

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Since its previous Trade Policy Review in 2007, Australia has maintained the openness of its trade regime, which is to a large extent due to the exemplary transparency in trade and related policy. Australia has proceeded with some unilateral liberalization in certain areas with a view to increasing the competitiveness of domestic firms and reducing anti-export bias. However, some significant tariff and non-tariff barriers to trade and to efficient re-allocation of domestic resources remain. Emphasis has been placed on better coordination of policy formulation and implementation at central, state, and territory level in areas such as standards, sanitary and phytosanitary (SPS) measures, and government procurement.

2. The tariff remains one of Australia's main trade policy instruments, albeit a minor source of tax revenue. As a result of unilateral reductions (on 1 January 2010) in tariffs applied to textiles, clothing, and footwear (TCF) as well as to passenger motor vehicles (PMVs), the average applied MFN tariff rate dropped slightly, from 3.8% in 2006 to 3.1% in 2010, with further unilateral reductions expected by 2015. The average applied MFN tariff for industrial products is 3.4%, while that for agricultural imports is roughly 1.4%. Some 96% of applied MFN tariff rates are currently in the range zero to 5%. Notwithstanding the unilateral cuts in tariffs, including peak *ad valorem* rates, in line with long-standing sectoral support to TCF and PMVs products, the applied MFN tariff rates on the latter remain considerably higher than the average. The tariff structure has been simplified and now involves seven rates (four *ad valorem*, one specific, one compound, and one alternate). However, the tariff structure is also characterized by tariff escalation, which means that effective rates of tariff protection can be considerably higher than nominal rates. Some 99.7% of tariff rates are *ad valorem*, which contributes to the transparency of the tariff. Nevertheless, non-*ad valorem* rates tend to conceal relatively high tariff rates, particularly those on used vehicles. The fact that 96.5% of tariff lines are bound imparts a high degree of predictability to the tariff; however, the simple average of bound MFN rates (10.1%) considerably exceeds the average applied MFN rate, providing the authorities with extensive scope for increasing applied tariffs within bindings, though there has been no such increase during the period under review. Although tariff-rate quotas have remained in place for five cheese items and for non-manufactured tobacco, they are apparently applied in a flexible/liberal manner; those on tobacco have never been applied. Computerized customs clearance has facilitated virtually all imports and exports.

3. Import prohibitions and restrictions in the form of stringent quarantine or technical requirements, which are considered by the Government to be proportionate to Australia's appropriate level of protection (ALOP), have remained in place, in principle to preserve, *inter alia*, human, animal or plant life or health, the environment, safety, or security. Changes were made to ensure that all standards developers work together, avoid duplication, and work in harmony with international standards, as well as to centralize the Commonwealth Government's power for introducing mandatory product safety and information standards. The share of national standards that are identical or "modified adoptions" of international standards remains at 38%. No new mutual recognition agreements (MRAs), a trade facilitation measure, were signed during the review period. Although Australia continues to maintain strict SPS measures, it recognizes that zero-risk is unattainable and launched reforms for a shift from "quarantine to biosecurity". Whereas the "net benefit" to the community as a whole (including domestic consumers) needs to be demonstrated in order for a standard to be adopted, SPS measures are taken without such cost-benefit analysis including the trade effects of such measures for stakeholders along the supply chain, although import-risk analyses are expected to address the issue of economic consequences for relevant stakeholders. Recourse to

anti-dumping and countervailing action has been steady, with most initiations and measures relating to items originating in Asia; no safeguard measures were adopted during the period under review.

4. Australia is an observer to the WTO Agreement on Government Procurement (GPA), but comprehensive chapters on government procurement in a number of its FTAs (Chapter II) oblige it to respect principles of transparency and non-discrimination in the conduct of its government procurement. Australia has continued to use government procurement as an instrument of economic policy aimed at fostering industrial development in certain sensitive areas (e.g. real estate property or accommodation, R&D services, and motor vehicles) that are exempt from the mandatory procurement procedures applying to procurement above certain thresholds. The target of sourcing at least 10% of purchase value from small and medium-sized enterprises (SMEs), as well as preference margins for local suppliers and local-content requirements by certain state governments have been maintained and, in certain areas, reinforced but applied in line with FTA commitments.

5. Export controls or quantitative restrictions operated by public sector entities affect certain primary and therapeutic goods to ensure, *inter alia*, adequate domestic supply, and to enforce standards; merino sheep exports have been liberalized. State involvement in the economy has been maintained where benefits can be captured from promoting and/or regulating export trade in certain agricultural goods (e.g. wheat, barley, rice, sugar). Nevertheless, the character of state involvement has changed in recent years with all statutory arrangements terminated (i.e. for grains, wheat, and sugar) except for the NSW-state based Rice Marketing Board, which is currently the sole entity with export monopoly rights. Export assistance, consisting of direct grants (e.g. through export market development grants) and tax concessions (e.g. Tradex), has been maintained and revised. In addition to local-content requirements, termed as "Australian activity", export finance is, *inter alia*, conditional upon "national interest" criteria; export credit terms seem to be in line with OECD guidelines.

6. Support for domestic production and trade has been provided through tax and non-tax incentives, with steady, albeit declining, emphasis on R&D spending as well as regulatory restrictions on competition. Some industry-specific programmes (e.g. dairy, automotive, pharmaceuticals) were ended or amended during the review period. The rate of the special Luxury Car Tax, which affects both domestic and foreign cars but seems to fall disproportionately on imports, was raised from 25% to 33%. The effective rate of combined assistance¹ (i.e. tariff, budgetary, agricultural pricing and/or regulatory assistance) remains relatively high for TCF, PMVs, grain, sheep and beef cattle farming, and horticulture and fruit growing activities; according to the authorities, support to primary production depends on the effects of climate. In addition to certain commodity export activities, the state is involved in the economy through government trading enterprises (GTEs) providing services in key infrastructure sectors (e.g. water, electricity, ports, rail, urban transport), though not always on a fully commercial basis.

7. Australia has further strengthened protection of intellectual property rights by expanding its international commitments. The competition policy framework, which remains characterized by a long list of special regimes and exemptions, including at state or territory level, has been updated in several areas with particular emphasis on cartel criminalization. Newly passed legislation is aimed at strengthening consumer protection and enforcement at the national level.

¹ This Chapter refers to several indicators, including effective rate of combined assistance, used by the Productivity Commission (Chapter II) for assessing support provided to different economic activities. For details on the definition, methodology, and scope of these indicators see Productivity Commission (2010b).

(2) MEASURES DIRECTLY AFFECTING IMPORTS**(i) Registration and documentation requirements**

8. During the period under review the minimum documentation requirements have remained unchanged; they include a full import declaration (FID), which is required for most imports.² Import permits are also required for certain goods subject to controls or restrictions (sections (v), (vi) and (vii) below). An Integrated Cargo System (ICS), replacing all previous cargo declaration systems, has been in place since 2005. The ICS is a single window for the vast majority of international trade-related transactions and provides an interface for industry to connect electronically for coordinated customs and quarantine clearance. Some transactions may require separate contact with permit-issuing agencies and some may require the presentation of the permit in hard copy. Opportunities are continuing to be explored on a case-by-case basis for higher volume and higher risk permit management processes to facilitate electronic clearance. Virtually all customs brokers are connected to the Customs electronic systems, while individual importers are also able to connect via the Internet and obtain a digital certificate to enable secure communication with the system. In 2009/10, 99.3% (99.4% in 2004/05) of Customs entries in Australia were processed electronically. Self-assessment of duty continues to be the norm, with compliance addressed by post-audit regimes.

9. The Enhanced Trade Solutions Program, Australia's trade facilitation programme, focuses on the ongoing preparation for paperless trading and other border-clearance improvements, and the development of an entity-based approach to risk management to supplement the existing transaction-based risk-assessment processes.³ Australia first conducted a time release study (TRS) in 2007, with further studies in 2008 and 2009; the TRS is based on the World Customs Organization (WCO)-endorsed method for measuring import clearance performance. The studies have shown and that Customs did not pose a significant impediment to the movement of cargo at the border and that Australia performed favourably against other economies.⁴ They also found that ongoing measurement of trade facilitation performance contributes to improvement and reform by helping to inform decision-making by both government and industry. The 2009 TRS showed that more than 85% of sea and air cargo is now fully risk assessed and unimpeded by the time it is physically available for delivery; in 2007, the arrival to clearance times for sea and air cargo were 1.8 and 0.3 days, respectively. In 2009, Customs released the Enhanced Trade Solutions (ETS) 2015 paper, and a work programme focused on: refining the cargo intervention strategy; improving risk management capabilities; and continuing work with industry, other government agencies, and international forums to address business challenges and opportunities in the trade environment.⁵ The estimated 2010/11 budget to cover trade facilitation activities is about \$A 234 million.

² For further information see WT/TPR/S/178/Rev.1, 1 May 2007, and Customs online information. Viewed at: <http://www.cargosupport.gov.au/site/page5954.asp>.

³ Studies by the OECD show that the thinning of trade barriers increases domestic productivity. In the trade facilitation context, Customs is required to deliver effective border management that, with minimal disruption to legitimate trade and travel, prevents illegal movement across the border, raises revenue, and provides trade statistics. For further details on trade facilitation in Australia see Australian Customs and Border Protection Service (2009a) and (2007).

⁴ For further details see Australian Customs and Border Protection Service (2009a) and (2007).

⁵ Australian Customs and Border Protection Service (2009b).

(ii) Tariffs

(a) Features

10. Since January 2007, Australia's tariff classification system has been based on the HS 2007 nomenclature.⁶ It is applied at the HS eight-digit level and has 6,008 lines, 116 lines less than the previous (HS2002) customs tariff. Australia continues to submit its customs tariff and trade data regularly to the WTO Integrated Data Base.⁷ The customs tariff comprises MFN and several preferential rates granted under bilateral and plurilateral agreements and unilateral concession schemes (Chapter II and section (e) below).

(b) Applied MFN tariff

11. On average, Australia's applied MFN tariffs remain relatively low. On 1 January 2010, tariffs on apparel and certain finished textile articles were reduced to 10% and those on other textiles, clothing, and footwear (TCF) goods, and motor vehicles and parts components to 5%. As a result of these cuts Australia's average applied MFN tariff rate dropped slightly, from 3.8% (2006) to 3.1% (2010) (Table III.1)⁸; tariffs on apparel and certain finished textile articles are to be further reduced to 5% on 1 January 2015. Around 1.9% of the Government's total tax revenue (2% in 2004/05) was from customs tariffs in 2008/09 (Table III.5).⁹

12. In accordance with the indexation provisions in section 19 of the Customs Tariff Act 1995 and section 6A of the Excise Tariff Act 1921, the rates of excise duties (section (4)(i)(a)) on certain spirits, beer and tobacco were last increased on 2 August 2010.¹⁰

Structure

13. During the review period, Australia simplified the structure of its customs tariff. In 2010, around 99.7% (5,992 lines) of the tariff lines were subject to four *ad valorem* rates (zero, 4%, 5%, 10%) down from six rates in 2006; this ensures a high degree of transparency of the tariff. The peak

⁶ Changes included mainly: restructuring of tariff classifications for certain wood and paper products, certain automotive parts, information technology and consumer electronic products to reflect changes in technology and trade; consolidating three headings for toys into a single heading, with fewer subheadings, to facilitate trade; deleting tariff classifications in around 200 six-digit subheadings due to low trade volumes across a broad range of commodities, including foods, chemicals, paper products, textile, clothing and footwear products, metals and machinery; and inserting and splitting subheadings. As a result there was, *inter alia*, a rise of the tariff rate on plywood veneered panels consisting of layers of bamboo and certain tropical woods from duty free to 5% (Australian Customs Service online information. Viewed at: http://www.customs.gov.au/webdata/resources/files/hs2007_faqs.pdf, and http://www.customs.gov.au/webdata/resources/files/HS2007_ImpSeminar.ppt [25 March 2010]).

⁷ WTO document G/MA/IDB/2/Rev.32, 6 October 2010.

⁸ As the calculation of import duty in Australia is based on the f.o.b. value, the actual tariff imposed is lower than in economies that calculate duty on the c.i.f. value.

⁹ Customs duties constituted around 99.8% of taxes on international trade; export fees and charges on selected agricultural products accounted for the remaining 0.2%.

¹⁰ The new rates of customs and excise duty listed are calculated by multiplying the previous rates by an indexation factor, which is calculated by dividing the most recent CPI number by the previous highest December or June Quarter number occurring after December 1983. Accordingly, the December 2009 index number (169.5) has been divided by the June 2009 index number (167.0) to establish an indexation factor of 1.015. As this factor is more than one, rates of customs and excise duty have been increased by the application of this factor (Australian Customs Notice No. 2010/05, 2 February 2010. Viewed at: http://www.customs.gov.au/webdata/resources/files/ACN_2010-05.pdf [20 April 2010]).

ad valorem rate dropped from 17.5% to 10%. Some 46.2% of tariff lines now carry a zero rate (Table III.I, Chart III.1), nearly half (49.8%) are subject to a rate of 5%, and 3.7% are at 10% (7.5% in 2006).

Table III.1
Australian tariff structure, 2002, 2006, and 2010
(%)

		MFN applied			Final bound ^a
		2002	2006	2010	
1.	Bound tariff lines (% of all tariff lines)	96.7	96.7	96.5	96.5
2.	Simple average rate	4.5	3.8	3.1	10.1
	Agricultural products (HS01-24)	1.4	1.4	1.4	3.6
	Industrial products (HS25-97)	5.0	4.2	3.4	11.2
	WTO agricultural products	1.5	1.5	1.6	4.1
	WTO non-agricultural products	5.0	4.1	3.3	11.2
	Textiles and clothing	12.4	12.1	5.4	24.0
	Passenger motor vehicles	57.6	55.1	41.7	23.0
	(excluding AVEs of non- <i>ad valorem</i> rates)	8.2	6.6	5.0	23.0
	ISIC 1 - Agriculture, hunting, and fishing	0.3	0.3	0.3	1.3
	ISIC 2 - Mining	0.4	0.4	0.5	2.2
	ISIC 3 - Manufacturing	4.8	4.1	3.3	10.8
	Manufacturing excluding food processing	5.2	4.3	3.4	11.5
	First stage of processing	0.5	0.5	0.4	1.5
	Semi-processed products	4.2	3.5	2.9	10.1
	Fully processed products	5.5	4.6	3.7	11.8
3.	Domestic tariff "peaks" (% of all tariff lines) ^b	11.4	4.1	3.9	5.6
4.	International tariff "peaks" (% of all tariff lines) ^c	4.1	4.1	0.2	13.7
5.	Overall standard deviation of tariff rates	9.9	8.9	6.5	10.9
6.	Coefficient of variation of tariff rates	2.2	2.3	2.1	1.1
7.	Duty-free tariff lines (% of all tariff lines)	47.4	47.6	46.2	19.8
8.	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.3	0.3	0.3	0.4
9.	Nuisance applied rates (% of all tariff lines) ^d	0.0	0.0	0.0	9.3

a Based on 2010 tariff schedule. Implementation of final bound rates was reached in 2000. Calculations are based on 5,796 bound tariff lines, of which 5,771 are fully bound and 25 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: 2002 and 2006 tariffs are based on HS02 nomenclature consisting, respectively, of 6,101 and 6,124 tariff lines; the 2010 tariff is based on HS07 nomenclature consisting of 6,008 tariff lines. Calculations include AVEs provided by the authorities for non-*ad valorem* rates.

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

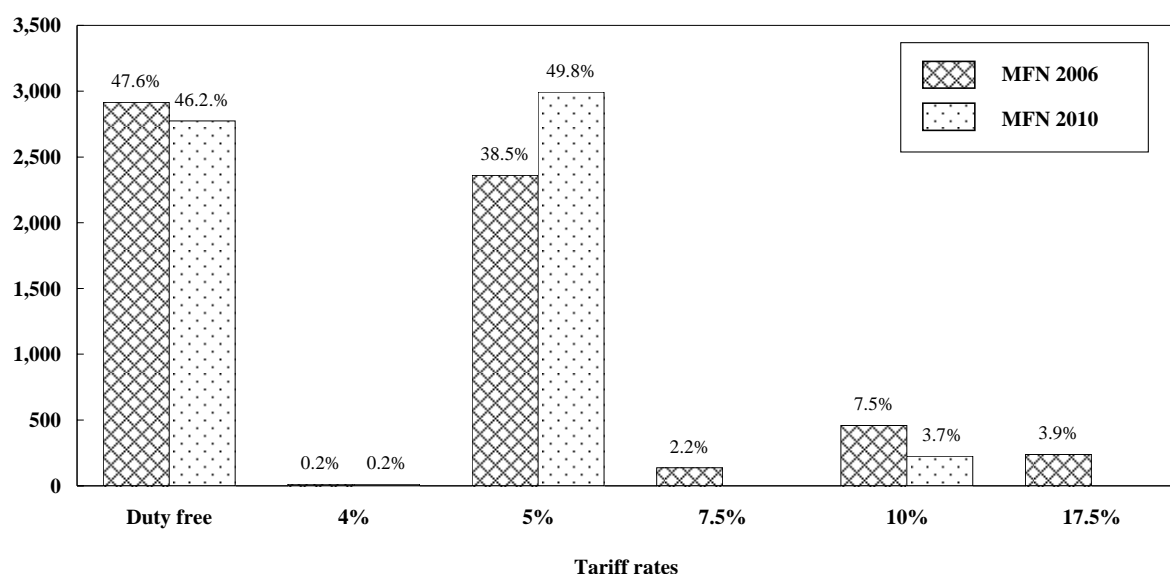
14. A few (0.3%) tariff lines remain subject to non-*ad valorem* rates, which tend to conceal relatively high tariff rates. These involve a specific rate of \$A 1.22/kg applied to five tariff lines (cheese and curd), an alternate rate of 5% or \$A 0.45/kg, whichever is lower, applied to four tariff lines (fruit juices), and a compound rate of 5% (10% in 2006) plus \$A 12,000 per unit applied to eight items (used or second-hand vehicles), which has rarely been applied since 2006.¹¹ Average

¹¹ Item 59 of Schedule 4 of the Customs Tariff allows for the waiving of the \$A 12,000 duty component on second-hand cars, provided the Department of Infrastructure, Transport and Regional Development has issued a Vehicle Import Approval (VIA). A vehicle must have a VIA to be imported. Vehicles falling under this category include those imported under the Registered Automotive Workshop Scheme

ad valorem equivalents (AVEs) for the period under review ranged from 10.2% to 27.1% for specific rates, up to 5% for alternate rates, and from 89.5% to 215.4% for compound rates (including the 5 percentage points *ad valorem* component).¹² These 13 AVEs are the highest applied tariff rates in place.

Chart III.1
Distribution of MFN tariff rates, 2006 and 2010

Number of tariff lines



Note: Percentages denote the share of total lines. Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. Figures for 2006 are based on HS02 nomenclature, and for 2010 on HS07. Totals do not add to 100% due to the exclusion of specific rates, representing 0.1%, for both years.

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

Tariff dispersion and escalation

15. Despite a low overall average tariff rate and large share of duty-free items, tariff peaks in some sectors remain a potential distortion and thus a source of inefficiency. In particular, while agriculture continues to face relatively low tariff rates (1.6%, under the WTO definition of agriculture, Table III.1), average rates for non-agriculture items, notably textiles and clothing (5.4%) and passenger motor vehicles (PMVs)¹³ remain significantly higher despite recent unilateral reductions, thus reflecting sensitivities in these sectors. Domestic "tariff peaks" affect 3.9% of tariff lines (3.7% excluding AVEs); their share has decreased since 2006.

(RAWS), which caters for specialist and enthusiast used imported vehicles not available in Australia in full volumes by mainstream manufacturers (Australian Customs and Border Protection Services online information. Viewed at: <http://www.customs.gov.au/site/page4371.asp#2ndHandVechicle> [2 December 2010]).

