TRADE POLICY REVIEW MECHANISM

Communication from Australia

The attached communication¹ has been received from the Government of Australia, responding to questions put in advance by the Governments of Canada, Switzerland and the United States in the context of the trade policy review of Australia on 12 December 1989. These documents, together with the oral responses made by the Representative of Australia at the review meeting, are also intended to cover the advance questions received from the Nordic delegations.

¹English only

90-0222
TPRM REVIEW OF AUSTRALIA: RESPONSES TO SWISS WRITTEN QUESTIONS

UNBOUND TARIFFS

Of 5,700 tariff lines in the Australian tariff, some 1,148 lines are fully or partially bound. This represents 20 per cent of the Australia tariff. Some 4,552 lines are not bound in the GATT.

Information to answer the question on increases in unbound rates is not readily available. For instance, on 1 January 1988 Australia adopted the Harmonized Tariff System which involved changes in tariff rates, both increasing and decreasing rates on many individual products.

AUTHORITY TO INCREASE TARIFFS AND PROCEDURES

The authority to increase or decrease tariffs resides ultimately with the Parliament of the Commonwealth of Australia.

The normal procedure followed in making tariff changes is:

. a reference to the IAC by the Treasurer (the Minister responsible for the IAC);
. enquiry and report by the IAC;
. a decision within twelve months by the Cabinet based on recommendations from the appropriate industry Minister;
. legislation introduced into Parliament, debated and given assent.

There are circumstances in which an IAC report may not be required. These include:

. changes arising from bilateral or multilateral trade agreements;
. broad-based changes to the Australian Customs Tariff, such as the removal of the 2 per cent revenue duty and the current across-the-board tariff phasing arrangements;
. the Textile, Clothing and Footwear Development Authority Act has provision for the Minister to approve administrative changes to tariffs without IAC enquiry or Cabinet agreement.

The Minister for Industry, Technology and Commerce can implement changes in advance of passage of legislation through the Parliament where:

. the action is necessary to implement Federal Government policy in relation to bilateral or multilateral agreements, or negotiations therefor;
a period of not more than twelve months has elapsed since the Minister received a report in relation to the matter from the Industries Assistance Commission (IAC);

administrative changes are required to ensure proper implementation of policies covered by the TCFDA Act (e.g. correction for tariff anomalies).

Action in relation to the first two cases would be preceded by a Cabinet decision or agreement between relevant Ministers and the Prime Minister on the course of action.

TEXTILES, CLOTHING AND FOOTWEAR (TCF)

Are the extremely high tariff rates and the tariff quotas directed mainly towards protecting the domestic industry against cheap, lower quality items?

The current duty and tariff quota provisions that apply to the TCD industries largely originated in response to competition from low-wage-cost imports during the mid-1970s;

the post-1988 TCF Plan aims to address the high TCD assistance levels by phasing out tariff quotas by 1995. Duty rates have also been reduced. The phasing of assistance reductions will gradually expose the industry to greater competition, while allowing it time to restructure and adjust to lower assistance levels;

phasing out the tariff quota restrictions is a major step forward especially in light of the slow progress being made in the MTN negotiations on quantitative restraints.

What kind of restructuring of the industry is aimed at?

the current TCF Plan was formulated with the aim of restructuring the industry so that it can compete without quantitative restrictions. This is likely to:

- encourage outward-looking, export-oriented, world-competitive firms;
- encourage further processing of Australia's raw materials (wool, cotton, skins, and hides), particularly to the early and intermediate stages of production.

How many of the 9,684 tariff concessions mentioned in Australia's paper apply to textiles, clothing and footwear?

tariff concession orders (TCOs) enable a considerable volume of trade to enter duty-free - there are approximately 280 TCOs currently applicable to TCF goods;
policy by-laws (i.e. TCOs that cannot be revoked) provide duty-free entry for most imports of textile yarns and fabrics, e.g. cotton fabrics attract a tariff of 35-40 per cent, but the majority enter free of duty through policy by-laws;

- policy by-laws are not included in the reference to 9,684 TCOs.

GOVERNMENT PROCUREMENT/OFFSETS

Prior to the commencement of the Australian Civil Offsets Programme (ACOP) in March 1988, all State governments operated their own State-based offsets policies. The introduction of the national programme reflects the desire for a more co-ordinated and co-operative approach in dealing with overseas suppliers. The States agreed to administer their offsets programmes according to the "national" guidelines, including the 30 per cent offsets requirement. With regard to information technology purchasing, the States agreed to the Federal Government negotiating offsets agreements with the overseas suppliers to the State programmes and they also accepted Pre-Qualified Offsets Supplier and Partnerships for Development arrangements. Implementation of the ACOP in other areas of State procurement is to be progressed on an industry-by-industry basis.

The Federal Government does not have legislative authority so far as State procurement policy is concerned. The Federal, State and Northern Territory Governments agreed to work towards uniform purchasing policies and practices under the National Preference Agreement of July 1986, which also prohibits State purchasing preference arrangements. The desirability of achieving a national offsets policy was one of the reasons for the NPA. The Federal Government is only able to influence the States to the extent that it is the largest single purchaser.

Australia has hitherto considered that its purchasing preference margin prevented its accession to the GATT Government Procurement Code. Removal of the Federal preference margin effective from 1 November 1989 paves the way for consideration of joining the Agreement.

A recent statement giving further detail on Government purchasing reforms is in Attachment A.

STANDARDS

Australia does not collect data on the percentage of tariff lines covered by State versus Federal standards.

Legislative responsibility for testing methods, type approvals, certificates, etc., rests, in the main part, with the States.

Article 12 of the Australian-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) encourages the harmonization of standards; the Memorandum of Understanding on Technical Barriers to Trade between
Australia and New Zealand is designed to facilitate the removal of technical barriers in trans-Tasman trade. Standards Australia and the Standards Association of New Zealand have signed a Memorandum of Understanding which allows for joint trans-Tasman standards. In addition, the National Association of Testing Authorities and its New Zealand counterpart, TELARC, have a mutual recognition agreement for their laboratory accreditation schemes.

The Standards mark offered by Standards Australia is a third-party product certification scheme which offers certification of products complying with Australian standards. Although available to a broad cross-section of industry, it is not widely utilized.

In the context of a satisfactory overall MTN result, Australia would be prepared to consider becoming a party to the GATT Standards Code.

**INTELLECTUAL PROPERTY RIGHTS**

The change in extension of term provisions arose from a report to the Australian Government by an expert advisory committee, which recommended that procedures for granting of extensions of term be eliminated. The recommendation was based on the view that there was no evidence that the social benefits of the extension procedure outweighed its costs, particularly those costs arising out of the uncertainty faced by competitors who were unsure when patent rights would terminate.

The Government accepted the recommendation in principle, but also recognized that the effective life of patents for pharmaceuticals for human use is reduced by the time-consuming evaluation procedures conducted to ensure both the safety of patients and the efficacy of drugs.

Extensions under the procedures about to be abolished must be based on the grounds of inadequate remuneration of war loss. The procedures require complicated evidence and argument to be presented at a court, which can grant an extension of up to ten years. The proceedings are often lengthy, costly, and the eventual outcome can remain uncertain for years.

The new procedures, which provide for an administratively-granted extension of four years, will be simpler, less costly and offer greater certainty to patent holders and others.

When the new provisions come into force, the Patent Office will grant extensions of term. A decision made on an application for an extension will be subject to appeal to a court, but a person seeking an extension will not be able to apply to a court in the first instance.

Extensions of term under the new provisions will only be available for patents for pharmaceuticals for human use. The term of a patent for other kinds of invention will not be able to be extended under the new provisions.
QUESTION

THE DISCUSSION OF TRADE DEVELOPMENT ZONES IN THE NORTHERN TERRITORY AND TOWNSVILLE STATES THAT THEY "FACILITATE THE MAXIMUM USE OF GENERALLY AVAILABLE EXISTING TARIFF CONCESSIONAL PROVISIONS". DO "CONCESSIONAL PROVISIONS" REFER TO TARIFF CONCESSIONS DISCUSSED IN PARAGRAPHS 42-48, OR TO SOME FORM OF FINANCIAL OR TAX ASSISTANCE OFFERED TO ENTERPRISES IN THESE ZONES? IF THE LATTER, PLEASE SPECIFY.

Concessional provisions refer to tariff concessions discussed in paragraphs 42 to 48, and also to duty drawback and by-law for exports provisions covered in paragraphs 49 and 50. These are available to industry generally. There is no special Federal assistance for Trade Development Zones.

QUESTION

DO THE TRADE DEVELOPMENT ZONES BENEFIT FROM THE RIGHT TO IMPORT WITHOUT PayING NORMAL CUSTOMS TARIFFS, TAXES, OR IMPORT CHARGES? IF SO, ARE SUCH DUTIES, TAXES AND CHARGES COLLECTED WHEN THE OUTPUT OF THE ZONES IS SOLD WITHIN THE AUSTRALIAN CUSTOMS TERRITORY?

All normal Federal charges apply to Trade Development Zones unless concessional entry is available under the schemes mentioned above. The Federal Government does not provide any special concessions for Trade Development Zones. All normally applicable customs tariffs, taxes and charges are collected on imports.

QUESTION

WHAT IS THE JUSTIFICATION FOR THE LOCAL CONTENT PROVISIONS APPLIED TO THE PMV, TOBACCO, AND FRUIT JUICE? WHAT IS THE JUSTIFICATION FOR THE 20 PER CENT SALES TAX APPLIED TO NON-CARBONATED DRINKS WITH AUSTRALIAN JUICE CONTENT BELOW 25 PER CENT?

PMV

The local content provisions in relation to PMV are voluntary. It is open to individual companies to decide whether they wish to avail themselves of the benefits of the arrangements.

They allow concessional entry of imports at reduced rates of duty to companies which meet specified levels of local content. The arrangements are therefore trade-liberalizing.
Article III of the GATT prohibits only regulations which require that a specified amount or proportion of a product must be supplied from domestic sources. As these arrangements are totally voluntary, they are consistent with the GATT.

**TOBACCO**

The local leaf content scheme is a long-standing part of the assistance provided to the domestic tobacco-leaf-growing industry. It was introduced in 1936 to alleviate grower hardship associated with the extent of adjustment taking place in the industry at that time. The provisions of the Protocol of Provisional Application therefore apply to these arrangements.

The concept of a tobacco local leaf content scheme is inconsistent with current Government industry policy and hence a decision has been taken to terminate it. Its early removal would, however, create severe industry disruption and have a significant adverse effect on regional economies where tobacco is grown. Legislation has therefore been enacted to effect the termination of the scheme on 1 October 1995.

**FRUIT JUICE**

Under the current sales tax arrangements for citrus juice, beverages with a minimum Australian, New Zealand or PNG juice content of 25 per cent incur a sales tax rate of 10 per cent rather than 20 per cent which applies to other juices and aerated and carbonated soft drinks. The local content arrangements have been in place since 1932 and were intended as an assistance measure to ensure a continuing demand for local juice and thus oranges for processing. They too are therefore grandfathered under the Protocol of Provisional Application. The relevant legislation is the Sales Tax (Exemptions and Classifications) Act 1935.

The Industries Assistance Commissions (IAC) recommended in its February 1988 Report on the Fresh Fruit and Fruit Products Industries that the local content provisions be removed and sales tax on fruit-based drinks containing not less than 25 per cent of fruit juices be increased to 20 per cent by 1994. The IAC is currently conducting an enquiry into the Food Processing and Beverage Industries. The Government has not made any decisions on the sales tax or local content issue pending further assessment of the evidence provided by the citrus industry and the finalization of the IAC Report.

**QUESTION**

IT IS INDICATED THAT LOCAL CONTENT REQUIREMENTS APPLY TO COMMERCIAL TELEVISION AND RADIO. PLEASE DESCRIBE THESE MORE FULLY AND SPECIFY ALL STANDARDS AND REQUIREMENTS ADMINISTERED BY THE AUSTRALIAN BROADCASTING TRIBUNAL.
There are both general and specific requirements for levels of Australian content on Australian commercial radio and television. General requirements are set out in the Broadcasting Act 1942. Specific standards are determined by the Australian Broadcasting Tribunal, an independent statutory authority.

General requirements

- The Broadcasting Act requires licensees to use, as far as possible, the service of Australians in the production and presentation of programmes (Section 114(1)).

- Licensees are also required to give an undertaking, in applying for the grant or renewal of a broadcasting licence, "to encourage the provision of programmes wholly or substantially produced in Australia and use, and encourage the use of, Australian creative resources in and in connection with the provision of programmes" (Section 83(5)).

- The Act also requires radio licensees to broadcast the works of Australian composers for not less than 5 per cent of the time occupied by the broadcasting of music.

Specific requirements

- Commercial radio licensees are required either to devote 20 per cent of broadcasts of music between 6.00 a.m. and midnight on an averaged annual basis to performances by Australians or in the case of a licensee which broadcasts musical items of a reasonably similar nature, not less than 20 per cent of the total number of items broadcast must be Australian performances (ABT Radio Programming Standard 4).

- The ABT recently determined a new Australian content standard for commercial television which will come into effect from 1 January 1990 (copy provided in Attachment D). This standard provides for:
  - a minimum level of Australian programmes commencing at a level of 35 per cent and increasing to 50 per cent over five years;
  - minimum drama levels (based on 1987-88 average levels);
  - minimum levels of children's drama.

- In relation to television and radio advertising, ABT programme standards provide that, with limited exceptions, all advertisements broadcast must be produced either in Australia or New Zealand or produced by an Australian crew overseas (ABT Radio Advertising Condition 3 and Interim Television Programme Standards 18, 19 and 20);
a general exception is that up to 20 per cent of content of a television advertisement may consist of foreign material if it portrays persons, places or events which cannot be photographed in Australia or New Zealand.

QUESTION

PLEASE INDICATE THE BASIS FOR THE PREFERENTIAL ARRANGEMENT BETWEEN AUSTRALIA AND CANADA. HAS THIS ARRANGEMENT BEEN NOTIFIED TO THE CONTRACTING PARTIES? ARE ITS PROVISIONS SUBJECT TO EXAMINATION IN THE GATT?

Article I and Annex A of the GATT permit the retention of preferences which existed between members of the Commonwealth in 1947, subject to certain base date requirements. The preferences existing between Australia and Canada derive from the Ottawa Agreements of the 1930s.

