

Bills Digest
No. 1 2004–05

Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

Thomas John
Law and Bills Digest Section

Michael Priestly
Economic, Commerce and Industrial Relations Section

8 July 2004

ISSN 1328-8091

© Copyright Commonwealth of Australia 2004

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

General Distribution Papers (GDP) are prepared for senators and members of the Australian Parliament. While great care is taken to ensure that they are accurate and balanced, papers are written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in papers is provided for use in parliamentary debate and for related parliamentary purposes. The papers are not professional legal opinion. Readers are reminded that GDPs are not official parliamentary or Australian government documents. IRS staff are available to discuss any paper's contents with senators and members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.
On the Internet the Parliamentary Library can be found at: <http://www.aph.gov.au/library/>

Published by Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

Contents

Purpose.	1
Background.	2
TCF Post-2005 Strategic Investment Program (SIP) Scheme	3
Revenue implications of tariff reductions	4
TCF tariffs in other countries.	5
Implications of a rising dollar for the TCF industry	6
Main Provisions	7
Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004	7
The applicable rates – a general overview.	7
Provisions of significance...	8
Part 1 products (7.5% duty from 1 January 2005)	8
Part 2 products (10% duty from 1 January 2005).	8
Part 3 products (17.5% duty from 1 January 2005)	9
Item 672 of the Customs Tariff Bill	9
Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004.	9

A new Division 4A – Conditional grants	9
Types of conditional grants	9
Compliance checks	10
Powers of the Secretary	10
Operation of, and compensation for damage to, electronic equipment	11
Operation of electronic equipment	11
Damage to electronic equipment	11
Potential problem: the interaction between the pre-condition and the compensation provision	12
A new Part 3A – The TCF Post-2005 (SIP) scheme	12
Division 3 – general policy objectives	13
Division 4 – Registration scheme	14
Division 5 – strategic business plans and accounts	14
Division 6 – conditional grants	14
Division 7 – other matters relating to the scheme	14
A new Part 3B – The TCF Small Business Program	15
Concluding Comments	15
Endnotes	16

Glossary of abbreviations

APS	Australian Public Service
DCS	Developing countries
DCT	Specified countries
TCF	Textile, Clothing and Footwear
WTO	World Trade Organisation
SIP	Strategic Investment Program
APEC	Asia-Pacific Economic Cooperation
TFIA	Council of Textile and Fashion Industries of Australia
Customs Tariff Bill	Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004
Act	<i>Customs Tariff Act 1995</i>
TCF Post-2005 Bill	Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004
TCF(SIP) Act	<i>Textile Clothing and Footwear Strategic Investment Program Act 1999</i>
R&D	Research and experimental development
Post-2005 scheme	TCF Post-2005 Strategic Investment Program (SIP) scheme
Scheme	TCF Strategic Investment Program (SIP) Scheme

Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

Date Introduced: 16 June 2004
House: House of Representatives
Portfolio: Justice and Customs
Commencement: On Royal Assent

Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004

Date Introduced: 16 June 2004
House: House of Representatives
Portfolio: Industry, Tourism and Resources
Commencement: Immediately after the commencement of the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

Purpose

The Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 ('the Customs Tariff Bill') amends the *Customs Tariff Act 1995* ('the Act') to reduce the general rate of customs duty on textile, clothing and footwear ('TCF') items from 1 January 2010 and 1 January 2015.

The scheduled reductions will mean that the general rate of customs duty applicable to all TCF goods (with the exception of clothing and finished textiles) will be 5 per cent from 1 January 2010. The general rate of customs duty on these other items will be reduced to 5 per cent from 1 January 2015.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 ('the TCF Post-2005 Bill') is introduced cognate with the Customs Tariff Bill, proposing amendments to the *Textile Clothing and Footwear Strategic Investment Program Act 1999*.

The TCF Post-2005 Bill extends and simplifies the current industry support program available to TCF manufacturers, the TCF Strategic Investment Program (SIP) Scheme ('the scheme') which will end on 30 June 2005. The TCF Post-2005 Bill extends the Scheme for a further 5 years (or ten years for TCF entities undertaking clothing and finished textile activities) and establishes the TCF Small Business Fund.

