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No. 7 2001–02

Customs Tariff Amendment Bill (No. 4) 2001

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No. 7 2001–02

Customs Tariff Amendment Bill (No. 4) 2001

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Law and Bills Digest and Science, Technology, Environment and
Resources Groups
27 July 2001

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Customs Tariff Amendment Bill (No. 4) 2001

Date Introduced: 28 June 2001

House: House of Representatives

Portfolio: Justice and Customs

Commencement: Refer to the 'Main Provisions' section of this Digest

Purpose

The major amendments proposed by the Bill:

- provide for the duty free importation of prescribed goods for use in a space project authorised by the Minister for Industry, Science and Resources
- make technical amendments consequential to the commencement of the Automotive Competitiveness and Investment Scheme
- provide for the duty free importation of goods as defined under the terms and conditions of the SPARTECA (TCF Provisions) Scheme, and
- provide the legislative basis for the new Project By-law Scheme.

Background

As there is no central theme to the amendments proposed by this Bill a background to each major amendment is contained in the “Main Provisions” section of this Digest.

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Main Provisions

Schedule 1 amendments

Automotive Competitiveness and Investment Scheme

The amendments to the *Customs Tariff Act 1995* proposed by **Schedule 1** of the Bill relate to the Automotive Competitiveness and Investment Scheme (ACIS).

On 6 September 2000 the Government introduced the ACIS Administration Amendment Bill 2000. The amendments were described by Senator Ian Campbell in his Second Reading Speech as minor amendments to enable the efficient delivery of the program and to reduce the administrative burden on both participants and the Government. The main changes are directed at achieving:

- a tighter definition of 'approved plant and equipment' and 'approved research and development' for use in identifying which expenditures will be eligible for the assistance benefit
- clarification of the methods for calculating investment, including the use of assistance loadings to cover the incidental costs of investment which are difficult to quantify, and
- protection from 'artificial' companies set up to take advantage of ACIS, that are not going to contribute to the sustainable growth of the Australian automotive industry.

The Automobile Competitiveness and Investment Scheme (ACIS) is the largest industry-specific assistance to industry program provided by the Commonwealth. It will operate for five years from 1 January 2001. It provides assistance, in the form of import duty credits, to producers of motor vehicles, components and automotive services for both domestic and export markets. Assistance is capped at \$2 billion over the five year program.

Participants are eligible to earn import credits on the basis of:

- their production of motor vehicles, engines or engine components (motor vehicle producers only), and
- their investment in certain plant and equipment and research and development.

The Government has stressed that ACIS is to provide *transitional* assistance over the next five years. The tariff on passenger motor vehicles and certain parts will be reduced from 15 to 10 per cent on 1 January 2005.

The purpose of ACIS is to encourage competitive investment and innovation in the Australian motor industry in order to achieve sustainable growth.

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Remarks

A major concern with the ACIS assistance package has been its administrative complexity. The Government has noted that ACIS will involve higher administrative costs to Government and higher compliance costs to industry than the existing motor vehicle assistance arrangements.

The Scheme needs to be delivered through an administrative framework which:

- clearly identifies which investments and innovations will be eligible for investment
- ensures the cap on the cost of ACIS is achieved
- minimises the administrative burden on both participants and the Government, and
- is sufficiently transparent to allow proper accountability.

Most of the amendments to ACIS relate to the regulations that can be used under the legislation to define and quantify which expenditures will be eligible for inclusion in the calculation of benefits under ACIS. The changes increase the powers of the regulator to control the distribution of benefits from the Scheme. In particular, with respect to what is approved plant and equipment and what is approved research and development, the amendments expand the scope of the regulations to specify not only which items are allowable but also the maximum claimable value in respect of allowable plant and equipment or research and development.

The expansion of the regulatory powers would appear to be of clear benefit to the regulator in that it provides scope for greater control over the cost of the program and for the prevention of potential abuse. The Minister notes in his Second Reading Speech to the ACIS Administration Amendment Bill 2001 that the changes will assist participants to determine what is and is not eligible expenditure-this is an important aspect. The Minister's further claim that the amendments will streamline the operation of the scheme and reduce the administrative burden on both participants and the Government appears more open to challenge. Increased regulation can often have the opposite effect and add to administrative burden. The outcome will depend on the skill of the regulator and the administrator in containing the administrative burden.

