oil and natural gases	26	1185.9	0.0	0.0	0.0	0.0
Other minerals	27	285.7	0.9	0.9	0.3	0.3
Petroleum and mineral exploration	28	0.0	0.0	0.0	0.0	0.0
Mining and exploration services nec	29	0.0	0.0	0.0	0.0	0.0
Petroleum and coal products	30	1635.5	0.7	0.7	.	.
Basic iron and steel	31	1326.8	314.5	317.9	23.7	24.0
Copper smelting, refining	32	15.8	0.0	0.0	0.0	0.0
Silver, lead, zinc smelting, refining	33	17.7	0.0	0.0	0.0	0.0
Alumina	34	0.0	0.0	0.0	0.0	0.0
Aluminium smelting	35	11.9	0.0	0.0	0.0	0.0
Nickel smelting, refining	36	3.7	0.0	0.0	0.0	0.0
Non-fer mets nec smelting, refining	37	46.2	0.0	0.0	0.0	0.0
Recovery and alloying of non-fer mets	38	12.0	0.0	0.0	0.0	0.0
Aluminium rolling, drawing, extruding	39	118.5	24.3	24.8	20.5	20.9
Non-ferrous metals, nec rolling etc	40	464.0	6.5	6.6	1.4	1.4
Export food, beverages and tobacco	41	804.7	0.0	.	0.0	.
Other food, beverages and tobacco	42	1426.7	.	.	.	.
Cotton ginning and wool scouring	43	65.9	0.0	0.0	0.0	0.0
Other textiles, clothing and footwear	44	3837.0	79.9	83.3	2.1	2.2
Wood, paper and printing	45	3780.2	155.7	352.1	4.1	9.3
Chemical fertilisers	46	300.1	0.0	0.0	0.0	0.0
Other basic chemicals	47	3278.8	460.7	933.3	14.1	28.5
Other chemical products	48	1759.0	258.7	276.0	14.7	15.7
Glass and cement products	49	1128.8	121.9	122.3	10.8	10.8
Structural and sheet metal products	50	1721.7	322.9	332.4	18.8	19.3
Motor vehicles	51	6153.6	369.7	399.4	6.0	6.5
Railway rolling stock	52	26.8	9.4	9.43	5.1	35.1
Other transport	53	2894.4	3.0	3.1	0.1	0.1
Photographic, scientific equipment	54	1968.4	358.3	363.6	18.2	18.5
Electronic and electrical equipment	55	9587.8	1690.3	1745.7	17.6	18.2
Agricultural machinery	56	648.9	21.3	21.7	3.3	3.3
Construction machinery	57	990.7	240.0	246.5	24.2	24.9
Materials handling equipment	58	481.8	73.3	81.4	15.2	16.9
Pumps and compressors	59	331.1	58.2	60.0	17.6	18.1

Table E1: **Value of imports and share of concessional imports: 1989-90** (continued)[a]

		Value of imports[b]			*Share of imports*	
Commodity group	*No.*	*All*	*Total CTCO* [c]	*concess*	*CTCO*	*Total concess*
			$ million		*Per cent*	
Other machinery and equipment	60	3098.7	760.4	796.9	24.5	25.7
Industrial machinery & equip nec	61	1225.0	366.3	384.9	29.9	31.4
Miscellaneous manufacturing	62	3605.5	579.2	586.8	16.1	16.3
Agriculture		*274.0*	.	.	.	.
Mining		*3263.9*	*1.5*	*1.5*	.	.
Manufacturing		*51132.5*	*6274.5*	*7148.2*	*12.3*	*14.0*
Total		**54670.4**	**6276.0**	**7149.7**	**11.5**	**13.1**

(.) Indicates positive but less than 0.1. a Services are excluded as data is for merchandise imports only. b Valued at value for duty. c Total concessions include CTCOs and non-plan By-laws.
Source: Commission estimates.

Price effects

In the absence of CTCOs, it is estimated that the average price for all imported commodities would have been 2 per cent higher. The biggest difference would have been for Railway rolling stock, with prices 6 per cent higher (see Table E2). Much higher increases would occur at finer commodity levels.

Table E2: **Price effects on imports of removing tariffs and concessional arrangements: 1989-90** (per cent)[ab]

		Removal of :		
Commodity group	*No.*	*Tariffs*	*CTCOs*	*Total concess*
Wool	1	0.00	0.00	0.00
Sheep	2	0.00	0.00	0.00
Wheat	3	0.00	0.00	0.00

Table E2: **Price effects on imports of removing tariffs and concessional arrangements: 1989-90** (per cent) (continued) [ab]

		Removal of :		
Commodity group	*No.*	*Tariffs*	*CTCOs*	*Total concess*
Barley	4	0.00	0.00	0.00
Other cereals	5	0.00	0.00	0.00
Meat cattle	6	0.00	0.00	0.00
Milk cattle and pigs	7	0.00	0.00	0.00
Other farming (cane fruit & nuts)	8	-2.60	0.00	.
Other farming (vegs, cot.oil seeds & tob.)	9	-3.60	0.00	.
Poultry	10	0.00	0.00	0.00
Services to agriculture	11	0.00	0.00	0.00
Forestry and logging	12	0.00	0.00	0.00
Fishing and hunting	13	0.00	0.00	0.00
Ferrous metal ores	14	0.00	0.00	0.00
Bauxite	15	0.00	0.00	0.00
Copper ores	16	0.00	0.00	0.00
Gold ores	17	0.00	0.00	0.00
Mineral sands	18	0.00	0.00	0.00
Nickel ores	19	0.00	0.00	0.00
Silver-lead-zinc ores	20	0.00	0.00	.
Tin ores	21	0.00	0.00	0.00
Uranium ores	22	0.00	0.00	0.00
Non-ferrous metal ores nec	23	0.00	0.00	0.00
Black coal	24	0.00	0.00	0.00
Brown coal	25	0.00	0.00	0.00
Crude oil and natural gases	26	0.00	.	.
Other minerals	27	-0.76	0.03	0.03
Petroleum and mineral expl. (own account)	28	0.00	0.00	0.00
Mining and exploration services nec	29	0.00	0.00	0.00
Petroleum and coal products	30	-0.07	0.01	0.01
Basic iron and steel	31	-7.52	2.91	2.95
Copper smelting, refining	32	0.00	0.00	0.00
Silver, lead, zinc smelting, refining	33	0.00	0.00	0.00
Alumina	34	0.00	0.00	0.00
Aluminium smelting	35	0.00	0.00	0.00
Nickel smelting, refining	36	0.00	0.00	0.00
Non-ferrous metals nec smelting, refining	37	0.00	0.00	.

Table E2: **Price effects on imports of removing tariffs and concessional arrangements: 1989-90** (per cent) (continued) [ab]

Commodity group	*No.*	*Removal of : Tariffs*	*CTCOs*	*Total concess*
Recovery and alloying of non-ferrous met. nec	38	0.00	0.00	.
Aluminium rolling, drawing, extruding	39	-9.97	2.74	2.79
Non-fer mets, nec rolling drawing etc	40	-1.22	0.15	0.15
Export food, beverages and tobacco	41	-1.81	0.00	.
Other food, beverages and tobacco	42	- 6.62	0.00	.
Cotton ginning and wool scouring	43	0.00	0.00	0.00
Other textiles, clothing and footwear	44	-25.10	0.43	0.47
Wood, paper and printing	45	-6.48	0.56	1.31
Chemical fertilisers	46	0.00	0.00	0.00
Other basic chemicals	47	-3.81	1.60	2.74
Other chemical products	48	-4.11	1.57	1.71
Glass and cement products	49	-10.18	1.46	1.47
Structural and sheet metal products	50	-10.76	2.98	3.08
Motor vehicles	51	-13.44	1.00	1.09
Railway rolling stock	52	-10.46	5.74	5.74
Other transport	53	-0.33	0.02	0.02
Photographic, scientific equipment	54	-2.10	2.42	2.46
Electronic and electrical equipment	55	-5.95	3.23	3.34
Agricultural machinery	56	-1.69	0.45	0.46
Construction machinery	57	-7.13	4.60	4.73
Materials handling equipment	58	-14.80	2.79	3.11
Pumps and compressors	59	-9.14	3.10	3.20
Other machinery and equipment	60	-5.85	3.79	3.98
Industrial machinery and equipment nec	61	-5.13	5.09	5.30
Miscellaneous manufacturing	62	-11.38	2.36	2.40
Electricity	63	0.00	0.00	0.00
Gas and Water	64	0.00	0.00	0.00
Residential construction	65	0.00	0.00	0.00
Other construction	66	0.00	0.00	0.00
Wholesale and retail trade	67	0.00	0.00	0.00
Road transport	68	0.00	0.00	0.00
Rail and other	69	0.00	0.00	0.00
Water Transport	70	0.00	0.00	0.00
Air transport	71	0.00	0.00	0.00
Communication	72	0.00	0.00	0.00

Table E2: **Price effects on imports of removing tariffs and concessional arrangements: 1989-90** (per cent) (continued) [ab]

		Removal of :		
Commodity group	*No.*	*Tariffs*	*CTCOs*	*Total concess*
Finance, property and business services	73	0.00	0.00	0.00
Technical services	74	0.00	0.00	0.00
Property and other business services	75	0.00	0.00	0.00
Ownership of dwellings	76	0.00	0.00	0.00
Public administration and defence	77	0.00	0.00	0.00
Community services	78	0.00	0.00	0.00
Entertainment etc	79	0.00	0.00	0.00
All Commodities		**-8.20**	**1.76**	**1.94**

. Indicates positive but less than 0.1. a Services are excluded as data is for merchandise imports only. b Prices are landed duty paid.
Source: Commission estimates.

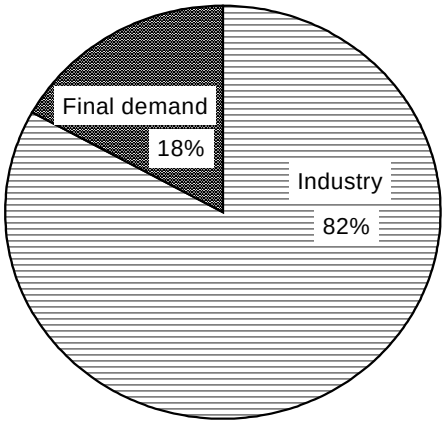
Duty savings from usage of concessional imports in the economy

Overall duty savings from CTCOs in 1989-90 are estimated at $962 million.[7] Assuming all the duty savings of CTCOs are fully passed on to users, 82 per cent of the duty savings on CTCO imports ($786 million) are estimated to have gone to industries (see Figure E3).[8] Three-quarters of those duty savings by industries relate to intermediate inputs while the remainder go to capital inputs. When non-Plan By-laws are added to CTCOs, the estimated share of duty savings from concessional imports used by industries remains at the same level.

[7] This figure is calculated from the total value of all imports in Table E1 and the price effect on imports of removing CTCOs in Table E2.

[8] The estimates of duty savings arising from CTCOs are subject to the assumption that concessional imports from a commodity are used in the same proportions as all imports from that commodity (see SectionÿE1). However, as the Excluded Goods Schedule prevents many consumer goods from obtaining CTCOs, it would seem reasonable that proportionately more CTCOs go to industry. This would imply the estimates for duty savings to industry from CTCOs are an understatement.

Figure E3: **Duty savings from estimated usage of CTCOs**



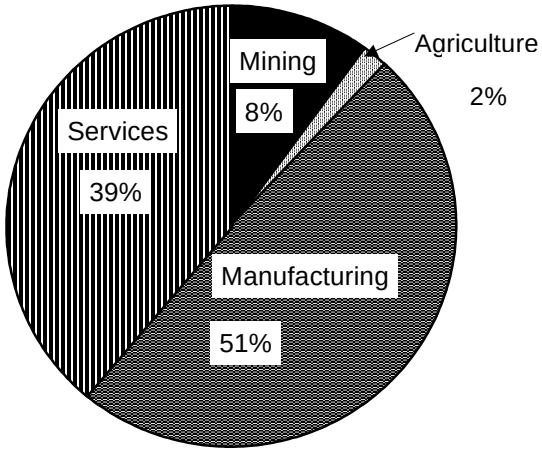
Source: Commission estimates.

The remaining discussion will be confined to the effects of CTCOs. Non-Plan By-laws account for less than a tenth of the concessions under examination which are received by industries (Plan By-laws are far more significant). In most cases their effects at the industry level are insignificant relative to CTCOs.

Results pertaining to the removal of non-Plan By-laws are, nevertheless, reported in Tables E1, E2 and E4. They consist of the differences between results for CTCOs and results for total concessions. Because By-laws are largely granted to narrowly defined commodities (by type and end-use), it was not possible to allocate them to domestic industries. Consequently, By-laws have been treated in the analysis in the same way as CTCOs. That is, it has been assumed that the By-law concession affects the price of imported inputs *but not outputs*. However, because By-law imports usually compete with domestically produced goods, their removal would have a protective effect on outputs as well as a cost increasing effect on inputs. Hence, the increase in effective assistance from the increase in protection to outputs will act to offset the negative effect from the increase in costs. Therefore, under the assumption used for the analysis, even the small non-Plan By-law effects observed are overstated.

Some sectors and industries directly benefit more than others from CTCOs. The manufacturing sector is estimated to receive about half of the duty savings from CTCO imports, followed closely by services, with mining -- and particularly agriculture -- having only a small share (see Figure E4).

Figure E4: **Sectoral duty savings from estimated usage of CTCOs**



Source: Commission estimates.

Shares of duty savings from CTCO usage range from nearly zero for Non-ferrous metals nec (Industry group 35), and Cotton ginning and wool scouring (Industry group 41) to about 9 per cent for Other construction (Industry group 64) (see Table E3).[9]

Intensity of CTCO usage

Although half of duty savings from usage of CTCOs are estimated to go to the manufacturing sector, it accounts for only 15 per cent of UVA in the economy.

[9] Duty savings may flow on to industries through the prices charged for input goods and services supplied by 'upstream' industries which benefit directly from CTCOs. This is particularly relevant for construction, which benefits from CTCOs and supplies other industries with fixed capital in the form of building and installed machinery.

Table E3: **Effect of removing CTCOs on industry costs: 1989-90** [a]
Per cent

Industry group	*No.*	*Increase in costs* *Intermed inputs*	*Capital inputs* [b]	*Total*	*Share of duty savings*	*CTCOs /UVA*
Agriculture						
Pastoral zone	1	0.07	0.10	0.04	0.13	0.07
Wheat-sheep zone	2	0.06	0.10	0.04	0.53	0.06
High rainfall zone	3	0.06	0.10	0.03	0.20	0.06
Northern beef	4	0.06	0.10	0.04	0.07	0.07
Milk cattle & pigs	5	0.02	0.10	0.02	0.07	0.03
Other farming (fruit, nuts)	6	0.04	0.10	0.02	0.10	0.03
Other farming (vegs, tobacco)	7	0.04	0.10	0.02	0.11	0.03
Poultry	8	0.00	0.11	0.02	0.04	0.05
Services to agriculture	9	0.10	0.37	0.07	0.15	0.08
Forestry & logging	10	0.36	0.51	0.20	0.36	0.36
Fishing & hunting	11	0.23	0.66	0.14	0.24	0.28
Total		*0.07*	*0.13*	*0.04*	*2.01*	*0.07*
Mining						
Ferrous metal ores	12	0.34	0.81	0.33	1.46	0.56
Bauxite	13	0.36	0.39	0.21	0.22	0.26
Copper ores	14	0.38	0.39	0.23	0.28	0.47
Gold ores	15	0.35	0.39	0.22	0.19	0.34
Mineral sands	16	0.35	0.39	0.22	0.14	0.40
Nickel ores	17	0.19	0.39	0.16	0.15	0.26
Silver-lead-zinc ores	18	0.37	0.39	0.20	0.47	0.34
Tin ores	19	0.37	0.39	0.23	0.14	0.38
Uranium ores	20	0.31	0.39	0.23	0.20	0.31
Non-ferrous metal ores nec	21	0.37	0.39	0.23	0.14	0.36
Black coal	22	0.26	0.47	0.16	1.77	0.24
Brown coal	23	0.18	0.47	0.11	0.05	0.16
Crude oil & nat gas	24	0.13	0.47	0.09	1.61	0.10
Other minerals	25	0.37	0.58	0.27	0.77	0.51
Petroleum & mineral explor	26	0.17	0.47	0.14	0.48	0.77
Mining & explorn serv nec	27	0.09	0.47	0.07	0.31	0.12
Total		*0.24*	*0.50*	*0.16*	*8.38*	*0.23*

Table E3: **Effect of removing CTCOs on industry costs: 1989-90** [a] (Continued)
Per cent

		Increase in costs				
Industry group	*No.*	*Intermed inputs*	*Capital inputs* [b]	*Total*	*Share of duty savings*	*CTCOs /UVA*
Manufacturing						
Petroleum & coal products	28	0.00	0.98	0.01	0.29	0.36
Basic iron & steel	29	0.19	0.98	0.18	3.46	0.66
Copper smelting, refining	30	0.01	0.82	0.01	0.02	0.14
Silv, lead, zinc smelt, ref	31	0.01	0.82	0.04	0.12	0.25
Alumina	32	0.01	0.82	0.19	0.68	0.43
Aluminium smelting	33	0.11	0.82	0.16	0.62	0.83
Nickel smelting, refining	34	0.01	0.82	0.12	0.17	0.46
Non-fer mets nec smelt, ref	35	0.01	0.00	0.01	0.00	0.12
Sec rec, alloy non-fer mets	36	0.00	0.82	0.06	0.06	0.35
Alumin roll, draw, extrud	37	0.01	0.82	0.09	0.17	0.48
Non-fer mets, nec roll draw	38	0.01	0.82	0.10	0.16	0.41
Export food, bevs & tob	39	0.03	0.64	0.05	2.03	0.29
Other food, bevs & tob	40	0.04	0.54	0.07	1.90	0.25
Cot gin & wool scouring	41	0.00	0.68	0.00	0.01	0.97
Other TCF	42	0.16	0.79	0.13	2.24	0.92
Wood, paper & printing	43	0.18	0.67	0.15	5.16	0.43
Chemical fertilisers	44	0.09	0.79	0.13	0.32	0.57
Other basic chemicals	45	0.37	0.72	0.33	2.60	1.49
Other chemical products	46	0.28	0.38	0.21	2.08	0.80
Glass & cement products	47	0.12	0.74	0.16	1.82	0.40
Structural & sheet met prods	48	0.23	0.65	0.18	3.92	0.62
Motor vehicles	49	0.34	0.76	0.26	4.88	1.83
Railway rolling stock	50	0.58	0.35	0.28	0.61	0.63
Other transport	51	0.49	0.44	0.25	0.84	0.51
Photo, scientific equip	52	0.48	0.51	0.31	0.48	0.90
Electronic equipment	53	0.57	0.56	0.38	5.59	1.53
Agricultural machinery	54	0.55	0.56	0.36	0.71	1.01
Construction machinery	55	1.19	0.52	0.82	0.40	3.46
Mats handling equipment	56	1.25	0.53	0.82	1.18	3.55
Pumps & compressors	57	0.94	0.64	0.58	0.58	1.88
Other machinery & equipment	58	0.94	0.63	0.58	3.15	1.65

Table E3: **Effect of removing CTCOs on industry costs: 1989-90** [a] (Continued)
Per cent

		Increase in costs				
Industry group	*No.*	*Intermed inputs*	*Capital inputs* [b]	*Total*	*Share of duty savings*	*CTCOs /UVA*
Indust machinery & equip nec	59	0.94	0.63	0.56	1.35	1.66
Miscellaneous manufacturing	60	0.27	0.85	0.22	2.91	0.84
Total		*0.18*	*0.70*	*0.17*	*50.48*	*0.70*
Services						
Electricity	61	0.03	0.34	0.10	2.00	0.19
Gas & Water	62	0.18	0.19	0.12	1.05	0.16
Residential construction	63	0.16	0.41	0.11	3.59	0.29
Other construction	64	0.25	0.76	0.17	9.30	0.38
Wholesale & retail trade	65	0.11	0.21	0.05	5.64	0.08
Road transport	66	0.11	0.25	0.06	1.46	0.12
Rail & other	67	0.14	0.06	0.07	0.66	0.11
Water Transport	68	0.03	0.08	0.02	0.21	0.05
Air transport	69	0.05	0.16	0.04	0.37	0.10
Communication	70	0.27	0.32	0.13	1.76	0.16
Finance, property & bus serv	71	0.02	0.06	0.02	0.88	0.03
Technical services	72	0.11	0.10	0.05	0.15	0.08
Property & business serv	73	0.11	0.10	0.05	2.16	0.08
Ownership of dwellings [c]	74	0.07	0.00	0.02	0.94	0.03
Public admin & defence [c]	75	0.16	0.00	0.06	2.26	0.11
Community services	76	0.16	0.13	0.05	3.77	0.07
Entertainment etc	77	0.23	0.14	0.10	2.91	0.16
Total		*0.14*	*0.11*	*0.07*	*39.13*	*0.11*
All industries		**0.16**	**0.23**	**0.10**	**100.00**	**0.21**

[a] Total costs include labour costs. [b] In disaggregating from the IO industry level, a similar composition of capital inputs within each IO industry has been assumed for agricultural, mining and selected other industries. [c] Comprises producers of government services for which no cost of capital is available. Producers of government services in other industries are similarly treated.
Source: Commission estimates.

Such a high level of duty savings from CTCOs received by manufacturing relative to its share of value added would indicate they are used relatively intensely in that sector. The estimates indicate that the manufacturing sector saves an amount equivalent to 0.7 per cent of its UVA from CTCO imports whereas, for the other sectors, the figure is less than half of this. Under this measure, the mining sector takes the second place followed by services and agriculture (see Table E3). Industries from the manufacturing sector were the ten highest receivers of duty savings from CTCOs when measured as a proportion of their value added.