Background

The Customs Tariff Bill 2004 and the TCF Post-2005 Bill implement the Government's response to the 2003 *Review of TCF Assistance* by the Productivity Commission as announced by the Minister for Industry, Tourism and Resources on 27 November 2003 (see [Ministerial Press Release](#)).

Following amendments made in 1999 to the Act, TCF items currently at 25 per cent customs duty will be reduced to 17.5 per cent from 1 January 2005, those at 15 per cent will be reduced to 10 per cent and those at 10 per cent will be reduced to 7.5 per cent. Those TCF items currently at 5 per cent will not change:

Australian tariff rates: TCF items (all rates expressed as per cent of value)

	Clothing, finished textiles, household textiles	Cotton sheeting, woven fabrics	Sleeping bags, table linen	Carpets	Footwear	Footwear parts	Other *
2000-04	25%	15%	10%	15%	15%	10%	5%
2005	17.5%	10%	7.5%	10%	10%	7.5%	5%

* Textile yarns.

As part of the phase-down in tariffs the Government provided certain incentives to TCF producers to undertake restructuring and achieve efficiency gains in the period up to 2005. The objective was to provide special assistance, for a limited period, to those sectors of the industry that had a strong prospect of becoming internationally competitive. The scheme is the main component of the TCF assistance package.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Following a review of TCF tariffs by the Productivity Commission in July 2003, the Government announced a five-year pause on tariff reductions after the scheduled 2005 tariff reductions followed by a further tariff phase-down. The Government agreed with the Commission's preferred option to reduce tariffs in two steps with all TCF items except clothing and finished textiles coming down to 5 per cent on 1 January 2010. Tariffs on these items would fall to 10 per cent and on 1 January 2015 would step down again to 5 per cent.

The Government also announced a \$747 million package of support measures to encourage industry restructuring (which included an extension of the scheme), additional support for the clothing and finished textiles sector to 2015 and a \$25 million grants-based program to support TCF small businesses.

The scheduled tariff reductions will mean that most of the TCF tariff lines (77 per cent) will be at 5 per cent or lower from 1 January 2010, with the remainder falling to 5 per cent in 2015, and are in line with Australia's APEC commitment under the 1994 Bogor Agreement to "free and open" trade by 2010:

Australian tariff rates: TCF items
(all rates expressed as per cent of value)

	Clothing, finished textiles, household textiles	Cotton sheeting, woven fabrics	Sleeping bags, table linen	Carpets	Footwear	Footwear parts	Other*
2005-09	17.5	10	7.5	10	10	7.5	5
2010	10	5	5	5	5	5	5
2015	5	5	5	5	5	5	5

* Textile yarns.

TCF Post-2005 Strategic Investment Program (SIP) Scheme

There are five types of grants available under the current scheme. The three largest of these provide grants for new plant/building expenditure (Type 1), for R&D expenditure (Type 2) and for value adding in TCF activities (Type 3). The smaller grants (Types 4 and 5) are designed to provide assistance to communities facing restructuring and employment problems.

Funding for the current scheme is capped at \$700 million over five years. In 2002-03, \$130 million was paid through the scheme. Around 60 per cent of SIP payments were for Types 1 and 2 grants. Type 3 grants accounted for 38 per cent of payments while Types 4 and 5 grants accounted for less than one per cent.

One of the criticisms of the current scheme, however, is that smaller TCF firms are unable to access the Scheme because of the Scheme's eligibility criteria, in particular the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

\$200,000 annual investment threshold of eligible expenditure.¹ In 2002-03, there were 365 SIP registrants, the majority (75 per cent) were medium sized and large TCF firms employing more than 20 people.

