

**Trade Policy Review Body**  
**23 and 25 September 2002**

**TRADE POLICY REVIEW**

**AUSTRALIA**

Minutes of Meeting

Addendum

*Chairperson: H.E. Ms Amina Chawahir Mohamed (Kenya)*

This document contains the advance written questions, and replies provided by Australia.<sup>1</sup>

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**Organe d'examen des politiques commerciales**  
**23 et 25 September**

**EXAMEN DES POLITIQUES COMMERCIALES**

**AUSTRALIE**

Compte rendu de la réunion

Addendum

*Président: S.E. Mme Amina Chawahir Mohamed (Kenya)*

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par l'Australie.<sup>1</sup>

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**Órgano de Examen de las Políticas Comerciales**  
**23 y 25 de septiembre de 2002**

**EXAMEN DE LAS POLÍTICAS COMERCIALES**

**AUSTRALIA**

Acta de la reunión

Addendum

*Presidente: Excma. Sra. Amina Chawahir Mohamed (Kenya)*

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Australia.<sup>1</sup>

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<sup>1</sup> In English only./En anglais seulement./En inglés solamente.



**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND REPLIES PROVIDED BY  
AUSTRALIA**

**I. Economic environment**

**(4) Main Structural Policy Developments**

**(i) Tax reform**

Question from the European Union

*Question: We note that despite the introduction of ‘The New Tax System’ on 1 July 2000 as part of the comprehensive tax reform introduced by the Commonwealth Government luxury cars are still subject to a luxury car tax of 25% on the value in excess of the LCT threshold. The LCT falls disproportionately on imported cars whose prices in Australia already reflect high import tariffs. The report furthermore states that “data on the disaggregation of LCT revenues between domestically produced cars and imported cars are not available from the Australian authorities”. The EU is concerned that this tax, which seems to be biased against imports, remains in place as only a few Australian made models fall under this tax, whereas more expensive imported cars from the EU are subject to this tax. Does Australia have any plans to ensure avoidance of such tax discrimination in the future?*

Answer: Australia has committed itself to creating an efficient and internationally competitive automotive industry. Australia has reduced tariffs on passenger motor vehicles from near 60 per cent in 1985 to the current level of 15 per cent. Australia is further committed to reducing tariffs to 10 per cent in 2005.

The Government introduced a luxury car tax (LCT) as an equity measure with the introduction of a goods and services tax (GST) in 2000. This was necessary to prevent disproportionate falls in the price of luxury vehicles compared to standard model vehicles when a GST of 10 per cent replaced the wholesale sales tax of 45 per cent that had previously applied to luxury vehicles. It is important to note that the LCT applies to both imported and domestically produced vehicles without discrimination. Price is the sole factor in determining which vehicles are subject to LCT.

The Australian Bureau of Statistics (ABS) collects data on car sales in Australia to be used in relevant statistical analysis. To produce a disaggregation of LCT revenues between domestically produced cars and imported cars would require data collection and analysis at a greater level of detail than is currently undertaken and this would involve significant costs.

The Australian Productivity Commission is currently undertaking a report concerning post 2005 assistance arrangements for the automotive manufacturing sector. This report will make recommendations on all relevant aspects of the Australian automotive industry.

## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(4) Trade Policy Objectives**

#### **(ii) Sectoral trade policy objectives**

##### Question from Brazil

*Question: Compared with agriculture, manufacturing benefited from much higher tariff protection (though subject to cuts) and industry-specific support has been maintained for automotive, pharmaceuticals, textiles, clothing, footwear, shipbuilding, and printing and publishing industries. Please provide more detailed information on these industry-specific support measures.*

Answer: The general philosophy on industry assistance has been to shift funding from broad assistance measures to a focus on strategic investment and encouragement of innovation. Some of the remaining assistance schemes exist for purely domestic purposes - for instance, the Tasmanian Freight Equalisation Scheme is aimed at overcoming the additional costs faced by Tasmanian consumers, compared to mainland Australians as a result of the unique burden of transporting goods by water to Tasmania. These measures have little if any trade distorting impact.

In terms of the industry specific schemes, these are spelt out in detail in section IV of the Review. A number of the measures compensate manufacturers for the impact of tariffs on inputs to the production process, and hence overcome aspects of negative assistance. In regard to some of the measures, they are part of managing the transition from much higher levels of assistance in the past to the modest levels that prevail today.

##### Question from the United States

*Question: - What is the economic rationale for having industry-specific support, as described in section II(4)(ii)?*

Answer: See the response to the previous question posed by Brazil.

### **(6) Trade Agreements and Arrangements**

#### **(ii) Preferential, regional and bilateral arrangements**

##### Questions from Argentina

*Question: What percentage of Australia's total exports and imports goes to or comes from countries with which it has preferential or free-trade agreements?*

Answer: Countries with which Australia has preferential or free trade agreements accounted for 7.8 per cent of total exports and 5.2 per cent of total imports in FY 2002.

*Question: In paragraph 33 of the Secretariat Report, it is stated that Australia is pursuing a number of regional trade initiatives with the objective of delivering meaningful gains in market access and promoting regional economic integration. Some of these initiatives are listed in the paragraph in question. Could Australia provide further information on these initiatives? What is the present state of the negotiations, and the modalities and sectors that would be covered?*

Answer:

**1. Australia-Singapore FTA (ASFTA)**

We are hopeful of concluding an FTA with Singapore covering trade in both goods and services in the coming months. There have been nine full rounds of negotiations in 2001-2002 and a number of intersessional meetings. Good progress was made at the most recent rounds of ASFTA negotiations held in July and early September. In most areas the framework text of the agreement is close to completion.

The agreement will be comprehensive, covering such issues as trade in goods, rules of origin, customs facilitation, standards, government procurement, services, investment, competition policy, intellectual property, and electronic commerce.

**2. Australia-Thailand Free Trade Agreement**

On 30 May, Prime Minister Howard and Thai Prime Minister Thaksin announced the launch of negotiations for a free trade agreement between Australia and Thailand. The negotiation of the "Closer Economic Relations" Free Trade Agreement will be broad in scope, covering not only the liberalisation of trade in goods and services, but also cooperation in a range of other areas where there are real and measurable benefits.

**3. AFTA-CER Closer Economic Partnership**

During recent consultations between ASEAN Economic Ministers and the Trade Ministers from Australia and New Zealand, a Joint Ministerial Declaration on the AFTA-CER Closer Economic Partnership (CEP) was signed, which introduced a formal structured approach to promoting trade, investment and regional economic integration between ASEAN and CER.

The Ministers agreed to set a target of doubling trade and investment by 2001 to ensure that the CEP was ambitious and results-oriented, with a practical focus on increasing trade and investment. Under the CEP Initial Work Program, priority has been given to elimination of technical barriers to trade and non-tariff barriers, customs cooperation, capacity building, trade and investment promotion and facilitation, standards and conformity assessment, electronic commerce and small and medium enterprises.

*Questions from Chinese Taipei*

*Question: It is noted that Australia believes that RTAs can complement and help to build momentum for multilateral liberalization, and that it believes that RTAs should comply strictly with the relevant WTO rules, including the requirements of covering substantially all the trade between the parties and not raising barriers against non-parties. Could Australia please illustrate with some examples how it avoids raising barriers against non-participating countries?*

Answer: GATT Article XXIV: 5 requires that Free Trade Areas and Customs Unions do not lead to the imposition at the outset of duties and other regulations of commerce with respect to WTO members that are non-Parties to such arrangements that are on the whole higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the territory of the Parties prior to the formation of such a Free Trade Area or Customs Union. Free Trade Agreements entered into by Australia have been consistent with this provision. In fact, in the same period that tariffs were eliminated under the Australia New Zealand Closer Economic Relations Trade

Agreement, the main FTA to which Australia is a Party, both Australia and New Zealand undertook measures to reduce significantly MFN tariffs applicable to imports from third countries.

*Question: The current Canada-Australia Trade Agreement only covers 400 tariff lines. It would be appreciated if Australia would explain how this Agreement conforms to the WTO MFN principle.*

Answer: See answer to the following question from the European Union.

Question from the European Union

*Question: The report indicates that Australia provides preferential tariff treatment to imports from Canada under the Canada-Australia Trade Agreement (CANATA). It is stated that these preferences are implemented through reductions of between 1 and 15 percentage points from MFN tariff rates and that they apply to over 400 tariff lines. Could Australia clarify how this scheme conforms with Australia's MFN obligations under Article I of the GATT 1994? Can Australia please provide further information on the scheme (including products covered, current preferential tariffs rates, levels of reduction from applied MFN rates, volume of trade affected). Has CANATA been formally notified to the GATT/WTO? Please provide any relevant references.*

*Does Australia consider CANATA to be compatible with its WTO obligations more generally? If so, please explain on what basis.*

Answer: The Canada-Australia Trade Agreement (CANATA), negotiated in 1960, provides for continuation of preferential tariff access on a range of goods specified in a 1930 agreement. The list of goods has not been added to. Its significance has declined since its introduction as a result of sweeping reductions in tariff rates and changes in the patterns of trade. Today, under the terms of CANATA, Australia provides margins of preference over the MFN rate ranging from 1% (lumber and paper) to 15% (car batteries) over the MFN rate on over 400 tariff lines (tariff preferences of 5% on 357 lines and 15% on 2 lines).

The exchange of preferences which was retained under CANATA was expressly allowed under Article I paragraph 2 of the GATT. This allows retention of margins of tariff preference between specified Commonwealth countries (including Canada and Australia) stemming from the Ottawa agreements of the 1930's.

Question from Japan

*Question: Providing tariff preferences only for Canada under the Canada-Australia Trade Agreement (CANATA) seems to be inconsistent with the MFN principle. Furthermore, since this CANATA does not eliminate the duties on "substantially all the trade" as stipulated in Article XXIV of GATT, Japan doubts that the CANATA is a Free Trade Agreement. Please provide Australia's justification in this regard.*

Answer: The Canada-Australia Trade Agreement is fully consistent with Article I:2(a) of the GATT and the associated annex (Annex A). CANATA is not a Free Trade Agreement as defined under Article XXIV of the GATT and accordingly has not been notified as such.

Question from Mauritius

*Question: The assistance that Australia is giving to LDCs is a most welcome one, though it can be improved. We would like to know whether Australia would be ready to extend a similar treatment to*

*small and vulnerable economies and SIDS, in particular those dependent on single commodity exports.*

Answer: Australia already has a number of arrangements in place to facilitate trade with small and vulnerable economies and SIDS in the Asia-Pacific Region. These include the SPARTECA and PACER agreements, which promote free trade within the region.. The Government is currently undertaking an analysis of the effects of further liberalising market access for LDCs, some of whom fit the SIDS category.

## **(8) FOREIGN INVESTMENT REGIME**

### *Questions from Brazil*

*Question: What kind of investment proposal could be considered as "contrary to the national interest"?*

Answer: Under the FATA, the Treasurer may reject applications to control an Australian business or acquire an interest in urban land if he/she considers the matter is 'contrary to the national interest'. The presumption is that foreign investment proposals are generally in the national interest and should go ahead.

The Board provides advice to the Treasurer on large or sensitive proposals; however, it is the Treasurer, as the authority under the FATA, who defines whether an investment is contrary to the national interest.

In preparing its advice to the Treasurer, the Board considers whether the proposal is inconsistent with:

- existing government policy and law — taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- national security interests; and
- economic development.

Where national interest concerns are identified, the Board will seek, where possible, to formulate conditions which address these concerns.

*Question: Could the limitations/requirements, described in Table II.1, be expanded or reduced based on the national interest? If positive, how will the treatment concerning the foreign investment already made in the same sector be dealt with?*

Answer: The table covers Australia's sensitive sectors (which are determined on national interest grounds) and the general policy relating to all other sectors. Accordingly, we do not see how the table should be expanded or reduced based on the national interest and the current policy.

Australia's foreign investment policy targets investment at the pre-establishment phase. Therefore, a change in policy relating to pre-establishment would not affect existing investments in Australia.

Questions from Canada

*Question: Paragraph 37 describes the role of Australia's Foreign Investment Review Board (FIRB). Please describe in greater detail what efforts have been made to enhance the transparency of this body in order to ensure that it does not act as a barrier to FDI. In addition, please provide a more detailed definition of what exactly constitutes Australia's "national interest".*

Answer: The FIRB is a non-statutory body established to advise the Commonwealth Government on foreign investment policy and its administration. Responsibility for the Government's foreign investment policy and for final decision making on proposals rests with the Treasurer.

Australia recognises the substantial benefits that arise from foreign investment, particularly the significant contribution it has made and continues to make in fostering important sectors in Australia. In this light, Australia's general policy approach, and the view shared by the FIRB, is to welcome and encourage investment.

In preparing its advice to the Treasurer and considering the national interest, the FIRB considers whether the proposal is consistent with:

- existing government policy and law — taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- national security interests; and
- economic development.

Where national interest concerns are identified, the FIRB will seek, where possible, to formulate conditions which address these concerns.

*Question: Paragraph 37 states that Australia's commitments under mode 3 in the WTO General Agreement on Trade in Services (GATS) are limited. However, according to paragraph 36, Australia encourages foreign investment. Given the importance of foreign direct investment to economic development, please indicate if Australia has considered the benefits of binding their recent investment liberalization initiatives under the GATS in order to encourage foreign investment. If so, please elaborate.*

Answer: Australia has not considered binding these initiatives under the GATS.

Questions from the European Union

*Question: In which sectors have the foreign investment proposals been refused since 1999?*

Answer: Real estate has been the major sector.

- 1998-1999 – there were 112 rejections. One was in the service sector and the remainder in real estate.
- 1999-2000 - All 96 rejections were in the real estate sector.

- 2000-2001 - 44 of the 46 rejections were in the real estate sector. The significant rejection in this period was in the petroleum industry - Shell's proposal to acquire Woodside.

*Question: Has there been since 1999 any acceptance of foreign investment proposals that were subject to certain conditions, or does the regime rely on a simple 'yes' or 'no' alternative? In case there have been conditions, what kind of conditions have been set?*

Answer: The Treasurer can conditionally approve proposals to ensure the proposal is in (and remains in) the national interest. Most real estate proposals are approved on the condition that certain action occurs (eg for vacant land, development should commence within 12 months of approval). Most non-real estate cases are approved unconditionally. The main kind of conditions that were applied in the non-real estate sectors were to ensure headquarters and/or other key functions remain in Australia

*Question from Chinese Taipei*

*Question: .Could Australia please describe the criteria used by the FIRB to judge whether proposals are "contrary to the national interest"? What are the sensitive sectors?*

Answer: The Foreign Investment Review Board is a non-statutory body established to advise the Commonwealth Government on foreign investment policy and its administration. Responsibility for the Government's foreign investment policy and for final decision making on proposals rests with the Treasurer.

Under the *Foreign Acquisitions and Takeovers Act 1975*, the Treasurer may reject applications to control an Australian business or acquire an interest in urban land if he considers the matter is 'contrary to the national interest'. The presumption is that foreign investment proposals are generally in the national interest and should go ahead.

The Board provides advice to the Treasurer on large or sensitive proposals; however, it is the Treasurer, as the authority under the FATA, who defines whether an investment is contrary to the national interest.

In preparing its advice to the Treasurer, the Board considers whether the proposal is inconsistent with:

- existing government policy and law - taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- national security interests; and
- economic development.

Where national interest concerns are identified, the Board will seek, where possible, to formulate conditions which address these concerns.