Effects of CTCOs on costs

The estimates in Table E3 indicate that reductions in production costs resulting from CTCOs directly affect every sector of the economy. Removing CTCOs would increase industry production costs by an estimated average of 0.10 per cent. The percentage increase in total costs is lower than the percentage increase in costs of intermediate and capital inputs because other costs, such as labour, are also included in the total. The percentage increase in total costs reaches up to 0.82 per cent for industries such as Construction machinery (Industry group 55) and Materials handling equipment (Industry group 56).

Although small in proportional terms, cost reductions from CTCOs amount to a considerable dollar saving. This is reflected in the estimated duty saving to industries of almost $800 million in 1989-90 (see above).

Effects of CTCOs on assistance

The cost savings from CTCOs may allow user industries to attract more resources and expand at the expense of other industries. If highly assisted industries receive a further significant advantage from CTCOs relative to other industries, then the loss of efficiency in the use of resources in the economy attributable to the assistance regime is likely to be exacerbated. Alternatively, if lightly and negatively assisted industries receive a significant benefit from CTCOs relative to other industries, they will be able to compete for resources on a more equal basis, which should improve the efficiency with which resources are used. On the other hand, if the effects of

CTCOs on assistance are small, or the benefits spread evenly, little net effect on resource allocation would be expected.

Effective rates

Removing CTCOs can be expected to reduce ERAs to industries. This follows from the assumption that CTCOs reduce industry costs but have no protective effect on outputs.

The Commission's estimates indicate that, whilst removing CTCOs would reduce ERAs, the changes would not be significant either for industries overall, or within sectors (see Table E4). For industries overall, and for all sectors except manufacturing, the decline was less than one percentage point. In the manufacturing sector, effective rates fell by up to four percentage points (Construction machinery -- Industry group 55 and Material handling equipment -- Industry group 56), but the average for the sector was still below one percentage point. Of course, much higher effects may occur at finer industry levels.

Table E4: **Disparities in effective rates of assistance: 1989-90**

			Effective rates [a]				
			With		*Without*	*Effect of:* [b]	
Industry group	*No.*	*Weights*	*total con*	*Without CTCO*	*total con*	*CTCO*	*Total con*
			%	*%*	*%*	*Percentage points*	
Agriculture							
Pastoral zone	1	0.06	-1.4	-1.5	-1.5	0.1	0.1
Wheat-sheep zone	2	0.31	-1.1	-1.1	-1.2	0.1	0.1
High rainfall zone	3	0.12	-1.1	-1.2	-1.2	0.1	0.1
Northern beef	4	0.04	-1.5	-1.6	-1.6	0.1	0.1
Milk cattle & pigs	5	0.10	-1.5	-1.6	-1.6	0.0	0.0
Other farming (cane fruit & nuts)	6	0.10	2.2	2.2	2.2	0.0	0.0
Other farming (vegs & tob.)	7	0.11	4.0	4.0	4.0	0.0	0.0
Poultry	8	0.03	-3.2	-3.2	-3.2	0.0	0.0
Services to agriculture	9	0.06	-1.3	-1.3	-1.3	0.1	0.1
Forestry & logging	10	0.04	-2.2	-2.6	-2.6	0.4	0.4

Table E4: **Disparities in effective rates of assistance: 1989-90** (Continue)

			Effective rates [a]				
			With		*Without*	*Effect of:* [b]	
Industry group	*No.*	*Weights*	*total con*	*Without CTCO*	*total con*	*CTCO*	*Total con*
			%	*%*	*%*	*Percentage points*	
Fishing & hunting	11	0.03	-4.4	-4.6	-4.7	0.3	0.3
Total		*1.00*					
Weighted average			*-0.5*	*-0.5*	*-0.6*	*0.0*	*0.1*
Standard deviation			*2.1*	*2.1*	*2.1*	*0.0*	*-0.1*
Mining							
Ferrous metal ores	12	0.07	-3.8	-4.3	-4.4	0.6	0.6
Bauxite	13	0.02	-1.9	-2.1	-2.2	0.3	0.3
Copper ores	14	0.02	-3.7	-4.2	-4.3	0.5	0.5
Gold ores	15	0.02	-2.6	-2.9	-2.9	0.3	0.4
Mineral s&s	16	0.01	-3.1	-3.5	-3.5	0.4	0.4
Nickel ores	17	0.02	-2.0	-2.2	-2.3	0.3	0.3
Silver-lead-zinc ores	18	0.04	-2.6	-2.9	-3.0	0.3	0.4
Tin ores	19	0.01	-2.9	-3.2	-3.3	0.4	0.4
Uranium ores	20	0.02	-2.3	-2.6	-2.6	0.3	0.3
Non-ferrous metal ores nec	21	0.01	-2.7	-3.0	-3.1	0.4	0.4
Black coal	22	0.19	-2.0	-2.3	-2.3	0.2	0.3
Brown coal	23	0.01	-1.4	-1.5	-1.5	0.2	0.2
Crude oil & natural gases	24	0.44	-0.7	-0.8	-0.8	0.1	0.1
Other minerals	25	0.04	-2.6	-3.1	-3.1	0.5	0.5
Petroleum & mineral exploration	26	0.02	-7.6	-8.3	-8.4	0.8	0.8
Mining & exploration services nec	27	0.07	-1.3	-1.4	-1.4	0.1	0.1
Total		*1.00*					
Weighted average			*-1.7*	*-1.9*	*-2.0*	*0.2*	*0.3*
Standard deviation			*1.3*	*1.4*	*1.4*	*-0.2*	*-0.2*
Manufacturing							
Petroleum & coal products	28	0.01	0.9	0.6	0.5	0.4	0.4
Basic iron & steel	29	0.07	15.3	14.6	14.6	0.7	0.7
Copper smelting, refining	30	0.00	-3.5	-3.6	-3.6	0.1	0.2
Silver,lead,zinc smelting & refining	31	0.01	-3.2	-3.4	-3.5	0.3	0.3

Table E4: **Disparities in effective rates of assistance: 1989-90** (Continue)

			Effective rates [a]				
			With		*Without*	*Effect of:* [b]	
Industry group	*No.*	*Weights*	*total con*	*Without CTCO*	*total con*	*CTCO*	*Total con*
			%	*%*	*%*	*Percentage points*	
Alumina	32	0.02	-3.5	-3.9	-4.0	0.4	0.4
Aluminium smelting	33	0.01	-9.2	-10.0	-10.2	0.8	1.1
Nickel smelting, refining	34	0.01	0.0	-0.5	-0.5	0.5	0.5
Non-ferrous metals nec	35	0.00	-5.5	-5.6	-5.7	0.1	0.2
Alloying of non-ferrous metals nec	36	0.00	-2.0	-2.4	-2.4	0.3	0.4
Aluminium rolling & drawing	37	0.00	62.7	62.2	62.2	0.5	0.5
Non-ferrous metals, nec	38	0.01	34.4	34.0	34.0	0.4	0.4
Export food, beverages & tobacco	39	0.10	0.1	-0.2	-0.3	0.3	0.3
Other food, beverages & tobacco	40	0.10	8.2	7.9	7.9	0.3	0.3
Cotton ginning & wool scouring	41	0.00	[c]	[c]	[c]	0.9	1.0
Other textiles, clothing & footwear	42	0.03	153.0	152.1	151.9	0.9	1.1
Wood, paper & printing	43	0.16	12.1	11.7	11.5	0.4	0.6
Chemical fertilisers	44	0.01	-5.5	-6.1	-6.2	0.6	0.7
Other basic chemicals	45	0.02	20.6	19.1	18.4	1.5	2.2
Other chemical products	46	0.04	19.5	18.7	18.3	0.8	1.2
Glass & cement products	47	0.06	1.7	1.3	1.2	0.4	0.5
Structural & sheet metal products	48	0.09	25.7	25.1	25.0	0.6	0.6
Motor Vehicles	49	0.04	88.5	86.7	86.5	1.8	2.0
Railway rolling stock	50	0.01	21.7	21.1	21.0	0.6	0.7
Other transport	51	0.02	6.5	6.0	6.0	0.5	0.5
Photographic, scientific equipment	52	0.01	11.1	10.2	10.1	0.9	0.9
Electronic & electrical equipment	53	0.05	39.6	38.1	38.0	1.5	1.6
Agricultural machinery	54	0.01	2.0	1.0	1.0	1.0	1.0
Construction machinery	55	0.00	37.4	34.0	33.8	3.5	3.7
Materials h&ling equipment	56	0.00	50.7	47.2	47.0	3.5	3.7
Pumps & compressors	57	0.00	32.2	30.4	30.3	1.9	2.0
Other machinery & equipment	58	0.03	14.3	12.7	12.6	1.7	1.7
Industrial machinery & equip nec	59	0.01	25.6	23.9	23.8	1.7	1.7
Miscellaneous manufacturing	60	0.05	30.5	29.6	29.4	0.8	1.1
Total		*1.00*					
Weighted average			*21.5*	*20.8*	*20.7*	*0.7*	*0.8*
Standard deviation			*36.2*	*36.0*	*36.0*	*0.2*	*0.2*

Table E4: **Disparities in effective rates of assistance: 1989-90** (Continue)

			Effective rates [a]				
			With		*Without*	*Effect of:* [b]	
Industry group	*No.*	*Weights*	*total con*	*Without CTCO*	*total con*	*CTCO*	*Total con*
			%	*%*	*%*		*Percentage points*
Services							
Electricity	61	0.03	-2.2	-2.3	-2.4	0.2	0.2
Gas & Water	62	0.02	-2.3	-2.5	-2.5	0.2	0.2
Residential construction	63	0.04	-9.7	-10.0	-10.0	0.3	0.3
Other construction	64	0.07	-8.8	-9.2	-9.2	0.4	0.4
Wholesale & retail trade	65	0.21	-2.0	-2.1	-2.1	0.1	0.1
Road transport	66	0.04	-4.3	-4.4	-4.4	0.1	0.1
Rail & other	67	0.02	-3.8	-3.9	-4.0	0.1	0.1
Water Transport	68	0.01	-2.0	-2.1	-2.1	0.0	0.0
Air transport	69	0.01	-3.3	-3.4	-3.4	0.1	0.1
Communication	70	0.03	-1.7	-1.9	-1.9	0.2	0.2
Finance, property & business services	71	0.08	-1.0	-1.0	-1.0	0.0	0.0
Technical services	72	0.01	-1.0	-1.1	-1.1	0.1	0.1
Property & other business services	73	0.07	-1.0	-1.1	-1.1	0.1	0.1
Ownership of dwellings	74	0.10	-0.7	-0.7	-0.7	0.0	0.0
Public administration & defence	75	0.06	-2.4	-2.5	-2.5	0.1	0.1
Community services	76	0.16	-1.2	-1.3	-1.3	0.1	0.1
Entertainment etc	77	0.05	-2.2	-2.4	-2.4	0.2	0.2
Total		*1.00*					
Weighted average			*-2.5*	*-2.6*	*-2.6*	*0.1*	*0.1*
Standard deviation			*2.4*	*2.5*	*2.5*	*-0.1*	*-0.1*
All industries							
Totald		**1.00**					
Weighted average			**1.2**	**1.0**	**1.0**	**0.2**	**0.2**
Standard deviation			**16.5**	**16.3**	**16.3**	**0.2**	**0.2**

[a] These estimates are limited to border intervention and do not account for domestic pricing arrangements, bounties and direct assistance to value adding factors such as tax concessions on income, and research and development. [b] Some figures differ by 0.1 because of rounding. [c] Greater than 250. d Individual industry weights are applied -- not shown in the table.
Source: Commission estimates.

Disparities

By altering ERAs, CTCOs might also alter the disparities in those rates. However, a significant change is not to be expected, given the small change in effective rates which has been estimated when CTCOs are removed.

The Commission's estimates indicate that removing CTCOs would not result in a significant change in disparities of assistance, either amongst industries overall, or within sectors. In all cases the result was less than half a percentage point of change in the standard deviation of effective rates (see Table E4).

For industries overall and the manufacturing sector, the sign of the changes implied that, if anything, CTCOs have caused an increase in disparities. For the other sectors, the sign of the changes indicated that CTCOs have (if anything) reduced disparities within those sectors.

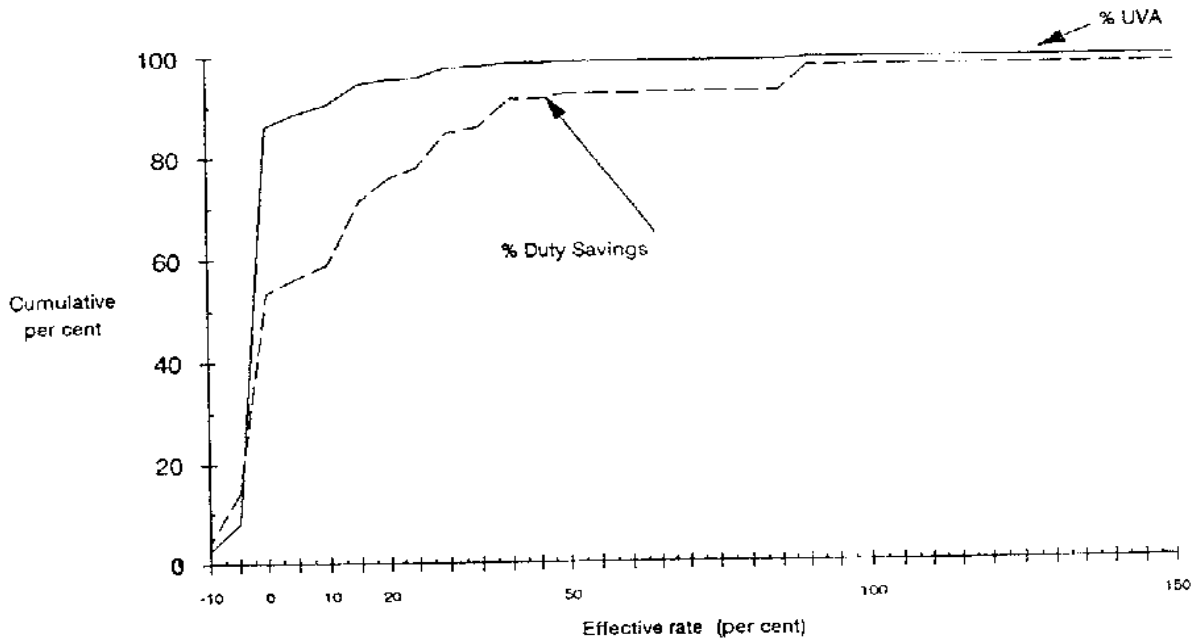
This result reflects the pattern of CTCOs usage across industries. The effect of removing CTCOs on disparities of assistance depends firstly on the significance of CTCOs for assistance levels themselves, and then on the assistance already accorded the industries benefitting most from CTCOs and the size of those industries. Although in absolute terms CTCOs impart a significant cost saving to industries, those savings are not large relative to value added -- even for manufacturing they represent less than one per cent. However, even if CTCOs were to make a significant impact on effective rates, it is not clear that this would lead to a significant impact on disparities in assistance.

If CTCOs had mainly benefited highly assisted activities, their removal would reduce disparities by bringing the effective rates of those industries down closer to the average. Conversely, if CTCOs had mainly benefited very lightly and negatively assisted activities, their removal would increase disparities by dragging those effective rates down further away from the average. Of course, for those changes to be significant at a sectoral or economy level, the activities must themselves be significant in size.

Figure E5 illustrates how unassisted value added (a measure of the size of an economic activity) and usage of CTCOs were related to ERAs for the year 1989-90.

The figure has been constructed by ranking industries in ascending order of ERA. Each industry's percentage share of UVA and usage of CTCOs (as measured by duty savings enjoyed) were then cumulated. A further cumulation grouped the data into steps of 5 percentage point increases in effective rates. The cumulative value added and usage of CTCOs were then plotted against those effective rate steps. Effective rates ranged from -10 per cent to greater than 150 per cent.

Figure E5: **Relationship of CTCOs to effective rates and value added: 1989-90**



Fifty-seven per cent of duty savings from CTCOs are estimated to go to industries with effective rates greater than Ä5 per cent and up to 15 per cent. This leaves 14 per cent for the industries most disadvantaged by the existing assistance structure and 29 per cent for the more highly assisted industries, 8 per cent going to industries with effective rates above 40 per cent. Thus a significant proportion of CTCOs do go to highly assisted industries, although the most negatively assisted industries are also relatively intense users of the system.

However, those highly assisted industries are not large in unassisted value added terms. The band with effective rates greater than -5 per cent and up to 15 per cent captures 87 per cent of value added. Eight per cent of value added occurs in industries with effective rates of -5 per cent or less. Five per cent of value added occurs with effective rates above 15 per cent and only one per cent with effective rates above 40 per cent.

Conclusions

While important to individual enterprises, CTCOs do not significantly alter assistance or disparities in assistance at an economy, sectoral or industry level, as duty savings from CTCOs are small relative to value added at the industry level. Nevertheless, over two-thirds of duty savings from CTCOs do benefit lightly or negatively assisted industries.

The important effect of CTCOs is on industry costs. Although for most industries they are less than one per cent of total costs, duty savings to industries still amounted to almost $800 million in 1989-90. For all users, including final consumers, duty savings amounted to almost one billion dollars.

Appendix F: ECONOMIC EFFECTS OF TARIFF CONCESSIONS

This appendix attempts to quantify the economic impact of the CTCS and non-Plan By-laws, using the ORANI model of the Australian economy.[1] The ORANI model has been applied on many occasions to analyse the effects of protection policy. Lower tariffs are estimated to benefit the Australian economy. Although tariffs encourage protected activities, these effects are outweighed by the costs that the Tariff imposes on export and export related activities, and lowly assisted import competing activities, which are constrained by international competition from passing on these cost increases.

Removal of the CTCS would have similar cost raising effects to the Tariff but without any offsetting benefits to Australian producers, since the CTCS only applies when there is no Australian production of the relevant goods.

Thus while there continues to be a protective Tariff, this analysis suggests that there would be economic benefits from allowing duty free or concessional imports of goods which do not compete with any Australian production.

However, it is important to recognise that the analysis abstracts from a number of the features of the CTCS. Administrative costs are incurred in operating the System, as are private costs in seeking concessions. The greater are these costs, the smaller are net benefits from the CTCS. As tariff levels come down the benefits from the CTCS will decline. But it will still be worthwhile for an importer to seek concessions so long as his private costs are less than the expected benefits, even if the total administrative and private costs of all parties involved in the System were greater than the benefits.

Similarly, the analysis abstracts from the assistance raising effects of the CTCS. Access to duty free imported inputs raises the effective rate of assistance of users. If they are already highly assisted this may produce undesirable resource allocation effects. However, the analysis in Appendix E, which is based on 1989-90

[1] A non-technical description of the ORANI model is in IAC (1987a).a

assistance levels, suggests that this is no longer a significant issue.

F1 Setting up the model

Many Australian producers currently benefit from the CTCS and from By-laws by gaining access to certain imports at duty free or concessional tariff rates. In order to evaluate the effects of the CTCS and the By-law system, the impact of the abolition of these systems has been estimated. In the case of By-laws, only non-Plan By-laws have been evaluated. To do this analysis requires a number of steps:

Determining the incidence of CTCS and By-laws

ABS trade data provide details of the values of imports entered under CTCOs or By-laws at the Tariff Item level (ABS 1990b). The estimated values of such imports in 1989-90 are given in Tables D3 and D4. These tables also provide estimates of the duty savings.

To analyse the effects of this forgone duty, information is required on who uses these imports and what impact the duties would have on the costs of those users. This information is not directly available, but estimates can be made using official input-output data (ABS 1990a). These are presented in Table E3.

Modifying the ORANI model

The standard version of the ORANI model does not distinguish between different categories of imports (ie normal, CTCS or By-law). For each of the 114 commodity groups of imports separately identified in the model's database, estimates were made of the shares of each of these three categories of imports, and of the average duty forgone on CTCS and non-Plan By-law imports. Separate databases were created to evaluate the effects of removal of the CTCS and the non-Plan By-law systems. Essentially this involved reallocating all CTCS imports or all CTCS and non-Plan By-law imports into the import commodity group called 'non-competing imports'. Then the effects of raising the costs of non-competing imports were estimated.

In constructing the new databases for the model it was assumed that CTCS and non-Plan By-law imports were only used by industries for intermediate inputs or investment purchases. There was no usage by consumers -- either private or government.[2] (This assumption is different from that used for the effective rate analysis in Appendix E, which is also based on 1989-90 assistance levels, and not 1988-89 as in this appendix.)

An important implication of this treatment of By-law imports is the assumption that neither CTCS nor non-Plan By-law imports compete with any domestic production. That is probably a reasonable assumption in the case of CTCS imports, but less so with other By-law imports. No account has been taken of the benefits to any competing domestic production resulting from removal of the systems.

Running the model

Before the model can be run, choices have to be made about which variables are to be endogenous (ie determined within the model) and which variables are exogenous (determined outside the model). These choices determine the model closure. The closure depends primarily on the time horizon of the analysis.

Industry assistance is essentially a long-run instrument. So most of the analysis in this appendix has been undertaken using a long-run closure of the model. But the effects of import concessions can be better understood if both long-run and short-run simulations are undertaken. For this reason one short-run simulation of the effects of removing the CTCS has been undertaken.

For short-run analysis, it is usually assumed that industries' capital stocks are fixed. Outputs can only be changed by using more or less labour. It is assumed that there are no constraints on the availability of labour, and that real wages are constant. Finally, aggregate absorption (private and public consumption and investment) is

[2] Also non-Plan By-law imports excluded imports by the Government. These imports are now dutiable. But there should be no price effects as government agencies will receive budget supplementation to offset the higher cost of imports. Effectively the tariff duties will passed back to government users.

held fixed. Thus, in the short run, domestic industries can change their export volumes or can compete with imports to supply the fixed level of absorption. Changes in GDP reflect changes in the balance of trade.