Amendments

Item 41A of Schedule 4 of the *Customs Tariff Act 1995* provides for the concessional entry of certain automotive products (eg. replacement components). The calculation of the rate of duty payable is based on earned export credits. For exports credits to be eligible for use they must be used before 1 January 2001. The amendments proposed by **item 1** of **Schedule 1** of the Bill will have two main effects:

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- allow for export credits earned in relation to eligible exports that occurred before 1 January 2001 to be used in assessing the amount of duty payable on eligible imports until 31 December 2001, and
- extend the range of eligible automotive products which attract concessional entry to include original equipment automotive components.

Similar to item 41A, item 41B of Schedule 4 of the *Customs Tariff Act 1995* provides for the concessional entry of motor vehicle components for use as original components in the assembly or manufacture of eligible vehicles (eg. trailers and semi-trailers for articulated vehicles). Export credits are used in calculating the amount of duty payable. The principal effect of the amendments proposed by **item 2 of Schedule 1** of the Bill is to provide a closure date for use of the existing concession on or before 31 December 2000.

Item 41B of Schedule 4 of the *Customs Tariff Act 1995* also provides for the duty free entry of prescribed vehicles components for use as original equipment in the assembly or manufacture of heavy commercial vehicles. **New item 41F**, which is inserted in the *Customs Tariff Act 1995* by **item 4 of Schedule 1**, provides for the continuation from 1 January 2001 of the concession currently provided by item 41B. This amendment is required as a consequence of the commencement of ACIS.

Item 41C of Schedule 4 of *Customs Tariff Act 1995* provides for the duty free entry of prescribed goods used in the testing, quality control, manufacturing evaluation or engineering development of passenger motor vehicles or motor vehicle components manufactured under the Passenger Motor Vehicle Manufacturing Plan. Provisions relating to that Plan were closed with the commencement of ACIS. **Item 4 of Schedule 1** of the Bill inserts a **new item 41G** in Schedule 4 of the *Customs Tariff Act 1995*. The effect of the proposed item is to maintain the existing duty free rate of entry for prescribed goods used in the testing, quality control, manufacturing evaluation or engineering development of:

- motor vehicles manufactured by motor vehicle producers registered under the ACIS scheme, or
- original equipment components for inclusion in motor vehicles manufactured by motor vehicles producers registered under the ACIS scheme.

Commencement: 1 January 2001

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Schedule 3 amendments

SPARTECA

The South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) entered into force generally on 1 January 1981 and into force for Australia on 30 June 1982.

SPARTECA comprises the governments of Australia, the Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Western Samoa (Forum Island countries).

The objectives of the Agreement are:

- to achieve progressively in favour of Forum Island countries duty free and unrestricted access to the markets of Australia and New Zealand over as wide a range of products as possible
- to accelerate the development of Forum Island countries in particular through the expansion and diversification of their exports to Australia and New Zealand
- to promote and facilitate this expansion and diversification through the elimination of trade barriers
- to foster the growth and expansion of exports of Forum Island countries through the promotion of investment in those countries through the promotion of investment in those countries
- to promote greater penetration by exports from Forum Island countries into the Australian and New Zealand markets through such measures as cooperation in the marketing and promotion of goods from Forum Island countries, and
- to promote and facilitate economic cooperation, including commercial, industrial, agricultural and technical cooperation.

SPARTECA (TCF Provisions) Scheme

The Government announced on 28 February 2001 the creation of a new item 68 in Schedule 4 of the *Customs Tariff Act 1995* to allow certain textiles, clothing and footwear (TCF) to enter duty free from 1 March 2001 under the SPARTECA (TCF Provisions) Scheme.

The Scheme is intended to allow goods that are not entitled to duty free entry under SPARTECA to enter duty free providing certain conditions are met. Only Forum Island country manufacturers registered under the Scheme can participate.

The Scheme's objectives are to:

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- encourage trade in TCF between Australia and Forum Island countries (FICs)
- encourage increased diversity in the manufacture of TCF goods in FICs, and
- encourage FICs to market TCF goods and services to markets outside SPARTECA.

The Scheme is to run from 1 October 2000 to 31 December 2004.

Eligible goods under the Scheme include: articles of apparel and clothing accessories (including gloves) made of plastic; articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanised rubber other than hard rubber; woven fabrics of silk or of silk waste; women's or girls suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted; t-shirts, singlets and other vests, knitted or crocheted; and sports footwear other than ski boots and cross country ski wear.