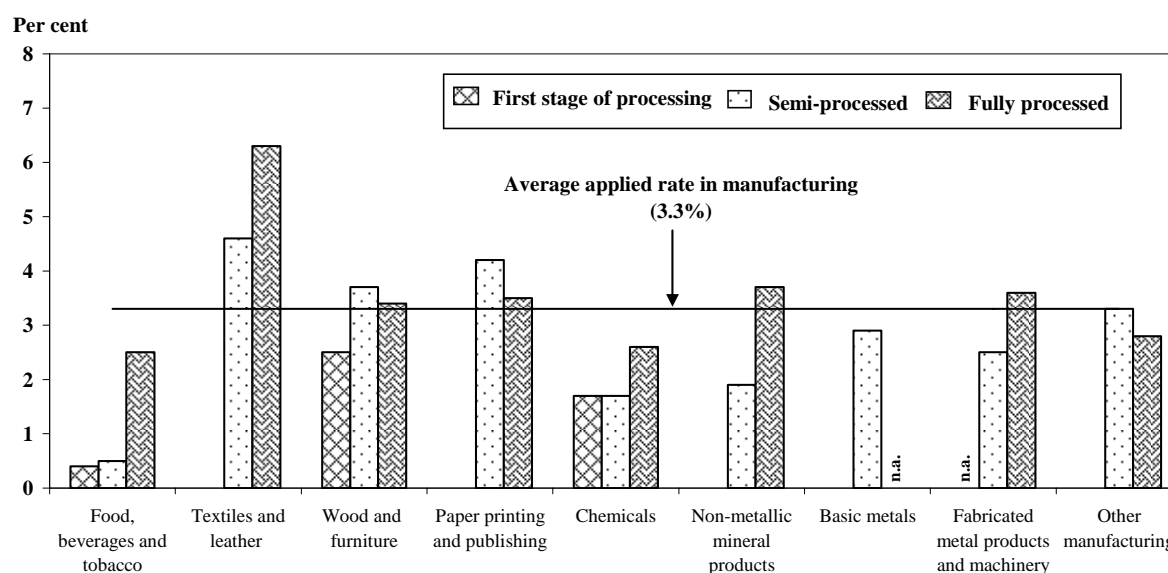
¹² The *ad valorem* equivalents (AVEs) are computed on the basis of unit values for imports of the items concerned over the period 2006-08.

¹³ The rate on new cars is 5%, while the rate rises to 52.7% when duties on used cars form part of the calculation.

16. Overall, the tariff shows a tendency to escalate, with the average for unprocessed, semi-processed, and fully processed goods rising from 0.4% to 2.9% and 3.7% (Table III.1). The outcome is that the level of effective protection increases as goods undergo further processing.¹⁴ The textiles and clothing sector shows more significant tariff escalation (Chart III.2); since 2006, the average tariff for fully processed textiles and clothing and leather products has declined from 10.4% to 6.3% but remains high compared with other product categories, which range from 2.5% to 3.8%. The average tariff for semi-processed products has fallen from 3.5% to 2.9% during the period. Tariff escalation is a potential impediment to the efficient allocation of resources, it also constitutes an obstacle to local processing of primary and semi-finished goods produced in exporting countries, thereby impeding the industrialization of these developing countries whose exports are not eligible to preferential duty-free access to Australia's market.

Chart III.2

Tariff escalation by 2-digit ISIC industry, 2010



n.a. Not applicable.

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

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

(c) Bound tariff

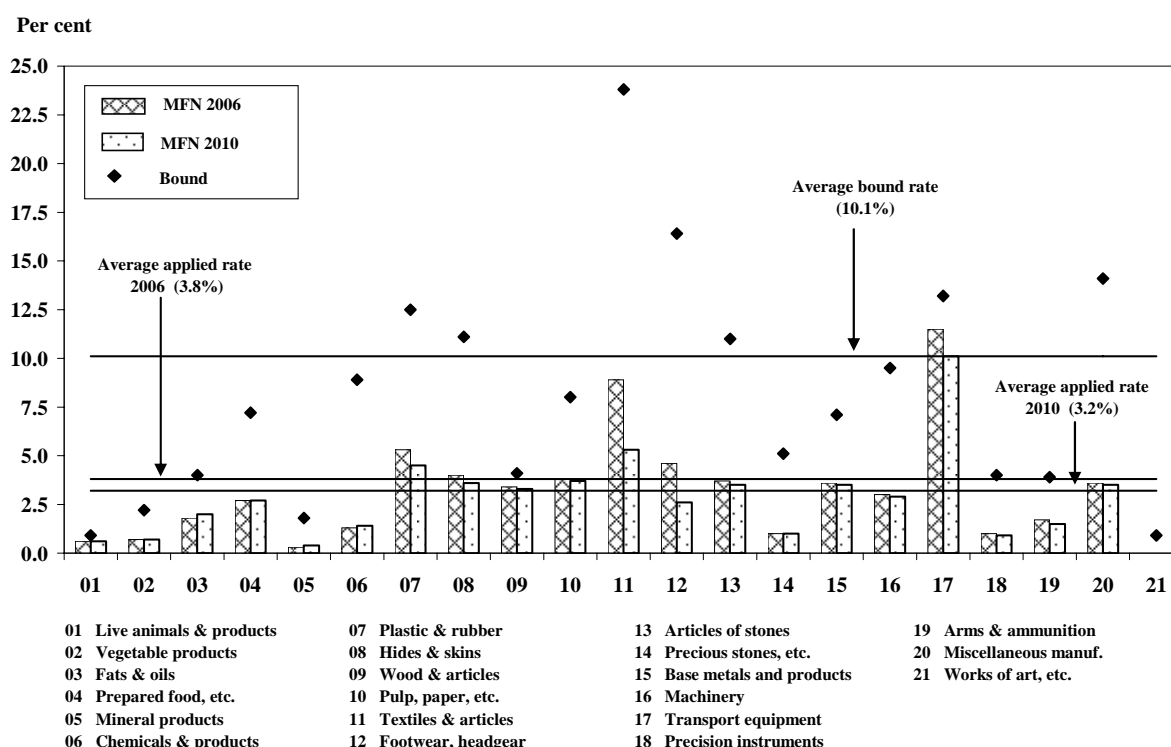
17. Australia's tariff Schedule of Concessions has remained based on the Harmonized Commodity Description and Coding System 2002 but has not been certified (as at November 2010) (see below). According to its HS07 version supplied by the Australian authorities, 96.5% (96.7% in HS02 version) of tariff lines are bound; bindings cover 100% of agricultural tariff lines and 96.2% of non-agricultural products (WTO definitions); 96% (95.9% in HS02 version) of the non-agricultural

¹⁴ The effective rate of protection (ERP) measures the protection provided by the entire structure of tariffs, taking into account those levied on inputs as well as those on outputs. It is defined as $ERP = (V_D - V_W)/V_W$, where V_D is the value added in the given sector at domestic prices, which includes tariffs, and V_W is value added at world prices. If the nominal tariff on the final product is t , the share of each imported input i in the total value of the final product is a_i , and the nominal tariff on each imported input is t_i , then the effective rate of protection can be written as: $ERP = (t - \sum a_i t_i) / (1 - \sum a_i)$. Thus, if $t = 5\%$, $t_i = 2.5\%$ for all inputs, and $\sum a_i = 0.6$, the ERP is nearly 8.75%.

products are fully bound.¹⁵ Bound rates range from zero to 29% (processed potatoes) for agriculture, and from zero to 55% (clothing) for non-agricultural products. Australia's bound rates currently exceed applied MFN rates by nearly seven percentage points (Chart III.3); maximum gaps of up to 55 percentage points affect clothing items. Differences between bound and applied rates may provide scope to raise applied tariffs, especially in sensitive sectors, although this has not been the case during the period under review.

Chart III.3

Average applied MFN and bound tariff rates, by HS section, 2006 and 2010



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.

18. Australia has remained covered by waivers from Article II of GATT 1994 to implement domestically the HS2002 (since 2002) and HS2007 (since December 2006) changes, pending incorporation of such changes into its Schedule of Concessions.¹⁶ By the time of completion of this report, neither the HS96 nor the HS2002 changes to Australia's WTO Schedule I had been certified. In a communication to the Committee on Market Access on 26 May 2010, Australia indicated that the domestic certification process of its HS02 changes was still ongoing and was to be completed as soon as possible.¹⁷ Concerning the process of incorporating HS07 changes to its WTO Schedule of Concessions, Australia was one of the two Members that had submitted the relevant files within the

¹⁵ The 212 eight-digit HS07 unbound lines include yarns, textiles, clothing, leather, rubber products, tools/articles of base metals, products of iron and steel, ceramic products, glassware, machinery, transport equipment, photographic equipment, and other electrical components and equipment.

¹⁶ WTO Secretariat documents WT/L/786, 21 December 2009, WT/L/787, 21 December 2009, and G/MA/TAR/RS/154, 12 February 2010.

¹⁷ WTO document G/MA/M/51, 26 May 2010.

agreed original deadline in 2007. No progress has been made in any Member's work in this area because of its linkage with the ongoing NAMA negotiations.¹⁸

(d) Tariff-rate quotas

19. Tariff-rate quotas (TRQs) involving specific rates apply to most types of cheese and curd imports¹⁹; the TRQ on unmanufactured tobacco has never been implemented as the customs duty rate for this item is set at zero. The out-of-quota (above 11,500 tonnes) and in-quota rates for cheese remain at \$A 1,220 per tonne and \$A 96 per tonne, respectively. Since 1995, quota allocation has been based on historical import performance within the quota for the previous 23 months (excluding quota transfers); the quota may be accorded upon application to the Customs. New importers are able to obtain an allocation only on transfer from an existing holder of a tariff quota share. Between 2003/04 and 2005/06, tariff quota utilization varied from 92.4% to 97.4% but from 2006/07 to 2008/09 its fill in ratio exceeded 99%²⁰; this is indicative of strong demand for cheese and curd as well as minimal impediments to accessing the quota.

20. Future cheese and curd import arrangements are to be considered in the context of the Doha Round negotiations on agriculture. Preferential imports from LDCs, partners covered by regional trade agreements (New Zealand, Singapore, Thailand, the United States, Chile, and ASEAN), and the South Pacific Forum island countries are exempt from this TRQ (see below). Developing countries are subject to a reduced out-of quota tariff for the lines covered by the cheese and curd tariff quota, at \$A 1,220 per tonne less 5%.

(e) Tariff preferences

21. Australia maintains numerous unilateral preferential and regional trade agreements (Chapter II). Duty- and TRQ-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 recently signed RTAs lead to lower tariffs for some developed countries than those granted to around 90 developing countries (or economies) under Australia's Generalized System of Preferences (GSP) (Table III.2).

Table III.2
Summary analysis of the Australian preferential tariffs, 2010
(Number and %)

	Number of preferential lines ^a	Total		WTO agriculture		WTO non-agriculture	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
MFN		3.1	53.8	1.6	29.1	3.3	57.3
Canada (CANATA)	512	2.7	46.1	1.4	26.6	2.9	49.0
Chile (ACIFTA)	2,672	0.6	9.2	0.0	0.3	0.7	10.5
Malaysia (MATA)	801	2.8	50.7	1.3	26.2	3.1	54.2
New Zealand (ANCZERT)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Papua New Guinea (PATCRA)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Singapore (SAFTA)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Thailand (TAFTA)	3,232	0.2	3.7	0.0	0.0	0.2	4.3
United States (AUSFTA)	3,233	0.7	9.9	0.0	0.0	0.8	11.4
SPARTECA ^b	3,207	0.2	0.1	0.0	0.0	0.2	0.2

Table III.2 (cont'd)

¹⁸ WTO document G/MA/M/50, 22 October 2009.

¹⁹ Camembert, brie, roquefort, stilton, and goat-milk cheeses are exempt from the quota scheme.

²⁰ WTO documents G/AG/N/AUS/66, 28 August 2007, and G/AG/N/AUS/78, 13 August 2010.

	Number of preferential lines ^a	Total		WTO agriculture		WTO non-agriculture	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
ASEAN-Australia-New Zealand FTA							
Brunei Darussalam	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Burma	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Cambodia	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Laos	3,029	0.3	3.6	0.0	0.3	0.4	4.1
New Zealand	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Philippines	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Singapore	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Viet Nam	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Indonesia	3,004	0.3	4.0	0.0	0.3	0.4	4.6
Malaysia	3,024	0.3	3.7	0.0	0.3	0.4	4.2
Thailand	3,004	0.3	4.0	0.0	0.3	0.4	4.6
GSP ^c	3,129	0.5	5.6	0.1	0.7	0.5	6.3
GSP ^d	797	2.8	50.8	1.3	26.2	3.1	54.3
DCT ^e	176	3.0	51.2	1.4	26.2	3.2	54.8
LDCs	3,233	0.0	0.0	0.0	0.0	0.0	0.0

a The number of preferential lines includes only lines on which the rates are lower than the corresponding MFN applied rate. The 2010 MFN tariff consists of 6,008 tariff lines of which 2,775 lines are duty free.

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

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

d GSP for around 90 developing countries.

e Republic of Korea, Chinese Taipei, and Hong Kong, China.

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

(f) Duty concession schemes

22. Australia has a number of tariff concession schemes to support local industry. Total duty forgone through these schemes has risen considerably since the previous Review (Table III.3); this is due mainly to an increase in both the use of the Tariff Concession Scheme (TCS) and imports, including those of electronic consumable goods, and machinery destined for use by the mining sector. The drop in 2009/10, which was due to the global financial crisis, should be reversed by the broader use of these concessions in a few very large projects.

Table III.3
Duty forgone through tariff concession arrangements, 2005/06-2009/10
(\$A million)

Industry assistance measure	2005/06	2006/07	2007/08	2008/09	2009/10
Tariff Concession Scheme	1,073.5	1,300.1	1,456.8	1,624.7	1,471.5
Textile Clothing and Footwear Policy By-Law	13.5	13.8	11.9	11.5	7.3
TRADEX	65.5	77.6	80.0	68.0	51.2
Enhanced Project By-Law	33.2	64.6	53.6	131.2	132.9
Cheese and Curd Quota Scheme	12.6	13.1	13.0	12.9	12.6
Certain Inputs to Manufacture	2.6	2.1	5.1	2.2	2.0
Other concessions	146.7	124.5	171.6	151.3	147.1
Total	1,346.8	1,550.8	1,765.0	1,966.1	1,824.7

Source: Data provided by the Australian authorities.

Duty deferral – customs warehouses

23. 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.²¹

Tariff concessions

24. Minor administrative changes (e.g. guidelines and application form) have been made to the TCS since 2007 to, *inter alia*, better reflect the obligations of the applicants; the TCS legislation and policy objectives remain unchanged. In 2009, it was agreed to pursue a range of additional reforms including tighter guidelines for the TCS. Australia's TCS is available for imports for which substitutable goods were not produced in Australia at the time a Tariff Concession Order (TCO) application was lodged.²² Products that do not qualify for a TCO include foodstuffs, most textiles and clothing, certain motor vehicles and parts, jewellery, and furniture, as local industry produces these goods. A local manufacturer may object to the granting of a TCO and may request revocation of an existing TCO. A total of 431 TCOs were revoked between January 2007 and June 2010 upon proof that the Australian-made goods concerned could be substituted for imported goods; in 2009/10, the most common types of goods covered by revoked TCOs were steel products, plastics products, electrical, shelters and pre-fabricated buildings. In June 2010, there were 13,500 active TCOs.

25. In March 2010, the authorities initiated work on the rationalization and simplification of Schedule 4 of the Customs Tariff Act 1995, which provides tariff concessions for over 90 items covering a range of goods and industry sectors as well as circumstances; in November 2010, work was still in progress.²³ The key objectives for tariff concession rationalization are: to ensure that tariff concession arrangements reflect current market practices and government policy; to remove obsolete items; to reduce the regulatory burden on business and, more generally, to address the "significant monitoring and compliance costs for businesses". Reportedly, the list of concessions has grown over many years, becoming increasingly complex to administer and difficult for users to understand. Some concessions have been in place since 1901; many items were introduced when general tariff rates were much higher than current rates. There are 14 government agencies with policy responsibility for various items. Complexities create burdens on business with costs being passed on to consumers; they may also result in inappropriate use of concessions.

Other duty concession schemes

26. 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, the Trade and Export Concession Scheme (TRADEX) (section (3)(iv)(b)), the Certain Inputs to Manufacture (CIM) programme (section (3)(iv)(d)), and the Space Concession programme.²⁴

²¹ Australian Customs factsheet. Viewed at: <http://www.customs.gov.au/webdata/resources/files/fscustomswarehousedeferduty.pdf> [20 April 2010].

²² In respect of goods that are the subject of a TCO application or of a TCO, substitutable goods are Australian-made goods that have a use that corresponds with the use (including a design use) of the goods that are the subject of the application or of the TCO (Australian Customs factsheet. Viewed at: <http://www.customs.gov.au/webdata/resources/files/commer01.pdf> [20 April 2010]).

²³ Department of Finance and Deregulation (undated).

²⁴ For further details on these schemes, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, as well as AusIndustry online information. Viewed at: <http://www.ausindustry.gov.au/ImportandExport/Pages/home.aspx> and <http://www.ausindustry.gov.au/Manufacturing/Pages/home.aspx> [20 April 2010].

27. The EPBS 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, power supply, and water supply industries. These goods must not be produced in Australia, or the imports need to be more advanced, more efficient or more productive than 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), which outlines how the applicant will provide "full", "fair", and "reasonable" opportunity for Australian industry to participate in the project; in this way, Australian industry is provided the same opportunities as global suppliers in all aspects of the project, it is treated on an equal and transparent basis, and tenders are not structured in a way that might rule out the Australian industry.²⁵ The authorities indicated that these requirements are not compulsory. Since 2006, approximately 200 EPBS AIP plans have been prepared and the total tariff concession benefit from the EPBS amounted to around \$A 380 million.

28. Under the ACIS, scheduled to end on 31 December 2010, 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. 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 (Table III.3).

(iii) Other charges affecting imports

29. In addition to fees for cargo handling, customs clearance, and post-clearance compliance activities, last amended in 2006, imported and domestic goods are subject to indirect taxes (section (4)(i)(a)). Customs fees and charges remain set on a cost-recovery basis rather than on import values. Fees relating to quarantine processes were last amended in July 2009.

(iv) Customs valuation and rules of origin

(a) Customs valuation

30. Australia has implemented the GATT/WTO Agreement on Customs Valuation since 1981. Goods are valued under nine different methods of valuation in a sequence established in the domestic legislation²⁶; the most common is the transaction value method, which is used for around 98% of imports. Australian valuation legislation allows for the inclusion of royalties and buying commissions in line with requirements under Article 8 of the WTO Agreement, and foreign inland freight and inland insurance in the dutiable value of goods; the authorities consider that this practice is permitted under the WTO Agreement. The total understated revenue (under-invoicing) for 2009/10 was \$A 128.9 million.

(b) Rules of origin

31. Australia's approach to non-preferential rules of origin (ROOs) remains unchanged since its last Review; on the other hand, changes were made to preferential ROOs in its bilateral and regional free-trade agreements (FTAs). The most common rules in these FTAs are those of: wholly obtained; change in tariff classification (CTC); regional value content (RVC); and the process rule

²⁵ AusIndustry (2010).

²⁶ These valuation methods are: the transaction value; the identical goods value; the similar goods value; the deductive goods value (consisting of the contemporary sales, later sales, and derived sales methods); the computed goods value; and the fall-back method.

(chemicals).²⁷ The ROOs in Australia's bilateral FTA with Singapore are based on an RVC measure, while the ROOs in its FTAs with New Zealand, the United States, Thailand, and Chile are essentially based on the CTC methodology, reinforced and enhanced where necessary with RVC and process rule requirements or options. In the regional FTA with ASEAN and New Zealand, "alternative and co-equal" product-specific rules exist for most tariff lines, offering exporters the choice of a CTC-based rule or an RVC-based equivalent. Around 83% of tariff lines are covered by these "alternative and co-equal" rules, while approximately 11% of lines offer only one pathway – either a CTC-based or RVC rule. The remaining lines are covered by wholly obtained requirements for agricultural goods and special rules for waste and scrap goods. Other provisions relating to ROOs include final process of manufacture requirements, rules governing consignment, and *de minimis* provisions. The objective of the different types of ROOs is to properly limit preferential rates of duty to goods that either wholly originate in the preference-receiving country, or that have undergone substantial transformation in that country.

(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. No automatic import licensing has been imposed. Non-automatic licensing requirements have been in place to enforce import prohibitions, restrictions, and controls (Table III.4); non-automatic import permits may be given on an ad-hoc or defined-period basis. Prohibition or stringent quarantine/permit/inspection procedures (section (vii)(b)) currently apply on more than 150 agricultural/livestock products (e.g. cereals, fresh fruit, vegetables, meat, poultry products) and other items (e.g. used machinery) considered to have the potential to introduce contamination or disease. Australia's last submission to the WTO of its Replies to the Questionnaire on Import Licensing Procedures was in October 2006²⁸; in November 2010, Australia was in the process of developing a revised submission to reflect recent limited changes.

Table III.4
Main import prohibitions, restrictions, and controls, 2010

Goods	Reason	Policy agency/permit issuing agency
Prohibited		
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 Côte d'Ivoire	International commitment	
Restricted		
Anabolic and androgenic substances and ketamine	Public health or safety concerns	Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
Asbestos	Public health or safety concerns	National Occupational Health and Safety Commission
Therapeutic substances and goods (antibiotics)	Public health or safety concerns	Therapeutic Goods Association, Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
ANZAC, and related advertising materials	National symbol	Department for Veterans' Affairs

Table III.4 (cont'd)

²⁷ For further details on these rules, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, and Australian Customs and Border Protection, "Service Practice Statement", 27 February 2009. Viewed at: http://www.customs.gov.au/webdata/resources/files/PS200913-Rules_Of_Origin.pdf [21 April 2010].