Over the years the extent of these preferences has been significantly reduced.

The Protocol of Provisional Application has no relevance in relation to the right of Australia to retain these preferences. Article I provides Australia and Canada with a right to retain the preferences indefinitely and with a right to reinstate preferences which have been eliminated since 1947.

It should be noted that these preferences are specifically authorized by the General Agreement and that it is not necessary for Australia to have recourse to Article XXIV or to seek a waiver from Article I.

There is no requirement for these preferences to be notified to the GATT nor any obligation to submit them to examination in the GATT.

QUESTION

IT IS STATED THAT THERE IS NO GRADUATION MECHANISM IN AUSTRALIA'S GSP PROGRAMME. HAS AUSTRALIA CONSIDERED THE POSSIBILITY FOR GRADUATION IN THE FUTURE FOR COUNTRIES WHICH ARE CLEARLY NO LONGER IN A DEVELOPING STAGE? WITHOUT SUCH A PROVISION, WON'T THE TRADE INTERESTS OF THE LESS DEVELOPED LDCS BE DAMAGED?

When the developing country tariff preferences system was last reviewed, the Australian Government accepted the importance to developing countries and Australian industry of a predictable system and adopted the current régime providing for a 5 percentage point margin of preference on all products with no exceptions (the last exceptions were terminated in early 1989) and no graduation. Australia considers that the scheme has operated well and in the interests of all developing countries.
A recent report to the Prime Minister on Australia's trade and relations with the countries of Northeast Asia considered the question of graduation of particular middle-income economies from Australia's preference system. It did not favour graduation.

Any change to the system will only be considered in the context of a comprehensive review. No such review is planned at present.

QUESTION

COULD AUSTRALIA DESCRIBE ITS FREE-TRADE PROVISIONS CONCERNING TRADE IN SERVICES WITH NEW ZEALAND?

The Australian-New Zealand Closer Economic Relations Trade Agreement (CER) Trade in Services Protocol, which came into force from 1 January 1989, brought services within the CER for the first time on the basis of clearly stated rules and provides arrangements to further liberalize trade in services between the two countries.

A major feature of the Protocol is its comprehensive coverage of all service sectors except those specified in the Annex. Only a limited number of sections of service industries are listed in the Annex. Any service activities not listed in the Annex are automatically covered and the same will apply to new services as they are developed.

The Protocol defines five principles for the provision of services from one contracting State to the other. These are: market access, national treatment, commercial presence, non-discrimination and transparency of measures. Accordingly, each contracting State must, amongst other things, grant to persons of the other State services provided by them:

- access rights in its market no less favourable than those allowed to its own persons and services provided by them;

- treatment no less favourable than that accorded in like circumstances to its persons and services provided by them. Differential treatment can be justified only by prudential, fiduciary, health and safety or consumer reasons and if equivalent in effect to treatment accorded to domestic service providers; and

- the right to select their preferred form of commercial presence in accordance with the applicable laws and regulations of the relevant contracting State.

Further, each contracting State must:

- abstain from the introduction of any measure that constitutes a means of arbitrary or unjustifiable discrimination against persons of the other contracting State or a disguised restriction on trade between them in services; and
make public, subject to national security, public interest or legitimate commercial interests, all laws, regulations, judicial decisions and administrative rulings pertaining to trade in services.

QUESTION

TWO RESTRICTIONS ARE IDENTIFIED WHICH HAVE RECENTLY EXPIRED: EXPORT FLOOR PRICES FOR STEEL FROM KOREA AND "UNDERSTANDINGS" WITH NEW ZEALAND ON SHEEPMEAT AND DAIRY PRODUCTS. DID THESE RESTRICTIONS APPLY TO ANY OTHER COUNTRIES? UNDER WHAT AUSTRALIAN LEGAL AUTHORITY WERE THESE ACTIONS TAKEN? HOW WERE THEY JUSTIFIED UNDER GATT?

The expiry of export floor prices for steel from the Republic of Korea is a reference to the revocation of anti-dumping duties payable on certain steel pipes and tubes from the Republic of Korea. The duties were withdrawn after a review undertaken in accordance with Article 9 of the GATT Anti-Dumping Code concluded that these measures were no longer necessary.

Neither the understanding between the Australian and New Zealand dairy industries, which will effectively lapse from 1 July 1990, nor the informal industry-to-industry arrangement on sheepmeat, which lapsed some years ago, apply to other countries. As they are voluntary arrangements between industries no Australian legislation is involved and the question of justifying these "understandings" under the GATT does not arise.

QUESTION

PLEASE GIVE MORE INFORMATION ABOUT THE REVIEW PROCESS BY THE QUARANTINE INSPECTION SERVICE BASED ON AN "ASSESSMENT OF ACCEPTABLE RISK".

Australia has historically adopted an "acceptable risk" policy for quarantine, recognizing that to do otherwise is totally impractical as well as being inconsistent with its international obligations.

The Government's policy, as announced in December 1988 in the document "Australian Quarantine - Looking to the Future", endorsed the principle of risk management in quarantine decision-making. Risk management incorporates not only biological factors but also other relevant considerations such as the economic consequences of introduction of the pest or disease, environmental costs, etc. It stated that in future the quarantine decision-making process would be both more structured and more transparent. Major exercises are currently under way to determine the best ways of applying these principles.

QUESTION

TO WHAT EXTENT ARE THE REQUIREMENTS FOR GRAIN IMPORTS PROTECTIVE OF TRADE, RATHER THAN PLANT HEALTH?
Customs Regulations prohibit the importation of barley, oats, rye and triticale without the written approval of the Minister for Primary Industries and Energy. Guidelines associated with the importation of these grains under these regulations provide for quarantine standards being met, consultations with State Departments of Agriculture and firm arrangements for the disposal of the grain.

To date, these regulations have had no impact on trade in coarse grains with little import demand and those import applications received being given a favourable response.

These prohibitions are currently under review and are expected to be removed in 1990.

QUESTION

ISN'T THE RESTRICTION ON POTATO IMPORTS THE EQUIVALENT OF A QUANTITATIVE IMPORT RESTRICTION?

This question erroneously assumes a current import restriction on potatoes. As stated in paragraph 76 of Australia's Country Report, the prohibition on the importation on potatoes was removed in 1987. There is nothing under the Customs (Prohibited Import) Regulations that currently prohibits their import.

QUESTION

GOVERNMENT OFFSETS AND PROCUREMENT POLICY

Civil offsets apply where the duty-free price of the purchase, or of accumulated purchases within a year, exceed $A 2.5 million and the imported content exceeds 30 per cent of this price. The general requirement is that offsets be provided at 30 per cent of the imported content of single or accumulated purchases.

Aerospace and information technology hardware procurement have underpinned around 96 per cent of the programme for each of the past two years.

PROCUREMENT GIVING RISE TO OBLIGATIONS,
BY COMMODITY CLASSIFICATION

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<tr>
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<th>1988-89</th>
<th>1987-88</th>
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<tr>
<td>Aircraft, spacecraft, etc.</td>
<td>60.4</td>
<td>29.3</td>
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<td>IT hardware components</td>
<td>32.5</td>
<td>56.8</td>
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<tr>
<td>Civil vehicles and associated equipment</td>
<td>3.5</td>
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<td>IT hardware other</td>
<td>2.5</td>
<td>5.2</td>
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<td>Other</td>
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Government procurement in 1988-89 monitored by the Offsets Authority but which did not reach the offsets threshold totalled $A 10.6 million. This was marginally up on the previous year.

The offset programme is applied solely to items procured by the Government for its own use. Offsets are required as a result of all purchases, leases or hire arrangements in respect of overseas-sourced goods or services within the scope of the programme by all Federal or State organizations subject to the policy and a number of companies in which the Federal or State Governments have direct interest or which benefit from a government-bestowed protective advantage for:

(a) single orders placed overseas, as either prime or sub-contract; or
(b) cumulative orders placed on an overseas supplier by all organizations subject to the Policy, in a single financial year, where the duty-free price of the purchase, or accumulated purchases, exceeds $A 2.5 million and the imported content exceeds 30 per cent of this price.

The level of the offsets obligation is 30 per cent of the imported content of single or accumulated contracts.

It should be noted that "offsets" are defined as activities of commercial and technological significance which are directed to Australian industry by an overseas supplier as a result of, or in anticipation of, receiving an order for goods and/or services, from Federal and/or State Government organizations.

A number of Government organizations which supply commercial goods and services in competition with the private sector are exempted from offsets.

The Industry Development Arrangements (IDA) for the telecommunication and pharmaceutical sectors are entirely separate programmes and are not related to the offsets requirements.

While the IDAs emphasize the undertaking of R & D in Australia and encourage exports, there are no offset requirements to be fulfilled by a company engaging in general trade in Australia. In fact, exports and R & D undertaken in the items covered by the IDAs (i.e. PABX, Small Business Systems (SBS), Cellular Mobile Telephone (CMTs) and first telephones) will count for both offset and IDA obligations.

The IDA scheme differs from the offsets programme in the following manner:

- to be accepted as civil offsets, proposals put forward by overseas suppliers must meet all of the criteria relating to commercial viability, price, level of technology and new work. There is no such requirement for the IDA scheme;
the range of goods covered is significantly smaller as the IDAs apply only to customer equipment as outlined above;

- with civil offsets the preference is for long-term arrangements with credit available for future work undertaken, while the IDA scheme requires the points scheme to be met on a yearly basis; and

- the IDA scheme does not have a large number of conditions applying to its acceptance as does offsets activity.

In addition:

- the IDA scheme is transitional to a more deregulated market for PABXs, first telephones and CMTs;

- there is no compulsion to do each of the three activities - there is only an inducement to "factor up" all of the three point-scoring activities to meet a specified minimum point level;

- the result at the end of the IDA programme will be a freer deregulated market, connection dependent only on the meeting of technical specifications set by AUSTEL rather than the old Telecom rules.

Defence offsets

The Government's Offsets Policy applies to the imported content of defence equipment acquisitions, and is implemented by the Department of Defence through its Australian Industry Involvement (AII) programmes.

An obligation to provide defence offsets activities for Australian organizations is incurred by a contractor entering into a contract with Defence to supply equipment or services from an overseas source. The level of defence offsets sought will be specified in RFTs - generally this would be 30 per cent of the imported content. However, the actual level of defence offsets specified for a particular purchase will be determined by the total AII programme (i.e. Australian production, designated work and defence offsets) considered to be consistent with overall defence objectives. Defence offsets would not usually be sought where the value of the imported content in a contract is less than $A 2.5 million.

To qualify for inclusion in an AII programme defence offsets must be activities of technological significance, and must contribute to the development of defence capability in Australian industry. They may include, but are not restricted to, manufacturing, software development, research and development, design and development technology transfer and certain types of training. Neither Australian production nor designated work will be accepted as meeting defence offsets obligations.
Defence may require, as a condition of the contract, that prime contractors accept responsibility for securing and achieving defence offsets obligations incurred by their overseas suppliers or sub-contractors. Where such a condition is not included in a contract, prime contractors would be expected to ensure that any overseas suppliers or sub-contractors entered into appropriate contractual arrangements with Defence.

Where a direct contractual arrangement with a supplier is not practical, for example under the United States Foreign Military Sales System, or where the time-scale for acquitting the offsets obligations exceeds the period of the principal contract, or where the offsets activities are mainly non-project related, the overseas supplier or contractor would be required to enter into a project deed to provide the offsets.

The Government's Offsets Policy allows overseas suppliers to undertake activities that generate credits to be applied against future offsets obligations. Defence facilitates this arrangement through credit deeds negotiated with overseas suppliers to establish long-term programmes of technological and defence significance with Australian industry. In most cases the programmes are not related to any specific project but are essentially directed towards industry goals that meet the long-term needs of the Australian Defence Forces (ADF).

Defence offsets arrangements are monitored by Defence. To facilitate this process contractors are required to report on obligations and achievements in a format and frequency nominated in the relevant contract or Deed. Such reports are subject to verification procedures by Defence, including confirmation by the Australian recipient.

Note: 
Australian production. In the context of AII, Australian Production refers to that part of a contract to be obtained from competitive Australian sources, and encompasses all activities with Australian value added, including research and development. Where Australian industry can demonstrate:

- that it has the technological capability to supply equipment and services to the ADF; and

- that it is able to do so competitively, in terms of price, performance and quality,

contractors would be expected to source such equipment and services in Australia.
Designated work. Defence may require that certain work activities associated with the supply of capital equipment be carried out in Australia because of their importance in the development or maintenance of industry capabilities that contribute to defence self-reliance. Where such work cannot be carried out competitively in Australia, prospective contractors may be requested to submit proposals for the work to be undertaken in Australia at a cost premium above overseas prices. The term designated work is used to describe work activities that are subject to these arrangements.

Australian industry involvement

Australian Industry Involvement (AII) programmes are established under contracts to supply capital equipment. An AII programme has three elements: Australian production, designated work, and defence offsets. The prime objective of AII is to maximize the level of competitive Australian production in capital equipment contracts. Australian production is augmented by designated work and defence offsets which aim to introduce to Australian industry specific capacity to supply, repair and maintain defence equipment through technology transfer and the placement of work with local enterprises.

Defence Industry Development Programme

The Defence Industry Development Programme provides for the establishment of generic manufacturing and maintenance capabilities in Australia, where this would be consistent with an ADF requirement. Activities that may qualify for the Programme include feasibility studies, new manufacturing facilities, training, and research and development on new materials and processes.

A recent statement giving further information on Government procurement policies is provided in Attachment A.

QUESTION

IT IS STATED THAT THE AUSTRALIAN GOVERNMENT RECENTLY AGREED THAT IN ASSESSING MATERIAL INJURY IN ANTI-DUMPING CASES, THE TERM "MATERIAL" WILL BE INTERPRETED IN TERMS OF ITS OPPOSITE, I.E. NOT IMMATERIAL, INSUBSTANTIAL OR INSIGNIFICANT. WHAT ARE THE PRACTICAL EFFECTS OF THE CHANGE - TO MAKE INJURY FINDINGS MORE OR LESS LIKELY, AND WHY?

The practical effects of the change will be to make findings of injury less likely.

There were basically two reasons why the Government gave directions on how the term "material" should be interpreted. The first reason was to help ensure that all interested parties in a dumping enquiry had a clear understanding of what was meant by the term "material injury".

