

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) INTRODUCTION

1. Australia's economic policies, practices, and measures, including those related to trade, are exceptionally transparent, especially in terms of their nature and rationale. This transparency often involves independent evaluation of their cost-effectiveness; that is, their costs in relation to their benefits. Transparency enhances government accountability and hence public debate over the merits of its policies, practices, and measures. Transparency has thus greatly contributed to the continual process of structural reform, which has been aimed at reducing, if not removing, distortions to competition in order to improve the functioning of markets for goods, services, labour, and capital, thereby accomplishing a more efficient use of resources. The latter has been reflected in rising productivity in the economy as a whole and hence increasing competitiveness in world markets. The outcome has been that the Australian economy has achieved one of the fastest rates of growth among OECD countries during the past 15 years or so (Chapter I). Trade liberalization, much of it unilateral, has been an integral part of the structural reforms that have contributed to Australia's impressive economic performance. Such liberalization has continued during the period under review (2002-06); however, some tariff and non-tariff barriers to trade remain.

2. The tariff remains one of the main instruments of Australia's trade policy. As a result of unilateral reductions (on 1 January 2005) in tariffs applied to textiles, clothing, and footwear (TCF) as well as to passenger motor vehicles (PMVs), the overall simple average applied MFN tariff rate fell from 4.5% in 2002 to 3.8% in 2006. Notwithstanding the cuts in tariffs applied to TCF and PMV products, their rates are still considerably higher than the average applied MFN rate. While almost 97% of Australia's tariffs are bound, more than 40% of its bound rates currently exceed applied MFN rates by at least five percentage points, largely as a consequence of the reductions in tariffs on TCF and PMV products. While this potentially imparts a degree of unpredictability to the tariff, there has not been any increase in applied tariff rates during the period under review. A few tariff lines are subject to non-*ad valorem* rates, which tend to conceal relatively high tariff rates. In particular, judging from its high average *ad valorem* equivalent (AVE), the compound duty on used or second-hand vehicles is potentially prohibitive.

3. Although Australia continues to maintain strict sanitary and phytosanitary (SPS) measures, steps have been taken to improve import risk analyses in order to make the process more transparent, efficient, and timely. The share of national standards that are equivalent to international standards remains at around 40%. According to the authorities, this is largely because international standards covering the same areas do not exist.

4. Australia has no plans to become a party to the WTO Agreement on Government Procurement, holding that accession to the agreement would impose unnecessary costs and delays on procurement operations. Its government procurement of motor vehicles still incorporates local-content requirements.

5. Assistance is provided in order to encourage domestic industry development. Such assistance may take the form of tariff concessions, tax incentives, grants, or concessional loans. Assistance delivered through the tax system accounts for more than two-fifths of total annual budgetary assistance; details are published annually in the Tax Expenditure Statement, enhancing the transparency of this assistance (which would otherwise be opaque). The import duty credit under the Automotive Competitiveness and Investment Scheme (ACIS) is the most significant industry-specific assistance programme. However, the apparent lack of cost-benefit analysis of some schemes,

including tax measures, makes it difficult to determine whether the assistance has yielded net social benefits.

6. Reform regarding competition policy continues. In particular, the review of the National Competition Policy has resulted in a new National Reform Agenda (NRA), including competition and regulatory reforms. In addition, with a view to reducing the regulatory burden, the Banks taskforce made a large number of recommendations (including regular review and cost-benefit analysis of regulations), most of which have been accepted, fully or partially, by the Government (Chapter II).

7. Australia's recently signed regional trade agreements changed various aspects of its trade policies, such as rules of origin, government procurement, and particularly protection of intellectual property rights. As a consequence of the signing of the Australia–United States Free Trade Agreement (AUSFTA), amendments were made to the Copyright Act 1968 and minor changes made to the Patents Act 1990. The authorities state that some changes, such as in the area of government procurement, would be extended to all WTO Members on an MFN basis.<sup>1</sup>

## **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

### **(i) Registration and documentation requirements**

8. Under the Customs Act 1901, a customs declaration is required for most imports.<sup>2</sup> An Integrated Cargo System (ICS) commenced for imports in October 2005; with the intention of improving the cargo reporting process, the ICS replaced all previous cargo declaration systems (such as EXIT, Compile, Air Cargo Automation, and Sea Cargo Automation).<sup>3</sup> To use the ICS, clients must register with the Australian Customs Services (Customs); import declarations lodged electronically are given priority.<sup>4</sup> In 2004/05, 99.4% of Customs entries in Australia were processed electronically.<sup>5</sup> Customs clearance may be undertaken by either the importer, or a customs broker; the latter must be licensed by Customs. For imports subject to quarantine restrictions, ICS import declarations must include both Customs and Australian Quarantine Inspection Service (AQIS) requirements.<sup>6</sup> Documentation requirements remain unchanged.<sup>7</sup>

9. Australia has no preshipment inspection requirements for imports or exports. Preshipment requirements, if applicable, are determined on a case-by-case basis.

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<sup>1</sup> The authorities gave two reasons for extending the results to all countries: firstly, a non-discriminatory framework for government procurement is believed to be conducive to ensuring value for money; and secondly, the Government did not want to sustain two procurement frameworks.

<sup>2</sup> Some imports are exempted from customs declaration requirements: accompanied or unaccompanied personal or household effects; goods not exceeding \$A 1,000 per consignment; containers belonging to persons carrying on business in Australia and intended for re-export; and containers manufactured in Australia and continuing to be the property of a person carrying on business in Australia. In addition, permission may be granted for "like customable goods" and "special clearance goods" to be delivered for home consumption without a customs declaration being lodged at the time of importation.

<sup>3</sup> The ICS commenced for exports on 22 September 2004, and for imports on 12 October 2005.

<sup>4</sup> Customs (2005b).

<sup>5</sup> Customs (2005a), p. 22.

<sup>6</sup> DAFF (2005b).

<sup>7</sup> WTO (2003). Minimum documentation requirements remain unchanged since 1998; they include an airway bill or bill of lading, invoices, and any other papers (including packing lists, insurance documents, etc.) relating to the shipment. Imports subject to quarantine restrictions require special certificates, issued by the authorities in the country of export, confirming that the goods meet Australian regulatory requirements. Import permits are also required for certain goods subject to controls or restrictions.

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**(ii) Tariffs****(a) Tariff structure**

10. Since the previous Review, the tariff classification system has been changed from the Harmonized Commodity Description and Coding System (HS) 1996 to HS 2002. Australia grants at least MFN treatment to imports from all its trading partners. Its 2006 tariff has 6,124 lines, of which, 6,107 (99.7%) are *ad valorem*, which ensures a high degree of transparency of the tariff. Australia continues to submit its customs tariff and trade data regularly to the WTO Integrated Data Base. It also submits its tariffs to the APEC tariff database project. The tariff continues to be a minor source of tax revenue (2% of total tax revenues in 2004/05) (section (4)(i), and Table III.6).<sup>8</sup>

11. Tariffs increase the price of imported goods, which allows scope for domestic producers of similar products to increase their prices. If the imported goods are used as inputs, by increasing their prices, tariffs increase their cost to local industries. For example, in 2003/04, the services sector received an estimated \$A 800 million in budgetary assistance; however, tariffs on manufactured inputs increased services industries' costs by an estimated \$A 2.8 billion that year.<sup>9</sup>

12. Based on the 2006 eight-digit tariff schedule, 96.7% of tariff lines are bound; bindings cover 100% of agricultural tariff lines and 96.2% of non-agricultural products (WTO definitions); 95.9% of the non-agricultural products are fully bound. The final/current average bound rate is 10.0%. Bound rates range from zero to 29% (vegetables) for agriculture, and from zero to 55% (clothing) for non-agricultural products.

13. On average, Australia's applied MFN tariffs are low; 47.6% of all tariff lines are duty free, a further 38.7% bear tariffs of between zero and 5%. In 2006, the simple average applied MFN tariffs for agricultural products (WTO definition) and non-agricultural products are 1.5% and 4.1%, respectively (Table III.1). In addition, the overall simple average applied MFN tariff rate has fallen from 4.5% in 2002 to 3.8% in 2006, as a result of unilateral tariff reductions in 2005. On 1 January 2005, tariffs were reduced from 15% to 10%, for passenger motor vehicles (PMV), components, and replacement parts, and are scheduled to be reduced to 5% in 2010. The applied tariffs for textiles, clothing, and footwear (TCF) were reduced on 1 January 2005: from 25% to 17.5% on apparel and certain finished textile articles; from 15% to 10% on cotton sheeting, woven fabrics, footwear, and carpets; and from 10% to 7.5% on sleeping bags, table linen, and footwear parts. No further unilateral tariff reduction on TCF imports are envisaged until 2010 and 2015.<sup>10</sup> Notwithstanding these unilateral reductions in tariffs applied to TCF and PMV products, their rates remain considerably higher than the average applied MFN rate of 3.8%.

14. Largely as a consequence of these reductions, more than 40% of Australia's bound rates currently exceed applied MFN rates by at least five percentage points (Chart III.1). This gap provides the authorities with considerable scope to raise applied rates, potentially imparting a degree of unpredictability to the tariff. In practice, there has been no increase in any applied tariff rates during the period under review.

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<sup>8</sup> As the calculation of Australian import duty is based on the free-on-board (f.o.b.) value, the actual tariff imposed is lower than in economies that calculate duty on the cost, insurance, and freight (c.i.f.) value (APEC, 2004).

<sup>9</sup> Productivity Commission (2004).

<sup>10</sup> Tariffs on apparel and certain finished textile articles are to be reduced to 10%, and other TCF goods to 5% on 1 January 2010; tariffs on apparel and certain finished textile articles are to be reduced to 5% on 1 January 2015.

**Table III.1**  
**Structure of the MFN tariff, 2002-06**  
(Per cent)

	2002	2003	2004	2005	2006	Final bound <sup>a</sup>
1. Bound tariff lines (% of all tariff lines)	96.7	96.7	96.7	96.7	96.7	96.7
2. Simple average applied rate	4.5	4.5	4.5	3.8	3.8	10.0
Agricultural products (HS01-24)	1.4	1.4	1.4	1.4	1.4	3.5
Industrial products (HS25-97)	5.0	5.0	5.0	4.2	4.2	11.1
WTO agricultural products	1.5	1.5	1.5	1.5	1.5	3.9
WTO non-agricultural products	5.0	5.0	5.0	4.1	4.1	10.9
Textiles and clothing	12.4	12.4	12.4	12.1	12.1	24.3
3. Domestic tariff "peaks" (% of all tariff lines) <sup>b</sup>	11.4	11.4	11.3	4.1	4.1	5.6
4. International tariff "peaks" (% of all tariff lines) <sup>c</sup>	4.1	4.1	4.1	4.1	4.1	13.5
5. Overall standard deviation of tariff rates	9.9	9.9	9.9	8.9	8.9	11.2
6. Coefficient of variation of tariff rates	2.2	2.2	2.2	2.3	2.3	1.1
7. Duty-free tariff lines (% of all tariff lines)	47.4	47.4	47.6	47.6	47.6	20.8
8. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.3	0.3	0.3	0.3	0.3	3.6
9. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	0.0	0.0	0.0	0.0	0.0	0.0
10. Nuisance applied rates (% of all tariff lines) <sup>d</sup>	0.0	0.0	0.0	0.0	0.0	9.5

a Implementation of the U.R. was reached in 2000. Calculations are based on 5,921 bound tariff lines (representing 96.7% of total lines), out of which 5,904 (96.4%) are fully bound and 17 (0.3%) are partially bound.

b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.

c International tariff peaks are defined as those exceeding 15%.

d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Calculations include AVEs provided by the authorities for non-*ad valorem* rates. AVEs have been adjusted accordingly (e.g. a compound tariff line's applied MFN rate equals 15% + \$A 12,000 in 2002; the given AVE equals 207.5%. For the same line the applied MFN rate equals 10% + \$A 12,000 in 2006; its AVE becomes 202.5%).

Source: WTO calculations, based on data provided by the authorities of Australia.

15. The dispersion in applied MFN rates declined as a result of unilateral tariff reductions in 2005; the standard deviation of tariff rates fell from 9.9 in 2004 to 8.9 in 2006, and the coefficient of variation has increased slightly. Tariff escalation remains: on average, Australian tariffs on primary products are considerably lower than on semi-processed and processed goods, particularly in textiles, clothing and leather, and food, beverages and tobacco, as well as non-metallic mineral products and fabricated metal products and machinery (Chart III.2).<sup>11</sup> Tariff escalation constitutes a potential obstacle for developing country exports of semi-processed and processed goods to Australia, and thus could impede their industrialization process.<sup>12</sup>

16. Only a few (0.3%) tariff lines are subject to non-*ad valorem* rates, which tend to conceal relatively high tariff rates. These involve a specific rate of \$A 1.22/kg applied to five items (cheese and curd), an alternate rate of 5% or \$A 0.45/kg, whichever is lower, applied to four items (fruit juices), and a compound rate of 10% (15% in 2002) plus \$A 12,000 per unit applied to eight items (used or second-hand vehicles).<sup>13</sup> Although the average AVE for the latter was 206.8% in 2006, the authorities state that the tariff has not been applied since the commencement of a registered

<sup>11</sup> Exceptions include wood and furniture, and paper, paper products and printing and publishing.

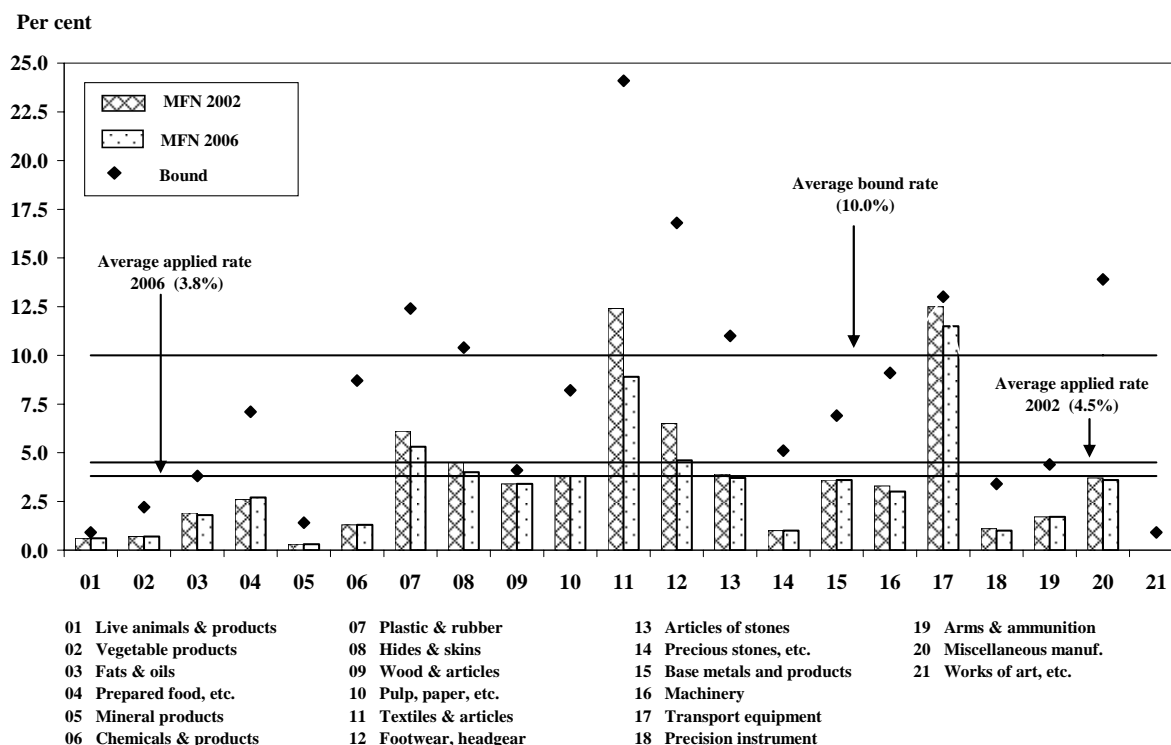
<sup>12</sup> As Australia grants duty-free and quota-free access to all goods originating in the 50 LDCs designated by the UN (Chapter II(6)(ii)(a)), these LDCs do not face any tariff escalation once the relevant rules of origin are complied with. Imports originating in the 50 LDCs comprise 0.2% of Australia's total imports.

<sup>13</sup> The *ad valorem* equivalents (AVEs) are computed on the basis of unit values for imports of the items concerned over the period 1999-01. The average AVEs for alternate duties (fruit juices), specific rates (cheese and curd), and compound rates (used or second hand vehicles) are 3%, 23.8% and 206.8%, respectively, in 2006.

automotive workshop scheme (RAWS) in 2002, which allows a RAW to import up to 130 vehicles per category every 12 months, in compliance with the Australian design rules (ADRs). However, imports under the RAW scheme must be "specialist and enthusiast vehicles" (Chapter IV(4)(ii)). This suggests that the compound duty is prohibitive for imports of other types of used or second hand vehicles.<sup>14</sup>

### Chart III.1

#### Average applied MFN and bound tariff rates, by HS section, 2002 and 2006



**Note:** Calculations include AVEs for non-*ad valorem* rates, provided by the authorities. Sections 7, 8, 11, 12, 13, 15, 16, 17, 18, and 20 are not fully bound.