²⁸ WTO document G/LIC/N/3/AUS/3, 23 October 2006.

Goods	Reason	Policy agency/permit issuing agency
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 ^a	Public health or safety concerns	Australian Customs Service
Cetaceans (whales, dolphins, and porpoises)	Environmental conservation	Department of the Environment, Water, Heritage and the Arts
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 Customs Service
Crowd control equipment	Community protection	Australian Customs Service
Papua New Guinea cultural items	International commitments	Australian Customs Service
Diamonds – Kimberley Process	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, the Office of Chemical Safety and Environmental Health
Endangered species of wild fauna and flora	International commitment (Convention on International Trade in Endangered Species (CITES))	Department of the Environment, Water, Heritage and the Arts
Erasers resembling food in scent or appearance	Public health or safety concerns	Australian Customs Service
Explosives, plastic	Community protection	Attorney-General's Department
Fish/toothfish	Environmental conservation	Australian Fisheries Management Authority
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
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)	Department of the Environment, Water, Heritage and the Arts
Incandescent lamps	Energy saving	Department of the Environment, Water, Heritage and the Arts, Energy Efficiency Branch
Certain industrial chemicals	Public health or safety concerns, environmental conservation	Department of the Environment, Water, Heritage and the Arts
Kava	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
Knives and daggers	Community protection	Australian Customs Service

Table III.4 (cont'd)

Goods	Reason	Policy agency/permit issuing agency
Laser pointers	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, Water, Heritage and the Arts
Organochlorine chemicals (pesticides)	Public health or safety concerns, environmental conservation	Department of Agriculture, Fisheries and Forestry
Objectionable material	Community protection	Classification Board
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 for Health and Ageing
Tablet presses	Public health or safety concerns	Attorney-General's Department
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	Australian Customs Service, Firearms and Weapons Section
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/page4369.asp> [14 July 2010].

33. Since 12 January 2009, a Post Import Permission Scheme has allowed permission to be granted after importation, at the discretion of Customs, in respect of certain classes of controlled goods including specific drugs, chemicals, consumer items, firearms and knives, asbestos products, and items bearing Australian national symbols. If the post import permission is not sought or it is not granted within 30 days of application, then Customs seize the goods in question.²⁹ The system allows flexibility to Customs in dealing with importers who were genuinely unaware of the need for, or unable to obtain import permission prior to importation.

(vi) Contingency measures

(a) Anti-dumping and countervailing measures

34. No changes have been made to the legislative, institutional or procedural framework on anti-dumping and countervailing measures during the review period³⁰; these measures continue to be subject to a five-year sunset clause, but their duration may be extended. Investigations are conducted by Customs; and parties may appeal Customs decisions. In light of the unique convergence in business practices and bilateral application of competition legislation between Australia and New Zealand, imports from New Zealand covered by the ANZCERTA remain excluded from

²⁹ Australian Customs Notice No. 2009/03, 16 January 2009. Viewed at: <http://www.customs.gov.au/webdata/resources/notices/acn0903.pdf> [20 April 2010].

³⁰ For further details on these matters, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

anti-dumping actions and are dealt with under competition laws³¹; competition legislation has never been exercised in this regard.

35. With 221 cases initiated between 1995 and 2010, Australia was one of the world's major user of anti-dumping measures (sixth in 2008).³² Between 1 July 2007 and 31 October 2010, Australia initiated 25 anti-dumping investigations; 30% concerned items originating in China. As of October 2010, 21 anti-dumping measures were in force on 18 products, mainly pineapple fruit (5 cases), several steel items (3 cases), and polyvinyl chloride (2 cases). Nine of these measures were extensions of existing measures beyond their five-year sunset period. Action affected mostly products originating in Asia (15, mainly China (7) and Thailand (3)), but also the EU (3) and the United States (2).³³ Between 2006 and October 2010, Australia initiated six countervailing investigations; these included brandy from France, mobile garbage bins from Thailand, toilet paper, hollow structural sections and aluminium extrusions from China, and biodiesel from the United States. Definitive countervailing duties were levied on certain brandy from France and aluminium extrusions from China. At end-October 2010, the countervailing investigation on biodiesel from the United States was still under way.³⁴

36. A 2009 Productivity Commission report recommended retaining the anti-dumping and countervailing system, on the basis that it provides leverage for broader trade reforms. However, it, *inter alia*, notes that the current system has a number of significant deficiencies which, if not addressed, will continue to impose a net cost on the economy.³⁵ The Commonwealth Government's response to the review will be considered in the 2011/12 Budget process.

(b) Safeguards

37. Australia has no specific legislation for the imposition of safeguard measures and there has been no development in this regard during the review period.³⁶ The Productivity Commission remains the investigating authority. Following consideration by the Australian Government, the Treasurer may refer matters to the Productivity Commission for inquiry. An investigation on increased imports of frozen pig meat was initiated in October 2007 and was terminated in April 2008 without the adoption of any safeguard measures.³⁷

38. Bilateral free-trade agreements (such as, for example, the Thailand-Australia Free Trade Agreement) may have additional safeguard processes covering preferential trade where the injury caused by increased imports is due to the tariff reductions under the particular FTA; these

³¹ 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 in cases of alleged dumping by a third country whose exports were dumped into Australia or New Zealand and are causing or threatening to cause material injury to industry.

³² WTO online information. Viewed at: http://www.wto.org/english/tratop_e/adp_e/adp_e.htm [23 April 2010].

³³ WTO document G/ADP/N/195/AUS, 23 March 2010.

³⁴ WTO online information. Viewed at: http://www.wto.org/english/tratop_e/scm_e/scm_e.htm [23 April 2010]; and WTO document G/SCM/N/203/AUS, 24 March 2010.

³⁵ The Productivity Commission's concerns with the current system focus on: the lack of consideration of wider impacts; maintaining the currency of measures; extensions of measures; appeal arrangements; alignment of the subsidies provisions with the Subsidies and Countervailing Agreement; and transparency in the decision-making process and outcomes (Productivity Commission, 2009b).

³⁶ 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.

³⁷ WTO document G/SG/N/9/AUS/2, 10 April 2008.

"transitional safeguards" or "bilateral safeguards" are not global safeguards.³⁸ The process for these safeguards is essentially the same as for WTO safeguards; no safeguards of this type were used during the review period. No safeguard measures apply to products originating from Singapore, New Zealand, Thailand, the United States or from developing country WTO Members, provided certain conditions are met.³⁹

(vii) Standards and other technical requirements

(a) Standards, testing, and certification

39. Under the Commonwealth system, the legislative, executive, and judicial powers relating to technical regulations (mandatory standards) remain shared between the Commonwealth (the Australian Central Government) and the constituent state and territory governments.⁴⁰ A 1992 Commonwealth/State Agreement on Mutual Recognition allows a product that is in conformity with requirements of at least one State or Territory (i.e. legally saleable) to be sold throughout Australia.⁴¹ While this broad standards-setting and enforcement framework remains in place, there has been significant reform since Australia's last Review to improve national coordination and uniformity of implementation across the Commonwealth. In particular, the Council of Australian Government (COAG) adopted a best practice regulation guide in 2007 designed to promote efficient regulation among jurisdictions. In December 2007, the COAG established the Business Regulation and Competition Working Group with the aim of reducing the regulatory burden on business, including by improving regulation-making and review processes. The COAG has also commenced initiatives to increase regulatory consistency and harmonization between jurisdictions through the National Partnership Agreement to Deliver a Seamless National Economy (Chapter II). Further, a national product safety system where the Commonwealth and state and territory agencies will administer the same set of uniform product standards became operational on 1 January 2011. The single law multiple regulator (SLMR) model of Australian product safety regulation commencing on 1 January 2011 set the Australian Competition and Consumer Commission (ACCC) as the agency responsible for product safety policy development for Australia. The state and territory agencies, with the ACCC, will be responsible for the enforcement of those mandatory product safety regulations.

³⁸ Department of Foreign Affairs and Trade online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/trade_remedies.html [26 April 2010]. For further details on TAFTA safeguards see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

³⁹ Under the SAFTA, products determined to be of Singapore origin are excluded from safeguard inquiry; the two countries agreed not to apply safeguard measures against each other's products. Under AUSFTA imports of U.S. origin are exempt when they are not a substantial cause of serious injury or threat thereof; under TAFTA imports of Thai origin 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).

⁴⁰ Commonwealth and national regulators have responsibility for making technical regulations in pharmaceuticals, medical devices, and therapeutic goods (Therapeutic Goods Administration (TGA)), food (e.g. Australia New Zealand Food Authority (ANZFA)), occupational health and safety, product safety, agricultural and veterinary chemicals, telecommunications and radio communications, aviation, marine and road safety (Department of Infrastructure, Transport, Regional Development and Local Government), measurement, and building codes. State and territory regulators are responsible for making technical regulations in areas such as food, power, water, public health, occupational health and safety, road transport and the environment. For more information see WTO documents G/TBT/2/Add.8/Rev.1, 29 May 2001 and WT/TPR/S/178/Rev.1, 1 May 2007.

⁴¹ According to the Productivity Commission, mutual recognition has led to lower regulatory compliance costs for firms set in areas having jurisdictional differences; it seems that this has contributed to the expansion of interstate and trans-Tasman trade (Productivity Commission, 2009f).

40. The institutional framework for standards and conformity assessment remains unchanged. It consists of four main bodies: Standards Australia, 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), the two main accreditation bodies⁴²; and the National Measurement Institute (NMI), the physical, chemical, and biological measurement and metrology government body. Since 1 July 2010, NMI has been responsible for administering the new national trade measurement system, which replaces the previous state-based arrangements with a single, nationally applicable framework, funded and administered by the Australian Government.

41. Standards Australia International (SAI) or Standards Australia, the top non-governmental standards writing body, is responsible for the formulation and publication of voluntary standards (see below); it represents by far the largest single body of formal standards being produced for Australian use. On 30 May 2008, the Department of Innovation, Industry, Science and Research (DIISR), on behalf of the Commonwealth Government, signed a new Memorandum of Understanding (MOU), largely the continuation of the previous MOU, with Standards Australia. The new MOU is subject to performance reviews at intervals not exceeding five years and remains in force until varied or terminated by the parties.⁴³ The new MOU requires, *inter alia*, Standards Australia to report annually on its progress in the implementation of a range of matters; and the development of new or amended standards and setting of priorities to be transparent and well-founded, and ensuring the primary decision criterion is of net benefit to the community as a whole.⁴⁴ The Accreditation Board for Standards Development Organisations (ABSDO) accredits other standards development organizations to make Australian standards; five organizations other than Standards Australia are now accredited to write Australian standards.⁴⁵

Mandatory standards

42. Voluntary standards are often made mandatory (or regulatory) by reference in technical regulations.⁴⁶ By November 2010, Standards Australia had published 6,953 standards (6,850 in 2007), of which approximately one third (2,400 in 2007) have become mandatory; 35% of Standards Australia's catalogue are joint Australian/New Zealand Standards.

43. Since 1 January 2011, only the Commonwealth Government has had the power to introduce mandatory product safety standards and information standards. To ensure consistency of regulations operating throughout Australia, the ACCC and all state and territory agencies have committed to introduce the same set of product safety regulations prior to the date marking the introduction of the new Australian product safety system.⁴⁷ In respect of Commonwealth regulations, mandatory

⁴² Another regulatory body, the Australian Quarantine and Inspection Service (AQIS), provides inspection and certification services for food imports.

⁴³ Standards Australia online information. Viewed at: <http://www.standards.org.au/downloads/SAI-MoU-2008.pdf> and http://www.standards.org.au/downloads/080825_SA_Signs_MOU_with_Commonwealth.pdf [28 April 2010].

⁴⁴ Net benefit takes into account the costs and benefits related to: public health and safety; social and community impact; environmental impact; competition; and economic impact. Standards Australia online information, *Guide to Net Benefit*, last revised on 9 March 2010. Viewed at: <http://www.standards.org.au/LinkClick.aspx?fileticket=0cfqGeR1arU%3d&tabid=75> [2 December 2010].

⁴⁵ ABSDO online information. Viewed at: <http://www.absdo.org.au/Home.aspx>.

⁴⁶ By making compliance compulsory or optional (if the target is met through some alternative approach), mandatory (or regulatory) standards tend to be more targeted, as they are aimed at, *inter alia*, protecting the health or safety of persons, or the environment.

⁴⁷ Previously, Commonwealth and state and territory government ministers could issue mandatory safety and information standards. This had led to some differences in regulations between governments. The Council of Australian Governments (COAG) agreed that Australia would have a new single national system of

consumer product safety and information standards are still enforced by the ACCC. At the state and territory level, these regulations are enforced by government departments or agencies with portfolio responsibility for consumer affairs and fair trading. In April 2010, mandatory product safety standards affected 41 consumer items (including some on labelling)⁴⁸, and 24 unsafe goods were banned⁴⁹; these requirements do not necessarily apply to the entire Commonwealth territory.

44. The ACCC conducts regular bi-annual product safety surveillance activities to monitor compliance levels with mandatory standards and bans, and to remedy identified breaches. Since 2007, the ACCC has conducted surveillance activities on 28 mandatory product safety and information standards, and on six banned goods. Since 2007, 431 breaches of mandatory standards have been identified; non-compliance ranged from very low technical breaches to serious breaches involving significant hazards to consumers. These breaches resulted in a range of remedial measures (including product recall, withdrawal from sale, product modification, re-labelling, etc.) or enforcement measures (prosecutions, injunctions, court orders, enforceable undertakings, administrative actions).

National, international and aligned standards

45. Australia's policy remains 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. However, in the absence of a suitable international standard, national standards are developed, with transparency and consensus being two key requirements. At end-November 2010, 38% of national standards were identical or modified adoptions of international standards (40% in 2007); however, it is estimated that 97% of applied standards are identical or modified adoptions where an international standard exists. International equivalence remains high in, *inter alia*, electronic and IT products. In 2010, 70% (over 60% 2004) of motor vehicle safety, anti-theft and emission standards were aligned with the United Nations Economic Commission for Europe (UNECE) 1958 Agreement on technical standards for automotives and parts regulations; a further 10% were modified for adoption, while 20%, comprising 14 standards, are not aligned. Australian standards for which there are no international standards exist for soils, aggregates, babies' cots, nightwear, children's swimming aids.

Accreditation and quality management standards

46. The MOU between the National Association of Testing Authorities and the Australian Government was renewed in March 2008. 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. However, the Australian Government is now no longer committed to using NATA accredited facilities for its own testing needs as "a matter of course".⁵⁰ In November 2010, there were 2,961 NATA-accredited laboratories and facilities.⁵¹

consumer product safety laws by January 2011 (ACCC online information. Viewed at: <http://www.productsafety.gov.au/content/index.php/itemId/970773> and <http://www.productsafety.gov.au/content/index.php/itemId/970467> [26 April 2010]).

⁴⁸ For the full list of products covered by mandatory general consumer product safety standards requirements, see ACCC online information. Viewed at: <http://www.productsafety.gov.au/content/index.php/itemId/970773> [26 April 2010].

⁴⁹ For a full list of the banned items, see ACCC online information. Viewed at: <http://www.productsafety.gov.au/content/index.php/itemId/970715> [26 April 2010].

⁵⁰ NATA (2008).

⁵¹ NATA (2009).

47. JAS-ANZ accredits certification bodies for the certification of management systems (e.g. quality, environmental, occupational health and safety, and HACCP-based food safety), products, and personnel in line with international and national standards, such as the ISO 9001, ISO 14001, AS/NZS 4801 and ISO 22000, and HACCP (Hazard Assessment Critical Control Point) food safety standards. In the absence of an international standard, JAS-ANZ may accredit certification or inspection bodies to certify the use of a regulatory or industry standard, including the Department of Foreign Affairs and Trade's Certificate of Origin Scheme, which relies on free-trade agreements to identify the specified requirements or standards. In May 2010, there were 45 certification bodies accredited to issue certificates in Australia. The use of quality management system standards such as ISO 9001 and ISO 14001 has been increasing: between 2007 and 2010, the number of Australian companies with ISO 9001 certification increased from 9,201 to 9,312; and companies certified to ISO 14001 increased from 979 to 1,629.

International cooperation

48. Since its last Review, Australia has not signed any new mutual recognition agreements (MRAs), which contribute to trade facilitation. In addition to the non-treaty 1996 Trans Tasman Mutual Recognition Agreement (in force since May 1998) and the Mutual Recognition Arrangement for measurement standards of the International Committee for Weights and Measures (CIPM MRA) (October 1999), it maintains treaty-status MRAs on Conformity Assessment with the EU (1998), the EFTA (2000), Singapore (2001), and Canada (2006), as well as a voluntary MRA with Thailand (2000).⁵² In the context of APEC, Australia is a party to the MRAs on Conformity Assessment of Telecommunications Equipment (1999), Conformity Assessment of Electrical and Electronic Equipment (1999) and Conformity Assessment of Foods and Food Products (1997). NATA and JAS-ANZ have developed an extensive network of agreements (MLA)/MRAs through international and regional fora; NATA through the International Laboratory Accreditation Cooperation (ILAC) and the Asia-Pacific Laboratory Accreditation Cooperation (APLAC), and JAS-ANZ through the International Accreditation Forum (IAF) and the Pacific Accreditation Cooperation (PAC)). In the area of legal metrology, as well as the CIPM MRA, NMI is helping to establish mutual confidence within the global legal metrology environment through participation in the OIML Mutual Acceptance Agreement (MAA) for pattern approval of measuring instruments. Australia has bilateral MRAs of type approval test reports with equivalent bodies in the Netherlands, New Zealand, and the United Kingdom.

Transparency

49. Notices of technical regulations are generally published in the Commonwealth of Australia *Gazette* as well as on the websites of bodies such as the Australia New Zealand Food Authority (ANZFA). Additionally, standards and conformity assessment procedures are notified widely in national newspapers, in-house journals and other relevant Australian, state, and territory government publications. Notices on voluntary standards are also published in the journal of Standards Australia, *The Australian Standard*, while information on conformity assessment procedures are published in the quarterly NATA newsletter, *NATA News*.

50. Between 2007 and May 2010, Australia made ten notifications (including on genetically modified agricultural and food products) under the WTO Agreement on Technical Barriers to Trade (TBT). In most cases the timeliness of submission allowed for a comment period of 45-59 days.⁵³

⁵² For more information on MRAs in force see DIISR. Viewed at: <http://www.innovation.gov.au/Section/Industry/Pages/OverviewforIndustry.aspx>.

⁵³ WTO documents G/TBT/25, 4 March 2009 and G/TBT/23, 20 February 2008.

(b) Sanitary and phytosanitary regulations

51. Australia is a major exporter of agricultural commodities and agri-food products and, has maintained its strict sanitary and phytosanitary (SPS) regime, which the authorities consider proportionate and matching their appropriate level of protection (ALOP, see below). The authorities maintain that SPS measures are based on science and aim to reduce the risk of exotic pests and diseases to a very low level acceptable to Australia (but not zero).⁵⁴ Nevertheless, Australia has been criticized by certain trading partners on the grounds that they are unduly stringent and therefore protectionist; during the review period, complaints were related to quarantine procedures and apple imports.⁵⁵ Since 2004, an Eminent Scientists Group (ESG), a high level review group independent of Biosecurity Australia (see below), has been tasked with providing external scientific and economic scrutiny of significant import risk analyses. Its role was strengthened in September 2007, and again in July 2009, to take account of relevant new information brought to its attention, including assessing conflicting scientific views provided to it.⁵⁶ However, it appears that so far no unified analytical framework has been used to assess the costs and benefits of SPS measures for stakeholders along the supply chain, such as domestic consumers, producers and governments, or foreign suppliers, or, where relevant, foreign consumers and governments.⁵⁷ Trade effects are part of the assessment, as measures have an impact on trade as conduit of the externality, but trade effects are not the sole focus.⁵⁸ The authorities consider that the WTO SPS Agreement provisions do not require such analysis, and that the only direction as to relevant economic consequences to be taken into account in a risk assessment is found in Article 5.3 of the Agreement. Australia's risk import assessments (see below) address the issue of economic consequences to relevant stakeholders.⁵⁹

⁵⁴ Department of Agriculture, Fisheries and Forestry online information. Viewed at: <http://www.daff.gov.au/market-access-trade/sps> [9 May 2010]. See also WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

⁵⁵ At end-December 2009, 4 out of 15 WTO panels established to examine SPS-related dispute cases were on complaints against Australia. The cases involved complaints by: Canada and the United States against Australia's restrictions on imports of fresh, chilled or frozen salmon (mutually agreed solution, 2000); the Philippines against Australia's restrictions on fresh fruits and vegetables, including bananas (panel established in 2003); the EU against Australia's quarantine procedures (mutually agreed solution, 2007); and New Zealand against Australia's restrictions on apples (Chapter II) (WTO document G/SPS/53, 3 May 2010).

