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ACIS Administration Amendment Bill 2003

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ACIS Administration Amendment Bill 2003

Brendan Bailey
Law and Bills Digest Group
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ACIS Administration Amendment Bill 2003

Date Introduced: 25 June 2003

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The substantive amendments in Schedule 1 commence on a day to be fixed by Proclamation. If a Proclamation is not made within 6 months of the date of Royal Assent, the Act commences on the first day after that six month period.

Purpose

The purpose of the Bill is to extend the Automotive Competitiveness and Investment Scheme (ACIS) until 2015. The scheme provides assistance to the Australian automotive industry.

Background

The Current Automotive Competitiveness and Investment Scheme (ACIS)

In 1998, following an Industry Commission review, the Government announced a framework for post-2000 automotive policy. The main elements of the policy are:

- continued tariff reform by way of a pause in the tariff at 15 per cent from 2000 to 2004 followed by a reduction to 10 per cent in 2005
- an 'Automotive Market Access and Development Strategy' aimed at opening and developing key export and investment markets for the industry, and
- ACIS, a transitional assistance scheme providing import credit benefits to eligible companies over the period 2001–2005.

ACIS commenced on 1 January 2001 and was scheduled to lapse on 31 December 2005.

The Government's Policy Commitment beyond 2005

The Government's policy commitment beyond 2005 for the Australian automotive industry was announced in December 2002. Central to that commitment is the continuation of ACIS.

As noted above, initially, ACIS was a transitional assistance scheme over the five years 2001 to 2005. ACIS provides import credits to eligible companies to offset customs liabilities on vehicles and certain components. Credits may also be sold to other businesses for their use. ACIS credits for motor vehicle producers (MVPs) are related to production and investment. Credits are also available for automotive components producers and service providers to the industry. ACIS has two separate funding pools. The capped incentives pool is available to all participants. The uncapped pool is only available to MVPs and these credits are tied to the tariff applying to passenger motor vehicles (PMVs) and related components.

On 13 December 2002, the Minister for Industry, Tourism and Resources, the Hon Ian Macfarlane MP, issued a media release in which it was announced that ACIS would continue beyond 2005 to 2015. The Government's announced policy is:

> Post-2005 ACIS
>
> Similar to its predecessor, the post-2005 Automotive Competitiveness and Investment Scheme will be a transitional assistance scheme that will encourage competitive investments by firms in the automotive industry in order to achieve sustainable growth. The Scheme has been announced well before its implementation date of 1 January 2006 to provide certainty for the industry in its planning for the next decade. It will run for ten years with all industry specific support ceasing on 31 December 2015.
>
> **ACIS capped incentives**
>
> During the 2006-2010 period, ACIS capped incentives will be limited to $2 billion. Over 2011 to 2015, ACIS capped payments will be limited to $1 billion, with assistance declining progressively over this period.
>
> From the first quarter of 2003, capped payments will be divided into two funding pools in a ratio of 55:45, one for MVPs and one for the supply chain respectively.
>
> **ACIS uncapped production credits**
>
> MVP uncapped production credits will continue as at present, but will conclude in 2015. They will continue to be tied to the tariff applying to PMVs and related components.

R&D fund for car producers

A $150 million R&D Fund will be created to encourage vehicle producers to invest in high-end R&D activities. The Fund will be conducted on a competitive grants basis with three annual rounds of applications to be held over 2006, 2007 and 2008. Up to $50 million will be allocated for each round, with unallocated funds returned to the MVP funding pool.

Automotive tariffs

From 1 January 2005, the tariff for passenger motor vehicles (PMVs) and automotive components will be 10%. From 1 January 2010, it will be 5%.[1]

The ACIS scheme aims to encourage the development of internationally competitive firms in the Australian automotive industry. As noted above, eligible production, strategic investment and research and development activities earn incentives in the form of duty credits. These credits can be used to offset customs duty on eligible automotive imports, or can be sold for use by another party.

Productivity Commission's *Review of Automotive Assistance* Report (August 2002).