The sectors where additional requirements as outlined in Australia's foreign investment policy (see [www.firb.gov.au](http://www.firb.gov.au)) are:

- Urban land
- Banking

- Civil aviation
- Shipping
- Media
- Broadcasting
- Newspapers
- Telecommunications

Questions from the United States:

*Question: Through the FIRB, Australia screens foreign investors when they seek to establish or acquire new business interests or purchase additional properties.*

*Why is it necessary for Australia to so tightly control foreign investment into Australia rather than restricting investment using laws or regulations for specific activities within a sector?*

Answer: Australia does not “tightly control” foreign investment, rather its policy is liberal and highly transparent. Much proposed business activity by foreign investors is not caught by our general screening requirements or is subject to simplified examination. For example, the prior notification threshold for foreign investment in existing businesses is \$50 million (including rural businesses) and \$10 million for the establishment of new businesses. Investments below these thresholds are exempt. Further, there is much simplified processing of proposals to invest in existing businesses or establish new businesses valued between \$50 and \$100 million.

Acquisitions of developed commercial property valued at less than \$50 million are exempt (\$5 million for heritage listed properties) and acquisitions below \$100 million are subject to the simplified processing arrangement. In addition, where the acquisition of commercial real estate is incidental to the existing/proposed business activities, the acquisition is exempt irrespective of value.

In regard to those larger business proposals over the notification thresholds, there have been very few rejections. In 2000-2001, 1.4 per cent of cases were rejected with only two of these outside the real estate sector, and in 1999-2000, there were no rejections in non-real estate sectors.

Australia’s current pre-establishment screening is its preferred mechanism for monitoring foreign investment for a number of reasons:

- An upfront approval provides certainty to investors (i.e. no risk that investors will be unable to carry on with their business after investments have occurred);
- It can monitor to some extent the types of investors that participate in Australian markets (i.e. reduce the risk of harbouring illegal persons and illegitimate investments);
- The policy has strong bipartisan political and community support. In the absence of this policy, it would be difficult to satisfy community concerns about levels of foreign ownership and control. Australian objectives of maintaining a liberal foreign direct investment regime and satisfying community concerns would be more difficult to achieve without this pre-establishment screening process;

- It provides for the rejection of proposals that are considered contrary to the national interest, and in this regard, also considers wider community concerns; and
- In light of the 1999 liberalisations and the ever increasing transparency of the policy, Australia's regime does not discourage worthwhile investment, including from the US who was Australia's largest single direct investor in 2000-2001 and accounts for over one third of Australia's total investment inflow. Businesses continue to get on with the job of investing in Australia within the current regime.

Australia does have certain sectors where additional requirements exist, for example the *Urban Land Policy Guidelines* detail the requirements for acquisitions in the real estate sector and the *Insurance Act 1973* governs investment in Australian insurance companies.

*Questions: Could you describe in more detail the criteria used by the FIRB to screen potential investors?*

*We note that proposals by foreign investors are usually approved unless they are judged "contrary to the national interest". What is the definition the FIRB uses in deciding if an investment is "contrary to the national interest"? Could you please give some specific examples of investments that have met this standard?*

Answer: Australia has a highly transparent foreign investment regime. The criteria for obtaining approval for urban land are detailed in the document *Urban Land Policy Guidelines* (see [www.firb.gov.au](http://www.firb.gov.au)).

The FIRB does not have a definition of the "national interest". "Not contrary to the national interest" is a positive test, not a "negative" economic benefits test (i.e. where investors must show net benefit against a list of criteria). The basic presumption is that foreign investment proposals will bring economic benefits to Australia and should go ahead. The Government has to find fault with a proposal for it to be judged contrary to the national interest.

In preparing its advice on business cases to the Treasurer, the FIRB considers whether the proposal is inconsistent with:

- existing government policy and law - taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- national security interests; and
- economic development.

Where national interest concerns are identified, the FIRB will seek, where possible, to formulate conditions which address these concerns.

Specific examples of proposals that have been approved and rejected can be found in the FIRB's Annual Reports at [www.firb.gov.au](http://www.firb.gov.au).

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(2) Measures Directly Affecting Imports**

##### **(i) Registration and documentation requirements**

###### Questions from Chinese Taipei

*Question: referring to paragraphs 12 and 13, since 1998, minimum documentation requirements of the Australian Customs Service have remained unchanged and since 1997 approximately 98% of all imports have been electronically controlled with self-assessment. Chinese Taipei would appreciate having Australia's answers to the following questions:*

###### *(1) Are those documents transmitted via electronic data interchange?*

Answer: In Australia, electronic lodgement of import entries began in 1991. When introduced the system was based on direct, interactive access via dedicated terminals and landlines.

In 1995, an EDI interface was added to the system. The shift to this new access method has been progressive, but is not yet complete. Currently, of the 98% of entries communicated electronically, 53% are transmitted via EDI.

Customs expects a better take-up of EDI access for imports with the introduction of developments resulting from its Cargo Management Re-engineering (CMR) process.

###### *(2) Could it explain the Internet network of the customs clearance system?*

Answer: Customs does not have an Internet network as such. Currently, a single dedicated Value Added Network (VAN) is used to provide network services. Users connect directly to the interactive system, COMPILE, via this VAN.

An alternative is to connect to the system via this VAN using TCP/IP (Internet). However, this is not a general Internet access connection. A general Internet access is one of the options to be provided under CMR.

###### *(3) Are there any regulations or standards for clearing customs by paying an equivalent deposit for the imports? If so, please provide the details.*

Answer: Payment of the applicable amounts of duty and taxes is a prerequisite for obtaining clearance through Customs. However, in specific circumstances, goods may be cleared based on the payment of a security equal to the amount of the calculated duty and tax liability.

##### **(ii) Tariffs**

###### Question from the European Union

*Question: We understand that Australia levies a 5% ad valorem tariff on inter alia spirit drinks, in addition to the index-linked 'exercise equivalent component' levied on one Australian dollar per litre of absolute alcohol basis. This is considered by industry as a 'nuisance' tariff, i.e. more troublesome to collect than its actual value would justify. Apparently, this view was supported by the Australian government-initiated Productivity Commission Inquiry, which concluded in July 2000 that the 5% tariff should be abolished "sooner rather than later, preferably on 1 July 2001 and no later than*

*1 January 2003". We understand that the Australian Government decided not to act on this recommendation, but to retain the tariffs for the time being. Could Australia please comment on this point?*

Answer: The 5 per cent ad valorem tariff on inter alia spirit drinks was not removed as recommended by the Productivity Commission Inquiry. This was consistent with the government's response to the Commission's recommendations that saw it retain the general tariff rate at 5 per cent.

*Question: The report states that the gap between bound and applied MFN rates provides considerable scope for the Australian authorities to increase applied tariffs within bindings. The importance of tariff bindings is borne out by the fact that the very structure of market access commitments under the GATT and now WTO is centred on the concept of bindings. Given the stances on other TPRM exercises, Australia appears to recognise the importance of bindings amongst other commitments in the context of time-varying protection processes. Could Australia comment on its intention to bridge the gap between applied and bound rates at the next round?*

Answer: The gap between bound and applied tariffs rates is a result of Australia lowering its applied rates, not the increase of relevant bound rates. With that in mind, the gap between the two rates underlines Australia's commitment to lowering trade barriers well below those negotiated in trade rounds. Australia remains committed to its APEC commitment of free trade in the Asia Pacific by 2010 and has no intention to increase current applied rates within bindings.

Question from the Republic of Korea

*Question: The Australian Government applies high tariff rates on Korean "Soju" (51.58\$/litt), while a lower rate is applied on wine (9.94\$/litt). Please inform us of the detailed criteria which explains the varied tariff rates on alcoholic beverages.*

Answer: The import tariff applied to wine and potable alcoholic spirits is 5%. An excise applies to potable spirits at a general rate which is currently \$A57.17 per litre of alcohol. This applies equally to Australian and imported spirits. For imported spirits, it is collected at the border through the Australian Customs Tariff. Internal taxes applicable to wine also apply equally to domestic and like imported product.

**(2) Measures Directly Affecting Imports**

**(ii) Tariffs**

Questions from Brazil

*Question: The Australian tariff regime embodies a degree of escalation. The tariffs of some of the Australian products are higher than those in other developed countries. Could Australia provide some clarification as to the possibility of reducing such tariffs?*

Answer: Australia's policy of reducing applied tariffs is focused on tariffs in general, rather than differentiating between various stages of the production process. Further reductions in applied tariff rates will be considered within the context of Australia's overall trade policy.

*Question: Please explain why changes in the customs tariff have had little impact on the pattern of tariff escalation since 1997/98. Exceptions involved wood and furniture and chemicals industries, which were the object of less pronounced escalation; for these industries, in the past, the domestic*

*production of raw materials and inputs or semi-processed items received more protection than subsequent production stages.*

Answer: Australia's policy of reducing applied tariffs is focused on tariffs in general, rather than differentiating between various stages of the production process. As a result, the historical patterns of tariff escalation may remain while Australia moves towards a position of free trade. As the graphs in the Review demonstrate, average applied tariff rates have fallen for imports across all stages in the production process; the graphs show that tariffs on fully processed goods in most sectors have fallen significantly since 1998.

Question from the United States

*Question: In para. 27, the Secretariat document notes the significant difference between Australia's bound rates and its applied rates. What is the genesis or rationale for this disparity? Has Australia, since the establishment of the WTO, had occasion to increase any of its applied rates to or near the bound rates?*

Answer: Over 96 per cent of Australia's tariff rates are bound, in line with our WTO commitments agreed during the Uruguay Round.

Australia has been engaged in a programme of reducing its applied tariff rates since the mid-1980s and is committed to continue this process. Average applied tariff rates have fallen from 6 per cent at the time of the previous Review to their current level of 4.6 per cent. Australia is committed to further reductions in tariffs in the two relatively highly protected industry sectors of textiles, clothing and footwear and passenger motor vehicles in 2005. Australia is currently reviewing post-2005 tariff arrangements for the PMV industry, and will shortly undertake an examination of post-2005 arrangements for the TCF industry. Australia believes that its approach to reductions in applied tariffs is a strong reflection of its commitment to free and open trade.

Australia has not increased any of its ad valorem applied tariff rates since the conclusion of the Uruguay Round.

Question from the Republic of Korea

*Question: In contrast to the relatively low rate of average tariffs on general industrial goods, high tariff rates, which are three times higher than average rates of 4.3% are applied on passenger motor vehicles and textiles, clothing and footwear. In addition, in 1997 the Australian government decided that the high tariff rates of the year 2000 will be maintained until 2004.*

*Such a decision, in effect, is to maintain trade distortion for the purpose of protecting domestic industry. Even the proposed new tariff rates which will be introduced in 2005 are higher than those of other main trading countries.*

*It is our view that the tariff reduction plan should be implemented at an earlier stage and a much larger reduction than what is proposed is needed. What is the view of Australian government on this?*

Answer: The Australian Government undertook an extensive review of the textiles, clothing and footwear (TCF) industry in 1997. This review resulted in a commitment by the Government to maintain tariff levels at year 2000 levels until 2005. This commitment provides an environment of certainty for Australia's TCF firms as they adjust to increasing global competition.

The Government has announced a commitment to undertake a substantive inquiry in late 2002 of post 2005 assistance to the TCF industry.

Question from the European Union

*Question: Although Australia plans to reduce applied tariffs for apparel and certain finished textiles by 1 January 2005, tariff rates on these items (17.5%) can still be described as a tariff peak. Could Australia please indicate how it intends to reduce or eliminate its tariff peaks on textiles thus facilitating access to the Australian market? Given the presence of tariff escalation in the structure of its tariffs, could Australia comment on how it intends to eliminate it?*

Answer: The Australian Government undertook an extensive review of the textiles, clothing and footwear (TCF) industry in 1997. This review resulted in a commitment by the Government to maintain tariff levels at year 2000 levels until 2005. This commitment provides an environment of certainty for Australia's TCF firms as they adjust to increasing global competition.

The Government has announced a commitment to undertake a substantive inquiry in late 2002 of post 2005 assistance to the TCF industry.

Question from Chinese Taipei

*Question: Chinese Taipei compliments the Australian Department of Industry, Science and Tourism on having undertaken a review of "nuisance" tariffs in July 1998 and on having reduced tariffs to zero on 267 lines in December 1999. It would be appreciated if Australia could provide information about its plans to continue this policy and could indicate the products on which tariffs might be reduced to zero in future.*

Answer: The Department of Industry, Tourism and Resources has since undertaken an exercise to identify some additional items that could be reduced to zero. No decision has been made about action on the items identified.

**(e) Tariff quotas**

Questions from Brazil

*Question: The Secretariat report states that although tariff quotas have remained in place for five cheese items, they are apparently applied in a flexible/liberal manner. Which are the criteria for defining such tariff quotas?*

Answer: The tariff quota applies to most imported cheeses and curd, whether fresh, grated, powdered or processed. Some exceptions are the roquefort and stilton types of blue veined cheeses, and the camembert and brie types of surface ripened cheeses. Fetta and Kasseri are subject to the tariff quota but other cheeses wholly made from goats milk are not. (The cheeses listed above as exceptions enter Australia duty free outside the tariff quota). All cheese imports from New Zealand, Papua New Guinea and South Pacific Forum Island countries enter Australia free of duty outside the tariff quota under free trade agreements.

Cheese tariff quota entitlements are administered by the Australian Customs Service as follows:

- Details of the tariff quota administration system, including the names of the quota holders are published in Commonwealth of Australia Gazettes.

- Tariff quota allocations are valid for one full year (1 July – 30 June)
- Tariff quota allocations are issued to individual companies, in direct proportion to their past imports under the tariff quota
- The tariff quota applies to cheese falling within 5 subheadings of the Harmonized Commodity Description and Coding System (HS). Tariff quota allocations are not subdivided and tariff-quota-holders are free to use their entitlement to import any cheese variety, or to source product from any supplier country
- As allocations are based on past import performance, individuals or companies that do not utilise their allocation will either lose their allocation or have it reduced in the following year
- Importers can apply for tariff quota by transfer from existing tariff-quota-holders, either directly or through brokers. The transfer of tariff quota between importers is a commercial transaction undertaken according to market conditions. The recipient is required to complete an application form and forward it to the Australian Customs Service for confirmation.

The tariff quota allows for the import of 11,500 tonnes of cheese per year at a tariff of A\$0.096/kg. The in-quota rate for Developing Countries is \$0.096/kg less 5%. The duty on imports above the tariff quota level is \$1.220/kg. For LDCs, the out-of-quota rate is \$1.220/kg less 5%.

*Question: Under chapter III, item 22 of the Secretariat report, Australia declares that, according to its market access commitments, there is a tariff quota of 11,500 tonnes for cheese imports. During 2000, the out-of-quota rate was reduced from \$A 1,294 to \$A 1,220 per ton, while the in-quota rate has been kept at \$A 96 per ton. Still, since 1995, quota allocation has been based on the actual usage of quota over the previous 23 months (excluding quota transfers), and that quota may be accorded upon submission of application to the Australian Customs Service. Could Australia provide information on procedures required for new exporters to obtain quota allocation?*

Answer: Quotas are allocated to importers. A new exporter who wishes to export cheese to Australia within the tariff quota should refer to the published list of quota holders and endeavor to build a commercial relationship with the importer. This is available electronically on the website - details of Cheese Quota Allocation holders for 02-03 which were listed in Commonwealth of Australia Gazette No TC 02/27 dated 10/7/02 with a further 54 Quota Allocations holders for listed in Gazette no TC 02/28 dated 17/07/02.

#### **(j) Trade Preferences**

##### Question from Norway

*Question: Australia stresses in its own report (WT/TPR/G/104) the importance of special initiatives for the least developed countries (LDCs). Despite this tariffs up to 5 % remains on a variety of products. We wonder whether Australia intends to follow Norway and EU's "Everything but Arms initiative" and eliminate all tariffs from LDCs?*

Answer: Australia's access arrangements for goods originating in least developed countries (LDCs) already compares favourably with those of other developed countries. The arrangements of some developed countries involve exceptions and phase-in arrangements for sensitive industries and the use

of restrictive quotas, often in those sectors of most interest to developing countries, such as agriculture.