**Source:** WTO Secretariat calculations, based on data provided by the Australian authorities.

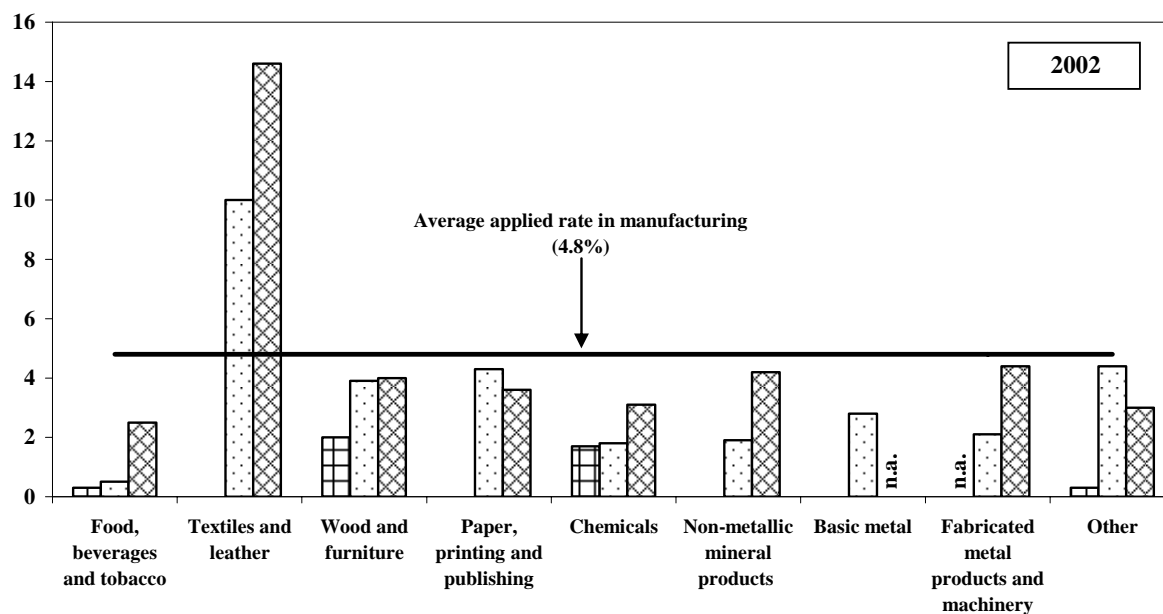
17. Tariff quotas involving specific rates apply to most types of cheese and curd imports.<sup>15</sup> Since the previous Review of Australia, the out-of-quota (above 11,500 tonnes) and in-quota rates for these products have been kept at \$A 1,220 per tonne and \$A 96 per tonne, respectively. Future cheese and curd import arrangements are to be considered in the context of the WTO negotiations on agriculture. Imports from LDCs, partners covered by regional trade agreements (New Zealand, Singapore, Thailand, and the United States), and the South Pacific Forum island countries are exempt from this quota.

<sup>14</sup> The authorities state that, where imports of these vehicles are permitted, the applied tariff is significantly lower.

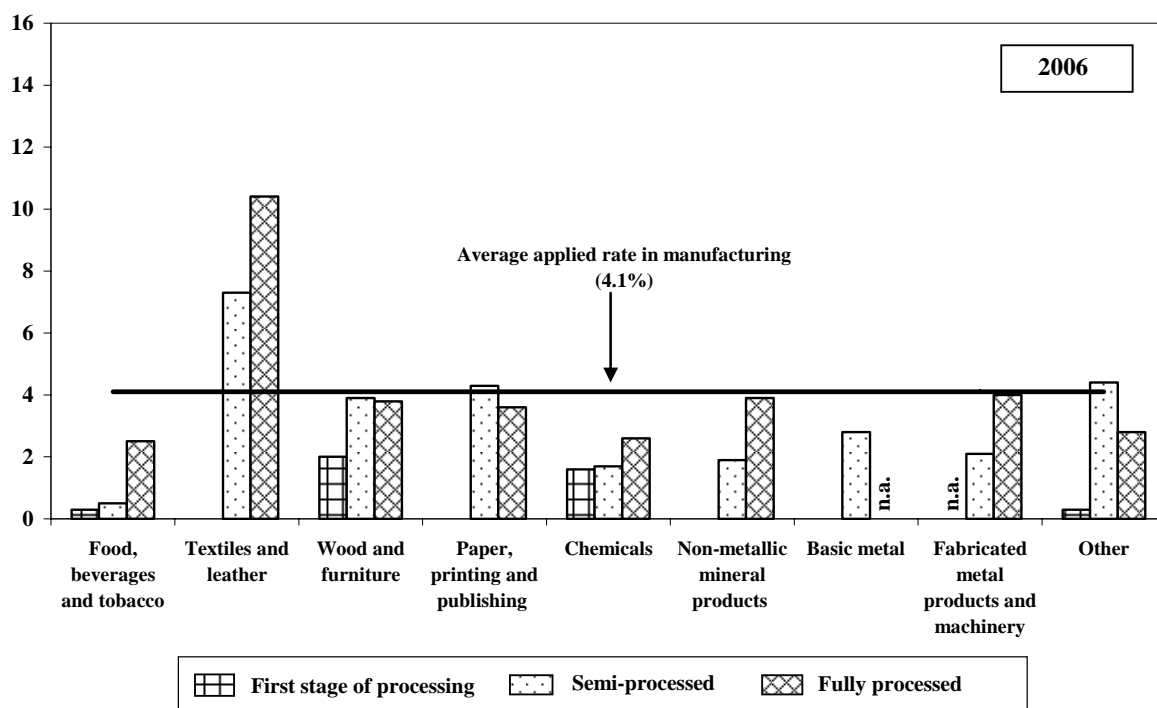
<sup>15</sup> Camembert, brie, roquefort, stilton and goat milk cheeses are exempt from the quota scheme. Customs online information. Viewed at: <http://www.customs.gov.au/webdata/resources/files/FScheesecurd1.pdf> [15 September 2006].

**Chart III.2**  
**Tariff escalation by 2-digit ISIC industry, 2002 and 2006**

Per cent



Per cent



n.a. Not applicable.

Note: Calculations include AVEs for non-*ad valorem* rates, provided by the authorities to the WTO.

Source: WTO Secretariat calculations, based on data provided by the Australian authorities.

18. Australia has unilateral preferential and regional trade agreements with a number of countries (Chapter II(6)(ii)). Duty-free and quota-free access in particular is provided for goods originating in the 50 LDCs, Papua New Guinea, New Zealand, and Singapore. However, bilateral tariff reductions resulting from the recently signed RTAs lead to lower tariffs for some developed countries than those granted to around 90 developing countries (or economies) under the Generalized System of Preferences (GSP) (Table III.2).

**Table III.2**  
Australia's MFN and preferential tariff regime, 2006  
(Per cent)

	Overall average	WTO agriculture	WTO non-agriculture	Leather, rubber, footwear & travel goods	Textiles & clothing	Transport equipment
<b>MFN</b>	3.8	1.5	4.1	5.6	8.9	12.1
New Zealand (ANZCERTA)	0.0	0.0	0.0	0.0	0.0	0.0
Singapore (SAFTA)	0.0	0.0	0.0	0.0	0.0	0.0
Thailand (TAFTA)	1.1	0.0	1.2	1.7	5.4	0.5
United States (AUSFTA)	1.4	0.0	1.6	0.4	7.1	8.1
Canada (CANATA)	3.4	1.3	3.7	5.0	8.7	9.4
Papua New Guinea (PATCRA)	0.0	0.0	0.0	0.0	0.0	0.0
SPARTECA <sup>a</sup>	0.3	0.0	0.3	0.0	0.0	8.1
Norfolk Island Act, Christmas Island Agreement, Cocos Islands Act, Australian Territories, Heard & McDonald Islands, Australian Antarctica	0.0	0.0	0.0	0.0	0.0	0.0
GSP <sup>b</sup>	1.3	0.1	1.4	1.5	5.2	8.1
GSP <sup>c</sup>	3.6	1.2	3.9	5.6	8.9	12.0
DCT <sup>d</sup>	3.7	1.3	4.0	5.6	8.9	12.1
Malaysia (MATA)	3.6	1.2	3.9	5.5	8.9	12.0
LDC	0.0	0.0	0.0	0.0	0.0	0.0

a Forum Islands - South Pacific Regional Trade and Economic Cooperation Agreement.

b GSP for New Caledonia, Northern Mariana Islands, Wallis and Futuna Islands, Tokelau, Pitcairn, Namibia, Palau, Guam, French Polynesia, Botswana, and American Samoa.

c GSP for around 90 countries and economies.

d Republic of Korea; Chinese Taipei; and Hong Kong, China.

Note: Calculations include AVEs for non-*ad valorem* rates provided by the authorities to the WTO.

Source: WTO calculations, based on data provided by the authorities of Australia.

#### (b) Duty concession schemes

19. Australia has a number of tariff assistance schemes for local industry. Total duty forgone through these schemes has been stable since the previous review (Table III.3).<sup>16</sup>

<sup>16</sup> After the Automotive Competitiveness Investment Scheme (ACIS) was launched on 1 January 2001, total amount forgone duty revenue increased sharply from \$A 788.7 million in 2000/01, to \$A 1,373.8 million in 2001/02. Since then, total duty forgone has been stable.

**Table III.3**  
**Duty forgone through tariff concession arrangements, 2002-06**  
(\$A million)

Industry assistance measure	2002/03	2003/04	2004/05	2005/06 <sup>b</sup>
Tariff Concession Scheme	489.0	477.4	552.3	509.3
Textile Clothing and Footwear Policy By-Law	38.5	26.8	20.4	6.9
TRADEX	138.7	129.3	93.8	33.0
Project By-Law Scheme <sup>a</sup>	7.1	n.a.	n.a.	n.a.
Enhanced Project By-Laws	20.7	52.2	52.7	12.2
Cheese and curd quota scheme	10.7	11.8	12.5	6.8
Automotive Competitiveness Investment Scheme (ACIS)	555.6	586.9	531.1	224.2
CIM	..	6.6	5.8	2.6
Other concessions	102.3	105.3	113.3	48.9
<b>Total</b>	<b>1,368.2</b>	<b>1,395.0</b>	<b>1,380.9</b>	<b>843.0</b>

.. Not available.

n.a. Not applicable.

a The Project by-law scheme was replaced by the Enhanced Project By-Laws in July 2002.

b Data for 2005/06 are for the first six months only.

Source: The Australian authorities.

#### *Duty deferral – customs warehouses*

20. The duty deferral facility allows imported goods to be stored in a customs licensed warehouse. These goods (referred to as "under bond") are under Customs control until the owner is ready to sell them for domestic consumption and pay the duty, or export them.<sup>17</sup>

#### *Tariff concessions<sup>18</sup>*

21. Australia's Tariff Concession System is available for imports for which substitutable goods (Australian-made goods with a use corresponding to that of the imported goods) were not produced in Australia at the time a Tariff Concession Order (TCO) application was lodged.<sup>19</sup> The main change to the system occurred on 11 May 2005, when a minimum 3% duty charged on goods with a TCO that were identified as business inputs was removed. As a result, all goods are allowed to be imported duty free. It is estimated that this removal eliminated a cost imposed on Australian industries and consumers of around \$A 300 million a year.<sup>20</sup> Certain products do not qualify for a TCO; these include, *inter alia*, food stuffs, most textiles and clothing, certain motor vehicles and parts, jewellery, and furniture.<sup>21</sup> The authorities state that these goods were excluded because local industry had been established to produce these goods.

<sup>17</sup> Customs (2000b).

<sup>18</sup> Customs (2000c).

<sup>19</sup> In a TCO application process, Customs must publish the details of the application in the *Commonwealth Gazette* within 28 days after the application is received. Appeals against the proposed TCO must be made to Customs within 50 days from the date of the publication, and a decision on whether to grant a TCO is to be made within 150 days from the date of the publication. When a TCO is granted, it becomes effective from the date the application was first received by Customs. All goods covered by the TCO description (not only the applicant's goods) and entering Australia on or after that date, are eligible for tariff concessions.

<sup>20</sup> Productivity Commission (2006e).

<sup>21</sup> Regulation 185 and Schedule 2 of the Customs Regulations.



*Other duty concession schemes*

22. Other duty reduction or exemption arrangements include: the Enhanced Project By-Law Scheme (EPBS), the Automotive Competitiveness Investment Scheme (ACIS), the textiles, clothing and footwear policy by-laws (Chapter IV), the Trade and Export Concession Scheme (TRADEX) (section (3)), the Certain Inputs to Manufacture (CIM) programme (section (3)), and the Space Concession programme.<sup>22</sup>

23. The EPBS, which replaced the Project By-Law Scheme in July 2002 with much wider coverage, provides duty-free entry for eligible goods (capital equipment and machinery) for projects in agriculture, food processing, food packaging, manufacturing, mining, resource processing, gas supply industries and, from 1 July 2006, power supply and water supply industries. These goods must not be produced in Australia, or the imports need to be technologically superior to those made in Australia. Total expenditure on capital goods for eligible projects must be no less than \$A 10 million. In addition, an EPBS applicant must develop and implement an Australian Industry Participation plan (AIP), under which, the applicant is "required" to demonstrate the intention to provide full, "fair", and "reasonable" opportunity for Australian industry to participate in all aspects of the project.<sup>23</sup> However, the authorities maintain that these "requirements" are not compulsory.

24. Under the ACIS, import duty credits are issued quarterly to eligible participants, to encourage new investment and innovation in the automotive industry. These credits can be used to discharge customs duty on subsequent eligible automotive imports; the credits can also be sold or transferred (Chapter IV(4)(ii)). Although most textiles, clothing, footwear, and headwear products are exempted from the tariff concession system, some can be imported duty free under various by-laws (Chapter IV(4)(i)).<sup>24</sup>

**(iii) Other charges affecting imports****(a) Indirect taxes**

25. Apart from customs duties, imports are subject to a goods and services tax (GST), as well as excise taxes (imported goods are subject to a duty collected at the border that is equivalent to an excise on the like domestic goods) (section (4)(i)(a)); a wine equalisation tax (WET) or luxury car tax (LCT) may also apply to certain goods. The GST applies to most imported goods<sup>25</sup>, and is applied at 10% of the value of the taxable import, which is the sum of its customs value, tariff payable, international transport and insurance, and any WET (if applicable).<sup>26</sup> The Australian Taxation Office administers a deferred GST scheme, under which authorized entities are allowed to defer their GST liability on imported goods until the twenty-first day of the following month.

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<sup>22</sup> The Space Concession programme allows duty-free entry of goods used in authorized space projects, with a view to increasing the competitiveness of the space industry in Australia.

<sup>23</sup> DITR online information. Viewed at: [http://www.industry.gov.au/assets/documents/itrinternet/AIP\\_Plan\\_Customer\\_Guide%20V2\\_May\\_%200420051020132749.pdf](http://www.industry.gov.au/assets/documents/itrinternet/AIP_Plan_Customer_Guide%20V2_May_%200420051020132749.pdf). According to the authorities, the AIP intends to assist Australian firms to compete with international ones, as the relative small size of the Australian economy, together with its geographical distance from major markets of Europe and North America, as well as the trend towards greater use of established supply chains by international investors could obstruct Australian industry's participation in major projects.

<sup>24</sup> Productivity Commission (2003c), p. 247.

<sup>25</sup> A few exemptions to GST include certain foodstuffs, some medical aids and imports that qualify for certain duty concessions.

<sup>26</sup> Customs (2002).

26. In 2002, an excise was introduced on imported and domestically produced ethanol for use as fuel; the rate was equivalent to that applying to petrol.<sup>27</sup> However, for the first 12 months, the excise paid by domestic producers of ethanol was rebated.<sup>28</sup> Thus, the tax levied functioned as a tariff. The WET applies to domestic and imported wine and other similar fermented beverages, at a rate of 29%. Motor vehicles (except motor cycles or similar vehicles) are subject to the LCT if they are designed to carry a load of less than two tonnes and fewer than nine passengers, and if their GST-inclusive value is above a threshold determined annually by the Commissioner of Taxation; it is set at \$A 57,009 for 2006/07.<sup>29</sup> The LCT is levied at the rate of 25% on the GST-exclusive value that exceeds the threshold.<sup>30</sup> Although applicable to both domestically produced and imported luxury cars, the LCT tends to discriminate against imported vehicles, which usually have higher prices than domestically produced ones, partly as a result of relatively high tariffs.<sup>31</sup> In 2004/05, 97% of the LCT was collected on imported vehicles.

(b) Other charges

27. Import declaration processing charges are imposed for goods imported by air, sea, and post. Charges continue to be set on a cost-recovery basis; however, this system was restructured in July 2005 in line with the Cargo Management Reengineering (CMR) project, to reflect additional costs for Customs in relation to, *inter alia*, quarantine processing for foot and mouth disease, container examination logistics, and the cost of implementing the CMR project.<sup>32</sup> In 2006, the Government announced a further increase to Customs import declaration processing charges.<sup>33</sup> Charges are not based on import values.<sup>34</sup>

(iv) Customs valuation and rules of origin

(a) Customs valuation

28. Australia has implemented the GATT/WTO Agreement on Customs Valuation since 1981; it has not invoked provisions on delayed implementation. The Customs Act 1901 replicates the GATT/WTO Agreement by providing a number of different methods for valuation, which must be

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<sup>27</sup> Australian Customs Notice 2002/53, Customs Tariff Proposal No. 3 - Ethanol, 18 September 2002. Viewed at: <http://www.customs.gov.au/site/page.cfm?c=2616> [20 November 2006].

<sup>28</sup> Productivity Commission (2002b).

<sup>29</sup> The LCT threshold is indexed annually to changes in the subgroup of motor vehicle purchases under the Consumer Price Index. The threshold does not increase if the indexation factor is less than 1. The threshold in 2006/07 is equal to that in 2005/06.

<sup>30</sup> To calculate the LCT for an imported vehicle: first, the sum of a vehicle's customs value, import duty, and any international transport and insurance, equals its value of taxable importation (VoTI). GST is paid at 10% on the VoTI. If the sum of the VoTI and the GST is higher than the threshold (\$A 57,009), LCT must be paid. The LCT is calculated at 25% on the gap between the value and the threshold from which the GST is then deducted (Customs, 2005b).

<sup>31</sup> The authorities maintain that the LCT does not discriminate against imported vehicles as it applies to both Australian and imported vehicles, and that the majority of vehicles are valued below the LCT threshold.

<sup>32</sup> For example, the minimum charges for electronically lodged declarations increased from \$A 44 to \$A 49.50 per declaration for sea imports, and from \$A 27.10 to \$A 30.10 for air and postal imports. Charges for manually lodged declarations remain the same (Customs online information. Viewed at: <http://www.customs.gov.au/site/page.cfm?u=4982> [22 March 2006]).

<sup>33</sup> The minimum charges for electronically lodged declarations increased from \$A 49.50 to \$A 50.00 per declaration for sea imports, and from \$A 30.10 to \$A 40.20 for air and postal imports (Customs online information. Viewed at: <http://www.customs.gov.au/site/page.cfm?u=4368#1>).

<sup>34</sup> Australian Customs Notice No. 2006/21, Changes to Import Processing Charges. Viewed at: <http://www.customs.gov.au/webdata/resources/notices/ACN0621.pdf> [20 November 2006].

used in sequence; the most common is the transaction value method.<sup>35</sup> Customs value of imported goods is calculated on a free-on-board (f.o.b.) basis.

