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Overview

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| Key points |
| * Government assistance to industry is provided through tariffs, budgetary outlays, taxation concessions, regulatory restrictions on competition and other measures. * Assistance generally benefits the industry receiving it and, if well targeted and designed, can deliver wider community benefits, but it can also come at a cost to other industries, taxpayers and consumers. * The assistance estimates presented in this *Review* mark the commencement of a new series based on the 2008‑09 ABS input-output tables. * Using the new series, tariff assistance to industry was $7.9 billion in 2011‑12 in gross terms. After allowing for the cost to industries of tariffs of $6.8 billion, net tariff assistance was $1.1 billion. * Assistance of $9.4 billion was also provided through budgetary outlays and taxation concessions — $5.1 billion in budgetary outlays and $4.3 billion in tax concessions. * Net assistance from tariffs and budgetary measures was $10.5 billion in 2011‑12. * The effective rate of assistance (net assistance as a proportion of unassisted value added) for manufacturing is about 4 per cent and 3 per cent for primary industries. * Effective assistance to the TCF and motor vehicle industries at around 7 and 9 per cent, respectively, although much reduced, remain higher than average. * Budgetary assistance in 2011‑12 was $0.4 billion lower than in 2010‑11. There were large decreases from the winding down of the Small Business and General Business Tax Break, reduced outlays on drought relief payments reflecting (at the time) improved conditions, and large increases in carbon-related support to industry. * Since the May 2012 Budget, the Australian Government announced further budgetary assistance of over $430 million, most to be spent over the next five years. * In relation to trade policy, with the stalling of the Doha Round of multilateral trade negotiations, Australia has been promoting alternative pathways including in the areas of trade facilitation and trade in services, where consensus may be reached. * Intellectual property (IP) law has a pervasive impact on innovation, production, trade and consumption and is the theme topic in this *Review.* * IP law aims at encouraging the creation of beneficial new ideas. * It influences firms’ capacity to derive pecuniary benefits from innovations and creations. It also influences the activities of firms and individuals seeking to use IP protected goods and services. * Because of the pervasiveness of IP law, it is important that the design, operation and review of IP systems be carefully governed. * For such a diverse topic area, an issue is whether there would be a role in the medium term for an independent overarching framework-style review, to complement ongoing topic-specific reviews into current issues and developments. |
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# Overview

The Australian Government assists industries through an array of measures, including import tariffs, budgetary outlays, taxation concessions, regulatory restrictions on competition and government purchasing arrangements and guarantees. Although assistance generally benefits the receiving industry and businesses, it can penalise other industries, taxpayers and consumers. Transparency about assistance arrangements is therefore important.

This *Review* reports on the levels of assistance afforded by government to industry as well as trade policy developments with assistance implications. However, assessing whether the benefits of any particular support program exceed the costs requires detailed consideration — a task beyond the scope of this *Review*.

The industry assistance landscape in Australia has changed considerably over the last 40 years. Tariff assistance has declined markedly, predominantly through unilateral tariff reductions implemented by the Australian Government. On the other hand, there has been a shift towards greater budgetary assistance to industry, particularly over the last decade. Such assistance is provided by the Australian Government, as well as by State, Territory and local governments.

### Estimates of assistance to industry

Assistance estimates presented in this *Review* mark the commencement of a new series. The new series is benchmarked to the 2008‑09 ABS input-output tables, replacing the previous 2004‑05 based series. With the re-benchmarking of assistance estimates, the Commission also introduced the latest ABS classification of industries — the *Australia and New Zealand Standard Industrial Classification* 2006 Edition. Because of structural changes in the economy between input-output years and data revisions, the estimated level of tariff assistance varies between the last three series where the years overlap (figure 1). The difference between series for the latest revision is not large compared with the rebasing from the 2001‑02 series to 2004‑05, or compared with the size of the economy in 2008‑09 (around $1.3 trillion). The last two series (2004‑05 and 2008‑09) are consistent in revealing the broad downward path in net tariff assistance associated with tariff reductions and the growth in relative importance of the services sector (which is not tariff assisted).

Figure 1 Net tariff assistance to Australian industry

Gross assistance to output less tariff penalty on inputs

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Using the new 2008‑09 benchmarked series, measured assistance to industry by the Australian Government amounted to over $17.3 billion in gross terms in 2011‑12 — comprising $7.9 billion in gross tariff assistance, $5.1 billion of budgetary outlays and $4.3 billion in estimated tax concessions.

After allowing for the cost to business of tariffs on imported inputs ($6.8 billion), estimated net assistance was $10.5 billion in 2011‑12.

The manufacturing sector continues to receive the highest level of net assistance —mainly because of tariff assistance on outputs. For the services sector, the tariff penalty on inputs exceeds its measured budgetary assistance. While the primary industries sector received the majority of its assistance in the form of budgetary outlays, tariff protection continues to be afforded to a range of horticultural, crop and forestry products.