The second reason was that, while the Australian Government was not prepared to tolerate material injury being caused to an Australian industry
through dumped imports, it wanted to make clear to industry that the injury had to be indeed material before it would act. This is consistent with the Government's policy of protecting Australian industry from unfair overseas competition, while ensuring that dumping measures are not used as protection against fair competition or as a means of resisting structural change.

**QUESTION**

**PARAGRAPH 97 OF AUSTRALIA'S TPRM REPORT STATES THAT GRANTS UNDER THE EXPORT MARKET DEVELOPMENT GRANTS SCHEME (EMDG) ARE NOT BASED ON EXPORT OR PRODUCTION LEVELS EXCEPT IN TERMS OF THE THRESHOLDS FOR ELIGIBILITY. PLEASE SPECIFY ALL CRITERIA USED TO DETERMINE ELIGIBILITY AND THE MAGNITUDE OF INDIVIDUAL GRANTS.**

Successive Australian Governments have recognized the need to assist export development activities. The major underlying reason for government involvement is related to existing market imperfections. Industries in different countries are not perfectly competitive because of direct subsidies in some cases, covert barriers to market entry, imperfect knowledge of the market place and attitudinal factors which, in Australia's case, have led to insufficiently production- and export-oriented business cultures.

Given the various market imperfections alluded to above, it is recognized that, without Government assistance, a shortfall may arise between the amount of export development activities undertaken by private companies and the amount of export development needed from the economy's viewpoint.

Experience has shown that market imperfections have significant impact on Australia, particularly given the small-scale nature of many of Australia's most promising exporters of value-added manufactures and services.

Australia's distance from many sophisticated developed markets and limited human resources with international marketing expertise mean that market entry costs in overseas countries can be high and can deter small and medium firms and even large companies from seeking new markets. There is increasing recognition that the "information gap" issues of language and culture and insufficient understanding of different government and business environments are inhibiting Australia's trade with Pacific Rim markets.

The current level of funding for export incentives in Australia is modest. The main vehicle is the Export Market Development Grants Scheme (EMDGS) managed by AUSTRADE on behalf of the Government. Its estimated cost in grant year 1987/88 is $A 177 million, representing only 0.36 per cent of exports of goods and services, and equivalent to only 0.06 per cent of GDP. Moreover, as a result of amendments made to the EMDGS in 1988, its estimated cost will fall to $A 134 million in grant year 1988/89.
AUSTRADE designs and manages on a cost-sharing basis a range of services to cater for differing client communities at various stages of the export process. These services include company export planning teams in AUSTRADE's State offices that prepare, in conjunction with company management and for a fee, detailed export strategies and plans to help the companies penetrate export markets; and export development strategies to provide, where appropriate, support on an industry-wide basis, where co-operation between companies is required to win international business; these services draw on improved data bases disseminating to industry the market intelligence flowing from AUSTRADE's overseas posts. AUSTRADE-EFIC also provides an export payments insurance facility on a commercial basis.

QUESTION

WHAT ARE THE OPERATIONS OF THE BARLEY BOARD?

The procurement of barley in Australia is the responsibility of marketing authorities which have been established through legislation on behalf of the industry. These marketing organizations are responsible to both industry and government. The primary objective of these authorities is to receive and market the barley produced in the various stages in such a manner as to provide the maximum long-term benefits to growers in those States.

All barley produced in South Australia and Victoria must be delivered to the Australian Barley Board (ABB) or its licensed receiver unless the barley is for on-farm use or an exemption or permit has been granted by the ABB. Inter-State trading is provided for in both South Australian and Victorian legislation.

In Western Australia barley must be delivered to the Grain Pool of Western Australia or its licensed receiver unless a permit has been granted or exemptions in the Act are applicable.

In New South Wales either all or part of the barley crop has been vested in the New South Wales Barley Marketing Board since its formation in 1972. At present the Board operates a compulsory pool for malting barley and this barley must be delivered to the Board or its licensed receivers. For feed barley the Board operates a voluntary pool and a licensed merchant system. Growers may deliver feed barley to the Board or obtain approval to sell direct to a licensed merchant or end user. Exemptions to these delivery requirements may be granted and barley for on-farm use or seed is retained on farms.

In Queensland barley is vested in the Queensland Barley Marketing Board. All barley must be delivered to the Board including barley to be used for seed the following year. The Act provides for exemptions to be granted if the Board sees fit.
QUESTION

PLEASE GIVE MORE INFORMATION ON THE DIFFERENTIAL PRICING EMPLOYED IN EXPORT SALES BY THE AUSTRALIAN WHEAT BOARD.

The Australian Wheat Board does not employ a specific policy of differential pricing. Prices for export and domestic sale are issued each trading day of the year for the various shipment positions for each of its four basic classes of wheat. Because the United States is the principal wheat-trading nation, prices are based primarily on quoted export prices in the United States for comparable classes of wheat.

QUESTION

TO WHAT EXTENT ARE THE BOUNTIES REFERRED TO IN PARAGRAPH 131 OF AUSTRALIA'S TPRM REPORT APPLIED TO THE PRODUCTION OF PRODUCTS FOR EXPORTS?

Generally, bounties apply for the production of goods in Australia, and are not directly connected to exports of any goods. However, goods that are manufactured with bounties have no restrictions on them as to their final destination. At present, some books, shipbuilding and metalworking products benefitting from bounties are exported.

QUESTION

PLEASE EXPLAIN HOW AUSTRALIA CAN JUSTIFY ITS PASSENGER MOTOR VEHICLES LOCAL CONTENT REGULATIONS UNDER THE GATT.

Under the Passenger Motor Vehicle Plan currently operating in Australia, if any one of the four vehicle manufacturers achieves 85 per cent local content in the value of production over a calendar year that producer is entitled to by-law concessions for the remaining 15 per cent. The by-law can be used to import completely built-up vehicles (CBU) and/or original equipment components duty-free.

There are no quantitative restrictions on the import of CBUs or original equipment components. There is no compulsion in these arrangements.

Importers face a tariff-only import régime if the car makers wish to import original equipment components over and above their 15 per cent duty-free entitlement. The duty rate is currently 42.5 per cent phasing down to 35 per cent by 1992.

The Australian motor vehicle policy arrangements rely heavily on clearly transparent barrier measures which are enabling the local industry to improve its international competitiveness over time. The policy is transitional and has an end date. Local content is an integral part of this programme and the action taken by the Australian Government in 1988 to
move away from quantitative limitations on imports of components to a tariff-only situation was a deliberate attempt by the Government to ensure that the local industry was increasingly subject to greater international competition.

The response to the earlier question on local content schemes is also relevant here.
QUESTION

PLEASE ELABORATE ON YOUR EXPERIENCES IN IMPLEMENTING YOUR TRADE LIBERALIZATION PROGRAMME, INCLUDING A MORE COMPLETE DESCRIPTION AND ASSESSMENT OF THE ROLE AND STRUCTURE OF THE INDUSTRIES ASSISTANCE COMMISSION IN ADVANCING THAT PROCESS.

The trade liberalization programme was announced by the Australian Government as part of its May 1988 Economic Statement constitutes a major departure from past approaches to protection reform. Together with other industry policy reforms, the programme is designed to facilitate greater efficiency and competitiveness in Australian industry.

The Industries Assistance Commission (IAC) provided detailed technical assistance to the Australian Treasury and other departments for work leading up to the May 1988 Statement. This included the use of the IAC's assistance measurement systems for manufacturing and agriculture, and of the ORANI model of the Australian economy, to analyse the effects of various options.

Community understanding of the need for reform was fundamental to its acceptance of the May Statement. The IAC has played a central role in this process. Since its inception in 1973, the IAC has been an important force in building community awareness of the costs of protection.

Over the past sixteen years, the IAC has provided more than four hundred reports to Government on assistance arrangements for individual industries in the primary and manufacturing sectors. Its wide charter has also enabled it to report on matters in other sectors of the economy and on broad assistance programmes. Recently, IAC enquiries have extended to measures impeding adjustment in all sectors of the economy. In addition, the Commission has monitored trends in the overall structure of assistance, particularly in the agricultural and manufacturing sectors.

The key features of the operations of the IAC have been:

- its statutory independence from government;
- its open public enquiry process, which maximises opportunities for public participation and scrutiny;
- its economy-wide approach, which recognizes that assistance to one industry imposes costs on other industries and on consumers; and
- its statutory requirement to report annually on the general structure of industry assistance in Australia and its effects on the economy.

As noted in its TPRM report, the Australian Government has recently moved to restructure the IAC and broaden its role. With the establishment of the new organization, known as the Industry Commission, the Government
has acknowledged the invaluable contribution that an independent public enquiry body can make to trade liberalization and micro-economic reform more generally.

QUESTION

GIVEN AUSTRALIA'S MOVES TOWARDS A MORE TRANSPARENT AND COMPETITIVE TRADING SYSTEM, WHAT ARE AUSTRALIA'S INTENTIONS WITH REGARD TO EXISTING MULTILATERAL COMMITMENTS ON TECHNICAL BARRIERS TO TRADE AND GOVERNMENT PROCUREMENT?

In the context of satisfactory overall MTN results, Australia would be prepared to consider becoming signatory to the GATT Codes on Technical Barriers to Trade and on Government Procurement.

QUESTION

GIVEN PROGRESS IN TRADE LIBERALIZATION IN AUSTRALIA OVERALL, WHAT ARE YOUR INTENTIONS TO BRING THE LEVELS OF PROTECTION FOR INDUSTRIES WHICH HAVE HIGHER THAN AVERAGE PROTECTION, SUCH AS THE PASSENGER VEHICLE, SUGAR AND TOBACCO INDUSTRIES, CLOSER TO THE AVERAGE?

SUGAR

On 1 July 1989 the sugar import embargo was lifted and the associated domestic administered pricing arrangements were terminated. A transitional tariff of $115 per tonne applies to imports of raw and refined sugar, phasing down to $95 per tonne from 1 July 1992

- the tariff rates to apply for the longer term will be decided in the context of an Industry Commission enquiry to be held in 1991.

Domestic sugar pricing is now on a competitive commercial basis, with domestic refiners competing with imports

- imports are expected to be low, given the efficiency of local producers and the cost of transport.

There have been substantial structural adjustment and rationalization in the Australian sugar industry in recent years, with a steady decline in grower numbers and the closure of four out of thirty-two raw sugar mills since 1985

- this process, together with a steady increase in production, has resulted in considerable efficiency gains for the industry.

As set out above, Australia has already taken steps to convert import restrictions and administered domestic pricing arrangements for sugar into tariffs, with a firm programme for progressive tariff reduction.

TOBACCO

The general tariffs on tobacco leaf were reduced to 21 per cent on 1 July 1989 in line with the Government's 1988 policy decision to phase down tariffs to 15 per cent by 1 July 1992.
Non-tariff assistance to the tobacco-growing industry is provided by way of a local leaf content scheme and a stabilization plan which provides for an average minimum price and production quotas for domestically produced leaf. The stabilization plan will expire in October 1992 while the local leaf content arrangements will be terminated in October 1995.

**Passenger Motor Vehicles (PMV)**

Changes in assistance arrangements for the PMV industry are discussed in Section 3.4.2 of Australia's Trade Policy Review Mechanism Report. The post-1992 assistance arrangements will be determined after a review by the Industry Commission.

**Question**

Please elaborate on the recent endorsement of the principle that Australian quarantine decisions must be based on sound technical grounds. Does this mean that Australia would be willing to base its restrictions on criteria other than no-risk, and that the least trade restrictive actions will be chosen to achieve your health and sanitary objectives? Please give further information on the new Australian programme for inspection of food imports.

Australia has historically adopted an "acceptable risk" policy for quarantine, recognizing that to do otherwise is totally impractical as well as being inconsistent with its international obligations.

The Government's policy, as announced in December 1988 in the document "Australian Quarantine - Looking to the Future", endorsed the principle of risk management in quarantine decision making. Risk management incorporates not only biological factors but also other relevant considerations such as the economic consequences of introduction of the pest or disease, environmental costs, etc. It stated that in future the quarantine decision making process would be both more structured and more transparent. Major exercises are currently under way to determine the best ways of applying these principles.

**Imported foods inspection**

- Inspection of imported foods is public health oriented to ensure the safety and wholesomeness of imported foods.

- An Imported Food Risk Advisory Committee will be in charge of classifying imported foods for testing
  - high, medium or low public health risk based on both chemical and microbiological contamination
  - all consignments of high-risk foods to be inspected, also a sample of medium-risk foods; most foods are likely to be in the low-risk category which will attract no new inspection.
Where adequate documentary evidence is available from overseas countries certifying that the foods concerned comply with Australia's requirements, sampling and analysis on arrival in Australia will be waived.

QUESTION

PLEASE PROVIDE FURTHER INFORMATION ON AUSTRALIAN GOVERNMENT PROCUREMENT PRACTICES, ESPECIALLY WITH REGARD TO PREFERENCES AND OFFSETS, AND WITH REGARD TO THE IMPACT OF YOUR RECENTLY INTRODUCED PROGRAMME OF PURCHASING REFORM.

CIVIL OFFSETS

Civil offsets apply where the duty-free price of the purchases, or of accumulated purchases within a year, exceed $A 2.5m and the imported content exceeds 30 per cent of this price. The general requirement is that offsets be provided at 30 per cent of the imported content of single or accumulated purchases.

Aerospace and information technology hardware procurement have underpinned around 96 per cent of the Programme for each of the past two years.

PROCUREMENT GIVING RISE TO OBLIGATIONS, BY COMMODITY CLASSIFICATION

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<td>Aircraft, spacecraft, etc.</td>
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<td>IT hardware components</td>
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<td>Civil vehicles &amp; associated equipment</td>
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Government procurement in 1988-89 monitored by the Offsets Authority but which did not reach the offsets threshold totalled $10.6 million. This was marginally up on the previous year.

The offset programme is applied solely to items procured by Government for its own use. Offsets are required as a result of all purchases, leases or hire arrangements in respect of overseas-sourced goods or services within the scope of the Programme by all Federal or State organizations subject to the policy and a number of companies in which the Federal or State Governments have direct interest or which benefit from a government-bestowed protective advantage for:

(a) single orders placed overseas, as either prime or sub-contract; or
(b) cumulative orders placed on an overseas supplier by all organizations subject to the Policy, in a single financial year where the duty-free price of the purchase, or accumulated purchases, exceeds $2.5 million and the imported content exceeds 30 per cent of this price.