(b) Rules of origin

29. Australia applies rules of origin in accordance with the WTO Agreement on Rules of Origin, and participates actively in the work of the WTO Committee on Rules of Origin (CRO), as well as the Technical Committee on Rules of Origin (TCRO). Australia provides non-reciprocal preferential tariff access to imports originating in developing countries and LDCs, if: the imports are wholly produced in the country where they originate; they are wholly manufactured in the country from originating materials; or the last process in the manufacture occurs in that country, and a specified local-content threshold is met. A 50% threshold (using the factory cost method) applies to Papua New Guinea, the Forum Islands, developing countries and LDCs (under the Australian System of Tariff Preferences)<sup>36</sup>; a threshold of 25% or 50% (depending on whether the goods are commercially manufactured in Australia) applies to Australia's external territories including the Cocos (Keeling) Islands, Christmas Island, and Norfolk Island.

30. Australia's reciprocal preferential trade agreements with Canada, Singapore and New Zealand operate on the same basis as the non-reciprocal rules of origin. The local-content threshold varies: 25% or 75% (depending on whether the goods are commercially manufactured in Australia) for goods originating in Canada<sup>37</sup>, 50% for New Zealand, and 50% or 30% for Singapore.

31. Australia's most recent regional trade agreements with Thailand and the United States have adopted a different approach to determine the origin of a good. Under the Thailand–Australia Free Trade Agreement, and the Australia–United States Free Trade Agreement, rules of origin are based on changes of tariff classification.<sup>38</sup> In addition, under the Australia–New Zealand Closer Economic Relations Trade Agreement, new rules of origin based on a change in the tariff classification (at the HS six-digit level) are to be adopted as of 1 January 2007 (Chapter II(6)(ii)). The existing 50% local-content threshold will optionally apply in parallel for a period of five years.

(v) Import prohibitions, restrictions, and licensing

32. Import prohibitions or restrictions may be applied for various reasons, including public health or safety concerns, animal and plant life, environmental conservation, security and international commitments. For restricted imports, if certain conditions are met, non-automatic import permits may be issued by the Australian Customs Service, the Australian Quarantine Inspection Service, or other agencies (Table III.4).<sup>39</sup>

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<sup>35</sup> When the transaction value method cannot be used the other methods are: identical goods value, similar goods value, deductive (contemporary sales) value, deductive (later sales) value, deductive (derived goods sale) value, computed value, and fall-back value method (Customs, 2004).

<sup>36</sup> For Papua New Guinea and the Forum Islands, in special circumstances the 50% threshold may be reduced to 48%.

<sup>37</sup> In the case of Canada, direct shipment is also a condition.

<sup>38</sup> Customs (2005c and d). A regional value content (RVC) requirement may be applied, either as an additional requirement, or as an optional test.

<sup>39</sup> Australia does not impose automatic import licensing.

**Table III.4**  
**Main import prohibitions, restrictions, and controls, 2006**

Goods	Reason	Policy agency/permit issuing agency
<b>Prohibited</b>		
Dogs - dangerous breeds, and related advertising matter	Public health or safety concerns	
Embryo clones - viable materials, and related advertising matter	Public health or safety concerns	
Suicide devices	Community protection	
Diamonds - from Liberia	International commitment	
<b>Restricted</b>		
Therapeutic substances and goods (antibiotics)	Public health or safety concerns	Therapeutic Goods Association, Department of Health and Ageing
ANZAC, and related advertising materials	National symbol	Department for Veteran's Affairs
Australian flag and coats of arms	National symbol	Department of Prime Minister and Cabinet; Australian Customs Service
Hazardous and health-related goods (glucomannan in tablet form, seat-belt accessories, autotrend sun filters, victim toys, smokeless tobacco products, diveman underwater breathing apparatus, "quickie" line release system, gas masks containing asbestos, cigarette lighters)	Public health or safety concerns	Australian Competition and Consumer Commission
Cat and dog fur products	Animal welfare	Australian Customs Service
Glazed ceramic ware <sup>a</sup>	Public health or safety concerns	Australian Customs Service
Cetaceans (whales, dolphins, and porpoises)	Environmental conservation	Department of the Environment and Heritage
Chemical weapons	International commitment (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (CWC))	Australian Safeguards and Non-Proliferation Office in the Department of Foreign Affairs and Trade
Cosmetics – toxic materials	Public health or safety concerns	Australian Customs Service
Credit cards – counterfeit	Community protection	Australian Federal Police, Attorney General's Department
Crowd control equipment	Community protection	Australian Customs Service
Papua New Guinea cultural items	International commitments	Department of the Environment and Heritage
Diamonds – from Sierra Leone	International commitments	Department of Foreign Affairs and Trade
Dog collars – electronic and protrusion	Animal welfare	Australian Customs Service
Drugs and narcotics	Public health or safety concerns, International commitments (Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971, and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988)	Department of Health and Ageing
Endangered species of wild fauna and flora	International commitment (Convention on International Trade in Endangered Species (CITES))	Department of the Environment and Heritage
Erasers resembling food in scent or appearance	Public health or safety concerns	Australian Customs Service
Fish/toothfish	Environmental conservation	Department of the Environment and Heritage; Department of Agriculture, Fisheries, and Forestry
Fly swatters/mosquito bats – electronic	Public health or safety concerns	Australian Customs Service
Marked fuels (duty-free fuel marked to signify that it is not for use in internal combustion engines)	Domestic regulation	Australian Customs Service

**Table III.4 (cont'd)**

Goods	Reason	Policy agency/permit issuing agency
Growth hormones and substances of human or animal origin	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Hazardous waste	International commitments (Basel Convention, OECD Council Decision C(92)39)	National Industrial Chemicals Notification and Assessment Scheme in the Australian Department of Health and Ageing; Department of the Environment and Heritage
Certain industrial chemicals	Public health or safety concerns, environmental conservation	Department of the Environment and Heritage
Kava	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Knives and daggers	Community protection	Australian Customs Service
Logs and timber products – from Liberia	International commitment (UN Security Council Resolutions)	Department of Foreign Affairs and Trade
Goods coated with or containing unsuitable mineral compounds (toys, cosmetics, money boxes, pencils)	Public health or safety concerns	Australian Customs Service
Ozone depleting substances	Environmental conservation/International commitment (Ozone Protection and Synthetic Greenhouse Gas Management Act 1989)	Department of the Environment and Heritage
Organochlorine chemicals (pesticides)	Public health or safety concerns, environmental conservation	Department of Agriculture, Fisheries and Forestry
Objectionable material	Community protection	Office of Film and Literature Classification
Radioactive substances	Community protection, international commitments	Australian Radiation Protection and Nuclear Safety Agency; Department of Health and Ageing
Steroids	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Therapeutic drugs and substances	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Tobacco leaf	Domestic regulation	Australian Taxation Office
Weapons, firearms, and parts of firearms	Community protection	Attorney-General's Department
Woolpacks and woolpack caps	Domestic regulation	Department of Agriculture, Fisheries and Forestry

a No permit is needed for importation. However, a testing certificate is required from the Australian Government Analytical Laboratory or a testing agency approved by the National Association of Testing Authorities Australia.

Source: Customs online information. Viewed at: <http://www.customs.gov.au/site/page.cfm?u=4369>; WTO document G/LIC/N/3/AUS/3, 23 October 2006; and Customs (Prohibited Imports) Regulations 1956.

## (vi) Contingency measures

### (a) Anti-dumping and countervailing measures

33. Australia's anti-dumping and countervailing legislation is based on the Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement). Major domestic legislation in this regard includes: the Customs Act 1901, which sets out the general inquiry process; the Customs Tariff (Anti-Dumping) Act 1975, which provides for the imposition of anti-dumping and countervailing duties; and the Customs Administration Act 1985, which establishes some administrative matters and associated regulations.<sup>40</sup>

<sup>40</sup> Customs (2005e).

34. The institutional and procedural framework on anti-dumping and countervailing measures has remained unchanged since the previous Review of Australia; these measures continue to be subject to a five-year sunset clause.<sup>41</sup> Parties may appeal adverse Customs decisions under the Administrative Decisions (Judicial Review) Act 1977, the Ombudsman Act 1976<sup>42</sup>, or the Customs Act 1901.<sup>43</sup> Imports from New Zealand remain excluded from anti-dumping actions (as these are dealt with under competition laws)<sup>44</sup>; the authorities stated that competition legislation has never been exercised in this regard.

35. Australia's recourse to anti-dumping action has been declining; initiations fell from 16 in 2002 to 2 in 2005.<sup>45</sup> Of the total 35 anti-dumping initiations between 2002 and 2005, 15 were subject to provisional measures, and another 15 resulted in definitive measures (involving anti-dumping duties and minimum export prices). Imports affected include plastics, base metals, chemicals, pulp of wood/paper or paperboard, and textiles. The Members affected most include the EC15, China, and the Republic of Korea. Since 2002, there have been four countervailing initiations, making six initiations overall at end 2004.<sup>46</sup> These initiations cover canned tomatoes from Italy, and olive oil (virgin and refined) from Greece, Italy, and Spain.

(b) Safeguards

36. Australia has no specific legislation for the imposition of safeguard measures.<sup>47</sup> The Productivity Commission remains the investigating authority. Following consideration by the Australian Government, the Treasurer may refer matters to the Productivity Commission for inquiry. Safeguard measures are applied to a product being imported irrespective of its source; exceptions are products originating from Singapore<sup>48</sup>, New Zealand, and from developing country WTO Members, if certain conditions are met. Pursuant to the AUSFTA and TAFTA, products determined to be of U.S. or Thai origin, may also be excluded.<sup>49</sup>

37. TAFTA also contains provisions for special safeguard (SSG) measures for imports of some sensitive agricultural products; for example, Australia has reserved SSG rights from 2005 to 2008, for

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<sup>41</sup> Customs online information, Anti-Dumping and Countervailing Investigation Process. Viewed at: [http://www.customs.gov.au/webdata/resources/files/Anti\\_dumping\\_and\\_countervailing\\_investigation\\_process1.pdf](http://www.customs.gov.au/webdata/resources/files/Anti_dumping_and_countervailing_investigation_process1.pdf) [24 March 2006].

<sup>42</sup> WTO (2003).

<sup>43</sup> Under the Customs Act 1901, a Trade Remedies Review Office was set up to allow parties to apply for review of certain anti dumping and countervailing decision.

<sup>44</sup> Under the ANZCERTA, both countries have precluded anti-dumping action against goods that are the produce or manufacture of the other. However, actions may be taken for exports from New Zealand under the Trade Practices Act (Customs, 2000a). Also, countervailing actions can be applied. In addition, Article 15 of the ANZCERTA provides for third-country anti-dumping actions to be taken in cases where dumped imports into Australia or New Zealand from a third country are causing or threatening to cause material injury to industry.

<sup>45</sup> WTO online information. Viewed at: [http://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_stattab2\\_e.xls](http://www.wto.org/english/tratop_e/adp_e/adp_stattab2_e.xls). [28 March 2006].

<sup>46</sup> WTO online information. Viewed at: [http://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm](http://www.wto.org/english/tratop_e/scm_e/scm_e.htm) [28 March 2006].

<sup>47</sup> Procedures for safeguard investigations are contained in *Gazette* No. S297 of 25 June 1998. Also see WTO documents G/SG/N/1/AUS/2, 2 July 1998, and G/SG/N/1/AUS/2/Suppl.1, 16 December 2005.

<sup>48</sup> Under the SAFTA, products determined to be of Singapore origin are excluded from the inquiry; the two countries agreed not to apply safeguard measures against each other's products.

<sup>49</sup> For imports of U.S. origin, exceptions are those that are not a substantial cause of serious injury or threat thereof; for imports of Thai origin, those that are not a cause of serious injury or threat thereof, nor of serious damage or actual threat may be excluded (WTO document G/SG/N/1/AUS/2/Suppl.1, 16 December 2005).

prepared or preserved tuna, skipjack and bonito, as well as pineapples and pineapple juice.<sup>50</sup> Australia imposed special safeguards in October 2005 on canned tuna, and in August 2006 and September 2006 on canned pineapple and canned tuna, respectively, imported from Thailand.

**(vii) Standards and other technical requirements**

**(a) Standards, testing, and certification**

*Standards*

38. Legislative, executive, and judicial powers relating to technical regulations and standards are shared between the Commonwealth and state and territory governments.<sup>51</sup> Currently, the institutional framework for standards consists of four main bodies: Standards Australia, which is a not-for-profit company responsible for the formulation of standards; the National Association of Testing Authorities (NATA), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), two accreditation bodies; and the National Measurement Institute (NMI), established in July 2004 to integrate the country's physical, chemical, and biological measurement and metrology.<sup>52</sup>

39. Australia has two types of standard: voluntary and regulatory.<sup>53</sup> The majority of voluntary standards are developed and published by Standards Australia. Voluntary standards are often made mandatory by reference in technical regulations, and become regulatory (mandatory) standards.<sup>54</sup> Standards Australia has published 6,850 standards, approximately 2,400 of which have become mandatory. Australia's policy is that standards should be compatible with relevant international or internationally accepted standards or practices, with a view to minimizing impediments to trade. In particular, mandatory standards should be consistent with Australia's international obligations.<sup>55</sup> However, in the absence of a suitable international standard, national standards are developed, with transparency and consensus being two key requirements. The share of national standards that are equivalent to international standards remains at around 40%.<sup>56</sup> International equivalence is high in, *inter alia*, electronic and IT products.

40. The Department of Industry, Tourism and Resources (DITR), representing the Commonwealth Government, has a Memorandum of Understanding (MOU) with Standards Australia International Ltd (trading name "Standards Australia"). Revised in 2003, the MOU recognizes

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<sup>50</sup> DFAT online information. Viewed at: [http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta\\_annex\\_5.html](http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_annex_5.html) [21 September 2006].

<sup>51</sup> WTO document G/TBT/2/Add.8/Rev.1, 29 May 2001.

<sup>52</sup> The NMI combines the National Measurement Laboratory from the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the National Standards Commission, and the Australian Government Analytical Laboratories; it resides within the Department of Industry, Tourism, and Resources.

<sup>53</sup> Standards are reviewed regularly, the major ones on a five to seven year basis. Standards are valid for no longer than 15 years after the publication date; any standard older than 15 years is automatically withdrawn, with a view to ensuring that standards represent current practice.

<sup>54</sup> Regulatory (mandatory) standards, by making compliance compulsory or optional (if the target is met through some alternative approach), tend to be more targeted, as they are aimed at, *inter alia*, protecting the health or safety of persons, or the environment.

<sup>55</sup> COAG (2004).

<sup>56</sup> According to Standards Australia, alignment with international standards is possible in a total of 2,743 instances (i.e. an international standard covers the same subject as a national standard), of which, 2,328 (85%) were adopted without modification, 338 (12%) were modified for adoption, and the remaining 77 (3%) have not been adopted because there is no need for a standard in Australia.

Standards Australia as the country's top non-government standards writing body.<sup>57</sup> In addition, government funding was provided to Standards Australia to facilitate various activities in the "public interest", including representing Australia in international standard-setting bodies.<sup>58</sup> In 2006, the Productivity Commission reviewed the relationship between the Government and Standards Australia, and concluded that the standard-setting arrangements were working efficiently, albeit with scope for improvement.<sup>59</sup> In particular, it suggested that the Government should work with Standards Australia to improve the effectiveness of Australia's participation in international standard-setting fora, by defining "national interest" more clearly.<sup>60</sup>

41. In addition to Standards Australia, there are a number of other private standards-writing bodies in Australia, each operating in a specific sector.<sup>61</sup> Some government agencies develop standards without the involvement of Standards Australia; these include Food Standards Australia New Zealand (FSANZ), the Therapeutic Goods Administration (TGA), and the Office of the Gene Technology Regulator (OGTR). Others, such as the Australian Greenhouse Office and the ACCC, request Standards Australia to develop a standard and then reference it in regulation. Alternatively, regulations developed by a number of government bodies could be used as standards. For example, the Department of Transport and Regional Services (DOTARS) develops and reviews the Australian Design Rules (ADRs), which are national safety and environmental standards for motor vehicles, to ensure their consistency with international standards developed under the United Nations Economic Commission for Europe (UNECE) framework.<sup>62</sup> In 2004, over 60% of vehicle standards were aligned with the UNECE 1958 Agreement on technical standards for automobiles and parts regulations.<sup>63</sup>

42. In respect of Commonwealth regulations, mandatory consumer product safety and information standards are enforced by the Australian Competition and Consumer Commission (ACCC). Unsafe goods are banned.<sup>64</sup> At the state and territory level, such regulations are enforced

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<sup>57</sup> An MOU was signed between Standards Australia and the Government in 1988, and in 1998. The current MOU was signed in 2003 for a period of five years. In 2003, Standards Australia sold some of its commercial operations to a publicly listed company, SAI-Global Ltd. Since then, Standards Australia's functions have been concentrating on developing standards, and SAI-Global Ltd is in charge of publishing, distributing, and marketing Standards Australia's products. In 2005, Standards Australia's holding in SAI Global was reduced to 9%.

<sup>58</sup> These include the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the Pacific Area Standards Congress. Standards Australia is also a signatory to Annex 3 of the TBT Agreement. Most Australian Government funding to Standards Australia and NATA is provided through the Support for Industry Service Organizations Programme, administered by the Department of Industry, Tourism and Resources.

<sup>59</sup> Productivity Commission (2006d). Major recommendations to Standards Australia include ensuring, *inter alia*: systemic consideration of the costs and benefits prior to any decision to develop or revise a standard; balanced stakeholder representation; barriers to volunteer and public participation are addressed; and improved accessibility, transparency and timeliness, including an improved appeals and complaints mechanism.

<sup>60</sup> According to the PC, "public interest" covers matters relating to the whole Australian community, including impact on all members of the community; and "national interest" covers Australia's interests at the international level.

<sup>61</sup> Of these, three bodies are accredited by Standards Australia: the Australian Communications Industry Forum, the Seafoods Services Australia, and the Australian Forestry Standard Ltd.

<sup>62</sup> DOTARS (2005). Between 1 July 2002 and 30 June 2005, 33 ADRs were issued; a further 35 were to be issued in 2005/06. The authorities state that ADRs issued in 2005/06 were not new; they were either revised or issued in the new format required under the Legislative Instruments Act 2003 so as to be registered in the Federal Register of Legislative Instruments.

<sup>63</sup> APEC (2004), p. 213.