⁵⁶ As a result of the Beale Review (2008), the membership of the ESG was expanded in 2009 to include an eminent economist; until then its membership consisted of scientists. So far the ESG has issued reports on apples from New Zealand (October 2006), chicken meat (May 2008), bananas from the Philippines (October 2008), prawns and prawn products (June 2009), and apples from China (November 2009). Department of Agriculture, Fisheries and Forestry online information. Viewed at: http://www.daff.gov.au/about/contactus/corp-policy/eminent_scientists_group/esg_terms_of_reference [12 November 2010].

⁵⁷ In quarantine as in other policy areas, cost benefit principles are always relevant. Even the quest for disease-free status must pass such a test, as there would be no rationale in maintaining a barrier as extreme as this if it were to impose more economic costs on Australia than benefits. According to a 2010 study, Australian quarantine arrangements effectively transfer the costs of an extreme disease control regime from growers to domestic consumers, and recent official quarantine reviews have been unduly limited. The ban on imports of apples from New Zealand was estimated to be the equivalent of consumers directly paying growers \$A 2 billion over six years. The cost of controlling an outbreak of fire blight would be minimal - no more than \$A 10 million and most likely about \$A 3 million. Given that Australia is due to raise quarantine spending by \$A 260 million in 2010, the study suggests it could easily afford any mishaps (Bosworth and Cutbush, 2010).

⁵⁸ According to an OECD published study, this analytical framework allows comparison of alternative ways to design measures and discerns their trade and welfare effects. An import ban (or prohibitive standard) to keep the domestic market free of some undesired product characteristic can be compared to allowing trade under the condition that the foreign product be clearly identifiable (e.g. through labelling) (Van Tongeren et al, 2009).

⁵⁹ Article 5.3 of the SPS Agreement allows for cost-effectiveness analysis to be applied to evaluating alternative measures to reducing pest and disease risk to the appropriate level of protection (ALOP) in line with

Food standards setting

52. Since its previous Review, Australia has maintained many quarantine controls and food standards that are stricter than relevant standards promulgated by international bodies (e.g. CODEX Alimentarius Commission). Food Standards Australia New Zealand (FSANZ), a bi-national independent statutory authority, develops food standards, and if appropriate, joint codes of practice with industry, covering the content and labeling of food sold in Australia and New Zealand (section (c) below). All domestic and imported food products marketed in Australia must comply with relevant food standards as regulated in the Food Standards Code (the Code), which is developed and maintained by FSANZ. From 1 July 2007 to 30 June 2010, 62 applications and proposals were gazetted in the Code. FSANZ is required to take account of international standards, including those set by Codex, when developing standards. Where FSANZ has developed standards that are not consistent with international standards, it has notified the WTO through the appropriate mechanisms. Maximum residue limits (MRLs) for a number of agricultural and veterinary chemicals were revised on several occasions during the review period.

53. The Code also regulates food derived from GM plants, animals or micro-organisms, as well as the labelling of GM foods. Imported foods using biotechnology may be sold in Australia only after assessment and approval by FSANZ. In November 2010, FSANZ had completed assessments of 45 commodities produced from gene technology and approved all of them; it is currently assessing a further 6 commodities. FSANZ has also assessed and approved numerous enzymes sourced from GM micro-organisms. Imports of live and viable genetically modified organisms (GMOs) requires authorization from the Gene Technology Regulator, an independent statutory office holder, in charge of regulating all GMO issues. All dealings with GMOs must be licensed by the Regulator, unless otherwise authorized under the legislation. All licence applications are subject to case-by-case scientific risk assessment and risk management. As of 20 August 2010, the Regulator had authorized the unrestricted "commercial" release of 25 GMOs (varieties of cotton, canola, carnations, roses, and two vaccines).

Biosecurity

54. Since 2009, Australia's biosecurity system has been undergoing institutional reform in line with the recommendations of a 2008 independent review.⁶⁰ The review, *inter alia*, recognized that zero-risk is unattainable and undesired and suggested a shift from the largely negative-defensive quarantine to the pro-active biosecurity. Many of the review's recommendations are dependent on the commencement of new biosecurity legislation. A draft of this legislation would be released for public comment prior to its scheduled introduction into Parliament. A number of institutional reforms entered into effect on 1 July 2009 to strengthen the governance of the biosecurity system, including the appointment of the interim Inspector General of Biosecurity to conduct independent audits of Australia's biosecurity system. A Biosecurity Services Group was established within the DAFF, drawing together all biosecurity activities (including those of Biosecurity Australia) and AQIS,

the objective of minimizing negative trade effects. Cost-effectiveness analysis involves an evaluation of the costs of different measures in addressing a particular benefit. A measure is chosen on the basis that it involves the least aggregated cost. Although falling short of cost-benefit analysis, the application by regulators of cost-effectiveness analysis can at least facilitate the selection of measures that are consistent with achieving a desired risk target at low cost (Binder, 2002).

⁶⁰ The Government agreed in principle with the 84 recommended reforms. Other key recommendations included better coordination of states, territories, industry and the Commonwealth to monitor biosecurity risks before and after goods enter the country (WTO documents G/SPS/R/54, 28 April 2009 and G/SPS/R/56, 28 January 2010; and Commonwealth of Australia, 2008b).

reflecting the recommendations made in the independent review.⁶¹ A Biosecurity Advisory Council was established on 1 January 2010 to provide advice to the Minister for Agriculture, Fisheries and Forestry.

Import risk analyses (IRAs)

55. During the review period, Australia conducted science-based risk assessments, including import risk analyses (IRAs) under a regulated process, and developed recommendations on import conditions that would meet Australia's appropriate level of protection (ALOP).⁶² IRAs completed during the review period included apples from New Zealand, bananas from the Philippines, capsicums from Korea, mangoes from India, unshu mandarins from Japan, apples from China, stonefruit from the United States, horse meat from approved countries, chicken meat, and prawns and prawn products.⁶³ In April 2010, Biosecurity Australia commenced concurrent IRAs to assess the animal quarantine risks from the importation of beef and beef products from the United States, Canada, and Japan.⁶⁴ Following a change to the 2001 policy on Bovine Spongiform Encephalopathy (BSE), as from 1 March 2010 countries that have had one or more cases of BSE have been allowed to apply for assessment for possible access to the Australian market; countries with existing access will have to apply for assessment under the new policy by 30 June 2011.⁶⁵ However, this new BSE policy is still not in line with the relevant World Organization for Animal Health (OIE) standard.⁶⁶ New IRA arrangements entered into effect on 5 September 2007 setting specific timeframes for completion of IRAs within either 24 months or 30 months.⁶⁷ Two trading partners expressed concern that this new policy would still allow for long delays in the risk assessment process.⁶⁸ The authorities indicated that the existing backlog may continue because of delays relating to the prioritization of processing of past market-access requests.

Quarantine

56. Due to differences in the status of animal and plant health across Australia, different quarantine measures may be imposed within the country. The quarantine system is regulated by Commonwealth, state and territory laws⁶⁹; it applies to all humans, plants, animals, and associated products, including food products. Quarantine activities are pre-border, border, and post-border.

⁶¹ WTO document G/SPS/R/55, 23 September 2009; and DAFF online information. Viewed at: <http://www.daff.gov.au/bsg/biosecurity-services-group> [10 May 2010].

⁶² For more information on Australia's procedures see Department of Agriculture, Fisheries and Forestry (2009a).

⁶³ Biosecurity Australia online information. Viewed at: <http://www.daff.gov.au/ba/ira/current-plant> [15 July 2010].

⁶⁴ Biosecurity Australia Advice (BAA) 2010/10, 8 April 2010. Viewed at: http://www.daff.gov.au/ba/ira/current-animal/beef_and_beef_products_for_human_consumption/commencement_of_iras_for_the_importation_of_beef_and_beef_products_from_the_united_states,_canada_and_japan [14 July 2010].

⁶⁵ WTO document G/SPS/R/56, 28 January 2010.

⁶⁶ WTO document G/SPS/N/AUS/239, 26 October 2009.

⁶⁷ WTO document G/SPS/R/46, 2 January 2008.

⁶⁸ WTO document G/SPS/R/44, 30 May 2007.

⁶⁹ Australia also has inter- and intra-state barriers in the form of quarantine restrictions. Under the Constitution, the Commonwealth Government does not have exclusive power to make laws relating to quarantine; thus Commonwealth and state laws coexist. However, the Constitution 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. A 1995 MOU on animal and plant quarantine matters between the Commonwealth and states governments remains in place. 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.

AQIS is responsible for administering quarantine legislation on behalf of the Commonwealth; its quarantine functions include issuing import permits, inspections, directions for treatment, and clearances. 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. In moving away from "mandatory intervention" targets (i.e. high risk containers entering Australia) to a 'risk-return' approach (i.e. resources targeted to secure the biggest possible reduction in the risks posed by pests and disease), AQIS no longer collects data on quarantine inspection operated at airports, seaports, and mail.

57. During the review period, Australia eradicated equine influenza (December 2008) and citrus canker (January 2009); the authorities consider these as examples of the effectiveness of Australia's well developed disease and pest control capability and regulatory processes.⁷⁰

Transparency and technical assistance

58. Between 2007 and 20 May 2010, Australia submitted 58 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 Organization for Animal Health, and International Plant Protection Convention. Australia has continued to assist developing countries, particularly APEC members, to build quarantine infrastructure and risk analysis capacity, and to improve awareness of international standards on SPS issues in general.⁷¹

(c) Labelling and packaging

59. Food labelling is also regulated under the Food Standards Code (see above); all foods sold in Australia, including imported foods, must comply with the relevant regulations. In October 2009, the Council of Australian Governments (COAG) and the Australia and New Zealand Food Regulation Ministerial Council agreed to undertake a comprehensive review of food labelling law and policy; its final report was to be submitted to the Ministerial Council by the end of 2010.⁷²

60. Mandatory product information standards, including care labelling for clothing and textile products, as well as for a range of other consumer products including sunglasses, cosmetics and toiletries, and tobacco products, remain in force (section (a) above). Mandatory energy consumption labelling requirements affect appliances such as refrigerators, freezers, clothes washers/dryers, dishwashers, room air conditioners, mains-pressure electric-storage water heaters, and motor vehicles. National, state, and territory information standards were to be rationalized and replaced with a single national set of standards by 1 January 2011 as part of the implementation of the Australian Consumer Law (section (4)(iii)(b)).

(viii) Government procurement

61. Despite participating in the work of the WTO Working Group on Transparency in Government Procurement and following negotiations on the revised GPA, Australia has remained one of five OECD members that is not a signatory to the Plurilateral WTO Agreement on Government

⁷⁰ WTO document G/SPS/R/54, 28 April 2009.

⁷¹ WTO documents G/SPS/GEN/717/Add.1, 11 October 2007, and G/SPS/GEN/717/Add.2, 6 July 2010.

⁷² Online information. Viewed at: <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/home> [14 July 2010].

Procurement (GPA) with no intention of becoming a party to it.⁷³ Nevertheless, Australia is bound by principles and rules on transparency and non-discrimination in this area in the context of its FTAs (see below and Chapter II); the authorities insist that these commitments are extended to all its trading partners. Furthermore, Australia considers the GPA to be largely inconsistent with its approach of low regulation in the public sector; nevertheless, it is closely following negotiations on the Revised GPA.

62. The Commonwealth government procurement market for goods and services is estimated at 2.6% of GDP (2008/09) (Table I.1). Between 2005/06 and 2008/09, Commonwealth government contracts for the purchase of goods and services (including expenditure by agencies covered by the Financial Management & Accountability (FMA) Act 1997 and Commonwealth Authorities and Companies Act (CAC), see below) ranged from about \$A 26.4 billion (2007/08) to \$A 32.9 billion (2008/09). In 2008/09, ten agencies were responsible for 83.7% of the total amount; 56% of this was defence-related expenditure.⁷⁴ In 2007/08, domestically produced goods and services were estimated at 69% of the total amount spent; when procurement by the Department of Defence is excluded, the domestically produced share of contracts is 89% of the total value of contracts awarded.⁷⁵ The bulk of imports were for goods and services that are not made in Australia, such as photocopiers and specialist military equipment. These amounts do not cover procurement spending by state and territory governments, which is seemingly higher than Commonwealth government spending.⁷⁶ Reportedly, in many instances government trading enterprises (GTEs) (sections (3)(iii) and (4)(iv)(b)) at central, state, and territory government level have dominated the provision of infrastructure works, instead of opening up the provision of infrastructure and related service to competition, including to efficient private market entities.⁷⁷

63. The core principle of Australia's procurement framework remains value for money, which is supported by open competition, non-discrimination⁷⁸, efficiency, effectiveness, and use of resources in an ethical manner.⁷⁹ At the Commonwealth level, the overall government procurement policy framework consists of three key elements: the Commonwealth Procurement Guidelines (CPGs), which form the basis of Commonwealth procurement policy and are issued by the Finance Minister⁸⁰; finance circulars, which provide advice on key changes and developments of procurement policy and are issued by the Department of Finance and Deregulation (Department of Finance); and financial management guidance documents developed by the Department of Finance to help agencies to implement the Government's procurement policy. In 2008, the CPGs were amended to include a new text describing coordinated procurement arrangements, a revised statement on the approach to risk allocation in contracts, a clarification of the definition and scope of procurement, requirements for

⁷³ Australia has maintained its observer status in the WTO Committee on Government Procurement.

⁷⁴ Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html> [11 May 2010].

⁷⁵ Australian Government (2009b).

⁷⁶ In 2008/09, procurement by the Australian Capital Territory, the Northern Territory, Western Australia, South Australia, and Tasmania was \$A 1.1 billion, \$A 1.7 billion, \$A 11.5 billion, \$A 3.4 billion and \$A 1 billion, respectively.

⁷⁷ Infrastructure Australia (2008).

⁷⁸ The authorities indicated that exceptions to this non-discrimination principle are specific policies to assist small and medium-size enterprises and, in limited circumstances, policies to assist indigenous Australians.

⁷⁹ For further details see WTO document WT/TPR/S/178/Rev.1, 1 May 2007 as well as Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/procurement-policy-faqs.html> [11 May 2010].

⁸⁰ The latest CPGs were issued by the Finance Minister in December 2008. For further details see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, and Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/publications/fmg-series/docs/CPGs-2008.pdf> [11 May 2010].

contractors to give details of subcontractors, requirements excluding suppliers with a judicial decision against them, a reordering of the mandatory procurement procedures, and an exemption for procurement of property or services from an existing business providing services to disabled persons.

64. As in the case of standards and SPS (section (a) above), each of Australia's three levels of government (Commonwealth, state and territory, and local) has its own procurement framework and policies. Under the Financial Management and Accountability Act 1997 (FMA 1997) and relevant regulations, each Commonwealth agency is in charge of its own procurement. When conducting procurement above certain thresholds, all agencies are required to follow mandatory procurement procedures⁸¹, which provide for open tendering, select tendering, and direct sourcing.⁸² However, procurement of, *inter alia*, real estate property or accommodation, R&D services, and motor vehicles⁸³ are exempt from mandatory procurement procedures.⁸⁴ Under the Public Works Committee Act 2009, the limit above which public works must be referred to the Parliamentary Standing Committee on Public Works was increased to \$A 5 million (previously \$A 2 million) in June 2009. AusTender provides multiple functions for searching data online (see below) including the breakdown of contracts (numbers of contracts and their values) under various procurement methods.⁸⁵ In 2008/09, direct sourcing represented 48.8% of total procurement value while open and select tendering accounted for 30.7% and 20.5%, respectively.⁸⁶

65. All bidders are expected to meet requirements under the 2009 Fair Work Act, which includes obligations regarding legislated minimum standards, rights of freedom of association, and access to dispute resolution processes.⁸⁷ As from 1 January 2010, the Fair Work Principles have required Commonwealth entities to obtain information from tenderers about their compliance with their obligation to ensure fair, cooperative, and productive workplaces.⁸⁸ The authorities indicated that similarly to the AIPs (see below) these are broad legal requirements rather than aspects of the government procurement framework.

⁸¹ These thresholds remain unchanged at \$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: In 2008, the threshold for procurement of construction services was raised from \$A 6 million to \$A 9 million. For more information on the mandatory procedures see Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/publications/fmg-series/docs/CPGs-2008.pdf> [11 May 2010]; and WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

⁸² Open tendering involves publishing a request for tender, and accepting submissions from any potential suppliers who satisfy conditions for participation. Under the select tender process, an invitation to tender is issued to selected potential suppliers, such as suppliers granted a licence. 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.

⁸³ For example, in early 2010 the Department of Finance and Deregulation requested governmental agencies to consider the selection of the Australian-made Toyota Hybrid Camry car in preference to imported vehicles where it represents an operationally suitable alternative. At the same time it recalled that the Government's Green Car Challenge stipulated that by 2020, 50% of the Government fleet passenger vehicles would be Australian-made "value for money environmentally friendly" cars (Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/procurement/previous_news.html [21 May 2010]).

⁸⁴ Exemptions are listed in Appendix A of the 2008 Commonwealth Procurement Guidelines. Viewed at: <http://www.finance.gov.au/publications/fmg-series/docs/CPGs-2008.pdf> [11 May 2010].

⁸⁵ AusTender online information. Viewed at: <https://www.tenders.gov.au/?event=public.reports.CN.procurementMethod.form>.

⁸⁶ AusTender online information. Viewed at: <https://tenders.gov.au>.

⁸⁷ Australian Government (2009b).

⁸⁸ Department of Education, Employment and Workplace Relations (2010).

66. 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. Links to the procurement operations of State Governments can be accessed via AusTender.⁸⁹

67. Australia has maintained its target of sourcing at least 10% of purchases by value from small or medium-size enterprises (SMEs).⁹⁰ In addition, 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 minimum SME participation levels set at 10% of contract value for hardware, and 20% of contract value for software/services. Between 2005/06 and 2008/09, the share of SMEs, in terms of the value of contracts, dropped from 35.8% to 29.1%.⁹¹ No data on main product/services/project categories supplied by SMEs are collected by the authorities.

68. Australia's bilateral free-trade agreements with Chile (as of 2009), Singapore, and the United States all include specific government procurement commitments with respect to national treatment. Amendments to the Australia New Zealand Government Procurement Agreement (ANZGPA) in 2007 consisted of refinements and did not change any fundamental principles.⁹² Australia effectively extends to all suppliers the same treatment to which it has committed in its existing FTAs with government procurement commitments. No data on the share of goods, services, or public works procured by suppliers from New Zealand, Chile, Singapore, and the United States were available from the authorities.

69. While various states incorporate "buy local" and/or price preferences for local goods in their procurement policies, they maintain that they implement those preferences in a manner consistent with Australia's international government procurement commitments.⁹³ In addition to their Buy Local Policy (see below), certain states maintain a 10% preference (e.g. Western Australia, Tasmania and Northern Territory) or 20% preference (New South Wales, Queensland and South Australia), in the form of a nominal increase on tendered price, for procurement of domestic or New Zealand or U.S. goods and related services, to uphold industry development, social or economic objectives. Preference margins are not applied to purchases of services alone (i.e. unrelated to goods contracts).

70. During the review period, Australia has undertaken further steps in helping domestic suppliers to raise their participation in government procurement contracts. As from July 2009, the Boosting Australian Industry Participation (AIP, see below) policy has required tenderers for government works to outline their use of Australian or overseas suppliers in every bid. As from 1 January 2010, companies bidding for large Commonwealth procurement projects (generally above \$A 20 million)

⁸⁹ AusTender online information. Viewed at: <https://www.tenders.gov.au/?event=public.relatedlink.list> [21 May 2010].

⁹⁰ An SME is a domestic or New Zealand firm with fewer than 200 full-time employees.

⁹¹ Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html> [21 May 2010].

⁹² Australia and New Zealand Government Procurement Agreement Revised 2007. Viewed at: <http://www.apcc.gov.au/LinkClick.aspx?fileticket=TgehskMiNw%3d&tabid=144&mid=489> [21 May 2010].