The TCF Post-2005 Bill amends the scheme and provides for only 2 types of grants. The new Scheme, renamed the TCF Post-2005 (SIP) Scheme ('Post-2005 scheme'), will be capped at \$575 million, of which \$487.5 million will be the amount capped for the 2005-06 to 2009-10 income years and \$87.5 million for the 2010-15 income years.

Type 1 and 2 grants will provide for a 40 per cent capital investment subsidy and an 80 per cent innovation subsidy respectively. As under the current scheme, grants can only be paid in arrears on the basis of demonstrated performance in the areas specified.

In line with WTO rules, the overall level of assistance to an individual TCF firm from both the Post-2005 scheme and the Import Credit Scheme (Product Diversification Scheme) in any one year is limited to 5 per cent of its total sales revenue in the preceding twelve months.²

Revenue implications of tariff reductions

Customs revenue from TCF tariffs in 2001-02 was around \$950 million.³ This was about 26 per cent of the total tariff revenue for that year or 0.6 per cent of total Commonwealth revenue.

As noted in the [Explanatory Memorandum](#) to the Customs Tariff Bill, the tariff reductions, which commence on 1 January 2010, are estimated to result in revenue foregone of \$6.3 billion over eight years:

Period	Revenue Forgone \$ millions
2004-05	0.0
2005-06	0.0
2006-07	0.0
2007-08	0.0
2008-09	0.0
2009-10	300
2010-11	600
2011-12	600
2012-13	700
2013-14	700
2014-15	900
2015-16	1,200
2016-17	1,300

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

TCF tariffs in other countries

Tariff protection for the Australian TCF industry has declined significantly since the 1990s, beginning with the 1987 TCF industry plan. For example, in the footwear sector tariffs fell from 45 per cent in 1990 to the current level of 15 per cent and will fall to 10 per cent in January 2005.

While Australia has pushed ahead with its trade liberalisation strategy and is working towards the overarching APEC goal of free and open trade by 2010, many of its regional trading partners have maintained their tariff barriers on TCF products. Much like Australia, the TCF industry globally has traditionally been highly protected.

As Table 1 shows, Australia's tariff reductions have not been matched by its major trading partners and regional competitors:

Table 1: TCF tariffs for selected products, Apical International 2003

Sector	Product	Tariff	
Apparel Textiles	Circular knitted cotton containing 5% or more of elastometric yarn	Mauritius 80% Vietnam 40% India 35% Pakistan 30% Israel 27.4%	Mexico 23% China 22% South Africa, Thailand and Malaysia 20% Japan 15.7%
Industrial Textiles	Woven Nomex	Vietnam 40% Pakistan, China and India 30%	South Africa 22% Malaysia and Thailand 20%
Footwear	Protective metal toe-cap footwear	Japan 60% (without quota) Vietnam 50% Thailand and Papua New Guinea 40% Malaysia and South Africa 30%	Another work-boot also with a protective metal toe-cap attracts a tariff of 37.5% upon entering the US
Leather Apparel and Handbags	Apparel and clothing accessories	Vietnam 50% India and Mexico 35% South Africa and Thailand 30%	Japan 20% Korea 16% Indonesia and Canada 15%
Woollen Apparel	Men's knitted woollen cardigans	Vietnam 50% South Africa 40% Israel 36%	India 35% Thailand and Pakistan 30% US 16.3%

Source: Apical International, *Market Access Industry Participation Program*, 2003, commissioned by the TFIA.

The Apical International Report identified tariffs of 30 per cent or more on TCF products in developing countries such as India, Vietnam, Pakistan and China. In developed countries of APEC such as the US, Canada, Japan, TCF tariffs are mostly around 15 per cent with some higher tariffs on individual TCF items.⁴