<sup>64</sup> ACCC online information. Viewed at: <http://www.accc.gov.au/content/index.phtml/itemId/268701/fromItemId/6191> [4 April 2006]. Banned goods include: candles containing lead, children's dart gun sets, "diveman" underwater breathing apparatus, gas masks containing asbestos, glucomannan in tablet form,



by government departments or agencies with portfolio responsibility for consumer affairs and fair trading.

#### *Accreditation*

43. Accreditation services are provided by NATA and JAS-ANZ. NATA is a private-sector organization, and JAS-ANZ was established by the Australian and New Zealand Governments. The Therapeutic Goods Administration, a Commonwealth regulator, is in charge of assessing all therapeutic goods. Another regulatory body, the Australian Quarantine and Inspection Service (AQIS), provides inspection and certification services for food imports.

44. NATA signed its current MOU with the Australian Government in 2003. Covering a period of five years, the MOU recognizes NATA as the national authority (except for most therapeutic goods) for accreditation of testing and calibration laboratories, suppliers of certified reference materials, and inspection bodies. There are around 3,000 NATA-accredited laboratories and facilities.<sup>65</sup> Like Standards Australia, NATA receives government funding, which is intended to facilitate activities in the "national interest", including representing Australia in international laboratory accreditation fora.<sup>66</sup> In its 2006 review, the Productivity Commission concluded that NATA has been working effectively, but efficiency could be improved if the Government could make more efforts to achieve full mutual recognition of conformity assessment in multilateral and bilateral fora, and if NATA could facilitate a more competitive proficiency testing market by assuming a coordinating role and leaving most proficiency testing to accredited commercial bodies.<sup>67</sup>

45. The JAS-ANZ established in 1991 under a Treaty between the Australian and New Zealand Governments, is a non-profit organization accrediting certification bodies to certify management systems, products, and personnel. It represents Australia in the International Accreditation Forum (IAF) and the Pacific Accreditation Cooperation (PAC). Unlike Standards Australia and NATA, the JAS-ANZ no longer receives funding from either the Australian or the New Zealand Government; its income is largely derived from the fees it charges.<sup>68</sup> For certification purposes, JAS-ANZ usually accredits certification bodies to certify in line with international standards, such as the ISO 9000, ISO 14000, and HACCP (Hazard Assessment Critical Control Point) food safety standards. In the absence of an international standard, JAS-ANZ may accredit certification bodies to certify in line with a national standard. It may also accredit in line with other industry standards, such as QS-9000 for automotive parts and systems, or regulatory standards based on a case-by-case assessment.<sup>69</sup>

#### *International cooperation*

46. Recognizing that the alignment of domestic standards with international standards contributes to trade facilitation, Australia is a party to the WTO Agreement on Technical Barriers to Trade (TBT); between 2002 and 2006, it made 48 notifications under the Agreement. It is also a party to the APEC MRAs on conformity assessment of telecommunications equipment, electrical and electronic

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jelly cups – konjac, "quickie" line release system, seat belt accessories, sun visors, tinted headlight covers, tobacco products (smokeless), victim toys, and no holes tongue studs and similar products.

<sup>65</sup> In 2006, Proficiency Testing Australia (PTA) was established as a wholly owned subsidiary of NATA to offer proficiency testing services.

<sup>66</sup> These include the International Laboratory Accreditation Cooperation (ILAC) committees and working groups, the Asia Pacific Laboratory Accreditation Cooperation (APLAC), the OECD Panel on Good Laboratory Practices, and various committees of ISO and IEO.

<sup>67</sup> Productivity Commission (2006d).

<sup>68</sup> JAS-ANZ used to receive funds from both the Australian and New Zealand Governments.

<sup>69</sup> JAS-ANZ (2005).

equipment, and foods and food products. Australia also participates in the International Harmonised Research Activities (IHRA) group, which develops testing procedures for road safety.<sup>70</sup> Australia participates in the WHO International Food Safety Authorities Network for the exchange of information on food recalls.

47. Furthermore, in the area of legal metrology, Australia has bilateral mutual recognition agreements (MRAs) of type approval test reports with equivalent bodies in the Netherlands, New Zealand, and the United Kingdom.<sup>71</sup> MRAs on standards and conformity assessment were signed between Australia and the EC (1998), the EFTA (1999), Singapore (2001), and Canada (2006). In addition to being a founding member of the International Laboratory Accreditation Cooperation (ILAC), NATA was one of the four inaugural signatories to the extended Asia Pacific Laboratory Accreditation Cooperation (APLAC) MRA for inspection, signed in November 2003.<sup>72</sup> Australia has an MOU on therapeutic goods with the U.S. FDA for exchange of information, and current good manufacturing practice (GMP) inspections of human pharmaceutical manufacturing facilities.<sup>73</sup> In 2004, the Therapeutic Goods Administration (TGA) signed an MOU with Health Canada, covering information-sharing and facilitating collaborative activities related to therapeutic products for human use. In 2006, the TGA signed an MOU with Swissmedic covering the development of collaborative activities and the sharing of information relating to the regulation of medicines and medical devices.

(b) Sanitary and phytosanitary regulations

*Overview*

48. Australia has a strict sanitary and phytosanitary regime. The authorities justify this by maintaining that Australia has unique and diverse flora and fauna, is a major exporter of agricultural products, and is relatively free from serious pests and diseases.<sup>74</sup> Under quarantine policy, commodities may not be imported unless the quarantine risks are reduced to a level consistent with Australia's appropriate level of protection (ALOP), which is described as "providing a high level of sanitary and phytosanitary protection aimed at reducing risk to a very low level, but not zero".<sup>75</sup> However, if the SPS regime is unduly strict, it may constitute an import restriction or prohibition. Some WTO Members have raised concerns about the strictness of the Australian regime in the Committee on Sanitary and Phytosanitary Measures, covering, *inter alia*, cosmetics, fresh fruits and vegetables, live fish, prawn and prawn products, chicken meat, pigmeat, sauces, and cheese.<sup>76</sup>

49. Insofar as quarantine restrictions are unduly stringent, they protect domestic producers but reduce consumer welfare through higher domestic prices of the product. The welfare loss becomes more evident and may outweigh any producer gains when natural disasters happen and domestic production falls. For example, Australia has maintained its ban on Philippines' bananas for SPS-

<sup>70</sup> APEC (2004), p. 217.

<sup>71</sup> APEC (2004), p. 220.

<sup>72</sup> APEC (2004), p. 220.

<sup>73</sup> APEC (2004), p. 219.

<sup>74</sup> DAFF estimated that if foot and mouth disease were detected in Australia, the immediate loss of trade for wool, meat, dairy, and live exports would be over \$A 10 billion (DAFF online information. Viewed at: <http://www.daff.gov.au/content/output.cfm?ObjectID=2C8B8DEE-8136-427E-9D81481389015227&contType=outputs> [7 April 2006]).

<sup>75</sup> DAFF (2003).

<sup>76</sup> Concerns have been raised by: ASEAN (represented by its member countries), Bulgaria, Canada, Chile, Croatia, Czech Republic, Estonia, the European Communities, India, Indonesia, Japan, Latvia, Malaysia, New Zealand, the Philippines, Poland, Republic of Korea, Romania, Slovak Republic, Slovenia, Switzerland, Thailand, and the United States (WTO document G/SPS/GEN/204/Rev.6, G/SPS/GEN/204/Rev.6/Add.1, G/SPS/GEN/204/Rev.6/Add.2, G/SPS/GEN/204/Rev.6/Add.3, 19 May 2006).

related reasons, despite the drought in 2002/03 and 2006, and the tropical cyclone in early 2006, although the latter devastated 80% of Australia's banana crop and led to a sharp increase in the price of bananas.<sup>77</sup>

#### *General framework*

50. The Australian quarantine system is regulated by Commonwealth, state and territory laws<sup>78</sup>; the legislation at the Commonwealth level is the Quarantine Act 1908.<sup>79</sup> Quarantine applies to all humans, plants, animals, and associated products, including food products. Quarantine measures are applied at three levels: pre-border, border, and post-border. At the pre-border level, Biosecurity Australia (BA) is in charge of developing recommendations for risk management measures and reviewing existing measures for items that may be imported through an import risk analysis (IRA) approach or a policy review.<sup>80</sup> BA was created in December 2004 as a prescribed agency under the Financial Management and Accountability Act 1997, with a view to improving independence in operations and ensuring financial autonomy (Chapter IV(2)(ii)).<sup>81</sup>

51. BA provides advice to the Australian Quarantine and Inspection Services (AQIS) under DAFF; AQIS implements quarantine policies at the border. AQIS's functions include issuing import permits, as well as providing export health certification for agriculture and food exports, in consultation with industry consultative committees (ICCs).<sup>82</sup> The Department of Health and Ageing (DoHA) performs risk assessments on all biological materials that are of human quarantine concern and provides advice to AQIS before an import permit is issued. Australia's quarantine operations are based on high levels of inspection at the border. During 2004/05, 91% of incoming passengers at airports, 100% of arriving vessels, seaport passengers, sea cargo containers and mail, as well as 95%

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<sup>77</sup> The authorities maintain that decisions on imports and measures applied are science-based, and not more trade restrictive than required. According to the authorities, the IRA process is independent of domestic market concerns (including prices), and the application of Australia's Appropriate Level of Protection (ALOP) is applied consistently regardless of the impact of natural events on domestic production, e.g. drought and cyclone devastation of Queensland's banana crop in 2006. Also, according to the authorities, the price increase in bananas was a temporary one.

<sup>78</sup> Inter- and intra-state barriers in the form of quarantine restrictions also exist within Australia. Under the Constitution, the Commonwealth does not have exclusive power to make laws relating to quarantine; thus Commonwealth and state laws on quarantine coexist. However, the Constitution also states that, if a state law is inconsistent with a Commonwealth law, the Commonwealth law prevails, and the state law is invalid to the extent of the inconsistency. An MoU on animal and plant quarantine matters was signed between the Commonwealth and states governments in 1995. The authorities state that Australia has many pest- and disease-free zones, which are maintained through second-tier domestic quarantine measures affecting inter-state and local movement of products.

<sup>79</sup> Other major legislation includes the Quarantine Regulations 2000, as well as three Quarantine Proclamations, which are the Quarantine Proclamation 1998, the Quarantine (Cocos Island) Proclamation 2004, and the Quarantine (Christmas Island) Proclamation 2004.

<sup>80</sup> An IRA would be conducted on, for example, new commodities that have not previously been imported into Australia, or commodities that have been imported before but the import request is from a different country/area with a significantly different pest and disease status (DAFF online information. Viewed at: <http://www.daff.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060B0A03921> [7 April 2006]).

<sup>81</sup> BA may seek advice from other agencies such as the DoHA and the Department of Environment and Heritage, when undertaking an IRA.

<sup>82</sup> These ICCs include the Imported Food Consultative Committee (IFCC), Dairy Export Industry Consultative Committee, Quarantine and Exports Advisory Council (QEAC) (DAFF online information. Viewed at: <http://www.affa.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060A1B00057&contType=outputs> [25 July 2006]). The QEAC, an independent advisory council, provides advice to the Minister for Agriculture, Fisheries and Forestry, on major quarantine and export certification issues.

of imported air cargo, underwent quarantine inspection. According to the authorities, this helps to minimize the risk of introducing exotic pests and diseases that could be harmful to Australia's agriculture, human health, and the environment.<sup>83</sup>

52. The Product Integrity, Animal and Plant Health (PIAPH) division of DAFF works with state and territory government agencies on post-border matters to facilitate a coordinated national approach to pest and disease management within Australia; this is also facilitated by the Primary Industries Ministerial Council and associated committees.

#### *Recent policy changes*

53. Until 2003 there had been routine IRAs, for less complex issues or issues not likely to involve the analysis of new and significant risks; and non-routine IRAs, for issues involving new or complex risks. In August 2003, a revised IRA Handbook introduced a single IRA process (containing many of the features of the non-routine process), with a view to improving stakeholders' involvement in the import risk analyses.<sup>84</sup> Further changes were announced in October 2006, to make IRAs more transparent, efficient, timely, and predictable. Under the new process, which is to begin in early 2007, a standard IRA will be completed within 24 months, and an expanded IRA (if there are significant differences in scientific opinion or significant biosecurity risk) within 30 months, of an announced commencement date of the process.<sup>85</sup>

54. Nevertheless, there has been growing internal debate on the quarantine process: for example, based on an IRA report, the Australian Government granted a permit to import uncooked pig meat from the United States in July 2004. The IRA report assessed the quarantine risk in relation to a number of diseases found in pigs, including the post-weaning multisystemic wasting syndrome (PMWS). This triggered a law suit against the Government by the domestic industry, represented mainly by the Australian Pork Limited (APL), as well as Windridge Farms. The challenge was successful in the first instance, but the decision was overturned on appeal. The application by APL to appeal to the High Court was rejected in November 2005, bringing an end to APL's legal challenge.<sup>86</sup> The case provides an important precedent for any future challenges to quarantine import decisions.

55. All food imports must comply with the Australia–New Zealand Food Standards Code, which was developed by Food Standards Australia New Zealand (FSANZ) and came into effect in December 2002. Under the Code, FSANZ develops general food standards, food product standards, food safety standards, and primary production standards.<sup>87</sup> New standards are required to be consistent with the principles and approaches of the Codex Alimentarius Commission.<sup>88</sup> AQIS and

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<sup>83</sup> DAFF (2005a), p. 71.

<sup>84</sup> ANAO (2005), p. 34. According to the revised Import Risk Analysis Handbook, the IRA process conforms to Australia's international obligations, such as the WTO SPS Agreement, and international standards established under the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC).

<sup>85</sup> Under the new process, IRAs are to be expanded to include analyses currently undertaken as "policy reviews" (some analyses where relevant import policy exists). Processes for receiving and prioritizing import requests will be improved and clarified. A high-level group will be established to prioritize import proposals and monitor their progress. The criteria used to allocate priority to IRAs and Australia's IRA work programme will be made public. The process of reviewing IRAs by the Eminent Scientists Group will be strengthened.

<sup>86</sup> DAFF online information. Viewed at: <http://www.daff.gov.au/content/output.cfm?ObjectID=22DD9ED3-43E8-4D6C-A55FD79C8D7FF026> [6 September 2006].

<sup>87</sup> FSANZ online information, "Australia and New Zealand Food Standards Code". Viewed at: <http://www.foodstandards.gov.au/thecode> [4 April 2006]. The Code conforms with obligations under the Agreement on Mutual Acceptance of Oenological Practices (MAA) (APEC, 2004).

<sup>88</sup> APEC (2004), p. 212.

FSANZ jointly run an imported food inspection scheme; FSANZ develops food risk assessment policy and AQIS is responsible for inspection.<sup>89</sup> FSANZ also coordinates food supply monitoring and food standards enforcement, and all Australian food recalls. For example, imported foods using biotechnology can be sold in Australia only after being assessed and approved by FSANZ.<sup>90</sup> Based on FSANZ's analysis, imports into Australia of some long-prohibited products have been permitted since 2002. For example, imports of French cheese (Roquefort) started in 2005; in addition, three raw milk cheeses (Swiss Gruyere, Sbrinz, and Emmental), and "raw milk very hard cheeses" (specified as having a moisture content of less than 36% and stored for a minimum of six months) were already permitted.

56. The Food Standards Code also regulates food derived from GM plants, animals or micro organisms, as well as the labelling of GM foods.<sup>91</sup> The Australian Government's Gene Technology Regulator is in charge of regulating gene technology in Australia, and is supported by the Office of the Gene Technology Regulator (OGTR). The OGTR, a statutory agency and part of the Therapeutic Goods Administration (TGA), is located in the Department of Health and Ageing. The Gene Technology Regulator administers the Gene Technology Act 2000, which is aimed at protecting the health and safety of people, and the environment, by identifying and managing risks posed by or as a result of gene technology. The DoHA provides independent human health risk assessments when a genetically modified organism is imported.

#### *Participation in international activities*

57. Between 2002 and 2006, Australia submitted 100 notifications to the WTO relating to Article 7 and Annex B of the SPS Agreement. Draft IRA reports, as well as outcomes of the IRA process are also notified to the WTO. Australia is also active in the three standard-setting organizations under the SPS Agreement: FAO/WHO Codex Alimentarius Commission, World Organisation for Animal Health, and International Plant Protection Convention. Notably, Australia hosts and chairs the Codex Committee for Food Import and Export Inspection and Certification Systems.

58. Australia assists developing countries, particularly those in the APEC, to build quarantine infrastructure and risk analysis capacity, and to improve awareness of international standards on SPS issues in general.<sup>92</sup> It has provided detailed information regarding its technical assistance activities to the WTO SPS Committee.<sup>93</sup>

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<sup>89</sup> DAFF online information. Viewed at: <http://www.daff.gov.au/content/output.cfm?ObjectID=637FF0C5-C305-43BD-9216486B57110266> [6 April 06].

<sup>90</sup> FSANZ has completed safety assessments of 30 food products using gene technology.

<sup>91</sup> There are certain exemptions to the labelling requirements for GM foods: foods that do not need to be labelled as "genetically modified" include those highly refined that contain no DNA or protein, such as oil made from GM soy beans, and those in which GM ingredients are present accidentally and make up less than 1% of the final food (FSANZ, 2005).

<sup>92</sup> For example, Australia provides quality assurance for animal health laboratories in Indonesia and Thailand, and assistance in animal health-related activities in Papua New Guinea, East Timor, and Indonesian Papua and Flores. Australia provides funds and assistance for audits and assessments of plant disease herbaria and arthropod pest collections in Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Viet Nam, and some other APEC region countries, to improve infrastructure required to support quarantine-related market opening and maintenance capacity. FSANZ works with China to develop capacity-building activities, including training programmes, to help China fulfil its obligations under the WTO SPS Agreement.

<sup>93</sup> WTO document G/SPS/GEN/717, 4 August 2006.

(c) Labelling

59. FSANZ is the regulatory authority that develops, implements, and reviews food labelling requirements, for food sold, prepared for sale in, or imported into Australia and New Zealand.

60. Mandatory product information standards, including care labelling for clothing and textile products, and for a range of other consumer products including sunglasses, cosmetics and toiletries, and tobacco products, remain in force.

**(viii) Government procurement**

61. The core principle of Australia's procurement framework is value for money, which requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement procedure. Other principles include competition, non-discrimination, accountability, and transparency, as well as conducting procurement and using resources in an efficient, effective, and ethical manner. Australia still has an industry development initiative for the procurement arrangements for motor vehicles, which is exempted from mandatory procurement procedures specified under the Commonwealth Procurement Guidelines (see below).