In the longer-run simulations, aggregate consumption and investment are allowed to vary. However, government consumption is held constant. It is assumed that the extra revenue collected by the Government through abolition of the CTCS and non-Plan By-laws is returned to Australians via lower direct taxes. Industries are allowed to adjust their capital stocks and do so to maintain their previous rates of return on fixed capital. Real wages can also vary to reflect changes in the aggregate supply and demand for labour. In the longer run, changes in GDP reflect both changes in the balance of trade and changes in absorption.

Sensitivity analysis

Removal of the CTCS or the By-law system raises the costs of industries and reduces their competitiveness vis-a-vis imports. The overall impact on the Australian economy depends to a significant extent on the degree to which users switch between domestically produced goods and services and imports as relative prices change. In the ORANI model, the amount of switching depends on the import substitution elasticities and on the base period import shares for each commodity group.

As the ORANI database was modified for this analysis, the base period import shares for each commodity group have been reduced, in some cases significantly. The effect of this would be to reduce the switch to imports as the price of domestically produced commodities increases.

The sensitivity of the results to the values of the import substitution elasticities was tested by rerunning one of the simulations with double the standard values. Higher import substitution elasticities are expected to have two offsetting effects: users will switch more to imports as the relative prices of domestic commodities increase; but users' costs will fall as they use relatively more of the cheaper commodity. Thus some industries are disadvantaged by the increased import competition whereas others benefit.

Types of simulations

Separate estimates have been made of the longer-run effects of:

- removal of the CTCS, and
- removal of the CTCS and non-Plan By-laws.

The effects depend on the level of the substantive Tariff; in other words on the duty forgone because of the systems. The Tariff is undergoing a program of reductions which over time will reduce the benefits of the CTCS and the By-law system. The longer-run effects have been estimated based on 1988-89 tariff rates and concessions.

Although not reported in this appendix, the Commission has also estimated the effects of removal of the CTCS and non-Plan By-laws based on projected tariff levels in the mid-90s. The results are qualitatively very similar to those for the 1988-89 tariff levels. However, as average tariff levels will be lower in the mid-90s, the benefits of the CTCS will be smaller and the costs of losing the CTCS would be lower.

For comparative purposes, estimates have also been made of the effects of removal of all existing assistance to manufacturing industries based on assistance levels in 1988-89.

To assist in explaining the results, one short-run simulation has been undertaken of the effects of removing the CTCS. A simulation has also been run to assess the sensitivity of the results to assumptions about the extent to which users switch between imported and domestically produced goods and services as their relative prices change.

F2 Results of the analysis

Short-run effects of removal of the CTCS

Given the existence of the protective Tariff at 1988-89 levels, removal of the CTCS is estimated to have deleterious effects on the Australian economy. CTCOs are more significant for capital goods than for intermediate inputs to production. As shown in Table F1, the average price of investment goods is estimated to increase

by around 1 per cent, while the general level of prices -- as represented by the ORANI index of consumer prices -- would increase by around 0.3 per cent. These increases reflect the combined impacts of the direct effects of higher prices for CTCS imports, the indirect effects of high prices for other intermediate inputs (whose higher costs are passed on) and the induced increases in wage costs, since nominal wages are assumed to be indexed to the ORANI index of consumer prices in the short run. These increases would be offset to some extent because profit margins for some industries would be squeezed, to allow them to continue to export or to compete with imports.

Despite the squeeze on profits, in aggregate the volume of exports is projected to fall by 0.3 per cent in the short run, while aggregate imports would increase by around 0.2 per cent.

The overall level of economic activity as reflected by real GDP is estimated to decline by around 0.1 per cent. In the short run it is assumed that capital stocks remain fixed in each industry. Hence the decline in activity would create a fall in employment of 0.1 per cent.

No industry is estimated to benefit from removal of the CTCS (see Table F2). The biggest losers are the major export industries (agriculture, mining and processed agricultural and mineral products), which would face output declines of up to 0.7 per cent, despite reducing their returns on capital, and the industries facing significant import competition such as Textiles, Clothing and Footwear, and Motor Vehicles. The machinery sector, which heavily utilises the CTCS, would also be relatively disadvantaged.

Much of the services sector would be quarantined from these effects. This sector does not directly engage in international trade to any great extent. Also in this short-run simulation it is assumed that the overall level of household and government current expenditure, plus aggregate investment, remains fixed.

In summary, in the short run the effects of removal of the CTCS would be inflationary. Price effects would dominate. International competitiveness would be reduced, resulting in higher import levels and less exports, and as a consequence less production activity and employment.

Table F1: **Estimated macro-economic impacts of removal of the CTCS, non-Plan By-laws and assistance to manufacturing (%): 1988-89 tariff rates and concessions**

Macroeconomic Variables	*Short-run* *Removal of CTCS*	*Long-run* *Removal of CTCS* *Import substitution elasticity values*		*Removal of CTCS and non-Plan By-laws*	*Removal of Assistance to Manufacturing*
		Standard	*Double*		
Real GDP	-0.09	-0.25	-0.25	-0.28	0.93
Real GNP	0.07	-0.07	-0.07	-0.08	0.51
Real household consumption	a	-0.10	-0.09	-0.11	0.70
Real investment	a	-0.84	-0.83	-0.91	2.08
Volume of exports	-0.26	-0.35	-0.24	-0.34	5.78
Volume of imports	0.21	-0.26	-0.16	-0.27	6.01
Balance of Trade (% of GDP)	-0.07	-0.01	-0.01	-0.01	-0.09
Index of investment prices	1.01	0.65	0.63	0.68	-2.36
Index of consumer prices	0.30	-0.05	-0.07	-0.06	-1.85
Real pre-tax wage rate	a	-0.42	-0.43	-0.51	1.47
Aggregate employment	-0.11	-0.03	-0.03	-0.03	0.11
Aggregate capital stock	a	-0.84	-0.83	-0.91	2.08
Change in direct tax rates	a	-1.15	-1.16	-1.40	3.52

a Held constant by assumption in the short run.

Source: Commission estimates.

Long-run effects of removal of the CTCS

In the longer run, the economy has more capacity to adjust to the cost raising effects of removal of the CTCS. Rather than squeezing profit levels, industries can adjust their output levels -- by reducing capital stocks and labour usage -- until their profit rates return to their earlier levels. Because the aggregate supply of labour is assumed to be very inelastic, falls in the demand for labour would have more impact on wage rates than on employment levels. Real wages are estimated to fall by around 0.4 per cent. This reduction in wage costs would be a substantial offset to the cost increasing impact of removal of the CTCS. The ORANI index of consumer prices is estimated to fall by 0.1 per cent, while the investment price index would increase by 0.6 per cent.

The overall level of economic activity is estimated to decline by around 0.3 per cent, reflecting a reduction in the economy's capital stock of 0.8 per cent and a marginal decline in employment. In turn, real investment expenditure would fall by 0.8 per cent while real household consumption expenditure is estimated to decline by a more modest 0.1 per cent.

The volume of exports would decline by around 0.3 per cent. Because the projected decline in domestic competitiveness is smaller in the longer run and the overall level of economic activity is estimated to fall, aggregate import volumes would decline by a similar percentage.

Unlike the short-run results, in the longer term there would be much greater dispersion in effects at the industry level. The relatively labour intensive internationally trading industries would either increase or maintain their levels of output. Capital intensive mining and mineral processing exporters would fare badly. Industries like services which depend heavily on the state of the domestic economy would also be worse off, unless they sell to government, whose consumption expenditure is assumed to be fixed in these simulations.

If it is assumed that the import substitution elasticities are double their standard values, the estimated long-run effects of removal of the CTCS do not change significantly either for the overall economy or for particular sectors.

Table F2: **Estimated effects on industry outputs from removal of the CTCS, non-Plan By-laws and assistance to manufacturing (%): 1988-89 tariff levels and concessions**

Macroeconomic Variables	*Short-run* *Removal of CTCS*	*Long-run* *Removal of CTCS* *Import substitution elasticity values* *Standard*	*Double*	*Removal of CTCS and non-Plan By-laws*	*Removal of Assistance to Manufacturing*
Agriculture	**-0.1**	**0.2**	**0.2**	**0.2**	**1.4**
Mining	**-0.4**	**-1.1**	**-1.0**	**-1.1**	**9.0**
Primary Production	**-0.2**	**-0.4**	**-0.3**	**-0.4**	**4.6**
Processed agricultural exports (a)	-0.3	0.2	0.3	0.3	2.6
Other food, drink and tobacco	..	..	..	..	-0.2
Other textiles, clothing, footwear	-0.3	-0.1	-0.1	-0.1	-15.8
Wood, paper products	-0.1	-0.3	-0.3	-0.3	-0.4
Chemicals	-0.2	-0.3	-0.3	-0.3	-0.1
Non-metallic mineral products	..	-0.6	-0.6	-0.6	0.7
Metals	-0.3	-0.6	-0.6	-0.8	1.4
Transport equipment	-1.0	-0.9	-1.3	-1.0	-12.6
Machinery	-0.4	-0.9	-1.0	-0.9	0.2
Other manufacturing	-0.3	-0.4	-0.5	-0.5	-3.8
Manufacturing	**-0.3**	**-0.4**	**-0.4**	**-0.4**	**-1.6**
Utilities and construction	..	-0.5	-0.5	-0.6	1.33
Trade and transport	-0.1	-0.2	-0.2	-0.2	1.1
Business and personal services	..	-0.2	-0.2	-0.2	0.7
Other public services	..	..	..	..	0.1
Services	**..**	**-0.2**	**-0.2**	**-0.3**	**0.8**
Total Output	**-0.1**	**-0.3**	**-0.3**	**-0.3**	**0.5**

.. Between -0.05 and +0.05.a Meat products, other food products and cotton ginning.
Source: Commission estimates.

In summary, the longer-run effects of removal of the CTCS are estimated to be deflationary. So much so that the induced price effects would more than offset the inflationary impact of the higher prices for CTCS imports.

Long-run effects of removal of the CTCS and non-Plan By-laws

Non-Plan By-laws are less significant in terms of import volumes than the CTCS, and the average level of duty saved is lower. However, loss of access to non-Plan By-law imports would further increase users' costs. The overall macroeconomic and industry effects of removal of both systems is estimated to be only slightly greater than for removal of the CTCS. All of the macroeconomic effects are greater in magnitude. But there is some variability in the estimated effects on industry outputs, reflecting particular features of certain industries. For example, some of the paper producers, who are relatively large users of By-laws imports are more significantly disadvantaged by removal of non-Plan By-laws.

As tariffs continue to fall, the costs of removing both the CTCS and non-Plan By-law systems will also diminish.

Longer-term effects of removal of assistance to manufacturing

The CTCS and the By-law system exist because there is a protective Tariff. For most sectors, the benefits from removing assistance to manufacturing would outweigh any advantages that they currently get through access to import concession schemes.

The last column of Table F1 shows estimates of the longer-term macroeconomic effects of removing assistance to manufacturing industries. The corresponding industry output effects are given in Table F2.

Removal of assistance to manufacturing is projected to improve the competitiveness of the economy. Based on the assistance levels prevailing in 1988-89, the index of consumer prices would fall by around 1.8 per cent. The overall level of activity would increase by around 0.9 per cent. The combined impact of these two factors stimulates most industries - particularly export activities and those industries selling on the local market without strong competition from imports. Highly assisted

sectors such as Textiles, Clothing and Footwear, and Motor Vehicles are estimated to face significant falls in output, however.

The overall level of demand for labour would increase resulting in a 1.5 per cent increase in the real wage rate and a marginal (0.1 per cent) rise in the level of employment. Investment and capital stocks would both increase by around 2.1 per cent. Proportionately, similar gains are obtained if assistance is reduced to zero from its projected mid-90s levels.

F3 Summary

This analysis suggests that the CTCS and the By-law system do provide significant benefits to the Australian economy by reducing industries' costs of production. Although no account has been taken of the costs of private sector participation in or public administration of the systems, these costs would have to be very substantial to outweigh the benefits.

Unfortunately, no reliable data are available on which industries benefit from the systems and to what extent. Hence, the overall results are probably more meaningful than the estimated effects for particular industries. The main beneficiaries are likely to be those industries which face significant competition in domestic or overseas markets and which are important users of capital equipment.

Appendix G: TARIFF CONCESSION SYSTEMS IN OTHER COUNTRIES

The Commission has examined various concessional entry schemes that are utilised in other developed economies. Much of the information in this appendix was obtained from the Department of Foreign Affairs and Trade. Other participants also presented the Commission with useful information. The Commission has confined its attention to those schemes of a commercial nature, excluding country preference arrangements, (for example, for developing countries).

CANADA

The Canadian Customs Tariff is based on the Harmonized System. Goods imported into Canada face one of three substantive rates of duty, depending on their country of origin. These are:

- for most developed countries -- most favoured nation rates;
- for most developing countries -- general preferential rates; and
- for goods imported from the United States -- US rates.

Goods may also qualify for entry under concessional rates of duty, when imported under international agreements, when used in particular industries, or when used in Canadian manufactures. These concessions are consolidated in a separate schedule of the Customs Tariff, and are cross-referenced, using a coding system, to the Tariff proper [Tariff Board (Canada) 1985]. There are some 1500 of these codes.

Concessions are issued as permanent concessions, or as temporary reductions in substantive duties. Permanent concessions are granted under statute, and they may be amended or removed only with parliamentary approval. Temporary reductions in duty on most goods are made by executive order under Section 68 (1) (a) of the

Customs Tariff. Temporary concessions on chemicals and plastics are made under Section 68 (1) (b) of the Customs Tariff.

Other sections of the schedule cover:

- goods entered under government programs (for example automotive products, machinery and capital equipment); and
- goods entered under international agreements (for example the *Agreement on Trade in Civil Aircraft).*

In addition to these concessional entry systems, Canada also operates duty drawback and duty remission schemes. These fall into four major groups:

- drawback on goods used or consumed in the manufacture of certain products in Canada;
- drawback on imported goods which are subsequently re-exported, or which are used or consumed in making goods which are subsequently exported;
- relief of customs duty on machinery imported into Canada when reasonably equivalent machinery is not available from Canadian manufacturers; and
- remissions of Customs duties under s. 101 of the Customs Tariff by executive order.

EUROPEAN COMMUNITY

Under Article 28 of the *Treaty of Rome*, duties on imports into the Community may be altered or suspended, when requested by a member state (EC 1989). These requests are made to the European Commission, which has the power to initiate legislation for concessions. The Commission's proposed legislation is presented to the Council of Ministers, which may enact the proposal intact or with modifications.

`Alterations' are permanent amendments to the common tariff. `Suspensions' are limited to a period usually not exceeding twelve months. Suspensions enter into force on either 1 January or 1 July each year, and they are notified in *the Official Journal of the European Community* at least two months before they come into force.

Suspensions must be open to all enterprises, both within the Community and outside it. As such, goods subject to exclusive trading agreements are not normally eligible for suspensions. In deciding whether to grant a suspension, the European Commission must consider:

- the need to promote trade with third countries;
- developments in conditions of competition within the Community;
- the requirements for raw materials and semi-finished goods within the Community: recognising the need to avoid distorting conditions of competition between member states in respect of finished goods; and
- the need to avoid serious disturbances in the economies of member states and to ensure rational development of production and expansion of consumption within the Community.

The *Treaty of Rome*also specifies that suspensions granted under Article 28 should lead to a reduction in consumer prices, an increase in employment within the Community, and should encourage industry to modernise.

Suspensions are also issued subject to a minimum value threshold: the annual customs duty payable on imports of those goods into the Community must exceed 20 000 European Currency Units. This does not relate to differences between local and import prices. The Commission and the Council of Ministers are required to disregard any such differences.

Suspensions are not granted:

- if there are identical, equivalent or substitute products already being manufactured in sufficient quantities to meet demand within the Community;
- the benefits of the suspensions are not likely to be passed on to Community producers or processors; or
- on finished consumer goods.

Concessional entry by one member state requires that all member states allow the same concessional entry.

Article 28 has primarily been used to give Community producers access to raw materials, semi-finished goods and components which are unavailable within the Community.

In 1989, about five per cent of total imports into the European Community entered under tariff suspensions. Of these imports, chemicals and pharmaceuticals accounted for about 60 per cent; microelectronics products for 20 per cent; agricultural products, especially fertilizers for 10 per cent; and products for the aircraft industry for 10 per cent.

FINLAND

Under Finland's *Tariff Act 1987* (ICTB 1988) special, reduced rates of duty or exemptions from duty may be granted on:

- goods when similar goods are not industrially manufactured in Finland (known as e-duty treatment); and on

- goods for industrial uses specified in a list of industrial duties appended to the *Tariff Act 1987,* subject to compliance with conditions stipulated by the Finnish Cabinet (known as industrial duty treatment).

Goods receiving e-duty treatment occur in Chapters 84, 85, 90, and 94 of the Finnish Tariff.

E-duty treatment is also provisionally applied to:

- certain copper tubes and pipes;

- furnace burners;

- calendaring or other rolling machines;

- weighing machines;

- extinguishers and mechanical sprayers; and

- machines for making pulp, paper and paperboard;

when goods similar to those imported are not industrially manufactured in Finland, and the value of the goods imported exceeds 5000 Mk (about ($A1800).

Goods receive industrial-duty treatment when they are used subject to prescribed end-uses. As at 30 September 1988, there were 69 industrial rates of duty in place. In 1988 goods to the value of 897m Mk (about $A321m) were imported under industrial-rates of duty, and goods to the value of 760m Mk (about $A272m) were

imported under e-rates of duty.

JAPAN

In Japan, most tariffs are bound at low rates under international agreements. Reductions generally occur only through multilateral tariff negotiations. Of about 15 700 manufactured products listed in the Tariff, some 2300 have substantive rates of zero.

Japan also reduces import duties on certain goods for general policy reasons. These include:

- to meet particular needs in the economy;

For example, imports of wheat or barley may enter duty free when the price of the imported foodstuff exceeds the wholesale price in Japan of the locally produced substitute, or when a local disaster or other emergency warrants the reduction or removal of import duties.

- to promote educational, cultural or social policies;

For example, articles for educational or publicity purposes, and medals and other awards won overseas are exempt from duty.

- to introduce international agreements; and

- to reciprocate diplomatic privileges.

For example, goods used by the Imperial Household and Heads of foreign countries are exempt from duty, while goods used by foreign diplomats receive reduced rates of duty.

In addition, certain raw materials, semi-manufactures, and goods entered for further processing in manufactures exports, or which themselves are re-exported, are also eligible for concessional rates of duty.

Concessional arrangements also apply to goods which are damaged or deteriorate during transit, to account for their drop in value, and to goods which were exported for repair or further processing, to prevent the payment of duty on their Japanese content.

NEW ZEALAND

The New Zealand Tariff is made up of two parts. Part I lists substantive duties. Items are grouped according to industry classifications. Substantive rates on most goods are being phased down to rates of 10 per cent by 1 July 1996. Some industries are not covered by these reductions: footwear and carpet (both currently under review), apparel (phased reduction to 25 per cent by 1996), and motor vehicles (phased reduction to 30 per cent by 1992, with a long-term rate to be decided after Australia announces its post-1992 PMV policy).

Part II is a record of the decisions made to reduce, generally to free, the substantive rates of duty contained in Part I. Each decision is made on the basis that a similar good is not produced in New Zealand. For a good to qualify as being produced in New Zealand, at least 25 per cent of its factory cost (materials, labour and overheads) must have been incurred in New Zealand. Local manufacturers can oppose the introduction of a Part II tariff concession or seek the withdrawal of such a concession if they produce a similar product which satisfies this 25 per cent local content rule.

New Zealand also has end-user concessions, which allow concessional entry for goods of a particular brand. And in regard to concessions for pharmaceutical products, concessions are only refused if the imported product is identical to a domestic product.

In October 1989 the New Zealand Government announced that tariff concessions in existence for five years would not be withdrawn, and that other concessions would be withdrawn only after 12 months notice. This indicated a desire to increase the transparency of the system.

On March 20 1990, the Government announced that it would retain New Zealand's tariff concession system, particularly to deal with the situation of 'made to order' plant and equipment (Butcher 1990). The Government had sought to remove Part II of the Tariff, initially by abolishing concessions. But when this approach ran into political difficulty, consideration was given to integrating the existing concessions into Part I of the Tariff. This was ruled out because it was considered administratively impractical to do so. Moves were also made to increase the local content rule to 50 per cent, but these were abandoned on the grounds that to have done so would have required the re-writing of both Parts I and II of the Tariff.

In deciding to retain tariff concessions, the Government laid down some policy guidelines for the operation of the concession system (Officials' Working Party 1990):

- in general, tariffs will not be increased;
- use of Part II decisions will be limited to those cases where it isn't possible to appropriately amend descriptions of items under Part I; and
- concessions should be worded appropriately to take full account of the principles involved in Tariff administration, including enforcement.

The Government indicated that its guidelines are to be implemented and administered in a way that maximises transparency, consistency and simplicity. It also recommended that in determining the appropriate tariff regime to be applied to a product or industry, consideration could be given to such things as market share, commercial availability, quality, price and technological sophistication, where and when it was considered appropriate to do so.

Having laid down the policy guidelines for the tariff concession system, New Zealand is planning to review its Customs procedures for issuing tariff concessions. The case for retaining Part II concessions will be re-considered in 1995, when the next general review of substantive tariff rates is expected.

NORWAY

Norway's Customs Tariff is based on the Harmonised System. Duty concessions are also available on certain imports. Three provisions in the Norwegian Tariff offer reduced duties on:

- basic commodities and technical assistance materials;
- liquid ethers and esters, which by denaturing or otherwise are guaranteed against being used as beverages; and
- machinery, apparatus and parts thereof, provided that similar machinery is not being manufactured locally.