The policy of successive Australian governments has been to accord imports from LDCs a margin of preference of 5 percentage points below the general tariff rate. As a result, about 85 per cent of Australia's tariff lines are duty-free for LDCs and over 90 per cent of imports from LDCs enter Australia free of duties. Imports from LDCs that are subject to duty are essentially textiles, clothing and footwear (TCF) and passenger motor vehicle (PMV) items, including parts – but these items still receive the 5 percentage points preference.

The Government is currently undertaking an analysis of the effects of further liberalising market access for LDCs. This is in response to the number of international commitments we have made to the objective of duty-free and quota-free market access for all LDC products.

### (iii) Customs valuation

#### Question from Chinese Taipei

*Question: Australian valuation legislation requires buying commissions, inland freight and inland insurance to be included in the duty-paying-value of imported goods. Please clarify how this practice complies with the Agreement on Implementation of Article VII of the GATT 1994.*

*Answer: The treatment of buying commissions and inland freight and inland insurance in the Customs Act 1901 (Customs Act) is considered to be consistent with the WTO Agreement on Customs Valuation for the reasons outlined below.*

It is noted that paragraph 38 could be misinterpreted: the typical buying commission, where the agent is acting only on behalf of the purchaser, is not included in the dutiable value of goods; and the references to inland freight and inland insurance relate to foreign inland freight and foreign inland insurance. Foreign inland freight and foreign inland insurance are included in the dutiable value of goods, but domestic (i.e. Australian) inland freight and domestic inland insurance are not included in the dutiable value of goods.

**Buying commissions** – When buying commissions are paid prior to the place of export, they may be included in the purchase price of the goods. However, buying commissions are to be excluded from the price actually paid or payable for the goods, and are not, therefore, dutiable because of Article 8(1)(a)(i) of the Valuation Agreement.

Australia determines the customs value of almost all imported goods under section 161 of the Customs Act, i.e. using the transaction value method. The transaction value method uses the price actually paid or payable for the imported goods and includes 'price related costs'.

'Price related costs' are defined in section 154 of the Customs Act, and includes commissions, other than buying commissions.

An interpretation of buying commissions is provided in section 155 of the Customs Act. Section 155 of the Customs Act is designed to restrict a deduction for buying commission to those cases where the agent is acting solely for the purchaser, and not to those cases where the agent acts for both the seller and the purchaser in the transaction or where the agent is in fact the vendor.

***Inland freight/inland insurance*** – Article 8(2) of the Agreement provides for the inclusion or the exclusion, from the customs value, of the cost of insurance and the cost of transport of the imported goods to the port or place of importation.

Australia determines the customs value of imported goods at the place of export, which is typically at the free-on-board (FOB) point. The cost of foreign inland freight and foreign inland insurance up to the place of export are included in the customs value. These costs are included as they form part of the definition of ‘price related costs’ in section 154 of the Customs Act.

**(v) Import prohibitions, restrictions, and licensing**

*Comment from the United States*

*We wish to commend Australia for the detailed and comprehensive submission this month of its responses to the Questionnaire on Import Licensing Procedures, contained in G/LIC/N/3/AUS/2. Transparency in this area of trade is essential, and we appreciate the effort made in submitting this information.*

**(vi) Government procurement**

*Question from Singapore*

*Question: We note from the Secretariat's report that Australia remains the only major industrialised country that is not a signatory to the plurilateral Government Procurement Agreement (GPA), and is thus not bound by principles and rules on transparency and non-discrimination in this area. The report also states that the Australian authorities have been considering whether Australia should become a party to the GPA. We would like to know when Australia intends to join the GPA?*

Answer: Australia has no plans to accede to the WTO Agreement on Government Procurement.

Australia has not signed the GPA because it considers that the Agreement contains a number of flaws. Market access commitments are based on mutual reciprocity; there are complex and onerous administrative provisions and costs including those associated with statistical requirements; and the GPA does not necessarily encourage open and transparent systems of government procurement. Many of the major industrialised countries have acceded to the GPA on a highly conditional basis which potentially makes these markets more restrictive than Australia's and, enables them to discriminate against non-GPA Members. Further, some Members of the GPA have been able to exclude large portions of their government purchasing markets from foreign competition.

*Questions from the United States*

*Question: Does Australia have any plans to seek accession to the WTO Agreement in Government Procurement? If so, when? If not, please explain why Australia is not pursuing accession to the GPA when it is the only major industrialized country that is not a party to the GPA*

Answer: Please see above (i.e. Question from Singapore)

*Question: Why is it necessary for Australia to continue to use procurement as a major instrument of economic policy?*

Answer: Australian governments are significant purchasers of goods and services and as such can elect to use their respective positions in the marketplace to promote their economic and social goals and, obtain the best value for money when expending public funds.

*Question: How does Australia ensure that all suppliers have the same access to procurement information?*

Answer: All Australian jurisdictions make their procurement policies publicly available via the Internet.

*Question: Please describe the tendering procedures that are used by agencies in Australia.*

Answer: Australian jurisdictions do not prescribe procurement methods. The procurement process should match the procurement requirements. Procurement methods can range from sole source to public tender. However, all jurisdictions make information regarding their procurement framework available on the internet.

For example the Commonwealth Procurement Framework guidelines can be assessed via the Internet at: <http://www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth%5Fprocurement%5Fguide.html>

*Question: Please describe the extent to which the Central Government places restrictions on procurement.*

(a) *Does the central Government place any restrictions on the types of procurement methods that government agencies may use?*

Answer: No. Please refer to question 4 above.

(b) *Is a notice of a procurement opportunity published for every procurement? What information is required to be included in such notices?*

Answer: Commonwealth government agencies must gazette all open business opportunities on the Government Advertising website, located at: [www.ads.gov.au](http://www.ads.gov.au) An open business opportunity is a publicly available opportunity to do business with Government, including, but not limited to, invitations to bid, expressions of interest, offer proposals, request for information, requests for tender, and disposals.

Details of business opportunities must include:

- Ministerial portfolio, department or agency, division or group, branch or office and postcode of the office;
- Reference number allocated to the department or agency;
- Description of goods or services sufficient to identify the nature and quantity of the requirements, and any delivery period that may apply;
- Closing date and time of invitation;
- Place of delivery postcode;

- Name, telephone numbers and email addresses of contact officers for supply of documents, or responses to commercial and ethnical enquires; and
- Australian and New Zealand Standards Commodity Classification (ANZSCC) code for the goods or services required.

*Question: Does Australia impose any restrictions on the development of technical specifications? If so, please describe.*

Answer: The Commonwealth encourages specifications to be outcomes based, to promote flexibility and innovation and no restrictions are imposed on technical specifications.

*Question: Are suppliers informed of all the evaluation criteria before they submit their tenders?*

Answer: Yes. Tender documentation identifies the selection criteria on which the assessment of the tenders is based. However, individual weightings for each criterion may not be disclosed.

*Question: How much time is allowed for suppliers to submit tenders?*

Answer: There are no prescribed time periods and the time for submission of tenders will vary according to the complexity of the tender.

All Commonwealth contracts and standing offers with an estimated value of \$2,000 or more must be reported and published on the publicly available Gazette Publishing System located at: [www.contracts.gov.au](http://www.contracts.gov.au) within six weeks of entering into the contract.

*Question: Are losing suppliers provided with an opportunity to receive an explanation as to why their tender was not selected?*

Answer: Yes.

*Question: Does Australia provide domestic review procedures to enable suppliers to challenge procurement decisions? If so, please describe.*

Answer: At the Commonwealth level, the Commonwealth Purchasing Advisory and Complaints service (PACS) answers purchasing inquiries and deals with procurement concerns. Under the *Financial Management and Accountability ACT 1997*, the Chief Executive of each Commonwealth agency is responsible for procurement decisions. So while it is outside the PACS Charter to overturn purchasing decisions made by departments and agencies, PACS can organise meetings between suppliers and buyers to help resolve differences. Suppliers also have access to:

- The Commonwealth Ombudsman; or
- A Court of law.

*Question: Please describe the authority of the central government over procurement by the states?*

Answer: State and Territory governments are responsible for their own procurement regimes and the Commonwealth government has no authority over their purchasing policies and practice.

Questions from Switzerland

*Question: Since 1991, Australia ensures national treatment and absence of any preferential and discriminatory measures to New Zealand under the Australia and New Zealand Government Procurement Agreement. What experiences did Australia gather under this Agreement? Could Australia envisage extending this treatment to the GPA Members on a reciprocal basis? If no, why?*

Answer: The provisions of the Australia-New Zealand Agreement on Government Procurement provide for a single marketplace for government procurement. Australia is not considering acceding to the GPA for the reasons set out above (i.e. Question 1 from Singapore).

*Question: To which extent are price preferences used in practice by public purchasers?*

Answer: The use of price preference policies varies across State and Territory jurisdictions. The Commonwealth of Australia does not have price preference policies.

*Question: What modifications were made to the Commonwealth Procurement Guidelines in 2002?*

Answer:

Changes to the content of the CPGs

March 1998 Edition	Revised Edition	Explanation
Value for Money is one of the core principles governing Commonwealth Procurement	Value for Money is the core principle governing Commonwealth Procurement.	All other principles involved in effective procurement contribute to achieving Value for Money outcomes.
Detailed references to the Performance Improvement Cycle and the Competitive Tendering and Contracting Publications	Reference to the Performance Improvement Cycle and the Competitive Tendering and Contracting Publications	The CPGs provide the framework for Commonwealth procurement and hyperlinks to the content of the two documents will enable agencies to easily access the detail.
Value for money test	Hyperlink to Value for Money toolkit.	The CPGs provide agencies with the framework for Commonwealth procurement highlighting mandatory requirements. Value for Money toolkit provides agencies with additional best practice guidance material, including the Value for Money test.
Whole of Government Purchasing Arrangements referencing Common Use Arrangements	Revised to address Strategic Common Use Arrangements (CUAs).	The December 1997 the Government ceased existing CUAs and decided that where appropriate strategic CUAs could be put in place in areas where a Whole-of-Government arrangement would result in significant savings for Government.
Reference to Pre-qualification scheme	Whole-of-Government supplier pre-qualification arrangements addressed – Endorsed Supplier Arrangement (ESA).  Hyperlink provides agencies with access to the ESA homepage	In December 1997, Government agreed to the establishment of a pre-qualification scheme.  Agencies must ensure outsourced service providers abide by ESA requirements when engaging sub-contractors.

(Cont'd)

March 1998 Edition	Revised Edition	Explanation
Detailed references to Openness and Transparency	Mandatory requirements and framework are addressed under Accountability and Transparency.	The CPGs provide the framework for Commonwealth procurement the reference to openness was being incorrectly interpreted to mean that public tenders must always be used. The issue of openness is now covered under transparency.
Industry consultation requirement for information technology tenders to be made available in draft form to potential tenders for at least one month to allow for comment before finalisation	Not referenced.	This requirement is no longer appropriate as industry is aware of the IT outsourcing programme and extensive consultation is undertaken with industry throughout any outsourcing process
Telstra Transigo™ reference	Gazette Publishing System (GaPS) and the Government Advertising website are mentioned and contain hyperlinks.	Updated to reflect the recent changes in the mandatory requirements in gazettal mechanisms. The change reflects the move from Telstra Transigo™ to the new system, the Gazette Publishing System (GaPS).
List of notification details to be included in Telstra Transigo™	Not referenced.	Notification details are contained on the GaPS website by virtue of the data fields that are required to be completed. A hyperlink is provided to GaPS.
Exercising discretion in deciding the procurement method	Procurement Methods.	Repositioned to Best Practice section.
Conditions for effective competition	Reflected in Model Industry Development Criteria.	Conditions for effective competition are addressed under the revised Model Industry Development Criteria (MIDC)
Reference to Accredited Purchasing Units (APUs)	Not referenced.	Commonwealth Procurement Circular 98/3 removed the requirement for agencies to establish APUs.
Requirement for agencies to provide information on request to Members of Parliament, Senators and the public after the tabling of annual reports as specified in the <i>Requirements for Departmental Annual Reports</i>	Not referenced.	The Department of the Prime Minister and Cabinet has just completed a review of the requirements for Departmental Annual Reports and the revised requirements do not contain this provision.
Reference to ISO9000 certification	Not referenced.	Government policy does not mandate quality assurance or specify specific quality assurance standard. A hyperlink has been established to the Standards Australia website that provides agencies with a complete menu of formal quality assurance options, including the previously mentioned ISO9000.
Section 6 <i>Support for other Commonwealth policies</i>	Has been streamlined.	Relevant components have been repositioned within other areas of the revised CPGs. A hyperlink has been used in the Value for Money section to link directly to <i>Additional legislation and Resources</i> .
Requirement for Year 2000 compliant equipment	Not referenced.	The critical date has passed and the reference is no longer required.

(Cont'd)

March 1998 Edition	Revised Edition	Explanation
PACS reference	Reference to PACS has been moved to the introduction of the revised document.	Addresses the concern raised by the JCPAA in their Report 369 <i>Australian Government Procurement</i> that "there is a need for this to be more heavily promoted. The next version of the CPGs should include information about PACS in a prominent part at the front of the CPGs. Its current position in the CPGs is restricting awareness of this service" – p:26.
Not referenced in current CPGs as it is a proposed policy change.	Requirement for outsourced service providers to use the Endorsed supplier Arrangement when purchasing information technology and major office machines.	Benefits of this scheme are widely recognised (eg. Financial viability of a company) and this policy change would enable the Commonwealth to enforce the arrangement to the sub contractor level.
Not referenced in current CPGs.	Private Financing Initiatives. Hyperlink to private financing advice.	Reflect the recent Government decision on Private financing
Not referenced in current CPGs.	Requirement for contestability and competitive neutrality for Commonwealth agencies.	The 1995 Competition Principles Agreement signed by Federal, State and Territory Governments ensures Government businesses do not have a competitive advantage over their private sector competitors.
Not referenced in current CPGs .	Requirement for outsourced service providers to comply with the Government's affirmative action requirements.	Illustrates commitment of the Commonwealth to affirmative action. Enables the Commonwealth to enforce its commitment to the sub contractor level.
Not referenced in current CPGs.	Requirement for agencies to ensure that an outsourced service provider maintains appropriate systems for recording decisions and the reasons for making them	Good business practice and addressed through contract provisions that identify the need for access to information when requested by the project officer.
Not referenced in current CPGs	Requirement for agencies to ensure they refer to Comcover. Includes a hyperlink to Comcover site.	Reflects the role of Comcover for Commonwealth agency insurance and associated risk management requirements.
Not referenced in current CPGs.	Requirement for agencies to list contracts exceeding \$100,000 on their websites.	As a result of Senate Order 192, Government Agency Contracts (Murray Motion).
Not referenced in current CPGs.	Definition for SMEs has been included.	JCPAA Inquiry 369, <i>Australian Government Procurement</i> , Recommendation 5 requiring OSB and Finance to develop a definition covering SMEs and include in the next edition of CPGs.
Not referenced in current CPGs	Model Industry Development Criteria (MIDC) threshold lowered to \$5 million.	Reflects recent Government decision on MIDC threshold
Not referenced in current CPGs	Foreign Exchange. Hyperlink to Finance Circular 2000/03.	Address concerns regarding the need to consider foreign exchange when procuring goods or services overseas.
Not referenced in current CPGs.	Agencies to use Whole of Government Telecommunications Arrangements and Shared Systems Initiative.	Clearly identify requirement for agencies.
Not referenced in current CPGs.	Agencies are able choose their own legal service providers. Hyperlink to Attorney-General's advice.	Reflect legal services directions

*Question: What are the implications of the Strategic partnership Industry Development Agreements Programme (SPIDA) for public procurement?*

Answer: SPIDA was concluded in June 2002

*Question: Does the SPIDA also include for foreign firms a requirement of 70% local value-added of exports? If yes, how does it comply with the TRIMS Agreements?*

Answer: See above.

