



**This is a new edition of a Bills Digest (no. 1-2, 2004-05) previously prepared for the 40th Parliament**

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

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### **Contents**

Legislative history.....	1
Purpose.....	1
Background.....	2
TCF Post-2005 Strategic Investment Program (SIP) Scheme .....	3
Comments .....	3
Main Provisions .....	4
Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.....	4
The applicable rates – a general overview .....	4
Provisions of significance... ..	5
Part 1 products (7.5% duty from 1 January 2005).....	5
Part 2 products (10% duty from 1 January 2005).....	5
Part 3 products (17.5% duty from 1 January 2005).....	5
Item 672 of the Customs Tariff Bill.....	6
Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004.....	6
A new Division 4A – Conditional grants.....	6
Types of conditional grants.....	6
Compliance checks .....	7

Powers of the Secretary .....	7
Operation of, and compensation for damage to, electronic equipment .....	7
Operation of electronic equipment .....	7
Damage to electronic equipment .....	8
Potential problem: the interaction between the pre-condition and the compensation provision.....	9
A new Part 3A – The TCF Post-2005 (SIP) scheme.....	9
Division 3 – general policy objectives.....	9
Division 4 – Registration scheme .....	10
Division 5 – strategic business plans and accounts .....	10
Division 6 – conditional grants.....	11
Division 7 – other matters relating to the scheme .....	11
A new Part 3B – The TCF Small Business Program .....	11
Endnotes.....	12

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

**Date Introduced:** 17 November 2004

**House:** House of Representatives

**Portfolio:** Justice and Customs

**Commencement:** Immediately after the commencement of the Customs Tariff Amendment (Textile, clothing and Footwear Post-2005 Arrangements) Bill 2004

### **Legislative history**

The Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 ('the Customs Tariff Bill') and the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 ('the TCF Post-2005 Bill') have been introduced previously on 16 June 2004.<sup>1</sup> However, with the prorogation of the 40<sup>th</sup> Parliament, both Bills have lapsed.

The Government has reintroduced the Bills without having made any changes to the original Bills introduced during the 40<sup>th</sup> Parliament.

### **Purpose**

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.

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, which will end on 30 June 2005. The TCF Post-2005 Bill extends the SIP 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.

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## 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 SIP Scheme is the main component of the TCF assistance package.

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 on 1 January 2010 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 SIP 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 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:

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**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 SIP 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.

The TCF Post-2005 Bill amends the SIP 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.<sup>2</sup> A summary of the Post-2005 scheme is contained in the Main Provision section below.

**Comments**

Australia's domestic market is small compared to the global TCF market and 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

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already undergoing significant change and restructuring. These pressures will be felt in Victoria where almost half of all TCF manufacturing is located. The new industry 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. However, future growth through exports will not occur without further trade liberalisation by Australia's trading partners in the region and elsewhere.<sup>3</sup> 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.

## 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

	<b>Part 1</b>	<b>Part 2</b>	<b>Part 3</b>
<b>Items</b>	1 to 137	138 to 432	433 to 671
<b>Changes applicable to</b>			
	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).
<b>Current dutiable rate</b>			
	10%	15%	25%
<b>Proposed dutiable rates</b>			

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	Part 1	Part 2	Part 3
1 January 2005 <sup>4</sup>	7.5%	10%	17.5%
1 January 2010 <sup>5</sup>	5%	5%	10%
1 January 2015 <sup>6</sup>	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.<sup>7</sup> 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'<sup>8</sup> and 'DCS'<sup>9</sup> 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.

#### 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.

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‘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)**)
- 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)**).

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## 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))**.

## 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:

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- 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
- 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

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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').

**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 ( <b>2005-2006 to 2014-2015</b> )	\$575 million
Ceiling for financial years <b>2005-2006 to 2009-2010</b>	\$487.5 million
Ceiling for financial years <b>2010-2011 to 2014-2015</b>	\$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.

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**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)**.

#### **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

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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
  - 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.

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

## Endnotes

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- 1 Bills Digests for the Bills introduced on 16 June 2004 have been prepared by the Parliamentary Library. T John and M Priestley, 'Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 and Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004', Bills Digest, Nos. [1](#) and [2](#), Parliamentary Library, Canberra 2004.
- 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 See Werner International, *TCF&L Market Access Study*, Paper prepared for the TCF&L Forum, May 2003.
- 4 As per the *Customs Tariff Amendment Act (No. 1) 1999*.
- 5 As per the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.
- 6 As per the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.
- 7 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.
- 8 DCS countries are so called 'developing' countries including eg Croatia, China, North and South Korea and Vietnam.
- 9 DCT countries are so called 'specified' countries and include Singapore and Hong Kong.

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