These three provisions are administered by the Department of Finance. The Department can also authorise reductions in customs duties for goods under Paragraph 12.1 of the Customs Tariff's introductory provisions. These reductions may take the form of circulars to the customs authorities, letters to individual importers who have sought concessions, or by regulations.

The Norwegian Parliament also reviews customs duties annually, and some selective duty reductions are passed in the course of these reviews.

Reductions in duties for commodities and technical assistance materials are issued with end use conditions which set out the process the materials may be used in and the goods which can be produced using those materials. The same applies to a large extent to the duty reductions authorised under Paragraph 12.1 and the duty reductions passed by the Parliament during the annual review of duties.

The selective duty reductions given to basic commodities and technical assistance materials, liquid ethers and esters, and those granted under Paragraph 12.1 are currently be revised to eliminate those concessions which are no longer operative and those which do not contribute substantially to reducing the price of their end product.

SWEDEN

The Swedish Government introduces duty exemptions and concessions arising under international trade agreements and the Generalised System of Preferences by issuing ordinances. The Government is authorised to issue these ordinances under the Customs Duty Exemption, etc. Act. Concessions granted in the framework of the GATT are implemented directly in the Customs Tariff Act.

In addition to these general preferences, the Government may, on application, grant duty-free entry for goods which are not produced in Sweden. These decisions are normally introduced under an ordinance which remains valid for three years. Ad hoc decisions are also granted.

The products granted this type of duty free entry are mostly chemicals and products in the machinery sector. Normal rates of duty range from zero to 11 per cent for chemicals and from zero to 8 per cent for machinery. The average rate of duty for these goods is 3.8 per cent. The average tariff level on industrial products, weighted against imports, is 4.1 per cent.

Some of these concessions are granted with end-use provisions. If the goods imported are not used according to their end use, the importer is obliged to inform the customs authority concerned.

The total value of all imports into Sweden in 1989 was 315.061m SEK (about $A71.14m). The total value of imports entered at concessional rates of duty (duty-free) was 1.419m SEK (about $A320ÿ000), or less than half a per cent of total imports.

SWITZERLAND

Switzerland operates a system of concessional entry. Concessions are introduced by legislation, and are issued, in many cases, subject to end-user restrictions. Three broad classes of imports have been given concessions:

- embroidery;
- minerals, oils, hydrocarbons and derivatives; and
- aircraft and aircraft parts.

Imports of minerals, oils, hydrocarbons and derivatives receive concessional treatment in the form of lower rates of duty upon importation, or in the form of duty-refunds, when the imports are used according to end-user restrictions.

Imports of aircraft and aircraft parts are imported at concessional rates of duty under an international treaty covering trade in aircraft, or under duty preferences accorded to registered transport companies.

Goods to the value of SFR 82b (about $A81b) were imported into Switzerland in 1988. The value of goods imported at concessional rates was SFR 312m (about $A308m) or 0.4 per cent of total imports. The average tariff rate on all imports into Switzerland is approximately 2.8 per cent.

THE UNITED STATES OF AMERICA

The US Tariff is based on the Harmonized System, with 21 sections broken up into 97 chapters. A further section contains chapters covering special classification provisions (including end-use provisions), temporary legislation, and temporary modifications to trade agreement legislation.

The basic mechanism for special tariff treatment is a `temporary duty suspension', introduced under legislation. This used to be implemented through individual bills

introduced into Congress. But recent practice has been to accumulate proposals and append them to other legislation every two years or so. For example, under the *Trade and Tariff Act 1984*, the duties on more than 65 products were reduced or suspended, generally for a period of three years. The goods covered included, amongst others, chemicals, minerals and metals. While US tariff rates average 3 to 4 per cent, the substantive duty rates on these products are generally much higher (for example, 17 per cent on chemicals) (USITC 1990).

Duty suspensions and reinstatements are usually initiated by ad-hoc requests to Congress from US companies and generally apply to items either not manufactured in the US or in short supply in the US. The Ways and Means Committee of the House of Representatives requests the International Trade Commission (USITC) to prepare a short report on each duty suspension request, covering such aspects as US production (if any) of the item in question, trade policy implications, and the effects of the duty suspension on government revenue, consumers etc. This report is forwarded to the President, who may issue a proclamation that suspends a duty or reinstates a suspended duty, as recommended by the USITC. If the President chooses not to issue a proclamation, the reasons for the refusal are published in the *Federal Register.*

Suspensions usually apply for three years and are renewable. There are no mandated and specified exclusions.

Items for which many suspensions have been granted include:

- certain pharmaceuticals and intermediate chemicals;
- certain minerals, metals and related products;
- parts for civil aircraft; and
- farm equipment.

Some suspensions have end-use restrictions, notably on parts for civil aircraft, equipment for use on farms, and scientific instruments covered by the *Florence Agreement.*

The *Customs and Trade Act 1990* now authorises the USITC to accept petitions to introduce suspensions or to reinstate substantive duties on goods, twelve months after a bill is introduced in the House of Representatives or the Senate that would, if enacted, put into effect such suspension or reinstatement. The USITC then handles

the petition as it does the requests from the Ways and Means Committee of the House of Representatives.

Goods may also receive concessional treatment where they contain US components. Under tariff item 9802, any articles sent from the US to be further processed overseas incur duty on their landed value net of the into-store cost of their US components. Imports under this heading are mostly garments, electrical and electronic equipment, motor vehicles and office machines.

In addition, goods used in international trade may enter the US free under bond, and theatrical effects, travellers samples and items of a trivial value may be entered conditionally free of duty or may be entered subject to a reduced rate of duty.

Table G1: **Imports into the US of Articles Listed in the** *Trade and Tariff Act 1984:* **1986**

Articles	*Total Imports*	*Temporary Duty-free Imports*	*Ratio*
	US$m	*US$m*	*%*
Pharmaceuticals	651.9	31.1	4.8
Intermediate chemicals	490.2	76.5	15.6
Minerals, metals and related products	171.7	51.3	29.9
Certain radios, textile machines, and magnetron tubes	256.4	182.4	71.1
Other miscellaneous products	71.4	67.0	93.9
TOTAL	**1641.6**	**408.3**	**24.9**

Source: USITC (1990).

Appendix H: PARTICIPANTS' REQUESTS AND SUGGESTIONS

This appendix lists the participants in the inquiry and summarises their principal requests and suggestions. The appendix does not cover every point raised by participants. A fuller understanding of participants' views can be obtained by reading the submissions and the transcripts of the public hearings. All particpants who expressed a view on continuation of some kind of CTCS and / or By-law system supported their retention, except AFCO.

Participants are listed in Table H1. Those that lodged submissions or attended the public hearings are listed below the table in alphabetical order together with the summary of their requests and suggestions. Submissions are numbered in the order in which they were received. Names of participants who presented their submission at the initial and draft report public hearings are marked with asterisks and # signs respectively.

The Commission received 311 submissions to the inquiry by 11 January 1990. Of these, 40 were received in response to requests from the Commissioners at the initial public hearings, and 57 commented on the draft report.

Table H1: **Organisations which submitted evidence to the Commission**

Participant	*Submission Number*
3M Australia Pty Ltd	31
Aarque Systems Pty Ltd	56
ACI Fibreglass	47
ACI Glass and Plastic Packaging Divisions *	81
Administrative Review Council #	289, 307
Advanced Technology Laboratories	192
AF Gason Pty Ltd	4
Amiad Australia Pty Ltd	135
Ampex Australia Pty Ltd	153
Andrew Kohn	9
AS Harrison & Co Pty Ltd	171
Associated Pulp and Paper Mills, Paper Division *	116, 305
Atlas Air Australia Pty Ltd	50

+ This participant appeared at a public hearing but has not yet lodged a written submission.

3M Australia Pty Ltd
- tariff concessions be granted on a `no objections' basis; and
- the provision for revoking concessions be retained.

Aarque Systems Pty Ltd
- a chemical, raw material or product which is not available from indigenous Australian sources should not have protectionist duty applied on importation.

ACI Fibreglass

sunset clauses and end-use criteria for CTCOs be introduced.

ACI Glass and Plastic Packaging Divisions
- end-use under security concessions be reintroduced; and
- the Government meet export development costs of private exporters and provide financial assistance for high-technology advances undertaken by exporters.

Administrative Review Council
- essential parts of a legislative rule should not be contained in separate documents;
- consideration should be given to including a list of factors in the Customs Act itself to guide decision makers;
- By-laws should be subject to tabling and disallowance in both Houses of Parliament;
- all essential criteria governing the making of Determinations should be inserted into the Customs Act;
- in that event, consideration should be given to allowing review on merits of Determinations by the AAT; and
- By-laws and Determinations should be subject to external review, but not by the AAT.

Advanced Technology Laboratories
- the CTCS should not attempt to cover broad classes of goods but should be maintained focusing on particular goods;
- the CTCS should recognise differences in technology, in the product's applications, and in the requirements of different users;
- any decision to grant a CTCO should be subject to independent review;
- Government Departments should pay the same rates of duty as the private sector;
- communication between all beneficiaries of the system should be encouraged;
- requests for revoking concessions should face the same criteria and process as applications for CTCOs, except in reverse;
- the `onus of proof' should rest with the parties concerned; and
- administrative changes leading to faster decisions would be welcomed.

AF Gason Pty Ltd
- parts used in manufacturing farm machinery and tractors be accorded duty-free entry.

Amiad Australia Pty Ltd
- the CTCS be expanded to cover any imported goods which do not compete with Australian products;
- concessions be granted only where they would not have a substantially adverse effect on the market available for any Australian manufacturer; and
- decisions to grant or refuse to grant a CTCO be exposed to independent review.

Ampex Australia Pty Ltd

- the CTCS and the By-law system be required to recognise specific market segments when considering questions of competition, and to place more emphasis on the realities of the market place;
- this be achieved by placing less emphasis on function and more emphasis on the effects, if any, that the granting of a CTCO would have on Australian manufacturers' interests.

AS Harrison and Co Pty Ltd

- this review should be directed at ensuring the development of efficient internationally competitive Australian industries which are in existence now.

Associated Pulp and Paper Mills, Paper Division

- `goods serving similar functions' be retained as the sole criterion for the granting of concessions, subject to the `substantially adverse effect' and `national interest' provisions conforming with s. 8 of the Industry Commission Act, and greater use be made of these provisions by Customs/Government;
- sub section 269B(4) of the Customs Act be amended by substituting the word `competition' for the term `cross elasticity of demand' and incorporating other key definitions in the Act including those interpreted by the Federal Court;
- the Customs Act be amended to allow applications to be reworded after lodgement without the loss of their operative date;
- greater use of sunset provisions for CTCOs be considered;
- three year sunset provisions be placed on end-use Policy By-laws where goods serving similar functions are produced locally, to assess their full impact, and whether the Government's objectives are being met;
- the concessional rate of duty for Policy By-laws be set above zero where goods serving similar functions are locally produced;
- `Australian content' be raised to at least 50 per cent of works or factory cost, and `substantial process' be redefined to exclude simple conversion operations;
- all Commonwealth Departments become liable for Customs duties;
- Customs publish annual statistics showing the total quantity and value of imports under each concession to increase transparency and aid review/monitoring by local manufacturers;
- the Federal Court and Industry Commission continue to be used to review CTCS decisions;
- the framework of the CTCS be retained with the core criteria being defined in the Act by the substitution or extension of s. 269B(4) and 269B(7) with legal definitions based on some proposed guidelines, with the `goods serving similar functions' guidelines being amended slightly to reflect a more flexible approach; and
- provision for revoking CTCOs be retained.

Atlas Air Australia Pty Ltd

- those likely to benefit from the operation of the CTCS bear a reasonable proportion of the cost of its administration;
- under security provisions be reintroduced, where importers are prepared to meet the full administrative cost of such arrangements;
- the concessional entry systems not be removed as a way of introducing more pressure for further reductions in the Tariff.

Augat Pty Ltd[1]

- the basic criteria be `whether or not goods capable of performing the same function are being produced in the normal course of business in Australia';
- greater emphasis be placed on the use of `substantial process' when evaluating local content;
- a standardised form be produced to take the place of the current `free form' Market Statement;
- applications be more automatically accepted and advertised promptly to gauge industries response;
- Customs' scrutiny be limited to correctness of tariff classification and the administrative appropriateness of the wording;
- the Manufacturer's Index should be abolished;
- CTCOs be granted on a `no objections' basis;
- there be a greater balance of responsibility between the parties in relation to the `onus of proof';
- the provisions of ACN 90/5 be revoked with retrospectivity;
- `in-transit provisions' be examined to take into account binding contracts made at a time when a CTCO is in force;
- the EGS be abolished and replaced with a `national interest' test to determine exemptions from the CTCS;
- Commonwealth Departments lose their current `duty free' status;
- criteria be legislated in basic form with detailed administrative guidelines being promulgated;
- concessions be grouped under Tariff References to the Item (ie four figure) level only and product-specific concessions remain scheduled separately;
- the AAT be given the role of hearing appeals against decisions made under the concession systems;
- Tariff Concessions delegates be placed in the tariff section of each State Collectorate, or at least in Sydney and Melbourne;
- the provisions for revoking CTCOs be retained, but with users being informed before the concession is actually revoked;
- a concession be deemed to be made if Customs have not made a decision on an application within a set period after the application's initial gazettal; and
- end-use and sunset provisions be introduced into the CTCS.

Australian AMP Pty Ltd

- imports of all goods which are imported and used in manufacturing in such a way that they are irreversibly changed, and their value in this changed state exceeds their value before being so changed be entered duty-free be allowed.

Australian Aviation Industry Customs Committee

- the factors contained in the submission made by Qantas Airways Ltd be accepted as those of the Australian Aviation Industry Customs Committee;

Australian Boating Industry Association Ltd

- tariffs not apply where their removal would have no adverse effect on Australian manufacturing industry;
- there be no discrimination between industries which are entitled to use a concession;
- concessions not be restricted to manufacturing inputs;

[1] This was a joint submission with a number of other forms presented by Hudson, O'Leary and Associates.

- the EGS not be widened and there be an avenue for appeal regarding products listed in the EGS;
- there be an independent avenue of appeal, such as the AAT, for any CTCO refused by Customs;
- manufacturers opposing an application for a CTCO or seeking to revoke a CTCO be made to demonstrate capability to produce the goods in question; and
- CTCS criteria be promulgated by administrative guidelines, rather than in legislation.

Australian Chamber of Manufactures

- concessions be removed only if tariffs in a particular classification have been reduced to zero;
- the EGS be expanded to include retail consumer type products;
- continuity in the processing of a CTCO be maintained by Customs from the date of receipt of application;
- minor changes in the wording of the application not affect retrospectivity or in transit provisions;
- Customs revise the CTC1/2 forms;
- references to the AAT be on merit;
- greater attempts be made to identify local manufacturers before by-law imports are allowed;
- the Manufacturers Index be retained, be accessible by computer, and be cross-referenced to the database of the Industrial Supplies Office;
- Customs make greater use of convening meetings between opposing parties and seek the opinions of `technical expert witnesses', before making a final decision in contentious cases;
- local manufacturers be allowed only 28 days to object to an application after publication in the Commonwealth Gazette;
- a time limit of 30 days be placed on each stage in the processing of applications;
- gazettal of all applications for a CTCO be made at the time of receipt by Customs, allowing approval on a `no objections' basis;
- consideration be given to establishing an industry exchange program for Customs staff;
- in reviewing applications for CTCOs, Customs apply an objective test to determine injury to local industry (if any);
- criteria to determine actual threat to a local manufacturer be set in legislation;
- `end-use, under security' provisions be introduced in the CTCS;
- notification be required before revoking a concession in the same way that is required before making a CTCO.

Australian Coal Association

- Items 43, 45 and 47 be retained;
- Item 45 be expanded to include goods used in coal washing, preparation, blending and handling;
- `Australian content' be set at at least 50 per cent of factory or works cost;
- legislative guidelines for criteria should not be replaced by gazetted ministerial interpretative guidelines;
- `substantially adverse effect' be removed;
- automatic approval of concession applications where Customs fails to make a decision within a set period should be introduced;
- the AAT should become the major external appeal body;
- `minimum market share' should be introduced to determine which manufacturers can qualify as objectors to CTCO applications;

- Item 47 should cover components within imported goods and clear guidelines should be provided for its administration; and
- a greater obligation should be placed on Customs to initiate the resolution of disputes over specific applications.

Australian Customs Service
- legislation include administrative guidelines for the interpretation of contentious terms;
- tariff concessions be able to be written either wider or narrower than goods described in the application;
- the CTCS be independently reviewed every three to five years to ensure its objectives are still being met;
- broad ranges of goods made in Australia, especially those which are not inputs to industry, be specified in the EGS;
- retrospective time limits be placed on CTCOs to curb the size of duty refunds which may be generated where the application process becomes protracted;
- these time limits be waived in the case of capital equipment;
- legislation be introduced to ensure that duty paid between when a CTCO is revoked and when the outcome of an appeal under ADJR against that revocation is known, not be refundable;
- charges not be introduced for processing applications for CTCOs;
- concessional entry of high technology goods be provided by a different mechanism;
- duty rates on goods entered under CTCOs not become substantively duty-free after a specified time period;
- clear guidelines be developed on the extent to which market share should bear on a decision to grant a CTCO;
- sunset provisions not be introduced for CTCOs;
- any end-use concession should be integrated with the CTCS to the extent that an application under the CTCS satisfies the criteria except that there may be an Australian capability and that the local manufacturer has no objection to a concession being granted;
- clear policy objectives of any future concession system be issued, supported by a simple and transparent administrative framework;
- the policy objectives of `national interest' be re-examined by the Government;
- guidelines be provided for periodic evaluation of the By-law system;
- administrative procedures concerning By-laws be streamlined, and that wordings/intentions of By-laws be clarified;
- Items 5, 6 and 12 be removed;
- Items 14 and 22 be repealed, and goods imported under these Items be considered for entry under the CTCS;
- Item 18 be amended to contain an `as prescribed by By-law' criterion, and a definition of `specific warranty';
- Item 19 be amended to contain an `as prescribed by By-law' criterion, and a definition of `being goods the identity of which has not been altered since the date the goods were exported from Australia';
- Item 20 be amended to contain an `as prescribed by By-law' criterion, and a by-law be written to this Item to define `altered identity';
- guidelines be developed to define terms used in Item 23;
- Item 27 be reviewed, with a view to cancelling it;
- definitional guidelines be developed for Item 28B;
- Item 31 be restricted to the goods which were specifically intended by the Government to receive concessional entry, and that other goods currently entered under this Item be considered for entry under the CTCS;

- all By-laws expressing dollar values be regularly reviewed;
- the Government's intention regarding Item 42A be clarified, and Item 42A be rewritten if necessary;
- Items 101 to 105 of the Supplementary Provisions be moved to Schedule 4 to replace Item 4;
- Item 106 be moved to Schedule 4;
- Item 111 of the Supplementary Provisions be retained; and
- Items 112 and 113 of the Supplementary Provisions be deleted.

Australian Electrical and Electronics Manufacturers' Association Ltd and Australian Electronics Industry Association

- the CTCS be retained while broad based tariffs continue to apply;
- the Customs Act be amended to reflect the intention that a CTCO be granted in cases where there is no substantially adverse effect for local manufacturing;
- `substantially adverse effect' be defined in terms consistent with those used in anti- dumping legislation;
- `national interest' provisions be provided to allow CTCOs to be granted where there would be a clear net gain to the community overall;
- Customs should be able to widen the description of the particular goods with consent from local manufacturers or to narrow the description with consent from the importer without affecting an application's operative date;
- an appropriate appeals process along the lines of the Anti-Dumping Authority be established;
- appropriate lodgement and revocation fees should apply to CTCOs; and
- the provision to revoke CTCOs should be retained.

Australian Mining Industry Council

- all industry assistance be removed via a continuing program of phased reductions;
- a mineral processing policy by-law be established to cover all mineral processing beyond the current mining Policy By-law and covering all operations associated with industries covered by the mining and mineral processing reference currently before the IC;
- all CTCOs and By-laws be `bound';
- `Australian content' be raised to at least 50 per cent of works or factory cost;
- `substantial process' be more stringently interpreted to ensure that simple conversion operations are excluded;
- `market share' be adopted as a criterion for determining potential objectors to applications for CTCOs;
- an efficiency review of how the tariff relief mechanisms are administered be conducted by external consultants with expertise covering legislative, tariff and management techniques;
- the EGS be extended to cover all goods not used as industrial inputs, if the current relief mechanisms are to be minimised for reasons of administrative cost;
- the duty savings that have flowed from tariff concessions be established;
- where it is not possible to identify goods without end-use criteria, a mechanism be available whereby the overall national interest can be considered in extreme cases;
- this `national interest' provision could be incorporated into the concession criteria, but should preferably be a criteria for establishing Policy By-laws;
- such a provision be subject to ministerial approval, and be used only on the rare occasions where a significant detrimental effect on the Australian economy is expected; and

- if Customs fails to make a decision on an application for a CTCO within a prescribed period, then the application should be automatically granted as a CTCO.

Australian Paint Manufacturers Federation Inc.
- an inquiry be held into the ways and means of re-establishing an end-use By-law system to be administered at a departmental level.

Australian Paper Manufacturers
- additional definitions be included in the current CTCS and By-law system frameworks;
- administrative guidelines be reduced to a minimum;
- concessions continue to be granted even if the general rate is low;
- `substantial process of manufacture' be defined and `Australian content' be increased to 50 percent of factory or works cost;
- greater `onus of proof' should be placed on the domestic industry where it claims the capability to manufacture in the normal course of business;
- Policy By-laws not be promulgated without a full public inquiry by the IC;
- the current review bodies of the Federal Court and the Industry Commission be retained;
- greater use be made of sunset provisions for certain CTCOs;
- the EGS be removed;
- CTCOs and By-laws not be transferred to Schedule 3 of the Tariff;
- official statistics be published to monitor compliance with certain concessions; and
- duty forgone under the CTCS not be regarded as potential revenue.