*Question: Despite the fact that Australia is a strong advocate of a WTO Agreement on Transparency for public procurement, Australia has not joined the GPA and maintains preferential schemes for local firms. Is public procurement essential to pursue these policies? Are there other means to realise the same objective?*

Answer: Australia has chosen not to accede to the WTO GPA for the reasons stated above (Question 1 Singapore refs). Australia's government procurement policies and practices are consistent with its WTO obligations.

Questions from the European Union

*Question: Australia remains the only major industrialised country that is not a signatory to the Plurilateral Agreement on Government Procurement (GPA). Considering that the Australian legal framework appears to be sufficiently developed to comply with the GPA requirements and the openness of its procurement system appears to be similar to that of most GPA parties, is Australia considering now to accede to the WTO plurilateral Agreement on Government Procurement?*

Answer: No

*Question: The Australian authorities have been considering Australia's overall interest to become a Party to the GPA. What was the main argument (in 1997 when the position was adopted) against GPA membership? Are these same conditions still apply five years later? What aspects would Australia like to change in the current GPA system to make it more attractive to its interest?*

Answer: Please refer above (i.e. Question 1 from Singapore).

*Question: The report refers to access on-line for records and reports of tendering processes. Is there any electronic procurement system in Australia? If so, could you provide with a description of such a system? What is Australia planning in the area of electronic procurement?*

Answer: The Commonwealth Government of Australia has recently conducted a trial of the Commonwealth Electronic Tender System (CETS). As a result of the trial, various improvements have been identified. The National Office of the Information Economy is currently re-developing the system to implement the suggested improvements. Once the system has been upgraded, it will be available for all Commonwealth agencies to use if they wish. The pilot site of the CETS is [www.tenders.gov.au](http://www.tenders.gov.au).

For further information on the Commonwealth Government's e-procurement policies, please visit [www.noie.gov.au](http://www.noie.gov.au) and <http://www.govonline.gov.au/projects/eprocurement/index.htm>

*Question: Domestic price preference and local-content requirements in government procurement are a usual way to promote local industry and set-aside some sectors from foreign competition. Will Australia re-consider this policy and the cost in terms of budget expenditure (better value for money) as well as the need to introduce healthy competition between Australian and New Zealanders and foreign bidders?*

Answer: The Commonwealth of Australia's industry development requirements as identified in the *Commonwealth Procurement Guidelines and Best Practice Guidance* require agencies governed by the *Financial Management and Accountability Act 1997* (FMA Act) to ensure that tender documentation does not discriminate against Australian and New Zealand industry, particularly small and medium enterprises. This approach is consistent with Australia's obligations under the ANZ Agreement on Government Procurement.

Value for Money is the core principle governing Commonwealth procurement. Industry development is one of the principles underpinning Value for Money. Any industry development requirements are considered as part of the overall value for money consideration.

The Industry Development Principle does not discourage competition between Australian, New Zealand and foreign bidders. The underlying premise of the Industry Development Principle is to create competitive Australian and New Zealand Industries.

For further information on the *Commonwealth Procurement Guidelines and Best Practice Guidance* please visit [www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth\\_procurement\\_guide](http://www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth_procurement_guide).

*Question: Where agencies purchase overseas goods in preference to Australian or New Zealand goods, they must demonstrate that suppliers from these two countries had opportunities to compete. What kind of evidence has the agency to provide on the opportunity to compete? How is confidentiality of foreign bids ensured in such a case?*

Answer: When developing tender documentation, Commonwealth agencies subject to the Financial Management and Accountability Act (FMA) are required to ensure that there is nothing in the tender documentation that would prevent Australian or New Zealand companies from being able to compete for Commonwealth Government business. The tender documentation becomes part of the audit trail to demonstrate that suppliers from these two countries have not been discriminated against.

#### Questions from Canada

*Question: Paragraph 48 states that Australia has maintained its requirement for sourcing at least 10% of its public procurement from domestic or New Zealand small- and medium-sized enterprises (SMEs). Please explain how this 10% amount is determined and what constitutes a small and medium-sized business.*

Answer: All Commonwealth agencies governed by the *Financial Management and Accountability Act 1997* are required to source at least 10% of their procurement from small and medium enterprises. The Department of Finance and Administration conducts an annual survey using the information available from the Commonwealth Purchasing and Disposal Gazette (the Gazette).

All agencies are required to report all agency agreements, Commonwealth contracts and standing offers with an estimated liability (including Goods and Services Tax where applicable) of \$2,000 or more in the Gazette, within six weeks of entering into the agreement.

The *Commonwealth Procurement Guidelines and Best Practice Guidance* publication identifies small and medium enterprises as:

Except for the Information Technology sector, small and medium enterprises are defined as businesses registered in Australia and New Zealand that employ less than the full time equivalent of 200 persons. Sub categories of this definition include:

small enterprises employing less than the full time equivalent of 20 persons; and

micro enterprises employing less than the full time equivalents of 5 persons.

The information technology sector has a tailored small and medium enterprise definition that applies in the Government's IT Outsourcing Initiative, and the IT component of the Model Industry Development Criteria for Major Project's scheme. For the purposes of major ICT contracts, an SME is defined as a body corporate incorporated in Australia or New Zealand which, together with its related bodies corporate and Parent Entities, has an average annual revenue over the last four financial years of less than A\$500 million.

Questions from Chinese Taipei

*Question: It is noted that Australia is still not a signatory to the WTO Agreement on Government Procurement (GPA). In view of Australia's sizeable government procurement market and its economic status, and considering the benefits that would accrue from greater liberalization of the market, could Australia please explain the rationale behind the fact that it is not applying for membership of the GPA. In addition, Chinese Taipei would appreciate receiving in due course the statistical information regarding government procurement at the Commonwealth level and the State level.*

Answer: With regard to Australia's membership of the WTO GPA please refer above (Question 1 from Singapore).

The following statistics are provided for the Commonwealth government:

Financial year 2000-2001, the Commonwealth government spent approximately AUD 13.5 billion on goods and services (this figure includes expenditure by agencies covered by the Financial Management & Accountability Act (FMA) and Commonwealth Authorities and Companies Act (CAC)).

Questions from Hong Kong China

*Question: Note that Australia has been considering whether to become a party to the Agreement on Government Procurement for some time. We are interested to know the progress of the assessment, and whether Australia has reached any decision and if so, the details of it.*

Answer: Please refer above (i.e. Question 1 from Singapore).

*Question: Note that Australia still maintains certain discriminatory practices in government procurement at the Commonwealth and States level. Interested to know if Australia has any intention or plan to eliminate them, and if so, the details of them, such as the implementation timetable.*

Answer: Australia's government procurement policies and practices are consistent with its WTO obligations. Australia's procurement policies are consistent with Australia's obligations under the ANZ Agreement on Government Procurement.

Questions from the Republic of Korea

*Question: Australia is the only advanced economy which is not a member of the WTO GPA. In fact, foreign companies' access to the government procurement market in Australia has been hampered by some discriminatory government procurement policy of the Australian government for industry development purposes.*

*(a) For instance, state governments of Australia are currently providing a 10-20% preference margin to Australian and New Zealand companies at the bidding. Commonwealth government also considers "industry development criteria" apart from bidding price when it chooses the candidate for a project worth over 10 million Australian dollars.*

*(b) In this regard, significant improvement in the market condition for government procurement is needed and accession to WTO GPA is highly recommended. What is the view of Australia on this?*

Answer: (a) The Commonwealth government's industry development requirements as identified in the *Commonwealth Procurement Guidelines and Best Practice Guidance (CPGs)* require agencies governed by the *Financial Management and Accountability Act 1997 (FMA Act)* to ensure that tender documentation does not discriminate against Australian and New Zealand industry, particularly small and medium enterprises.

Value for Money is the core principle governing Commonwealth procurement. Industry development is one of the principles underpinning Value for Money. Any industry development requirements are considered as part of the overall value for money consideration.

The Industry Development Principle does not discourage competition between Australian, New Zealand and foreign bidders. The underlying premise of the Industry Development Principle is to create competitive Australian and New Zealand Industries.

For further information on the *Commonwealth Procurement Guidelines and Best Practice Guidance* please visit [www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth\\_procurement\\_guide](http://www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth_procurement_guide).

Officials are required to be mindful of industry policy goals and ensure that they are familiar with the value for money principles set out in the CPGs. The CPGs provide guidance on the key purchasing principles, including the relationship between industry development and Value for Money.

(b) Please refer above for Australia's position on WTP GPA membership (i.e. question 1. Singapore).

Questions from Brazil

*Question: Regarding paragraph 51, page 43 of the Secretariat report, does Endorsed Supplier Arrangement (ESA) function as a list of suppliers for governmental agencies/entities send invitation to take part on bidding process? If negative, do governmental agencies/entities consult any lists of suppliers to invite for bidding process? If affirmative, is there a possibility for potential foreign suppliers to be included in these lists of suppliers used by federal government agencies entities? If affirmative, how should those suppliers proceed to be included? Which are the requirements to be qualified in those lists? Is there preferential treatment in this regard for suppliers from any region/country besides Commonwealth?*

Answer: The endorsed supplier arrangement (ESA) list is used by agencies to source suppliers for selected or invited procurement processes, particularly in the IT and Major Office Machines (MOM) industry sector. The online search has tools to assist in developing lists. ESA is the only central list but is limited to three industry sectors: IT and MOM, Commercial Office Furniture and Auctioneering Services. Foreign suppliers may apply for endorsement and are assessed equally with Australian suppliers. If successful they are listed with all other endorsed suppliers. All potential providers can apply on line at <http://www.esa.finance.gov.au>. In order to become endorsed, potential suppliers must undergo the following checks: Financial viability, proven service performance, ability to service Australian based customers, industry development (IT and MOM only). There is no preferential treatment for suppliers from any region/country, including Australian suppliers.

*Question: Regarding paragraph 48, page 42 of the Secretariat report, what are the criteria used to characterize a small business? Regarding the principle of national treatment that may exist in other commercial agreements to which Australia is a Party, do small businesses from countries Parties in those agreements have equal treatment (with preferential access conditions) in Australia government procurement?*

Answer: The *Commonwealth Procurement Guidelines and Best Practice Guidance* define a small business as a company that employs less than the full time equivalent of 20 persons. Australia currently has a government procurement agreement with New Zealand. Under this agreement, New Zealand companies are treated equally with Australian companies.

*Question: Are bidding processes of the Department of Defence excluded from the coverage of Commonwealth or other commercial agreement to which Australia is a Party? Is there any other entity/agency excluded from the coverage in commercial agreements to which Australia is a Party? What kind of restrictions exist in the Department of Defence procurements?*

Answer: Defence's contracting templates and procurement policies are based on the Commonwealth Procurement Guidelines and, as such, Defence adheres to Government procurement policy. There are currently no exclusions relating to Defence nor any other entity or agency. Where the Government has passed enabling legislation to enact an international treaty, agreement, arrangement or UN Security Council resolution that restricts trade, the Department of Defence is bound by that restriction. In addition, some Defence procurements require the contractor to be cleared to a specific security level.

*Question: Are there any eco-labelling or eco-audit offsets in the Australian government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.*

Answer: No.

*Question: Are there any social clause requirements in the Australian government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.*

Answer: Section 3 of the *Commonwealth Procurement Guidelines and Best Practice Guidance* identify additional legislation, policies and resources that may impact on procurement decisions. This section highlights Commonwealth Government policies such as disability considerations and indigenous opportunities. A copy of the CPGs can be found at [www.finance.gov.au/ctc](http://www.finance.gov.au/ctc)

*Question: Does Australia use the Build-Operate-Transfer (BOT) as a purchasing method? Is the Build-Operate-Transfer (BOT) included in the coverage of commercial agreements, such as the Commonwealth and others?*

Answer: The Build-Operate-Transfer purchasing model is referred to in Australia as a “BOOT” scheme or Build-Own-Operate-Transfer. This scheme is essentially the same as a BOT, given the assumption that in order to transfer an infrastructure asset back to Government, the private sector must also own the asset during the operational period.

BOOT projects have been widely used in Australia, and are more commonly applied by State Governments rather than at the Federal level due to the ability to adopt a user-pays system for a variety of State infrastructure.

Variations on this model, such as build own operate (BOO) or design, build, finance maintain (DBFM) schemes are also applied on the basic principle that a procurement must deliver value for money, no matter what the delivery mechanism. This is also consistent with the *Financial Management and Accountability Act 1997* that states that Chief Executives of government agencies have an obligation to promote the efficient, effective and ethical use of resources.

In relation to agreements, Australia is a signatory to the *Australian and New Zealand Government Procurement Agreement* that means that Australia and New Zealand are treated equally and as one market for procurement.

*Question: Is there a consolidated and single national legislation on guidelines and procedures on government procurement or does each entity/agency/state/territory have its own? Are States and Territories obliged by international agreements made by the Central Government on government procurement field?*

Answer: The *Commonwealth Procurement Guidelines and Best Practice Guidance* (CPGs) publication issued by the Minister and Finance and Administration governs procurement at the Commonwealth of Australia. All agencies governed by the *Financial Management and Accountability Act 1997* must have regard to the CPGs when conducting procurement.

State and Territory Governments have their own legislation and policies to govern procurement within their jurisdiction.

The coverage of international agreements to States and Territories is not automatic. During the course of negotiations, the scope of the international agreement will be developed and this may or may not extend to include States and Territory government procurement.

*Question: Which classification system is employed to goods, services and public works in Australia?*

Answer: The Commonwealth of Australia currently uses ANZ Standard Commodity Classification (SCC) system for the Commonwealth Purchasing and Disposals Gazette. The Commonwealth's Purchasing and Disposals Gazette that performs two functions:

- The Government advertising site ([www.ads.gov.au](http://www.ads.gov.au)) for gazettal of all public business opportunities; and
- The Gazette Publishing System (GaPS) ([www.contracts.gov.au](http://www.contracts.gov.au)) for gazettal of agency agreements, contracts and standing offers.

The Commonwealth is currently reviewing the classification system.

**(viii) Contingency measures**

**(a) Anti-dumping and countervailing measures**

Questions from Brazil

*Question: In paragraph 57, it is also mentioned that “the anti-dumping system was to be reviewed before June 2002”. Could Australia inform if this review has already been concluded? If so, what were the modifications implemented or to be implemented?*

Answer: This review was to be undertaken by the Productivity Commission. However the Australian government is still considering when a review is to take place.

Questions from Chinese Taipei

*Question: According to paragraph 57, the Australian Customs Service (ACS) is now the sole agency in charge of the entire process of anti-dumping investigations, while it is the Trade Measures Review Office (TMRO) that reviews an appeal against a final finding, consisting of an interpretation of existing information rather than further investigation. Please indicate how many appeals have been lodged with TMRO and in how many cases the interpretation by TMRO has differed from the final finding of ACS. Referring to paragraph 57, the anti-dumping system was to be reviewed before June 2002. Please provide information on the results.*

Answer: The TMRO has reviewed 10 appeals since its establishment. These appeals were to the Minister's final decision. The TMRO can recommend either the Minister affirm their decision or that the Minister order Customs to reinvestigate aspects of the case. In 8 cases the TMRO recommended the Minister's decision be affirmed. One case was reinvestigated, the result was the affirmation of the original decision. One case is still under review. This review was to be undertaken by the Productivity Commission. However the Australian government is still considering when a review is to take place.