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

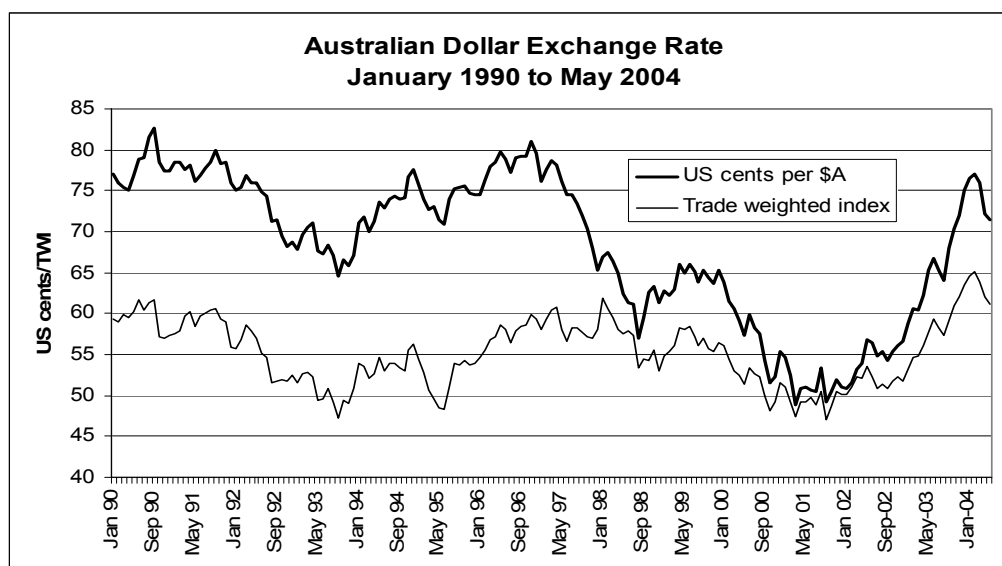
The Productivity Commission's *Review of TCF Assistance* also indicates that Australian firms face significant tariff and non-tariff barriers, such as quota restrictions and restrictive rules of origin when exporting TCF products. The Commission noted:

Among developed countries, maximum developed applied tariffs are higher in the United States than in the European Union (EU) or Japan (these markets accounted for 50 per cent of world textile and clothing imports in 2001). Since the mid-1990s, maximum tariff rates in these three markets have for the most part either fallen marginally or remained stable (a notable exception being a sharp rise in certain man-made fibre tariffs in the United States).

In Australia, in contrast to the EU, the US and Japan, tariffs on all TCF products have been reduced significantly over the last decade and a half (albeit from a much higher starting point).⁵

Implications of a rising dollar for the TCF industry

Until recently, the low value of the Australian dollar has shielded TCF firms from the competitive pressures that tariff reductions and global influences would otherwise have had on the industry. Over the year to March 2004, however, the Australian dollar has appreciated by 25 per cent against the US dollar and 16 per cent against the trade weighted index. This recent appreciation of the Australian dollar and any further rise in the dollar's value affects the industry's competitiveness and viability.



According to a survey by the [Australia Industry Group](#), for each one cent appreciation of the Australian dollar against the US dollar, export income for manufacturing overall is

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

reduced by 0.3 per cent (or an annual loss of \$210 million for every one cent appreciation). For the TCF industry the loss of export income is even greater. The survey estimates a loss of 0.4 per cent and 1.4 per cent for textiles, and clothing and footwear export earnings respectively, for every one cent appreciation.

For manufactured exports, the survey notes that the US\$0.70 mark is the critical point. Beyond this level, Australian exports become highly uncompetitive on world markets. An appreciating Australian dollar will, of course, also reduce the cost of TCF imports. While the Australian dollar has fallen back below US\$0.70, any appreciation of the currency will be of more concern for TCF producers than tariff reductions.

The survey also found that industries that are relatively labour intensive are more likely to move their production activity offshore due to the appreciating dollar. This includes many TCF firms. Around 50 per cent of the firms surveyed indicated that the higher dollar had increased the likelihood of moving at least some or all production offshore. In recent years, a number of well-known, high profile TCF firms have moved their manufacturing operations offshore.⁶

Main Provisions

Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

The amendments to the Act as proposed by the Customs Tariff Bill will have the following effects on customs duties.