On 30 August 2002, the Productivity Commission issued its *Review of Automotive Assistance* report.[2] The Government sought advice from the Productivity Commission on options for assistance to the automotive industry after 2005 i.e. after the current ACIS scheme is due to lapse. The goal for the Australian automotive industry is to have a viable internationally competitive industry combined with competitively priced and quality manufactured vehicles available for Australian consumers. Some of the key points identified in the Productivity Commission's report were:

- in recent years, the Australian automotive industry has transformed itself to become a major exporter and innovator
- this transformation has been influenced by reductions in tariffs
- ACIS support and a lower $A have both been important in helping the industry adjust to lower tariffs
- a serious weakness is the adversarial workplace culture that continues to be evident in some parts of the industry; better communication and greater cooperation between firms, their employees and unions is the key to improved workplace and industrial relations outcomes, and
- to meet the twin objective of establishing a clear path to lower assistance and giving the industry time to adjust, a decade of policy certainty is desirable.[3]

The Productivity Commission advised that there would be advantages in providing a tariff pause at 10% from 2005 then a reduction to 5% in January 2010 until 2015. The Productivity Commission supported the retention of the ACIS scheme as a transition mechanism, largely in its current form, until the end of 2010.[4]

Australian National Audit Office's Performance Audit Report: *Administration of the Automotive Competitiveness and Investment Scheme* (June 2003)

The Australian National Audit Office (ANAO) issued its performance audit report on ACIS on 30 June 2003.[5]

Overall, ANAO found that the administration of ACIS to date by the Department of Industry, Tourism and Resources (DITR) was timely in delivering credits to participants and that DITR provided good client service. ANAO made some recommendations for improvements to the administration of the scheme, including the introduction of performance measures to assess the effectiveness of ACIS and the introduction of a comprehensive risk management plan.[6]

ANAO also reported on a need to enhance the auditing of the ACIS program due to the identification by AusIndustry (within the DITR portfolio) of inappropriate claims identified in the audits conducted so far. The Australian National Audit Office (ANAO) had reported on the self–assessment nature of ACIS by participants in the scheme and stated:

> As at April 2003, 114 out of 208 participants had been audited. These audits, undertaken by AusIndustry, have resulted in the identification of some $100 million in inappropriate claims. Audits have also identified a number of issues for broader program administration. These have been appropriately addressed by AusIndustry.
>
> However, the ANAO found that auditing was not undertaken in accordance with legislative requirements. Officers undertaking audits were not formally authorised to audit under the Act, nor issued with identity cards, as required.[7]

DITR has agreed with the ANAO recommendation and noted that AusIndustry is recruiting additional staff with auditing expertise.[8]

The Labor Party's Comments

In a media release dated 27 June 2002, the then Shadow Minister for Innovation, Industry, Trade and Tourism, Mr Craig Emerson MP, said:

> Labor shares the Commission's optimism about the industry's future and supports the retention of ACIS as a sound investment in the industry's expansion.
>
> …

> Labor also welcomes the Productivity Commission's support for a roundtable of employer and employee representatives designed to achieve industrial harmony in the industry.[9]

On 1 July 2003, Mr Emerson issued a media release noting that the Auditor–General's report on ACIS included the finding, mentioned above, that $100 million in inappropriate claims had been made under the scheme.[10]

Australian Democrats Welcome Ongoing Support for ACIS

Senator Aden Ridgeway, the Australian Democrats Industry, Small Business and Tourism spokesperson issued a media release on 14 May 2003 commenting on Budget 2003–04, welcoming 'the ongoing and additional funding for the continuation of the Automotive Competitive Scheme (ACIS).'[11]

Media and Other Commentary on ACIS

An editorial in the *Australian Financial Review* on 16 December 2002 under the heading 'Tariff cuts good for car industry' stated:

> The present Australian Competitiveness and Investment Scheme will pour $2.8 billion into the industry over the five years to 2005, when the tariff will fall from 15 per cent to 10 per cent.
>
> Contrary to the doom–and–gloom merchants, the tariff cuts have been the making of the industry. It now exports nearly a third of its output, worth $5 billion; the foreign parents are pouring billions of dollars into new plants and new models; and they all face the future with confidence.[12]

The Victorian Attorney-General and Minister for the Manufacturing Industry, the Hon Rob Hulls MLA, is reported in the *Herald Sun* of 3 October 2002 as arguing for the retention of ACIS and a 10% tariff. Mr Hull's comments were directed, at that time, at suggestions that the ACIS scheme might be axed. He noted that Victoria has three of the four major manufacturers and around 150 automotive component makers.[13]