*Question: According to the Agreement in Implementation of Article VI of the GATT 1994, throughout an anti-dumping investigation, all interested parties shall have full opportunities for the defence of their interests. Given the fact that Australia allows a shorter period (155 days) than most other members for such investigations, is this a sufficient amount of time for foreign exporters to be able to properly prepare and defend their cases?*

Answer: Australia's new system is consistent with WTO requirements, and merely removes replications to streamline the process for all interested parties. The shorter time period for the investigation results in a reduction of uncertainty, beneficial to exporters and all interested parties. Thoroughness has not been sacrificed in the shortening of the timeframes. As the legislation allows, the Minister has regularly granted extensions of time for investigation deadlines. The need to give some exporters more time to prepare submissions is one of the reasons extensions have been granted. An additional safeguard to thoroughness and transparency is the addition of an appeal mechanism absent from the previous process.

Questions from the European Union

*Question: We note that the anti-dumping system was to be reviewed before June 2002. Could Australia please indicate if this was the case and what is the outcome of this review?*

Answer: This review was to be undertaken by the Productivity Commission. However the Australian government is still considering when a review is to take place.

*Question: According to Art 5.5 of the WTO Agreement on the enactment of Art VI of the WTO Antidumping Agreement Australia has agreed to notify the government of a concerned exporter before and about the initiation of an anti-dumping investigation. According to information received from EU Member States this has not been always respected in recent cases. Can Australia please confirm that the obligations of the WTO Agreement will be respected and what will be done to avoid such unconformity?*

Answer: Australia confirms its commitment to article 5.5 of the Agreement and confirms that it is the policy of the administering authority to notify the government of a concerned exporter before the initiation of an anti-dumping investigation.

Questions from the Republic of Korea

*Question: Australia is the world's 5th most frequent antidumping investigation user. From 1996 to 2001, it initiated 111 antidumping investigations. According to the Secretariat report, only 37% of total investigations during 1998-2000 (17 of 52 investigations) lead to actual antidumping measures. This evidences the fact that the anti-dumping investigations are being misused.*

*In addition, the Australian government abolished the independent Anti-dumping Authority and designated the Australian Customs Service to be solely in charge of the investigation, reducing the investigation period from an average of 215 days to 155.*

*It may enhance the effectiveness of the remedy measures from a viewpoint of Australian domestic producers. However, there is a concern that full investigation and opinion gathering to protect the rights of subject foreign companies cannot be guaranteed in such a short period of time.*

*Considering that in many cases the announcement of an investigation itself inflicts irreparable damage to the industries concerned, more careful initiation of antidumping measures is requested.*

Answer: Australia's imposition of anti-dumping measures has decreased steadily since 1998. The amount of cases initiated is higher than the amount of cases resulting in the impositions of measures. This is not evidence that the cases were not worthy of investigation. However, Australia notes that it has recently amended its application form to request more comprehensive information from applicants. The new form came into use in August 2001. Since then five investigations have been initiated and one has been completed. That investigation resulted in the imposition of measures.

Australia's new system is consistent with WTO requirements, and merely removes replications to streamline the process for all interested parties. The shorter time period for the investigation results in a reduction of uncertainty, beneficial to exporters and all interested parties. Thoroughness has not been sacrificed in the shortening of the timeframes. As the legislation allows, the Minister has regularly granted extensions of time for investigation deadlines. The need to give some exporters more time to prepare submissions is one of the reasons extensions have been granted. An additional

safeguard to thoroughness and transparency is the addition of an appeal mechanism absent from the previous process.

Question from Chinese Taipei

*Question: Referring to paragraph 59, during the period under review Australia decided to increase the existing domestic adjustment assistance to the swine meat industry, while in 1998/1999 it considered the introduction of border measures on imports of swine meat. Please describe what measures are being taken in the context of domestic adjustment assistance.*

Answer: An integrated package of business assistance programs was provided in 1998/99 over 4 years to assist the pork industry to adapt to change, assess new market opportunities and become more competitive. For those pork producers who were in serious financial difficulty assistance was provided to exit the industry. The pork package has now terminated and the industry is now receiving no product specific adjustment assistance. The pork package was notified in Australia's domestic support notifications in 1998/99 (G/AG/N/AUS/30), 1999/2000 (AUS/36), in 2000/01 (AUS/41/Rev.1) and final payments will not be notified in the next notification. Grants to pork processors and producers under the package were notified as *de minimis* support under the AMS provisions and grants to pork producers who had decided to leave the industry were notified as "green" box support.

Questions from Brazil

*Question: In paragraph 56 (chapter III.2) of the Secretariat report, it is mentioned that 19 anti-dumping investigations resulted in definitive measures (involving anti-dumping duties and minimum export price undertakings). Could Australia inform how many anti-dumping duties were applied on the basis of the "best information available"?*

Answer: Best information available was used in four cases. This information is set out in Australia's return to the WTO. The code 'FA' is used to represent best available information.

*Question: Chart III.5 indicates that in 1999 most of the investigations were concluded without the imposition of anti-dumping measures; in 2000, apparently, in almost half of the investigations terminated anti-dumping measures were adopted; Could Australia elaborate on this evolution? Has the reform of the anti-dumping system in Australia implemented in July 1998, referred to in paragraph 57, had any impact on the relative increase of investigations concluded with imposition of anti-dumping measures?*

Answer: Australia's imposition of anti-dumping measures has decreased steadily as an absolute number since 1998. However, Australia notes that it has recently amended its application form to request more comprehensive information from applicants. The new form came into use in August 2001. Since then five investigations have been initiated and one has been completed. That investigation resulted in the imposition of measures.

*Question: In paragraph 57, it is mentioned that the Australian Customs Service (ACS) is now the sole agency in charge of the entire investigation. Could Australia elaborate on the operation of this agency as an investigating authority?*

Answer: The Australian investigating authority receives applications, examines them to determine whether they justify initiation, conducts the investigation, and then makes recommendations to the Minister for Justice and Customs. The Minister is the decision maker in the process. Administrative

review is provided for through the Trade Measures Review Office which is not a part of the investigating authority and is fully independent. Judicial review is also available through the Federal and High courts.

*Question: In paragraph 57 it is mentioned that “after an initial screening period of up to 20 days, the investigation is now undertaken as a single-stage procedure of 155 days”, that is, less than 6 months. Could Australia explain the meaning of “initial screening period”? Please explain as well the meaning of “single stage procedure”. Does this expression mean that preliminary determinations are not made?*

Answer: Initial screening period is the time between the lodging of an application and the initiation of the investigation. During this time the investigating authority examines the application to determine whether there is sufficient evidence to justify the initiation of an investigation as set out in article 5.3 of the Agreement.

Single stage procedure does not mean that preliminary determinations are not made. Single stage procedure refers to the new process being undertaken by one agency in comparison with the old process, which involved two agencies and some replication of processes. Preliminary affirmative determinations can be imposed in the new system.

*Question: Considering that Article 6.1.1 of the AD Agreement establishes that “Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply”, and that footnote 15 establishes that “the time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative (...)”, in the hypothesis that no extension of the 30 day-period was conceded, the investigating authority would have only 4 months to conclude the investigation, that is, a very short time period. Could Australia inform if, in the case of a request for an extension of the 30-day period, this extension is conceded? How does Australia conciliate this short time period for the conclusion of the investigation with the general principle that the interested parties should have the opportunity to defend their interests?*

*Does Australia normally carry out on-the-spot investigations? If so, are the 155 days sufficient to allow those investigations?*

Answer: Australia's new system is consistent with WTO requirements, and merely removes replications to streamline the process for all interested parties. The shorter time period for the investigation results in a reduction of uncertainty, beneficial to exporters and all interested parties. Thoroughness has not been sacrificed in the shortening of the timeframes. Australia does visit interested parties including Australian industry and exporters. The submissions of the interested parties are thoroughly verified at these visits.

As the legislation allows, the Minister has regularly granted extensions of time for investigation deadlines. The need to give some exporters more time to prepare submissions is one of the reasons extensions have been granted. An additional safeguard to thoroughness and transparency is the addition of an appeal mechanism absent from the previous process.

*Question: In paragraph 57, it is mentioned that “anti-dumping and countervailing measures continue to be subject to a five-year clause, with reviews undertaken prior to the expiry date, if there is a request for the action to continue”. Could Australia inform how many “sunset reviews” it has*

*conducted during the period under review? If any, how many were concluded with a decision to maintain the action?*

Answer: The Australian authority invited Australian industry to apply for continuation of measures beyond the sunset date in 33 cases. Six sunset reviews were conducted. In five cases the measures were continued. One case is still pending.

*Question: In paragraph 57, it is also mentioned that “appeals against a final finding entail a review by a Trade Measures Review Officer (TMRO) of the interpretation of existing information rather than further investigation”. During the period under review, how many were the reviews initiated by the TMRO? And how many were the decisions that reversed the result of the investigation? In how many cases was a decision not to adopt a measure reverted? And in how many cases was a decision to adopt a measure reverted?*

Answer: The TMRO has reviewed 10 appeals since its establishment. These appeals were to the Minister’s final decision. The TMRO can recommend either that the Minister affirm their decision or that the Minister order Customs to reinvestigate aspects of the case. In 8 cases the TMRO recommended the Minister’s decision be affirmed. One case was reinvestigated, and the result was the affirmation of the original decision. One case is still under review.

*Question: Is the TMRO an administrative tribunal? Is it independent of the authorities responsible for the determination or review in question?*

Answer: The Trade Measures Review Office is not a part of the investigating authority and is fully independent.

*Question: Does this review conducted by the TMRO impede the recourse to a judicial review?*

Answer: Reviews conducted by the Trade Measures Review Office do not limit the recourse to a judicial review.

#### Questions from Thailand

*Question 1 refers to the investigation of certain steel shelving and expresses concern over the investigation period.*

Answer: The investigation period is the period over which the investigating authority examines whether dumping has occurred. The investigation period in this case commenced at the date of the first importations of the steel shelving from Thailand.

*Question 2 refers to the investigation of pineapple concentrate and canned pineapple and expresses concern over the method used to establish a dumping margin.*

Answer: The investigation of pineapple involved an unusually large group of Thai producers. For this reason sampling methods consistent with article 6.10 of the Agreement were used and the data of five Thai exporters was chosen for verification. An examination of the Thai exporters costs was undertaken by an independent international accounting firm in order to confirm the approach of the investigating authority. Unfortunately, that examination concluded the costs did not reasonably reflect the costs associated with the production and sale as required by article 2.2.1.1 of the Agreement. However, the investigating authority was able to construct costs that reasonably reflected the costs of production and sale for one exporter. This normal value was used as a basis for other

exporters. Keeping in line with the investigating authority's commitment to transparency this approach was clarified in the statement of essential facts pursuant to article 6.9 of the Agreement.

*Question 3 refers to the investigation of pineapple concentrate and canned pineapple and expresses concern over provisional measures and securities.*

Answer: The WTO panel decision (hot rolled steel) precludes anti-dumping duties being imposed on the basis of the best available information. Australia has been re-examining its legislation regarding the establishment of duty following this decision. In the meantime the Thai exporters sought a review by the TMRO. The outcome of the review had the potential to alter the basis for the anti-dumping duties. Unfortunately, that review took some time to complete and did not result in an alteration of the basis of the anti-dumping duties. Australia notes that the Thai exporters affected can apply for a further review of the measures. Australia will not await the outcome of any further review before proceeding to re-examine the basis of which duties are imposed.

*Question 4 refers to the investigation of pineapple concentrate and canned pineapple and expresses concern over the confidentiality issues involved employment of a private auditing firm.*

Answer: Australia is committed to preserving the confidentiality of all interested parties. All the staff involved from the private accounting firm were subject by contract to the same legislative confidentiality provisions as officers of the investigating authority and all work was required to be undertaken on the premises of the investigating authority. Further, the private accounting firm staff were subject to comprehensive security checks identical to those applied to the officers of the investigating authority.

**(a) Standards**

*Question from Chinese Taipei*

*Question: Referring to paragraph 61, a 1992 Commonwealth/State Agreement on Mutual Recognition allows a product that is in conformity with the requirements of at least one State or Territory to be sold throughout Australia. Please clarify whether this agreement on mutual recognition can be applied to all other products, apart from those mentioned as examples, pressure equipment and bicycle helmets. If there are some other products that are exceptions, further information would be appreciated with an explanation of how the standards requirements throughout Australia can be met.*

Answer: The Commonwealth Mutual Recognition Act 1992 (the Act) provides that if a good is legally saleable in one state or territory then it is legally saleable in all other states and territories. The Act contains a list of goods and laws relating to goods that are permanently exempt from the operation of the Act. The goods permanently exempt are, firearms and other prohibited or offensive weapons, fireworks, gaming machines, and pornographic material. Laws relating to goods that are permanently exempt fall into the following categories: quarantine, environmental issues, firearms and offensive weapons and the classification of publications, films and videotapes. Therefore, by definition all other goods are covered by the operation of the Act.

The issue that Chinese Taipei has raised is in relation to the "use" of a small number of goods. This is where, for example, a construction helmet may be legally saleable between jurisdictions, however, only construction helmets that meet the Australian Standard can be used on construction sites. So as can be seen in this particular case there is no restriction on the sale of the helmet, however, the "use"

of the helmet in certain circumstances may be subject to the health and safety regulations of a particular jurisdiction.

It should be noted that very few goods are regulated by use and that for the vast majority of goods the mutual recognition arrangement for sale is adequate.

The Mutual Recognition Arrangement is the subject of a review to be held in 2003. The issue of sale and use is likely to be examined as part of the review.

Question from Switzerland

*Question: Paragraph 66 says that technical regulations often refer to voluntary standards prepared by Standards Australia International (SAI). What is the ratio between technical regulations that refer to voluntary standards in comparison to technical regulations that do not make such a reference?*

Answer: Standards Australia advise that approximately 2400 Australian voluntary standards (or 40 per cent) are referenced in Australian legislation/regulations. We have no data on the total number of technical regulations. It should be noted the high level of alignment of Australian Standards with international standards as outlined in paragraph 72.

*Question: In many countries there is only one accreditation service that provides for accreditation of calibration, testing, inspection and certification bodies. Is it planned to merge NATA and JAS-ANZ in the near future?*

Answer: The Government is not currently considering a merger of NATA and JAS-ANZ. Moreover NATA is a private company whereas JAS-ANZ is an unincorporated entity created by treaty between Australia and New Zealand. A merger as such would not be a simple transaction.

*Question: Switzerland is interested in information concerning the application of the MRA between Australia and the European Community. Does the implementation proceed smoothly or are there any problems mentioned in this context? Is it planned to amend the EC-Australian MRA (especially the sectoral annexes)? When will this procedure be completed?*

Answer: The implementation of the MRA the European Community has proceeded without any significant problems and is being utilised to facilitate trade by both parties.

Australia has made a number of representations to the European Community in relation to the "rules of origin" clause and updating the existing sectoral coverage to incorporate changes to European Directives and Australian legislation. These issues are likely to be the focus of discussions at the next Joint Committee meeting of the parties due to take place in late October 2002.

*Question: What efforts are being made to guarantee in future the normal 60-day comment period for notifications being submitted by Australia?*

Answer: Australia is fully conscious of the 60 day period recommended by the Committee for the submission of comments on draft technical regulations and procedures for assessment of conformity.

We take seriously the notification recommendations of the Committee and seek to meet them. As the Secretariat notes in its Report, the timeliness of our notifications has been improving.

Australia is keen to promote increased transparency in the notification process and, for its part, will shortly be reminding Agencies responsible for promulgating technical regulations and procedures for assessment of conformity of the desired 60 day notification period.