Remarks

SPARTECA, which was signed more than a decade ago, has assisted some Forum Island countries in establishing strong TCF industries. For example, in Fiji, SPARTECA along with the establishment of a Free Trade Zone is believed to have contributed significantly to the creation and maintenance of a textile industry employing more than 20,000 workers. Companies such as Pacific Dunlop, which owns Bonds, King Gee, Yakka, the Stafford Group and Glo Weave Investments have large operations in Fiji or use sub-contractors to produce their clothing. Duty free access to Australia's market is considered to be crucial to the Fijian textile industry, giving the goods a competitive advantage over Vietnamese and Chinese goods, which face tariffs upwards of 20 per cent.¹ It is reported that since 1991, Australian textile imports from Fiji have grown from negligible to \$120 million annually, accounting for about a third of Australian TCF imports.²

While SPARTECA can be said to have been of economic benefit to countries such as Fiji, some commentators would argue that the same cannot be said for Australia. For example, it is reported in *The Sydney Morning Herald* of 15 February 2000 that:

Between 1990 and 1997, Australian taxpayers funded those companies to the tune of \$1 billion. The result was that two-thirds of Australian textile workers lost their jobs and most companies moved offshore anyway. "A lot of them used the money to pay out redundancies for Australian workers and then moved their operations to Fiji," says an official of the Textile, Clothing and Footwear Union, Mr Barry Tubner.

"It's cheaper to make up clothing in China but Fiji is more secure because you don't have to be in joint ventures and it has a holiday atmosphere where these people can buy a holiday house and conduct their business," he adds.

More recently the SPARTECA TCF Scheme became embroiled in the Fiji coup with the Fiji Labour Council calling on the Government to immediately cease its extension of SPARTECA until:

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- democracy is restored in Fiji, and
- in accordance with earlier commitment of the deposed Chaudhury government, the wages and conditions of Fijian workers currently exploited in the Fijian 'Free Trade Zones' are brought into line with the legal minimum wages and conditions of all other Fijian workers.³

On 12 December 2000 the Australian Minister for Foreign Affairs, the Hon. Alexander Downer, issued a Media Release connecting the Fiji election timetable to the SPARTECA TCF Scheme. That Media Release stated:

On 14 November, Fiji's interim government – for the first time – made a public commitment to hold democratic elections by March 2002, rather than – as previously suggested – only after two or more years. When the interim government was first sworn in July this year, I expressed Australia's very deep concern at the consolidation of unconstitutional and undemocratic rule there. That concern extended particularly to indications from some in Fiji that they attached no urgency to a return to democracy and that elections under a new constitution might be delayed for a long as three years – that is, until perhaps the middle of 2003, or later.

...

In the light of the commitment by the interim authorities in Suva to an earlier election date, we will now proceed to introduce a successor scheme to the ICS. The scheme will provide additional benefits for TCF within the framework of the existing South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), and will be entitled SPARTECA – TCF. Continuing implementation of the scheme will be subject to Fiji's progress in implementing the timetable for a speedy return to democratic and constitutional rule. This must include a constitutional outcome which accords with democratic norms and the principles recently enunciated by Pacific Islands Forum Leaders in the Biketawa Declaration.

Amendments

A **new item 68** is inserted in Schedule 4 of the *Customs Tariff Act 1995* by **item 1** of **Schedule 3** of the Bill and provides for the duty free importation of goods, imported on or before 31 December 2004, as defined in the terms and conditions of the SPARTECA (TCF Provisions) Scheme.

Commencement: 1 March 2001

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Schedule 5 amendments

Space Agreement with Russia

On 23 May 2001 Australia signed the Australian–Russian Agreement on Space Cooperation. In a Media Release announcing the Agreement, the Minister for Regional Services, Territories and Local Government, Senator the Hon. Ian Macdonald said:

The Agreement paves the way for the establishment in Australia of commercial spaceports using Russian launch technology.⁴

Further in relation to the Agreement, the Minister for Industry, Science and Resources, Senator the Hon. Nick Minchin, said:

The Agreement between the Government of the Russian Federation and the Government of Australia on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes provides a framework for cooperation between the two countries and addresses such matters as intellectual property, forms of cooperation, relief from customs duty, liability and security of technology.⁵

The Agreement provides for the duty free entry of space related goods and equipment to be used in projects conducted in either country. As noted in the Government's Explanatory Memorandum to the Bill, while launch vehicles, satellites, scientific equipment, telemetry and guidance equipment can enter Australia duty free, equipment such as transporter erectors, launch vehicle lifting gear, fuel handling equipment and instrumentation attract the general duty rate of 5 per cent.⁶ The Government further states that:

The Russian Government applies import duties of up to 30% on space related goods. The Russian duties will only be waived if reciprocated by the importing country and if the commitment to a mutual exemption is reflected in a bilateral treaty (international obligations override domestic law in Russia).