Criticism of the tariff freeze at 10 per cent and further industry assistance has, however, been described as 'an unfair advantage' to local producers in Australia by the South Korean Trade Minister Mr Doo–Yun Hwang.[14]

Toni O'Loughlin in the *Sydney Morning Herald* has commented on 28 June 2002:

> Consumers and businesses will keep paying thousands of dollars more for new vehicles if the Government adopts a Productivity Commission report arguing for it to prop up the car industry for another 10 years.
>
> …

> If the Government adopts the findings it will be the second time since 1997 that it has extended assistance to Australia's four car makers, Mitsubishi, Toyota, Holden and Ford.[15]

The recent surge in the value of the Australian currency will, however, be a cause for concern for motor vehicle-related exports. Ian Porter in the *Age* commented on 28 July 2003 that, if the Australian dollar holds around US66 cents for 12 months, the value of exports could plunge by more than $1 billion.[16]

Failure to Pass the Bill

A failure to pass the Bill would see the assistance provided to the automotive industry under the ACIS scheme lapse in December 2005.

Main Provisions

Schedule 1

Items 2 and **3** insert provisions in the *Overview of the Act* at section 4 of the *ACIS Administration Act 1999* (the Act) to identify that ACIS will have three stages and three caps on the value of certain duty credits. These are:

- Stage 1—the current scheme up to 31 December 2005 (a financial cap of $2 billion);
- Stage 2—the period 1 January 2006 to 31 December 2010 (a financial cap of $2 billion); and
- Stage 3—the period 1 January 2011 to 31 December 2015 (a financial cap of $1 billion).

The ACIS scheme also has other uncapped assistance estimated at $1.2 billion and administration costs estimated at $0.1 million in 2002–03, increasing to $2.4 million in 2015–16.[17]

The abbreviation 'MVP' used in the wording of **Item 3** means a person registered as a motor vehicle producer under the Act. An 'unmodulated type J investment credit' is a new form of credit available for MVPs who undertake research and development and it is outlined at **Item 43** as a **new Part 5A—Research and development scheme** to be inserted in the Act.

The June 2003 report Administration of the Automotive Competitiveness and Investment Scheme by ANAO explains modulation as:

> The limiting of credits in the capped pool is achieved through a process called modulation. This involves assessing whether total 'unmodulated' claims are likely to exceed the cap of $2 billion over the five year life of the scheme; and, calculating a factor by which future claims should be modulated (reduced) to keep total credits within the cap.[18]

'Modulation' in the context of the ACIS scheme means 'to adjust'.

Items 7 to **10** insert definitions into section 6 of the Act to define ACIS as having three stages (the stages are outlined above in **Items 2 and 3**).

Item 11 extends the ACIS scheme to the 'year before the year 2016'.

Item 13 inserts a definition for 'expires'. It relates to the use and expiry of duty credits under the ACIS scheme and should be read in connection with **Items 64** and **65** (below).

Items 15 to **21** further clarify terminology associated with 'modulation' (see explanation above) used in the current ACIS scheme. **Items 17** and **18** insert references to the new type of assistance available (referred to as type J investment credits for the Research and Development scheme—see also **Item 25**).

Item 28 sets out the funding caps in each of the new three stages of the ACIS scheme with their respective financial 'stage cap' (see outline, above). A new type J investment credit for the Research and Development Scheme can only be issued in Stage 2.

Items 32 to **38** amend the Act to require the Minister to issue modulation guidelines under the proposed revised ACIS scheme with its additional stages and expanded categories of participants. These Ministerial guidelines are disallowable instruments (subsection 55(3) of the Act).

Item 43 inserts a **new Part 5A—Research and Development Schem**e which is associated with the proposed new type J investment credits available in Stage 2 of ACIS. Under **proposed new section 60B**, the new R&D scheme may be varied *but not revoked* pursuant to subsection 33(3) of the *Acts Interpretation Act 1901* which states:

> (3) Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Item 56 inserts additional subsections in existing 'section 66—Circumstances in which the Secretary must amend the ledger' (i.e. the ACIS ledger that records credits in respect of participants). At present, a person may notify the Secretary under section 68 of the Act that they believe that there is an error in the ACIS ledger (see also **Items 57** to **59**) and the Secretary may determine that an error has occurred in relation to that person. The additional subsections to section 66 will clarify that the Secretary must, when adjusting the ledger, have regard to the overall stage caps and the participant's personal limit under the ACIS scheme. In addition, if the error requires a decrease in a person's credit, then the Secretary must amend the ledger to fix the error.