Question from Thailand

*Question: Australian authorities require that steel wire and PC strand/wire imports into the country must be approved by ACRS and NATA respectively. In view of the Thai steel industry, involvement of domestic producers of like products in standard certifying body(ies) has raised doubts on grounds of transparency. This practice is in place despite there being a competent international testing and certification institute accepted by the steel industry worldwide. We would like to hear Australia's rational for not accrediting such institute.*

*Answer:* The Commonwealth Government has a clear policy of adopting international standards and implementing arrangements for the mutual recognition of conformity assessment in both the regulated and voluntary sectors. This means that regulators are encouraged to accept test reports from NATA accredited laboratories and NATA MRA partners.

There is no internationally recognised standard for reinforcing steel. There is a sound technical basis for the Australian standard. The standard has been investigated on competition policy grounds and cleared by the Australian Competition and Consumer Commission and the Australian Building Codes Board. Both bodies are independent of the steel industry. That the standard is not a technical barrier to trade is readily demonstrated by the rapid growth in imports of reinforcing steel. The Australian standard for pre-stressing strand is under review. There are sound technical reasons driving the need for this review.

**(b) Sanitary and phytosanitary regulations**

Questions from Brazil

*Question: Import prohibitions and restrictions in the form of stringent quarantine or technical requirements have remained in place, in principle to preserve, inter alia, public health, the environment, safety, or security. Please explain what efforts have been made to align certain compulsory standards to international standards as well as to improve coordination and international cooperation in this regard. (WTO notification, MRAs, APEC).*

*Answer:* Australia is a major exporter of unprocessed agricultural products. Of the \$30 billion of agricultural exports, only a small percentage is in highly processed form. Most has not been subject to any process that would inactivate pathogens of concern to an importing country. For this reason, maintenance of Australia's highly favourable animal and plant health status is therefore critical to its ability to trade in world markets – hence our very conservative approach to quarantine.

In this respect Australia is in a markedly different position to many other countries that are net importers of agricultural products or which process most of their agricultural exports to the consumer-ready stage.

Australia's history and comparative geographic isolation as well as traditionally strong quarantine system has resulted in a favourable animal and plant health status that we intend to maintain.

Where current international standards such as those endorsed by OIE and IPPC meet Australia's needs with regard to protection from pests and diseases, they are included in import protocols.

However, many do not provide an adequate level of quarantine protection and Australia legitimately exercises its right under the SPS Agreement to impose stricter controls, justified on scientific grounds and supported by a transparent risk analysis.

Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

*Question: Changes have been introduced to Australia's SPS and quarantine requirements to cover, inter alia, genetically modified organisms and biotechnology; a formal import-risk-analysis process has also been introduced. How does Australia plan on preventing formal import-risk-analysis processes from being trade-distorting or from relying on mechanisms that distort trade?*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

We have consulted extensively in developing a new Administrative Import Risk Analysis Framework. Despite receiving copies of relevant draft documents, none of our trading partners took up the invitation to comment. The proposed new Framework builds on experience to date with the current process and aims to improve consultation and further enhance the scientific rigour and transparency of quarantine decisions.

*Question: Prohibition or stringent quarantine/permit/inspection procedures (see section (ix)(b)) currently apply on more than 150 agricultural/livestock products (e.g. cereals, fresh fruit, vegetables, meat, poultry products) and other items (e.g. used machinery) considered to have the potential to introduce contamination or disease. What are the technical studies necessary to state that a certain product falls under such legislation?*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

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#### Questions from the European Union

*Question: The report states that Australia's SPS measures are considered by a number of its trading partners as unduly stringent, and that it maintains many quarantine and food standards which are stricter than international standards, claiming that these are necessary to reflect domestic needs. The*

*EU agrees that it is the right of sovereign states to set their appropriate level of protection. The major concern of the EU, however, is the very lengthy process, which is invoked each time an IRA is made. This usually involves publication of an issues paper, which in itself may take several years, with lengthy comment periods. This is then followed up by the risk assessment process, which again make take several years. Furthermore, Australia frequently goes beyond international standards without publishing scientific justification for this action.*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

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The time taken to complete IRA's by Australia is comparable with other countries which have strong quarantine systems and which used science-based risk analysis to develop their quarantine policies.

Australia is a major exporter of unprocessed agricultural products. Of the \$30 billion of agricultural exports, only a small percentage is in highly processed form. Most has not been subject to any process that would inactivate pathogens of concern to an importing country. For this reason, maintenance of Australia's highly favourable animal and plant health status is therefore critical to its ability to trade in world markets – hence our very conservative approach to quarantine.

In this respect Australia is in a markedly different position to many other countries that are net importers of agricultural products or which process most of their agricultural exports to the consumer-ready stage.

Australia's history and comparative geographic isolation as well as traditionally strong quarantine system has resulted in a favourable animal and plant health status that we intend to maintain.

Where current international standards such as those endorsed by OIE and IPPC meet Australia's needs with regard to protection from pests and diseases, they are included in import protocols. However, many do not provide an adequate level of quarantine protection and Australia legitimately exercises its right under the SPS Agreement to impose stricter controls, justified on scientific grounds and supported by a transparent risk analysis.

Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

*Question: With cases such as the Danish pig meat or the Australian ban on European products on FMD grounds, the EU has experienced situations which support the contention that Australia may be using the WTO process to hinder access to its market for as long as possible. We would therefore like to request that Australia*

- *expedites market access requests for products covered by the SPS Agreement,*
- *uses current knowledge as much as possible to adopt interim solutions which minimise trade disruption pending the final assessment,*
- *uses international standards as much as possible, and provides scientific justification for any departure from them.*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

Denmark already has access to the Australian market for its pig meat. The EU's reference to this is obscure. With regard to the suspension of potentially contaminated products from EU member countries during the 2001 FMD outbreak, it should be noted that Australia permitted the resumption of trade immediately adequate technical information had been supplied to demonstrate that it was safe to do so.

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Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

#### Questions from India

*Question: Australia maintains very stringent standards for Maximum Residue Levels(MRLs) for spices in general and chillies in particular. Would Australia give reasons for fixing such stringent standards? Has it been fixed after appropriate risk assessment?*

Answer: In Australia, Food Standards Australia New Zealand (FSANZ) is the agency with responsibility for developing food standards, including Maximum Residue Limits (MRLs) for chemical residues in food.

FSANZ must be satisfied that any changes to the residues and MRLs do not represent an unacceptable risk to public health and safety before agreeing to a variation to any MRLs. All changes to Australian MRLs only occur following completion of a scientific risk assessment. Codex standards are taken into account when Australia establishes national food standards. FSANZ makes WTO notifications on all proposed MRLs.

FSANZ is currently processing an application specifically to allow the import of specific foods (ie. herbs and spices) that have been treated with pesticides overseas. The assessment of this application will involve a thorough examination of scientific data associated with the chemicals and residue trials and consideration of the results of exposure assessment studies.

*Question: It is gathered that Australia does not disclose the testing methods used in the laboratory for fixing SPS standards on the ground that these are intellectual property. Would Australia elaborate as to how it considers such methods of tests as an intellectual property?*

Answer: Australia discloses information on its testing methods that are part of its import requirements. The "Australian Diagnostic Techniques for Animal Diseases" details the tests and standards for each disease. This book is published and the information available on the internet.

*Question: Is there any provision in the Australian law by which the testing procedures and food standards can be shared with other countries?*

Answer: (For food standards) All of the Australian food standards are contained in the *Australia New Zealand Food Standards Code*. This is a public document and freely available on the website of Food Standards Australia New Zealand: [www.foodstandards.gov.au](http://www.foodstandards.gov.au). Explanatory material and User Guides are also available on that website.

*Question: It is gathered that for Dehydrated Culture Media exported from India, Australian Government agencies do not accept certificates of Government of India/Government of Maharashtra, Animal Husbandry Department certifying such products to be BSE/TSE free and FMD free. Could Australia elaborate on the reasons for non-acceptance of such certificates?*

Answer: Australia understands that FMD is endemic to India and appreciates that it has not undertaken a thorough examination of India's TSE status. Australia appreciates that dehydrated culture may be used for the production of vaccines, certain therapeutics and other in vivo products and, as such, represent a potential high quarantine risk.

#### Questions from the United States

*Question: Please elaborate on how defending a country's reputation as a high quality exporter (as discussed in para. 75 of the Secretariat's report) is a legitimate scientific basis for imposing trade restrictive SPS measures under the SPS agreement.*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners

requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

Australia is a major exporter of unprocessed agricultural products. Of the \$30 billion of agricultural exports, only a small percentage is in highly processed form. Most has not been subject to any process that would inactivate pathogens of concern to an importing country. For this reason, maintenance of Australia's highly favourable animal and plant health status is critical to its ability to trade in world markets.

Australia's history and comparative geographic isolation as well as traditionally strong quarantine system has resulted in a favourable animal and plant health status that we intend to maintain through quarantine measures developed legitimately under the SPS Agreement.

*Question: Para. 33 of the Government's report states that "The Import Risk Analysis (IRA) process is open and transparent . . ." We would like to note for the record that exporters to Australia have commented that although the IRA process is now open and transparent, it is extremely slow, to the point that there is now a 19-year backlog of IRA requests. Consequently, some of these exporters feel the process continues to protect Australian agriculture.*

Answer: The length of time taken for individual IRAs depends on a number of factors including the availability of published or other information necessary to support the analysis. It also depends on the quality and completeness of information provided by the proponent of the import. Only some of the import requests received by Biosecurity Australia will necessitate a formal IRA. Many other requests are dealt with by means of simpler reviews of or extensions to existing policies. Also, not all IRAs flow through to a conclusion. Proposals are sometimes withdrawn or aggregated (into a generic analysis) and changing circumstances can affect the commencement and progress of an IRA.

*Question: Has a new administrative framework for IRAs been implemented (as discussed in para. 81 of the Secretariat's report)? If so, how long will it take Australia to catch up on its backlog of requests for market access?*

Answer: In the light of lessons from recent years, Australia has reviewed its Import Risk Analysis process to strengthen opportunities for external scientific input and to enhance opportunities for public consultation. The basic elements of the IRA process will remain unchanged, but the aim is to make it more consistent, accountable and transparent. This information is available at [www.affa.gov.au](http://www.affa.gov.au).

The IRA process will continue to comply with our international obligations. The Government will finalise the new IRA Framework late in 2002.

Overall, it is hoped that the new framework will help to ease potential delays in the IRA process, by identifying and handling any stakeholder technical concerns earlier in the process. The changes are directed towards greater consultation with stakeholders as well as the scientific community, to increase the transparency and scientific rigour of the analysis process. Other countries that develop their measures through science-based risk analyses take similar time periods to complete their IRAs.

*Question: IRA processes in many countries are often vulnerable to politicization and influence from protectionist interests. What measures does the Australian Government have in place to ensure against undue political influence in the IRA process?*

Answer: The following measures assure the independence of the IRA process

- IRA decisions are made by the Director of Quarantine
- Australia's IRA process and technical guidelines are published and readily available to all interested parties;
- There are regular reports and updates to stakeholders;
- There is no restriction on who can be a stakeholder;
- All IRA's are science-based and open to public scrutiny;
- Stakeholders have a right of appeal.

*Question: Does Australia recognize disease/pest free regions within a country? If so, please provide examples.*

Answer: Yes. Australia does recognise disease/pest free regions within a country. Examples of zone freedom incorporated into import decisions include Bluetongue in the US, Bluetongue in Canada and foot and mouth disease in South Africa. Examples for plant products include mangoes from the Guimaras Islands, the Philippines (mango and pulp weevil), Ya pears from China (fruit flies and some other pests), Fuji apples from Japan (brown rot and bacteria shoot blight), fresh table grapes from California (USA), (medfly, black rot and a number of other pests and diseases) and citrus from California, Texas and Arizona - freedom from citrus canker (only present in Florida).

*Question: How many biotech products are still waiting to be assessed by ANFZA. Is there any commercial productions of approved biotech products? In general, how long does ANFZA's assessment process take?*

Answer: FSANZ (formerly ANZFA) has assessed 23 applications for approval of GM foods to be in food in Australia and New Zealand. Of these, 19 have been fully approved by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC, formerly the Australia New Zealand Food Standards Council); one is currently under consideration by the Council; one is undergoing assessment by FSANZ; and two have been withdrawn.

For foods that require a mandatory pre-market safety assessment, the FSANZ process for the safety assessment of foods is transparent and consultative, and includes two full rounds of public consultation. The statutory timeframe for assessment is twelve months, with the possibility of a six-month extension. GM food safety assessments generally take up to twelve months to complete.

In Australia, there are two genetically modified varieties of carnations available commercially to be grown, and two genetically modified cotton varieties allowed to be grown under the OGTR's processes. FSANZ does not regulate the environmental release of GM crops. This is regulated under the Gene Technology Act 2000 and is the responsibility of the Office of the Gene Technology Regulator (OGTR).

Question from Brazil

*Could Australia make comments on its position in relation to product tracing (traceability) requirements for many foods, feedstuffs and food-producing animals the European Union wants to impose?*

Answer: Australia has previously raised its concerns about the European Union's proposed traceability requirements on products containing GMOs and food and feed products produced from GMOs in the SPS and TBT Committees.

As the EU's proposed regulations have been notified to the SPS Committee as a sanitary and phytosanitary measure, the SPS Agreement requires that the measure be based on an international standard or a science-based risk assessment, does not result in arbitrary or unjustified discrimination, and is not more trade restrictive than necessary.

Australia is concerned about the scientific basis for the proposed EU traceability regulations, including whether it is justified on a scientific risk assessment or an international standard. Australia also questions whether, in the absence of an identifiable risk to human health, the proposed regulations would meet the WTO requirements.

Question from the European Union

*Question: Australia's Ministry of Health has presented a draft in order to complement BSE surveillance measures which puts into question the safety of milk and milk products and introduces additional requirements on imports. These measures seem not to be in line with the SPS Agreement (articles 2.2 and 4). In addition, these regulations provide for a difference between suppliers from Australia and New Zealand on the one hand and the EU on the other. This would be a discriminatory trade barrier, which again would be inconsistent with the SPS Agreement (article 2.3). Does the Government intend to revise these draft regulations in order to make them conform with the SPS Agreement?*

Answer: In Australia, a new standard was introduced into the Food Standards Code on 18 July 2001 requiring that all beef and beef products sold in Australia for human consumption be derived from animals free from Bovine Spongiform Encephalopathy (BSE). These restrictions do not include milk and dairy products, gelatine, fats and tallow, collagen from bovine skins and hides, and non-beef flavourings, as current scientific evidence indicates these products present a negligible risk for transmission of the BSE agent.

Question from the Philippines

*Question: The SPS Agreement encourages Members to rely upon the SPS standards established by the three international standards setting bodies, CODEX, OIE and IPPC. However, as noted in the Secretariat's report, Australia has maintained many quarantine controls and standards that are stricter than those established by these bodies. Will Australia consider adopting international standards thereby promoting the objective of the SPS Agreement to harmonize standards?*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

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maintenance of Australia's highly favourable animal and plant health status is therefore critical to its ability to trade in world markets – hence our very conservative approach to quarantine.

In this respect Australia is in a markedly different position to many other countries that are net importers of agricultural products or which process most of their agricultural exports to the consumer-ready stage.

Australia's history and comparative geographic isolation as well as traditionally strong quarantine system has resulted in a favourable animal and plant health status that we intend to maintain.

Where current international standards such as those endorsed by OIE and IPPC meet Australia's needs with regard to protection from pests and diseases, they are included in import protocols. However, many do not provide an adequate level of quarantine protection and Australia legitimately exercises its right under the SPS Agreement to impose stricter controls, justified on scientific grounds and supported by a transparent risk analysis.

Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

#### Questions from Malaysia

*Question: Market access into the Australian market has been impeded by stringent SPS requirements. These have been criticised as unduly stringent. Many of the standards imposed have been stricter than international standards. We appreciate Australia's views and their response to such criticism.*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

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Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

Question from the Philippines

*Question: In the course of the SPS Committee's deliberations on specific trade concerns, several Members have questioned some of the SPS measures required by Australia. In particular, some developing countries have noted that the stringent measures required by Australia are oftentimes very costly and render exports to Australia no longer viable. Article 9.2 of the SPS Agreement states that:*

*“Where substantial investments are required in order for an exporting developing country to fulfil the SPS requirements of an importing country, the latter shall consider providing such assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.*

*Is Australia willing to commit to such technical assistance to enable developing countries to shoulder the additional costs of complying with Australia's stringent SPS measures on specific products, thereby ensuring real market access for these countries?*

Answer: Australia gives a high priority to providing technical assistance to regional countries seeking to improve their capacity in SPS-related matters, and the health status of their animal and plant industries.

Under Australia's ASEAN-Australia Development Cooperation Program (AADCP) which will commence later this year, a number of quarantine-related activities have been agreed following consultations with ASEAN countries. These include:

**Quality Assurance Systems for ASEAN Fruit and Vegetables.**

The goal of this project is to contribute towards building consumer confidence in ASEAN horticultural produce. The indicative budget is \$A1.55 million.

**Quality Assurance and Safety of Fish and Fishery Products, Processing and Packaging**

The goal of this project is to facilitate and promote intra- and extra- ASEAN trade in fishery products through the application of Hazard Analysis and Critical Control Point (HACCP)-based quality assurance systems. The indicative budget is \$A0.8 million.

**Strengthening ASEAN Plant Health Capacity**

The goal of this project is to support regional objectives of harmonising plant health regulations through science-based policies and regulations. The indicative budget is \$A1.05 million.

### **Strengthening Animal Health Management and Quarantine**

The goal of this project is to enhance the capability of ASEAN members to comply with commitments related to the application of sanitary and phytosanitary (SPS) measures for livestock and animal products. The indicative budget is \$A1.05 million.

### **Strengthening ASEAN Capability in Risk Assessment in Support of Food Safety Measures**

The goal of this project is to strengthen ASEAN capability in risk assessment in support of food safety measures. The indicative budget is \$A0.65 million. ASEAN and Australia are now well into a process of consultations to develop the detailed final designs of these activities.

Australia is also funding a new \$3.5 million SPS initiative under the AFTA-CER Closer Economic Partnership (CEP), the **Sanitary and PhytoSanitary Capacity Building Program** (SPSCBP). The SPSCBP will build regional cooperation in SPS matters, and strengthen the internal and border quarantine capacities of the ASEAN countries. Inter alia, the SPSCBP will build the technical, scientific and managerial capacities of the organisations (regional and national) within the ASEAN region with responsibilities for management of SPS matters.

There are two planned stages of implementation.

- Stage 1 is an initial, 9-12 month, phase of working jointly with the participating governments to identify the scope for enhanced regional cooperation, to confirm areas of focus, to select specific institutions for capacity building support, to analyse their institutional building needs, and to develop detailed programs of work.
- Stage 2 (approx 3 years) will focus on the delivery of specific technical assistance activities to support enhanced regional SPS-related cooperation, and build key technical, scientific and organisational capacities.

#### Question from the Philippines

*Question: We note in the Secretariat's report that since June 1999, Australia has required imported agricultural commodities to undergo Import Risk Analysis (IRA). In the same report, however, Australia has pointed out the limit on resources as constraint to undertaking IRAs. For those commodities where Australia has no IRA, what is Australia's basis for instituting an SPS measure?*

*Likewise, to what extent does Australia take into account pertinent information that may be available from international organizations, as well as of SPS measures applied from other Members, when establishing measures for which Australia has not undertaken an IRA?*

Answer: The SPS Agreement requires governments to base their quarantine measures on international standards, or on a transparent science-based risk analysis. Australia uses a formal, science-based process to assess risks associated with proposed imports of animals, plants and their products. Our process is open and transparent and keeps stakeholders, including the trading partners requesting access, informed of the progress and detail of scientific assessments. Few other countries have import risk analysis processes as articulated and transparent as Australia's.

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Furthermore, relevant international standards do not always exist. This is particularly notable for plant biosecurity where there are a comparatively large number of pests and diseases infecting a large number of host species, but there are only a very small number of standards (none of which cover specific pests or diseases).

Question from Argentina

*Question: "Paragraph 80 of the Secretariat's Report points out that since June 1999 a quarantine and inspection process requires that imported agricultural products be subject to an import risk analysis to determine the risk that could exist that these goods might introduce pests and illnesses into Australia and how to face these risks. An import risk analysis of imports can take between one and two years. A new administrative framework for this type of analysis - according to the report - must be completed and put into practice in 2002. What is the status of the new system? Can Australia provide some additional elements and characteristics about the future administrative framework, besides those contained in paragraph 34 of the Government Report? Is this new framework expected to fast-track the risk analyses?"*

Answer: In the light of lessons from recent years, Australia has reviewed its Import Risk Analysis process to strengthen opportunities for external scientific input and to enhance opportunities for public consultation. The basic elements of the IRA process will remain unchanged, but the aim is to make it more consistent, accountable and transparent. This information is available at [www.affa.gov.au](http://www.affa.gov.au).

The IRA process will continue to comply with our international obligations. The Government will finalise the new IRA Framework late in 2002.

Overall, it is hoped that the new framework will help to ease potential delays in the IRA process, by identifying and handling any stakeholder technical concerns earlier in the process. The changes are directed towards greater consultation with stakeholders as well as the scientific community, to increase the transparency and scientific rigour of the analysis process. Other countries that develop their quarantine measures based on science-based risk analyses take similar time periods to complete their IRAs.

Questions from Chile

*Question: Page 52 of the Secretariat's TPR Report states that an Import Risk Analysis (IRA) for imported agricultural commodities "may take from one to two years". Chilean table grapes have been undergoing this process for more than seven years. In this context, we would like to ask the following questions:*

- *Could Australia explain the different stages of the IRA and the timelines for the completion of each one?*
- *The report says that a new administrative framework of IRA's will be finalized and implemented in 2002. Could Australia provide further details on what this framework entails and how it differs from the actual system?*
- *Once the IRA is finished and a product is approved for import is this valid for all of Australia or are there regional quarantine measures that might affect this import?*

Answer: In the light of lessons from recent years, Australia has reviewed its Import Risk Analysis process to strengthen opportunities for external scientific input and to enhance opportunities for public consultation. The basic elements of the IRA process will remain unchanged, but the aim is to make it more consistent, accountable and transparent. This information is available at [www.affa.gov.au](http://www.affa.gov.au).

The IRA process will continue to comply with our international obligations. The Government will finalise the new IRA Framework late in 2002.

Overall, it is hoped that the new framework will help to ease potential delays in the IRA process, by identifying and handling any stakeholder technical concerns earlier in the process. The changes are directed towards greater consultation with stakeholders as well as the scientific community, to increase the transparency and scientific rigour of the analysis process. Other countries that develop their quarantine measures based on science-based risk analyses take similar time periods to complete their IRAs.

Australia addresses regional differences in pest status and risk and any consequent variation to SPS measures as part of its import risk analyses. If region-specific quarantine measures are required, these are scientifically-justified and are available on ICON.

Question from China

*Question: We seek Australia's clarification on the pending Pest Risk Analysis test of China's apple and peach originating from Shandong and Shaanxi provinces and China's request for lifting of the ban on Ya pear to be expanded to cover all kinds of pears.*

Answer: In November 2001, China advised that its top priority for access was Shandong pear and Australia has commenced work on this request. In August 2002, China provided data on six Chinese arthropod pests that Australia is considering as being of potential quarantine significance.

Questions from Chinese Taipei

*Question: Chinese Taipei respects the fact that as a major exporter of agricultural products, Australia is heavily dependent on agriculture. It would therefore be desirable to adopt stringent SPS measures to ensure that agricultural products would not be jeopardized by pests and diseases, and to secure food safety. Clarification from Australia on two issues would be appreciated. First, on the*

*issue of preserved eggs, Chinese Taipei has been requesting access to the Australian market since 2000, but access has been denied on the basis that the import risk analysis (IRA) is not yet complete. Furthermore, it should be noted that for a long time preserved eggs have been freely imported into both the United States and Japan. Chinese Taipei is concerned at the length of time being taken to complete the IRA process. In the interests of transparency, it is hoped that Australia could provide an update on the status of the IRA on preserved eggs. In addition, Australia's new administrative framework of IRAs is to be finalized and implemented in 2002. Please clarify how this administrative change is likely to affect the IRA process on preserved eggs after 15 May 2002 and indicate when this process will be finalized.*

Answer: Australia is currently undertaking a generic (ie from all potential sources) import risk analysis (IRA) of egg and egg products. Alkalized eggs are being considered as part of this IRA and are not the subject of a separate IRA. Whether this egg product can be imported and whether it should be subject to further quarantine treatment will be determined in the risk analysis process.

The Economic Division, Taipei Economic and Cultural Office (TECO) in Canberra, has been placed on the stakeholder register for the IRA on non-viable eggs and egg products and will be advised of any developments in this matter.

The IRA was started in May 1998. Progress has been slow for a number of reasons including delays due to external review of technical papers.

A common reason for delays in progressing IRAs is the difficulty in obtaining relevant technical information. For example, Chinese Taipei has provided some details of the manufacturing process for alkalized and salted eggs. However, it has not been possible to accurately assess the efficacy of the process at inactivating pathogens of concern, in particular very virulent infectious bursal disease virus (IBDV) since details are lacking such as:

- the precise steaming time and
- core temperature for salted eggs; and
- the changes in internal pH of the alkalised eggs

We would welcome provision of this technical information. The change to a revised IRA Framework is not expected to adversely impact on the egg and egg product IRA.

*Question: On the second question concerning Konjac, Australia has issued an import ban on food containing Konjac at customs agencies, resulting in an adverse effect on the normal trade of food. Konjac has been a traditional food used in Asian countries for more 10 centuries, and it has been proved as safe as rice and wheat for the human body. Please could Australia clarify whether such extensive bans of all food containing Konjac are appropriate SPS measures. Does an alternative measure exist that could avoid damage to normal food trade?*

Answer: On 16 November 2001 the Australia New Zealand Food Authority (ANZFA) announced that mini jelly cup products containing konjac should be recalled from sale in Australia, due to the choking risk that they posed, especially to children. On 23 August 2002, the Australian Competition and Consumer Commission issued an 18 month ban on mini-cup confectionary containing konjac. Similar action has been taken by governments overseas (e.g. USA and the EU). Several people, including a child in Australia, have choked to death after jellies containing konjac became lodged in their throats.

The issue is not the safety of konjac per se, but its formulation as a jelly cup confectionary of such a shape and consistency as to pose an undoubted threat, particularly to children. Only jelly cup confectionery containing konjac was recalled through this action.

Konjac is not currently an approved food additive under the *Australia New Zealand Food Standards Code* (the Code).

Australia has consulted with representatives from both Chinese Taipei and Japan about the ban, and at these meetings indicated that we would welcome a formal application to have konjac approved as a legal food additive in Australia and New Zealand.

As yet, no application has been received. In the absence of this application, FSANZ cannot make an assessment of the safety of konjac as an additive in the food supply. I reiterate our invitation to Chinese Taipei to apply to FSANZ to have konjac approved as a legal food additive so that an assessment can be made and, subject to the results of that assessment, the Code can be appropriately amended.

Australia recognises that in prohibiting entry of foods containing konjac and banning specific jelly cup products from sale some impact upon trade may have occurred. However, we believe that these actions are consistent with Australia's obligations under the Agreement on the application of Sanitary and Phytosanitary Measures (the SPS Agreement), and the Agreement on Technical Barriers to Trade. These agreements provide for Governments to introduce measures where urgent problems of safety or health arise or when they have not been provided with the necessary information to undertake a risk assessment.

#### Questions from the European Union

*Question: We note that Australia maintains that it "requires a highly conservative (but not a zero-risk) approach to biosecurity risk management". Documentation on Australia's biosecurity framework illustrates the approach in terms of a risk estimation matrix and a theoretical iso-risk curve. Can Australia please quantify the probability it uses for its ALOP, which it describes in generic terms as "very low risk".*

*Answer: The Appropriate Level of Protection (ALOP) is a cornerstone of quarantine policy. It represents the level of risk that a country is prepared to accept at a particular point in time, and is the benchmark against which quarantine risk management decisions are made.*

Australia's ALOP is expressed as taking a "very conservative approach to quarantine policy" aimed at reducing risk to a very low level but not to zero. Australia's ALOP is not quantified. Nor is any other country's and no other country provides a more detailed definition of its ALOP. The iso-risk curve provides a pictorial representation of risk as a product of likelihood and consequence.

*Question: We also note the statement "An IRA process may take from one to two years". There is a perception that the Australian process takes longer than this. Accordingly, can Australia please specify how many IRAs since 1995 have been completed within one to two years and how many have taken over two years? Also, for the outstanding IRAs how many have been in process for under two years, how many have been in process for over two years and under three years, how many for over three years and under four years and how many for four years or more?*

Answer: The length of time taken for individual IRAs depends on a number of factors including the availability of published or other information necessary to support the analysis. It also depends on the quality and completeness of information provided by the proponent of the import.

Only some of the import requests received by Biosecurity Australia will necessitate a formal IRA. Many other requests are dealt with by means of simpler reviews of or extensions to existing policies. Also, not all IRAs flow through to a conclusion. Proposals may be withdrawn or aggregated (into a generic analysis) and changing circumstances can affect the commencement and progress of an IRA.

*Question: Further, for each IRA process where the time taken exceeds two years could reasons be given for the delay, and for outstanding IRAs, what steps are being taken to speed up the process?*

Answer: The length of time taken for individual IRAs depends on a number of factors including the availability of published or other information necessary to support the analysis. It also depends on the quality and completeness of information provided by the proponent of the import.

Only some of the import requests received by Biosecurity Australia will necessitate a formal IRA. Many other requests are dealt with by means of simpler reviews of or extensions to existing policies. Also, not all IRAs flow through to a conclusion. Proposals may be withdrawn or aggregated (into a generic analysis) and changing circumstances can affect the commencement and progress of an IRA.

*Question: We also note the statement "It is also recognised that Australia cannot reject or indefinitely defer consideration of access requests from its trading partners." Could Australia specify how many outstanding requests there are for access, how many of these have been outstanding for under one year, how many for over one year and under two years, how many for over two years and under three years, over three years and under four years, over four years and under five years, and over five years?*

Answer: In line with its transparency obligations, Australia maintains a listing of information, including year of receipt, about outstanding requests to access its markets at [www.affa.gov.au](http://www.affa.gov.au). Again, this is an element of transparency undertaken by few other WTO members.

*Question: Given the answers to the above, how long does Australia consider it to be a reasonable time period before it commences consideration of requests?*

Answer: The length of time taken for individual IRAs depends on a number of factors including the availability of published or other information necessary to support the scientific analysis. It also depends on the quality and completeness of information provided by the proponent of the import.

Only some of the import requests received by Biosecurity Australia will necessitate a formal IRA. Many other requests are dealt with by means of simpler reviews of or extensions to existing policies. Also, not all IRAs flow through to a conclusion. Proposals may be withdrawn or aggregated (into a generic analysis) and changing circumstances can affect the commencement and progress of an IRA.

#### Questions from Hungary

*Question: Please list the countries from according to Australian sanitary and phytosanitary regulations the imports of fresh, chilled or frozen meat of beef, pig, sheep and poultry are admitted?*

Answer: Australia, like many other countries, has quarantine measures in place applying to a wide range of live animals, plants and their products.