⁹³ For example the Government of Western Australia maintains a long-standing Buy Local Policy, which was last revised in December 2009 to reflect latest commitments under bilateral FTAs (State Supply Commission of Western Australia online information, "Addendum to the Buy Local Policy December 2009 – Agreements affecting the operation of the Buy Local Policy". Viewed at: [http://www.ssc.wa.gov.au/files/guidelines/Buy%20Local%20Policy%20Addendum%20\(December%202009\).pdf](http://www.ssc.wa.gov.au/files/guidelines/Buy%20Local%20Policy%20Addendum%20(December%202009).pdf) [21 May 2010]). The New South Wales Local Jobs First Plan provides price preference for Australian and New Zealand SME's content.

have been required to prepare and implement AIP plans.⁹⁴ These plans must set out how suppliers give SMEs full, fair, and reasonable opportunity to supply goods and services. The Australian Industry Participation (AIP) National Framework⁹⁵, which encourages the Commonwealth, state and territory governments to adopt a consistent national approach to maximizing domestic-industry participation in major projects in Australia and overseas, was strengthened and extended by new initiatives costing \$A 19.1 million over four years as from 2009. These initiatives, *inter alia*, aim to ensure that tender specifications are not designed in a way that has the effect of excluding Australian suppliers, as well as to maximize the ability of Australian industry to win work at home and abroad. An amount of \$A 8.5 million over four years will be provided to the Industry Capability Network (ICN)⁹⁶ for increasing opportunities for local business, with an emphasis on connecting domestic suppliers to Commonwealth-funded infrastructure projects. The Government will appoint supplier advocates with specialized industry knowledge within the Department of Innovation, Industry, Science and Research at a cost of \$A 8.2 million over four years to help domestic SMEs market their capabilities to government buyers in Australia.

71. Buy Local procurement policies have also been strengthened recently at state level.⁹⁷ From June 2009, under its Local Jobs First plan (LJFP) the Government of New South Wales reinforced measures giving local industry increased preference in major projects by expanding the definition of SME to businesses with up to 500 workers, compared with 200 workers previously and in the rest of the country (see above); every tender over \$A 4 million also requires a local industry participation plan. Under the July 2009 Victorian Industry Participation Policy, local-content rules aimed at encouraging SME participation in government procurement may apply to projects designated strategically significant by Victoria's Department of Innovation, Industry and Regional Development. According to the authorities, both the New South Wales LJFP and the Victorian VIP have been designed to comply with Australia's existing commitments on government procurement.

72. As foreshadowed in July 2009 a Procurement Coordinator has been established to: provide external parties with an understanding of the Commonwealth procurement framework; review and advise on procurement practices across government on an ongoing basis; handle complaints from suppliers and interested external parties; review complaints regarding contract administration; aggregate information about Commonwealth procurement across all procurement categories; and submit an annual report on procurement matters to the Minister for Finance and Deregulation.⁹⁸ The Procurement Coordinator seeks input on how government procurement can be enhanced from a procurement consultation committee comprising industry, union, and community stakeholders.

73. The Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009 introduced criminal liability for cartel conduct, including arrangements between competitors involving bid rigging (section (4)(iii)(a)). Major construction contracts are identified as vulnerable to misconduct

⁹⁴ Department of Innovation, Industry, Science and Research online information "Australian Industry Participation Plans (AIP Plans) in Commonwealth Government Procurement", January 2010. Viewed at: <http://www.innovation.gov.au/Section/Industry/Pages/AustralianIndustryParticipationPlansforCommonwealthGovernmentProcurement.aspx> [23 August 2010].

⁹⁵ The AIP National Framework's strategic approaches consist of: encouraging industry to meet world best practices through capability building; early identification of opportunities for Australian industry participation in Australia and overseas; promoting Australian capability and integrating industry into global supply chains; and enhancing project facilitation and Australian industry participation (Australian Government, 2009b).

⁹⁶ The ICN operates in Australia and New Zealand and assists businesses to maximize the opportunities that arise from purchasing requirements from both the government and private sectors.

⁹⁷ United States Trade Representative (2010).

⁹⁸ Australian Government (2009b).

by suppliers. In July 2007, penalties of more than \$A 9.1 million were imposed on 11 companies and 18 individuals for a series of bid-rigging and price-fixing cartels in commercial air conditioning after ACCC Federal Court action.⁹⁹

(ix) Local-content requirements

74. Local-content requirements remain in place in government procurement arrangements for motor vehicles (see above)¹⁰⁰, in export finance, guarantees, and insurance provided by the Export Finance and Insurance Corporation (EFIC) (section (3)(iv)(f)), and in foreign investment requirements in the broadcasting services sector. The authorities clarified that EFIC requirements relate to "local/Australian activity".

75. 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.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

76. All goods intended for export must be registered with Customs, unless exempted.¹⁰¹ Most export declarations are submitted through the Integrated Cargo System (ICS), the electronic cargo reporting tool. Customs may undertake compliance examinations on behalf of permit-issuing agencies.

(ii) Export prohibitions, restrictions, and licensing

77. Exports of acetic anhydride to Afghanistan remain prohibited¹⁰², as are exports of certain cultural and heritage goods, and suicide devices. Exports of some other goods are restricted in compliance with, *inter alia*, international commitments, unless permission or a licence is granted.¹⁰³ In the light of Australia's reliance on agri-food exports, export controls on certain agricultural and food products are operated by certain public-sector entities with a view to, *inter alia*, ensuring importing country requirements are met (e.g. volume limitations, trade and product descriptions), and

⁹⁹ ACCC online information. Viewed at: <http://www.accc.gov.au/content/index.phtml/itemId/793552/fromItemId/2332> [1 November 2010].

¹⁰⁰ As indicated earlier (section on government procurement) 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 (Ford, Holden, Toyota, Nissan), or imported passenger motor vehicles marketed by an Australian-based manufacturer (Department of Finance and Deregulation online information. Viewed at: <http://www.finance.gov.au/vehicle-leasing-and-fleet-management/fleet-guidance-and-related-material.html> [25 May 2010]).

¹⁰¹ 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 under-bond stores).

¹⁰² This chemical is used, *inter alia*, for the synthesis of heroin.

¹⁰³ The list of restricted items has remained unchanged since the previous Review of Australia (see Australian Customs online information. Viewed at: <http://www.customs.gov.au/site/page4381.asp> [22 May 2010]; and WTO document WT/TPR/S/178/Rev.1, 1 May 2007).

to maintain food safety and quality standards.¹⁰⁴ Export controls on wood and woodchips are for the purpose of protecting environmental and heritage values. As from 1 January 2010, no restrictions have applied on merino sheep exports; previous export quotas on merino sheep were set at a maximum of 800 rams, with an additional 100 stud rams placed on an export donor register (for trade in genetic material).

78. Export licensing to manage access-related import quotas has occurred for agricultural products that are not subject to single-desk arrangements. For example, access to the EU dairy quota for cheddar cheese, and for varietal cheeses to the United States requires the issuance of export licences; similarly a quota allocation affects the meat industry's access to the EU and U.S. beef quotas.

(iii) State trading

79. According to Australia's latest WTO notification on state trading in 2010, five state-trading entities operated in Australia during the review period, with activities largely focused on exports in bulk of: barley from the State of South Australia, by Australian Barley Board (ABB) Grain Export Limited; wheat, by Australian Wheat Board (AWB) (International) Limited; barley, lupins, and canola from Western Australia, by Grain Pool Pty Ltd; sugar from Queensland, by Queensland Sugar Limited (QSL); and rice from New South Wales, by its Rice Marketing Board.¹⁰⁵ The sole exporter or single-desk (i.e. monopoly) rights of ABB Grain Export Limited and AWB (International) Limited were terminated in July 2007 and July 2008, respectively. Those affecting the export of barley, canola, and lupins were terminated in October 2009, and those relating to the QSL expired in September 2009. The Rice Marketing Board is the only notified entity with export monopoly rights still in place. Nevertheless, there are still a relatively large number of public entities, with or without monopoly or exclusive trading rights in goods and services, at Commonwealth, state or territory level (section (4)(iv)(b)).¹⁰⁶ In 2008/09, the entities discussed in this section accounted for 91%, 39.6%, and 65.7% of total exports of wheat, barley, and canola, respectively. No data on exports of raw cane sugar and rice by the relevant state-trading entities were available.

(iv) Export assistance

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

80. The EMDG scheme remains Australia's main financial assistance programme targeting mainly small but also medium-sized enterprises across all sectors of the economy.¹⁰⁷ Grants partially reimburse expenditure (up to 50% above a threshold) on specific export promotion activities to any overseas market except New Zealand, Iraq, and the Democratic People's Republic of Korea. Changes

¹⁰⁴ For example, AQIS grants export licences for meat, dairy products, eggs, animals, fish, grain, vegetables, and fruit; and the TGA, under the Department of Health and Ageing, grants export licences for certain drugs and goods containing those drugs, as well as certain animal and human products. 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 oranges, dried grapes, apples and pears) (Australian Customs Service, 2007).

¹⁰⁵ WTO documents G/STR/N/12/AUS, 2 July 2008, and G/STR/N/13/AUS, 13 September 2010.

¹⁰⁶ For more information on the extent of past government involvement in the Australian economy see WTO document WT/TPR/S/104, 26 August 2002.

¹⁰⁷ In 2007/08, 80% of the beneficiaries were small businesses with a turnover of less than \$A 5 million. The EMDG also applies to services and to intellectual property or know-how that resulted mainly from work in Australia, but excludes legal, migration, and real estate purchasing services (Austrade, 2008).

were made to the EMDG scheme affecting expenditure incurred from 1 July 2008 and 1 July 2010.¹⁰⁸ Key changes in 2008 included: increasing the maximum grant by \$A 50,000 to \$A 200,000; raising the maximum turnover limit of recipients from \$A 30 million to \$A 50 million; reducing the minimum expenditure threshold by \$A 5,000 to \$A 10,000; allowing costs of patenting products overseas to be eligible for EMDG support; making the scheme more accessible to services exporters; allowing state, territory, and regional economic development and industry bodies to access the scheme; and introducing an EMDG payments assessment measure tied to two alternative tests (export performance test, Australian Net Benefit Requirements) for applicants who have already received two grants. Key changes in 2010 included: increasing the minimum required level of export-promotion expenditure from \$A 10,000 to \$A 20,000; reducing the maximum number of grants an applicant can receive from 8 to 7; reducing the maximum grant payable from \$A 200,000 to \$A 150,000; capping the maximum amount claimable for intellectual property expenses at \$A 50,000; and extending the scheme for five years to the 2015/16 grant year (2016/17 financial year).

81. Administered by Austrade, the EMDG distributed grants worth \$A 198.1 million to 4,675 exporters in 2009/10, an increase of 13.9% in grant numbers and 6.6% in grant payments compared with 2008/09. This was on top of an increase of 23.7% in grant payments in 2008/09, which was largely the result of increasing the 2008/09 budget appropriation from \$A 150.4 million to \$A 200.4 million to meet a shortfall in funding for claims. Budgeted funding for the EMDG for 2009/10 was also \$A 200.4 million, but for 2010/11 reverted to \$A 150.4 million.

82. According to an independent (Mortimer) 2008 Review, the EMDG scheme is both effective and efficient in supporting the development of Australia's exports.¹⁰⁹ Research undertaken by Lateral Economics and KPMG Econtech found, *inter alia*, that: for each EMDG recipient an additional 2.4 companies benefit from following the EMDG recipients into offshore markets; EMDG recipients are estimated to have a 13.2% increase in labour productivity as a result of the grant; and compared to other relevant grant programmes, e.g. the Strategic Investment Program and R&D programmes, EMDG has a benefit/cost ratio equal to or better than these other widely accepted programmes. Moreover, the proportion of export marketing expenditure is higher for EMDG recipients than for comparable non-recipient firms, and the incidence of firms developing into new exporters and becoming regular exporters is higher for EMDG recipients. Modelling indicates that each dollar of EMDG generates some \$A 13.5 to \$A 27 of exports.¹¹⁰ The majority of EMDG exports were to traditional markets (United States, United Kingdom). The main products exported by EMDG participants were tourism, education, culture, information technology, and food and beverages. The majority of new EMDG applicants firms were relatively new to exports and used the scheme's funding to offset their cost of entry into new markets. The 2008 independent Review recommended, *inter alia*, to preserve EMDG as a capped programme, tighten the scheme's provisions by reducing the number of grants from eight to five per recipient per year and increase the minimum threshold to \$A 30,000 so as to resolve funding uncertainty, arising from demand exceeding the funding available. The 2008 independent Review replaced the EMDG review scheduled for 2010; the next review may take place within 2-3 years.

(b) Trade and Export Concession Scheme (TRADEX)

83. During the review period, Australia has maintained its up-front duty and GST exemptions for imported goods intended for direct export or used, lost, or wasted in the processing of exports under

¹⁰⁸ Austrade online information. Viewed at: <http://www.austrade.gov.au/default.aspx?FolderID=1436> [30 May 2010].

¹⁰⁹ Austrade (2008); and Productivity Commission (2009g) and (2010b).

¹¹⁰ Austrade (2008); and Productivity Commission (2009g) and (2010b).

the Tradex scheme.¹¹¹ Between 2006/07 and 2008/09, the operation of the scheme, which is administered by AusIndustry, resulted in total forgone duty estimated at \$A 225.6 million; the amount of duty forgone in 2008/09 dropped by about 18% compared to 2007/08, a peak year (Table III.3), and in 2009/10 it declined further to \$A 51.2 million, a reduction of about 24%. These reductions were due to the impact of the global financial crisis on foreign trade as well as to the tariff reductions for the motor vehicle, textile, clothing, and footwear industries, and the entry in force of the FTA with ASEAN countries (Chapter II). The main beneficiaries of the scheme were the automotive industry, mining, and electrical/scientific/electronic equipment manufacturers. An amendment to the Tradex Scheme Act in October 2008 ensured that the scheme could stand alone without reference to duty drawback legislation; other minor administrative changes were also introduced to improve the efficiency of the scheme. Further minor changes to clarify the eligibility of partnerships in the Tradex Scheme and remove redundant provisions of the Act were expected in 2010.

(c) Duty drawback scheme

84. A legislative amendment was made to the duty drawback scheme in May 2010 to facilitate electronic lodgement of drawbacks claims. Duty drawbacks are processed on the basis of self-assessment. The amount of duty drawback must be calculated by the claimant using one of the three calculation methods available.¹¹² In all methods the amount of a claim for drawback of import duty must not exceed the amount of import duty paid on the goods. Exporters may obtain a refund of customs duties (not GST) paid on imported goods if these goods were treated, processed, or incorporated into other goods for export, or are exported unused after import.¹¹³ A total of \$A 110.1 million was refunded to drawback claimants in 2007/08, \$A 118.4 million in 2008/09, and \$A 94.6 million in 2009/10; the drop in 2009/10 was for the same reasons as the fall in Tradex benefits (section (b) above). No data on the export value involved was available from the authorities. The main beneficiaries have been the automotive, tobacco, alcohol, and heavy machinery industries.

(d) Other schemes

85. The Certain Inputs to Manufacture (CIM) scheme provides duty-free entry for raw materials and intermediate chemicals, plastic and paper goods, and metal minerals used in manufacturing directed towards "import replacement" and export enhancement.¹¹⁴ CIM remains unchanged but may be subject to review in the next five years. Duty forgone from CIM since 2007 has been around \$A 9 million and the main beneficiaries have been the chemicals and plastics sectors.

¹¹¹ AusIndustry online information. Viewed at: <http://www.ausindustry.gov.au/importandexport/tradexscheme/Pages/TradexScheme.aspx> [21 May 2010].

¹¹² The three calculation methods are: shipment-by-shipment basis method (when imports directly relate to exports); representative or averaging shipment basis method (for high volume low value goods), where a representative shipment for a period is picked as a sample of the values of identical items, the averaging of shipments is costed over time and must not result in an overclaim; imputation method (when import documents are generally unavailable), where the basis on which to calculate duty drawback can be 30% of the purchase price of the goods whenever these goods are fully imported and have been purchased in Australia by the exporter (Australian Customs Service online information. Viewed at: http://www.customs.gov.au/webdata/resources/files/FS_Export-Concessions-Duty-Drawback-Scheme.pdf [2 August 2010]).

¹¹³ Australian Customs and border Protection Service online information. Viewed at: <http://www.customs.gov.au/site/page4382.asp> [21 May 2010].

¹¹⁴ According to the authorities "import replacement" means that certain eligible goods can be imported duty free, if their use as inputs has a substantial and demonstrable performance advantage over substitutable domestic goods. For more details about the scheme see AusIndustry online information. Viewed at: <http://www.ausindustry.gov.au/ImportandExport/CertainInputstoManufactureCIM/Documents/CIM%20Dec08.pdf> [21 May 2010].

86. The manufacture-in-bond scheme (MiB) was terminated on 5 June 2009.¹¹⁵ Under the MiB goods could be manufactured in a warehouse licensed by Customs using imported components on which duty and GST had not been paid; the scheme was never used as it was an interim measure while legislative amendments were put in place to enact Tradex, a more cost-effective option for deferring the payment of duty and GST.

(e) New exporters

87. In April 2009, the New Exporter Development Program (NEDP), which was confined to SMEs, was phased out and replaced by the Getting into Export Program, which provides, *inter alia*, advisory and training support to all new exporters. TradeStart, a coaching and action learning programme, which was scheduled to conclude at the end of the 2009/10, was extended for four years. During this period the authorities plan to invest a total of \$A 14.4 million to assist SMEs, particularly those located in rural Australia, and industries that have high growth potential to commence exporting, and to convert irregular exporters to sustainable export activity.

(f) Export finance, guarantees, and insurance

88. The Export Finance and Insurance Corporation (EFIC), is a self-funding statutory authority operating in accordance with commercial principles. It provides various finance, insurance, and guarantee facilities to support Australian companies exporting or investing overseas. EFIC's support includes: direct loans (to buyers); export finance guarantees (to banks financing contracts with buyers); documentary credit guarantees (to banks confirming letters of credit); and payments insurance (against non-payment by the buyer). The terms and conditions of such products are subject to the OECD guidelines.¹¹⁶ The level of official support depends on the degree of local content ("Australian activity" or "Australian content") involved: export contracts with over 50% local content may receive support for up to 85% of the eligible contract value (ECV) (sum of the imported components into the buyer's country, i.e. Australian plus third country activities plus the local cost which must be the lower of 30% of ECV or the local cost amount). Where the "Australian activity" involved is less than 50%, the level of support would normally be limited to the degree of "Australian activity". Although permitted by the EFIC Act, the EFIC does not normally provide credit insurance. Other means of support that are not subject to OECD guidelines include: contract bonds (to buyers to cover advance payment, seller's performance and warranty of products sold), working capital guarantees (to banks), and political risk insurance (to banks and/or Australian companies investing abroad). The Minister for Trade can direct or approve the EFIC's entry into transactions considered to be in the "national interest" (e.g. automotive)¹¹⁷; the Government is responsible for the financial consequences of national interest transactions.¹¹⁸ 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.

¹¹⁵ Customs Amendment Regulations 2009 (No. 1), 4 June 2009.

¹¹⁶ The OECD Arrangement on Officially Supported Export Credits is, *inter alia*, aimed at preserving a level playing field in officially supported export products.

¹¹⁷ 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. For example, on the National Interest Account, in 2008/09 EFIC provided a working capital line of credit to GM Holden Limited to support its export of motor vehicles, parts, and engineering services while the Australian manufacturer established stronger market links under the newly created General Motors Company (EFIC, 2009).

¹¹⁸ As a result of exchange rates movements, the national interest account recorded a loss of \$A 0.2 million in 2008/09, compared with a profit in 2007/08 of \$A 4.8 million (EFIC, 2009).

89. During 2009/10, the EFIC supported exports and overseas investment totalling \$A 5.9 billion, well above the previous year's performance (\$A 1.3 billion); this was the result of continuing economic and financial uncertainty and constrained access to credit.¹¹⁹ These figures cover both the commercial account and the national interest account. In 2009/10, the mining sector was the main sector supported, accounting for 41.1% of total EFIC signings, followed by construction (40.8%) and manufacturing (15.4%). The 2009/10 commercial account profit of \$A 38.3 million was up from \$A 33.6 million in 2008/09.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation

90. Australia remains a relatively low-tax OECD country relying on direct taxes for around 64% of its tax revenues (Table III.5).¹²⁰ The value-added tax (Goods and Services Tax) is the main indirect tax component, followed by excise taxes; taxes on international trade contributed a mere 1.9% to total tax revenues in 2008/09, and customs duties constituted around 99.8% of these taxes on international trade (section (2)(ii)(a)).