The level of the offsets obligation is 30 per cent of the imported content of single or accumulated contracts.

It should be noted that 'offsets' are defined as activities of commercial and technological significance which are directed to Australian industry by an overseas supplier as a result of, or in anticipation of, receiving an order for goods and/or services, from Federal and/or State Government organizations.

A number of government organizations which supply commercial goods and services in competition with the private sector are exempted from offsets.

The Industry Development Arrangements (IDA) for the telecommunication and pharmaceutical sectors are entirely separate programmes and are not related to the offsets requirements.

While the IDAs emphasize the undertaking of R&D in Australia and encourage exports, there are no offset requirements to be fulfilled by a company engaging in general trade in Australia. In fact, exports and R&D undertaken in the items covered by the IDAs (i.e. PABX, Small Business Systems (SBS), Cellular Mobile Telephone (CMTs) and first telephones) will count for both offset and IDA obligations.

The IDA scheme differs from the Offsets programme in the following manner

- to be accepted as civil offsets, proposals put forward by overseas suppliers must meet all of the criteria relating to commercial viability, price, level of technology and new work. There is no such requirement for the IDA scheme;

- the range of goods covered is significantly smaller as the IDAs apply only to Customer Equipment as outlined above;

- with civil offsets the preference is for long-term arrangements with credit available for future work undertaken, while the IDA scheme requires the points scheme to be met on a yearly basis; and

- the IDA scheme does not have a large number of conditions applying to its acceptance as does offsets activity.
In addition,

- the IDA scheme is transitional to a more deregulated market for PABXs, first telephone and CMTs;

- there is no compulsion to do each of the three activities - there is only an inducement to 'factor up' all of the three-point scoring activities to meet a specified minimum point level;

- the result at the end of the IDA programme will be a freer deregulated market, connection only dependent on the meeting of technical specifications set by AUSTEL rather than the old Telecom rules.

DEFENCE OFFSETS

The Government's Offsets Policy applies to the imported content of Defence equipment acquisitions, and is implemented by the Department of Defence through its Australian Industry Involvement (All) programmes.

An obligation to provide Defence Offsets activities for Australian organizations is incurred by a contractor entering into a contract with Defence to supply equipment or services from an overseas source. The level of Defence Offsets sought will be specified in RFTs - generally this would be 30 per cent of the imported content. However, the actual level of Defence Offsets specified for a particular purchase will be determined by the total All programme (i.e. Australian Production, Designated Work and Defence Offsets) considered to be consistent with overall defence objectives. Defence Offsets would not usually be sought where the value of the imported content in a contract is less than $A 2.5 million.

To qualify for inclusion in an All programme Defence Offsets must be activities of technological significance, and must contribute to the development of defence capability in Australian industry. They may include, but are not restricted to, manufacturing, software development, research and development, design and development, technology transfer and certain types of training. Neither Australian Production nor Designated Work will be accepted as meeting Defence Offsets obligations.

Defence may require, as a condition of the contract, that prime contractors accept responsibility for securing and achieving Defence Offsets obligations incurred by their overseas suppliers or sub-contractors. Where such a condition is not included in a contract, prime contractors would be expected to ensure that any overseas suppliers or sub-contractors entered into appropriate contractual arrangements with Defence.

Where a direct contractual arrangement with a supplier is not practical, for example under the US Foreign Military Sales system, or where the time-scale for acquitting the offsets obligations exceeds the period of the principal contract, or where the offsets activities are mainly non-project related, the overseas supplier or contractor would be required to enter into a Project Deed to provide the Offsets.
The Government's Offsets Policy allows overseas suppliers to undertake activities that generate credits to be applied against future offsets obligations. Defence facilitates this arrangement through Credit Deeds negotiated with overseas suppliers to establish long-term programmes of technological and defence significance with Australian industry. In most cases the programmes are not related to any specific project but are essentially directed towards industry goals that meet the long-term needs of the Australian Defence Forces (ADF).

Defence Offsets arrangements are monitored by Defence. To facilitate this process contractors are required to report on obligations and achievements in a format and frequency nominated in the relevant contract or Deed. Such reports are subject to verification procedures by Defence, including confirmation by the Australian recipient.

Note: **Australian Production.** In the context of AII, Australian Production refers to that part of a contract to be obtained from competitive Australian sources, and encompasses all activities with Australian value added, including research and development. Where Australian industry can demonstrate that it has the technological capability to supply equipment and services to the ADF; and that it is able to do so competitively, in terms of price, performance and quality, contractors would be expected to source such equipment and services in Australia.

**Designated Work.** Defence may require that certain work activities associated with the supply of capital equipment be carried out in Australia because of their importance in the development or maintenance of industry capabilities that contribute to defence self-reliance. Where such work cannot be carried out competitively in Australia, prospective contractors may be requested to submit proposals for the work to be undertaken in Australia at a cost premium above overseas prices. The term Designated Work is used to describe work activities that are subject to these arrangements.

**Australian Industry Involvement**

Australian Industry Involvement (AII) programmes are established under contracts to supply capital equipment. An AII programme has three elements: Australian Production, Designated Work, and Defence Offsets. The prime objective of AII is to maximize the level of competitive Australian Production in capital equipment contracts. Australian Production is augmented by Designated Work and Defence Offsets which aim to introduce to Australian industry specific capacity to supply, repair and maintain defence equipment through technology transfer and the placement of work with local enterprises.
Defence Industry Development Program

The Defence Industry Development Program provides for the establishment of generic manufacturing and maintenance capabilities in Australia, where this would be consistent with an ADF requirement. Activities that may qualify for the Program include feasibility studies, new manufacturing facilities, training, and research and development on new materials and processes.

GOVERNMENT PREFERENCES AND PURCHASING REFORM

A recent statement on Government preferences and purchasing is at attachment A.

QUESTION

PLEASE EXPAND ON YOUR CUSTOMS ADMINISTRATION PROCEDURES, PARTICULARLY THE ISSUE OF DISCRETIONARY MINISTERIAL POWERS TO MAKE CHANGES TO THE AUSTRALIAN IMPORT REGIME FOR CERTAIN PRODUCTS, AS WELL AS THE PROCESSES FOR TAKING ANTI-DUMPING AND COUNTERVAIL ACTIONS AND PROCEDURES FOR TARIFF RECLASSIFICATION.

(a) Discretionary Ministerial powers to make changes to the Australian import régime for certain goods

Attachment B gives an exhaustive description of possible changes to Australia’s import régime. In particular attention is drawn to paragraphs 1 and 3.5.

(b) Processes for taking anti-dumping and countervailing actions

A copy of an Information Booklet on Anti-Dumping and Countervailing is attached (Attachment C).

(c) Procedures for tariff reclassification

There are some basic reasons for changes to tariff classifications:

1. Legal Rulings

The decisions made by legal bodies such as the Administrative Appeals Tribunal or State Supreme Courts, following appeals by importers against Customs rulings.

2. Customs Co-operation Council Rulings

The Harmonized System is under constant review which may result in changes to the various headings and sub-headings of the nomenclature.
3. Change of practice by Australian Customs Service (ACS)

These occur when the ACS changes its opinion as to the correct identification of a class or kind of goods for tariff classification purposes.

4. Adjustment of Conceptual Error by the ACS

These occur when the tariff classification applied by the ACS is subsequently recognized to be in error of fact or law.

Categories 1 and 2 may require changes of legislation, which is a matter of parliamentary procedure and not of Ministerial discretion.
ATTACHMENT A

JOINT MINISTERIAL STATEMENT BY
THE MINISTER FOR INDUSTRY, TECHNOLOGY AND COMMERCE AND
THE MINISTER FOR ADMINISTRATIVE SERVICES

Major Reforms to Government Purchasing

The Government is about to take significant steps forward in improving both the cost-effectiveness of government purchasing and the ways in which it can enhance opportunities for local suppliers to get Commonwealth business.

This is a major element of micro-economic reform.

From 1 November there will be major changes to improve the efficiency of government purchasing. At the same time we will introduce new measures to give greater effect to our strong and continuing commitment to encouraging the development of local industry.

Federal public sector purchasing is very big business. An estimated seven to eight billion dollars, or 4 per cent of gross domestic product, is spent each year by budget sector agencies alone. This estimate excludes very substantial expenditure by government business enterprises. Purchasing is also very important to the efficient administration of Government. Government programmes would founder if their supplies of goods and services were to fail through breakdowns in their purchasing systems or if capital acquisition projects were unable to deliver on time and within budget.

But in the past purchasing has been a backwater. In Government, as in the private sector, it has not received the attention that it merits from management and its potential to contribute to better management has not been exploited. This was borne out by the service-wide review which was conducted last year under the Financial Management Improvement Programme.

The review involved extensive consultation within Government and with industry. It took account of the views of the people who work in purchasing and managers who are served by purchasing. It took account of development in other governments. It also took account of the views of those who do business with the Government.

It found:

. a restrictive regulatory environment;
. an emphasis on process rather than outcomes;
. a culture of caution and risk avoidance;
. slow and laborious processes;
a failure to provide staff with the training and career development opportunities they needed;

- a preoccupation with technical rather than functional specifications;

- a commitment to single stage tendering processes whether or not they were effective in the market.

The system was costing us money through excessive processing costs, time delays and failure to obtain the best price or the most appropriate goods and services from suppliers.

It was against this background that the Government decided to embark on the current programme of reforms. The aim, as with other reforms to the public administration, was not only to give managers greater freedom and authority to manage but also to require them to manage and to be accountable.

These reforms are part of a general programme to improve efficiency in government administration. In the administrative services portfolio this has also been reflected in major reforms to the provision of common services which have already produced better performance and very large savings to the Government.

Following months of planning and preparation, the progressive implementation of the changes will begin with effect from 1 November. The following requirements have been undertaken:

- The Audit Act 1901 has been amended to enable the issue of ministerial guidelines;

- The finance regulations dealing with purchasing have been substantially amended to eliminate prescription of detailed processes and tabled in Parliament;

- The Minister for Administrative Services has tabled and issued several guidelines on principles and practices for purchasing under the new régime; and

- Departments are preparing purchasing reform plans for endorsement by their Ministers before they begin to operate under the new régime.

Departments are required to advise on progress in their annual reports from 1988-1989 to 1990-1991.

To complete the system, the Minister for Administrative Services will shortly issue a policy framework which sets out in summary form the major policies applying to Commonwealth purchasing and their integration with industry policy.
The main elements of the new approach will be:

- A new emphasis on value for money in government purchasing, rather than price or acquisition costs. Departments' officers will need to look broadly at the performance of the goods and services they buy and their suppliers and take all relevant costs into account in assessment of offers;

- Greater scope for departments to settle purchasing methods within a general principle of open and effective competition. Departments will have to gazette public invitations of offers and contracts arranged. But methods of approach to the market will not be rigidly prescribed. Use of conventional public tendering will continue, but other approaches, such as staged purchasing and prequalification of suppliers, will be encouraged, together with early notification of purchasing plans.

Under this new approach there will be greater opportunity for departments to tailor their methods to the markets in which they are buying. Generally, we expect to see:

- Reduced costs in bidding and administration for both suppliers and Government;

- A more competitive approach from suppliers;

- A continuing emphasis on ethics and fair dealing, supplemented by a formal code of ethics which the Minister for Administrative Services has already issued with one of the Commonwealth procurement guidelines;

- Training and development to raise professionalism in Commonwealth purchasing and supply; and

- Use of practice and procedures that will make it easier for industry to provide commercial solutions to Government, and for Government to get value for money, for example:
  - functional specifications rather than detailed technical specifications;
  - purchasing planning including forward-purchasing planning;
  - negotiation, including post offer negotiation in appropriate circumstances; and
  - standardized and simple documentation.

Mr. President, I want to turn now to the Government's Preference Policy.
For a long time the Commonwealth Government has given some form of preference in its purchasing with the object of assisting Australian firms to obtain Government business and thereby encourage the development of Australian industry. Since 1983 New Zealand industry has been treated in the same way as Australian industry for the purposes of the Policy, consistent with the closer economic relations trade agreement between the two countries.

The Preference Policy has been in operation in some form for many years and has four main elements:

- a monetary margin of preference;
- avoidance of biased or discriminatory practices in purchasing;
- debriefing of unsuccessful local tenderers; and
- mandatory use of local products in some construction works purchases.

The preference margin is generally equivalent to a notional discount of 20 per cent on the Australian and New Zealand content of tendered goods and related services. There is discretion to give a higher margin in defined circumstances and for high value contracts.

A review of the effectiveness of the Preference Policy was initiated in 1988. The review was part of our response to the 1987 Report of the Inglis Committee of Review on Government High Technology Purchasing Arrangements.

There has been extensive consultation with industry, the unions and the States about the Preference Policy. As part of the review, the Bureau of Industry Economics evaluated the effectiveness of the margin as an industry development mechanism. What has emerged is that:

- The margin is cumbersome and costly to administer;
- It has very little effect, for example it has influenced the outcome of only 107 contracts out of tens of thousands;
- It is inconsistent with the thrust of our industry policy, which is directed to making local industry more competitive. This is because it is like another protective tariff overlaid on the existing customs duty. It does not serve our concern to make industry more competitive;
- The margin is inconsistent with the new purchasing policy with its emphasis on value for money. In this régime it does not make sense to use a mechanism which is narrowly focused on price. Remember that the new purchasing policy does not rely solely on final price.
For us the outcome of the review of preference was disappointing, we find ourselves responsible for a scheme which is not cost effective, not contributing to industry development and which is contrary to the thrust of purchasing reforms. But we believe very strongly that we must do something to demonstrate and make effective our commitment to Australian industry.

We considered various alternatives to the margin, including a second offer scheme to give suppliers with high local content a chance to make a second bid in some circumstances. However, the scheme did not generate wide acceptance, so we did not proceed with it.

What we have decided to do is to abolish, from 1 November, the notional 20 per cent discount component of the National Preference Agreement as applied by the Commonwealth. But we will retain and strengthen the anti-discriminatory elements of the current policy. For example, we are looking at making purchasing managers ensure that the specifications they issue are not biased.