Australian Petroleum Exploration Association Ltd
- `supply shortfall' be recognised as a basis for concession;
- goods entered under the CTCS and the By-law system be limited to capital equipment and inputs to further production;
- terminology used in the criteria of the systems be simple, unambiguous and defined in greater detail to ensure the systems fully achieve their aim;
- the criteria be changed to reflect lead times for manufacture and delivery;
- local manufacturers be required to prove their ability to supply goods specified in a CTCO;
- Policy By-law 9003520 be interpreted as `applying to equipment and materials used in work downhole of the well-head assembly in the development of all petroleum wells, regardless of when that work is performed';
- the end-use security system be abolished, or at the least, be better administered;
- the CTCS criterion of `goods serving similar functions' should be reviewed to allow technologically superior goods to have access to concessional importation;
- `Australian content' be increased to 50 per cent of total manufacturing costs, or 25 per cent of direct materials and direct labour costs only;
- Policy Items should have an explanation of the Government's objectives;
- Determinations under Item 43 should continue to be issued in their existing terms; and
- the existing Item 22 By-laws should remain and Customsfl APEA guidelines should be issued to cover `developments' in the petroleum industry.

Australian Pharmaceutical Manufacturers Association Inc.
- tariff concessions on machinery, materials and equipment used in the manufacture of ethical (prescription) pharmaceuticals be retained; and
- the Commission consider the impact of removing tariff concessions on price regulated industries.

Australian Sugar Milling Council
- the notion of items which perform similar functions be carefully considered; and
- all areas where a ctco could apply be investigated; and
- locally produced goods which are claimed to be substitutes for imported goods be tested to substantiate the claim, before gazetting a CTCO or revoking a CTCO on the basis of that claim.

Australian Swagelok Pty Ltd
- an across the board charge of 2 per cent on all imported products be introduced to meet the cost of providing protection against illegal imports.

Australian Synthetic Rubber Co Ltd
- `end-use under security' By-law determinations be introduced; and
- the provision for revoking CTCOs be retained.

Australian Vice Chancellors' Committee
- Item 14 of Schedule 4 be retained and extended to cover materials and components used for instructional purposes;
- the Commission's recommendation concerning Policy Items should be broadened to encompass Government policy generally rather than industry policy specifically; and
- an objective of the import concession system be `the removal of barriers to the provision of the educational and research infrastructure necessary to create the development and growth of Australian industries'.

Authentic Interiors
- a concessional clause be introduced to cover items which pose no threat to local manufacture and improve the intrinsic value of the goods to which they are applied.

B & B Billiards Pty Ltd
See Augat Pty Ltd

Bayer Diagnostics Pty Ltd
- Customs not be able to revoke CTCOs;
- an arbitration style of revocation procedure be adopted to ensure active participation of all interested parties; and
- the AAT be given powers of arbitration where all parties cannot agree on a particular decision.

BCS Photographics Pty Ltd
- revocations be more closely administered by Customs;
- consumer goods not be included in the EGS; and
- the `market' test be refined.

Bearing Association of Australia Incorporated
- the core criteria relating to the CTCS be comprehensively defined, be given specific legislative force and be removed from the discretionary interpretation of administrators;
- `Australian content' be raised to at least 50 per cent of works or factory cost;
- the specified manner of determining factory or works costs be included in the Customs regulations;
- the onus of proof be equally incumbent on the objector when a request for a CTCO is disputed, and when an existing CTCO is notified for revocation; and
- the appeal mechanism be amended so as to permit disputes to be taken before the AAT.

Belltyre Wholesale
- concessional entry for certain tyres and tubes for which there are no locally manufactured alternatives be retained.

BHP Steel Group
- `Australian content' be left at 25 per cent of works or factory cost, and the substantial process provision be retained;
- firm Order in Transit provisions apply to the revocation of any concessional item;
- end-use, fall-short, and sunset provisions for CTCOs be introduced;
- a suitable transition period be introduced, if the CTCS and the By-law system are terminated, and•the revenue raised by abolishing the systems be directed not to consolidated revenue, but to the development of Australian industry;
- concessional entry for imports which are designed to develop export market production be maintained;
- the provisions for revoking CTCOs should be retained, and the MTIA's proposals for making the system more transparent should be adopted; and
- an application be deemed to be granted after 60 days if no decision has been made.

Bilsom Group
- the administration of the CTCS be reviewed;
- provision be made for independent review of decisions; and
- `Australian content' be raised to at least 50 per cent of works or factory cost.

Bioclone Australia Pty Ltd
- CTCOs should not be granted to importers on the basis of the technology used where there is a product available from an Australian manufacturer for measuring the same substance;
- duty-free entry for raw materials which are not available in Australia should be retained; and
- Item 1 should be repealed.

Boral Elevators
See Associated Pulp and Paper Mills, Paper Division, and
- the EGS be removed, if the Government accepts the Federal Court's interpretation of s. 269B(3) and (4), and the general principle that consumer goods be included in the CTCS.

Boral Resources Ltd
- the CTCO on Michelin earthmover tyres be retained.

BP Australia Ltd
- general tariffs, the CTCS, and the By-law system be removed;
- alternatively, the CTCS and By-law system be abolished, with an offsetting across-the-board tariff cut;
- if these cannot be achieved, the CTCS and Bylaw system be retained, provided:
    - the application process is simplified and shortened;
    - the selection criteria is made less ambiguous and is made more flexible to handle new technologies;
    - the selection criteria takes account of product quality, safety specifications, delivery times, and specific industry needs; and
    - the onus of proof for refusing a CTCO is placed on local manufacturers to substantiate a product's adverse effects.

Brently Engineering Pty Ltd
See Augat Pty Ltd.

Bristile Ltd
- the removal of all concessional entry provisions after the current program of tariff phasing ceases in 1992.

B Seppelt & Sons Ltd
- decisions made by Customs be reviewed and, where appropriate, be changed by the AAT;
- ACN 90/5 be cancelled; and
- the Minister not be able to ultimately decide disputes.

BTR Nylex Ltd
- concessions qualified by `end-use' be introduced; and
- the status of certain developing countries be reviewed.

Calsonic Australia Pty Ltd
- Item 43 of Schedule 4 of *the Customs Tariff Act 1987* be retained;
- the Motor Vehicle Administration Scheme continue;
- the criteria for the concessions systems remain as is, with the addition that goods be compared on a level and equitable technological basis;
- guidelines for the CTCS be legislated and incorporated into the Customs Act;
- penalties be imposed on companies who oppose applications for CTCOs and who then fail to deliver the goods described in the applications after receiving firm orders;
- Customs should be free to expand `particular goods' to a class of goods when granting a CTCO, but not to do so if it would result in refusal to grant the Order on that basis; and
- `Australian content' should be raised to 50 per cent of factory cost

Chambion Hosiery Pty Ltd
- Item 40 (B), dealing with raw materials for use in the manufacture of products.

Chemical Confederation of Australia
- new administrative measures, including short time limits on each stage of the application process, be introduced to speed up the processing of applications for concessional entry of raw materials and capital equipment;
- greater use be made of meetings of opposing parties; and
- `end-use, under security' concessions be re-introduced.

Chemical Importers and Exporters Council of Australia
- simplicity should be a stated goal of any revised system;
- concessional rates of duty continue to be zero;
- administration be improved to minimise delays in processing applications;
- `end-use' concessions be introduced;
- `elasticity of demand' be the sole test for granting concessions;
- a simple arbitration system within Customs should be adopted;
- definitions of `local manufacturer' used in the CTCS be drawn from GATT definitions;
- the AAT not be used as a review body for the CTCS; and
- `short-fall' By-laws be introduced into the By-law system.

Chemplex Australia Ltd
- the CTCS be modified to accommodate specific end-use provisions; and
- plastics be included in the EGS if end-use provisions are not introduced.

Civil Aviation Authority
- `Australian content' be increased to 50 per cent of factory cost; and
- CTCOs remain valid for a minimum period of two years from the date of promulgation.

Clark Equipment Australia Ltd
- the CTCS be retained, at least until all tariffs are reduced to level of 5 per cent, and the impediments attributable to excessive government imposts have been properly addressed.

Clyde Industries Ltd
- the concessional rate of duty continue to be zero;
- CTCOs be granted if there are no objections (including third party objections);
- the procedure for examining applications for concessions be based on current antidumping procedures, including:
    - prescribed time limits for the determination of applications;
    - holding meetings of parties in cases of disputes;
    - the collection and analysis by the administering body of adequate factual information;
    - the publication of guidelines to be followed by administering staff; and
    - independent review of decisions, with disputes over CTCOs being finalised in the AAT, or other court of competent jurisdiction.

Co-operative Consulting
- the Commission consider some more effective mechanism than exists at present for the regular review of By-laws.

Coal and Allied Operations Pty Ltd
- the criteria `significant cross elasticity of demand' be replaced by criteria similar to `material injury' provisions of the *Customs Tariff Anti-Dumping Act 1981* s. 5A(1);
- concessions be revoked only when there is evidence of `material injury';
- decisions not to grant concessions be subject to independent review, with the reviewing authority having the power to substitute their decision for the original decision;
- the By-law for export (TEXCO) scheme be expanded to include drawback of a quantitative proportion of the duty paid on imported machinery used in production of exported goods;
- an `end-use' by-law for goods used in the manufacture, repair or maintenance of machinery used in mining be introduced;
- the criteria for Schedule 4 By-laws be consistent with Australia's obligations under international agreements, and be taken to include matters in the national or public interest, in respect of specific industry sectors or industrial pollution control equipment;
- the EGS be revoked; and
- no fee be charged for CTCO applications, but that a fee be payable for applications to review decisions.

Colan Products
- `shortfall' and `end-use' By-laws or CTCOs be introduced;
- By-laws be product specific and have a finite life;
- the decision to enact a By-law be by ministerial determination after reference to the IC;
- the concessional rate of duty be zero;
- the `onus of proof' remain with the importer;
- CTCOs operate until there is a locally produced product serving a similar function;
- goods on the EGS be amended to allow for changes in technology and for the entry of other Australia producers;
- `Australian content' be left at 25 per cent;
- By-laws have restrictions to prevent stockpiling of imports;
- the TEXCO scheme be retained;
- CTCOs be easily revokable;
- the Government not reduce assistance to export orientated industries; and
- industry policy decisions be open to public enquiry.

Commercial Customs Services Pty Ltd
- the existing legislation and criteria be made more concise and actual;
- the EGS be removed;
- sunset provisions apply only if justifiably requested by a local industry;
- no general concession be available to any Commonwealth Department or Institution;
- local producers pay $500 a year to be listed on the Local Manufacturers' Index, and thereby qualify as objectors to concession orders, or to seek revocations of existing concession orders;
- an application fee of $250 be imposed on applicants for concessions; and
- decisions on contentious concession orders be referred to the AAT.

Confederation of Australian Industry
- the concessional rate of duty be zero;
- sunset provisions apply to Tariff Concessions;
- the Tariff be reviewed to incorporate in it long standing CTCOs at a zero substantive rate of duty;
- Item 43 be retained;
- updating of the Manufacturers Index and the publishing of CTCOs be sub-contracted out to a major directory organisation, and both be placed on a real-time on-line Viatel/discovery system;
- the Minister approve or reject applications for CTCOs, once the primary criterion of `whether the goods are available from Australian sources' has been assessed;
- the criteria `goods serving similar functions', `capable of being produced in Australia', and `substantially adverse effect' be terminated.

Confederation of Western Australian Industry
- the Government's guidelines for the interpretation and use of `substantially adverse effect' not be used in any changes to current legislation;
- the EGS be retained; and
- provisions for revoking CTCOs be retained.

Connor Anderson Customs Pty Ltd
- an application's effective date be retained when the wording of an application is changed;
- the `onus of proof' rest equally with applicants and local manufacturers;

- identifiable dedicated parts for goods entered under CTCOs also receive concessional treatment on entry;
- Customs' decisions on applications be independently reviewed by the AAT;
- CTCOs not be granted indefinitely;
- the procedure for revoking CTCOs follow a similar procedure as applications, but in reverse;
- legislative guidelines not be replaced with administrative guidelines; and
- `Australian content' be increased.

Consumer Electronics Suppliers Association

- `exemption' or `removal' be used in place of `concession' in the changed legislation;
- section 269C(1) of the Customs Act be amended to allow concessions to be granted where:
  - goods that compete in the market for the particular goods are not produced in Australia or are capable of being produced in Australia by any person in the normal course of their business; and
  - where although there are goods produced in Australia or are capable of being produced in Australia by any person in the normal course of business which compete with the particular goods, there would be a net gain to the community from a duty concession;
- sections 269B(5) to (8) of the Customs Act 1987 be retained;
- the law be amended to permit an applicant's words to be:
  - widened only with the local industry's consent, and
  - narrowed only with the applicant's consent,

  while preserving the original application date;
- only those goods which fit the description in the application be considered as competing with those goods;
- the regulations be amended to ensure the questions asked for applications conform with the definitions and the criteria in the Act under which Customs decides whether a concession is made;
- Customs inform all interested parties in writing of their decisions to make, refuse or revoke a concession, to refuse a revocation, and to extend or refuse a time limit extension and include detailed reviewable reasons for their decisions;
- the `onus of proof' be shared equally among all parties;
- concessions not be denied on grounds of `national interest';
- if `national interest' remains, it be used as grounds for granting, as well as refusing a concession, and the power to use it be returned to the Comptroller;
- specific clear legislation be introduced to:
  - allow applications to be immediately gazetted, after preliminary checking by Customs for compliance with regulations, wording, adequacy of circularisation to local industry and if a concession already exists;
  - allow later changes to goods descriptions to be immediately gazetted;
  - require importers, local industry and any others to lodge submissions within 3 months after an application is gazetted;
  - allow the immediate gazettal of a concession when all local manufacturers have responded to the application and have supported it's being made;
  - allow the immediate gazettal of a concession 3 months after gazettal of its application, if Customs receives no objections from local manufacturers;
  - require Customs to call meetings of parties when local industry questions the making of a concession;
  - require Customs to make or refuse a concession, or to have referred the application to the Industry Commission within 3 to 6 months after first gazetting the application;

  - allow this time to be extended by Customs and reviewed by the AAT in the same manner as income tax objection and appeal times are;
  - require Customs to give reasons to importers, local industry and other interested parties for the extension;
  - require every decision made by Customs or the Industry Commission to be gazetted;
- applicants for concessions and revocations be required to pay a non-refundable $5000 lodging fee on application;
- procedures and criteria for revoking concessions be made identical to that for applications;
- the Anti-Dumping Authority be expanded to handle appeals against Customs decisions on both applications and revocations;
- all decisions concerning tariff concessions and revocations be subject to judicial review;
- Customs develop new criteria to overcome the costs of compliance of separate shipping;
- Commonwealth Government Departments and Instrumentalities not be exempt from the tariff;
- criteria for the CTCS should be placed in legislation;
- appeals on merit against Customs decisions on CTCO applications be made to a more specialist body than the AAT;
- CTCS forms be set out in the Customs Act, and should require respondents to give reasoned rather than one-word answers;
- the Commission be specific in all its recommendations and specify the actual words of any legislative changes made;
- if `cross elasticity' is removed from the criteria, then section 269B(4) should be changed to reflect that goods are taken to serve similar functions if the goods are available for sale throughout Australia and there is a significant part of Australia in which there is significant price competition in the market for the goods;
- `the market' and `price competition' be defined in the legislation; and
- consideration be given to deleting all references to `goods serving similar functions' in the legislation and replacing them with `goods competing in the same market'.

Containers Packaging
- the CTCS criteria be reduced to a single criterion -- `material injury to a local producer';
- objections be considered at meetings of parties chaired by DITAC;
- administrative guidelines be created which reflect the realities of international equipment manufacture and measures be taken to streamline and shorten the application process.

Continental Imports Pty Ltd
See AS Harrison and Co Pty Ltd.

Craig and Seeley Sales Pty Ltd
- the CTCS be restricted to imported inputs and machinery for use in further manufacturing or value adding activities only, where these items are not produced in Australia;
- final consumption goods be included in the EGS;
- a review mechanism be introduced to allow interested parties to request that specific material inputs be placed on, or removed from, the EGS;
- `Australian content' be raised to between 30 per cent and 40 per cent of `factory cost', being rigourously applied to all material inputs used in the subject goods;

- `factory cost' be fully defined, either in legislation or guidelines, and
- there be no limits placed on the value or duration of concessions obtained under the CTCS;
- duty not be imposed on an imported material or component for which there is no local production;
- provisions for revoking CTCOs be maintained;
- applications for revocation should be judged against the same criteria and guidelines as apply in considering an application for a concession;
- there should be notice of intent to revoke a concession;
- there should be a right of appeal before a revocation becomes effective;
- the guidelines for interpreting `capable of being produced in the ordinary course of business' be amended to reflect market issues; and
- Customs use a `meeting of parties' approach to facilitate the resolution of disputes during the early stages of the application process.

Cramb Consulting Group Pty Ltd

- minor changes be made to the CTCS legislation;
- Government be allowed to consider requests for Policy By-laws without first seeking an Industry Commission report on such requests;
- local industry have the responsibility to provide adequate information in response to applications for concession orders;
- the Customs Act be amended to allow the wording of applications to be revised without loss of their operative date;
- Customs receive adequate staff and funding to enable the concession systems to be administered effectively and efficiently;
- the instructions to local manufacturers, contained in Customs form Approach to Australian Manufacturers (CTC2), with respect to competition between goods in the market be clarified;
- local industry be required to substantiate requests for revocation with an adequately documented case;
- the issues raised by the Federal Court in the judgement in the Sandvik case be resolved as a matter of urgency;
- the interpretation of `significant', as used in s. 269B(4) of the Customs Act, be based on the consideration of cross elasticity of demand being `not insignificant';
- all relevant references to the need for the Comptroller to be satisfied be removed from Part XVA of the Customs Act;
- appeals be allowed to the AAT on all decisions taken, other than those relating to matters of law;
- the Industry Commission be removed as an avenue for appeal against decisions taken with respect to tariff concession applications;
- the Industry Commission address the anomaly of increases in duty on fusible linings used in shirt production, in five successive 8 percentage point steps, under By-law 8940014;
- delivery, quality and price be used to interpret `normal course of business';
- `insignificant market supply' be used to determine whether local manufacturers are eligible to oppose applications for CTCOs;
- the facility to revoke CTCOs be retained;
- there be no provision for the `deemed' refusal of applications for CTCOs;
- if a deeming provision is introduced, applications be deemed to have been approved unless a decision to refuse the application is notified within 60 days;
- no time limits be placed on the receipt of refunds of duty following the approval of concession orders;

- any review or appeal in relation to an application for or revocation of a CTCO consider only the information available when the relevant decision was made;
- the Bureau of Industry Economics conduct all inquiries which precede decisions relating to Policy By-laws;
- the concept of `significant competition' be incorporated as the core criterion in Part XVA of the Customs Act; and
- the words in box 5.6 of the draft report be revised to those actually used by Cramb, or the reference to sourcing from Cramb's submission be removed.

Crown Equipment Pty Ltd
- end-use under security by-laws/provisions be reintroduced.

CSR Hebel Australia Pty Ltd
- the concession systems be expanded to provide concessional entry for capital equipment imported for use in connection with the establishment of a viable manufacturing industry for Australia;
- wherever an importer has genuinely sourced whatever he could locally, a single concession be granted for the balance of the equipment, and this be achieved by extending the provisions and the philosophy behind Item 43 to the consideration of applications for CTCOs on an entire plant or sub assemblies of that plant.

Cummins Diesel Australia
See Boral Elevators.

Customs Agents' Association of NSW
See Augat Pty Ltd.

Customs Agents' Institute of Australia and Customs Agents Federation of Australia
- the CTCS be made more flexible to address particular goods within classes of goods at the discretion of the applicant;
- Customs administer the CTCS in a manner consistent with the legislation;
- decisions made under the CTCS be independently reviewed by the AAT or a similar independent authority;
- the current modus operandi be changed to reduce costs;
- the apparent problems with `effective dates' be solved by administrative change or, if necessary, legislative change;
- the `onus of proof' be shared equally between all beneficiaries; and
- all Schedule 4 Items be retained;
- legislative guidelines not be replaced with administrative guidelines;
- `Australian content' be raised to 50 per cent of factory cost;
- CTCOs continue to be revokable;
- applications not be deemed to be refused if Customs fails to make a decision on them within a set period after lodgement;
- the rewording of an application not affect the application's operative date;
- CTCOs be deemed to apply 180 days before gazettal; and
- decisions on CTCO applications be reviewed by the AAT.

DCE Vokes Pty Ltd
- `Australian content' be raised to 50 per cent of works or factory cost;
- the `onus of proof' be shared equally between all beneficiaries of the system; and

- decisions not to grant CTCOs be independently reviewed;

David J Fuller
- sub-sections 269C(1), (1A) and (1B) should be amended to transfer the responsibility for identifying `goods serving a similar function' from the Comptroller to the local industry and to allow `no objections' to be grounds for granting a concession under these sub-sections; and
- consideration be given to amending s. 269E(1) and (2) to enable non-objection to be the grounds for assessing whether an order should or should not be made in terms of these sub-sections.

Davies Ferguson Pty Ltd
- the CTCS and the By-law system be implemented in a way that ensures the tariff on inputs to Australian manufactured goods are not dutiable at a higher rate of duty than the tariff on the finished product itself, whether or not the inputs are currently manufactured in Australia;
- user related CTCOs be introduced;
- the test for determining whether goods `serve similar functions' be made on a commercially realistic basis;
- the application and utilisation by the manufacturer of a specific product and not just the end function of that product be taken into consideration;
- in transit provisions be extended to reflect a commercially realistic time frame;
- users of revoked CTCOS be allowed to use revoked CTCOs at a pro rata rate based on their imports over the last twelve months, of three months for every two years the CTCO was in existence;
- local manufacturers seeking to revoke a CTCO be required to first approach users of that CTCO to prove they are capable of manufacturing the goods in question in the normal course of business;
- the review mechanism for CTCOs be clearly defined by the IC, to allow appeal to the courts, not only on matters of law, but also on the merits of the decision;
    - if that does not happen, that an independent tribunal be authorised to consider the questions of fact in a dispute, as well as any matters of law.