The estimated value of budgetary assistance amounted to $9.4 billion in 2011‑12 down from $9.8 billion the previous year. The largest reduction was the winding down of temporary assistance afforded by the Small Business and General Business Tax Break introduced in the 2008‑09 financial year as part of the Nation Building and Jobs Plan. The concession amounted to $680 million in 2011‑12 compared with $2.4 billion in 2010‑11. The level of budgetary support to rural industries in 2011‑12 declined further from earlier years mainly because of lower Exceptional Circumstances (drought relief) payments. The largest increases in budgetary assistance to industry in 2011‑12 were $1 billion under the Energy Security Fund (Transitional Assistance) and $219 million for the Coal Sector Jobs Package.

With the unwinding of the temporary tax breaks the relative importance of assistance to small business is estimated to have declined from nearly 40 per cent of total budgetary assistance to industry in 2010‑11 to around one quarter in 2011‑12. The relative importance of assistance to R&D remained around 30 per cent. A further 30 per cent of budgetary assistance was directed to selected industries — including, textiles, clothing and footwear (TCF), motor vehicles, film production, steel, coal and electricity. The remainder of industry assistance is designated as sectoral-wide support, and assistance for exports, regional structural adjustment and investment.

Across the primary, mining and manufacturing industries, in 2011‑12, the highest measured effective rates of assistance — net assistance per dollar of value added — continued to be for the TCF and motor vehicles industries. The effective rate of assistance for these industries was around seven and nine per cent, respectively, in 2011‑12 compared to the average for manufacturing of around four per cent. The effective rate of assistance to primary industries is around three per cent. In dollar terms, the highest assistance was afforded to the food processing industries and metal and fabricated metal products industries — mainly on account of tariffs on a range of products manufactured by these industries.

While effective rates of assistance have not been estimated for the service industries, net assistance is negative for most service industries because the tariff penalty on inputs exceeds the magnitude of budgetary assistance.

### Recent industry-related announcements

Since May 2012 (the reporting date for the 2010-11 *Review*), the Australian Government has announced a number of budgetary and regulatory measures relating to industry assistance, across a wide range of activities.

Announcements relating to proposed budgetary outlays affording assistance to businesses and activities amounted to around $430 million. Of this, announcements in respect of industry-support programs totalled around $230 million, much of which is planned to be expended over the next five years. This predominantly relates to transitional assistance to the fishing industry, the automotive new markets program, regional-industry infrastructure programs and tourism programs. A further $192 million was announced for carbon emission reduction and energy efficiency measures (including the Briquette Restructuring Package and the United States-Australia Solar Energy Collaboration).

In addition to these proposed expenditures, expenditure with potential assistance implications for firms and activities of over $230 million were made, most of which related to the future submarine project.

Although difficult to quantify, assistance to industry can also be conferred through regulatory arrangements which affect market access and competition. During the last year, the Government made a number of such announcements and introduced legislation relating to the airport passenger movement charge and the promotion of tourism, broadcasting and communications, and fisheries.

### International trade policy developments

The global financial crisis (GFC) was associated with significant disruption of financial markets, the effects of which have been felt unevenly across the globe. When the crisis began in 2008, world trade contracted severely and rapidly, but has since recovered and now exceeds pre-GFC levels. At the time of the crisis, the risk of increased protectionism and associated costs was recognised and high level commitments were made to avoid this. While average tariffs (trade-item average) worldwide have continued to decline, the onset of the crisis was marked by an increase in protectionist measures, the most common of which included trade remedies (such as anti-dumping investigations) and border assistance (including some increases in applied tariffs).

Concern continues to be expressed about the apparent shift in the policy emphasis of trade remedies and other trade-restricting measures, from measures aimed at combatting the temporary effects of the GFC, towards ‘national industrial planning’, including through government subsidies and purchasing preferences. Monitoring of changes in these by the WTO is proving difficult leading to calls for improvements in transparency and peer review.

In the aftermath of the GFC, concern has also been expressed that competitive currency devaluations are being used to gain advantage in trade.

The Doha Round of multilateral trade negotiations remain stalled. In order to progress the Doha agenda, the Australian Government has been promoting a ‘new pathways’ approach that involves attempting to conclude on those areas of the agenda where agreement may be attained. Two areas being pursued by the Australian Government as candidates for early completion are negotiations on trade facilitation (such as customs procedures) and agreement on trade in services. On the latter matter, Australia is co-chairing with the United States negotiations amongst 46 WTO members.

Australia has continued to be involved in negotiations on bilateral and regional trade agreements. One of these is the proposed Trans-Pacific Partnership (TPP). It has also joined in negotiations for a proposed Regional Comprehensive Economic Partnership (RCEP) which was launched at the East Asia Summit in 2012. The two agreements, if formed to include the current negotiating parties would constitute two trading blocs with limited overlap in member-to-member trade.

In October 2012, the Australian Government issued the Asian Century White Paper. In this paper, it recommitted to existing schedules to lower tariffs and commitments encompassed in trade agreements. It also committed to work towards reducing unnecessary domestic regulatory impediments to cross border business activity, investment and skilled labour migration.