The elimination of discrimination against local industry is fundamental government policy and the basis of the National Preference Agreement to which the Commonwealth is strongly committed.

The Commonwealth's decision was agreed to in principle by the signatories to the National Preference Agreement at a meeting of the Australian Industry and Technology Council on 22 September. Some of them wanted to delay removal of the margin for twelve months, but this was not a practical alternative if we were to press on with our general purchasing reforms, so the changes will go ahead and we have been asked to report back to the Australian Industry and Technology Council next year on their effectiveness.

In any case, not all signatories to the Agreement apply the 20 per cent margin. Some apply 10 per cent and New Zealand does not apply a margin at all.

The specifics of the new arrangements are as follows:

1. The 20 per cent preference margin and discretionary preference elements of the Commonwealth's policy will be abolished from 1 November 1989 - the same date as for the commencement of the purchasing reforms. Requests for tender for goods over $A 20,000 issued before that date will be assessed under the old system;

2. The important elements of the policy dealing with non-discrimination and debriefing of unsuccessful local tenderers will be retained and strengthened;
Emphasis will be placed on the use of functional specifications rather than detailed technical specifications. This will give local suppliers the opportunity to offer cost-effective and innovative solutions to user requirements;

A purchase Australian office will be established;

There will be a public sector education campaign about buying local products;

We will fund the establishment of a full-time National Industrial Supplies Office Co-ordinator;

A working party of officials investigation whether departments should pay customs duty will report by 1 November;

Priority will be given to dealing with the remaining recommendations of the Inglis Committee of Review on Government High Technology Purchasing Arrangements;

Consideration will be given to measures to co-ordinate the use of Commonwealth and State government purchasing to assist industry; and

There will be additional Commonwealth funding for the very successful National Procurement Development Programme. State Ministers at the recent Australian Industry and Technology Council meeting agreed in principle to additional joint funding for the programme after June 1990.

I turn now to some details of these measures.

Existing measures

The measures which will be retained and strengthened were last endorsed in 1984 and are designed to give Australian and New Zealand suppliers every opportunity to win orders from the Commonwealth. They require that:

- Government specifications do not exclude suitable, or reasonable adaptable Australian and New Zealand products;
- Alternative Australian and New Zealand solutions be considered;
- Department's ordering patterns where possible be scaled to the minimum economic order requirements of Australian and New Zealand industry; and
- Unsuccessful suppliers be debriefed on request about the reasons why they failed to win orders.
A purchase Australian office

This new and entrepreneurial organization will be established in the Department of Administrative Services to develop a rôle in promoting Australian and New Zealand industry in government and government business opportunities to industry. It will help to educate business about government buying, without cutting across what is already being done in government departments and agencies. A 008 number has been installed in the new office to handle queries from local suppliers.

The office will take on the rôle of designated body under the National Preference Agreement to investigate any complaints of discrimination.

It will manage a public sector education programme.

It will work closely with those agencies in government with specific industry development functions, such as the Department of Industry, Technology and Commerce and AUSTRADE, and with the purchasing community generally.

It will also join in investigating other suggested initiatives, such as strategic purchasing by Commonwealth and State governments to develop local industries. And it will develop links with the industrial supplies offices.

National Industrial Supplies Office Co-ordinator

The Government has also committed funds for the establishment of a full-time National Industrial Supplies Office Co-ordinator in Canberra. The industrial supplies offices assist suppliers to be fully aware of the commercial and technical requirements of major purchasers and ensure that these purchasers are equally aware of the supply capabilities of local producers. The national office will co-ordinate the efforts of the various State offices to stimulate Australian industry.

The office is presently staffed on a part-time basis with funds from the States. The Co-ordinator will work closely with the purchase Australian office.

A public sector education campaign

The aim of this campaign will be to promote in government the real advantages of dealing with Australian and New Zealand industry and the opportunities to get better value for money through doing so. These can include:

. whole-of-life support;
. shorter supply lines; and
. avoiding the vagaries of currency fluctuations.
Payment of customs duty by departments

One step we are disposed to take is to make departments, not just statutory authorities, pay customs duty. Under present arrangements, departments are required to include the duty notionally for tender evaluation purposes. However, actual payment of the duty would remove a possible financial incentive which departments might have to buy cheaper imports. It may also simplify the government purchasing process for both suppliers and buyers. We have directed a group of officials considering the issue to report by 1 November.

General Agreement on Tariffs and Trade - Government Procurement Code

Removal of the preference margin would allow fresh consideration of Australia's accession to the Code should the Government decide that this will offer advantages to Australian industry. At present we are unable to sign as a result of the protective nature of the preference margin.

To reiterate, purchasing reform is an important part of the Government's programmes for economic improvements. Greater public sector efficiency and improved access for local suppliers has a beneficial effect right down the line. And it is consistent with and complementary to the Government's programmes for the development and restructuring of Australian industry.

The issues have been thoroughly canvassed by all the interested parties. We all want better government purchasing systems that save time and money, improve service and performance and encourage local suppliers. We don't want symbolic reforms or to continue with processes that are outmoded or unworkable.

We aim to make purchasing by government conform to the best practices of the private sector.

Certainly, we will demonstrate for all to see our clear commitment to the development and strengthening of Australian industry and we will show our equally strong commitment to the anti-discriminatory principles underlying the National Preference Agreement.
ATTACHMENT B

1. Introduction

1.1 The responsibilities of the Australian Customs Service (ACS) include the control of goods, the import of which is prohibited by law. In most cases the prohibition is conditional and permission to import may be given by a designated authority. These controls over imports are exercised during the operations of several components of the Customs Programme, e.g. passenger control, cargo control, postal control or entry processing.

1.2 Most import prohibitions have their legal basis in the Customs (Prohibited Imports) Regulations. The most notable exception to this are the provisions of the Commerce Trade Descriptions Act 1905 and the Commerce (Imports) Regulations relating to the marking of imported goods, the restrictions on the import of fauna and flora expressed in the Wildlife Protection (Regulation of Exports and Imports) Act 1982 and controls over the import of cultural property by means of the Protection of Movable Cultural Heritage Act 1986.

2. Objectives

2.1 The objectives of the ACS in regard to prohibited imports are to co-operate with policy agencies and, within the constraints of work priorities and resource allocation, to:

- deny release of prohibited goods unless a permission to import is presented;
- apply audit techniques and risk assessment to assist in the identification and examination of consignments on behalf of those agencies.

2.2 Attainment of these objectives will depend on a clear understanding by both the ACS and the policy agencies of the responsibilities of each.

3. Principles

3.1 Goods to be controlled

3.1.1 While the Government might prohibit or restrict the import of any goods such a step is not to be taken lightly as it interferes with a basic right of a citizen - the quiet enjoyment of his property. Of course this right must be exercised so as not to adversely affect the rights of others.
3.1.2 Goods in respect of which the erosion of the right of quiet enjoyment may be most readily conceded are those the uncontrolled import of which would:

- pose a threat to:
  . the health or safety of members of the community;
  . the environment;
  . the moral well-being of children;
- be offensive to a reasonable adult person;
- be contrary to a Resolution of the United Nations for which Australia cast a favourable vote.

Only goods of these classes should be candidates for import prohibition.

3.2 Circumstances under which control can be applied

3.2.1 Even though goods fall within one of the above classes import controls should only be applied at the Customs barrier if:

- there is no practical alternative such as:
  . controls at the point of retail or wholesale sale;
  . legislation creating offences to possess, sell or use the goods;
- similar restrictions are placed on possession, sale or use of relevant Australian made goods;
- the control can be effectively administered by the ACS; and
- there is a reasonable expectation that imports would occur.

3.3 Prohibitions must be precisely specified to enable traders to determine the status of goods before importation.

3.4 Absolute prohibitions are not appropriate. The control authority should have the flexibility to allow import in appropriate cases.

3.5 The Minister responsible for the ACS should not be a controlling authority. Customs has no reason of its own to control the import of anything. Controls should only be imposed after acceptance of a proposal from a Policy Department or Agency.
3.6 Policy Departments and Agencies are responsible for:

- examining applications for permission to import;
- issuing permits;
- dealing with disputes;
- providing the ACS with intelligence to enable risk assessment to be used and specific shipments to be targeted.

This is dealt with in more detail in Section 6.

3.7 All regulations will include a sunset clause to ensure that controls do not outline their usefulness.

Note: These principles preclude import prohibitions on goods which do not fall within 3.1 and in respect of which the circumstances specified in 3.2 do not apply, e.g.:

- motor vehicles which do not comply with State or Territory registration requirements;
- goods in retail packages of non-standard sizes;
- controls imposed to inform consumers, e.g. country of origin marking, which are more effectively administered at the point of retail sale;
- also goods the prohibition of which would be no more than non-tariff barriers for industry assistance purposes.

4. Procedures

4.1 Physical examination of all, or a large proportion of, imported goods is neither feasible, on resource allocation grounds, nor desirable if undue interruption to the movement of goods and passengers is to be avoided. Selections for examination of potential prohibited imports must be made in the light of the many reasons to physically examine goods. They should be based on criteria designed to not only maximize detections but also to deter attempts to import.

4.2 Procedures will vary with the Programme Component within which they are employed. They will, however, involve audit techniques and risk assessment, physical control and examination of goods and documentary checks.

4.3 Details of procedures are published in ACS manuals.
5. **Barrier control**

5.1 Problems associated with barrier controls are not unique to the ACS. They are shared by other Customs administrations, particularly those of countries with extensive but thinly populated border areas. This is more than just a matter of available resources.

International developments and community aspirations generally favour maximum freedom for the movement of goods and people with a minimum of intervention.

5.2 The aim is to introduce only those controls whose objectives cannot be met in another way and to apply them on a selective basis.

5.3 Identification of prohibited imports is seldom straightforward. Import documentation often does not contain an adequate description of goods so that their status can be determined and physical examination is required. Even then the examining officer must relate the goods to the terms of the prohibition. Export technical advice might be needed.

5.4 Modern freight methods often mean that delay to one consignment involves other unrelated consignments, such as those in an LCL container, in some delay.

6. **Arrangements with other agencies**

6.1 Import prohibitions applied through the means of Customs legislation will only be introduced at the request of Commonwealth agencies which can demonstrate that such action is essential to deal with an identified problem.

6.2 As an import control has no effect on goods produced or manufactured in Australia a prerequisite to an import prohibition will be controls over sale, possession or use of the goods or goods of the same class or kind. In most cases it will be found that these latter controls are the most effective and obviate the need for an import control.

6.3 To permit orderly administration, to fix responsibilities to ensure that controls remain relevant and to facilitate the solving of problems it is essential that there be a formal arrangement between the ACS and the agency responsible for the control. Such an arrangement, signed on behalf of each party, should set out:

- the objectives of the prohibition;
- the responsibilities of each party for such aspect as:
  - documentation;
. enquiries and disputes;
. adherence to conditions attached to permissions;
. interpretation of legislation;
. seizures and disposal of goods;
. conduct of investigations;
. prosecutions;
. training of ACS officers;
. publicity;
. reviews of effectiveness and efficiency; and
. of continuing relevance of control.

7. Relations with State authorities

7.1 Various State authorities may be able to assist in the administration of import prohibitions by providing specialist advice. However, care must be taken that such advice is relevant to the terms of the import prohibition itself and is not a reflection of the particular provisions of the law of a State, which may not be relevant to the import control.

8. Conclusion

8.1 An import prohibition is not to be imposed lightly. The chances of detection and the cost of detection must be weighed against perceived benefits. At the customs barrier the nature of goods is not as apparent nor are goods as readily available for inspection as at the point of sale or use.

8.2 While questions such as community health or safety may justify consideration of an import prohibition the efficiency and effectiveness of alternative methods must always be considered.
ATTACHMENT C

Foreword

This booklet is designed as an introduction to Australia's anti-dumping legislation as contained in Customs Tariff (Anti-Dumping) Act 1975, the Customs Act 1901 and the Anti-Dumping Authority Act 1988. Copies of the legislation can be obtained from Commonwealth Government bookshops.

To make application for the imposition of dumping or countervailing duties or to obtain more information about the anti-dumping legislation, please contact:

The Manager
Dumping
Australian Customs Service
Customs House
5 Constitution Avenue
Canberra Act 2601
Purpose of anti-dumping legislation

Australia's Anti-Dumping Act is in place to protect Australian manufacturers and producers from two types of unfair import competition. These are:

- dumping - where goods are imported into Australia at lower prices than the price paid for like goods in their home market; and
- subsidization - where goods are imported into Australia which have been produced or exported with the benefit of government subsidies.

Australian producers are entitled to protection under the Act only if it is established that dumped or subsidized imports have caused or threaten to cause material injury to an Australian industry producing like goods. An anti-dumping duty or a countervailing duty may be levied on these imports to offset the price advantage caused by dumping or subsidization.

Establishing material injury

Injury or threat of injury must be demonstrated to the major proportion of an Australian industry producing like goods to those that have been dumped or subsidized.

Injury may be demonstrated by factors which include loss of sales, depressed prices, reduced profits, retrenchments, under-utilization of capacity or loss of market share. The injury must be material and there must be a causal link between the dumping or subsidization and the injury.

What is dumping?

Dumping occurs when products of one country are exported to another country at less than their normal value. This does not necessarily mean, however, that goods imported into this country and sold for less than the prevailing price of similar Australian produced goods have been dumped.

What is subsidization?

Governments may provide assistance such as loans, grants and tax incentives, to private enterprises to stimulate industries, increase employment, promote exports and further national objectives. These subsidies may lower the price of goods imported into Australia. Under the provisions of the General Agreement on Tariffs and Trade, (GATT), subsidies to manufacturers in one country should not cause injury to domestic production in other countries.

What is the normal value?

Normal value is the term used to describe the price paid for like goods sold for domestic consumption in the country of export by the exporter or by other sellers.
In the absence of such a domestic price, normal value is based on the price paid for like goods sold to importers in other countries, or, on the basis of the cost of production plus an amount for selling and administrative costs. Unless otherwise directed a zero profit rate is imputed.

Where the normal value cannot be determined by any of the above methods because sufficient information has not been furnished or is not available, the normal value is an amount determined by the Minister on the basis of all relevant information.

If the export price and the domestic price are not on a comparable basis, due allowance may be made for differences in physical characteristics, quantities, conditions and terms of sale, taxation and other differences affecting price comparability.