The relief from duty is a threshold issue to the Russian Government and they will not sign the Inter-Government Agreement without provision for it. Accordingly, duty relief is required to facilitate the signature of the Agreement and development of the domestic industry.⁷

The Space Activities Amendment (Bilateral Agreement) Bill 2001, which will give effect at Australian domestic law to the Agreement, has yet to pass both Houses of the Australian Parliament. The reader is referred to the Bills Digest for that Bill for additional information relating to the Agreement: <http://www.aph.gov.au/library/pubs/bd/2000-01/01BD046.htm>.

On 24 June 2001 the Minister for Industry, Science and Resources and the Minister for Regional Services, Territories and Local Government announced that the Government had agreed to provide up to \$100 million “to pave the way for the Asia Pacific Space Centre (APSC) to establish a spaceport on Christmas Island in the Indian Ocean.”⁸

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Remarks

Satellite Launch Vehicle Market

According to the influential newspaper *Space News*, today's satellite market is not big enough to sustain five major players, even under the most optimistic of scenarios.⁹ With the expected rationalisation of the industry, profitability may increase, but links with launch providers will probably also restrict to contract arrangements with only a few, most likely existing, launch providers. The five prime satellite companies are Alcatel Space of France, Astrium of Europe, America's Boeing Satellite Systems, plus Lockheed Martin Corporation and Loral Space Communications both in California. Together these build over 60 large telecommunications satellites each year, but the annual demand in coming years is likely to average no more than 25 to 30 spacecraft. Smaller companies in Italy, Japan, China and India make up the remaining players.

Significant over-capacity stems from industry consolidation, expanded capabilities and decreased cycle times such that by 2005 launch capacity may be double market demand.¹⁰

As the market for heavy commercial launch payloads continues to stagnate, commercial launch companies face a deepening financial crisis and pressures to consolidate, according to the authoritative magazine *Aviation Week and Space Technology*.¹¹ Projections estimate a launch market of 30 geo-synchronous missions a year, corresponding to the above satellite market estimates. The major launch providers Arianespace, Boeing and International Launch Services (ILS) are updating their facilities in order to survive. Other players include China and India, with around a dozen launch service companies competing with about 20 different launch vehicles.

Arianespace has a 50 per cent commercial market share using the facility located in French Guiana, just north of the Equator. It will soon offer a 10 tonne capability to geo-synchronous transfer orbit (GTO). The ILS Atlas-Centaur and Russian launch vehicles provide 24 per cent of satellite launches, ranging from US\$65 to \$85 million in price. Boeing with Delta handles 13 per cent, China 8 per cent and Russian 6 per cent. Newcomer Sea Launch expects to survive on 6 to 7 flights per year, of Russian rockets, from its floating Equatorial base. They can handle 5.2 tonnes to GTO. The new Indian GSLV launcher may be able to achieve 4.2 tonnes to GTO orbit, within a few years time. Note that geostationary satellites are tending to become larger over time.

Taking the European perspective, Euroconsult estimates a total satellite launch market of US\$34.5 billion over 2000-2009 with annual sales between US\$3 to US\$4 billion.¹² Commercial operators will take two-thirds of this while two-thirds of the market will also be for geostationary satellite launches. Launch charges may drop to around US\$50 million but still represent about half of overall satellite system costs. Dividing the lower annual market figure, by say a 5 per cent share provides US\$150 million a year, or one and a half launches annually, but at a much higher price than actually negotiable. Note that launch failures and insurance premium price rises may affect such figures.

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According to Asia Pacific Aerospace Consultants (APAC), there is an oversupply of launch capability relative to demand.¹³ APAC estimates an industry supply capability of up to 76 flights per year for vehicles capable of launching 4 tonnes to GTO, but with a forecast demand of only 20 to 30 flights. In the face of a heavily oversupplied launch market, APAC continues "to rate the (Christmas Island) project as high risk". APAC says that for the low-earth orbit satellite market, the rate of launch oversupply is even greater.