The applicable rates – a general overview

	Part 1	Part 2	Part 3
Items	1 to 137	138 to 432	433 to 671
Changes applicable to			
	A range of textile yarns, fabrics, certain finished textile goods and footwear parts (Part 1 products).	A range of footwear, cotton sheeting and woven and knitted fabrics of various textile materials (Part 2 products).	Most articles of apparel and certain finished textiles (Part 3 products).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

	Part 1	Part 2	Part 3
Current dutiable rate			
	10%	15%	25%
Proposed dutiable rates			
1 January 2005 ⁷	7.5%	10%	17.5%
1 January 2010 ⁸	5%	5%	10%
1 January 2015 ⁹	remains unchanged	remains unchanged	5%

Provisions of significance...

Part 1 products (7.5% duty from 1 January 2005)

The Customs Tariff Bill will maintain the current preferential regime, therefore the gradual reductions of the general rate applicable to preference countries envisaged by the Customs Tariff Bill will have the effect that most preference countries will enjoy tariffs that are 'Free' (i.e. zero) as of 1 January 2010.¹⁰ Under the current legislative arrangements, the only exception to this will be Canada. However, amendments envisaged by **Schedule 1 Part 1** of the Customs Tariff Bill (**Items 7, 18, 49, 50, 56, 57, 110, 111, 112, 117 and 122**) ensure that the dutiable rate for Canadian goods will be 'Free' after 1 January 2010.

In relation to the special rates applicable to 'DCT'¹¹ and 'DCS'¹² countries as set out in Schedule 1, Part 4 and 5 of the *Customs Tariff Act 1995*, the general rate will apply to Part 1 goods manufactured or produced in those countries from 1 January 2010.

Part 2 products (10% duty from 1 January 2005)

The amendments set out in **Schedule 1 Part 2** of the Customs Tariff Bill will not interfere with the margins of tariff preference and duty free entry for preference countries, with the tariff becoming or remaining 'Free' after 1 January 2010. **Item 351** of the Customs Tariff Bill preserves the preferential treatment for Canada, and ensures that goods produced or manufactured in Canada will become free of tariffs as of 1 January 2010.

'DCT' and 'DCS' countries will be subject to the general rate.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Part 3 products (17.5% duty from 1 January 2005)

The amendments set out in **Schedule 1 Part 3** of the Customs Tariff Bill will not interfere with the margins of tariff preference and duty free entry for preference countries. The tariff will gradually be reduced as set out in the table above, with the tariff preference margin ensuring that when the general rate sinks to 5% on 1 January 2015, the preference rate will be Free. **Item 541** of the Customs Tariff Bill preserves the preferential treatment for Canada with the tariff for goods produced or manufactured in Canada becoming 'Free' as of 1 January 2010, and remaining Free after 1 January 2015.

'DCT' and 'DCS' countries will be and remain subject to the general rate.

Item 672 of the Customs Tariff Bill

Item 672 will allow the Government to operate a 'Product Diversification Scheme' under the Customs Tariff legislation for certain clothing and finished textiles. Based on a duty credit scheme, this scheme will apply to goods entering Australia for home consumption.

Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004

Schedule 1 Items 1 to 9 of the TCF Post-2005 Bill provide for consequential changes to the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* ('the TCF(SIP) Act'), including, for example, amendments to definitions and a simplified outline.

A new Division 4A – Conditional grants

Schedule 1 Item 10 of the TCF Post-2005 Bill introduces a new **Division 4A** into the TCF(SIP) Act, providing for the payment of conditional grants available under the scheme.

Central to the conditional grant scheme is proposed **section 18A** of the TCF Post-2005 Bill. **Subsection 18A(1)** stipulates that the scheme may provide for the payment of grants subject to certain conditions which may be imposed as a condition precedent or subsequent.

Types of conditional grants

The following conditions may be imposed:

- compliance with an information gathering notice pursuant to section 38 of the TCF(SIP) Act (**subsection 18A(2)**)

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- that no false or misleading statement, information, evidence or document is made, given or produced in connection with the grant (**paragraphs 18A(3)(a) to (c)**), or
- that entities allow authorised officers reasonable access to the business premises for the purpose of monitoring compliance with the conditions imposed upon the grant (**subsection 18A(4)**).