Deloitte Trade & Customs Consultancy Pty Ltd
- the EGS be removed, but if the EGS is retained, then a process for removing goods from the EGS be introduced when it can be demonstrated that markets for local products are adversely affected by their retention on the EGS;
- published guidelines outlining this process be devised;
- Excise By-laws and regulations be matched with corresponding Customs By-laws or concessions and vice versa;
- the resolution of disputes be modelled on Anti-Dumping Authority procedures;
- `Australian content' be raised to 50 per cent of factory cost;
- end-use concessions be introduced into the CTCS; and
- the material in Box 5.6 of the draft report, which was about PET resin, be deleted.

Denis M Gilmour and Associates
- `Australian content' be extended to `Australian and New Zealand content'.

Diverse Products Ltd
- the AAT be given the authority to review and decide on Customs' deciusions;
- ACN 90/5 be cancelled to minimise uncertainty in the application process; and
- the current situation whereby the Minister would appear to be the ultimate decision maker in matters of dispute should be changed.

Dow Corning Australia Pty Ltd
- concessional entry be free of customs duty; and
- existing CTCOs which cover silicone raw materials and certain silicone finished products be retained.

Du Pont (Australia) Ltd
- the concessional rate of duty continue to be zero;
- Customs be responsible for administration of the CTCS on a non-objection basis;
- a business unit within DITAC have responsibility for disputes, and these disputes be subject to conclusion in the AAT or other court of competent jurisdiction;
- specific time limits be introduced for application processing and review of disputes;
- there be an equal onus of proof on manufacturers and importers in the resolution of disputes;
- `Australian content' be raised to 50 per cent of factory cost; and
- end-use concessions be re-introduced without security provisions.

Dureau Tools Pty Ltd
- `Australian content' be raised to 50 per cent of factory cost;
- concessions be granted retrospectively to cover application processing time; and
- a decision not to grant a CTCO be subject to independent review.

Electrolux Pty Ltd
- the existing EGS be retained and an appeal process for removing products from the EGS be introduced;
- an independent avenue of appeal be introduced for applications for CTCOs refused by Customs; and
- CTCOs be allowed where the applicant demonstrates that the concession would not have a substantial adverse effect on the market for Australian produced goods.

Electric Lamp Manufacturers (Aust) Pty Ltd
- the CTCS be confined to industry inputs, whether they be materials or capital inputs;
- `Australian content' be raised to 50 per cent of factory cost; and
- end-use under security by-laws be reintroduced, with the criteria promulgated in administrative guidelines rather than in legislation.

Email Ltd
- concessions be made non-revokable; and
- a common external tariff with New Zealand be introduced under ANZCERTA.

Ernst & Young
- concessional rates be maintained at zero;
- the EGS be retained as part of the legislation;
- Commonwealth Departments remain exempt from customs duty;
- sunset provisions not be introduced;
- the administration of the system be reviewed to remove perceived ambiguities;
- concessions remain separate to the tariff;
- the CTCO application process be reviewed;
- the definition of `Australian manufacturer' be reviewed;
- a greater burden be placed on local manufacturers in relation to objections lodged against concession applications, requests for revocations, and maintenance of the Manufacturers' Index;
- appeals against decisions be referable to the AAT;

- Customs not be given any further administrative discretion in interpreting the CTCS criteria;
- any amendments to legislation concerning the CTCS be reviewed by various industry sectors before its enactment;
- `substantially adverse effect' be retained as a criterion in the CTCS and legislative guidelines be introduced to assist Customs in interpreting and applying it;
- CTCOs continue to be revocable, with a period of notice before gazetted revocations take effect;
- no restrictions should be introduced to limit refunds of duty when a CTCO application succeeds; and
- the Commission should consider the experience of New Zealand in creating a single publication of the Tariff, policy by-laws and CTCOs.

ER Squibb & Sons Pty Ltd

- `Australian content' be raised to 50 per cent of factory or works cost;
- concessions be granted unless a manufacturer can substantiate that such a concession would have a `substantial adverse effect' on his market;
- an independent forum for the review of decisions on merit and for the resolution of disputes be introduced;
- State and Federal Government Departments not be treated any differently to the private sector;
- communication between all beneficiaries of the system be encouraged;
- requests to revoke CTCOs follow the same process as applications for CTCOs, but in reverse;
- the `onus of proof' rest equally with the parties concerned; and
- administrative changes be made to encourage faster decision making.

Esso Australia Ltd

- the CTCS be retained until general tariff rates reach two per cent;
- the `onus of proof' in determining local manufacturers' capabilities and capacities to produce be shared by applicants and objectors;
- users have the right to appeal against revocations before revocations are enacted;
- public guidelines detailing the basis for all decisions affecting the granting and revocation of CTCOs and By-laws ce created;
- Customs' central office be responsible for all ultimate decisions regarding concessional entry; and
- applicants have the right to seek an independent review, via the AAT, of all Customs decisions made regarding an application for a CTCO.

Eveready Australia Pty Ltd

- the present core criteria be retained;
- a Tariff Concessions and By-law Authority reporting to the Minister for Industry, Technology and Commerce be established;
- specific guidelines be included in the legislation enacting the Authority;
- in the event of objections to an application, the matter be referred to the Authority within 45 days of receipt of the objection. The Authority be required to inquire and report to the Minister within 60 days, during which time it be required to hold public meetings of parties, and also be required to publish its findings;
- `Australian content' be raised to 50 per cent of factory or works cost;
- CTCOs continue to be available for all categories of imported goods where the core criteria are satisfied; and
- Customs be required to process applications within 60 days of their receipt provided that all the relevant data has been submitted by the applicant.

Exicom Australia Pty Ltd
See AS Harrison and Co Pty Ltd, and
- CTCOs which have been in existence for five years be absorbed into the Tariff; and
- the criteria for assessing applications for CTCOs be reduced to `whether or not goods serving similar functions are produced in Australia'.

Federal Chamber of Automotive Industries
- the operation of By-law Item 41A not be reviewed.

Ferro Corporation (Australia) Pty Ltd
- the concessional rate of duty continue to be free;
- concessions be granted if there are no objections, and objectors be required to provide reasons for objections;
- a system be adopted of determining applications for concessions similar to those provided by anti-dumping procedures;
- detailed and substantiated costings of goods be provided by the applicant showing the infeasibility of using the Australian made substitute;
- any disputes be resolved through a delegate from Customs, an independent agency, the Minister or ultimately the AAT or other Court of competent jurisdiction; and
- a reasonable time limit be imposed on all parties involved in the application process.

Fiatagri Australia Pty Ltd
See Augat Pty Ltd.

Fliway Tariff & Trade Services Pty Ltd
- the legislation be amended to allow an application to be reworded after lodgement without loss of its operative date;
- more detailed investigations be made to verify the validity of local manufacturers requests for the revocation of CTCOs;
- a simple system of Industry Commission reviews for disputed applications be introduced;
- the Commission's draft recommendation that `the legislation should be amended to remove provision for revocation of CTCOs' be amended to read `the legislation should be amended to remove the provision for revocation of CTCOs except where the revocation is necessary to allow the amendment of CTCO wordings to reflect the original intention of the application';
- the Commission's draft recommendation that `a CTCO application should be deemed to be refused if a decision by Customs on the application has not been made within 60 days of its initial gazettal' not be carried into the Commission's final report;
- the Commission consider recommending that Customs be obliged to answer correspondence on an application within a specified period of time and be obliged to answer status inquiries if no response is received within that period; and
- the Commission's draft recommendation that `the Commission further recommends that Customs publish, to the extent possible, all tariff and quota rates and levels, substantive, preferential or concessional, in a consolidated form in sequence according to Australia's Harmonised Tariff System. Additional concessions should be published as a part of the same document, so that, at any time, an interested person can ascertain as simply as possible the duty payable on particular goods' not be carried into the Commission's final report.

Ford Motor Company of Australia Pty Ltd
- the EGS be continued and be regularly reviewed by Government and Industry;

- the AAT be used to resolve disputes relating to CTCO application;
- proposed revocations be gazetted;
- importers be able to apply for an extension of in-transit provisions; and
- Commonwealth Departments not be exempted from duty liabilities and general concessions not be extended to State and local Government agencies.

Gadsden Rheem
- the Government remain free to introduce special arrangements applying to imports as part of an overall assistance policy for a particular industry.

Garlock Pty Ltd
- `Australian content' be raised to 40 per cent of factory or works cost.

Gibbens Industries Pty Ltd
- Item 21 be retained;
- `Australian content' be raised to 40 per cent of factory cost; and
- administrative decisions be subject to independent review.

Greencorp Magnetics Pty Ltd
- the present CTCS be widened to benefit exporters and manufacturers who add substantial value.

Heavy Engineering Manufacturers' Association
- the wording `not capable of being produced in the normal course of business' be retained as one of the criteria in the CTCS;
- the requirement for importers requesting CTCOs to send CTC2 forms to known manufacturers of the goods in question be retained;
- `Australian content' be retained at 25 per cent of factory or works cost, with the words `significant physical change in the goods' to be used as a guide; and
- the broad, open-ended nature of Items 22, 45 and 46 be addressed.

Hitachi Sales Australia Pty Ltd
- applications for CTCOs be considered as relating to particular goods, as defined by the applicant, irrespective of classification in the Customs Tariff;
- if Customs considers a case exists for the making of a concession for classes of goods, it be required to utilise the provisions of s. 269J(2) of the Customs Act and deem that an application has been made for that class of goods;
- CTCOs be limited to specified tariff classifications for administrative purposes, with the proviso that if, at any time and for any reason the classification of the particular goods for which the order was made is ruled to be incorrect, a new order will be made operative from the same date as the incorrect order; and
- an Item be introduced into Schedule 4 of the Customs Tariff, allowing for declaration that a specified rate of duty, less than the rate applicable to prescribed goods in Schedule 3 of the Tariff, should apply to those prescribed goods.

HJ Heinz Company Australia Ltd
- the AAT be given the authority to review and decide on Customs' decisions;
- ACN 90/5 be cancelled to minimise the uncertainty in the application process; and
- the Minister no longer be given the role of ultimate decision maker in matters of dispute.

Hudson, O'Leary and Associates Pty Ltd
See Augat Pty Ltd.

Industrial Supplies Office (Victoria) Ltd
- revocations of CTCOs be provided for in the legislation; and
- notification should be required before revoking a CTCO in the same way that is required before a CTCO is made.

Industry Research and Development Board
- changes proposed by the Commission should not lead to increases in the cost of inputs to R AND D activities.

International Packaging Machinery Pty Ltd
See Augat Pty Ltd.

Interox Chemicals Pty Ltd
- the CTCS be retained in conjunction with standard tariffs.

IW Bullock & Associates
- changes in the wording of an application not result in it being treated as a new application.

Jim Gregory Customs Agent Pty Ltd
- the HS be modified to better account for parts for machinery or other goods;
- the criteria for CTCOs be changed to `goods other than:
  - goods that form less than 25 per cent of the finished manufacturing cost of goods manufactured in Australia;
  - machinery and plant where the imported content is not more than 25 per cent of the total investment; and
  - parts for machinery imported under concession for a period of 5 years from time of original import';
- fees be introduced for processing applications and for listing local manufacturers on the Manufacturers Index;
- concessions be issued to applicants only; and
- sunset provisions be set on CTCOs.

Johnson Tiles Pty Ltd
- a process of arbitration be introduced to allow a fair and impartial evaluation of both the applicant and the objector's case; and
- time limits be placed on the processing of applications.

Kawasaki Motors Pty Ltd
- `Australian content' be raised to 50 per cent of works cost;
- a restatement, in the IC's report, of the philosophy of the Australian Tariff;
- there be equal `onus of proof' imposed on the establishment of a CTCO;
- the administering department read more carefully section 269P of the Customs Act when revoking CTCOs;
- the introduction of sanctions against persons making false or misleading statements to Customs in respect of CTCOs;
- where local manufacturers refuse to `tool up' for a specific task because of the low volume of goods required, that those goods be imported at a concessional rate of duty;
- the statutory 28-day retrospectivity provision be extended to 90 days;

- if `cross-elasticity of demand' remains a criteria, the administration of the CTCS be passed to some entity or Tribunal which could analyse applications on that basis; and
- any requests for review of applications or revocations be handled by the AAT.

Kodak (Australasia) Pty Ltd
- the EGS be retained; and
- clearer definitions of `significant cross-elasticity of demand' and `normal course of business' be introduced into the criteria.

KPMG Peat Marwick International Trade and Customs Services
- any intended determination or By-law be gazetted before being made, inviting local industry response;
- applications be considered for the particular goods specified by the applicant, and Customs Regulation 181(1) be amended to reflect this;
- applications be required to include a suggested CTCO wording as well as information specifying the particular goods, and be drafted in accordance with a set of clear administrative rules promulgated by the Administration;
- if an application does not comply with these rules, the applicant be given 28 days to rectify the deficiencies identified before the application loses its effective date;
- the Comptroller be able to deem an order for a class of goods to be made which includes the particular goods specified in an application;
- where an applicant specifies a class of goods in an application, he be allowed to reword his application without losing its operative date, if a local manufacturer objects to the original description, in consultation with the local manufacturer and the administration, to exclude those goods for which concessional entry was opposed;
- the gazettal of the application include the name and address of the applicant and/or its agent, as requested by the applicant;
- Customs be required to notify personally any local manufacturer it considers may be affected if an application was gazetted as a concession;
- anyone contacting an applicant about a concession be required to inform Customs of their contact, and the reasons for it;
- the applicant be required to report to Customs, in writing, all correspondence received by them regarding the application within a specified period (say 6 weeks) after its gazettal, and be penalised for failing to do so;
- rewording of proposed concessions be gazetted before the concession is made;
- internal independent review of decisions on applications by Customs when requested by the applicant or an objector be retained;
- the Industry Commission be able to review decisions made by Customs regarding CTCO applications, at the applicant's or the objector's request;
- section 273GA of the Customs Act be amended to allow the AAT to review decisions on applications for CTCOs, and to replace the original decision for their own;
- concessions conditioned by end-use be introduced;
- `Australian content' be raised to 50 per cent of factory or works cost, and `substantial process be defined as one which results in significant transformation of the goods;
- the criterion for the making of a concession be `that the Comptroller is satisfied the particular goods detailed in an application do not compete with goods produced by a local industry, or there would be no substantially adverse effect on the market for any goods produced by a viable local industry if the concession was granted;
- goods be taken to serve similar functions if the granting of a concession for those goods would be likely to materially distort consumer choice';
- `capability to produce' be accepted as grounds for refusing a concession only if the goods are normally made for order in the country of export;

- all guidelines be incorporated in Part XVA of the Customs Act;
- applications which have been refused or concessions which have been revoked be gazetted with the reasons for their refusal/revocation;
- provision be made for orders to be backdated where the Comptroller is satisfied mitigating circumstances exist and failure to obtain a concession order was not caused by the applicant's negligence;
- local manufacturers objecting to the making of a CTCO be subject to Customs offences provisions of the Customs Act; and
- CTCOs be able to be revoked when redundant or in need of amendment.

L & K: Rexona
- the concession systems be retained while substantive tariff rates remain high; and
- the Industry Commission take full account of all Government economic and industry policy when making its recommendations for this inquiry.

Law Council of Australia
- administrative guidelines not be used as an aid to the interpretation of legislation;
- the future operation of any tariff concession system be governed by a detailed administrative scheme promulgated in legislation or regulations, and strict compliance be required of both applicants and Customs Officers;
- the wording of CTCOs be determined by consultation between the applicant, the Customs delegate and potential objectors;
- the Customs delegate should have discretionary power to call a meeting of interested parties at the request of an applicant for a CTCO;
- formal procedures be adopted for resolving objections by local manufacturers;
- the criteria for granting of applications be free of `economic parameters';
- CTCOs not be restricted to individual headings or sub-headings of Schedule 3 of the Tariff;
- decisions to refuse applications or revoke existing CTCOs be reviewable by the AAT;
- any further review of the CTCS be external in nature to maintain objectivity;
- if internal reviews of decisions concerning CTCOs are to be mandatory then a short period for the conduct of these reviews should be established;
- future legislation set out specific procedures and criteria for the inclusion of goods in the EGS;
- requests to revoke CTCOs face the same procedures as applications; and
- material relevant to the operation of the CTCS, including applications for CTCOs be published in ACNs rather than in Government Gazettes.

LDS General Services Pty Ltd
- all restrictions on applications for CTCOs, such as those listed in the EGS, be lifted.

Lee McKeand & Son Pty Ltd
- administration of the CTCS be made simpler and faster.

Leigh-Mardon Pty Ltd
- a flexible framework be adopted which allows a narrower range of goods than described in the tariff nomenclature to be imported duty free, if that action does not erode protection to local industry;
- the coverage of the concession system be general and not related to certain types of goods;
- `Australian content' be raised to 50 per cent of factory cost;
- only those local manufacturers which supply a `reasonable market share' be able to oppose a concession or to seek the revocation of a concession;
- if `user pays' is adopted, penalties be imposed on local manufacturers who are found to make false claims in opposing or seeking the revocation of a CTCO;

- end-use security provisions be re-introduced;
- `price' be considered when determining whether goods are substitutes;
- a non-legal but commercially oriented appeals mechanism be introduced; and
- a movement by a local manufacturer into related fields should be entitled to the same level of assistance as he receives on his current range of production.

Loose Leaf Products (Australia) Pty Ltd
- greater emphasis be placed on whether a concession would have a substantially adverse effect on an Australian manufacturer;
- the `onus of proof' be shared between beneficiaries of the system; and
- decisions not to grant a CTCO be subjected to the same independent review as questions of classification and valuation.

Mannesmann Demag Pty Ltd
See Augat Pty Ltd.

Marand Precision Engineering Pty Ltd
- manufacturers receive a processing fee for filling out CTC2 forms; and
- the system encourage dialogue with importers before the commitment to buy overseas is made.

Marathon Tyres Maitland
- imported earthmover tyres and tubes continue to enter Australia free of duty.

Marrick Pty Ltd
- the Tariff be amended to make concessions more readily available, but if the Tariff cannot be so amended, the process of obtaining policy by-laws be freed up.

Master Foods of Australia
- `Australian content' be raised to 50 percent of factory cost.

Matsushita Electric Co Australia Pty Ltd
- imported components used in the manufacture of colour television receivers that are not (or a viable alternative is not) available from local production be accorded duty-free entry;
- all existing CTCOs be transferred to a separate By-law in Schedule 4 of the Customs Tariff if the Government finds it inappropriate to continue the CTCS, and this By-law be established without an Industry Commission inquiry and report;
- sunset provisions not be introduced for individual CTCOs if the CTCS is retained;
- the concessional rate of duty be zero, if the CTCS is retained;
- the legislation should not be amended to remove provision for revocation of CTCOs; and

- applications for revocations be gazetted in much the same way as are applications for CTCOs.

Mechtric (NSW) Pty Limited
- the applicant be allowed to specify either particular goods or a broad class of goods in an application for a CTCO;
- where a broad class of goods is specified, specific exemptions should be made to accommodate local manufacturers' objections;
- `Australian content' be raised to 50 per cent of factory cost;
- alternatively, duties be reduced to zero in the substantive tariff at an Item level, imposing different rates on sub items, as requested by local manufacturers; and

- manufacturers be required to respond to gazetted applications before being sent formal questionnaires.

Mercedes-Benz (Australia) Pty Ltd
- Item 41A By-law be retained; and
- a system of determining application for concessions along similar lines of the anti-dumping procedures be adopted.

Metal Trades Industry Association
- the Comptroller-General or his delegate should be empowered to vary the wording of an application for a CTCO, without loss of operative date to both reduce and extend the range of goods covered by the proposed CTCO;
- `Australian content' be set at at least 35 per cent of factory cost;
- the restrictive interpretations contained in Part XVA of the Customs Act be replaced with easily understood principles for their interpretation;
- faster processing of applications under the CTCS;
- Federal Government Departments be required to pay import duty;
- State and Local Governments continue not to be in receipt of general concessions;
- the legislative definitions of criteria not be replaced by gazetted Ministerial guidelines;
- applications for CTCOs be automatically approved where Customs fails to make a decision on an application within a set period;
- no time limit should be set for the approval of applications for CTCOs, which are being actively progressed;
- the Commission should extend its recommendations on transparency to the revocation of CTCOs;
- proposed revocations be gazetted with the operative date set at a date 90 days following the date of gazettal;
- the AAT should become the major external appeal body; and
- manufacturers be allowed to oppose applications for CTCOs only if they supply at least 15 per cent of the Australian market for the good described in the application.

Michael Haywood Trade Consultant
- the tariff concession system be administered with a full appreciation of commercial practicalities and be commercially realistic in the formulation of its decisions;
- concessions be granted on a `no objection' basis;
- the concessional rate of duty be zero;
- all concessions be published in a separate document to that of the Customs Tariff;
- end-use concessions be re-introduced;
- By-laws be granted on national interest grounds;
- By-laws be introduced after an Industry Commission inquiry;
- the EGS be retained;
- all concessions apply retrospectively from 28 days before the date of receipt of their completed application;
- legislation be amended to allow the Comptroller General to change the wording of a concession without the loss of its operative date;
- local manufacturers be required to respond to applications for CTCOs within 28 days of receiving a copy of application;
- requests for revocations of existing CTCOs be required to formally satisfy Customs such cancellation is warranted;
- the current procedure of gazetting applications continue;
- penalty duties be imposed by the courts, not the Collector or his delegate;

- paragraph (d) of the Government's proposed guidelines for interpretating `capable of being produced in the normal course of business' be deleted; and
- sunset provisions on concessions be introduced.