Tabel III.5
Structure of tax revenue, 2005/06-2008/09
(% and \$A million)

	2005/06	2006/07	2007/08	2008/09
Total tax revenues (\$A million)	297,760	319,752	348,330	338,878
	<i>(Percentage share)</i>			
Direct taxes	63.6	63.7	64.4	64.4
Taxes on income	59.2	59.2	59.9	59.4
Income taxes levied on individuals	39.8	37.4	36.7	37.7
Income taxes levied on enterprises ^a	18.9	21.2	22.6	21.2
Income taxes levied on non-residents	0.5	0.6	0.6	0.5
Employers payroll taxes	4.4	4.5	4.6	5.0
General taxes (payroll tax)	4.3	4.3	4.5	4.8
Other employers labour force taxes	0.1	0.1	0.1	0.1
Indirect taxes	36.4	36.3	35.6	35.6
Taxes on provision of goods and services	25.5	25.0	24.4	25.0
General taxes (sales tax)	0.3	0.3	0.3	0.3
Goods and services tax (GST)	13.1	12.9	12.7	12.6
Excises and levies	7.7	7.4	7.0	7.4
Taxes on international trade	1.7	1.8	1.7	1.9
Taxes on gambling	1.5	1.5	1.4	1.5
Taxes on insurance	1.2	1.2	1.2	1.3
Taxes on property	8.6	9.2	8.9	8.2
Taxes on immovable property	4.5	4.6	4.5	5.2
Taxes on financial and capital transactions	4.2	4.5	4.5	3.0
Taxes on the use of goods and performance of activities	2.3	2.2	2.2	2.4
Motor vehicle taxes	1.9	1.8	1.8	1.9
Franchise taxes	0.0	0.0	0.0	0.0
Other	0.4	0.3	0.4	0.5
Total	100.0	100.0	100.0	100.0

a Includes petroleum resource rent taxes.

Source: Australian Bureau of Statistics, *Taxation Statistics 2008-09*, 5506.0, Canberra.

¹¹⁹ EFIC (2010).

¹²⁰ In 2007, Australia's total tax revenue as a percentage of GDP was 30.8% while the average total tax burden for OECD countries was over 35.8% (OECD, 2010).

(a) Indirect taxation

91. During the review period Australia's reliance on indirect taxes has remained lower than other OECD countries.¹²¹ Since 2007, Australia has increased the rates of the luxury car tax (LCT), and of excises on ready-to-drink beverages and tobacco. Non-fuel excise rates are indexed according to the Consumer Price Index in February and August each year to ensure that they are not eroded by inflation. Australia currently levies the following indirect taxes:

- a 10% GST on the value added at each point in the production and distribution chain for most goods and services (as from July 2000)¹²²;
- an additional Luxury Car Tax (LCT) of 33% (previously 25%) on vehicles with a retail value above a GST-inclusive and CPI-linked threshold equal to the car depreciation limit (\$A 57,466 for 2010/11, \$A 57,180 for 2008/09 and 2009/10, fuel-efficient cars above \$A 75,375 for 2010/11, \$A 75,000 for 2009/10)¹²³;
- a 29% Wine Equalisation Tax (WET) on grape wine, fruit wine, vegetable wine, perry, mead, sake, cider, and grape wine products including vermouth, marsala, wine cocktails and creams (since July 2000)¹²⁴; and
- excise taxes on the production, manufacture, sale or distribution of petroleum and other fuel products, certain alcohol, tobacco, and crude oil (Table III.6).¹²⁵

¹²¹ In 2007, the GDP share of Australia's revenue from taxes on goods and services was 8.2%, while the OECD average was 10.9% (OECD, 2010).

¹²² The valuation basis for the GST on imported goods is the c.i.f. value plus customs duties and any wine tax. The Australian Taxation Office (ATO) operates a scheme that provides for the deferral of GST on imported goods. Most educational, eligible childcare and health services, as well as medical appliances, cars for certain disabled people, basic foodstuff (meat, fruit, and vegetables), imports under certain customs concessions, and exports are among the items exempt from GST (Australian Customs Service online information. Viewed at: <http://www.customs.gov.au/site/page5343.asp> [25 May 2010]).

¹²³ No data on the sales of domestic or foreign luxury cars were available from the authorities. Australian Taxation Office online information, "Luxury Car tax - how to complete your activity statement". Viewed at: <http://www.ato.gov.au/content/downloads/bus27796n7391082009.pdf> [26 May 2010]; and Australian Customs Notice No. 2008/50, 15 October 2008. Viewed at: <http://www.customs.gov.au/webdata/resources/notices/ACN0850.pdf> [21 April 2010]; Australian Taxation Office online information. Viewed at: <http://www.ato.gov.au/taxprofessionals/content.asp?doc=/content/00144892.htm> [14 July 2010].

¹²⁴ Wine Equalisation Tax Ruling WETR 2009/1. Viewed at: <http://law.ato.gov.au/atolaw/view.htm?Docid=WTR/WT20091/NAT/ATO/00001> [29 May 2010].

¹²⁵ As of 26 April 2008, the excise applying to certain spirit-based ready-to-drink (RTD) pre-mixed drinks ('other excisable beverages' having an alcoholic strength by volume not exceeding 10%) increased from \$A 39.36 per litre of alcohol to \$A 66.67 per litre of alcohol. Special Notice Nos 87 and 88 in the *Australian Commonwealth Government Gazette* published the Government's intention to increase the excise and customs rates, respectively. Viewed at: [http://www.ag.gov.au/portal/govgazonline.nsf/\(custom-spcnot-pub-view\)!OpenView&Start=567](http://www.ag.gov.au/portal/govgazonline.nsf/(custom-spcnot-pub-view)!OpenView&Start=567) [20 August 2010]. As of 30 April 2010, the excise on tobacco products increased from \$A 0.26220 to \$A 0.32775 per stick of tobacco for cigarettes, and from \$A 327.77 to \$A 409.71 per kg of tobacco content for other tobacco (loose leaf tobacco). Special Notice Nos 63 and 62 in the *Australian Commonwealth Government Gazette* published the Government's intention to increase the excise and customs rates, respectively. Viewed at: [http://www.ag.gov.au/portal/govgazonline.nsf/\(custom-spcnot-pub-view\)!OpenView&Start=73](http://www.ag.gov.au/portal/govgazonline.nsf/(custom-spcnot-pub-view)!OpenView&Start=73) [20 August 2010]. The latest increases in excise rates took place on 2 August 2010. ATO online information. Viewed at: <http://law.ato.gov.au/atolaw/view.htm?Docid=PAC/BL030002/1&PiT=99991231235958> [2 December 2010].

Table III.6
Excise rates, as at 30 April 2010
(\$A)

Commodity	Rates applying from 1 February 2006	Current rates
Petroleum and other fuel products (per litre)		
Petroleum condensate	..	0.38143 ^a
Stabilized crude petroleum oil	..	0.38143 ^a
Topped crude petroleum oil	..	0.38143 ^a
Gasoline (other than for use as fuel in aircraft)	..	0.38143 ^a
Aviation gasoline	0.02854	0.02854 ^a
Aviation kerosene	0.02854	0.02854 ^a
Fuel oil	0.07557	0.38143 ^a
Heating oil and kerosene (for burner use)	0.07557	0.38143 ^a
Fuel ethanol	0.38143	0.38143 ^a
Diesel (other than biodiesel)	0.40143	0.38143 ^a
Biodiesel	0.38143	0.38143 ^a
Liquid aromatic hydrocarbons consisting principally of benzene, toluene or xylene or mixtures of them	..	0.38143 ^a
Mineral turpentine	..	0.38143 ^a
White spirit	..	0.38143 ^a
Petroleum products (other than blends) not elsewhere included
Greases (per kg)	0.05449	0.05449 ^a
Oils and lubricants, excluding greases (per litre)	0.05449	0.05449 ^a
Beer (per litre) ^b		
Individual container <48 litres		
Low strength	31.73	35.77 ^c
Mid strength	36.98	41.68 ^c
High strength	36.98	41.68 ^c
Individual container >48 litres		
Low strength	6.33	7.14 ^c
Mid strength	19.89	22.42 ^c
High strength	26.03	29.34 ^c
Other beer (produced for non-commercial purposes using commercial facilities or equipment) ^b		
Low strength	..	2.51 ^c
High strength	..	2.91 ^c
Other beverages, not exceeding 10% alcohol content	36.98	70.61 ^c
Brandy	58.48	65.93 ^c
Other spirits, exceeding 10% alcohol content	62.64	70.61 ^c
Cigarettes, cigars, and tobacco (per stick) ^d	0.23259	0.32775 ^e
Tobacco products (per kg)	290.74	409.71 ^e

.. Not available.

a Rates applying from 1 July 2006.

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

c Rates applying from 1 February 2010.

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

e Rates applying from 30 April 2010.

Source: Treasury (2006), *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 [9 May 2006]; and Australian Government (2010), Australian Taxation Office, *Excise Tariff Working Pages*, 30 April, Canberra. Viewed at: <http://law.ato.gov.au/atolaw/view.htm?Docid=PAC/BL030002/1&PiT=99991231235958>.

(b) Direct taxation

92. Since 2007, no major changes have been made to Australia's direct tax system, except for those relating to legislated changes to rates and thresholds, and to the implementation of reforms in taxation of financial arrangements. The progressive personal income tax rates currently range from zero to 45% for taxable income over \$A 180,000 (plus a 1.5% Medicare levy).¹²⁶ Currently, 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.¹²⁷ A 46.5% Fringe Benefits Tax (FBT) is levied on the value of certain fringe benefits employers provide to their employees, such as a right (including a property right), privilege, service or facility (e.g. the provision of company cars, subsidized accommodation and travel, entertainment, and the like).¹²⁸ In July 2010, new resource tax arrangements were announced, including a Mineral Resource Rent Tax. A 30% Mineral Resources Rent Tax for iron ore and coal is to be introduced and the Petroleum Resource Rent Tax of 40% is to be extended to include all onshore and offshore projects involving both oil and gas production.¹²⁹

(c) Tax incentives appraisal

93. Australia's latest annual Tax Expenditures Statement identifies 337 (about 270 in 2005) tax expenditures provided in 2009 by the Commonwealth Government to benefit a specified activity or class of taxpayer: 110 pertain directly to business income, 21 to commodities (e.g. fuel, alcohol, beer, wine, tobacco), 4 to natural resources, 23 to GST, and 5 (as from 1 July 2011) to the Carbon Pollution Reduction Scheme, whose introduction was deferred until after the end of the current Kyoto Period in 2012 and when certain international conditions are met.¹³⁰ The main business-income-related tax incentives include the small business and general business tax break (13 December 2008 to end December 2009)¹³¹, and the accelerated and simplified depreciation for small business (as from 2007). In November 2010, an R&D tax credit, originally scheduled to replace, as from 1 July 2010, the 125% R&D Tax Concession, the Tax Offset, the 175% Premium, and the International Premium, was under

¹²⁶ Medicare is Australia's health care scheme, which is funded by revenue collected through this levy based on taxable income (The Treasury, 2009b).

¹²⁷ Australian Taxation Office online information. Viewed at: <http://www.ato.gov.au/businesses/content.asp?doc=/content/44266.htm&pc=001/003/019/001/006&mnu=42573&mfp=001&st=&cy=1> [23 May 2010].

¹²⁸ Australian Taxation Office online information. Viewed at: <http://www.ato.gov.au/businesses/content.asp?doc=/content/76140.htm&pc=001/003/019/001/007&mnu=42573&mfp=001&st=&cy=1> [23 May 2010].

¹²⁹ The Government's compromise over the mining tax deal was expected to unlock a stalled pipeline of an estimated \$A 3.3 billion mergers and acquisitions in the booming resources sector (*Businessinsider.com*, "Australian Miners' Tax Victory Is Horrible News For Commodity Bulls", 2 July 2010. Viewed at: <http://www.businessinsider.com/australia-mining-tax-change-2010-7> [2 August 2010]; and *Reuters* "Australia mining tax deal seen unlocking M&A", 2 July 2010. Viewed at: <http://www.reuters.com/article/idUSTRE6611TM20100702> [2 August 2010]).

¹³⁰ The Tax Expenditures Statement provides details of concessions, benefits, incentives and charges provided through the tax system (termed as tax expenditures) to taxpayers by the Australian Government (The Treasury, 2010e).

¹³¹ The Small Business and General Business Tax Break was announced in December 2008 as part of the Nation Building Package response to the global financial crisis and further enhanced in February 2009 as part of the Nation Building and Jobs. It provides a tax deduction for investing in new tangible depreciating assets. The tax break varies in percentage terms. In the May 2009 Budget, it was increased from 30% to 50% solely for small businesses that: have a turnover of less than \$A 2 million a year; acquire assets costing at least \$A 1,000 per asset from 13 December 2008 until 31 December 2009; and installed those assets or had them ready for use by 31 December 2010 (Productivity Commission, 2010b).

consideration.¹³² These measures are available to domestic and foreign firms. During the review period, the estimated GDP share of total tax expenditures dropped from 10.4% (2006/07) to 8.5% (2008/09), and is expected to decline further; this decline mainly reflects the impact of lower marginal rates of personal income tax, which reduce the value of many tax concessions, and the impact of the global financial crisis. In 2008/09, assistance to all functions (economic and non-economic activities) in the form of various tax incentives was \$A 102.4 billion, an amount equivalent to less than a third of total direct expenditures (e.g. grants), which amounted to \$A 324.6 billion; very few tax expenditures relate directly to production and/or trade of goods and/or services. Tax expenditure for agriculture, forestry and fishing was forecast to rise drastically as from 2011, due to the (now deferred) CPRS implementation, while tax expenditures for fuel and energy are to decline progressively as a result of the phasing-in of an excise on alternative fuels from 1 July 2011 and the abolition of the exemption from crude oil excise of condensate as of 13 May 2008. The largest positive consumption tax expenditure relates to the GST (the main indirect tax), while negative tax expenditure is involved for commodity taxes and customs duties.¹³³ The capital gains taxpayers are the main recipients of tax expenditures, although the amounts involved have dropped considerably since the previous review.

(ii) Production assistance

94. Since its previous Review, Australia has continued to provide wide-ranging assistance to production, not just in the form of tariff concessions and other tax incentives (sections (2)(ii)(f), (3)(iv)(c) and (4)(i)(c)), but also in form of grants and concessional loans, which are not generally included in its assistance estimates, and regulatory restrictions on competition in certain activities (section (4)(iii)(a)). No information was available from the authorities on assistance programmes containing concessional loans and their budgetary cost. Assistance generally benefits the industry receiving it, but can come at a cost to other industries, taxpayers, consumers, and competitors.¹³⁴

95. Australia's latest notification to the WTO Committee on Subsidies and Countervailing Measures (October 2009) listed 30 federal programmes in support of sugar, dairy, forestry, passenger motor vehicles (PMV), textiles/clothing/footwear (TCF), pharmaceuticals, regional development, innovation and environmental protection activities, as well as 25 programmes at state and territory level (Table AIII.1).¹³⁵ Australia maintains sunset clauses for several incentives notified to the WTO;

¹³² According to a KPGM report, the planned R&D Tax Credit incentive (Table AIII.1) was rated the best out of 10 other national systems in terms of low total tax index ratings systems (i.e. total taxes paid by corporations as a percentage of total taxes paid by corporations in the United States) (KPGM, 2010). The planned R&D Tax Credit would double the rate of government support for R&D conducted by firms turning over less than \$A 20 million, from 7.5 cents under the previous scheme to 15 cents. These firms now benefit from a 45% refundable tax credit. Larger businesses turning over \$A 20 million or more also receive more assistance as they are eligible for a 40% non-refundable tax credit, which raises government assistance from 7.5 cents to 10 cents (AusIndustry Program Summary. Viewed at: <http://www.ausindustry.gov.au/AboutAusIndustry/Documents/2009-AI%20Program%20Summary/Program%20Summary.pdf> [2 June 2010]; and <http://minister.innovation.gov.au/Carr/Pages/RDTAXCREDITBESTINWORLD.aspx> [2 June 2010]).

¹³³ Negative tax expenditure occurs when these arrangements impose an additional charge rather than a benefit.

¹³⁴ Productivity Commission (2010b).

¹³⁵ WTO document G/SCM/N/186/AUS, 19 October 2009. In addition to WTO-notified subsidies, the Department of Innovation, Industry, Science and Research has several other programmes, including the Insulation Industry Assistance Package (IIAP), Green Building Fund (GBF), Re-tooling for Climate Change, Ethanol Production Grants (EPG), Renewable Energy Equity Fund (REEF), Innovation Investment Fund (IIF), the Pooled Development Funds (PDF), Venture Capital Limited Partnerships (VCLP), Commercialising Emerging Technologies (COMET) and TQUAL (tourism) Grants (Chapter IV), some of which may have expired by the time of finalization of this report. For example, as from 2009 Commercialisation Australia,

some of these programmes are to terminate on a specific date or were ended during the period under review, e.g. the Dairy Industry Adjustment Package (payments until April 2008, adjustment levy until February 2009), the ACIS (until end 2010), and the Pharmaceuticals Partnerships Programmes (until late 2009). Support under the notified schemes is mainly delivered by means of grants to eligible firms; other forms of assistance include duty concessions, tax exemptions, relief payments, and counselling services.

96. According to the Productivity Commission, in 2008/09 assistance to domestic production of goods and services was \$A 17.2 billion, in gross terms, comprising: \$A 9.5 billion in tariff assistance on output, \$A 3.7 billion of budgetary outlays, and about \$A 4 billion in tax concessions.¹³⁶ Total budgetary outlays to domestic production peaked at \$A 4.4 billion in 2007/08, while tax-concessions-related support continued to rise. Support became less focused on R&D, i.e. 29% of total budgetary assistance in 2008/09 compared with 42% in 2004/05, as support for small business increased from 9% (2003/04) to 21% (2008/09); in addition, the share of industry-specific support was reduced considerably.¹³⁷ In 2008/09, budgetary assistance (i.e. outlays plus tax incentives) benefited mostly the services sector (45%), and to a lesser extent manufacturing (23%) and the primary sector; this is in contrast with the situation in 2007/08 when assistance was allocated almost evenly between the primary and services sectors (27% per sector), with a lower share for manufacturing (22%), due to severe drought conditions.¹³⁸ In 2008/09, the estimated budgetary assistance was higher for: grain, sheep and beef cattle farming (12% of total), mainly in the form of drought assistance payments and R&D support; property and business services (9.7%); finance and insurance (8%); and motor vehicles and parts (7.5%), mainly through the Automotive Competitiveness and Investment Scheme (ACIS).¹³⁹ In 2008/09, the effective rate (of combined) assistance (ERA) remained high for TCF (14.5%), PMV (11.8%), grain, sheep and beef cattle farming (6.3%) and horticulture and fruit growing (5.6%).¹⁴⁰ Australia has kept its domestic support expenditure as measured by the Aggregate Measurement of Support (AMS) well below its final bound total commitment level; its final bound total AMS ceiling has been \$A 471.86 million since 2000, and its level of support, as measured by the current total AMS, dropped during the review period, from \$A 206.74 million (2007/08) to zero (2008/09).¹⁴¹ Nevertheless, in 2008/09, Australia provided trade-distorting domestic support, albeit below the *de minimis* levels, for milk (\$A 0.17 million), sugar (\$A 0.01 million), wheat (\$A 0.41 million), and cattle (\$A 0.08 million), as well as non-product-specific support mainly for irrigation grants (\$A 161.72 million) mostly in the form of irrigation management grants. The vast

which replaced COMET, assists innovative SMEs with the commercialization of promising research and innovation; the May 2009 Budget provided \$A 196.1 million over four years for Commercialisation Australia and \$A 82 million per annum thereafter to provide skills and knowledge grants, experienced executives grants, proof of concept grants, and early-stage commercialization repayable grants. For extensive information on the ongoing programmes see *AusIndustry Program Summary* online. Viewed at: <http://www.ausindustry.gov.au/AboutAusIndustry/Documents/2009-AI%20Program%20Summary/Program%20Summary.pdf> [2 June 2010]; and Productivity Commission (2010b).

¹³⁶ Productivity Commission (2010b).

¹³⁷ In 2008/09, industry-specific assistance for the automotive, biotechnology, and textile, clothing, and footwear industries accounted for 15% (27% in 2004/05) of total budgetary assistance, and export promotion for 8% (14% in 2004/05) (Productivity Commission, 2010b).

¹³⁸ The main reason for the increase of the services sector share is the inclusion in calculations of various small business tax concessions, a large proportion of which primarily benefit the services sector (Productivity Commission, 2010b and 2009g).

¹³⁹ Productivity Commission (2010b).

¹⁴⁰ The ERA measures the net subsidy equivalent (NSE) of combined tariff, budgetary, and agricultural pricing and/or regulatory assistance to a particular industry in proportion to that industry's unassisted net output (or unassisted value added). It can provide an indication of the extent to which assistance to an industry allows it to attract and hold economic resources (Productivity Commission, 2010b).

¹⁴¹ WTO documents G/AG/N/AUS/73, 13 July 2009 and G/AG/N/AUS/76, 13 July 2010.

majority of Australia's domestic support to agriculture is in form of "Green Box" programmes, i.e. support that has minimal trade-distorting effects or effects on production.