Compliance checks

To enable the authorised officer to effectively conduct the compliance check envisaged under **subsection 18A(4)**, the condition may further stipulate that the entity has to allow the authorised officer:

- to access and inspect the premises and anything located on the premises (**subsection 18A(4)(d)**)
- to operate electronic equipment on the premises to monitor electronically stored information (**paragraph 18A(4)(e)**)
- to make copies of any document found in hardcopy on the premises (**paragraph 18A(4)(f)**), and
- to receive reasonable facilities and assistance in connection with the monitoring (**paragraph 18A(4)(g)**).

Whilst the Department of Industry, Tourism and Resources ('the Department') has the authority to monitor compliance, it is important to note that it has no power to compel compliance with the conditions. Rather, where an entity has breached a condition imposed under the grant, the Commonwealth may recover the conditional grant pursuant to s.43 of the TCF(SIP) Act.

Powers of the Secretary

Subsections 18A(5) to (7) confers powers on the Secretary of the Department ('the Secretary') in relation to monitoring the compliance with the conditions imposed under the scheme. These include the power to:

- specify the business premises to be accessed (**subsection 18A(5)**)
- appoint a qualified APS employee as authorised officer within the meaning of the Division (**subsection 18A(6)**), and
- appoint an employee of and authorised Commonwealth contractor to be an authorised officer for the purposes of the new **Division 4A (subsection 18A(7))**.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Operation of, and compensation for damage to, electronic equipment

Sections 18B to 18E set out the framework for the use and operation of electronic equipment to monitor electronically stored information pursuant to **paragraph 18A(4)(e)**.

Operation of electronic equipment

Proposed **section 18B** applies to authorised officers within the meaning of **Division 4A**, empowering the officer to:

- put electronically stored documents into hard copy form and remove those documents from the premises (**subsection 18B(2)**), or
- transfer electronically stored documents to another electronic storage device, such as a disk or tape and remove this storage device from the premises (**subsection 18B(3)**).

Section 18C provides similar powers to an expert who is required to assist the authorised officer with the retrieval of relevant information from electronic storage devices by operating special equipment. However, whilst the expert is authorised to:

- put electronically stored documents into hard copy form (**subsection 18C(3)**), or
- transfer electronically stored documents to another electronic storage device, (**subsection 18C(4)**),

the removal of the documents or other electronic storage device must be performed by the authorised officer (**subsection 18C(5)**).

Damage to electronic equipment

Pursuant to **section 18D** of the TCF Post-2005 Bill, a **precondition** to the operation of electronic equipment for the retrieval of electronically stored information is that the person operating the equipment holds the reasonable belief that it can be operated without causing damage.

Where, however, equipment has been damaged as a **result** of the operation of the equipment, the Commonwealth has to pay reasonable compensation to the entity pursuant to **section 18E**. Under **subsection 18E(1)**, the compensation is only payable where:

- damage is caused to the equipment (**subparagraph 18E(1)(a)(i)**)
- damage is caused to the data recorded on the equipment (**subparagraph 18E(1)(a)(ii)**), or

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted (**subparagraph 18E(1)(a)(iii)**),

and, where the damage was due to:

- the exercise of insufficient care in selecting the person who operated the equipment (**subparagraph 18E(1)(a)(i)**), or
- the exercise of insufficient care by the person operating the equipment (**subparagraph 18E(1)(a)(ii)**).

The Commonwealth is required to pay compensation as agreed upon with the owner or user (**subsection 18E(2)**). Only where the Commonwealth and the owner or user cannot agree upon a reasonable amount, the Federal court will gain jurisdiction over the dispute under **subsection 18E(3)**. To determine the amount payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, provided any appropriate warning or guidance on the operation of the equipment (**subsection 18E(4)**).