Michel Tilche & Associates Pty Ltd
See Augat Pty Ltd.

MIM Holdings Limited
- tariff levels be further reduced after 1992;
- administration of the CTCS be improved;
- the scheme's criteria that there be no local manufacture of identical goods or goods serving similar functions be retained;
- tariff concessions be available for all capital equipment, operating supplies and consumables required by the mining and mineral processing, agricultural and manufacturing sectors in producing their final product;
- `Australian content' be increased to a minimum of 50 per cent of factory or works cost;
- the criteria be defined in legislation rather than in gazetted Ministerial administrative guidelines;
- the automatic approval of concession applications where Customs fails to make a decision within a set period be introduced;
- the AAT should become the major external appeal body;
- a `minimum market share' should be introduced which manufacturers have to meet to qualify as objectors to CTCO applications;
- Item 47 should cover components within imported goods and clear guidelines should be provided for its administration; and
- Item 45 be expanded to include equipment used in mineral processing.

MJ Buckley Pty Ltd
- the CTCS be broadened by placing greater emphasis on `substantially adverse effect' instead of `whether goods serve similar functions';
- `Australian content' be increased to 50 per cent of factory cost; and
- decisions made under the CTCS be subject to independent review.

MJ Preusker & Associates Pty Ltd
- concessions subject to end-use conditions be reintroduced;
- goods not be entered under CTCOs when the making of a concession order:
  - is not in the `national interest';
  - would cause `material injury' to an Australian manufacturer;
  - would contravene an international agreement; and
  - on particular goods is excluded by regulation;
- s. 269B(3) and (4) be repealed;
- section 269C(1) defining `competing goods' be amended, and another section, section 269CA defining `material injury' be added;
- paragraph (p) of Regulation 181(1) be amended, and another paragraph, paragraph (pa), be added to ensure Customs is given the names and addresses of those local manufacturers contacted by the applicant when he/she sought to establish that the goods for which a CTCO is sought are not available locally, and an indication of the degree of `material injury' those local manufacturers expect to face should the CTCO applied for be granted;
- the CTC2 form -- `Approach to Australian Manufacturers' be amended by rewording the four questions asked; and

- end-use under security concessions be introduced, either under Part XVA of the Act or under other legislation or guidelines.

Monsanto Australia Ltd
- the Comptroller be obliged to consider evidence from concession beneficiaries before revoking a CTCO;
- `significant cross-elasticity of demand' and `significant part of Australia' be clearly defined in legislation; and
- `produced in Australia' be further defined within the Customs Act to cover goods which are produced in the normal course of business whose production levels are:
  - economically and commercially sustainable; and
  - relevant to capacity and related realistically to market demand.

Motorola Communications Australasia
- the removal of all tariff barriers.

MSAS Cargo International Pty Ltd
- the operative date of a concession be changed to:
  - where a local manufacturer ceases production and an application for a CTCO is current: the date on which a local producer ceases manufacture; and
  - in all other cases, 28 days before the application is made;
- refunds of duty be limited to that paid on goods imported within the period twelve months before the day on which the concession is granted;
- the wording of a concession be able to be changed without affecting the concession's operative date; and
- concessions be able to be amended retrospectively to overcome any anomaly which may arise.

National Farmers Federation
- the CTCS be given the following policy objectives:
  - to remove tariff costs where there is no local industry would benefit significantly from the protection;
  - to remove serious or socially undesirable inequities and anomalies are created by the tariff;
  - to facilitate achievement of broader Government policy objectives of reducing tariff assistance to inefficient industries and encouraging efficient, self-reliant and internationally competitive industry;
- where administrative costs are prohibitive in relation to the benefits, the tariff rate in question be set at zero;
- legislation be altered to permit CTCOs to be granted where goods which may be reasonably substituted for those are the subject of the application are not:
  - produced in Australia; or
  - capable of being produced in the normal course of business within a period of time, is reasonable having regard to the commercial circumstances;
- an applicant for a CTCO be required only to identify existing or potential local manufacturers and to notify those persons an application has been made;
- the local manufacturer bear all responsibility for demonstrating capacity to produce, substitutability and any other reasons why an order not be made;
- the role of dispute settlement rest with Customs, not with the applicant;
- legislation be amended to allow CTCOs not to be revoked where the cause of the revocation would be the establishment of a new manufacturing activity, under the protection of the substantive tariff;

- the Government clearly state the conditions under which it intends to use its discretion to grant By-laws, to allow individuals who fall within such circumstances to bring them to the Government's attention, and for action to be taken; and
- CTCOs which remain in place for a period of three years be automatically converted to By-laws, the revocation of which would only be taken by Government after consideration of the national implications.

National Museum of Australia
- goods produced for commercial sale be exempt from duty when imported and placed in a collection; or
- such goods be exempt from duty when acquired by a public institution, defined as `having a registered affiliation with the Museums Association of Australia'.

National Paper Marketing Council of Australia
- duty-free entry be via an entry in the harmonised nomenclature of Schedule 3 wherever possible;
- where this is not possible, recourse be made available through the Policy By-law system;
- greater flexibility and less rigidity in the CTCS, by using administrative guidelines rather than legislation;
- `end-use, under security' provisions for CTCOs be introduced; and
- `cost' be introduced as a criteria when looking at substitute goods.

NEC Australia Pty Ltd
- the removal of the CTCS in line with the removal of the Tariff;
- CTCOs be granted where there are `no objections' to an application; and
- `Australian content' be raised to 40 per cent of factory cost.

Nippondenso Australia Pty Ltd
- any changes to the CTCS and/or the By-law system be limited to ensuring the system may be administered in a manner consistent with the government's overall industry policy; and
- the legislative amendments recently rejected by the Senate be carefully reconsidered.

North Broken Hill Peko Ltd
- the core criteria `goods serving similar functions' and `capable of being produced in the normal course of business' should be defined in the Customs Act by substituting s. 269B(4) and 269B(7) with legal definitions based on the proposed Guidelines in the Customs and Excise Legislative Amendments Bill (excluding Guideline (b) of the `goods serving similar functions' guideline);
- provisions to revoke CTCOs be retained, allowing the initial gazettal of revocations, a 28 day period in which users can oppose the revocation, and if revoked, a three month transhipment period, applying from the date of revocation, for goods already on order;
- end-use Policy By-laws providing for concessional entry of goods where goods serving similar functions are locally produced, be subject to three year sunset provisions to assess whether the Government's original objectives and intentions are being met, and the full impact on the production of the locally produced goods; and
- the concessional rate of duty for Policy By-laws providing concessional entry for goods in cases where goods serving similar functions are locally produced be set at half the general tariff rate.

NQEA Australia Pty Ltd

- local manufacturers be required to provide extensive information showing their ability to produce the goods required in the time span specified, that their goods can carry out the desired end-use, and that they can meet the required quality and standards; and
- an equal amount of time be given to the importer to put his case for non-revocation as is given to the Australian manufacturer to lodge objections.

Nufarm Ltd

- a clearly defined set of criteria be specified in legislation recognising the difference between capital and other goods;
- an importer be able to specify a particular product in a CTCO application when required by Government to do so;
- the general uses of a good covered by an application for a CTCO only be taken into account when they are more significant than the specialist functions of that good;
- formal guidelines for the CTCS be introduced provided they are subject to Parliamentary scrutiny, and dispute resolution procedures are implemented;
- `capability to produce in the normal course of business' be further qualified by adding `within a reasonable period of time' and `in commercial quantities commensurate with the domestic market';
- end-use concessions be introduced;
- CTCOs continue to be revocable;
- greater use be made of meetings of parties in the case of disputes;
- the period before an application is deemed to have been refused be extended to 90 days;
- a relevant time frame for the application process be detailed in legislation;
- the EGS be reviewed to encompass all products which are not used primarily in further value adding processes;
- changes to the EGS continue, providing the grounds or criteria for exclusion are clearly contained in legislation;
- the minimum level of value added be set at one third of the factory or works costs, and where the stated value added in Australia is within 10 percentage points of the threshold value, all calculations and cost allocations be examined by specialist Customs staff;
- revocations be subject to rigourous examination, with applicants being required to demonstrate commercial capacity and a willingness to accept orders;
- in addition to existing procedures, applicants for CTCOs be required to submit a copy of their market statement to potential local suppliers;
- a more formal procedure for the timely resolution of objections be introduced;
- where `cross-elasticity of demand' raises conflict between parties, the matter be referred to specialists within the Department;
- all procedures, including a formal mechanism for resolving conflicts, be subject to precise administrative arrangements specified in legislation and be strictly observed by all parties; and
- sunset provisions be applied to anticipatory assistance, terminating within a prescribed period in the event of local production having not been undertaken.

O'Brien Aluminium Pty Ltd

- applications be processed expeditiously and provision for the independent review of any decision not to grant a CTCO be made; and
- `Australian content' be raised to 50 per cent of factory or works cost.

OCE Australia Ltd
- guidelines to be followed by staff administering the CTCS be published;
- time limits for the determination of applications be introduced;
- meetings of parties in cases of disputes be encouraged; and
- decisions made under the CTCS be subject to independent review.

OE & DR Pope Pty Ltd
- the EGS be removed; and
- a sunset clause of 5 years be introduced for commercial tariff and By-law concessions.

Otis Elevators Company Pty Ltd
- decisions made under the CTCS be reviewable by the AAT.

Outboard Marine Corporation (Australia) Pty Ltd
- `Australian content' be left at 25 per cent of factory cost, with the additional clause that the last process of manufacture performed in relation to the goods must be performed in Australia;
- the existing guidelines for administration of the CTCS be revised to eliminate the legalistic approach currently taken when applying the legislation to specific CTCO applications;
- guidelines which encourage the flexible interpretation of the CTCS legislation be introduced; and
- `end-use' provisions should be included in the CTCS, merely as an aid to identifying goods and to facilitate administration.

Pacific Dunlop Ltd
- `end-use under security' concessions be introduced;
- CTCO applications be able to be modified while retaining their effective date;
- the effective date for a CTCO be 28 days before the date an application is accepted by Customs; and
- procedures to allow for `fast-track' reviews of barrier assistance, in specific cases where marginal local production activities are involved be introduced.

Parfums Yves Saint Laurent Pty Ltd
See AS Harrison and Co. Pty Ltd.

Parkesinclair Chemicals (Aust) Pty Ltd
- all tariff barriers be eliminated.

Pharmaceutical Industry Group
- qualifications for selection, and training of administering staff be upgraded;
- the concessional rate of duty continue to be free;
- concessions be granted if there are no objections in all but the most exceptional circumstances;
- the system for processing applications for concessions be modified along the lines of the anti-dumping procedures, and include:
  - prescribed time limits for the determination of applications;
  - meetings of parties in cases of disputes;
  - the publication of guidelines to be followed by administering staff; and
  - the independent review of decisions.

Plastech Industries Pty Ltd
See Outboard Marine Corporation (Australia) Pty Ltd, and

- guidelines for the processing of applications for admission of capital equipment free of duty under Item 47 be introduced;
- a general policy by-law in the following or similar terms be introduced:
  - `Goods, as prescribed by by-law, being goods which, in the opinion of the Minister, are goods to which this item applies';
- policy guidelines for the administration of such a by-law be formulated and disseminated; and
- a by-law in such terms should be administered personally by the Minister of State for industry policy, in the same manner in which the Item 43 by-law is presently administered.

Plastic Industry Association (Inc)
- the `onus of proof', in the event of objection, lie equally between the applicant and the objectors, and involve user interests;
- `end-use' concessions be introduced;
- applications be processed by Customs;
- if objections are received, procedures similar to those applying in dumping inquiries be followed;
- a Tariff Concession and By-laws Authority be established;
- changes be made to the legislation to permit ultimate resolution of disputes in a court of law or in the AAT; and
- the system be extensively publicised to ensure all potential users are aware of it.

Polarcup Australia Ltd
- `end-use, under security' provisions be introduced under the CTCS.

Polaroid Australia Pty Ltd
- import concessions be allowed when:
  - goods are not available or not reasonably available from local sources;
  - imported goods do not compete with locally produced goods; or
  - the granting of a concessions would not adversely affect local producers.
- the `onus of proof' be more equitably borne by all interested parties; and
- all parties continue to share the administrative costs of the CTCS.

PolyPacific Pty Ltd
- tariff rates not be reduced after 1992.

Pope Electric Motors
- tariff revenue be used to fund an adequate level of Customs and Excise operations.

PR Hermes Pty Ltd
- all duty rates over 10 per cent be reduced to 10 per cent; and
- the CTCS be abolished as duty rates are reduced.

Printing and Allied Trades Employers Federation of Australia
- the Government use the CTCS and, as a last resort, the By-law system, to make the Tariff more flexible;
- `end-use' and `threshold' concessions be introduced into the CTCS or the By-law System;
- `Australian content' be raised to 50 per cent of factory or works cost;
- a ` 25 per cent market share' criterion to determine eligibility to oppose applications for CTCOs be introduced;
- applications to revoke concessions be reviewed before being implemented;

- interpretative or administrative guidelines be introduced as an adjunct to the legislation; and
- decisions be independently reviewable by the AAT, at the request of either party, subject to the appellant meeting the costs of the appeal.

The Publishers Group
- the Policy By-laws affecting the publishing industry be retained;
- the existing By-laws be rationalised into one By-law to cover all paper used in the production of newspapers, periodicals, magazines, books, posters and other printed matter which would, if imported, be classified within Chapter 49 of the Customs Tariff;
- the By-laws be extended to cover all inputs used by the publishing industry;
- the removal of By-laws be subject to public inquiry even if they are receiving little use;
- By-laws be referenced to the third Tariff Schedule, to improve their visibility and accessibility;
- local industry be forced to assume much greater responsibility to provide adequate information in response to applications for CTCOs and to provide much more information;
- all references in Part XVA of the Customs Act to the Collector's `being satisfied' be removed;
- CTCOs be revoked only after prior notice is given and after an adequate opportunity has been given to the importing community to challenge the basis of revocation;
- the rules which enable an industry to qualify as an Australian manufacturer be examined;
- the criteria for granting CTCOs be amended to incorporate the term `satisfactorily performing the same or similar function';
- defined periods for each stage in the processing of CTCO applications be established, based on realistic assessments of the time involved in handling more complex concession applications; and
- all pollution controlling devices be subject to concessional entry.

Qantas Airways Ltd
- the CTCS and the By-law system be expanded to take into consideration economic issues and legislation other than the Customs Act;
- By-law Item 31 be retained;
- concessional entry be allowed where a local manufacturer is willing to accept orders for goods but has no intention of filling them;
- the criteria refer to the quality of the goods for which concessional entry is sought;
- goods which cannot be manufactured in Australia because the plans for the goods are not available locally be accorded concessional entry; and
- CTCO 8901830 be expanded to cover all aircraft parts.

Queensland Department of Manufacturing and Commerce
- `Australian content' be left at 25 per cent of factory cost;
- no sunset clauses be imposed on CTCOs;
- `significant competition' and `significant adverse effect' be selected as the criteria for determining whether or not a CTCO is granted; and
- the current CTCS and By-law system appeals mechanisms be revised to allow AAT review of Customs decisions.

Recochem Inc
- the CTCS be established in administrative guidelines, rather than legislation;
- decisions made under the CTCS be appellable in an independent forum; and
- there be no further reductions in tariffs after 30 June 1992.

Retail Traders Associations of Australia• `capable of being produced' be removed from the criteria for rejecting or revoking a CTCO; and
- the EGS be retained.

Revell (Australia) Pty Ltd
- a time limit be set within which Customs must either grant or refuse an application for a CTCO;
- all goods on order on the day a CTCO is revoked be allowed entry at the concessional rate of duty; and
- an independent body be appointed to settle disputes between applicants and Customs.

RM Diesel Pty Ltd
- responsibilities under the CTCS be shared equally between participating beneficiaries of the system;
- decisions made under the CTCS be subject to independent review;
- a blanket concession apply to all hand tools, tool kits and test equipment used in conjunction with the repair and service of diesel fuel injection equipment; and
- a blanket concession apply to all parts used in repairing and servicing diesel fuel injection equipment.

Robert Bosch (Australia) Pty Ltd
- the EGS be retained; and
- the legislation should not be amended to remove provision for revoking CTCOs.

Robinson Milling Systems Pty Ltd
See Augat Pty Ltd

Ronald C Fisher Trade Consultants Pty Ltd
- a new Policy Item with an `end-use' provision be created.

Rothmans of Pall Mall (Australia) Pty Ltd
- the criteria for the CTCS be promulgated in administrative guidelines, rather than being set in legislation;

Rover Mowers
- local manufacturers be required to respond promptly to requests for information relating to applications for CTCOs;
- appropriate action be taken to ensure the Comptroller has the flexibility to amend the wording of proposed concessions without loss of entitlement to the applicant;
- there be no extension of the EGS;
- there be no separate requirement to satisfy a delegate that a concession order should be implemented, and all relevant references to the need for the Comptroller to be satisfied be removed from Part XVA of the Customs Act;
- provision be made for the date and, where necessary, the period of effect, of a CTCO to be backdated;
- consideration be given to specifying periods within which positive decisions must be made by Customs or in which responses must be made by local industry in relation to applications for, or refusals and revocations of, concessions;

- no restrictions be placed on the period during which refunds of duty may be sought following the gazettal of concession orders; and
- consideration be given to ensuring that only those companies with more than an insignificant interest in a market be permitted to become involved in negotiations of relevant concession applications.

SAI Distributors Pty Ltd
See Augat Pty Ltd.

Sandvik Australia Pty Ltd
- concessional entry be provided for imported raw materials or products used for further manufacture by local industry.

Sarlon Industries Pty Ltd
- fibreglass yarn continue to enter under a CTCO.

Seton's Bakery Equipment
- protection be retained until all other countries have free trade; and
- an information bureau be established to advise businesses of all Australian-produced goods.

Simon Packaging
See Augat Pty Ltd.

Space Labs Medical Products Pty Ltd
- the CTCS be expanded to recognise different levels of technology and market segmentation;
- greater emphasis be placed on the words `significant' and `substantial' when considering the concession criteria;
- communication between all beneficiaries of the system be encouraged;
- the revocation of CTCOs follow the application process, but in reverse;
- the `onus of proof' rest equally with the parties concerned;
- administrative changes to encourage faster decision making be introduced; and
- an independent agency review decisions not to grant a CTCO.

Spalding Australia Pty Ltd
- the Commission consider the major cost increases currently facing manufacturing firms, and the consequences of imposing additional costs (through the removal of the CTCS) under these circumstances.

State Chamber of Commerce and Industry
- the core criteria of the CTCS be replaced with the term `not commercially manufactured in Australia'.

Stauff Corporation Pty Ltd
- CTCOs should apply to particular goods, not to broad classes of goods;
- concessions be granted only when they will not have a substantially adverse effect on any Australian manufacturer;
- `Australian content' be raised to 50 per cent of total costs; and
- decisions not to grant a CTCO be independently reviewed.

Steel Rule Distributors (A/asia)
- `Australian content' be raised to 50 per cent of factory or works cost; and

- the administration of the scheme be simplified, making it easier and faster for importers and manufacturers alike, and it be reduced to a minimum of paper work; and
- mechanisms for dispute resolution along the lines of the AAT be introduced.

Swiss Screens (Aust) Pty Ltd
- more restrictions be placed on those eligible to apply for and/or use CTCOs;
- concessions be more tightly worded;
- only applicants for a CTCO be able to use that CTCO;
- uniform rates of duty in the range of 10 to 15 per cent be applied to all goods;
- only goods used in manufacturing be eligible for entry under the CTCS;
- all criteria relating to similar functions, identical goods etc. be removed from the CTCS criteria; and
- a committee to arbitrate between applicants and potential users of their CTCOs be established.

Taylor Ceramics Engineering
- the current tariff arrangements for ceramics be retained.

Terumo (Australia) Pty Ltd
- the CTCS be extended to cover goods used in final consumption which are not made in Australia;
- the criteria of `substantially adverse effect' be more closely defined; and
- sunset provisions not be introduced on CTCOs.

Tetra Pak Pty Ltd
- the `onus of proof' be equally shared between an importer and domestic industry; and
- the review process be formalised, particularly in relation to disputes about the criteria of `substantial adverse effect'.

Textile Clothing and Footwear Council of Australia
- the existing Textile Clothing and Footwear Plan's Policy By-law arrangement not be affected by the deliberations of this inquiry;
- By-laws be retained for the duration of the current Textile Clothing and Footwear Plan;
- end-use security provisions be imposed and adequately policed;
- the revocation provisions for CTCOs be retained;
- the EGS be retained; and
- clear, definitive guidelines be established and adhered to for the examination of changes to policy by-law arrangements following the inquiry and report of any Government authority into those arrangements.

Textile Distributors' Association
- `market share' be introduced as a criteria for determining which local manufacturers be allowed to oppose an application for a CTCO; and
- Customs be required to consult with appropriate government authorities before implementing concessions which cover whole Tariff Items.

Thomas & Betts Pty Ltd
See Augat Pty Ltd.

Thycon Systems Pty Ltd

- rates of duty on imports of components used in uninterruptible power systems be the same as the rate of duty on imported complete uninterruptible power systems.

Trade Consultants (Australia) Pty Ltd

- the CTCS and the By-law system be extended in coverage;
- Policy By-laws remain distinct from normal concessions;
- concessions with under security provisions and shortfall arrangements be reintroduced, at least for inputs to production;
- a concession be granted when no local manufacturer objects to an application;
- `capability to produce' be restricted to those situations where production is undertaken only on the basis of orders;
- the present revocation arrangements be retained;
- Item 47 be removed, and goods qualifying for entry under Item 47 be required to use the CTCS; and
- a forum with the power to make decisions be introduced to review applications and objections.