Item 61 fixes a 6 month period after the end of *each* of the three stages when the Secretary can amend the ACIS ledger.

Items 64 and **65** insert a **new Division 1A—Use and expiry of duty credits** to recognise that ACIS will have three stages and to set a time limit of 1 year after the end of each of the three stages in which duty credits are issued, as the period that ACIS duty credits are deemed to expire (see also **Items 80** and **84**).

The existing Act prevents a court decision awarding additional ACIS funding where ACIS funding has already been allocated up to the overall financial cap and where the person's individual limit under the scheme has been reached (see section 112 of the Act). **Item 80** amends section 112 of the Act to recognise the three stages and that the period of adjustment after each stage is limited to 1 year after the end of each stage, respectively (see also the saving provision at **Item 90** for proceedings (if any) already commenced). A 'mirror' provision is also inserted in relation to review of decisions by the Administrative Appeals Tribunal (**Item 84)**.

Item 87 inserts a **new section 115A** which enables the Minister to publicise whether a person was a participant in the ACIS scheme and the amount of duty credit entered in the ACIS ledger in respect of the person. The new provision will be prospective in effect (see also the transitional provision at **Item 91**). The *Explanatory Memorandum* (page 28) to the Bill states that the policy behind this provision is to inform the public how public monies are expended.

Part 2—Transitional provisions

Items 88 to **91** are transitional and saving provisions, some of which are mentioned, above.

Concluding Comments

The identification by ANAO of the program audits by AusIndustry which revealed some $100 million in inappropriate claims made under the ACIS scheme is a matter of concern, even in what is a very large overall program of assistance to the automotive industry.

Given that the freeze in tariff means that Australian consumers will pay more for imported vehicles[19]—than might otherwise be the case if tariff were lowered more quickly—it is hoped that the improvements in auditing will at least increase the efficiency of this otherwise useful assistance program.

Endnotes

1 The Hon Ian Macfarlane MP, Minister for Industry, Tourism and Resources, *Media Release*, CMR02–319, 13 December 2002.

2 Productivity Commission, *Review of Automotive Assistance*, Inquiry Report No. 25, Canberra, 30 August 2002.

3 ibid: p.xii.

4 ibid.

5 Australian National Audit Office, *Administration of the Automotive Competitiveness and Investment Scheme*, Audit Report No. 63 2002–2003, Performance Audit, 30 June 2003.

6 ibid: p.20.

7 ibid: p.19.

8 ibid: p.24.

9 Mr Craig Emerson MP, Shadow Minister for Innovation, Industry, Trade and Tourism, 'Labor welcomes Productivity Commission position paper on automotive assistance', *Media Release*, 27 June 2002.

10 Mr Craig Emerson MP, Shadow Minister for Innovation, Industry, Trade and Tourism, 'Government negligence allows auto scheme rorting', *Media Release*, 1 July 2003.

11 Senator Aden Ridgeway, Australian Democrats Industry, Small Business and Tourism spokesperson, 'Small Business in the Budget Shadow of Big Business', *Media Release*, 03/330, 14 May 2003.

12 'Tariff cuts good for car industry', Editorial, *Australian Financial Review*, 16 December 2002,

13 Rob Hulls, 'Scuttle this car plan now', *Herald Sun*, 3 October 2003.

14 Sid Marris, 'Korea icy on Canberra car tariff plan', *Australian*, 17 September 2002, p. 19.

15 Toni O'Loughlin, 'Keep up the car payments: report', *Sydney Morning Herald*, 28 June 2002.

16 Ian Porter, 'As protection falls, currency surge threatens $1bn in car exports', *Age*, 28 July 2003, p. 1.

17 *Explanatory Memorandum*, ACIS Administration Amendment Bill 2003, p.3.

18 Australian National Audit Office, *Administration of the Automotive Competitiveness and Investment Scheme*, Audit Report No. 63 2002–2003, Performance Audit, 30 June 2003, p.16.

19 See Toni O'Loughlin, 'Keep up the car payments: report', *Sydney Morning Herald*, 28 June 2002.