62. Australia has observer status in the WTO Committee on Government Procurement, and currently has no intention of becoming a party to the GPA. However, it participates in the Working Group on Transparency in Government Procurement, and has submitted proposals on methods of procurement.<sup>94</sup> Each of Australia's three levels of government (Commonwealth, state and territory, and local) has its own procurement framework and policies. At the Commonwealth level, the government procurement policy framework has three key elements: the Commonwealth Procurement Guidelines (CPGs), which form the basis of Commonwealth procurement policy and are issued by the Finance Minister<sup>95</sup>; finance circulars, which provide advice on key changes and developments of procurement policy and are issued by the Department of Finance and Administration (Department of Finance); and guidance documents developed by the Department of Finance to assist agencies to implement the Government's procurement policy.<sup>96</sup>

63. In 2004/05, the Commonwealth of Australia signed 153,512 contracts with a total value of \$A 23.5 billion. Between 2001/02 and 2003/04, the share of SMEs in the number of contracts fell from 61.3% to 52%; however, in terms of the value of contracts, their share increased from 25.1% to 26.8%.<sup>97</sup> The Department of Finance is currently reviewing the methodology used for identifying SMEs.

(a) Mandatory procurement procedures

64. Under the Financial Management and Accountability Act 1997 (FMA 1997) and relevant regulations, each government agency is in charge of its own procurement. The Government considers

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<sup>94</sup> WTO document WT/WGTGP/W/31, 15 May 2002.

<sup>95</sup> The most recent CPGs were issued by the Finance Minister in December 2004. Department of Finance online information. Viewed at: [http://www.finance.gov.au/ctc/docs/CPGs\\_-\\_January\\_2005.pdf](http://www.finance.gov.au/ctc/docs/CPGs_-_January_2005.pdf) [11 April 2006].

<sup>96</sup> Other government procurement related policies include: the Occupational Health and Safety (Commonwealth Employment) Act 1991, which requires that health and safety issues be considered prior to and during any procurement; a statutory requirement for agencies to submit all construction projects valued at \$A 15 million or more to the Public Works Committee for consideration.

<sup>97</sup> Department of Finance online information. Viewed at: [http://www.finance.gov.au/procurement/contract\\_statistics.html](http://www.finance.gov.au/procurement/contract_statistics.html) [26 July 2006].

that no single procurement method suits all situations; hence, the CPGs allow considerable flexibility. When conducting procurement above certain thresholds, all agencies are required to follow mandatory procurement procedures.<sup>98</sup> These provide for open tendering, select tendering, and direct sourcing; specific rules decide which method can be applied. Open tendering involves publishing a request for tender, and accepting submissions from any potential suppliers who satisfy conditions for participation.<sup>99</sup> Under the select tender process an invitation to tender is issued to selected potential suppliers, such as suppliers granted a licence. This method may be used where the agency has identified all (potentially) interested eligible suppliers, through an open approach, or where suppliers have been granted a specific licence or comply with a legal requirement, and the licence or compliance is essential to the conduct of procurement. In the latter case, all registered and/or licensed suppliers must be invited to tender. Direct sourcing is conducted when no submission was received, or no submission or potential supplier satisfies conditions of the tender. It may also be conducted in extremely urgent situations, or exceptionally advantageous conditions.<sup>100</sup>

65. AusTender provides a single portal to advertise business opportunities and to report the award of government procurement contracts. Agencies are required to publish contracts or standing offers with a value of \$A 10,000 or more on AusTender. Interestingly, no data were available from the authorities concerning the breakdown of contracts (numbers of contracts and their values) under various procurement methods, which indicates a rare departure from Australia's high level of transparency. The authorities state that, Australia's government procurement framework is transparent, and interested parties can obtain the information if they wish.

66. According to the authorities, the Australian Government has a target of sourcing at least 10% of purchases by value from SMEs.<sup>101</sup> In particular, for major procurement of information and communication technology (ICT) products and services with an expected contract value of \$A 20 million or more, government agencies must ensure that tenders meet the following minimum SME participation levels: 10% of contract value for hardware, and 20% of contract value for software/services.

67. The industry development requirement was removed from the Endorsed Supplier Arrangement (ESA) as from 1 January 2005. The ESA is a mandatory pre-qualification scheme, and supports select tendering. Prior to participating in any government procurement, suppliers of information technology products, major office machines, commercial office furniture, and auctioneering services must obtain endorsement under the ESA.<sup>102</sup> In particular, until 2005, in major

<sup>98</sup> These are \$A 80,000 for procurement by FMA agencies (government entities), other than construction services; \$A 400,000 for procurements by relevant CAC Act bodies (government enterprises), other than construction services; and \$A 6 million for procurement of construction services. Procurement of, *inter alia*, real estate property or accommodation, R&D services, and motor vehicles, are exempt from mandatory procurement procedures. (Exemptions are listed in the Commonwealth Procurement Guidelines issued by the Finance Minister in January 2005, Appendix B.)

<sup>99</sup> Conditions for participation may include a requirement to undertake an accreditation or validation procedure.

<sup>100</sup> CPGs Articles 8.62-66. Examples of "extremely urgent situations" include natural disasters. Examples of "exceptionally advantageous conditions" occur only in the very short term and include unusual disposals, liquidation, and insolvency.

<sup>101</sup> An SME is a domestic or New Zealand firm with fewer than 200 full time employees.

<sup>102</sup> The ESA's conditions include: financial viability; insurance coverage; a successful track record for delivery (favourable referee reports); product and service compliance with the agreed industry standards and certain Australian Government policies; adherence to the endorsement rules; and a Head Agreement (for suppliers of IT and major office machines only) (Department of Finance online information. Viewed at: [http://www.finance.gov.au/online/esa/about\\_esa.html#WhatistheEndorsedSupplierArrangement](http://www.finance.gov.au/online/esa/about_esa.html#WhatistheEndorsedSupplierArrangement) [21 April 2006]).

procurement projects of \$A 5 million or more, agencies had to identify clearly in tender documentation any industry development criteria; according to the authorities, this was discontinued.

68. Complaints regarding the procedure or purchase decisions may be made to the relevant agency, or the Commonwealth Ombudsman, who is empowered to investigate procurement decisions and processes. Procurement decisions by agencies are also subject to judicial review.

(b) Preferences

69. Australia's bilateral free-trade agreements with New Zealand, Singapore, and the United States all include specific government procurement commitments.<sup>103</sup> The Australia and New Zealand Government Procurement Agreement (ANZGPA), which includes the Commonwealth and state and territory governments, is undergoing its five-year review.<sup>104</sup> Local preferences have been eliminated, and member governments are committed to the increased consistency in procurement policies, practices, and procedures.

70. The AUSFTA changed several aspects of Australia's government procurement policy framework. For example, the agreement increased thresholds for procurement to follow mandatory procedures: for procurement of goods and services, a threshold of \$A 87,000 applies for Commonwealth government entities, \$A 705,000 for state government entities, and \$A 434,000 for government enterprises; the threshold for procurement of construction services is \$A 9,933,000. The threshold is to be adjusted at two-year intervals, beginning on 1 January 2006.<sup>105</sup> The AUSFTA also specifies three procurement methods: open tendering is presumed to be the first choice; selective or limited tendering are allowed only in specific conditions. According to the authorities, changes made to the procurement framework under the AUSFTA have been extended to all countries.

(ix) Local-content requirements

71. Local-content requirements remain in government procurement arrangements for motor vehicles (Chapter IV(4)(ii))<sup>106</sup>, in export finance, guarantees, and insurance provided by the Export Finance and Insurance Corporation (EFIC) (section (3)(iv)(e)), and in foreign investment requirements in the broadcasting services sector.<sup>107</sup> In June 2006, local-content requirements under the Export Market Development Grants (EMDG) scheme were removed (section (3)(iv)(a)).

72. During the period under review, Australia has not made any notifications of TRIMs under the WTO Agreement on Trade-Related Investment Measures, thereby indicating the absence of such measures.

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<sup>103</sup> Under the Thailand–Australia Free Trade Agreement (TAFTA), a working group was established to discuss issues related to government procurement (DFAT online information. Viewed at: [http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta\\_chapter\\_15.html](http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_chapter_15.html) [26 July 2006]). Non-discriminatory national treatment is guaranteed under both SAFTA and AUSFTA; however, SAFTA includes exemptions relating to industry development, and not all U.S. states signed the government procurement chapter in the AUSFTA.

<sup>104</sup> APEC (2004).

<sup>105</sup> AUSFTA, Chapter 15, Annex 15-A.

<sup>106</sup> Procurement of motor vehicles is exempted from mandatory procurement procedures. Under the Australian Government's fleet arrangements, government procured motor vehicles must be either made in Australia by manufacturers that have a local operation in vehicle assembly or component production, or imported passenger motor vehicles marketed by an Australian-based manufacturer.

<sup>107</sup> In the broadcasting services sector, 55% local content is required in free-to-air television, 80% in television advertising, and 10% expenditure on Australian drama is required for pay-television channels.



**(3) MEASURES DIRECTLY AFFECTING EXPORTS****(i) Registration and documentation**

73. All goods intended for export must be registered with the Australian Customs Service unless otherwise exempted.<sup>108</sup> On 22 September 2004, the integrated cargo system (ICS) replaced the export integration system (EXIT).<sup>109</sup>

74. Customs may undertake compliance examinations on behalf of permit-issuing agencies<sup>110</sup>, for various reasons, including: verification of the goods against entry details; inspection of trade descriptions; detection of prohibited exports; and prevention of any non-payment of duties or GST. As for importers, exporters must keep all relevant commercial documents for a period of five years.

**(ii) Export prohibitions, restrictions, and licensing**

75. Exports of acetic anhydride to Afghanistan are prohibited, as are exports of certain cultural and heritage goods, and suicide devices. Exports of some other goods are restricted, unless permission or a licence is granted.<sup>111</sup> Discretionary export licensing restrictions are maintained for reasons related to SPS, the environment, and alignment with international agreements.<sup>112</sup> Quota arrangements remain on cheddar cheese exports to the EC and varietal cheeses to the United States, due to restrictions imposed by trading partners. Export quotas maintained on merino sheep, set limits

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<sup>108</sup> Exempted goods include: personal or household effects (including motor vehicles and pets) of passengers or crew members; a consignment by post, ship or aircraft from one person to another that has an f.o.b. value not exceeding \$A 2,000, except those requiring permits; dutiable (imported) goods on which duty is unpaid, excisable goods on which excise duty is unpaid, and/or goods for which a person intends to claim a drawback of customs duty or excise duty; containers, whether loaded or unloaded, that are the property of persons doing business in Australia and that are to be temporarily exported prior to re-import; and certain ship or aircraft stores (except underbond stores) (Customs, 2002).

<sup>109</sup> Customs (2005a). For a period of two weeks from 22 September 2004, ICS and EXIT operated in parallel. On 6 October 2004, EXIT was discontinued and all exports started to go through the ICS.

<sup>110</sup> Customs (2005a).

<sup>111</sup> These include asbestos; biological agents; cat and dog fur products; cetaceans (whales, dolphins, and porpoises); chemical compounds; counterfeit credit cards; some cultural and heritage goods; defence and strategic goods; diamonds (Kimberley process); drugs; endangered animal and plant species (subject to the CITES); firearms, parts, accessories, and ammunition; hazardous waste; human blood and other body fluids, organs and tissue; human embryos; ozone depleting substances; pornography and other objectionable material; precursor substances listed in relevant regulations (as these can be converted to other substances that may affect public health); prescription medicines; over-the-counter medicines and complementary medicines, unless exempt; radioactive substances; radioactive waste; toothfish; wine and brandy (bulk consignments of wine, brandy, grape spirit, and wine-derived products over 100 litres); as well as exports to Afghanistan, Liberia, Rwanda, and Sierra Leone (Customs online information. Viewed at: <http://www.customs.gov.au/site/page.cfm?u=4381> [3 May 2006]).

<sup>112</sup> For example, the Department of Environment and Heritage grants licences for exports of hazardous waste and ozone-depleting substances; AQIS grants export licences for meat, dairy products, eggs, animals, fish, grain, vegetables, and fruit; and the Therapeutic Goods Administration under the Department of Health and Aging grants export licences for certain drugs and goods containing those drugs, as well as certain animal and human products (Customs, 2005a). In addition, the Australian Wine and Brandy Corporation issues export licences for wine and brandy, and Horticulture Australia Ltd grants export licences for horticultural products (currently applicable to citrus, dried grapes, apple, pear, and stone fruit exports); export licensing for stone fruit was terminated in 2005.

at no more than 800 rams, with an additional 100 stud rams placed on an export donor register (for trade in genetic material).<sup>113</sup>

### (iii) State trading

76. Australia's most recent notification to the WTO on state-trading enterprises (STEs) was in June 2006.<sup>114</sup> These STEs manage exports of bulk wheat, and in some states, bulk barley, lupines, canola, and rice (Table III.5).<sup>115</sup> There have been several changes to the structure of STEs since 2002: in November 2002, following a National Competition Policy review, the former Grain Pool of Western Australia became a wholly owned subsidiary (Grain Pool Pty Ltd) of the grower-owned Cooperative Bulk Handling Ltd. The Australian Dairy Corporation was privatized and became Dairy Australia in July 2003 (thus no longer meeting the WTO definition of an STE). Under the New South Wales Grain Marketing Act 2001, the New South Wales Grains Board ceased trading, with state-trading arrangements terminated as of 1 October 2005. Under the Queensland Sugar Industry Amendment Act 2005, as of 1 January 2006, Queensland Sugar Limited (QSL) is no longer the exclusive exporter of Queensland's raw sugar.

**Table III.5**  
**State-trading enterprises for exports (Commonwealth and states), 2006**

Enterprise	Activity	Degree of state ownership
AWB (International) Ltd	Single-desk arrangements, sole exporter of bulk wheat	Wholly owned subsidiary of the majority grower-owned and controlled company, AWB Ltd
Grain Pool Pty Ltd <sup>a</sup>	Holds the main export licence to export bulk barley, lupins, and canola from Western Australia	Wholly owned subsidiary of the grower-owned Cooperative Bulk Handling Ltd
ABB Grain Export Ltd <sup>a</sup>	Single-desk arrangements, sole exporter of bulk barley grown in South Australia	Wholly owned subsidiary of the publicly listed, majority grower-owned and controlled ABB Grain Ltd
New South Wales Rice Marketing Board <sup>a</sup>	Single-desk arrangements, sole exporter of rice grown in New South Wales	State statutory authority

a Governmental or non-governmental entity that has been granted exclusive rights or privileges (Article XVII:4(a) of GATT and paragraph 1 of the Understanding on the Interpretation of Article XVII); entity notified to the WTO.

Source: WTO document G/STR/N/11/AUS, 28 June 2006.

### (iv) Export assistance

77. Australia's schemes to promote exports including mainly the Export Market Development Grants (EMDG) scheme, duty concession programmes such as TRADEX, the duty drawback scheme, CIM and MiB, as well as export finance, guarantee, and insurance operated by the Export Finance and Insurance Corporation (EFIC). The lack of cost-benefit analysis of some schemes makes it difficult to know whether the assistance has brought net social benefit.

<sup>113</sup> According to the authorities, the Australian wool industry has made substantial investment in improving the quality of merino wool over the years and this is a crucial element in the competitiveness of the industry (WTO, 1998). The Australia's 2004 APEC IAP stated that, the livestock industry has indicated in recent consultations that it does not support any change to these restrictions (APEC, 2004).

<sup>114</sup> WTO document G/STR/N/11/AUS, 28 June 2006.

<sup>115</sup> The AWB Ltd does not have single-desk arrangements to export wheat in containers or bags. Other STEs are licensed or have export arrangement in certain states.

(a) The Export Market Development Grants (EMDG) scheme

78. The EMDG scheme is administered by Austrade and aims to promote exports by SMEs.<sup>116</sup> In 2004/05, the scheme distributed grants worth \$A 123.9 million to 3,277 exporters, among which 77% were small business with annual incomes of \$A 5 million or less. Under the scheme, the Government reimburses up to 50% of specified export promotion expenditures above a threshold of \$A 15,000. The criteria to obtain grants include: having an annual income of not more than \$A 30 million; spending at least \$A 15,000 on eligible export promotion during the financial year before the application; and being the owner of the product or service being promoted (some exceptions apply). A local-content requirement was removed in June 2006 as a result of a review (see below).<sup>117</sup> The EMDG also applies to services, and intellectual property or know-how that resulted mainly from work in Australia, but excludes legal, migration, and real estate purchasing services.

79. Several changes were made in 2003 to further focus the scheme on smaller and emerging exporters. For example, the maximum grant was reduced from \$A 200,000 to \$A 150,000, and the annual income ceiling for eligible exporters reduced from \$A 50 million to \$A 30 million. Furthermore, the total number of grants available for an exporter was reduced from eight to seven and no extra grants are available for new markets.

80. In 2005, Austrade reviewed the EMDG scheme, and found the scheme particularly effective for smaller sized firms and less experienced exporters.<sup>118</sup> As part of the review, the Centre for International Economics (CIE) carried out a survey of the EMDG scheme in 2005, which found that the scheme had a moderate influence on export promotion on average. However, the research suggested that the scheme had a greater positive impact on smaller firms with capital constraints, and boosted exports and improved the sustainability of SMEs. While the CIE report concluded that "taking account of inducement rates and spillover rates, the evidence presented in this report suggests it is difficult to be categorical about the net social benefit of the scheme"<sup>119</sup>, the Government considered the research suggested a positive net economic benefit, and decided to continue the scheme until the end of 2010/11 with certain changes.<sup>120</sup> These changes include the removal of the local-content requirement in June 2006, as a result of which eligible goods include those considered "made in Australia" if they are Australian primary products, goods made primarily from such products, and goods that are substantially transformed in Australia. Goods that are not taken to be "made in Australia" must meet requirements set out in the EMDG (Significant Net Benefit) Guidelines 2006.

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<sup>116</sup> Austrade online news on 24 January 2006. Viewed at: [http://www.austrade.gov.au/corporate/layout/0,,0\\_S1-1\\_CORPID0054-2\\_-3\\_PWB110745194-4\\_-5\\_-6\\_-7\\_,00.html](http://www.austrade.gov.au/corporate/layout/0,,0_S1-1_CORPID0054-2_-3_PWB110745194-4_-5_-6_-7_,00.html) [4 May 2006].