Potential problem: the interaction between the pre-condition and the compensation provision

As mentioned above, before operating equipment, it is a prerequisite pursuant to **section 18D** of the TCF Post-2005 Bill to hold a reasonable belief that the operation will be safe for the equipment and damage or corruption will not occur as a result of the use. It may be, however, that this preliminary decision will not be caught by the compensation provision.

Section 18E of the Bill provides for a compensation scheme that expressly applies to situations where damage or corruption occurred as a result of insufficient care taken:

- in the selection of the person to operate the equipment, or
- in the operation of the equipment itself.

Arguably a person could take 'sufficient care' in operating a computer even though they did not have reasonable grounds for believing that the operation of the equipment could be carried out without causing damage. In this case, compensation for any damage may not be payable under the terms of **section 18E**. **Subparagraph 18E(1)(b)(ii)** could be amended to provide for compensation where a person lacks the reasonable belief required by **section 18D**.

A new Part 3A – The TCF Post-2005 (SIP) scheme

Schedule 1 Item 12 of the TCF Post-2005 Bill proposes to introduce a **new Part 3A** into the TCF(SIP) Act, implementing the Government's TCF Post-2005 (SIP) scheme ('the Post-2005 scheme').

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Division 1 of the new **Part 3A** introduces consequential amendments to the TCF(SIP) Act, such as definitions and the simplified outline of the Part.

Subsections 37C(a) to (c) confer the relevant powers upon the Minister to formulate the Post-2005 scheme to make grants in relation to the purposes set out in this section.

Section 37D of the TCF Post-2005 Bill sets out the total dollar ceiling for all grants made under the Post-2005 scheme. It provides:

Overall ceiling of the Post-2005 scheme (2005-2006 to 2014-2015)	\$575 million
Ceiling for financial years 2005-2006 to 2009-2010	\$487.5 million
Ceiling for financial years 2010-2011 to 2014-2015	\$87.5 million

Division 3 – general policy objectives

Division 3 of new **Part 3A** of the TCF Post-2005 Bill sets out the proposed general policy objectives to be achieved under the TCF(SIP) Act.

Section 37E makes it mandatory that the Post-2005 scheme must be directed at ensuring to achieve the policy objectives as set out in **sections 37F to 37K**. These objectives are:

- the reduction of types of grants from five types to two types (**section 37F**). These are:
 - grants in respect of TCF capital investment expenditure, and
 - grants in respect of TCF research and development expenditure.
- the making of grants in respect of TCF capital investment in compliance with the provisions set out in **subsections 37G(2) to (5)**
- the making of grants in respect of TCF research and development in compliance with the provisions set out in **paragraphs 37H(1)(a) to (c)** and **subsection 37H(2)** of the TCF Post-2005 Bill
- that grants are made in arrears as stipulated in **section 37J**
- that grants to entities are capped pursuant to the principles set out in **subsections 37K(1) to (5)**.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Division 4 – Registration scheme

Division 4 of the new **Part 3A** introduced by the TCF Post-2005 Bill empowers the Minister to introduce a registration regime for entities into the Post-2005 scheme (**subsection 37L(1)**). Examples for possible requirements relating to the registration of entities are listed in **subsection 37L(2)** and include, for example:

- a requirement that an entity must apply for registration, or
- that the entity’s application for registration be accompanied by a statement issued by a specified person as to the entity’s future financial viability.

Subsection 37L(3) provides examples for possible consequences as a result of non-compliance with the registration requirements, including:

- the consequence that the entity is not eligible for a grant, or
- the consequence that the entity’s eligibility for a grant is subject to restriction or reduction.

Division 5 – strategic business plans and accounts

Pursuant to **Division 5** of the new **Part 3A**, entities will only be eligible for grants if they have complied with the Post-2005 scheme’s provisions in relation to the content and submission of strategic business plans (**section 37M**). Under **section 37N**, the Post-2005 scheme may also contain similar stipulations in relation to the compliance with the requirements relating to the submissions of audited or unaudited accounts and financial statements (**subsections 37N(a)** and **(b)**).