97. Between 2006 and 2009, fuel excise credits of more than \$A 3 million per year were available to businesses that are large energy users, on the condition that they joined the Greenhouse Challenge Plus Programme, which ceased on 30 June 2009.¹⁴²

(iii) Competition and consumer policy

(a) Competition policy¹⁴³

General framework

98. Reportedly, Australia's competition regime has served well the economy, consumers, and business during the recent global economic crisis, which has been seemingly used by vested interests both domestically and abroad as a justification for applying pressure to relax competition law as well as regulation and enforcement.¹⁴⁴ 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 innovative. A key principle is that arrangements that detract from competition should be retained only if shown to be of public interest. As part of the NCP, under the Competition Principles Agreement (CPA), Commonwealth, state and territory governments undertake to review and reform legislation that restricts competition. The Council of Australian Governments (COAG) Reform Council has monitored progress of reforms since 2007, and assessed the costs and benefits of these reforms in several areas (e.g. standards, electricity, transport, infrastructure).

99. The institutional setting for competition matters remained unchanged during the review period. National competition policy is the responsibility of the Department of the Treasury within the Commonwealth Government as well as the Premier's Department in each State and the Chief Minister's Department in each Territory. The Australian Competition and Consumer Commission (ACCC), an independent statutory authority, is charged with, *inter alia*, administering the Trade Practices Act (TPA); the ACCC and the Australian Energy Regulator (AER) are responsible for regulating the electricity, gas, telecommunications, and transport sectors.¹⁴⁵ The National Competition Council (NCC), also an independent authority, assesses whether third-party access should be granted to major infrastructure under the TPA access provisions, with subsequent regulation of that access conducted by the ACCC or other state-based regulators. The Australian Competition Tribunal (ACT) may re-hear or re-consider these matters; it may affirm, set aside or vary the original decision.¹⁴⁶

Legislative framework

100. Competition (and consumer protection) legislation is contained in the Trade Practices Act 1974 (TPA), last amended in 2010, and is intended to promote and preserve fair and free competition

¹⁴² For more details about this facility see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

¹⁴³ For more information about Australia's competition law and policy developments see <http://www.australiancompetitionlaw.org/news.html>; WTO document WT/TPR/S/178/Rev.1, 1 May 2007; and OECD (2010c).

¹⁴⁴ ACCC (2009a).

¹⁴⁵ As of 1 July 2008, the AER is responsible for regulating revenues for gas transmission and distribution networks.

¹⁴⁶ For more details about the ACT and its activities see <http://www.competitiontribunal.gov.au/>.

in the domestic market. During the review period, legislative amendments enhanced the ability of the ACCC to share information with other regulators (2007), affected misuse of market power and unconscionable conduct (2007), information sharing (2007), water trading (2007), misuse of market power – predatory pricing (2008), and cartel criminalization (24 July 2009) and search-warrant powers (2009).¹⁴⁷ New laws were passed in 2010, including a new Australian Consumer Law (ACL) (section (b) below), and a Competition and Consumer Legislation Bill dealing with provisions on mergers and acquisitions as well as with those on unconscionable conduct was with the Parliament; this Bill is to insert all recent amendments into the TPA (including the ACL).

101. The TPA prohibits cartel conduct by way of price fixing, output restrictions, bid rigging, and allocating customers, suppliers or territories as well as other anti-competitive conduct such as boycotts, misuse of market power, exclusive dealing, resale price maintenance, and agreements or mergers substantially lessening competition. To foster more effective compliance with the TPA, four mandatory industry codes of conduct are in place: the 1998 Franchising Code of Conduct, the 2007 Oilcode, the 2007 Horticulture Code, and the 2009 Unit Pricing Code.¹⁴⁸ Conduct that may raise competition concerns (see below) may be authorized on a case-by-case basis through an administrative process managed by the ACCC, and on condition that it is in the public interest. In this regard, the ACCC has authorized voluntary industry codes, including the air conditioning and mechanical contractors code, the fruit juice industry code, the Indigenous Australian art trader code, the jewellery trading code, the Medicines Australia's code of conduct, the pallet-hire industry code and the scanning code of practice.

TPA exemptions

102. The TPA covers virtually all business activities, including government business¹⁴⁹; nevertheless, despite a ten-year programme of review and revision, a long list of special regimes and exemptions derogating the TPA is maintained.¹⁵⁰ Many of these exemptions are narrow and technical. Most arise at state and territorial levels of government where they seem difficult to reform.¹⁵¹ They include specific postal mail delivery services and overseas cargo liner shipping, at the national level, and agricultural marketing boards, taxi services or pharmacies, at state or territory level. Several deal with marketing arrangements for agricultural products, by authorizing either the operation of monopolies (e.g. exports of rice grown in New South Wales) or joint action ostensibly to equalize bargaining power between producers and processors. As of 1 July 2008, the Wheat Export Marketing Act 2008 abolished a monopoly over bulk wheat exports by establishing a scheme for accrediting exporters of bulk wheat and Wheat Exports Australia (WEA) to administer it.¹⁵² Following

¹⁴⁷ ACCC (2010a).

¹⁴⁸ The Oilcode regulates the conduct of suppliers, distributors, and retailers in the downstream petroleum industry, while the Horticulture Code deals with the conduct of growers and traders of horticulture produce.

¹⁴⁹ It also includes telecommunication-specific competition rules.

¹⁵⁰ OECD (2010c).

¹⁵¹ Some 10 Commonwealth and 70 state and territory Acts permit conduct that would normally contravene the TPA. Such conduct may be permitted if it is specifically authorized under those Acts, which, *inter alia*, cover farm produce, poultry meat, sugar industry, grain marketing, rice marketing, tobacco products, wine grapes marketing, liquor, coal industry, gas industry, electricity, financial, banking, gambling, health, insurance, postal, transport, water supply, and state-owned enterprises activities. The ACCC publishes the list of these enactments on its website and in its annual report (ACCC, 2009a; and OECD, 2010c).

¹⁵² To gain accreditation, wheat exporters that own or operate port terminal facilities must provide fair and transparent access to their facilities to other accredited wheat exporters. From October 2009, accreditation requires formal access undertakings under Part IIIA of the TPA, assessed by the ACCC, or a state or territory access regime that is certified as effective after recommendation by the National Competition Council (OECD, 2010c; and Productivity Commission, 2010c).

recommendations by a 2005 Productivity Commission review, the authorities decided to retain TPA provisions (Part X) on international cargo liner shipping conferences, but to amend them to clarify objectives, remove discussion agreements from their scope, protect individual confidential service contracts between carriers and shippers, and introduce a range of penalties for breaches of its procedural provisions.¹⁵³ The relevant legislative amendments have not yet been implemented; and further review of Part X is scheduled for 2010-11. Conditions in agreements licensing patents, design copyrights, and trade marks are also exempt from TPA provisions as long as they are limited to permitted topics.¹⁵⁴

103. Certain prohibited anti-competitive practice in industries and professions can be authorized when public benefits are deemed to exceed detriments. Businesses may obtain immunity by applying for an authorization or submitting notifications of exclusive dealing and collective bargaining to the ACCC. In 2008/09, 64 notifications covering 7 groups, included collective bargaining by: retailers of paint and related products with suppliers; operators of clubs in New South Wales with suppliers of wagering and broadcast services; and the owners of independent record labels with licensees in respect of the public performance and transmission of music videos. It granted authorization to 35 arrangements covering a wide range of industries, including recycling programmes aimed at reducing waste from agricultural and veterinary chemicals, and a capacity balancing system at the Port of Newcastle. In 2009/10, the ACCC assessed 74 collective bargaining notifications. It issued 37 authorizations including on collective bargaining by vegetable growers in Tasmania, joint marketing of gas produced by the Gorgon gas project, a long-term solution to the capacity constraints in the Hunter Valley coal chain, a Virgin Blue-Delta Air Lines joint venture, and a liquor accord in the Northern Territory.

104. 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, natural-gas pipelines, water, communications, port terminals, and airports. Its purpose is to promote economically efficient infrastructure use and investment, including promoting competition in markets upstream and downstream from the service, as well as to encourage new entrants into markets that rely on monopoly services (i.e. limited competition).¹⁵⁵ To achieve this objective, much of the ACCC/AER role in relation to access regulation may include: determining prices and access terms and conditions; monitoring and enforcing industry-specific pro-competition laws for bulk water, energy, and communications; and monitoring and reporting on prices and service quality of particular goods and services in the areas concerned. In 2010, the National Access Regime was amended to improve regulatory certainty and streamline administrative processes, including by introducing binding time limits and limiting merits review.

Mergers and acquisitions

105. The TPA prohibits acquisitions that would be likely to substantially lessen competition. Revised guidelines were issued by the ACCC in late 2008 outlining the general principles underpinning its merger analysis, with increased emphasis on the competitive theories of harm and the effect of constraints. Despite volatile economic conditions, merger activity was strong and showing no sign of significant change in the foreseeable future. Between 2004/05 and 2008/09, merger and joint ventures reviews more than doubled; they rose from 189 to 412 reviews, of which 239 were conducted confidentially and 173 were reviews of public mergers.¹⁵⁶ Some of the more substantial mergers considered recently fell within the banking, retail, and energy sectors. In 2008/09, substantial

¹⁵³ OECD (2010c).

¹⁵⁴ OECD (2010c).

¹⁵⁵ OECD (2010c); and ACCC (2009a).

¹⁵⁶ ACCC (2009a).

competition concerns were identified in 16 merger matters and resulted in ACCC decisions to oppose the merger or resolve it through an enforceable undertaking. In 2009/10, the ACCC considered 321 matters for compliance with the merger and acquisitions section of the TPA including the merger of two major pharmaceutical companies and the proposed sale of an oil company's retail assets to another oil company, which the ACCC opposed. Four mergers were allowed to proceed following acceptance of undertakings to address competition concerns. All publicly reviewed and decided mergers were published on the ACCC website.

106. To deal with 'creeping acquisitions'¹⁵⁷, by January 2010, the authorities intended to amend the TPA in order to ensure ACCC's power to reject acquisitions that would substantially lessen competition in any local, regional or national market.¹⁵⁸

Cartel conduct

107. Following the increase of pecuniary penalties against those found to have engaged in anti-competitive conduct in January 2007, criminal offences for cartel conduct commenced in July 2009; this significant change allowed for a range of more effective responses, including financial and criminal sanctions in line with those in other OECD countries, including the United States and Canada.¹⁵⁹ For individuals, cartel conduct is punishable by imprisonment of up to ten years and/or fines up to \$A 220,000 per contravention or under parallel civil prohibition fines up to \$A 500,000 per contravention.¹⁶⁰ Corporations found guilty of such conduct may be fined up to \$A 10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10% of the corporate group's annual turnover (whichever is greater). In addition to the ACCC, which is responsible for investigating allegations of cartel conduct and arranging civil proceedings, now the Commonwealth Director of Public Prosecutions (DPP), the general centralized prosecutions agency, has responsibility for prosecutions of all indictable federal offences in Australia.¹⁶¹ The cartel will be prosecuted on civil or criminal grounds depending on the facts of each case.¹⁶² This dual criminal-civil sanctions regime could spur a significant upward trend in Australia's penalties; those for breaching the prohibitions on anti-competitive conduct have been considered low by international standards.¹⁶³ Reportedly, there are potentially substantial benefits for objectivity and independence in decision-making as a result of the separation of investigatory and prosecutorial functions between the ACCC and DPP.

¹⁵⁷ "Creeping acquisitions" refer to a series of small acquisitions that individually do not substantially lessen competition in a market so as to breach section 50 of the *Trade Practices Act 1974* (Commonwealth), but collectively may have that effect.

¹⁵⁸ Dr. Craig Emerson Media release, "Government to secure powers to deal with creeping acquisitions". Viewed at: <http://www.craigemersonmp.com/files/012110%20Creeping%20acquisitions%20media%20release%20.pdf>.

¹⁵⁹ According to ACCC's Chairman "the financial penalties in Australia don't reflect the true damage done by anti-competitive conduct, and this reflects both the level of penalties that have been sought by the ACCC and those that have been awarded by the courts". In the recent past, there have been "cases where the profit from the conduct for the company far outstripped the reach of the penalties being sought by the ACCC and being awarded by the courts - which, ..., made anti-competitive conduct fairly good business" (ACCC, 2010a, and 2009a; and Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009, 24 July 2009. Viewed at: http://www.accc.gov.au/content/item.phtml?itemId=779417&nodeId=feda740e39f8ef706f88f67626945aeb&fn=Important%20Notice_Trade%20Practices%20Amendment%20Act%202009%E2%80%9494long%20notice.pdf [11 June 2010]).

¹⁶⁰ ACCC (2009a).

¹⁶¹ OECD (2010c).

¹⁶² See ACCC (2009b).

¹⁶³ The TPA also offers a range of other forms of penalty or remedy such as community service orders, adverse publicity orders, and disqualification from management (OECD, 2010c).

108. In 2009, a record year for cartel litigation, proceedings were instituted in 13 cartel matters and secured over \$A 20 million in fines. These included action against the air cargo cartel and the marine hose cartel, an alleged cartel involving electric cable manufacturers. Of the cartel proceedings instituted in 2009, seven have been concluded so far, with fines totalling \$A 26.3 million.¹⁶⁴ In 2009/10, the ACCC instituted ten proceedings for cartel conduct, of which seven related to its extensive investigation into alleged cartel activity in the provision of air cargo services; the ACCC has obtained penalties of over \$A 41 million to date in air cargo cases alone. Other cartel matters finalized in 2009/10 relate to marine hose companies and air conditioning companies.

Enforcement

109. Most of the investigations instituted under TPA provisions concern mergers and, to a much lesser extent, unfair competition and consumer protection, horizontal agreements, vertical agreements, and abuse of dominance.¹⁶⁵ The main industries subject to complaints and inquiries under TPA provisions (including those relating to consumer protection, section (b) below) in 2008/09 and 2009/10 covered: auxiliary finance and investment services; non-store retailing; electrical, electronic and gas appliance retailing; car retailing; computer and computer peripheral retailing; wired telecommunications network; lottery operation; automotive fuel retailing; credit reporting and debt collection services; and supermarket and grocery stores.¹⁶⁶ During the same period, the most common contraventions to the TPA provisions relating to mainly effective competition and informed markets were exclusive dealing and misuse of market power. Contraventions to the TPA provisions on predominantly fair trading and consumer protection related to misleading or deceptive conduct and retail warranties. Most TPA-related inquiries and complaints originate in New South Wales, Victoria, and Queensland. Litigations concluded in 2008/09 and relating to TPA provisions on lawful competition and informed markets involved: air cargo (price fixing in relation to fuel surcharges); baby clothing, sport compression garments, and water craft (resale price maintenance); and taxis (roster arrangement).

Price surveillance

110. Price surveillance is provided for in the TPA (Part VIIA). Three forms of price surveillance are available: price inquiries, directed to the ACCC 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. Under the formal price surveillance system, penalties may be applied for non-compliance actions. As indicated, the ACCC conducts formal price surveillance on aviation and airport services and facilities, fuel, electricity, telecommunications, postal services, and container stevedoring. During the review period, the ACCC undertook price monitoring of petrol and airport car parking services as well as an inquiry into the prices, costs, and profits of container terminal operator companies.

(b) Consumer protection policy

111. Consumer protection legislation, including compulsory product safety standards (section (2)(vii)(a)), is contained in the TPA. During the period under review, work was undertaken on passing a new single Australian Consumer Law (ACL) in two steps; the ACL entered into force as

¹⁶⁴ ACCC (2010a).

¹⁶⁵ OECD (2010c).

¹⁶⁶ ACCC (2009a).

of January 2011.¹⁶⁷ A Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 (ACL) was enacted on 14 April 2010¹⁶⁸; it amends the TPA to establish the Australian Consumer Law (ACL) as a schedule to the TPA. This framework legislation introduces provisions regulating unfair consumer contract terms (in effect as of 1 July 2010) as well as new penalties, enforcement powers and consumer redress options (in force as of 15 April 2010). A Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010, which completes the ACL was enacted on 13 July 2010 and has been in effect since January 2011¹⁶⁹; it transfers all of the consumer protection provisions of the TPA to the ACL. The second ACL Act also introduces a new national product safety regulatory framework and new national consumer guarantees replacing conditions and warranties that applied to contracts for the purchase of goods and services under the TPA.¹⁷⁰ Responsibility for consumer protection enforcement at the Commonwealth level is with the ACCC and the Australian Securities and Investments Commission (ASIC), which remains the primary regulatory agency responsible for consumer protection for financial services. During 2010, the ACCC and ASIC were given additional enforcement powers for consumer protection and fair trading, including the ability to issue public warnings, infringement notices and substantiation notices, and to seek orders for the payment of civil pecuniary penalties, non-party redress and the disqualification of directors and officers where there has been a breach of the law. Each state and territory has its own enforcement agency for consumer protection, and this will continue under the ACL, subject to a cooperative agreement between all Australian agencies responsible for consumer law enforcement. From 1 January 2011, all Australian consumer agencies will share common powers for the enforcement of the ACL.

112. Since 2007, the main possible contraventions to the TPA provisions relating to fair trading and consumer protection have been: misleading or deceptive conduct; retail warranties; accepting payment non-supply; misrepresentation of price; harassment and coercion; misrepresentation of performance characteristics, accessories, uses or benefits; product safety; assert right to payment of unsolicited services; assert right to payment of unsolicited goods; and misrepresentation of warranty, guarantee.¹⁷¹ In 2008/09, the ACCC initiated litigation in 27 consumer protection matters and accepted 62 undertakings, which include actions to ensure product safety compliance (section (2)(vii)(a)). Increasingly, the ACCC is using market and trend analysis as a means of facilitating identification of important problems where action needs to be taken; in this context, in 2008/09 outstanding debt collection, scams proliferation, and telecommunications-related fields were dealt with. In 2009/10, the ACCC commenced litigation in 21 consumer protection and fair trading matters and accepted 45 undertakings concerning consumer protection and fair trading matters.

¹⁶⁷ According to the Productivity Commission, by 2008 the division of responsibility for the consumer policy framework between the Australian and state and territory governments led to variable outcomes for consumers, added costs for businesses and a lack of responsiveness in policy making; there were gaps and inconsistencies in the policy and enforcement provisions, and weaknesses in redress mechanisms for consumers (Productivity Commission, 2008d).

¹⁶⁸ Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010. Viewed at: <http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/843C26B5CBBAB553CA25770A0023F5A9?OpenDocument> [15 July 2010]. More specifically, this first tranche of the ACL introduced national prohibitions on unfair contract terms, made companies that engage in unconscionable conduct or make false or misleading representations liable to fines of up to \$A 1.1 million, and inserted a new Part IX into the TPA to facilitate the application of the ACL across the Commonwealth. Middletons online information. Viewed at: <http://www.middletons.com.au/news/news.asp?id=292> [28 June 2010].

¹⁶⁹ The Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010. Viewed at: <http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/bills/bytitle/4A2EDC3EC8F77819CA2576EA00025C24?OpenDocument> [15 July 2010].

¹⁷⁰ The Treasury online information. Viewed at: http://www.treasury.gov.au/content/consumer_affairs.asp?ContentID=270 [28 June 2010].

¹⁷¹ ACCC (2009a).

(iv) **Corporate governance**

(a) Private sector

113. Australia's corporate governance framework consists of parts of the Corporations Act 2001 (Corporations Act); accounting standards (which have the force of law); various market operating rules, including the Australian securities Exchange (ASX) Listing Rules and Operating Rules, and the ASX Corporate Governance Council's "Principles of Good Corporate Governance and Best Practice Recommendations"; together with voluntary self-regulatory codes of practice. The Australian Securities and Investments Commission also plays an important role in supervising corporate governance requirements set out in the Corporations Act, as does the Australian Prudential Regulatory Authority in relation to financial institutions. Legislative and non-legislative changes since 2007 concern the executive remuneration framework, requirements for disclosure to shareholders, mutual director disqualification with other countries, the short selling regulatory regime, supervision of domestic licensed financial markets, the Australian Accounting Standards, and corporate governance principles, as well as the enactment of legislation to facilitate cross-border insolvency procedures.

(b) Government trading enterprises

114. Government trading enterprises (GTEs) remain, often as monopolies, engaged in the production of goods and services; they are required to substantially or fully cover their costs.¹⁷² GTEs established as companies are subject to the Corporations Act. However, most GTEs are established as statutory entities and may have policy objectives that place competing pressures on their commercial functions. 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. 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).

115. In 2006/07, there were 86 government trading enterprises (GTEs) providing essential infrastructure services (section (4)(iii)(a)) in key sectors of the economy, including water (24), electricity (23), ports (19), forestry (6), rail (6), and urban transport (5).¹⁷³ The 11 largest GTEs accounted for around 50% of the total assets of these companies. These GTEs controlled about 2.8% of Australia's non-household assets and accounted for around 1.7% of GDP. Between 2005/06 and 2006/07, the profitability of GTEs increased by 36%, specifically it increased in the electricity, urban transport, and ports sectors, largely due to the performance of a single GTE in these sectors, but declined in the rail, water, and forestry sectors. In 2006/07, 12 GTEs failed to achieve a positive return on their assets. According to the Productivity Commission, the poor financial performance of many GTEs underscores a long-term failure to operate these businesses on a fully commercial basis, in accordance with Competition Policy Agreements (section (4)(iii)(a)). A number of GTEs rely heavily on government funding in order to sustain operations, and their investments are funded from taxpayers and customers.¹⁷⁴ Funding from governments can be either direct, through grants, asset contributions or equity injections, or indirect, via contracts with a GTE or through the provision of loans at below-market interest rates. No recent data on the performance of GTEs are available from the authorities.