<sup>117</sup> Previously, for a firm to obtain grants under the EMDG scheme, the goods it intended to export needed to be made in Australia with at least 50% Australian content; or, if the goods were made outside Australia, at least 75% of the value of the components used in the making of the goods had to be attributable to goods that met the 50% Australian content rule. Goods that did not meet these requirements could also be eligible if Austrade determined that the Australian input in those goods was sufficient to ensure that Australia derived a significant net benefit from their export.

<sup>118</sup> Austrade (2005).

<sup>119</sup> CIE (2005).

<sup>120</sup> House of Representatives, Export Market Development Grants Legislation Amendment Bill 2006, Explanatory Memorandum. "The CIE research was not definite about the efficiency of the EMDG scheme in inducing economy-wide benefits in excess of economy-wide costs. Nevertheless, with positive export inducement rates – found to be characteristic of firms facing funding constraints and typical of many of the small owner-entrepreneurial businesses that characterize EMDG recipients – the CIE research suggests a positive net economic benefit, even with low spillovers of benefits from EMDG recipients to non-EMDG recipients".

(b) Trade and Export Concession Scheme (TRADEX)

81. The Tradex scheme, which started on 24 June 2000, provides duty and GST exemptions for imported goods intended for direct export or used, lost, or wasted in the processing of other exports. The Department of Industry, Tourism and Resources (DITR) has statutory responsibility for the scheme under the Tradex Scheme Act 1999, and AusIndustry is in charge of its general administration.

82. Tradex replaced the Tariff Export Concession (TEXCO) scheme and, partially, the duty drawback scheme.<sup>121</sup> Compared with the TEXCO and the duty drawback schemes, which require importers of goods destined for export to pay duty and other taxes at the time of import, Tradex has cash flow advantages, as duty and GST are exempted at the time of import. To obtain a Tradex order, the goods intended for import must be exported, or incorporated into or used in manufacturing goods for export; export must take place within one year of import, or within a longer period approved by AusIndustry. AusIndustry assesses and approves a Tradex application within 30 days. Total duty forgone under Tradex fell from \$A 138.7 million in 2002/03 to \$A 93.8 million in 2004/05, due partly to Australia's regional trade agreements (Table III.3).

(c) Duty drawback scheme

83. Under the duty drawback scheme, exporters can obtain a refund of duties paid on imported goods if these goods were treated, processed, or incorporated into other goods for export, or are exported unused after import. Duty drawback is available on most goods, with the exception of: exported goods that are to be returned to Australia; goods used in Australia other than for the purposes of exhibition, processing, or further manufacturing; or where exported goods are valued at less than 25% of their imported value.<sup>122</sup>

(d) Other schemes

84. The Certain Inputs to Manufacture (CIM) scheme is aimed at reducing input costs by providing duty-free entry for certain goods used in manufacturing directed towards "import replacement" and export enhancement. The authorities state that, "import replacement" here means certain eligible goods can be imported duty-free, if their use as inputs has a substantial and demonstrable performance advantage over substitutable domestic produced goods. Goods eligible under the CIM are raw materials and intermediate chemicals, plastic and paper goods, and metal minerals.<sup>123</sup>

85. The manufacture-in-bond scheme (MiB) remains, but has not been widely used. A firm may apply to the Department of Industry, Tourism, and Resources (DITR) for approval to import dutiable goods into a licensed warehouse free of duty and GST. If these goods are subsequently exported, no duty or GST needs to be paid; if sold domestically, duty and GST is to be paid.

86. Following assent for the Trade Development Zone Act Repeal Bill, the Trade Development Zone Authority (TDZA) ceased trading on 30 June 2003. At the same time, the Darwin Trade Development Zone also ceased to function as Australia's only free-trade zone.

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<sup>121</sup> If importers are not sure whether the imported goods would be finally exported, they use the duty drawback scheme, i.e. they pay the duties first and get them refunded once the goods are exported.

<sup>122</sup> Customs online information. Viewed at: [http://www.customs.gov.au/webdata/resources/files/FS\\_Export\\_concessions\\_duty\\_drawback\\_scheme1.pdf](http://www.customs.gov.au/webdata/resources/files/FS_Export_concessions_duty_drawback_scheme1.pdf) [11 September 2006].

<sup>123</sup> These goods are specified in Items 57 and 60 of Schedule 4 of the Tariff Act.

(e) Export finance, guarantees, and insurance

87. The Export Finance and Insurance Corporation (EFIC), Australia's official export credit agency, has been functioning within various statutory frameworks since 1957. The EFIC became a statutory corporation, wholly owned by the Commonwealth Government, in November 1991. Its core business is to provide various finance, insurance, and guarantee facilities to support Australian companies exporting or investing overseas. The EFIC is instructed by the Government to operate on a self-sustaining basis, but not in competition with the commercial market; instead, it works where the commercial market is unable or unwilling to provide support to Australian companies. For example, the EFIC provides medium-term but not short-term credit insurance, as it considers the latter to be adequately provided by commercial insurers. In addition, the EFIC's contract value depends on the degree of local content: products with local content of 60% or more may receive assistance for up to 85% of the export contract value; for products with local content of less than 50%, the level of finance would normally be limited to the value of Australian content; and for those with local content between 50% and 60%, the level of finance is considered on a case-by-case basis.<sup>124</sup>

88. Support provided by the EFIC includes: medium- to long-term finance or guarantee facilities (generally for more than two years) to the buyers or financiers of Australian exports (usually for export of capital goods and services); medium- to long-term political risk insurance (PRI) for overseas investment; and short-term guarantees to financiers of Australian SME exporters.<sup>125</sup> The EFIC provides such assistance through a commercial account, and a "national interest account".<sup>126</sup> Through the latter the Minister for Trade directs or approves the EFIC's entry into transactions considered to be in the "national interest".<sup>127</sup> In general, the EFIC operates on a commercial basis, charging its clients fees and premiums and earning interest on its loans and its capital investment and reserves. However, the Government is responsible for the financial consequences of national interest transactions, where the EFIC remits the revenues to the Government and the Government reimburses the EFIC for the cost and any losses arising from the transaction. The EFIC's obligations to third parties are guaranteed by the Government; although this guarantee has never been used, it is potentially an additional element of assistance for exporters.

(v) Measures maintained by importing countries

89. Since 2002, there have been five anti-dumping cases against Australian exports, mainly in the iron and steel sector (Table AIII.1).

90. Other measures maintained by certain importing countries that affect Australia's exports include: agricultural market access measures (tariff and tariff quota restrictions), tariff peaks in the non-agricultural market sector (particularly on passenger motor vehicles and seafood), services market access restrictions, SPS and/or standards, import licensing, and customs clearance procedures.

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<sup>124</sup> EFIC online information. Viewed at: [http://www.efic.gov.au/templates/efi/page/page\\_html\\_standard.php?secID=82](http://www.efic.gov.au/templates/efi/page/page_html_standard.php?secID=82) [16 May 2006].

<sup>125</sup> In September 2003, EFIC's short-term export credit insurance business was sold to a private credit insurer, Atradius Credit Insurance (incorporated in the Netherlands).

<sup>126</sup> Since the previous Review, exports supported by the EFIC through its Commercial Account increased from \$A 6.7 billion in 2001, to \$A 7.1 billion in 2003, then fell to \$A 2.2 billion in 2004 and \$A 342 million in 2005 (EFIC, 2005).

<sup>127</sup> National interest transactions usually occur where the transaction size or risk exceeds the EFIC's commercial parameters, and where the Minister for Trade considers them to be in the national interest.

#### (4) MEASURES AFFECTING PRODUCTION AND TRADE

##### (i) Taxation

91. Australia has remained a relatively low tax country during the period under review, with total tax revenue as a percentage of GDP at around 32% in 2004/05.<sup>128</sup> Income tax is the main source of tax revenue, and the goods and services tax (GST) is the major indirect tax. Taxes on international trade contributed only 2% to total tax revenues (Table III.6).

**Table III.6**  
**Structure of tax revenue, 2002-05**  
(Per cent and \$A million)

	2002/03	2003/04	2004/05
Total tax revenues (\$A million)	238,129	257,268	278,534
	(Percentage share)		
<b>Direct taxes</b>			
Taxes on income			
Individuals	39.7	39.9	40.3
Enterprises <sup>a</sup>	16.3	16.3	17.8
Non-residents <sup>b</sup>	0.5	0.4	0.4
Employer payroll taxes <sup>c</sup>			
General taxes (payroll tax)	4.1	4.1	4.2
Selective payroll taxes (stevedoring industry charges)	-	-	-
Other employer labour-force taxes	0.1	0.1	0.1
<b>Indirect taxes</b>			
Taxes on provision of goods and services			
General taxes (sales tax)	0.4	0.4	0.4
Goods and services tax (GST)	13.1	13.3	12.7
Excises and levies	9.1	8.5	8.2
Taxes on international trade	2.3	2.2	2.0
Taxes on gambling	1.6	1.6	1.5
Taxes on insurance	1.3	1.3	1.3
Taxes on property			
Taxes on immovable property	4.4	4.5	4.5
Taxes on financial and capital transactions	4.6	5.0	4.2
Taxes on the use of goods and performance of activities			
Motor vehicle taxes	2.0	2.0	1.9
Franchise taxes	-	-	-
Other	0.5	0.5	0.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

- Nil or rounded to zero (including null cells).

a Amounts collected under petroleum resource rent taxes are included in income taxes levied on enterprises.

b From 2001/02, withholding taxes on non-residents are no longer separately identifiable under the PAYG system. The values are estimates based on methodologies developed by the balance-of-payments area within the ABS.

c The Australia Bureau of Statistics introduced changes in the treatment of fringe benefits tax (FBT) in December 2005. The FBT is now classified as part of compensation of employees in the National Accounts, and as part of taxes on income in Government Finance Statistics (GFS). Thus FBT no longer appears as an employer payroll tax in the table.

Source: Australian Bureau of Statistics, *Taxation Statistics 2004-05*, 5506.0, Canberra.

<sup>128</sup> The average total tax burden for OECD countries is over 36% (OECD, 2006b, p. 41).

## (a) Indirect taxation

92. Australia has a lower reliance on indirect taxes than other OECD countries.<sup>129</sup> Its indirect taxes include a 10% GST on the value-added of taxable goods and services, a 29% wine equalisation tax (WET) on wine and other similar fermented beverages, and a 25% luxury car tax (LCT) on certain vehicles with a retail value above \$A 57,009 in 2005/06 (section (2)(iii)(a)). Excise taxes apply to petroleum and other fuel products, beer and potable spirits, as well as cigarettes and tobacco products (Table III.7). In particular, in September 2002, the Government extended the excise tax to both imported and domestically produced ethanol used as fuel; however, for a period of one year, the excise paid by domestic producers of ethanol was fully rebated.<sup>130</sup> Thus, during the one-year period, it was equivalent to a tariff.

**Table III.7**  
**Excise rates, 2004-06**  
(\$A)

Commodity	Rates applying from 2.08.2004	Rates applying from 1.02.2005	Rates applying from 1.08.2005	Rates applying from 1.02.2006
Petroleum and other fuel products (per litre)				
Unleaded petrol	0.38143	0.38143	0.38143	0.38143
Ultra low sulphur diesel	0.38143	0.38143	0.38143	0.38143
Other diesel	0.40143	0.40143	0.40143	0.40143
Aviation gasoline	0.03114	0.03114	0.03114	0.02854
Aviation kerosene	0.03151	0.03151	0.03151	0.02854
Fuel oil	0.07557	0.07557	0.07557	0.07557
Heating oil and kerosene (for burner use)	0.07557	0.07557	0.07557	0.07557
Fuel ethanol	0.38143	0.38143	0.38143	0.38143
Biodiesel	0.38143	0.38143	0.38143	0.38143
Greases (per kg)	0.05449	0.05449	0.05449	0.05449
Oils and lubricants, excluding greases (per litre)	0.05449	0.05449	0.05449	0.05449
Beer (per litre of alcohol over 1.15%) <sup>a</sup>				
Draught beer, low strength	6.09	6.16	6.24	6.33
Draught beer, mid strength	19.12	19.35	19.60	19.89
Draught beer, high strength	25.02	25.32	25.65	26.03
Other beer, low strength	30.49	30.86	31.26	31.73
Other beer, mid strength	35.53	35.96	36.43	36.98
Other beer, high strength	35.53	35.96	36.43	36.98
Other beverages, not exceeding 10% alcohol content	35.53	35.96	36.43	36.98
Potable spirits (per litre of alcohol)				
Brandy	56.21	56.88	57.62	58.48
Fruit brandy, whisky, rum, and liqueurs	60.20	60.92	61.71	62.64
Other spirits, exceeding 10% alcohol content	60.20	60.92	61.71	62.64
Cigarettes, cigars, and tobacco (per stick) <sup>b</sup>	0.22353	0.22621	0.22915	0.23259
Tobacco products (per kg)	279.41	282.76	286.44	290.74

a Rate applied per litre of alcohol on the amount by which the alcohol content (by volume) exceeds 1.15%.

b Rate applied per stick to cigarettes, cigars and tobaccos with tobacco content of 0.8 grams or less.

Source: Treasury (2006a), *Pocket Guide to the Australian Tax System*, Canberra. Viewed at: [http://www.treasury.gov.au/documents/866/PDF/Pocket\\_tax\\_guide\\_MYEFO%202005-06.pdf](http://www.treasury.gov.au/documents/866/PDF/Pocket_tax_guide_MYEFO%202005-06.pdf) [9 May 2006].

<sup>129</sup> OECD (2006a). Australia's GST rate of 10% is below the OECD average of 17.6%, and its petrol taxes were the third lowest among the OECD countries.

<sup>130</sup> Productivity Commission (2002b).

93. Since the introduction of the New Tax System in 2000, the Australian Government's share of indirect taxes in total revenue has been declining. With the transfer of the GST tax base to the states, the abolition of wholesale sales tax, the removal of indexation from petroleum excise<sup>131</sup>, and trade liberalization, the proportion of indirect tax to total tax revenue may well decline further in the future.<sup>132</sup> In particular, changes to the rate or base of the GST require the unanimous agreement of all levels of governments.

(b) Direct taxation

94. About 60% of Australia's total tax revenue is collected from direct taxes. The progressive personal income tax rates currently range from zero to 45% (plus the 1.5% Medicare levy). Since the previous Review of Australia, major changes include tax rate reductions and threshold increases, which may reduce the tax disincentive to save (Table AIII.2). Following these changes, more than 80% of taxpayers now face a marginal income tax rate of 30% or less. As income tax rates may affect people's decisions as to how much and where to work, the reduction in the top income tax rates and the increase in the thresholds tend to enhance Australia's international competitiveness.<sup>133</sup> In addition, the superannuation surcharge was abolished from 1 July 2005, to increase the incentive to make more superannuation contributions.

95. A flat rate of 30% applies to corporate income taxes; although the rate is higher than for some neighbouring countries, it is not out of line with rates in OECD countries. Since the previous review, various measures have been adopted to reform business taxes with a view to, *inter alia*, reducing their complexity and compliance costs, and encouraging investment. For example, as of 1 July 2002, wholly owned corporate groups are taxed as a single entity for income tax purposes, which reduces corporate groups' compliance costs. From 10 May 2006, the "diminishing value rate" was increased from 150% to 200% (referred to as a "double declining balance") for depreciating assets acquired on or after 10 May 2006. This measure provides an incentive for companies to invest in new plant and equipment. In addition, from 1 July 2005, Australia introduced deductibility for business "blackhole" expenditures.<sup>134</sup>

96. Measures have also been adopted to reform the Simplified Taxation System (STS), to further reduce the effective tax burden on small business and simplify record-keeping and reporting requirements. For example, small businesses with an annual turnover below \$A 50,000 receive a 25% reduction on their business income tax. The reduction phases out for businesses with annual turnover between \$A 50,001 and \$A 75,000. Also, the cash basis accounting requirement for STS users was removed, to allow them use the accounting method more appropriate to their circumstances. In addition, the period in which the Australian Taxation Office can audit and adjust the tax assessments of businesses in the STS was reduced from four to two years, to ease their record keeping and compliance requirements.

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<sup>131</sup> As part of the transition to the New Tax System, the Government cut fuel excise by 6.7 cents per litre (cpl) in July 2000, and by 1.5 cpl to 38.1 cpl in March 2001. The Government then abolished the indexation of fuel excise (six-monthly inflation adjustment), and the rate has remained at 38.1 cpl. Without the removal of indexation, the current excise rate would be around 53.6 cpl (OECD, 2006a).

<sup>132</sup> Treasury (2006a).

<sup>133</sup> OECD (2006a).

<sup>134</sup> These are expenditures not recognized under the income tax law and include pre- and post-business expenses (such as the costs of ceasing business, and costs incurred before the commencement, or after the cessation of the business).



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(c) International tax reforms

97. With a view to providing Australia with an internationally competitive business tax system, the Government initiated international tax reforms in May 2003, based on its review of international tax arrangements (RITA). The reform reflected the principle that Australia's tax system should not impede its businesses seeking to operate in a globalizing environment. Nor should it place barriers in front of foreign businesses seeking to use Australia as a base for their regional headquarters. The main components of the package included: simplifying the rules for Australian companies to operate in countries where tax arrangements are comparable to Australia's; moving towards a more residence-based tax treaty policy (as specified in the OECD's Model Tax Convention); exempting Australian companies from capital gains tax (CGT) for the sale of certain interests in foreign companies (non-portfolio) and extending the existing tax exemption for foreign dividends and some profits (non-portfolio); and amending the foreign investment fund rules to reduce the compliance burden for superannuation and managed funds.

98. On 10 May 2005, the Government announced further reforms including a foreign-income tax exemption for temporary residents.<sup>135</sup> The Government has also focused on modernizing tax treaties with key investment and trading partners. Australia provided some concessions to the United Kingdom and the United States under its bilateral tax treaties; it is negotiating with other treaty partners with a view to providing them with similar tax concessions.

(d) Tax expenditures

99. Tax expenditures are tax concessions generally designed to provide a benefit to a specified activity or class of taxpayer. They can be delivered in the form of tax exemptions, deductions, rebates, reduced rates, or deferrals.<sup>136</sup> Assistance in the form of tax incentives accounted for more than two fifths of total budgetary assistance, which in 2004/05 amounted to \$A 4.6 billion. Negative tax expenditure occurs when these arrangements impose an additional charge rather than a benefit.