Division 6 – conditional grants

Division 6 of the new **Part 3A** sets out the framework in relation to grants subject to conditions. The framework mirrors the provisions set out in the proposed **Division 4A** and the details are discussed above.

Division 7 – other matters relating to the scheme

Division 7 of the new **Part 3A** contains several additional features of the Post-2005 scheme. This includes, for example, that the Post-2005 scheme:

- may confer administrative powers on the Secretary of the Department (**section 37W**), and
- must provide for a review mechanism (**section 37X**), which

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- allows the affected entity to request reconsideration of the initial decision through the Secretary,
- requires the Secretary to reconsider the initial decision and either to confirm, revoke or vary it, and
- allows for the appeal from the Secretary's confirmation or variation to the Administrative Appeal Tribunal.

Finally, pursuant to **section 37 ZI**, the Minister is required to publish the grant totals under the Post-2005 scheme, including the list of entities that received grants and the total of the grants.

A new Part 3B – The TCF Small Business Program

Item 12 also inserts a new **Part 3B** into the TCF(SIP) Act which appropriates funding for the TCF Small Business Program. Pursuant to **subsection 37ZJ(3)**, the Government has appropriated \$25 million for this purpose. The Department is responsible for administering the program, which includes determining:

- recipients eligible for grants
- payable amounts
- timing of payments, and
- possible terms and conditions of the payments.

The remaining **Item 13** to **Item 24** contain consequential amendments to the Act.

Concluding Comments

Australia's domestic market is small compared to the global TCF market and it is absorbing increasingly higher levels of TCF imports. The projected tariff reductions in January 2010 and 2015 will bring additional adjustment pressures to bear on the TCF industry which is already undergoing significant change and restructuring. These pressures will be felt in Victoria where almost half of all TCF manufacturing is located. The support measures totalling \$747 million will help provide a framework for guiding the industry to the next stage of its development.

The TCF industry has demonstrated its preparedness to reduce its reliance on the domestic market through increasing the current levels of TCF exports which are currently worth \$1 billion annually. Over the past ten years these exports have doubled in real terms.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

However, future growth through exports will not occur without further trade liberalisation by Australia's trading partners in the region and elsewhere.¹³ At this stage, given the lack of progress in the Doha Round of trade negotiations over TCF tariffs, it is unlikely that further tariff reductions will occur globally.

Endnotes

- 1 See Australian Business Limited, Submission to the Productivity Commission *Review of TCF Assistance*, [Submission No. 98](#), pp 10–11.
- 2 The Import Credit Scheme (Product Diversification Scheme) will allow eligible TCF producers to import finished clothing and textiles at a discounted tariff rate, with the amount being linked to a firm's additional production.
- 3 Productivity Commission, *Review of TCF Assistance*, Report No. 26, 31 July 2003, p. 66.
- 4 See Victoria Government Submission to the Productivity Commission *Review of TCF Assistance*, [Submission No. 78](#), p. 7.
- 5 Productivity Commission, *Review of TCF Assistance*, Report No. 26, 31 July 2003, p. 252.
- 6 For example, Quicksilver in Torquay, Yakka in Shepparton and Fletcher Jones in Warnambool have all closed their operations in regional Victoria.
- 7 As per the *Customs Tariff Amendment Act (No. 1) 1999*.
- 8 As per the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.
- 9 As per the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.
- 10 Preference countries pursuant to ss. 3, 16 of the *Customs Tariff Act 1995* are: New Zealand, Papua New Guinea, any Forum Island Country, 'Least Developed Countries', 'Developing Countries', Canada and Singapore.
- 11 DCS countries are so called 'developing' countries including eg Croatia, China, North and South Korea and Vietnam.
- 12 DCT countries are so called 'specified' countries and include Singapore and Hong Kong.
- 13 See Werner International, *TCF&L Market Access Study*, Paper prepared for the TCF&L Forum, May 2003.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.