The Asia Pacific Space Centre (APSC) project proposes the launch of Russian Aurora multi-stage launch vehicles. With three stages, they might deliver up to 12 tonnes to low earth orbit for inclinations ranging from 10 to 110 degrees. Using a four stage configuration, they may deliver 4.5 tonnes to GTO at 11 degrees inclination and about 2 tonnes direct to geostationary orbit.¹⁴ APSC is said to be negotiating with a number of potential major satellite users, expecting up to as many as 15 launches per year by 2006. No Aurora vehicle has flown as yet.

According to the Russian Aviation and Space Agency, Rosaviakosmos, the first launch from the island might take place by early 2004 or 2005. The Aurora project calls for the construction of the launch infrastructure for the highly mobile Start booster as well as for medium-lift Soyuz rocket. The agreement was reached during the return visit of the Rosaviakosmos director-general Yuri Koptev to Canberra. The Russian-Australian agreement of 23 May 2001 also involves the countries in the cooperation in the field of radioastronomy, space medicine and the use of ground control facilities. Russia is also seeking space cooperation with other countries.¹⁵

In particular, on 2 July 2001, director-general Koptev signed an agreement in Moscow, with the industrial architects of Arianespace's vehicles, for the launch of Russian Soyuz rockets from Europe's French Guiana spaceport on the Equator. The adaptation of the spaceport is a Russian initiative, with reports suggesting that the business case is marginal at best and a possible threat to the Ariane 5 rocket at worst.¹⁶ This announcement also follows, yet another agreement signed on 13 April 2001, between Boeing and Rosaviakosmos, for cooperation in space launches and research on the commercial uses of space. That agreement envisages studying prospects of converting the Zenith booster, used for the operational Sea Launch project in the Pacific Ocean, for launches from the Baikonur cosmodrome in the former Soviet Republic of Kazakstan.¹⁷

On the basis of a twenty-year period of operations, with a capacity for 12 launches a year (from year 6), the APSC estimates, in its draft Environment Impact Statement (EIS) that company tax payable will be of the order of \$2 billion. Assuming income of US\$100 million per launch, ie. A\$200 million, their annual revenue would be A\$2.4 billion, or about A\$40 billion over two decades. Note that one media report suggests a launch cost of only A\$160 million.¹⁸ APSC claims that the Australian content of the capital expenditure for the \$800 million project would be more than \$300 million, but clearly most of the technology is to be imported along with foreign staff. APSC has proposed funding a \$15 million space research centre over the first five years.

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Environmental Factors

The Department of Environment and Heritage assessment of the draft APSC-EIS is at: <http://www.ea.gov.au/assessments/epip/notifications/christmasisland/assessmentreport02.html>. Many stakeholders were critical of what they perceived to be a lack of detail regarding many aspects of the proposal and that the draft EIS provided insufficient information on the potential for environmental impacts. There was widespread feeling that the rocket launch facility would effect the island's reputation as a peaceful haven and degrade the eco-tourism experience. The Assessment contains an extraordinary list of 65 recommendations requiring strict action before launches may proceed. The Environment Minister Senator Robert Hill approved of the project in May 2000.

According to *New Scientist* magazine, the APSC project threatens unique species in a major unexplored cave system.¹⁹ The launch site apparently sits over a partly flooded limestone cave that may contain undiscovered endemic species. Over the past decade, scientists have discovered 12 new underground species there, including two blind cockroaches, a blind scorpion, a primitive shrimp, spiders and silverfish. The island's surface is home to 20 endemic species of reptiles, mammals and birds while also being famous for its red land crabs, Abbott's Booby birds and surrounding coral reefs. The island also has 17 endemic plant species, with 65 per cent of its area as a National Park.

The logistics of rocket preparation and launch involve factors of noise and hazards. Noise from rocket launches could be disruptive to fragile species, particularly nearby seabird colonies. As well, the increased air and sea traffic may have effects on nature. Oil companies have complained that some of the drop zones for the discarded rocket segments lie close to the major offshore oil field sites in the Timor Sea and thus may represent a hazard. There are alternative flight paths, but none are certainties to occur.

The island's water supply has limitations being largely derived from an underground limestone spring. Any spill during rocket transportation or launch could see dangerous chemicals entering the limestone below and eventually the ground-water source. Chemical leaks could damage the underground ecosystem. The existing phosphate mine removes material lying on top of the limestone base of the island. The draft EIS claims that new water supply would come from roof top collection from its buildings.