100. Australia publishes an annual Tax Expenditure Statement, which enhances the transparency of assistance provided through the tax system; this facilitates the evaluation of such assistance and thus government accountability to the public. The resulting public debate contributes to tax reform.<sup>137</sup> The Tax Expenditure Statement for 2005 identified around 270 tax expenditures, of which 94 (8% of the total value) pertain to businesses. The main business-related positive tax expenditures relate to off-market share buybacks, the R&D tax concession, the Simplified Tax System, the accelerated depreciation for mining buildings, and the exemption from interest withholding tax on widely held debentures.<sup>138</sup> The largest source of negative tax expenditure relating to business is the removal of an accelerated depreciation allowance for plant and equipment in 2001.

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<sup>135</sup> Temporary residents will be provided with a four-year income tax exemption on most foreign source income, including capital gains on foreign assets, from 2006/07. Temporary residents will also be exempt from the Foreign Investment Fund rules regardless of the period of residence (Treasury, 2005, p. 58).

<sup>136</sup> Treasury (2005).

<sup>137</sup> The Tax Expenditure Statement does not include analyses of customs tariffs, and specific purpose taxes, such as agricultural levies.

<sup>138</sup> Certain widely held debentures are exempt from interest withholding tax. This exemption was extended to publicly offered corporate securities issued in Australia, as well as securities issued by non-resident companies operating through a permanent establishment in Australia (Treasury, 2005, p.105).

(ii) **Production assistance**

101. Since its previous Review, Australia has continued to provide assistance to domestic producers, not just in the form of tariff concessions and other tax incentives (sections (2)(ii)(e) and (3)(iv)), but also grants and concessional loans.

102. Of the \$A 4.6 billion in total budgetary assistance provided in 2004/05, budgetary outlays amounted to almost three fifths; the rest involved tax expenditures. Support has focused largely on R&D (42% in 2004/05).<sup>139</sup> Budgetary assistance varies markedly between sectors; the largest proportion is directed to the manufacturing sector. Services accounted for 30% of total budgetary assistance in 2004/05; of the total assistance to services, property and business services, finance and insurance, and cultural and recreational services accounted for 21%, 16%, and 14%, respectively.<sup>140</sup>

103. Australia's latest notification to the WTO Committee on Subsidies and Countervailing Measures (September 2005) listed 17 programmes in force at the Federal level, as well as several programmes at state and territory level (Table AIII.3).<sup>141</sup> The import duty credit concession under the Automotive Competitiveness and Investment Scheme (ACIS) was the most significant industry-specific budgetary assistance programme. The effective rate of assistance (ERA) in 2003/04 was 24.2% for textiles, clothing, footwear, and leather (TCF), and 10.6% for motor vehicles and parts, respectively.<sup>142</sup> Pharmaceuticals also receive a large proportion of assistance in manufacturing. On the other hand, assistance to the printing industry (including books and educational textbooks) ceased on 30 June 2004. Similarly, shipbuilding bounty ceased on 31 December 2004, and the shipbuilding innovation scheme ceased on 30 June 2005.<sup>143</sup> Assistance to agriculture includes statutory marketing arrangements; for example, the Productivity Commission estimated that \$A 3 million was provided in 2004/05 to rice marketing, and the domestic price of rice was maintained at higher levels than would otherwise prevail.<sup>144</sup> In line with its commitments in agriculture, Australia's bound AMS ceiling has been kept at \$A 471.86 million since 2000, and its actual level of support as measured by the current total AMS declined from \$A 308.46 million in 2001/02, to \$A 206.73 million in 2004/05. Thus,

<sup>139</sup> Industry-specific assistance accounted for 27% of total support and export promotion for 14%. In May 2004, a new assistance package was announced for R&D and related activities, the Backing Australia's Ability (BAA) – Building our Future through Science and Innovation Scheme. It is estimated that the new scheme will cost \$A 5.3 billion, which, together with the BAA plan announced in 2001, committed total funding of \$A 8.3 billion up to 2011. The package covers assistance for R&D, its commercialization, and related skills development. "Commercialization" here refers to the development of new commercial products, processes, and services resulting from the application of R&D activities (Productivity Commission, 2004).

<sup>140</sup> Productivity Commission (2006e), Table A.4.

<sup>141</sup> WTO document G/SCM/N/123/AUS/Rev.1, 23 September 2005. In addition to notified subsidies, the Department of Industry, Tourism and Resources (DITR) has several other programmes, including the Commercialising Emerging Technologies (COMET) programme, the Pooled Development Funds (PDF) programme, the Industry Capability Network Limited (ICNL) programme, the Major Project Facilitation (MPF) programme, the Supplier Access to Major Projects (SAMP) programme, and the Venture Capital Limited Partnership (VCLP) programme (DITR online information. Viewed at: <http://www.itr.gov.au/content/itrinternet/cmsindexpage.cfm?objectId=48A329AC-20E0-68D8-EDAC3ACDE65CAA6E&indexType=Programs%20and%20assistance> [12 September 2006]).

<sup>142</sup> Productivity Commission (2004), Table 2.4. ERAs are calculated by dividing the net assistance to an industry by the industry's unassisted value added. ERAs are not available for the services sector, reflecting partly technical issues.

<sup>143</sup> WTO document G/SCM/N/123/AUS/Rev.1, 23 September 2005.

<sup>144</sup> Productivity Commission (2006e), p. 3.15.

trade-distorting domestic support remains well below Uruguay Round commitments. De minimis provisions have been used for sugar and wheat, as well as non-product specific AMS.<sup>145</sup>

104. In June 2004, an Energy White Paper announced measures to commercialize energy technologies, particularly greenhouse abatement techniques.<sup>146</sup> The measures included a fuel excise reform from July 2006 to July 2015: from 1 July 2006, fuel excise credits of more than \$A 3 million per year are to be available to businesses that are large energy users, on the condition that they join the Greenhouse Challenge Programme (Chapter IV(3)(ii)).<sup>147</sup>

### (iii) Competition and consumer policy

#### (a) Competition policy

##### *General framework*

105. Australia's National Competition Policy (NCP) framework explicitly recognizes that competitive markets generally serve the interests of consumers and the community, by providing strong incentives for suppliers to operate efficiently, be price competitive, and be innovative. The NCP was formulated in 1995 when the Commonwealth together with state and territory governments committed to consolidate their implementation of competition policies. One innovation of the NCP was the annual competition payments, which were allocated between 1997/98 and 2005/06 by the Commonwealth to state and territory governments for their implementation of the reform; where there was lack of progress on NCP-related reform, the Government, upon recommendations from the National Competition Council (NCC), could reduce payments.<sup>148</sup>

106. NCP reform has included: extending competition legislation to all business activity in Australia; maintaining competitive neutrality, so that government businesses compete with private firms on an equal footing; reforming public monopolies, such as separating the regulatory function from commercial operations, ensuring third-party access to certain infrastructure services, and preventing overcharging by monopoly service providers; reforms in the energy, water, and road transport sectors; and legislative reviews.

107. Competition legislation is contained in the Trade Practices Act 1974 (TPA), which covers all business activities, including government business.<sup>149</sup> The TPA prohibits arrangements that substantially reduce competition, and that contain an exclusionary or price-fixing provision, as well as secondary boycotts, misuse of substantial market power, cartel conduct, resale price maintenance, and mergers or acquisitions that may substantially lessen competition.<sup>150</sup> However, exemptions to the

<sup>145</sup> WTO document G/AG/N/AUS/61, 19 April 2006.

<sup>146</sup> Department of the Prime Minister and Cabinet online information. Viewed at: [http://www.pmc.gov.au/publications/energy\\_future/docs/energy.pdf](http://www.pmc.gov.au/publications/energy_future/docs/energy.pdf) [16 May 2006].

<sup>147</sup> During the reform process, all off-road business use of fuel is to receive an excise credit; the existing partial excise on fuel used in heavy vehicles is to be transferred into a road-user charge from July 2006; diesel and fuel oil used in commercial power generation is to be exempted from excise tax from 1 July 2006, and gaseous fuels used for electricity generation continue to be excise free; a single business credit system was introduced in July 2006.

<sup>148</sup> Total funding of \$A 5.7 billion was allocated for competition payments over the period 1997/98 to 2005/06. This funding level, estimated by the Industry Commission in 1995, represents the benefits of implementing the reform programme (Productivity Commission, 2005c).

<sup>149</sup> It also includes telecommunication-specific competition rules.

<sup>150</sup> Section 50 of the TPA prohibits mergers or acquisitions that would have the effect or likely effect of substantially lessening competition in a substantial market for goods or services. Recommended by the Dawson Review (see below), a voluntary formal clearance process for mergers was proposed, which would work in

TPA remain for international liner cargo shipping (Chapter IV(5)(vi)(a)), and export contracts; although details of export contracts have to be filed with the ACCC, restrictions on cartels originating from abroad are stricter than on cartels formed by domestic exporters. Anti-competitive behaviour may thus be allowed on a case-by-case basis through an administrative process managed by the Australian Competition and Consumer Commission (ACCC), and on condition that they are in the public interest.<sup>151</sup>

108. The Department of the Treasury has primary policy responsibility for the competition provisions in the TPA and the NCP, and administers key agencies, including the NCC and the ACCC. As part of the new National Reform Agenda, the functions of the NCC are being reviewed; up until 2005, the NCC reported on the implementation progress of NCP reforms.<sup>152</sup> The ACCC is an independent statutory authority charged with, *inter alia*, enforcing the TPA and the state/territory competition legislation, and regulating national infrastructure services.<sup>153</sup> It conducts investigations on anti-competition matters. During 2004/05, the ACCC investigated around 200 competition matters, 11 of which were concluded while 15 were before the courts; penalties were imposed, *inter alia*, against eight companies and eight individuals for petrol price fixing in the Ballarat region in Victoria, against Liquorland for contraventions relating to its response to liquor licensing applications by smaller competitors, and against several companies regarding their illegally maintained prices by discouraging or banning discounting.<sup>154</sup>

#### *Legislative review and reform*

109. As part of the NCP, under the Competition Principles Agreement (CPA), governments (Commonwealth, states and territories) undertake to review and reform legislation that restricts competition. The governments agreed that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition. The CPA provides guidance on issues that should be considered in a review; these include, objectives of the legislation, nature, cost, and benefits of the restriction and the likely effect on competition and on the economy generally, and alternative measures for achieving the same result including non-legislative approaches. Since 1996, when all Australian governments published a legislation review schedule, approximately 1,800 pieces of legislation have been identified for review.

110. Reforms to the TPA commenced in October 2006, based on recommendations made in the 2003 Review of the Competition Provisions of the Trade Practices Act (Dawson Review). The Dawson Review emphasized that the TPA should remain focused on protecting the competition process and not be used for industry policy, nor to preserve uncompetitive companies. It recommended that the TPA be amended to improve its operation by, *inter alia*, providing for greater accountability, transparency, and timeliness in decision-making by the ACCC, and reducing the regulatory burden on business. Reform measures to be adopted include strengthening functions of the

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parallel with the existing informal clearance process operated by the ACCC. The ACCC is also adopting principles recommended by the International Competition Network (ICN), in relation to accountability, transparency, efficiency, and timeliness.

<sup>151</sup> In certain circumstances these exemptions are reviewed by the ACCC, and may be appealed to the Australian Competition Tribunal (ACT).

<sup>152</sup> Although the NCC is funded by the Commonwealth Government, it is accountable to all Australian states and territories through the Council of Australian Governments (COAG) (viewed at: <http://www.ncc.gov.au> [17 May 2006]).

<sup>153</sup> ACCC online information. Viewed at: <http://www.accc.gov.au> [17 May 2006].

<sup>154</sup> OECD (2005a).

ACCC, increasing penalties for contraventions of the TPA, improving transparency for mergers, and setting up a simpler and less costly process for collective bargaining by small businesses.<sup>155</sup>

111. The National Access Regime (Part IIIA of the TPA) provides a legislative framework for third party access to certain services provided by essential infrastructure facilities, such as electricity networks, rail tracks, and natural gas pipelines. By giving economic entities the legal right to negotiate the use of these services, the regime intends to ensure that businesses are offered reasonable terms and conditions of access. In the event that the parties are unable to reach a commercial agreement, it provides recourse to binding arbitration. In response to a Productivity Commission review, the Australian Government agreed to a range of measures designed to clarify the Regime's objectives and scope, encourage efficient investment in infrastructure, strengthen incentives for commercial negotiation, and improve the transparency of regulatory processes.<sup>156</sup> Legislation to address these issues also took effect on 1 October 2006.

112. On 2 February 2005, the Government announced its intention to introduce criminal penalties for serious cartel conduct. The proposal would prohibit any agreement between competitors that contains provisions to fix prices, restrict output, divide markets or rig bids. Legislation in this regard is currently being prepared.

113. The Productivity Commission conducted a review of the NCP and concluded that the legislative review programme should continue, but concentrate more on "significant" anti-competitive legislation and be more transparent and independent. Recommended priorities include anti-dumping, cabotage restrictions, single-desk marketing for wheat exports, pharmaceutical goods, and workers' compensation insurance.<sup>157</sup> In 2005, the COAG reviewed the NCP, taking into account recommendations from the Productivity Commission. Following the review, on 10 February 2006 the COAG endorsed a new National Reform Agenda, which included competition and regulation reforms aimed at facilitating investment in energy, transport, and other export-oriented infrastructure, and achieving efficient use of infrastructure by improving pricing and investment signals and establishing competitive markets. The COAG is expected to consider specific reform proposals in these areas in 2007. In addition, reform to reduce regulatory burden has been pursued in response to the Banks' Taskforce Report (Chapter II(4)).

#### *Price surveillance*

114. Price controls tend to distort market outcomes. Furthermore, for non-renewable resources, if prices are suppressed, sustainable supply of these resources in the long run could be compromised. On the other hand, according to the Productivity Commission, without effective competition in these markets, relaxing price controls could lead to inefficiently high prices.<sup>158</sup>

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<sup>155</sup> In March 2004, a Senate Economics References Committee issued a report on the effectiveness of the TPA in protecting small business. The report considered a range of issues including those relating to misuse of market power (section 46), unconscionable conduct (particularly section 51AC), and the administration of the TPA. The Government accepted 8 of the 17 recommendations, and intends to introduce legislation to implement them in the near future (Australian Parliament online information. Viewed at: [http://www.aph.gov.au/senate/committee/economics\\_ctte/completed\\_inquiries/2002-04/trade\\_practices\\_1974/report/government\\_response.pdf](http://www.aph.gov.au/senate/committee/economics_ctte/completed_inquiries/2002-04/trade_practices_1974/report/government_response.pdf) [17 May 2006]).

<sup>156</sup> The Australian Government's response to the PC report was viewed at: [http://www.treasurer.gov.au/tsr/content/publications/FinalReport\\_NationalAccessRegime.asp](http://www.treasurer.gov.au/tsr/content/publications/FinalReport_NationalAccessRegime.asp) [17 May 2006].

<sup>157</sup> Productivity Commission (2005c).

<sup>158</sup> In this case, community service obligation (CSO) payments may be applied to ensure market access by low income users (Productivity Commission, 2005c, p. 198).

115. Price restrictions applied under the Price Surveillance Act 1983 (PS Act) are now incorporated into the TPA (Part VIIA). Currently, there are three forms of price surveillance: price inquiries, where the ACCC is guided by portfolio Ministers to undertake a public inquiry; price notification, where the portfolio Minister requires specific companies to notify the ACCC of a proposed price increase; and price monitoring, where the portfolio Minister directs the ACCC to monitor the prices, costs, and profits of companies and government agencies relating to specific goods and services. Price surveillance may be conducted informally or formally. There is no legislative process for informal surveillance, which has been used to respond to consumers' concerns in, *inter alia*, insurance, petrol, and bank fees and charges. Under the formal price surveillance system, penalties may be applied for non-compliance actions.<sup>159</sup> The ACCC conducts formal price surveillance on aviation and airports, electricity, telecommunications, and container stevedoring.<sup>160</sup>

*Sector-specific issues*

116. To simplify the regulatory framework for the transmission and distribution of electricity, on 1 July 2005, an Australian Energy Regulator (AER) and an Australian Energy Market Commission (AEMC) commenced operation (Chapter IV(3)(ii)). A Memorandum of Understanding was signed between the AER, the AEMC, and the ACCC. Under the MOU, the ACCC retains responsibility as a regulator of competition matters; the AEMC formulates national electricity rules under the new National Electricity Law, which was amended in June 2005.<sup>161</sup> The AER is to assume economic, regulatory, enforcement, and monitoring functions in relation to electricity and gas markets.

117. The Telecommunications Competition Act 2002 was enacted in December 2002, to promote competition and investment in the telecommunication sector. In October 2005, the Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005 made further amendments to the competition provisions specific to telecommunications services. The amendments included the divestiture of the Government's majority stake in Telstra. A revised price control regime was imposed on Telstra, from 1 January 2006 to 31 June 2009 (Chapter IV(5)(v)).

118. Australia has limited water resources. In 2004, a National Water Initiative (NWI) to establish a market framework for the management of water resources in both urban and rural areas was signed by the Commonwealth Government and the governments of New South Wales, Queensland, South Australia, Victoria, the Northern Territory and the Australian Capital Territory, and later by Tasmania (Chapter IV(3)(iii)). Western Australia acceded to the NWI in 2006. Consistent with the NWI, a National Water Commission (NWC) was established recently; it accredits state and territory NWI implementation plans, assesses progress in implementing the NWI, and advises on how to better realize the objectives of the NWI.

*International cooperation*

119. Australia continues to participate actively in matters related to competition legislation and policy in the APEC, the OECD, the WTO, and the International Competition Network (ICN).<sup>162</sup> The

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<sup>159</sup> For example, if a firm does not comply with information requests by the ACCC, or it provides false or misleading information, the firm could be subject to a penalty.

<sup>160</sup> ACCC online information. Viewed at: <http://www.accc.gov.au/content/index.phtml/itemId/3671> [17 May 2006].

<sup>161</sup> The AER is to replace the 13 electricity regulators and 8 gas regulators.

<sup>162</sup> In the WTO Working Group on the Interaction between Trade and Competition Policy, Australia has submitted papers on its approaches to "hard-core" cartels (HCCs), benefits from voluntary cooperation between competition authorities, description and core principles of its competition policy framework, and its involvement in providing technical assistance to other countries. (WTO documents WT/WGTCP/W/198,

ACCC has cooperation arrangements with corresponding agencies in Canada, Chinese Taipei, New Zealand, Papua New Guinea, and Republic of Korea.