What is the export price?

Where the purchase from the exporter by the importer is an arms length transaction, the export price is the actual price paid or payable for the goods at the point of exportation.

Where the purchase from the exporter by the importer is not an arms length transaction and the goods are subsequently sold at arms length by the importer in the condition in which they are imported, export price is the price at which they are so sold less deductions of any Customs duty and sales tax paid, any costs incurred after exportation, and profit.

In any other case, the export price is as determined by the Minister having regard to all circumstances of the transaction.

Margin of dumping

The margin of dumping is the amount by which the normal value exceeds the export price of the goods. The dumping duty equals the margin of dumping. The Minister may direct a lesser amount of duty if such is sufficient to remove the injury to an industry.

Amount of subsidy

Countervailing duty may be levied to equal the full amount of the subsidy. The Minister may direct that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

Who may make application?

A person who believes that there are, or may be, reasonable grounds to publish a dumping duty notice or a countervailing duty notice may make an application to the Australian Customs Service.
Information required

An application must be made in accordance with a questionnaire designed to help applicants present their case simply and logically. It is structured to bring out as much information as possible about the dumping/subsidy and material injury caused to an Australian industry.

The questionnaire requires information relating to the goods alleged to be dumped or subsidized, the Australian industry producing like goods and evidence of dumping or subsidization.

It is also necessary to provide evidence of injury to an Australian industry and demonstrate that the injury is material and is caused by dumped or subsidized imports.
Application received

Rejection of application - incomplete

15 days maximum

Application properly documented

Rejection of application - no prima facie case

40 days maximum

Initiation of investigation - prima facie case

Preliminary finding

120 days maximum

Undertaking accepted - proceedings suspended

Termination - either no dumping/subsidization, no material injury or no causal link

Positive - provisional measures if justified

Final finding

120 days maximum

Undertaking accepted - proceedings suspended

Termination - either no dumping/subsidization, no material injury or no causal link

Positive duties levied
Consideration of application

Once an application has been received it is examined to decide whether it contains all the information required. An inadequately documented complaint will be rejected within fifteen days of receipt with a statement of the reasons for rejection.

An adequately documented application that is not considered to constitute a prima facie case of material injury caused by dumping/subsidization will be rejected within fifty-five days of receipt.

Investigation process

Where an application is not rejected the Australian Customs Service will carry out a full investigation of the alleged dumping/subsidy, claimed injury and causal link so as to reach a preliminary finding. This may include verification of information supplied by overseas manufacturers and exporters and discussions with foreign governments. This stage of the investigation process will be carried out within a maximum of 120 days from the date of public notification.

If either dumping/subsidization is not established, or there is no material injury, or no causal link exists between dumping/subsidization and material injury, the investigation will be terminated and a negative preliminary finding issued. Otherwise a positive preliminary finding may result in provisional measures being levied on the dumped or subsidized imports to protect Australian producers.

Provisional measures

Provisional measures may be in the form of cash or documentary securities and can be taken at the time of a positive preliminary finding where there is sufficient evidence of dumping/subsidization, material injury, and causal link. Such measures are applied where it is judged that they are necessary to prevent injury being caused to an Australian industry during the period of further enquiries.

Final finding

Following a positive preliminary finding the question of whether a dumping duty notice or countervailing duty notice is justified is referred to the Anti-Dumping Authority. Such notices have the effect of imposing a definitive duty on future imports.

The authority, after holding an enquiry into the matter and within a period of 120 days, will report to the Minister recommending whether any such notice should be published and the extent of any duties payable.

Subsequent imports

Any goods imported into Australia that are like those for which a dumping or countervailing notice has been published are examined by the Australian Customs Service to determine if they are dumped or subsidized goods. Duty will be assessed accordingly.
Retrospectivity

Where provisional measures have been taken, provision exists for dumping or countervailing duties to be levied retrospectively.

Also, in certain circumstances, duties may be levied for a limited period preceding the application of provisional measures.

Undertakings

Dumping and subsidy enquiries may be suspended upon acceptance of written undertakings given by exporters and/or governments to conduct their future export trade in terms that are acceptable to the Minister.

Undertakings may be accepted only after enquiries have indicated that there is sufficient evidence of injury and a causal link between dumping/subsidization and the injury.

Sunset provision

Anti-dumping and countervailing measures lapse after three years unless revoked earlier. This sunset provision also applies to voluntary undertakings which have been given by exporters and/or governments.

Appeal procedures

In cases where the Australian Customs Service has rejected an application because of inadequate documentation or no prima facie case, the applicant may, within thirty days, request that the Anti-Dumping Authority review the decision. The authority will confirm or revoke the decision within sixty days.

Similarly, where the Australian Customs Service has made a negative preliminary finding, the applicant may, within thirty days, refer the finding to the Anti-Dumping Authority for review. The authority will confirm or reject the finding within sixty days.

An application for review by the Federal Court under the Administrative Decisions (Judicial Review) Act may be made by a person whose interests are adversely affected by the decision, conduct, or failure to take a decision. Such a person may also request a statement of reasons from the decision-maker.
ATTACHMENT D

TELEVISION PROGRAMME

STANDARD 14

AUSTRALIAN CONTENT ON COMMERCIAL TELEVISION

1989

Part of the Inquiry Conducted by the Australian Broadcasting Tribunal into the Amount of Australian Content Transmitted by Commercial Television Licensees

IP/86/11A

November 1989

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"If we don't tell our own stories and sing our own songs, or dream our dreams, we might as well pack up and go to California."

Tony Morphett

THE PRICE OF BEING AUSTRALIAN conference

September 1987
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AUSTRALIAN FACTOR: TEST FOR DIVERSITY PROGRAMMES

COMPLIANCE WITH AUSTRALIAN FACTOR TEST
A comprehensive Report will be published in 1990 setting out the background to this Inquiry, summaries of information and details of the research considered. This report centres on the Tribunal's decisions. The extensive process of consultations both on substantive issues and drafting and technical matters is demonstrated through the material in the Inquiry file and the transcript of proceedings at conference.
AN AUSTRALIAN LOOK FOR COMMERCIAL TELEVISION

1. The public interest in this Inquiry is that viewers should receive an assured level of identifiably Australian programmes which recognize the diversity represented in the Australian community and which are developed under Australian creative control.

2. The need to regulate Australian content on commercial television has been recognized since the early sixties. It has proved necessary because there is an inherent conflict in the commercial system between financial viability and quality and quantity of Australian programmes. This conflict is exacerbated when overseas programmes are available at much less cost than Australian programmes, when technology provides for easy access to overseas programmes, and when licensees are protected from competition by the licensing system.

3. In setting this Standard the Tribunal has sought to:
   * reduce regulation of the commercial television sector;
   * encourage rather than restrict production activity;
   * provide maximum flexibility for licensees;
   * take a commercially-realistic approach to broadcasting development; and
   * ensure certainty of application for all parties affected.

4. The principle that has guided the Tribunal in determining appropriate minimum levels in this Inquiry has been that of setting a "safety net" at the relevant average programme levels reached and sustained in the past. The Tribunal has determined that substantially increased programming is required in the case of children's C drama.

5. This Standard provides for:
   * a minimum level for Australian programmes;
   * minimum Australian drama levels which will require an increase for some licensees in the amount of drama transmitted;
   * a significant increase for all licensees in the amount of children's C drama; and
   * a recognition of a group of programmes which may have commercial disadvantages but can add to programme diversity.

The Standard recognizes that all programme types are not equal in terms of their cost and risk to licensees and offers incentives to licensees who may wish to experiment with untried programmes or take financial risk with more expensive programmes.
6. In considering how best to meet its objectives the Tribunal had regard in the first instance to records and analysis of overall levels of Australian programming, the composition of programming generally, and the composition of, and trends in, Australian programming in particular. The Tribunal collected its own evidence (published in a series of discussion papers), invited comment in the form of submissions and sought additional evidence from industry bodies and members of the public. The evidentiary stage of the public Inquiry was comprehensive and sufficiently flexible to enable the Tribunal to properly consider and evaluate all the issues raised within its broad scope and to respond to issues raised at various stages of the finalization of the Standard.

7. An Australian is defined for the purpose of this Standard as "a person who is a citizen of or is ordinarily resident in Australia". Interpretations of "Australian" are expected to take account of the contemporary reality which is that Australia is a diverse multi-cultural society with an indigenous Aboriginal population.

8. The concept of an Australian look for commercial television was first articulated in the Tribunal's Self-Regulation for Broadcasters Report of July 1977 which at paragraph 8.2 states:

"An Australian television service which looks unmistakably (sic) Australian has long been regarded as a highly desirable ideal."

9. While the report acknowledged that there were structural difficulties effecting the attainment of a sufficient level and quality of Australian programming and that:

"stations should not be forced into bankruptcy through insistence on unattainable levels of Australian content"

it went on to state:

"Neither should the situation be allowed to develop whereby the majority of the programmes televised by Australian stations do not adequately reflect the Australian way of life." Paragraph 8.4

10. The report noted that "an Australian look involves an inherent conflict between the extremely sensitive and highly complex issues of station profitability, employment opportunities for creative Australians and the programme preferences of viewers".

11. In determining the outcome of the Australian Content Inquiry, consideration of the programme preferences of viewers, the commercial viability of licensees, and the capacity of the production industry to produce appropriate Australian television programmes has been taken into account in the context of the objectives set out above.

12. The financial impact of the Standard on licensee's operations has been considered throughout the Inquiry. A submission made on behalf of
licensees on 18 September 1989 sought leave to make detailed submissions on financial impact matters. In October 1989 these licensees wrote to the Tribunal indicating that they would not be making further submissions about financial matters.

13. The Tribunal is grateful for the information and submissions carefully prepared and provided by submitters and parties and for their co-operation throughout the conduct of the Inquiry.

Australian drama

14. An analysis of all programming between 6.00 am and 12 midnight over the full financial year periods 1979/80, 1983/84 and 1986/87 for six services (ATN7 Sydney, ATV10 Melbourne, GTV9 Melbourne, ADS10 Adelaide, QTQ9 Brisbane, STW9 Perth) was conducted during the Inquiry. The results were published in The Price of Being Australian (September 1987) and a secondary analysis published in the Inquiry discussion paper Australian Drama on Commercial Television (May 1988).

15. The results for 1986/87 were the most recent detailed results available to the Inquiry. These confirmed that drama is the most popular programme type on commercial television. They indicated that drama programmes accounted on average for 39 per cent of transmissions. Australian drama programmes accounted on average for 12.1 per cent of all drama and 4.7 per cent of all programmes broadcast. An analysis of all Australian programming transmitted by the three Sydney services (TEN10, TCN9 and ATN7) between 6.00 am and midnight during the 1988/89 year has just been concluded. In 1988/89 Australian drama accounted for 4.5 per cent of all programmes broadcast by these services.

16. Put simply, the smaller percentages of Australian drama are a result of it being expensive to produce in comparison to the cost of importing similar programme types. Prime time drama can be imported for between 10 per cent and 20 per cent of the cost of producing equivalent local programmes.

17. The cultural importance of, and the commercial disincentives to produce Australian drama are the reasons why it was first regulated in 1968. The popularity of Australian drama is no longer in question. However, the commercial pressures to show a high proportion of overseas drama and the disincentives to produce high budget Australian drama are still present. Regulation for Australian drama remains necessary.

Quality

18. The Tribunal accepts that any assessment of quality is subjective but at the same time is aware of the need to develop a regulation capable of distinguishing the cost and risk differences to licensees of different programme formats. Although quality is a subjective judgement which cannot necessarily be equated with cost, the purchase
price for a programme is a useful indicator of its production value and what it will look like. It is important to recognize the difference in cost to licensees particularly in relation to drama programmes made for television. One-off dramas such as mini-series and telemovies cost more to produce than series or serials. A fixed quota identifying the number of hours of drama which has to be produced does not recognize this difference. A factor has been developed for the programmes which are to be included in the drama/diversity score. This takes into account the difference in production costs and prices paid for different types of drama and the difference in risk between one-offs and series in the diversity category.

19. The drama quality factors also provide for flexibility and encourage diversity of drama types enabling a licensee to choose between broadcasting fewer hours of high cost mini-series or telemovies or more hours of lower cost series/serials in order to satisfy the regulatory requirements.

20. Concern was expressed that the scoring would allow licensees to meet the drama score with serials only and that this would defeat the objective of diversity of drama type. The implication of this line of argument is that the factor for each drama type would not provide sufficient incentive to encourage a mix of drama types. The Tribunal is confident on the basis of the evidence before it that market considerations such as audience preferences will ensure that such a scenario does not evolve.

Encourage diversity of programme types

21. The selection of programme types for this group is not based on any perception that they are better than types which have not been included. Local programme types not included such as sports, news, quiz and game shows are popular and flourishing and do not appear to require any intervention by way of regulatory incentive.

22. Six programme types, (variety, social documentary, arts, science, current affairs/news special, new concepts) have been selected to receive incentives. These were determined after analysis of programming records, trends and consideration of submissions from industry groups and members of the public. Inquiry discussion papers were prepared inviting submissions on issues relating to variety, documentary, arts and news and current affairs programmes. The Tribunal found that there are no arts programmes, very few social documentaries, and one science series on commercial television. Current/affairs specials and new concepts occur very occasionally and it is recognized that the cost and risk involved respectively are significant. While two sketch comedy variety series are currently succeeding on commercial television, more traditional variety programmes are absent from prime time programming.
23. The programme types selected have some or all of the following characteristics:

* there is reluctance among licensees to experiment with them in their schedules;
* they are culturally specific and therefore do not have an overseas market which makes them a greater commercial risk;
* they are currently under-represented or insecurely placed in commercial television schedules;
* they are funded by government agencies who consider them to be culturally important;
* they are based on live entertainment forms popular with audiences;
* they require a commitment from a licensee to take greater risks than those involved with more conventional programming.

24. The inclusion of a "new concept" programme category is intended to encourage new ways of combining content and treatment in programming.

25. Many submitters wanted a quota for the particular programme type that they were promoting. This would have required all licensees to meet each programme quota and would not have allowed flexibility for diversity of programming between licensees. A system of individual quotas is inconsistent with the Tribunal’s commitment to provide maximum flexibility to programmers.