During the year, the Australian Government also made a number of other trade policy announcements.

* It indicated that it will implement a national foreign ownership register of agricultural land and a working group has been formed.
* It announced that the Export Finance and Insurance Corporation (EFIC) will apply a new market failure test to determine the eligibility for support and will direct more resources to small and medium sized enterprises seeking to expand into Asian markets.
* It established an Anti-Dumping Commission and announced changes to enable it to deal with anti-dumping cases more quickly and rigorously.

The Anti-Counterfeiting Trade Agreement (ACTA) was also subject to review by the Joint Standing Committee on Treaties. The Committee raised a number of concerns including the potential for the agreement to shift the balance of interpretation in favour of intellectual property rights holders. To date, ACTA has not been ratified by Australia.

### Intellectual property (the theme chapter in this year’s *Review*)

Intellectual property (IP) law has a pervasive impact on innovation, production, trade and consumption and is the theme topic in this year’s *Trade & Assistance Review*. (Recent *Reviews* have included separate theme chapters on adjustment assistance, state and territory government assistance to industry, assistance to the finance industry and carbon reduction measures.)

Given the capacity for IP systems to facilitate (or inhibit) innovation, creative activity and trade, it is important that the design, operation and review of IP systems be carefully governed.

Intellectual property law, itself, has evolved over the centuries in response to changing economic circumstances. The inclusion of IP in the global trading system that accompanied the establishment of the World Trade Organization (WTO) in 1995 signalled a significant elevation of IP in economic policymaking.

An underlying motivation for much IP law is to facilitate trade and commerce, either through providing incentives for inventiveness and creativity, or through revealing information about new technology and ways of working to the market while preserving the proprietary rights of the IP owners. A stream of IP law also seeks to acknowledge the moral rights of creators and performers over their talents.

There are many types of IP provided for by statutory law in Australia, including patents, trade marks, designs, plant breeder’s rights, copyrights, circuit layout rights, artists resale royalty rights, moral rights and performers rights. This law and its implementation variously influence firms’ capacity to derive pecuniary benefits from their innovations and creations. The IP system also influences the activities of firms and individuals seeking to use IP in the production of their own goods and services, innovation and private consumption.

One of the most obvious differences between the various types of IP is the duration of protection — with the shortest maximum currently at eight years for an innovation patent while copyright protection extends to 70 years after the death of the author. Trade marks are of indefinite duration (provided they continue to be renewed). Differences in the duration of protection have also evolved within different types of IP. For example, the maximum duration available for pharmaceutical patents is longer than other standard patents in recognition of the lag between the patent being granted and regulatory approval for sale.

Complex legal systems and administrative frameworks have been established to manage IP law. In Australia, patents and other industrial IP are administered by Intellectual Property Australia, which employs around 1100 people and had a total expenditure in 2011‑12 of about $156 million, most of which was recovered through fees. Copyright is administered by the Attorney General’s Department while a range of other government agencies including Department of Agriculture, Fisheries and Forestry, Department of Health and Ageing, the Department of Foreign Affairs and Trade, Department of Broadband, Communications and the Digital Economy, and Department of Regional Australia, Local Government, Arts and Sport have responsibility for aspects of IP policy and administration.

National systems of IP law are complemented by international frameworks and treaties. There are now 24 IP treaties administered by the United Nations World Intellectual Property Organization (WIPO) of which 15 are in force in Australia. Australia is also a member of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) established in 1995 as an outcome of the Uruguay Round of trade negotiations. This agreement adopted the most-favoured-nation principle and sets substantive minimum standards in virtually all areas of IP. IP provisions are also negotiated as part of bilateral and regional trade agreements and there are separate international agreements on the protection of new plant varieties (of which Australia is a member) and an anti-counterfeiting agreement (which Australia has not ratified, at this stage).

Empirical research suggests that the relevance and impact of IP law varies between activities, while administrative arrangements can have separate effects on IP activity. Recent empirical research has covered a wide range of topics including the traditional focus on the incentive to invent and create, as well as new IP issues such as the impact of file sharing on copyright revenue and coordination of multiple input patents required to produce one product.

Australia has a substantive tradition of review and public debate concerning the implications for IP law of changing technology and ways of working, and evolving community norms. A review has just been completed in the area of compulsory licensing of patents while reviews are under way with respect to the implications of the digital economy on copyright and into pharmaceutical patents, amongst other matters.

Topic-specific reviews will continue to be needed from time-to-time to ensure that the economic, legal and administrative frameworks remain up to date. Empirical research on the balance of trade-offs associated with IP and the impact of IP protection on economic performance is likely to continue and deepen with improvements in information systems and analytical techniques.

For a large topic area such as IP, an issue is whether there would be a role in the medium term for an independent over-arching framework-style review, as has occurred in Australia in other areas, for example, the financial system and consumer policy.