Note that Christmas Island lies 10 degrees south of the Equator, whereas alternative sites at Biak Island Indonesia, Nauru Island, or in Brazil lie on the Equator. Such sites on the Equator offer greater satellite delivery efficiency to orbit, requiring less rocket capacity. Note too that Australia's Christmas Island in the Indian Ocean is not to be confused with once having a similar name, but now known as Kiritimati, in the equatorial Pacific Ocean.

Conclusion

In a report on *Parliamentary Accountability and Technology evaluation: the Australian Spaceport Project*, University of Canberra Senior Lecturer Dr Alan Jarman notes that the Cape York Spaceport project appeared in media stories and analyses for more than a

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decade. He examines the spaceport as an example of a major project potentially seeking substantial government subsidy and identifies the role of a bipartisan parliamentary committee in its review. He argues that the non-partisan and dispassionate nature of an inquiry was conducive to a more rational form of policy analysis. The inquiry examined previously commercial-in-confidence data and information and brought a new level of policy understanding to the debate. Such an approach may be warranted again in this instance.²⁰

Amendments

Item 1 of Schedule 5 of the Bill inserts a **new item 69** in Schedule 4 of the *Customs Tariff Act 1995* which provides for the duty free importation of prescribed goods, on or after 1 August 2001, for use in a space project authorised by the Minister for Industry, Science and Resources.

Commencement: 1 August 2001

Schedule 6 amendments

Project By-law Scheme

On 23 June 1998 the then Minister for Industry, Science and Tourism, the Hon. John Moore and then Minister for Customs and Consumer Affairs the Hon. Warren Truss announced the Project By-law Scheme.

In announcing the new scheme the Ministers said:

The new scheme will institute new administrative arrangements to reduce the amount of time taken to process by-law applications for major projects. It will also clarify the responsibilities that project proponents have to ensure that Australian industry has the opportunity to supply items of capital equipment for major projects. Proponents of major projects will benefit because it will be quicker and easier to process by-law applications, Australian suppliers will also benefit from the new arrangements because project proponents will be required to show that they have made a bona fide effort to source capital equipment locally.

The Project By-law Scheme, which basically is contained within items 45, 46 and 56 of Schedule 4 of the *Customs Tariff Act 1995*, is designed to assist proponents of major resource processing and agriculture-based industries whilst providing opportunities for local manufacturing industries to supply capital equipment.

The Project By-law Scheme, for the most part, is directed at major resource processing and agriculture-based projects. However, projects across other industry sectors, apart from infrastructure proposals, may also be eligible for import concessions where capital equipment is technologically superior to that produced in Australia.

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Assistance is only available where the total value of capital equipment (from Australia and overseas) used for each significant phase of a particular project exceeds \$10 million.

Item 45 covers capital equipment for use in the mining and resource processing industries.

Item 46 covers capital equipment for use in the agriculture, food processing and food packaging industries.

Item 56 covers capital equipment that is technologically more advanced, more efficient or more productive than equipment currently available from Australian manufacture.

For items 45 and 46 concessions are only made where project proponents can demonstrate that the equipment for which duty relief is sought could not be manufactured in Australia. Applicants seeking duty concessions under item 56 have to support their claim with independent technical assessments. For item 56 submissions to be valid there must be goods made in Australia with which the imported equipment can be compared.

Productivity Commission report

On 22 July 2000 the Productivity Commission (the Commission) issued its *Review of Australia's Tariff Arrangements*.

In relation to the Project By-law Scheme, the Commission's findings included:

- revenue forgone from project and other policy by-laws has declined in recent years with no applications for items 47 and 52 being lodged over the past three years and only a limited number for item 43
- the workload for items 45 and 46 has also declined considerably over the period and use of item 56 was negligible in 1999-00
- participants in the Scheme favoured the by-laws on the grounds that the reduced costs improve the competitiveness of Australian industry, particularly in respect of major capital projects
- some participants in the Scheme considered that the criteria for the by-laws had been tightened and interpreted too narrowly in recent years
- some participants in the Scheme suggested the reduction or abolition of the \$10 million threshold for project by-laws, interpreting 'project' and 'capital equipment' more broadly, and allowing split consignments to be shipped from various ports, and
- the administrative costs for the Scheme and item 57 will be approximately \$470 000 for 1999-00.²¹

The Commission's conclusions/assessment of the Project By-law Scheme and other policy by-laws was:

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As with business inputs under the TCS, there would be merit in reducing the concessional rate of duty under project and other policy by-laws for goods under reference to Free, where a higher duty currently applies, as soon as possible.