26. The more flexible approach and one in keeping with the objective of diversity is to:

* identify the programme types;
* give them a quality factor to provide genuine incentives to risk taking;
* make a distinction between series based on the production rate of the episodes and between series and one-off programmes;
* put all the programmes in one group and make their scoring interchangeable with one another.

Because drama is regarded as fundamentally important, and to accommodate drama specialization resulting in programming above the drama minimum, the score required for the diversity group can be contributed to or met by any excess above the drama and children’s C drama minimums.
27. Within the diversity group of programme types there is provision for "new concepts". This is to provide an incentive to licensees to take risks with either a new programme form or content for an initial twenty-six episodes. This period provides the opportunity to see if the programme is popular and commercially viable.
TRANSMISSION QUOTA

28. In order to achieve the minimum acceptable level of Australian programming a transmission quota is introduced requiring that 50 per cent of programme hours (broadcast between 6.00 am and midnight) be Australian from the commencement of the 1993 calendar year. The quota is to be introduced at 35 per cent for the calendar year commencing 1 January 1990 and will increase at the rate of 5 per cent each subsequent year until reaching 50 per cent of the calendar year commencing 1 January 1993.

29. Quotas of this type have been met by commercial television licensees in the past commencing with a 40 per cent requirement in 1960 increasing to 50 per cent in 1965 until the introduction of the points system in 1973. According to statistics provided by the three commercial networks during the course of the Inquiry, network services ATN7 and TEN10 achieved levels of Australian programming below 50 per cent for the 1987/88 year. (Nine network station TCN9 achieved a level of 64.1 per cent in the same year). The Tribunal's recently-completed analysis of Australian programming transmitted by the three Sydney services in 1987/88 and 1988/89 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>7</th>
<th>9</th>
<th>10</th>
<th>AV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987/88</td>
<td>46.0%</td>
<td>59.5%</td>
<td>44.8%</td>
<td>50.2%</td>
</tr>
<tr>
<td>1988/89</td>
<td>51.6%</td>
<td>55.2%</td>
<td>45.5%</td>
<td>50.1%</td>
</tr>
</tbody>
</table>

30. This Standard will allow licensees to count repeat Australian programming and include repeats of programmes first broadcast on ABC and SBS, towards the transmission quota. This decision provides the greatest possible scheduling flexibility and programming latitude to licensees while eventually requiring that half the programmes televised by Australian stations adequately reflect the Australian way of life.
THE DRAMA/DIVERSITY SCORE

31. To ensure that there are adequate levels of Australian drama, children's C drama and to encourage diversity of programme types a formula-based scoring system is introduced with the transmission quota. This system has been designed to recognize and encourage quality programming insofar as quality can be commensurate with programme cost and risk to licensees.

The components

32. The score comprises:

1. a minimum score of 850 points for first release drama;
2. a minimum score of 170 points for first release children's C drama.
3. a score of 400 point for first release diversity or additional drama (including C drama) programmes.

33. The sum of these scores gives the licensee's annual score of 1420.

34. Programme scores are calculated by multiplying figures intended to quantify the following elements:

\[ \text{Australian factor} \times \text{Quality factor} \times \text{Duration} = \text{Score} \]

Each of these elements is defined in the Standard.

35. The minimum annual children's C drama score required to be met is 170 points and is based on the hours of C drama programming contemplated in the Review of Children's Standards Inquiry. The score is to be phased in at 125 points, the equivalent of twelve hours of one-off drama, in the calendar year commencing 1 January 1990. It will be increased to 170 points, the equivalent of sixteen hours of one-off drama, in the calendar year commencing 1 January 1991 and apply thereafter.

36. Submissions were received that the annual drama/diversity score be averaged over three-year periods. These argued that averaging would accommodate a circumstance where an unsuccessful programme is cancelled without provision for an immediate replacement. In order to provide maximum flexibility the Standard requires that the drama/diversity score for each three-year period commencing 1 January 1990 be met over the periods, but that no fewer than 1320 points be met in any one calendar year of such a period. The allowance of 100 points shortfall in any one year is intended to compensate for the equivalent of the withdrawal of a significant number of episodes of an unsatisfactory serial/series.
Australian factor

37. The objective of this Standard in relation to drama is to encourage programmes in which the theme or perspective, language and character used are Australian.

38. Defining Australian and determining an appropriate system to determine an Australian factor for drama programmes has required considerable consultation. The problem has been twofold, on the one hand to ensure that viewers get drama made specifically for them, accurately depicting the Australian way of life; and on the other to provide a definition which will allow sufficient flexibility to provide for the creative potential of Australian drama without allowing gratuitous non-Australian elements to be introduced due to overseas finance.

39. The increasing cost of higher budget one-off dramas made for television is providing a commercial pressure to make these dramas for international markets. Such pressure may result in dilution of an Australian look to a point where our sense of identity is obscured or lost completely. It is important that any regulation provides incentives for high cost drama production which is recognizably Australian.

40. The definition of an Australian drama programme for the purpose of complying with the scoring system has been widely canvassed in submission and at conferences of the Inquiry.

41. The proposal that individual programmes be tested by examination of on-screen indicators (namely theme or perspective, language and character) after programmes had been broadcast, was opposed on the basis that it:

* denied certainty and applied creative limitations to Australian programme-makers;
* was open to subjective interpretation by the Tribunal;
* was not compatible with government production assistance tests;
* restricted the opportunities for international co-financing of costly one-off dramas.

42. Submissions that the Tribunal use a definition of Australian relied on by other agencies and organizations for different purposes such as financial or industrial assistance to the production industry have been considered. However, it is not accepted that the involvement of Australian technicians, artists and production executives alone necessarily ensures that a programme is identifiably Australian or developed especially for an Australian audience. For example, there is the practice of "off-shore" foreign productions being made in Australian predominantly for foreign markets by local production companies using Australian personnel.
43. Evidence was also given of programme content and casting pressures on Australian producers and writers inherent in the negotiation of international co-financing.

44. The Tribunal accepted submissions that a test based on the creative control indicators (origin of the work and integrity of the casting combined with nationality and the producers, writers, directors, actors, composers, and editors) will ensure that programmes complying meet its objectives.

45. In the event of a conflict of opinion about a factor then it is the proper rôle of the Tribunal to exercise its judgement on a programme's theme or perspective, language and character, after the programme has been broadcast.

46. The Australian factors are 3 or 1.5 and relate to the quality factors.

47. The test allows for drama programmes to have an Australian factor of 3 if there is involvement alongside Australians of foreign producers, actors and post-production personnel. If there is the involvement of a foreign writer or director then a factor of 1.5 will be allowed because the Tribunal accepts that these are pivotal creative rôles with the strongest potential to impact on the Australian image projected.

Quality factor

48. The quality factors for drama have been based on accepted industry average purchase price per hour for the various drama programme formats. For example, the average purchase price per hour of an Australian serial is assumed to be $110,000 and therefore has a factor of 1.1; while the average purchase price per hour of an Australian mini-series or telemovie is assumed to be $350,000 which translates to a factor of 3.5. The purchase prices paid by networks are relevant indicators of their assessments of programme quality. They are also quantifiable and have relativities which are less likely to change than those of the average production prices.

49. Quality factors for children's C drama are based on the purchase price per hour averages for drama, despite the fact that the average purchase price per hour for C drama programme formats are accepted as being lower than those for drama generally. The reason for this decision is that there is no incentive for licensees to broadcast C drama in excess of the minimum requirement if lower factors are used for C drama than for drama generally or diversity group programmes.

50. Diversity group quality factors are notional and are based on those for drama series/serials in the case of series and drama mini-series and telemovies in the case of one-shots as the costs and risks represented in the factors have similar relativities.
The drama score

51. The score will be calculated counting programmes broadcast between 6.00 pm and midnight daily for each calendar year.

52. In determining the drama score the performance of the three Sydney services for 1987/88 was examined and programmes scored according to the formula. A total of 533 hours of drama was shown in that year. Examination of the Australian drama performances of the three Sydney commercial services over the past ten years disclosed that the average annual number of hours broadcast by the three (523) was comparable to the 1987/88 result. The Australian drama results of the three Sydney services for 1988/89 are now available. These indicate that the amount of first release Australian drama (excluding C drama) transmitted by these services between 6.00 pm and 10.30 pm was 597 hours during the period.

53. The application of the average drama performance for 1987/88 year as the basis for the required drama minimum will require increased but acceptable levels of drama expenditure for some licensees.

The children's C drama score

54. There was strong support in the Inquiry for an increase in the amount of C drama to be required, although the amounts varied. The eight hours per annum required of licensees in the past has been rarely and then only marginally exceeded. It is important that children see a reasonable proportion of Australian drama made specifically for them so that they can identify with Australian themes and language. Children are an audience with specific needs and tastes but insufficient discretionary purchasing power to make them attractive as a discreet group to advertising buyers. There is consequently no argument that C drama will be broadcast as a result of market forces.

55. Individual C drama scores will be calculated according to the same formula used for drama. The Australian test and factors will apply as for drama generally.

The diversity group score

56. The score of 400 points is based on the total hours of programmes broadcast in this group in 1987/88. This can be contributed to by variety, social documentary, arts, new concepts, news/current affairs specials and science programmes as defined in the Standard. C classified programmes which meet the definitions contained in the Standard and which are shown in C time bands will also be eligible to count towards the diversity score. Because it is not intended that diversity programmes should be produced at the expense of any drama, drama programming in excess of the minimums also counts towards the score.

57. Individual scores will be calculated and added according to the formula used for drama although no provision has been made for a part-Australian factor for diversity programmes as no evidence was
received of cost pressures affecting the Australian content of these programme types.

The time bands

58. The score for all but the children’s C drama minimum and C classified diversity programmes can be contributed to by eligible first release programmes broadcast between 6.00 pm and 12 midnight only. This time band has been selected because:

(a) it encompasses peak viewing time (6.00 pm to 10.00 pm) at once ensuring that the greatest number of people are able to choose the programmes and acknowledging that first release of such costly programming as drama will generally be scheduled in peak time for commercial reasons;

(b) it extends beyond peak viewing time for the two hours 10.00 pm and midnight, providing an option for licensees to contribute to the score with untested or special interest programming drawn from within the eligible types.

59. Children's C drama will contribute to the children's drama minimum score when it is shown in C time bands. C classified programmes shown in C time bands which meet the diversity definitions and tests will contribute to the diversity score. As a result of a decision of the Review of Childrens' Television Standard Inquiry there is greater flexibility for programmers scheduling C programmes and greater opportunity for children to see these programmes if licensees do not schedule their C programmes against each other.
OTHER ISSUES

Pre-classification

60. Submissions were made that the Tribunal should classify programmes for Australian factors before production agreements are finalized. The Tribunal does not have the power to pre-classify programmes other than children's programmes (S.16 (6) of the Act) whether on a voluntary requested basis or as a requirement in the Standard. For any Australian factor pre-classification system to be operable, legislative change is necessary.

Regional look to Australian drama

61. The question of whether there should be regulation to encourage regional drama was an issue. Submissions for an incentive to encourage drama produced outside Sydney and Melbourne were examined.

62. The objective of regulation for Australian content is to ensure that there is a minimum of diverse quality Australian programmes and that all Australians can see programmes showing different parts of the country and reflecting different views.

63. It is important that Australian drama does reflect the concerns and character of Australians as a whole showing different aspect of Australian life from all parts of the country and that all the major cities are represented on national television screens in various types of programming from time to time. Regulation to provide incentives to encourage more diverse representation in Australian drama is not required at this time. However, the evidence is that there are a number of dramas which portray regional Australian. These include A COUNTRY PRACTICE and THE FLYING DOCTORS, a serial and series which have been running for some years. A FORTUNATE LIFE, and THE SHIRALEE are more recent mini-series.

64. Submissions for a regulation in this area aimed to ensure that there was a production industry outside Sydney and Melbourne. The Tribunal takes the view that it is not its rôle to ensure jobs for people in particular production locations in Australia. If Parliament intended to ensure employment in broadcasting-related industries outside Sydney and Melbourne legislation would express such an intention.

Aboriginal programmes bonus

65. The Department of Aboriginal Affairs (DAA) requested that the Standard: include a special category of 2 per cent of programmes to be of Aboriginal orientation; recognize that, in certain contexts, the Australian look of a programme is incomplete if it does not include Aboriginal elements; provide bonus points wherever Aboriginal factors are present in a programme.
66. Programmes of Aboriginal orientation will not be required to be broadcast by the Australian content Standard because the Tribunal does not expect all licensees to provide for the same special interests. At the 1985 Sydney/Melbourne licence renewals the DAA argued that Aboriginal heritage is an essential part of the culture of all Australians and that service licensees should not only provide programmes for Aboriginals but also expose other Australians to programmes about Aboriginals. The Licence Renewal report said that the Tribunal expected licensees to take account of the matters raised in the DAA submission and to: increase their understanding of the needs and interests of the Aboriginal communities; provide access for programmes made by these groups; and to discuss with production houses some ways in which issues raised by the DAA could be resolved.

67. Interpretation of the Standard's definition of an "Australian" is, as stated at paragraph 7 of these Reasons, expected to take account of the contemporary reality which is that Australia is a diverse multi-cultural society with an indigenous Aboriginal population. Under this interpretation, the Standard will ensure that, in those contexts where Aboriginal elements are required, that these be accurately rendered. However, there will be no bonus for Aboriginal factors in programmes.

Programmes made pursuant to co-production treaties

68. A submission was received from the New Zealand Broadcasting Corporation (NZBC) requesting reciprocity of local content benefits between that country and Australia. The New Zealand Parliament subsequently rejected the idea of New Zealand local content regulations.

69. The Australian Film Commission (AFC) sought to ensure that the Standard recognize programmes made pursuant to any co-production treaties between the Commonwealth of Australia and other countries as fully Australian for the purpose of Australian content regulation. The AFC informed the Tribunal that a central clause of any such treaty required that: "a co-production film shall be entitled to the full enjoyment of all benefits which are or may be accorded in the co-producing countries respectively to national films".