(b) Consumer protection policy

120. During the period under review, the Government commenced reviews of its consumer protection policy, to consider options for its product safety framework, and penalties available for breaches of the consumer protection provisions. Responsibility for product safety matters at the Commonwealth level is with the ACCC, and the Australian Securities and Investments Commission (ASIC) continues to be the primary regulatory agency responsible for consumer protection for financial services. In addition, negotiations with the EC on the development of an administrative arrangement to share information on consumer protection policy were finalized in 2002.

121. Since 2002, the ACCC has been undertaking legal actions against, *inter alia*: misleading and deceptive conduct; pyramid and referral selling; breaches of the product safety/liability provisions of the TPA; harassment and coercion; unsolicited goods; and price exploitation. It has taken enforcement action against a number of businesses that allegedly breached mandatory safety or information standards.<sup>163</sup> Other actions taken include conducting consumer and business education on competition, fair trading and consumer protection rights and responsibilities, as well as enhancing industry self-regulation.

(iv) Corporate governance

(a) Private sector

122. Australia's corporate governance framework consists of a number of accounting standards (which have the force of law), the Australian Stock Exchange (ASX) Listing Rules, and the ASX "Principles of Good Corporate Governance and Best Practice Recommendations", together with voluntary self-regulatory codes of practice. Various private sector organizations have also issued documents providing guidance on corporate governance, including the Investment and Financial Services Association, the Association of Superannuation Funds of Australia, the Chartered Secretaries Australia, and the Australian Institute of Company Directors.

(b) Government trading enterprises

123. Government trading enterprises (GTEs) are government-owned or government-controlled entities that are mainly engaged in the production of goods and services; they are required to substantially or fully cover their costs.<sup>164</sup> Australia's competition legislation covers all business activities, including those of GTEs.<sup>165</sup> GTEs, often as monopolies, provide essential services such as

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26 July 2002; WT/WGTCP/W/199, 26 July 2002; WT/WGTCP/W/211, 24 September 2002; and WT/WGTCP/W/232, 23 May 2003.)

<sup>163</sup> The Product Safety Policy Section of the ACCC develops national (Commonwealth) mandatory safety and information standards for selected consumer products, for items such as baby walkers, bean bags, bunk beds, caravan jacks, children's nightwear, children's swimming aids, cigarette packaging, cosmetics, elastic luggage straps, exercise cycles, high tar cigarettes, latex gloves, motor cycle helmets, pedal bicycles, sunglasses, trolley jacks, and vehicle jacks.

<sup>164</sup> Productivity Commission (2005a). The GTEs are outside the general government sector, and are also separate from government financial enterprises (in the banking, insurance, and related sectors).

<sup>165</sup> Under a national tax equivalent regime (NTER), most GTEs are required to pay taxes on their operating profits at the same company tax rate as private business. Previously GTEs were subject to inconsistent tax-equivalent regimes of their respective portfolio ministries.

water, electricity, gas and transport, and poor governance practices may distort these enterprises' operations in asset management, investment, and dividend distribution.<sup>166</sup>

124. Current governance arrangements for GTEs largely reflect the various reforms that have been introduced, including commercializing and replicating private sector principles and practices, separating non-core activities from these enterprises, and placing greater emphasis on cost recovery. However, under-performance remains, and reforms are necessary particularly in external governance, which refers to the arrangement between the enterprise and ministers (and government agencies). Considering the importance of the GTEs in certain sectors, improvement in governance could bring significant benefits to the economy. Thus, the Productivity Commission in a recent research paper made several recommendations, including clarifying the objectives and ownerships of the GTEs, and improving transparency in the external governance role of Ministers.<sup>167</sup>

125. GTEs established as companies are subject to the Corporations Law. However, most GTEs are established as statutory entities and may have objectives that contradict their commercial functions. The Commonwealth Authorities and Companies Act 1997, and the "Governance Arrangement for Commonwealth Government Business Enterprises 1997" provide a framework on corporate governance. Under the Governance Arrangement, the relationship between the Government and its GTEs is similar to the relationship between a holding company and its subsidiaries. The Government's ownership is generally represented by two "Shareholder Ministers", the portfolio Minister (the Minister in charge of the portfolio in which the GTE is involved), and the Finance Minister.<sup>168</sup>

126. The principal objective for GTEs is to add value to shareholders, by minimizing cost, and earning at least a commercial rate of return. The Government may impose price controls on GTEs providing goods and services in a monopolistic market, or specify other targets such as community service obligations (CSOs).<sup>169</sup> In addition, to enable greater public accountability, GTEs are required to prepare a Statement of Corporate Intent (SCI) in consultation with their shareholder ministers. As a general rule, the Government does not provide formal guarantees for GTE liabilities; any guarantees provided in the past continue to apply until they mature.<sup>170</sup> Government approval is required to set up a partially owned GTE, or to change a GTE from wholly to partially government-owned. GTEs

<sup>166</sup> Productivity Commission (2005a).

<sup>167</sup> Productivity Commission (2005a).

<sup>168</sup> Within the Department of Finance and Administration, the Government Business and Private Financing Advice Unit (GBPFAU) is responsible for providing, *inter alia*, strategic advice to the Minister on the commercial performance of the Government's investment in, *inter alia*, the Australian Postal Corporation, Australian Rail Track Corporation Limited, Airservices Australia, and the Defence Housing Authority, as well as the Export Finance and Insurance Corporation, and Snowy Hydro Limited.

<sup>169</sup> Governments sometimes require GTEs to engage in activities that the enterprise would not undertake on purely commercial grounds. Under these community service obligations (CSO), GTEs often have to provide economic and social benefits to the community. Previously, the Government recognized these obligations by funding operating deficits of the relevant GTEs; the current policy is to make direct payments to the GTEs for the provision of CSOs. In 2003/04, rail GTEs received almost 60% of the overall reimbursement; GTEs in water, electricity, and urban transport sectors received 16%, 13%, and 11%, respectively (NCC online information. Viewed at: <http://www.ncc.gov.au/sector.asp?sectorID=19> [28 July 2006]).

<sup>170</sup> Under the Australian Industry Development Corporation Act 1970, guarantees were provided by the Commonwealth Government to the Australian Industry Development Corporation (AIDC) in certain circumstances. The AIDC was privatized in 1998 but its previous obligations remain covered by this guarantee until they mature.



wishing to establish partly-owned subsidiaries, purchase a controlling interest in other companies, or form joint ventures, must notify their intention to the shareholder ministers.<sup>171</sup>

**(v) Intellectual property rights**

**(a) Overview**

127. Australia is a member of the World Intellectual Property Organization (WIPO) and is a party to most multilateral IPR agreements.<sup>172</sup> Australia has committed to acceding to both the 1996 WIPO Copyright Treaty and the 1996 WIPO Performances and Phonograms Treaty (WPPT), subject to completion of the necessary legislative and consultative processes.

128. IP Australia remains responsible for the administration of patents, trade marks, and designs, and since 27 October 2004, has been responsible for plant breeders' rights (previously the responsibility of the Department of Agriculture, Fisheries and Forestry). The Advisory Council on Intellectual Property (ACIP) advises the Minister for Industry, Tourism and Resources, as well as IP Australia, on matters relating to intellectual property policy and the strategic administration of IP Australia. Following administrative changes in 2004, the Attorney-General's Department has sole responsibility for the administration and policy in relation to the Copyright Act 1968 and the Circuit Layouts Act 1989.

129. During the period under review, various pieces of legislation have been amended. Amendments to the Copyright Act 1968, and a minor change to the Patents Act 1990, in particular, were made to incorporate requirements under the AUSFTA. The authorities state that these changes are applied on an MFN basis to all WTO Members.

130. According to a report in 2004 by the Australian National Audit Office on intellectual property policies and practices within the Australian Government, the Commonwealth Government did not have a "whole-of-government" policy approach to manage intellectual property.<sup>173</sup> Consequently, agencies are responsible for devising their own management approaches, and the treatment of intellectual property assets in an agency's financial statement could be complex and uncertain. Accordingly, the Attorney-General's Department is leading the development of a "whole-of-government" approach to manage intellectual property. Currently, all states and territories, with the exception of the Australian Capital Territory, have either implemented, or are planning to implement, a policy addressing intellectual property management at the "whole-of-government" level.

**(b) Industrial property**

*Patents*

131. The Patents Act 1990 provides protection for standard patents and innovation patents, with terms of validity of 20 and 8 years, respectively. The innovation patent, which replaced the previous

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<sup>171</sup> Department of Finance online information. Viewed at: <http://www.finance.gov.au/GBPFAU/> [18 May 2006]; and "Governance Arrangement for Commonwealth Government Business Enterprises 1997". Viewed at: [http://www.finance.gov.au/GBPFAU/docs/Governance\\_Arrangements\\_June\\_1997.PDF](http://www.finance.gov.au/GBPFAU/docs/Governance_Arrangements_June_1997.PDF) [18 May 2006].

<sup>172</sup> For Australia's participation in multilateral IPR agreements, please see WIPO online information. Viewed at: <http://www.wipo.int/about-ip/en/ipworldwide/pdf/au.pdf> [19 May 2006].

<sup>173</sup> Intellectual property management requires measures that can enable an agency to identify, protect, and control intellectual property assets and, where appropriate, facilitate exploitation of these assets. Intangible assets (including intellectual property) have been increasingly recognized as a considerable part of an agency's value (ANAO, 2004).

petty patent in 2001, intends to stimulate innovation in SMEs by providing them with easier access to, but a shorter term of, protection for inventions. The innovation patent covers the same subject matters as the standard patent, with the exception of animals and plants, and biological processes for the generation of animals and plants.

132. The IP Laws Amendment Act 2006, passed on 27 September 2006, includes various amendments to the Patent Act 1990, the Designs Act 2003, the Olympic Insignia Protection Act 1987, the Plant Breeder's Rights Act 1994, and the Trade Marks Act 1995. A minor change was also made to the Patents Act to implement an AUSFTA requirement regarding the revocation of patents. The number of patents granted, however, declined from 13,844 in 2002 to 11,168 in 2005.

#### *Trade marks*

133. The Trade Marks Act 1996 provides for the registration of trade marks, collective trade marks, certification trade marks and defensive trade marks. Under the Act, trade marks are protected for ten years and renewable indefinitely, upon request and payment of the appropriate fee.<sup>174</sup> Amendments to the Act were mainly minor and technical changes.

#### *Industrial designs*

134. On 17 June 2004, the Designs Act 1906 was replaced by the Designs Act 2003, which implemented a new system for the registration of industrial designs.<sup>175</sup> The term of registration of a design is: five years from the filing date of the application in which the design was first disclosed; or, for renewal, ten years from the filing date of the application in which the design was first disclosed. Thus, only one renewal is possible under the Designs Act 2003. However, design applications filed under the Designs Act 1906 continue to have a possible maximum term of 16 years. Also on 17 June 2004, the Designs Regulation 2004 replaced the Designs Regulation 1982, and implemented procedures and processes associated with the new design registration system.<sup>176</sup>

#### *Protection of plant varieties*

135. Under the Plant Breeders' Rights (PBR) Act 1994, unauthorized use of protected plant varieties, and different kinds of false representation regarding plant varieties, are criminal offences. Enforcement of PBRs is generally the responsibility of holders of the rights through civil procedures. In 2002, a PBR Amendment Act 2002 amended the 1994 Act, to, *inter alia*, clarify plant breeders' rights to remuneration in circumstances where some public interest concerns restrict their rights.<sup>177</sup>

#### *Geographical indications (GIs)*<sup>178</sup>

136. GIs are protected through: the Trade Marks Act 1995, which allows for the registration of GIs as certification trade marks, provided that certain criteria are met; and the Trade Practices Act

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<sup>174</sup> WTO (2003).

<sup>175</sup> The Designs Act 2003 defines a design as the overall appearance of a product resulting from one or more visual features of the product. A product is a thing that is manufactured or hand made.

<sup>176</sup> In particular, the Regulation provides for minimum filing requirements for a design application, and prescribes details for the registration, publication, and examination processes, as well as for the amendment, withdrawal, and lapse of design applications, and a new fee payment system.

<sup>177</sup> The Plant Breeders' Rights (PBR) Act 1994 and the Plant Breeders' Rights Regulations 1994 provide protection for new varieties of plant, fungal, algal species and transgenic plants, in line with UPOV guidelines and test procedures (Department of Parliament, Plant Breeders' Rights Amendment Bill 2002, Bill Digest No. 164, 2001/02).

<sup>178</sup> WTO document IP/C/W/392, 9 December 2002.

1974, which prevents misleading conduct. In addition, the Australia New Zealand Food Standards Code contains prohibitions on false or misleading indications of the origin, character or place of manufacture of food. Protection is also provided through labelling legislation, such as the Commerce Trade Descriptions Act 1905.

137. GIs for wine are protected through the Australian Wine and Brandy Corporation Act 1980, which establishes a "Register of Protected Names" for the protection of geographical indications of Australian and foreign wine. The Geographical Indications Committee of the Australian Wine and Brandy Corporation administers GIs for wine. In 2004, the Australian Wine and Brandy Corporation Act was amended, to allow trade mark owners to object to the determination related to geographical indications, and to provide for the cancellation of Australian geographical indications.

#### *Other*

138. There have been no changes regarding trade secrets during the review period.

#### (c) Copyright and related rights

#### *Copyright*

139. The Copyright Act 1968, as amended, protects all original literary, dramatic, musical, and artistic works for the lifetime of the author plus 70 years. If, before the author's death, the work has not been published, performed in public, broadcast, or offered or exposed for sale to the public, the copyright in the work continues to subsist until the end of 70 years after the end of the calendar year in which the work was first exposed to the public.<sup>179</sup> For anonymous and pseudonymous works, copyright protection is provided for 70 years after the end of the calendar year in which the work was first published.<sup>180</sup> Unlike for patents, registered trade marks, designs, and plant breeders' rights, where registration is a precondition for protection, copyright is granted automatically where the substantive requirements are fulfilled.<sup>181</sup>

140. During the period under review, various amendments have been made to the Copyright Act 1968, mainly to reflect changes under the AUSFTA. The Copyright Amendment Bill 2006 was introduced into Parliament on 19 October 2006. Amendments made to the Copyright Act under the US Free Trade Implementation Act 2004 include: broadening the definition of criminal offences to target copyright infringements undertaken for commercial advantage or financial gain, as well as making it an offence for a person to engage in significant infringing activity on a commercial scale but with no direct or indirect motivation of financial gain<sup>182</sup>; and extending the term of protection for copyright material by 20 years for works, sound recordings, and films.

141. Other amendments to the Copyright Act resulted, *inter alia*, from the Designs (Consequential Amendments) Act 2003, the Copyright Legislation Amendment Act 2004, and the Copyright Amendment (Film Directors' Rights) Act 2005.<sup>183</sup>

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<sup>179</sup> The Copyright Act 1968 also protects subject matter other than works (cinematograph films, sound recordings, broadcasts and published editions), for 70, 50, or 25 years (Part IV, Division 4).

<sup>180</sup> Part III, section 33 and 34 of the Copyright Act 1968.

<sup>181</sup> APEC (2004).

<sup>182</sup> For example, this offence may be committed by a person who creates a website that allows infringing copies of movies or computer software to be downloaded to internet users for free.

<sup>183</sup> The Designs (Consequential Amendments) Act 2003 contained amendments dealing with the overlap between copyright and industrial design protection. The Copyright Legislation Amendment Act 2004

*Parallel imports*

142. Some parallel imports are allowed under the Copyright Act 1968 and, in certain circumstances, under the Trade Marks Act 1996. Since 2002, there have been no amendments to the trade marks legislation relating to parallel importation. The Copyright Amendment (Parallel Importation) Act 2003 (PI Act) amended the Copyright Act 1968 to extend parallel importation and subsequent commercial distribution to computer software, electronic books, electronic journals, and electronic sheet music, with the notable exception of films (digital video discs (DVDs)). These provisions also provide that the use of trade marks on those goods shall not prevent their parallel importation.<sup>184</sup>

*Circuit layout*

143. The Circuit Layouts Act 1989 remains the major legislation for layout designs.<sup>185</sup> A layout design is protected for ten years from first commercial exploitation, and if not exploited, ten years from when it was made. The Circuit Layout Amendment Regulations 2003 commenced on 23 December 2003, and updated the list of eligible foreign countries to which Australia extends protection of circuit layouts designs.

(d) Enforcement

144. IP enforcement is a priority issue for the Australian Government. IP rights holders may enforce their IPRs by civil action against infringers. Courts, both at the Federal and the state level, have jurisdiction over matters related to intellectual property infringement. The Australian Federal Police and state police agencies are in charge of criminal investigations, with prosecutions conducted by the relevant state or Commonwealth office of the Director of Public Prosecutions. Penalties for offences relating to intellectual property rights include fines and imprisonment. For copyright offences, the maximum penalty is a fine of not more than \$A 93,500 together with imprisonment of not more than five years. For trade mark offences, penalties may take the form of fines of up to \$A 55,000, and/or imprisonment for up to two years for individuals; monetary penalties for a company can be up to five times the penalty for individuals. At the border, upon acceptance of a notice of objection lodged by the IPR owner, Customs may seize and hold imported goods infringing intellectual property rights. During the period under review, notices of objection were lodged for a wide variety of trade mark and copyright protected items.<sup>186</sup>

145. The Australian Government has also established a number of forums to facilitate discussion and improve coordination of IP enforcement issues. This includes an Interdepartmental Committee, which brings together policy and enforcement agencies, as well as an Intellectual Property Enforcement Consultative Group, which includes industry as well as federal, state and territory law enforcement and government representatives.

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made various minor and clarifying amendments to the Copyright Act, with a view to ensuring compliance with obligations under the AUSFTA. The Copyright Amendment (Film Directors' Rights) Act 2005 gave film directors a share of the copyright in the films that they direct. The Copyright (International Protection) Regulations 1969 were amended in 2003 and 2004, to extend copyright protection automatically to foreign works and subject matter in compliance with relevant international conventions.

<sup>184</sup> Under the amendments, the Federal Magistrates Court has jurisdiction in various civil copyright matters, and is making efforts to establish a quicker, simpler, and cheaper forum for resolving routine cases.

<sup>185</sup> WTO (1998).

<sup>186</sup> Customs online information. Viewed at: <http://www.customs.gov.au/site/page.cfm?u=4393> [1 June 2006].