Tubemakers of Australia Ltd

- special tariff concessions be granted for specific projects, such as one-off single capital projects; and
- sunset clauses be introduced on all tariff concessions which causes them to lapse when not used within or over a specific period.

Unilever Australia Ltd

- across-the-board tariff cuts continue;
- maintenance of the Manufacturers' Index be subcontracted out, and the Index be placed on the Viatel system;
- `cross elasticity of demand' be removed from the interpretative criteria;
- the criteria concerning `capability to produce' and `substantially adverse effect' should be terminated;
- local manufacturers be required to respond to applicants' inquiries within 28 days of receiving notice of intention to apply for a concession, and if they fail to do so, their lack of response be taken as agreement to the concession being granted;
- sunset provisions be introduced to make CTCOs part of the tariff, or CTCOs, once made, not be able to be revoked; and
- the Tariff and the CTCS be abolished when tariffs reach 5 per cent across-the-board.

Vacubrite Pty Ltd

- the revocation of TCO 8803477 be re-examined and the circumstances leading to its cancellation determined with a view to its immediate reinstatement;
- alternatively, Vacubrite's CTCO application of 20 September 1990 with amended wording should be proclaimed;
- CTCOs should not be revokable without detailed investigation involving participation of users; and
- end-use provisions should be accepted in cases where there is a sole Australian manufacturer and raw materials of the specifications involved are not locally manufactured.

Victoria State Opera Company Ltd
- Item 28A of the Customs Tariff Act be retained.

Wacker Chemicals Australia Pty Ltd
- any decision made concerning the CTCS be evaluated thoroughly in the light of the consequences it could have on the local manufacture of silicone products.

Walker Australia Pty Ltd
- aluminium coated mild steel be accorded duty-free entry into Australia by either a Policy By-law or a general tariff concession.

Warner Electric Australia Pty Ltd
- `Australian content' be raised to at least 50 per cent of factory or works cost.

Western Australian Farmers Federation
- all tariffs be removed; and
- the New Zealand tariff system be investigated.

Western Star Trucks (Australasia) Pty Ltd
- more precise criteria for determining `locally produced goods' be introduced;
- more recognition be given to Australian labour content in defining `locally produced goods';
- Australian `product design and development' engineering costs be taken into consideration when assessing assistance; and
- `Australian content' of goods eligible for tariff preferences under international trade agreements should include any `Australian content' of those goods as well as the `Australian content' of any parts which are added to those goods upon importation.

WH Ireland & Sons Pty Ltd
- `Australian content' be raised to 50 per cent of factory or works cost.

Wilson Electric Transformer Pty Ltd
- tariffs not be further reduced after 1992.

Woodside Offshore Petroleum Pty Ltd
- tariffs be abolished on completion of phasing in 1992;
- consumer goods be excluded from the CTCS;
- `goods serving similar functions' and `capable of being produced in the normal course of business' should be reviewed to allow technologically superior goods to have access to concessional importation, or the By-law system should include an Item to cover this category of goods;
- `Australian content' should be raised to 50 per cent of total costs, or 25 per cent of materials and direct labour costs;
- Policy Items should contain an explanation of the Government's objectives in creating them;
- Determinations for Item 43 should continue to be issued in their existing terms;
- Item 22 should be retained; and
- Customs-DITAC-Petroleum industry guidelines should be issued to cover `developments in the petroleum industry'.

WR Grace Australia Ltd

- concessions with `end-use' provisions be introduced;
- such `end-use' concessions be checked efficiently and effectively using a risk-assessment system, having regard to Auditors' statements and on a user pays basis;
- penalties similar to those imposed in relation to incorrect entries be applied in instances where goods are not used in the end-use for which they are entered;
- a system of determining applications for concessions along lines similar to `anti-dumping' procedures be adopted, and should include:
  - prescribed time limits for determining applications;
  - meetings of parties in cases of dispute; and
  - the publication of guidelines to be followed in the administering the system;
- the selection qualifications and training of the administering staff be upgraded; and
- the function of administering the system be transferred from Customs to DITAC.

WW Wedderburn Pty Ltd

See Augat Pty Ltd except:

- the EGS be narrowed, rather than removed; and
- changes only be made to the EGS by the Government, following a public inquiry and report by the Industry Commission.

Yamaha Motor Australia Pty Ltd

- `Australian content' be raised to 50 per cent of factory or works cost;
- `end-use, under security' concessions be introduced and administered by Customs using a risk-assessment system which imposes penalties when imported goods are diverted from their approved uses;
- exclusions from the concession system be minimised, and be able to be waivered where the reason for their exclusion is no longer valid;
- clear guidelines for the core criteria of the CTCS and the By-law system be provided and published; and
- a system of determining applications along the lines of the Anti-Dumping Authority be introduced.

GLOSSARY

Administrative Appeals Tribunal Act 1975	The Administrative Appeals Tribunal established under this Act is an independent statutory body set up to review certain Commonwealth administrative decisions. The Tribunal has power in appropriate cases to affirm, vary or substitute its own decision for a decision under review. It thus provides a simple, relatively inexpensive avenue of appeal against official action (or inaction).
Administrative Decision (Judicial Review) Act 1977	Under this Act, the Federal Court of Australia may consider appeals against administrative decisions which will be examined only in relation to matters of law and the particular procedures followed rather than the issues involved.
Anticipatory assistance	Describes assistance provided to an activity before that activity is undertaken locally, in the expectation that one day it may be.
Australian Customs Notice	Is a circular issued by Customs to advise of changes in in tariff arrangements and other matters relating to the importation of goods into Australia.
By-law	A direction issued under Part XVI of the *Customs Act 1901* by the Comptroller-General of Customs that 'goods or a class or kind of goods' be granted concessional entry as part of the By-law system.
By-law system	The arrangements that provide for concessional entry of imports for various community, administrative and industry policy purposes. It comprises the arrangements set out in Schedule 4 of the *Customs Tariff Act 1987* and *the Schedule of Concessional Instruments* excluding those provisions which constitute the CTCS.

Commercial By-law System (CBS)	This refers to By-laws that were made under section 271 and to Ministerial Determinations made under section 273 of the *Customs Act 1901*, for the purposes of items in Schedules 1 and 2 of the *Customs Tariff Act 1966.* These By-laws and Determinations were issued subject to the criterion that the goods concerned were goods, a suitable equivalent of which that was the produce or manufacture of Australia were not reasonably available.
Consolidated By-law References (CBRs)	Goods that were automatically eligible for concessional entry under the CBS were listed in a publication of the Department of Industry and Commerce entitled *Consolidated Customs By-law References.*
Cross elasticity of demand	An economic concept which defines the extent to which the demand for one good is affected by changes in the price of another good.
CTC1 form	A Customs application form which must be completed and lodged with Customs by those seeking to import goods under the CTCS. It must include a supporting case assessing the extent of competition which exists in the market place.
CTC2 form	A Customs form on which local manufacturers are expected to reply to queries about local competition from an applicant for concessional entry under the CTCS.

CTCO	An import concession established under the CTCS after the criteria specified in Part XVA of the *Customs Act 1901* has been met.
CTCS	The arrangements under which concessional entry of imports is allowed because there are no goods serving similar functions produced or capable of being produced locally in the normal course of business. The goods covered by the arrangements are included in Schedule 4 of the *Customs Tariff Act 1987* and the *Schedule of Concessional Instruments.*
Day of effect	Is the day from which the CTCO, if granted, is able to be used. It may be set no earlier than the day occuring 28 days before the day on which Customs received the application for the CTCO.
Determination	A direction issued under Part XVI of the*Customs Act 1901* by the Comptroller-General of Customs that 'particular goods' be granted concessional entry as part of the By-law system. Formerly these were called 'Minsterial Determinations'.
Economic rent	A payment to a factor of production in excess of what is necessary to keep that factor in its present occupation.
Effective date	(See Day of effect).
Effective rate of assistance	Assistance to an activity, net of the effects of tariffs and certain other forms of government intervention which alter the prices of material inputs used by the activity.
Excluded Goods Schedule	The 'Exclusions Schedule' in the Customs Regulations in which are specified goods which have been declared ineligible for CTCOs (See Appendix B).

Fall-short	Describes the situation where local production levels stay constant but demand increases, often suddenly, in the short term.
Florence Agreement	The *UNESCO Agreement on Importation of Educational, Scientific and Cultural Material*, which was established by the UNESCO General Conference in 1950. The purpose of the Agreement is to reduce tariff and trade barriers to the international circulation of educational, scientific and cultural material.
Functional unit	Describes machinery or equipment which is designed to be used as a single piece of plant, although it can be separated into a number of components, some of which may be able to operate alone.
General equilibrium	Is concerned with the structure and prices of the economy as a whole. A general equilibrium analysis does not involve the restrictive assumptions about economic interlinkages that are made in partial equilibrium analyses.
Gross subsidy equivalent	The change in producers' gross returns from assistance. It is the notional amount of money necessary to provide an activity with a level of assistance equivalent to the nominal rate of assistance on its output.
Harmonized Tariff System	A Harmonized Commodity Description and Coding System for imports developed by the Customs Co-operation Council (an international organisation based in Brussels which has a primary objective of promoting uniformity in world-wide customs procedures). The system was adopted by Australia on 1 January 1988.

Industry Plan	A sectoral policy established by the Government which gives special treatment to particular industries. Current Plans cover the Textiles, Clothing and Footwear industries, Passenger Motor Vehicles, and Tobacco.
Industry Policy Item	A Policy Item which the Government has created to meet an industry policy objective by providing or augmenting assistance to a particular industry.
Instrument	A generic term covering By-laws, Determinations and CTCOs and which are listed in the *Schedule of Concessional Instruments.*
Long run	As used in ORANI simulations, a notional period of time in which all factors of production (labour, capital and entrepreneurial skills) are able to shift between different activities in the economy. (See short run).
Manufacturers' Index	This is a microfiche index of goods and the firms that produce them (as notified to Customs). The index is available for purchase or can be viewed at Customs Houses. It is used by Customs and by applicants for CTCOs in order to identify firms which may produce 'similar' or 'identical' goods in Australia to those for which concessional entry is sought.
Net subsidy equivalent	The change in returns to an activity's value added due to assistance. It is the notional amount of money necessary to provide a level of assistance to an activity's value added equivalent to its effective rate of assistance.
Nominal rate of assistance	Assistance provided by tariffs and certain non-tariff measures which has the effect of increasing the price to domestic users or consumers, of an imported good or service.

Operative date	(See Day of effect).
Partial equilibrium	Is concerned with the price and output of a single good, or of a few goods, in isolation from the other sectors of the economy. It assumes that the impact of the price and output of one good on the price and impact on all other goods is so slight that it can be disregarded.
Policy By-law	A mechanism for enabling the concessional entry of goods, usually at a duty rate of zero. It may be granted where there is local production of the good for which concessional entry is sought.
Policy Item	A description of goods listed in Schedule 4 of the *Customs Tariff Act 1987* but not including those descriptions (Items) which are part of the CTCS.
Schedule 4	A schedule of the *Customs Tariff Act 1987* which lists the Policy Items that specify, often in general terms, the goods which are eligible for concessional entry.
Schedule of Concessional Instruments	A document which lists the details of goods (instruments) that are allowed concessional entry because a CTCO, By-law or Determination has been made. The Schedule is subordinate to Schedule 4 of the *Customs Tariff Act 1987.* (See Section 7.3 for more information.)
Short run	As used in ORANI simulations, a notional period of time in which all factors of production except capital are able to shift between different activities in the economy.

Shortfall	Describes the situation where local production is unable to maintain normal production levels through circumstances such as plant breakdown, industrial disputation, or crop failure.
Split	Describes the situation where plant or equipment which consignment will be assembled and operated as a single unit, is imported in a number of shipments.
Standard deviation	A statistical measure of how far from the average the items in a frequency distribution are located, thereby measuring the extent of variation or dispersion in the distribution.
Sunset provision	Is a clause in a CTCO, By-law Item or By-law instrument which sets the day or date from which the provision no longer has effect.
Supplementary	A description of goods included in the Supplementary Item Provisions.
Supplementary	A listing at the end of the Working Tariff (Customs Provisions 1990b) which sets out the goods which are granted concessional entry under certain legislation other than the Customs Tariff Act 1987.
Tariff	A tax on imports.
Tariff	A special Commonwealth Gazette in which Concessions applications, promulgations and revocations of CTCOs,
Gazette	By-laws and Determinations are published.
Unassisted	The difference between the market value of a good or value added service and the value of the inputs used to produce that good or service, after the effects of assistance on the value of both the inputs and the good or service have been removed.

REFERENCES

AAT (Administrative Appeals Tribunal) 1986, Decision & Reasons Re Cherry Lane Pty Ltd and Collector of Customs (Vic). No. V86/158, Melbourne, 13 May. Customs Agents Institute of Australia.

ABS (Australian Bureau of Statistics) 1989a, Customs and Excise Revenue, Australia, Cat No. 5425.0.

ABS 1989b, *Customs Clearances at Specified Rates of Duty*, Cat. No. 5427.0, (and previous issues).

ABS 1990a, *Australian National Accounts, Input-Output Tables 1983-84*, Cat. No. 5209.0.

ABS 1990b, *Imports 3 Magnetic Tape.*

ADA (Anti-Dumping Authority) 1989, *Inquiry into Material Injury, Profit in Normal Values and Extended Period of Time.* Report No. 4, AGPS, Canberra.

ADA 1990, *Annual Report 1988-89*, AGPS, Canberra.

ALRC (Australian Law Reform Commission) 1990, *Customs and Excise Draft Legislation.* Discussion Paper 45, two volumes, October, Sydney.

Brown, Hon. John 1983, *House of Representatives Hansard*, 11 May, p. 401.

Butcher, Hon. David (New Zealand) 1990, *Economic Statement*, 20 March.

Button, Senator John 1988a, *Boost for Major Industrial Projects*, Minister for Industry, Technology and Commerce, News Release No. 136/88, 25 August, Canberra.

Button, Senator John 1988b, *Statement by the Minister for Industry, Technology and Commerce*, 25 May.

Button, Senator John 1989a, *Concessional Entry System for Imports*, Minister for Industry, Technology and Commerce, News Release No. 125/89, 14 September.

Button, Senator John 1989b, *Government moves to lower costs in mining, agricultural and construction industries*, Minister for Industry, Technology and Commerce, News Release No. 72/89, 13 June, Canberra.

Button, Senator John 1990a, *Government Decision on IAC Report: Concessional Entry of Aluminised Steel for Use in Mufflers and Exhaust Systems,* Minister for Industry, Technology and Commerce, News Release No. 85/90, 17 August, Canberra.

Button, Senator John 1990b, *Government intends to sign Florence Agreement,* Minister for Industry, Technology and Commerce, News Release No. 51/90, 13 June, Canberra.

Button, Senator John 1990c, *Senate Hansard,* 1 June, p. 1735.

Cook, Senator Peter 1989, *Senate Hansard,* 14 December, p. 4587.

Coulter, Senator John 1989, *Senate Hansard,* 14 December, p. 4588.

Crawford Study Group (J.G. Crawford, Chairman) 1979, *Report of the Study Group on Structural Adjustment,* AGPS, Canberra.

Customs (Australian Customs Service) 1989a, *Changes to the Commercial Tariff Concession System,* Australian Customs Notice 89/127, September.

Customs 1989b, *Commercial Tariff Concession System (CTCS),* Australian Customs Notice 90/5, 28 December.

Customs 1990a, 1989-90 *Annual Report,* AGPS, Canberra (and previous issues).

Customs 1990b, *Combined Australian Customs Tariff and Statistical Nomenclature,* AGPS, Canberra (as amended).

Customs 1990c, *Commercial Tariff Concession System,* Australian Customs Service Manual, Volume 13.

Customs 1990d, *Commercial Tariff Concession System (CTCS). Change to the scope of applications for concessions.* Australian Customs Notice 90/149, 28 November, Canberra.

Customs 1990e, *Concessional arrangements for functional unit split consignments,* Australian Customs Notice 90/64, 9 May, Canberra.

Customs 1990f, *Customs by-laws for goods designed for use in the mining and agricultural industries,* Australian Customs Notice 90/43, March, Canberra.

Department of Administrative Services and Purchasing Reform Group 1990, *Commonwealth Procurement Circular,* July.

Davies, Morling and Gummow JJ 1988, *Reasons for Judgment in the matter of Amcor Ltd v Customs on appeal from a single Judge of the Federal Court of Australia*, Federal Court of Australia, ACT District Registry, General Division, No. 50 of 1987, 15 April 1988, Sydney.

EC (Official Journal of the European Communities) 1989, *Commission Communication concerning autonomous tariff suspensions*, No. C235, 13 September, p. 2-8.

Garnaut, R. 1989, *Australia and the North-East Asian Ascendancy*, October, AGPS, Canberra.

Hawke, Hon. R.J.L. 1989, Speech at the launch of 'Australia and the North-East Asian Ascendancy', Sydney, 22 November.

IAC (Industries Assistance Commission) 1978, *Removal of Primage Duty*, Report No. 399, AGPS, Canberra.

IAC 1980, *Textiles, Clothing and Footwear*, Report No. 240, four volumes, AGPS, Canberra.

IAC 1981, *Customs Tariff Simplification*, Report No. 286, AGPS, Canberra.

IAC 1982a, *Approaches to General Reductions in Protection*, Report No. 301, AGPS, Canberra.

IAC 1982b, *The Commercial By-law System*, Report No. 305, AGPS, Canberra.

IAC 1984a, *Computer Hardware and Software; Typewriters, Calculating and Other Office Machines; Parts and Accessories: Recording Media; Metal Working Machine Tools and Robots*, Report No. 338, AGPS, Canberra.

IAC 1984b, *Re-import Concessions*, Report No. 353, AGPS, Canberra.

IAC 1985a, *Chemicals and Plastics Industries* (Interim Report), Report No. 361, AGPS, Canberra.

IAC 1985b, *Passenger Concessions*, Report No. 374, AGPS, Canberra.

IAC 1986a, *Certain Aircraft Parts and Servicing Equipment (Concessional Arrangements)*, Report No. 392, AGPS, Canberra.

IAC 1986b, *The Chemicals and Plastics Industries*, Report No. 390, AGPS, Canberra.

IAC 1986c, *The Textile, Clothing and Footwear Industries*, Report No. 386, three volumes, AGPS, Canberra.

IAC 1987a, *A Guide to the IAC's use of the ORANI Model*, AGPS, Canberra.

IAC 1987b, *Export Concessions*, Report No. 399, AGPS, Canberra.

IAC 1987c, *Pulp, Paper, Paper Products and Printing Industries*, Report No. 401, AGPS, Canberra.

IAC 1987d, *The Tobacco Growing and Manufacturing Industries*, Report No. 405, AGPS, Canberra.

IAC 1988a, *Annual Report 1987-88*, AGPS, Canberra.

IAC 1988b, *Mining and Minerals Processing Plant and Equipment; Construction, Earthmoving, Materials Handling and Agricultural Equipment; Railway Rolling Stock; Pumps and Compressors; and Certain Associated Service Industries*, Report No. 413, AGPS, Canberra.

IAC 1989a, *Commercial Tariff Concessions (PVC Foam Blocks and DC Electric Motors)*, Report No. 416, AGPS, Canberra.

IAC 1989b, *Concessional Entry of Aluminised Steel for Use in Mufflers and Exhaust Systems*, Report No. 421, AGPS, Canberra.

Industry Commission 1990, *Aids and Appliances for People With Disabilities*, Report No. 3, AGPS, Canberra.

ICTB (International Customs Tariffs Bureau) 1988, The International Customs Journal, *Finland*, No. 95, 18th Edition, September, ICTB Printing Department.

Jackson Committee (R.G. Jackson, Chairman) 1975, *Report of the Committee to Advise on Policies for Manufacturing Industry, AGPS*, Canberra.

Keating, Hon P.J. 1988, *Economic Statement May 1988*, AGPS, Canberra.

McLachlan, Hon. I. 1990, *Media Release*, 23 August.

MacGibbon, Senator David 1989, *Senate Hansard*, 13 December, p. 4483.

MTIA (Metal Trades Industry Association) 1986, *The Current State of Australia's Manufacturing Industries*, Canberra.

Officials' Working Party (New Zealand) 1990, *Report of Officials' Working Party on The Review of The Post-1992 Tariff Adjustment Programme*, 13 March.

Rae, Senator Peter 1983, *Senate Hansard*, 2 June, p. 1235 .

Simmons, Hon. David 1989, *House of Representatives Hansard*, 2 November, pp. 2404-6.

SMOS (Department of the Special Minister of State) 1975, *Review of Customs ByÄlaw Policy: A Discussion Paper*, AGPS, Canberra.

Tariff Board (Canada) 1985, *A Report of an Inquiry by the Tariff Board Respecting Canada's Customs Tariff According to the Harmonized System: Volume V Consolidation of Concessionary Provisions -- Statutory Concessionary Tariff Items*, January, Ottawa.

Tariff Board 1926, *Articles and Personal Effects Owned By Consuls*, Report No. 169, Govt. Printer, Canberra.

Tariff Board 1973, *Products of the Printing Industry*, Report No. 1990, AGPS, Canberra.

Treasurer 1901, *House of Representatives Hansard*, 8 October, p. 5707.

USITC (United States International Trade Commission) 1988, *Cost Savings or Other Benefits to US Consumers Resulting From Temporary Duty Suspensions In The Trade and Tariff Act of 1984, Report to the Committee of Ways and Means, US House of Representatives on Investigation No. 332-247 Under Section 332(g) of the Tariff Act of 1930*, February, USITC Publication 2060.

Vernon Committee (Sir James Vernon, Chairman) 1965, *Report of the Committee of Economic Inquiry*, AGPS, Canberra.