The original intention of the project and many other policy by-laws appears to have been to allow concessional duty free entry for certain types of goods where the Government believed, on industry policy grounds, that such concessional entry was warranted, but that the normal criteria of the generally available concession scheme (now the TCS) could not be met (for example, because substitute goods are produced in Australia). In recent years, however, the application of these by-law items appears to have become more restrictive. As a result, use has declined significantly.

The Commission's assessment is that these by-laws are likely to be net contributors to economic welfare where they assist unprotected (as distinct from protected) domestic production. This suggests that, if non-zero general tariffs continued for some time, there would be merit in expanding the scope of the by-law items along the lines requested by participants – for example, by reducing the project threshold from \$10 million to \$5 million. Further, if their scope was clearly restricted to inputs to unprotected domestic production, then any past need for detailed case by case analysis of the effects on Australian industry could be reduced. In expanding their scope in this way, however, there would be a need to balance any extra administrative and compliance costs against the overall assistance benefits for the community.²²

The Productivity Commission recommended that:

The concessional tariff rates for policy by-law items 43, 47 and 52 be reduced to Free as soon as possible.²³

Government Response to Productivity Commission

The Government responded to the Productivity Commission's report on 19 December 2000. As outlined in the Government's Explanatory Memorandum to this Bill, the Government announced that it would consider changes to the Project and Policy By-laws Schemes, in line with the Productivity Commission's suggestions. The Government states in the Explanatory Memorandum to this Bill that the Department of Industry, Science and Resources has held discussion with stakeholders on future directions for the Project and Policy By-laws and that there was broad consensus that streamlining the Policy By-laws would reduce business costs and enhance Australian industry competitiveness.²⁴ The Government also states that there was general support from stakeholders for a 'one stop shop' approach and for a greater range of goods to be eligible for concession entry under the Policy By-laws.²⁵

The amendments proposed by this Bill give effect to the Government's decision with respect to Policy By-laws. Basically, the Government's decision is to streamline Policy By-laws into a single new item in Schedule 4 of the *Customs Tariff Act 1995* and broaden sector eligibility.

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Amendments

The major amendment proposed by Schedule 6 of the Bill is the insertion through **item 6** of a **new item 71** in Schedule 4 of the *Customs Tariff Act 1995*. **New item 71** forms the legislative basis for the new Project By-law Scheme and replaces the existing legislative basis for the Scheme which is contained in items 45, 46 and 56 of Schedule 4 of the *Customs Tariff Act 1995*. The text of existing items 45, 46 and 56 of Schedule 4 of the *Customs Tariff Act 1995* is as follows:

- | | | |
|----|---|------|
| 45 | Capital equipment for use in the mining and resource processing industries, as prescribed by by-law | Free |
| 46 | Capital equipment for use in the agriculture, food processing and food packaging industries, as prescribed by by-law | Free |
| 56 | Capital equipment classified under a heading or subheading in Chapter 84, 85, 86, 87 (excluding goods covered by the plan known as the Passenger Motor Vehicle Manufacturing Plan), 89 or 90 of Schedule 3 which, in the opinion of the Minister, is technologically more advanced, more efficient or more productive than equipment currently available from Australian manufacture, as prescribed by by-law | Free |

Commencement: 1 July 2002

Endnotes

- 1 *Financial Review*, 20 March 2000.
- 2 *ibid.*
- 3 ‘Downer’s Fiji Muddle Deepens’, *Workers Online*, Issue No. 63, 21 July 2000
- 4 Minister for Regional Services, *Media Release*, Territories and Local Government, M145/2001, 23 May 2001.
- 5 Minister for Industry, Science and Resources, *Media Release*, 01/223, 23 May 2001.
- 6 *Explanatory Memorandum*, Customs Tariff Amendment Bill (No. 4) 2001, p. 10.
- 7 *ibid.*, at p. 11.
- 8 Minister for Regional Services, Territories and Local Government, *Media Release*, M191/2001, 24 June 2001.

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- 22 *Ibid.*, at p. 136.
- 23 *Ibid.*, at p. 139.
- 24 *Explanatory Memorandum*, Customs Tariff Amendment Bill (No. 4) 2001, p. 127.
- 25 *Ibid.*

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