70. It submitted that this clause establishes the principle of reciprocity which is the linchpin of treaty agreements and that unless official co-productions automatically receive an equivalent status to fully indigenous productions Australia will be disadvantaged in the negotiation of treaties. This is contrary to the objective of the Standard which is to ensure that drama which contributes to the score is identifiably Australian and developed for an Australian audience. Therefore no exemption will be provided from the Australian drama factor test for programmes made pursuant to any co-production treaty.
Risk factor for new series/serials

71. Submissions were received that a 150 per cent quality factor loading to represent the cost and risk involved in the development and launch of series and serials be included. TCN 9 argued that the quality factor be 3.5 for the first thirteen episodes of a series and that it be 2.2 for the first twenty-six episodes of a serial.

72. While the Tribunal accepts that the cost and risk involved in series and serials is greatest during the first run episodes and that the attrition rate is high, it believes that this factors are off-set, relative to one-off programmes, by the propensity of successful series/serials to continue for many years.

Dated 23 November 1989

DEIRDRE O'CONNOR
Chairman

PETER WESTERWAY
Vice-Chairman

KIM WILSON
Member

BRUCE ALLEN
Member

SUE BROOKS
Member

MICHAEL RAMSDEN
Member
TELEVISION PROGRAMME STANDARD 14

AUSTRALIAN CONTENT ON COMMERCIAL TELEVISION

1989

DETERMINATION OF STANDARD
Australian content of commercial television programmes
Television Programme Standard 14

Introduction

(1) The objective of this Standard is to encourage programmes which:

(a) are identifiably Australian;

(b) recognize the diversity of cultural backgrounds represented in the Australian community;

(c) are developed for an Australian audience; and

(d) are produced with Australian creative control.

(2) Drama

In the case of drama programmes, the objective of the Standard is to encourage Australian drama in which:

(a)(i) the theme (if set in Australia) is Australian, that is, the subject matter portrays aspects of life in Australia or the life of an Australian or Australians; or

(ii) the perspective (if wholly or partly set outside Australia or if the subject matter is not Australian) is Australian, that is, the subject matter is presented from an Australian viewpoint; and

(b) the language is Australian, that is, the speech of Australian characters is the speech, including idiom or accents, found among people who meet the definition of an Australian; and

(c) the character of the production is Australian, that is, the visual depiction of the scenes set in Australia including locations, backgrounds, props and costumes is recognizable as Australian, the interpretation of the material is Australian and, casting accurately reflects the Australian characters portrayed.

In the case of drama programmes located in imaginary environments (such as in animation, science fiction or in mythological or historical settings), or where programmes are fantasies, allegories or satires, the objective of the Standard is to ensure such programmes are developed for an Australian audience and are under Australian creative control.
(3) **Variety**

In the case of variety programmes the objective of the Standard is to encourage programmes which:

(a) showcase Australian talent on-screen.

(4) **Social documentary**

In the case of social documentary programmes the objective of the Standard is to encourage programmes which:

(a) are detailed studies, by Australians, of real people and/or events.

(5) **Arts**

In the case of arts programmes the objective of the Standard is to encourage programmes which:

(a)(i) are presentations of artworks where the originator of the work is Australian (e.g. composer, writer, painter, choreographer); or

(ii) are presentations of Australian or foreign artworks staged or produced by an Australian performer or performing group, gallery or other arts organization; or

(iii) report and reflect on aspects of the arts and their relevance to Australians.

(6) **Science**

In the case of science programmes the objective of the Standard is to encourage programmes which:

(a) are studies, by Australians, of an issue or issues in science (including the social sciences), technology, the environment or medicine.

(7) **Current affairs/news special**

In the case of current affairs/news specials, the objective of the Standard is to encourage Australian production of programmes which:

(a) will provide prime time focus on social, economic, or political issues of immediate relevance to the community; and

(b) represent a substantial outlay in resources.
(8) **New concepts**

In the case of new concepts programmes the objective of the Standard is to encourage the production of programmes which:

(a) present new forms and content in Australian programming; and

(b) reflect a high level of commitment in production and promotion.

(9) **The Standard contains two content requirements:**

(a) a score for drama and diversity, which is intended to ensure minimum levels of Australian drama and children's C drama and to encourage programme diversity between 6 p.m. and midnight; and

(b) a transmission quota, which is intended to ensure that a specified percentage of transmission time is Australian programming between 6 a.m. and midnight.

**Definitions**

(10) **An Australian** is a person who is a citizen of, or is ordinarily ordinarily resident in, Australia.

Arts programme means a self-contained programme which portrays, reports or reflects on aspects of the arts.

Artworks includes any of the performing, literary, visual, cinematic, and design arts in classical, contemporary, folk, traditional, ethnic, popular or experimental genres.

Australian C drama has the same meaning as Australian children's drama in Children's Television Standard (CTS) 11.

Australian diversity programme means a variety programme, social documentary, arts programme, science programme, current affairs/news special or new concept programme which has an Australian factor of three points.

Australian factor means a figure representing the extent to which a programme meets the objectives of the Standard as determined in accordance with paragraph (18).

C band has the same meaning as C band in Children's Television Standard (CTS) 3.
Current affairs/news special means a programme focusing on social, economic or political issues of immediate relevance to the community and having a minimum duration of one-and-a-half hours.

Drama means a fully scripted screenplay or teleplay in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure. It includes animated drama and dramatized documentary, but does not include sketches within variety programmes, or characterizations within documentary programmes, or any other form of programme or segment within a programme which involves only the incidental use of actors.

Drama serial means a drama production broadcast in episodic form containing a number of interweaving and overlapping plots which continue from one episode to the next.

Drama series means a drama production broadcast in episodic form featuring characters, themes or settings common to all episodes, where episodes consist of self-contained plots which do not have to screened sequentially.

Dramatized documentary means a fully scripted screenplay or teleplay in which the central theme is an event or events which actually occurred and in which actors are used to play the part of real characters who were involved in the events portrayed.

Feature film means a drama production complete in one episode and produced for cinema release and includes a drama production produced originally for television but given prior cinema release.

First release means the first presentation of a programme in a licensee's service area. The subsequent use of the programme by another licensee having a substantial market in common will not be accepted as first release.

New concept programme means the first twenty-six episodes of a programme introducing a new approach to the presentation of information or entertainment on Australian television.

Mini-series means a drama production made for television which is broadcast in the form of a limited number of episodes, is less than thirteen hours in total length and contains a major plot continuing from one episode to the next. It may contain minor plots but should form a unified whole.

Quality factor means a figure representing the quality and production type of a programme as used in paragraph (19).
Science programme means a programme concerning an issue or issues in science (including the social sciences), technology, the environment or medicine which has a minimum duration of half-an-hour.

Social documentary means a programme which is a creative treatment of actuality which deals with a single issue, subject or theme and which has a minimum duration of half-an-hour or, in the case of a series, half-an-hour per episode. It may include the following:

(a) a series of social documentary programmes presented by means of an anchor person or having a common theme; or

(b) a one-off single issue documentary special transmitted within the format of an established current affairs or information programme, where the social documentary occupies the whole programme.

Telemovie or teleplay means a drama production complete in one episode and produced for television. Productions defined as telemovies or teleplays have had no prior cinema or theatrical release.

Variety programme is a programme which contains a mixture of entertainment forms or series of short performances which may include comedy, music, dancing, gags and patter and in which there may be an element of competition. Where such a programme is handled by a compere it may contain interviews with personalities to supplement the entertainment. It does not include quiz, panel, game, today or tonight programme categories. A one-off variety programme shall have a minimum duration of one hour.

References to duration

(11) For the purpose of measuring duration, "programme" includes advertisements, community announcements, station promotions and other material.

The score for drama and diversity

(12) A licensee shall achieve a minimum score of 4,260 points for drama/diversity programmes each three calendar year period commencing 1 January 1990. In any one calendar year of the period a licensee shall achieve a minimum score of 1,320 points.

(13) The drama/diversity score will be calculated by adding the total scores for the first release of Australian drama, C drama, and diversity programmes, including C classified programmes which meet the diversity definitions, over the period.
(14) A licensee's score shall include minimum annual scores of 850 points for drama and 170 points for C drama shown during C bands.

(15) In the calendar year commencing 1 January 1990 only, the points requirement for C drama shall be 125. The total of drama/diversity points required for the three-year period ending 31 December 1992 only shall consequently be 4,215.

(16) To qualify, drama and diversity programmes must be shown between 6 p.m. and midnight. In the case of C drama and children's diversity programmes these qualify if they are shown in C-time bands. A licensee may count any C drama score in excess of 170 points towards its adult drama score. In addition, first release C drama which is shown outside of C bands is eligible to count towards the drama/diversity score.

(17) Each drama and diversity programme will be scored by multiplying its Australian factor by the appropriate quality factor multiplied by hours broadcast.

\[ \text{SCORE} = \text{AUST FACTOR} \times \text{QUALITY FACTOR} \times \text{NO OF HOURS} \]

(18) The Australian factor will be determined in accordance with the tests at paragraphs (24) to (34).

(19) The quality factors for drama, C drama and diversity programmes are as follows:

<table>
<thead>
<tr>
<th>Quality factor</th>
<th>Description</th>
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<tbody>
<tr>
<td>1.1</td>
<td>Series/serial produced at the rate of more than 1 hour per week:</td>
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<tr>
<td>2.2</td>
<td>Series/serial produced at the rate of one hour or less per week:</td>
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<tr>
<td>3.5</td>
<td>One-offs (including mini-series; telemovie/teleplay; feature film):</td>
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</table>

(20) Where a minimum of $\text{A} 500,000 measured at 1989/90 constant dollars (indexed to CPI of weighted average of eight capital cities) is the total sum paid per hour for Australian broadcast rights, the quality factor will be:

5.0
Australian transmission quota

(21) Not less than 35 per cent of the time occupied by programmes broadcast by a licensee between the hours of 6 a.m. and midnight, averaged over the calendar year commencing 1 January 1990, shall be devoted to the broadcasting of Australian programmes, including repeats. The percentage requirement shall increase to:

(a) 40 per cent for the calendar year commencing 1 January 1991;
(b) 45 per cent for the calendar year commencing 1 January 1992;
(c) 50 per cent for the calendar year commencing 1 January 1993 and for each calendar year thereafter.

(22) Drama, C drama and diversity programmes will qualify in full for the transmission quota if they have an Australian factor of 3 or 1.5 as determined in paragraphs (26) and (34) of this Standard.

(23) (a) Programmes other than drama will qualify in full for the transmission quota if they are:

(i) designed for and relevant to Australian society; and
(ii) under Australian creative control; and

(iii)(A) are shot in Australia and all elements of the programme have been designed and produced by Australians for an Australian audience; or
(B) are produced in Australia for an Australian audience but some elements of the programme have been made by non-Australians (e.g. news, current affairs and today programmes); or
(C) are shot overseas but with substantial Australian production involvement (e.g. Australian travel documentaries and sporting events covered on site by Australian interviewers and commentators).

(b) In the case of programmes packaged in Australia, i.e. where non-Australian segments or programmes are introduced or linked by an Australian host (e.g. video music programmes, overseas sports programmes and children’s cartoon programmes), only the introductions, links and any other Australian segments will qualify for the Australian transmission quota.
Australian factor: test for drama programmes

(24) To qualify for the drama/diversity score and/or the transmission quota, drama and C drama must have an Australian factor of 3 or 1.5. The factor will be determined using the test below.

(25) Australians must exercise direction over the creative decisions involved in the development, casting, appointment of key creative personnel, pre-production, filming and post-production of the programme as evidenced by the following:

(i) the programme is based on an original creative work by an Australian/s and retains an Australian theme and perspective; or

the programme is based on an Australian interpretation of an original creative work and has an Australian perspective;

(ii) the programme is produced by an Australian/s possibly in conjunction with a foreign co-producer or foreign executive producer;

(iii) the editing of the programme and the composition, performance, editing and synchronization of the soundtrack are substantially carried out by Australians;

(iv) the casting of leading and major supporting rôles accurately reflects the Australian characters portrayed and at least 50 per cent of performers in leading rôles and 75 per cent of performers in major supporting rôles are Australian;

(v) the writing, development, editing and supervision of the story, script or screenplay is undertaken by Australians;

(vi) the director/s are Australian.

Scoring

(26) (a) A programme where all the elements described at (25)(i) to (iv) are present will have:

Australian factor

3.0

(b) A programme where the elements (i) to (iv) at (25) are met but either a foreign writer or director is involved will have:

1.5

(c) Otherwise:

0
(27) The Tribunal in deciding the outcome of any dispute relating to the interpretation of the Australian Factor Test at paragraphs (25) and (26) will have regard to the objectives set out in paragraphs (1) and (2) of this Standard.

**Australian factor: Test for diversity programmes**

(28) Australian variety programmes will meet the definition of a variety programme contained in this Standard and will have the principal purpose of showcasing Australian talent on-screen.

(29) Australian social documentary programmes will meet the definition of a social documentary programme contained in this Standard and be detailed studies, by Australians, of real people and/or events.

(30) Australian arts programmes will meet the definition of an arts programme contained in this Standard and be:

(a)(i) presentations of artworks where the originator of the work is Australian (e.g. composer, writer, painter, choreographer); or

(ii) presentations of Australian or foreign artworks staged or produced by an Australian performer or performing group, gallery or other arts organization; or

(iii) programmes which report and reflect on aspects of the arts and their relevance to Australians.

(31) Australian science programmes will meet the definition of a science programme contained in this Standard and be studies, by Australians, of an issue or issues in science (including the social sciences), technology, the environment or medicine.

(32) Australian current affairs/news special programmes will meet the definition of a current affairs/news special contained in this Standard and:

(a) will be produced by Australians; and

(b) represent a substantial outlay in resources.

(33) Australian new concept programmes will meet the definition of new concept programmes contained in this Standard and will:

(a) present new forms and content in Australian programming; and

(b) reflect a high level of commitment in production and promotion.
Scoring

(34) Where a programme meets one of the relevant requirements at (28) to (33) it will have:

| Australian factor test | 3.0 |

Compliance with Australian factor test

(35) Programmes which would have complied with the relevant provisions of Interim Television Programme Standard (TPS) 14 (introduced 1 January 1986) for the purpose of that Standard's drama quota, which have their first release after 1 January 1990, will be deemed to comply with this Standard if contracts between licensees and programme suppliers had already been signed before 1 January 1990. This is subject to the condition that the Tribunal is notified by the licensee, in writing, of the programme and its compliance with the relevant provisions of Interim TPS 14 by 30 June 1990.