¹⁷² GTEs are also commonly referred to as government business enterprises (GBEs); government-owned corporations (GOCs); public trading enterprises (PTEs); public corporations; state-owned corporations (SOCs); state-owned enterprises (SOEs); or territory-owned corporations (TOCs) (Productivity Commission, 2008b). Further information on the GTEs regime is available at WT/TPR/S/178/Rev.1, 1 May 2007.

¹⁷³ Productivity Commission (2008b).

¹⁷⁴ Productivity Commission (2008b).

(v) Intellectual property rights**(a) Overview**

116. Australia has continued to provide strong intellectual property rights (IPRs) protection and enforcement. During the review period, it expanded its commitments on the protection of IPRs by becoming a party to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaties, in force as of July 2007, and the Patent Law Treaty and the Singapore Treaty on the Law of Trademarks, as of March 2009.¹⁷⁵ Thus, it now participates in 17 out of 24 treaties administered by the WIPO.¹⁷⁶ For a broad range of reasons reflecting domestic and international policy, Australia is not a contracting party to several WIPO treaties.¹⁷⁷ In February 2008, Australia announced its participation in negotiations for the establishment of an Anti-Counterfeiting Trade Agreement (ACTA) setting international standards on IPR enforcement; the final round of these negotiations, which were to conclude in 2010, was held in October 2010 in Tokyo.¹⁷⁸

117. To, *inter alia*, implement its new WIPO treaties-related commitments and/or to reflect new policy between 2007 and 2010 (November) Australia passed or amended legislation on: patents, industrial designs, trade names, trade marks, plant varieties, integrated circuits, geographical indications, domain names, copyright, and enforcement.¹⁷⁹ Following the release of a public consultation paper on 22 April 2010 outlining the proposed model for implementing the WTO TRIPS Protocol in Australia, a public consultation was launched on its implementation; responses to this paper were under review in November 2010.¹⁸⁰

¹⁷⁵ The Singapore Treaty and the Patent Law Treaty harmonize and simplify procedural requirements for the administration of patents and trade marks, making them more user-friendly, more consistent between countries, less time-consuming and less expensive (Department of Innovation, Industry, Science and Research, 2008).

¹⁷⁶ For more details on Australia's participation in WIPO Treaties see WIPO online information. Viewed at: http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=10C.

¹⁷⁷ These are: the Madrid Agreement (Indications of Source); the Nairobi Treaty on the Protection of the Olympic Symbols; the Washington Treaty on the Protection of Integrated Circuits; the Hague Agreement Concerning the International Registration of Industrial Designs; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Madrid Agreement Concerning the International Registration of Marks; the Locarno Agreement Establishing an International Classification for Industrial Designs; and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

¹⁷⁸ By October 2010, participants in the negotiations had resolved nearly all substantive issues and produced a consolidated and largely finalized text of the proposed agreement, which was to be submitted *ad referendum* to their respective authorities. Other countries participating in the negotiations are: Canada, the EU, Japan, Korea (Rep. of), Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States (Department of Foreign Affairs and Trade online information. Viewed at: <http://www.dfat.gov.au/trade/acta/> [14 July 2010]; and European Commission Press release, "Anti counterfeiting Tokyo - Japan, 2nd October 2010 - Joint statement from all the Negotiating parties to ACTA". Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=623> [8 November 2010]).

¹⁷⁹ See IP Australia Official Notices. Viewed at: <http://www.ipaustralia.gov.au/>; and WIPO online information. Viewed at: http://www.wipo.int/clea/en/search.jsp?cntryorg_id=6.

¹⁸⁰ The TRIPS Protocol enables least developed and developing countries deal with health crises such as an HIV/AIDS, malaria or influenza epidemic by permitting WTO Members to issue compulsory licences to manufacturers to produce patented pharmaceutical products exclusively for export to address the relevant health need (IP Australia online information. Viewed at: http://www.ipaustralia.gov.au/resources/news_new.shtml#24 [12 July 2010]; and IP Australia, 2010).

Institutional and registration issues

118. IP Australia, under the Department of Innovation, Industry, Science and Research, is responsible for the administration of patents, trade marks, designs, and plant breeders' rights; IP Australia recovers more than 95% of its costs by charging fees for its IPRs services. IP Australia provides input to FTA negotiations (Chapter II) so as to lock in transparent, high-standard protection for IPRs.¹⁸¹ The Advisory Council on Intellectual Property (ACIP) and the Plant Breeders' Rights Advisory Committee advise the Minister for Innovation, Industry, Science and Research, as well as IP Australia, on matters relating to IP policy and the strategic administration of IP Australia.¹⁸² The Attorney-General's Department has responsibility for administration and policy in relation to the Copyright Act 1968 and the Circuit Layouts Act 1989.

119. In 2008/09, as a result of the global financial crisis, firms around the world scaled back investment, and the number of applications for IPRs dropped.¹⁸³ In 2009, the average interval between the lodging and acceptance of applications for industrial property rights was: 4 months for trade marks; 46 months for designs; and 35 months for plant breeders' rights. The average interval between a patent applicant's request for examination and the issue date of the first examination report is 13 months. The average time taken to determine a wine's geographical indication depends on the application. No clear difference exists in average times between domestic and foreign applications for protection.

(b) Industrial property

Patents

120. The Patents Act 1990, last amended in 2010, provides protection for standard patents and innovation patents, with terms of 20 (up to 25 for eligible pharmaceuticals) and 8 years, respectively.¹⁸⁴ The Act and the Patent Regulations 1991 have been amended on a number of occasions since 2007. Most of the amendments are of a minor technical nature and consist of updating the relevant rules implementing the Patent Cooperation Treaty (PCT), aligning the various requirements for declarations in the designs, patents, and trade marks legislation, and consistency with amendments made to other Australian legislation, and removing the obligation for patents applicants to inform the Commissioner of Patents of the results of documentary searches conducted by foreign patent offices.¹⁸⁵ During 2008/09, in line with the relevant PCT provisions, IP Australia signed international search authority and international preliminary examination authority agreements with the United States Patents and Trade Marks Office (USPTO), and the Korean Intellectual Property Office (KIPO), which came into effect on 1 November 2008 and 30 January 2009, respectively.¹⁸⁶

121. Since 2008/09, reforms have been proposed to the Patents Act and Regulations to, *inter alia*, raise patent thresholds; improve certainty about the validity of granted patents; introduce a statutory exemption from infringement for experimental activities; reduce delays in the resolution of patent

¹⁸¹ Department of Innovation, Industry, Science and Research (2008).

¹⁸² IP Australia online information. Viewed at: http://www.ipaustralia.gov.au/resources/news_new.shtml#24 [12 July 2010].

¹⁸³ Department of Innovation, Industry, Science and Research (2009a).

¹⁸⁴ The innovation patent, is intended to stimulate innovation in SMEs by providing them with easier access to, but a shorter term of, protection for inventions; it 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.

¹⁸⁵ Department of Innovation, Industry, Science and Research (2008).

¹⁸⁶ These arrangements offer applicants the choice of which patent office to work with to achieve patent grants in both countries (Department of Innovation, Industry, Science and Research, 2009a).

applications; and streamline and modernize aspects of the patent application process.¹⁸⁷ Reforms are also proposed to improve the operations of the patent and trade mark attorney professions. Public consultations on the reforms was undertaken during 2009 and 2010. In February 2010, the Advisory Council on Intellectual Property reported to the Government on its review of post-grant enforcement strategies.¹⁸⁸

122. As from April 2008, IP Australia has operated its new web-based patent search system (AusPat); in 2007/08, IP Australia adopted the European Patent Office Query (EPOQUE) search system as the main facility for patent examiners.¹⁸⁹ Patents applications originate mostly in the United States, the EU, and Australia.¹⁹⁰ During the review period, the number of certified innovation patents ranged from 243 (2007) to 235 (2009), and standard patents sealed increased from 11,070 (2007) to 12,410 (2009).

123. A Commonwealth, state or territory court may order the granting of a compulsory licence if it is satisfied that the reasonable requirements of the public have not been met in relation to the invention, and the patentee has not given a satisfactory reason for failing to exploit the invention.

Trade marks

124. The Trade Marks Act 1995, amended in 2009 and 2010, provides for the registration of trade marks, collective trade marks, certification trade marks, and defensive trade marks. Under the Act, registered trade marks are protected for ten years and can be renewed indefinitely, upon request and payment of the appropriate fee. Since 2007, the Act and the Trade Marks Regulations 1995 have been amended on a number of occasions. Amendments that entered into effect in March 2007 included: allowing collective marks to be owned by incorporated associations; introducing new provisions for divisional applications and series applications; clarifying amendment provisions; providing for more flexibility for the Registrar to correct clerical errors or obvious mistakes; reducing the period within which a trade mark registration may be renewed; and amending customs provisions in relation to cash security. Other amendments were of a minor technical nature and related to aligning the various requirements for declarations in the designs, patents, and trade marks legislation, and consistency with amendments made to other legislation.

125. Upon a 2008 IP Australia proposal, public consultations were held in February 2009 on the amendment of the Trade Marks Act to: raise the penalties for indictable criminal offences (i.e. maximum imprisonment period from two years to five years); introduce summary offences with lower fault requirements than those for indictable offences; and introduce additional damages provisions for civil actions.¹⁹¹ In November 2010, a Bill was being drafted in this area. Further legislative changes were proposed to reduce delays in the resolution of trade mark oppositions and public consultations were held in 2009/10.

126. During the review period, trade mark registrations rose from 26,715 (2008) to 42,306 (2009); in 2009, trade mark registrations consisted of 22 certification trade marks, 15 collective trade marks, 8 defensive trade marks and 42,261 standard trade marks. Trade mark applications originate mostly from Australia.

¹⁸⁷ Cutler (2008); and Department of Innovation, Industry, Science and Research (2009a).

¹⁸⁸ Advisory Council on Intellectual Property (2010b).

¹⁸⁹ Department of Innovation, Industry, Science and Research (2008).

¹⁹⁰ Department of Innovation, Industry, Science and Research (2009a).

¹⁹¹ Department of Innovation, Industry, Science and Research (2009a).

Industrial designs

127. The Designs Act 2003 provides for an initial registration for five years from the filing date of the application, and for a single renewal for a further five years, i.e. a maximum term of ten years. However, design applications filed under the Designs Act 1906 (i.e. prior to 2003) continue to have a possible maximum term of 16 years. Most applications originated in Australia (approximately half), the United States, and the EU.¹⁹² Since 2007, the Act and the Designs Regulations 2004 have been amended on a number of occasions. Most of these amendments are of a minor technical nature. The number of registered designs rose from 5,207 in 2007 to 6,097 in 2008.

Protection of plant varieties

128. Under the Plant Breeders' Rights (PBR) Act 1994, amended in 2007 and 2010, unauthorized use of protected plant varieties, and different kinds of false representation regarding plant varieties, are criminal offences. PBRs registration lasts up to 25 years for trees and vines, and 20 years for other species. The PBR Act was amended in 2007 and 2010; the amendments relate mainly to minor technical issues relating to consistency with amendments to other legislation. In July 2008, a framework was approved that set criteria for assessing requests to extend the duration of PBRs beyond the current maximums under the Act.¹⁹³ In January 2010, the Advisory Council on Intellectual Property submitted its review of enforcement of PBR rights for the Government to respond.¹⁹⁴ Enforcement of PBRs is generally the responsibility of holders of the rights through civil procedures, and the Customs has no seizure powers at the border (section (d) below). Between 2007 and 2009, 727 PBR titles were issued (332 from domestic applicants). Approximately half of plant breeders' rights applications originate in Australia, while the majority of other applications originate in New Zealand, the United States, and the EU.

Geographical indications (GIs)

129. 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 1974, which prevents misleading conduct. In addition, the Australia New Zealand Food Standards Code contains prohibitions on infringement of GIs of spirits. Protection is also provided through labelling legislation, such as the Commerce Trade Descriptions Act 1905, which prohibits the use of false trade descriptions on labelling. 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. A new wine agreement, the Australia-European Community Agreement on Trade in Wine, was signed in December 2008 and entered into force on 1 September 2010; as a result, the Australian Wine and Brandy Corporation (AWBC) Act and Regulations 1981 have been revised to provide a clear and transparent process for the determination of foreign GIs. The Geographical Indications Committee of the Australian Wine and Brandy Corporation determines GIs for wine. Since 2006, eight Australian wine GIs have been determined and entered on the Register of Protected Names; no applications for foreign GIs were received during this period.

¹⁹² Department of Innovation, Industry, Science and Research (2009a).

¹⁹³ Department of Innovation, Industry, Science and Research (2009a).

¹⁹⁴ Advisory Council on Intellectual Property (2010a).

Other

130. No changes were made to the law in relation to undisclosed information and trade secrets, which are protected under the common law and by equity.¹⁹⁵

(c) Copyright and related rights

Copyright

131. The Copyright Act 1968, amended in 2007, 2008, and 2010, protects all original literary, dramatic, musical, and artistic works. The duration of a copyright varies according to the nature of the work and whether it has been published. Depending on the material, copyright for literary, dramatic, musical and artistic works generally lasts for the author's life plus 70 years from the year of the author's death or from the year of first publication after the author's death. Copyright for films and sound recordings lasts 70 years from their publication, and the term for broadcasts is 70 years from the year in which they were made.¹⁹⁶ Unlike for patents, trade marks, designs, and PBRs, where registration is a precondition for protection, copyright (including of circuit layouts) is granted automatically where the substantive requirements are fulfilled.

132. The 2004 amendments to the Copyright Act 1968 implemented obligations under the Australia-United States Free Trade Agreement concerning technological protection measures, rights management information, and encoded broadcasts; these are now applied to all trading partners.

Parallel imports

133. Some parallel imports are allowed under the Copyright Act 1968 and, in certain circumstances, under the Trade Marks Act 1995. The Copyright Amendment (Parallel Importation) Act 2003 (PI Act) extends 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)); the use of trade marks on these goods should not prevent their parallel importation. Parallel importation of liquor, branded foods, clothing, IT items (e.g. Australian computer games including their hardware) from third parties (i.e. bypassing the local licensees of the products) is common practice for some wholesale and/or retail stockists.¹⁹⁷ A 2009 Productivity Commission report recommended that legislation be extended to legalize the parallel importation of books, with three years notice for publishers; according to the Productivity Commission, restrictions on parallel imports result in higher local book prices.¹⁹⁸ In November 2009, the authorities decided not to change the parallel importation regulatory regime for books.¹⁹⁹

¹⁹⁵ For more details, see WT/TPR/S/104, 26 August 2002.

¹⁹⁶ The Copyright Act 1968 protects subject matter other than works (cinematograph films, sound recordings, broadcasts, and published editions), for 70, 50, or 25 years (Part IV, Division 4).

¹⁹⁷ *The Age* online information, "Retailers rock the boat with parallel imports", 15 January 2010. Viewed at: <http://www.theage.com.au/business/retailers-rock-the-boat-with-parallel-imports-20100114-ma5h.html> [14 July 2010].

¹⁹⁸ Australia's Copyright Act currently forbids parallel importation of books if an Australian publisher releases the book within 30 days of its first release elsewhere. This enables rights holders to charge prices (or obtain royalties) in the Australian market with the certainty that they cannot be undercut by commercial quantities of imports of the same titles. The average price of an Australian book was found to be 35% higher than in the United States. The PC concluded that permitting bookstores to stock copies of books imported from outside Australia would encourage lower prices (Productivity Commission, 2009e).

¹⁹⁹ Australian book printing and publishing is under strong competitive pressure from international online booksellers, and the Government has formed the view that this pressure is likely to intensify. In addition,

Circuit layout

134. The Circuit Layouts Act 1989 remains the major legislation for protection of layout designs (topographies) of integrated circuits (also referred to as computer chip designs or semi-conductor chips). A layout design is protected for 10 years from its first commercial exploitation, and if not exploited, 10 years from when it was made, i.e. maximum protection of 20 years. The Circuit Layout Amendment Regulations 2003 contain the list of eligible countries to which Australia extends reciprocal protection of circuit layouts designs; they were last amended in 2008 to ensure that eligible foreign countries are Members of the WTO. This mechanism enables the Regulations to self-update each time a new Member joins the WTO.

(d) Enforcement

135. The negative impact of IPRs infringement may include adverse effects on business, the national economy, and consumer health and safety. IPRs holders may enforce their IPRs by civil action against infringers, both at the federal and the state level. The Australian Federal Police and state and territory police agencies have the authority to undertake criminal investigations, with prosecutions conducted by the relevant state or Commonwealth or State/Territory office of the Director of Public Prosecutions. Penalties for offences relating to IPRs include fines and imprisonment. For copyright offences, the maximum penalty is a fine of up to \$A 93,500 together with imprisonment of up to 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. Upon acceptance of a Notice of Objection lodged by the IPR owner, Customs may seize and hold imported goods infringing copyrights or trade marks law; by July 2010, 453 Notices of Objection had been lodged for a wide variety of items; 392 concerned trade marks and 60 copyrights and 1 concerned protected Olympic expressions.²⁰⁰ Customs does not have similar seizure powers in relation to patents or PBRs; in 2009 some stakeholders argued that the lack of Customs seizure provisions in the PBR Act was a major obstacle to effective enforcement.²⁰¹ Between 2007 and 2009, Customs made 9,023 seizures of about 2.3 million items of a total retail value exceeding \$A 74.3 million, mainly originating in Asia; clothing, textiles, and accessories have consistently made up the largest category, with a significant increase in seizures of food and beverage items in recent years. A number of forums facilitate discussion and improve coordination of IPRs enforcement issues among stakeholders.

136. According to a 2008 study by the Australian Institute of Criminology, while there is no suggestion that piracy and counterfeiting is non-existent in Australia, there is a lack of verifiable empirical evidence on the extent of the problem.²⁰² In 2008, IPRs violations in Australia consisted mainly of: the importation on a separate component basis of counterfeit goods such as clothing, luxury goods, and footwear, from South-East Asia²⁰³; and the domestic manufacture of goods that

the technology of electronic books (e-books) will continue to improve, with further innovations and price reductions expected. Changing the regulations governing book imports is unlikely to have any material effect on the availability of books in Australia (Dr. Craig Emerson Media release "Regulatory regime for books to remain unchanged", 11 November 2009. Viewed at: <http://www.craigemersonmp.com/files/Nov%2011%2009%20Regulatory%20regime%20for%20books%20to%20remain%20unchanged.pdf>).

²⁰⁰ Australian Customs Notices. Viewed at: <http://www.customs.gov.au/webdata/miniSites/ipData/> [18 July 2010].

²⁰¹ Advisory Council on Intellectual Property (2010a).

²⁰² Australian Institute of Criminology (2008).

²⁰³ For example, counterfeit shoes may be imported in one shipment, while items bearing the counterfeit trade mark may be in a separate shipment, with the trade mark being affixed to the shoes in Australia.

infringe copyright, such as films, music, games, and software. According to industry statistics, in 2009, Australia recorded the fifth lowest software piracy rate in the world, after the United States (20%), Japan (21%), Luxembourg (21%), and New Zealand (22%).²⁰⁴ From 2005 to 2009, installations of unlicensed software on personal computers (PC) in Australia fell by four percentage points to 25%; in 2009 the commercial value of Australia's illegal software amounted to US\$550 million. Those involved in IPRs infringement range from members of the general public to more professionally organized criminal networks.²⁰⁵ As it appears that a significant proportion of pirated and counterfeit material is produced locally rather than imported, border control and related Commonwealth law enforcement activity is unlikely to detect this category of infringements. In 2008, in general, representatives of key industries viewed civil proceedings as time-consuming and costly, with losses frequently not recovered even when proceedings were successful.²⁰⁶ Reportedly, very few IPRs crimes are pursued at a federal level and less well-resourced victims of IPRs infringement tend not to pursue either civil or criminal remedies.²⁰⁷

²⁰⁴ Business Software Alliance online information. Viewed at: <http://www.bsa.org/country/News%20and%20Events/News%20Archives/global/05112010-globalpiracystudy.aspx> [14 July 2010].

²⁰⁵ Australian Institute of Criminology (2008); Australian Crime Commission (2009); and The Allen Consulting Group (2009).

²⁰⁶ Specific statistics are not maintained on civil cases of copyright infringement.

²⁰⁷ These include individual creators/artists (including indigenous creators/artists), small companies and sole traders, and unincorporated businesses and associations.