To list all the products to which these measures apply would not be practical in the context of this review. However, in keeping with Australia's open and transparent approach to quarantine, details on all of Australia's import requirements can be found in AQIS' "ICON" database at [www.affa.gov.au](http://www.affa.gov.au).

*Please list the countries from according to Australian SPS regulations the imports of smoked,dried, canned or otherwise prepared processed products of beef, pig, sheep and poultry are admitted?*

Answer: Australia, like many other countries, has quarantine measures in place applying to a wide range of live animals, plants and their products.

To list all the products to which these measures apply would not be practical in the context of this review. However, in keeping with Australia's open and transparent approach to quarantine, details on all of Australia's import requirements can be found in AQIS' "ICON" database at [www.affa.gov.au](http://www.affa.gov.au).

#### Question from Norway

*Question: Norway has for five years tried to get the necessary permissions to start export of "pork seed/sperm" to Australia without succeeding. Australian authorities argue that a world-wide risk analysis for all pork products is underway and that we will have to wait for the results of this analysis. In practice this argumentation works as an effective barrier to trade. Norway is as a matter of fact declared as a risk free area. We would therefore be pleased if Australia could explain why Norwegian export of pork sperm is not allowed.*

Answer: Australia appreciates that Norway is currently seeking access to its market for pig semen. A generic IRA is being undertaken on pig semen from all destinations to address this and other requests.

Australia notes that Norway did not provide formal comments on the draft IRA report on pig semen, despite being invited to do so.

The Norwegian Government has been advised that the next step in the IRA will be the consideration of the stakeholder comments and the incorporation of these comments where relevant.

Following this the Final IRA Report will be the released.

#### Questions from the Philippines

*Question: The Secretariat's report notes that Members have criticized Australia's SPS measures as unduly stringent and protectionist. In addition, we would also note that some of these measures, as in the case of requiring methyl bromide as fumigant, are also harmful to the environment. Does Australia take into account the environmental effect of its quarantine control prescription?*

Answer: Methyl bromide is widely used as a quarantine fumigant in many countries around the world, including the Philippines.

Along with other countries, Australia is keen to identify potential alternative treatments of equivalent efficacy, however at the present time, there are many situations both in Australia and in other countries for which methyl bromide remains the most appropriate quarantine fumigant.

There is a specific exemption to the Montreal Protocol for the use of methyl bromide for quarantine purposes.

*Question: Footnote 84, page 52 of the Secretariat's report refers to a partial equilibrium empirical analysis conducted on Australia's SPS related ban on the imports of bananas. The study suggests that the consumer benefit from moving to free trade on banana would far outweigh the losses to producers. The study further concludes that there is a need for a comprehensive economic review of Australia's myriad SPS policy measures.*

*Following concerns raised by the Philippines on Australia's long-standing ban on the imports of bananas, in 2000, Australia finally committed to undertake an IRA for this product. Said IRA would be conducted within two years, or by June 2002. We understand that there have been delays in completing the said IRA. Could Australia inform us of the status of this IRA, including the final date of its completion. Moreover, in the conduct of the IRA, has Australia taken into account the economic benefits to Australian consumers of opening its banana market?*

Answer: The SPS Agreement limits consideration of economic considerations of economic factors to: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternate approaches to limiting risks.

Australia appreciates that the Philippines Government has provided comments on a Draft IRA Report on the importation of fresh banana fruit from the Philippines, the comment period for which closed on 30 August 2002.

The Philippines Government has been advised that the next step in the IRA will be the consideration of the stakeholder comments. There is no nominated length of time for this step as it depends on the extent and complexity of stakeholder comment. Following this will be the release of the Final IRA Report.

The Philippines Government has been kept informed of progress at all stages of the banana IRA.

#### Questions from Switzerland

*Question: Which agricultural products were mainly concerned (products, tonnage) by the strict quarantine and inspection provisions which may make market access to the Aust market more costly and risky (page 87, para. 13 and 17)?*

Answer: Australia, like many other countries, has quarantine measures in place applying to a wide range of live animals, plants and their products.

To list all the products to which these measures apply would not be practical in the context of this review. However, in keeping with Australia's open and transparent approach to quarantine, details on all of Australia's import requirements can be found in AQIS' "ICON" database at [www.affa.gov.au](http://www.affa.gov.au).

Similarly, to provide tonnages for the products subject to quarantine conditions is also not practical.

Australia challenges the comment about the "risky" nature of the Australian market. Australia has clearly articulated quarantine conditions, and trade can take place provided these conditions are met. The conditions are publicly available.

Other WTO members apply the same concepts, i.e. they allow trade provided their national quarantine requirements are satisfied.

*Question: "Australia is carrying out "import risk analysis" concerning dairy products. In what way are these analysis carried out for the importation of cheeses made from raw milk? What are the results of the analysis in this field?"*

Answer: The import risk analysis that is referred to in this question was completed in 1999. The requirements allow the importation of raw milk cheeses with respect to animal quarantine issues but do not address the public health and safety requirements regulated by Food Standards Australia New Zealand (FSANZ) in the Food Standards Code.

The *Food Standards Code* requires milk for cheesemaking to be either pasteurised or, as an alternative, be subjected to a minimum heat treatment of 15 seconds at 62°C (thermisation) in conjunction with a requirement for 90 days storage of the cheese at not less than 2°C. This requirement applies to both domestically produced and imported cheese.

The *Food Standards Code* allows the importation of raw milk cheeses if it is demonstrated that they can be consistently produced to an equivalent level of safety as cheese made from pasteurised milk. Safety can be demonstrated by undertaking a risk assessment or other scientific evaluation as appropriate. This was undertaken in relation to a number of Swiss raw milk cheeses in 1998, and these are now allowed into Australia. Currently, FSANZ has raised and is assessing a proposal to evaluate the safety of very hard grating cheeses produced using raw milk.

*Question: On 17 July, the Therapeutic Goods Administration (TGA) published a draft on "Supplementary Requirements for Therapeutic Goods for Minimising the Risk of Transmitting Transmissible Spongiform Encephalopathies (TSE)". The proposed provisions lay down rules for ingredients of human and animal origin, which are used in the preparation of active medicinal substances. Switzerland is of the opinion that the measures proposed by Australia seem to provide little additional benefit to the patient's safety, but significant additional cost and efforts for manufacturers. Furthermore, the access to essential medicinal products could be endangered in Australia if the proposed requirements enter into force.*

*The Australian proposal is in contrast to global harmonisation efforts and can therefore be considered as a technical barrier to trade. Switzerland would welcome if Australia would consider the above mentioned requirements.*

Answer: The proposed measures are primarily intended to capture information on the potential for TSE risk mitigation associated with materials processing and addressing the potential for cross-contamination with high risk materials. It is important that these measures be documented so that, in the event the TSE risk profile of the materials changes, both the industry and TGA will be able to respond quickly and appropriately to avoid serious disruption to the supply of essential therapeutic goods. The TGA will give careful consideration to the comments from Switzerland.

*Following the outbreak of BSE, Australia has applied stringent import restrictions on beef and beef products that are much stricter than relevant standards promulgated by international bodies (eg OIE International Animal Health Code). Are there plans to review these trade restricting measures and the Australian risk assessment taking into account the present state of scientific knowledge?*

Answer: Variant Creutzfeldt-Jakob disease (vCJD) is a fatal disease caused by the transmission of the bovine spongiform encephalopathy (BSE) agent to humans via consumption of beef and beef products contaminated with the infectious agent.

Australia's measures are designed to manage the risk of human exposure to the BSE agent through consumption of beef and beef products. The measures are not animal health measures such as covered in the OIE Code, but for the protection of human health.

The measures are appropriate measures to minimise the likelihood of the Australian population being exposed to a fatal, food-borne illness and to maintain consumer confidence in the safety of imported beef and beef products.

Australia will continue to review its measures in light of new scientific information in accordance with its WTO rights and obligations.

Questions from Thailand

*Question: We would like to stress that the stringent measures imposed by Australia on the two Thai products have given rise to conditions which are commercially unviable. Although Thailand fully understands Australia's concerns over the safety of indigenous habitats, the importance of the principles of free trade and fair trade laid down by the WTO should not be ignored. In this regard, we would like to seek Australia's views on the possibility of accepting alternative testing methods and procedures endorsed by internationally recognised scientific institutions, so as to show Australia's sincerity in these two long-standing issues and would appreciate prompt attention and responses from the Australian delegation.*

*Imports of chicken meat into Australia are required to undergo the cooking temperature of 74 degrees Celsius for 165 minutes or 80 degrees Celsius so as to get rid of the Infectious Bursal Disease Virus.*

Answer: Conditions for the importation into Australia of cooked chicken meat from Thailand, Denmark and the USA took effect in August 1998. The final conditions were based on laboratory test results on the time/temperature cooking parameters for inactivation of virulent infectious bursal disease virus. Australia is currently reviewing further information provided by the Thai authorities on this matter.

Australia is currently conducting a generic IRA on uncooked chicken meat from all destinations, including Thailand. The Thai authorities did not comment on an issues paper, released on 18 July 2001 for 60 days public comment that provided technical information on pests and diseases.

*Question: Australia's import inspection procedure requires the cutting of durians in an excessive sampling size, i.e. 450 out of 1,000 or 600 out of more than 1,000 in order to ensure that they are free of seed borers.*

Answer: Australia completed an IRA on fresh Durian from Thailand in 2000 but Thai agreement to an Arrangement document to underpin the trade remains outstanding. The measures in the IRA are based on sound science to mitigate pest and disease risks and the fruit sampling regime is in accordance with relevant international standards.

Australia has a long history of providing assistance to regional countries, including Thailand, to improve the health status of their animal and plant industries. Australia has indicated it would be willing to work with Thailand to jointly explore the scope for using rapid-scan X-ray imaging or other non-destructive sampling of tropical fruits, including durian and mangoes, including via the visit in June 2002 when technical assistance was given to the Thai authorities to investigate the use of non-destructive detection methods using x-ray imaging for the detection of durian seed borer. Australia

would also be willing to explore the scope for greater use of “area freedom” from specific pests and diseases when considering market access requests.

Question from China

*Question: The labelling requirement to indicate the Latin name in addition to the English one for mushroom and fish imports from China seems to be unnecessarily burdensome.*

Answer: The Australia New Zealand Food Standards Code does not require the compulsory naming of fish in Latin. It is mentioned in a (non-mandatory) editorial note to the Code. Codex, at the behest of the European Union, is in favour of the labelling of fish in Latin due to the difficulty in accurately identifying the same fish with different names or different fish with the same names, depending on which country or region the fish is labelled in. The Latin name is the only universal system of identification of fish.

**(3) Measures Directly Affecting Exports**

**(i) Registration and documentation**

Question from Chinese Taipei

*Question: Referring to paragraph 87, about 97% of exports are lodged directly into the EXIT system on a self-assessment basis. Please explain why there is a difference between imports and exports in the percentages of electronic data interchange.*

Answer: Customs Export Integration (EXIT) system was designed after the import system and provided an EDI interface from the outset. Take up of electronic access via EXIT has been extensive throughout the exporting community. However, the decision to opt for electronic processing is one for individual exporters, or importers, to make based on the benefits to their business. Consequently, there is no direct relationship between the take-up figures for the two systems. With regards to exporters, the time critical nature of export cargo especially cargo exported via air demands speedy clearance through Customs formalities, therefore electronic initiatives provide that efficiency.

**(ii) Export prohibitions, restrictions, and licensing**

Question from Brazil:

*Question: Export controls or quantitative restrictions operated by public sector entities affect certain primary and therapeutic goods to ensure, inter alia, adequate domestic supply, and to enforce standards. How does Australia plan to prevent these controls and restrictions from being trade-distorting or from relying on mechanisms that distort trade?*

Answer: In regard to primary products, the Secretariat has outlined in paragraphs 90 and 91 the rationale for export controls. In essence Australia maintains export controls as a trade facilitation measure, and not as a trade restriction. Because of Australia's reliance on agri-food exports, export controls have been maintained to ensure its reputation as a reliable supplier of high-quality food. Under existing legislation (Export Control Act, and other), export controls on certain agricultural and food products (meat, dairy, grains, horticultural products, fish, sugar, wine) are operated by certain public sector entities with a view to, *inter alia*, ensuring importing country requirements are met (e.g. volume limitations, trade and product descriptions), and to maintain food safety and quality standards.

Export controls on wood and woodchips are for the purpose of protecting environmental and heritage values.

**(iii) State Trading**

Question from Republic of Korea

*Question: The Australian Wheat Board Ltd still maintains monopolistic exports rights. By means of monopolistic status, it manipulates export price and quantity, causing serious trade distortion and increasing the burden of importing countries including Korea.*

*It is necessary to ensure that the AWB Ltd operates with transparency and fairness by making public the information on produced quantity and price of wheat. What is the view of Australia on this?*

Answer: AWB Ltd does not command an unfair market advantage in the international wheat market and does not engage in unfair trading practices. The Australian domestic wheat market is completely deregulated, so there is no scope for AWB Ltd to charge higher prices on the domestic market in order to subsidise exports

Australia is a price taker on the international wheat market, accounting for only around 10-15 per cent of international wheat exports and its marketing operations do not have a decisive influence over the general level of world prices, compared with large exporters such as the US, EU and Canada

AWB Ltd must compete with domestic users for grain on the Australian domestic market to acquire wheat for export and competes for sales to foreign markets with multiple international suppliers, many who operate behind market distorting production and exporting systems.

AWB Ltd makes commercial decisions regarding the timing of export sales and is required to maximise returns to growers. It does not hold large stocks and attempts to minimize storage costs by shipping at the earliest possible opportunity.

neither does AWB Ltd receive any direct assistance or domestic subsidies of any kind from the Government

AWB Ltd is no less transparent than its private sector competitors; private traders do not disclose commercially confidential information such as contract and price information.

Question from Switzerland

*Question: Are the single desk state trading enterprises really compatible with the competition laws in Australia? See page 88 paragraph 18 and page 93 para 30.*

Answer: Australian STE's are compatible with National Competition Policy (NCP). In 1995, Australia's nine governments agreed to implement the NCP reform program. The resulting Competition Principles Agreement (CPA) builds on a process that was launched with the *Trade Practices Act 1974* (TPA). The TPA established rules to limit the abuse of market power by businesses, promote fair trading and efficient industry practices and to protect consumers.

Over the period of the NCP's operation governments have reviewed the legislative arrangements underpinning all STEs and have announced or implemented their responses to a number of these reviews. Further, all single desk arrangements in Australia are subject to continuing periodic review under the CPA to ensure that the arrangements deliver net public benefit to Australia.

Question from the United States

*Question: While single-desk State Trading Enterprises such as the Australian Wheat Board have been modified to allow greater private sector participation, government influence in other sectors (dairy, lamb, wool) remains strong. Is the Government of Australia considering additional de-regulatory steps (beyond those discussed in para. 93 of the Secretariat's report) to eliminate the monopoly export control of state trading enterprises?*

Answer: It is misleading to suggest that Australian government influence in the dairy, lamb and wool sectors remain strong. No government controls or constraints exist in the marketing and production of wool and lamb both domestically and for export. In regard to dairy no government controls or constraints exist in dairy production. Government involvement in export management in the dairy industry is currently being wound back. It was always very limited in both products and markets covered. Trade in Australian dairy products for all intents and purposes is operated on a commercial basis.

The Government is not considering additional measures to remove single desk selling for wheat. It should be noted that the Australian domestic wheat market was deregulated in 1989, and the statutory marketing authority, the Australian Wheat Board, no longer exists and was replaced by AWB Ltd under Corporations Law on 1 July 1999. This means that AWB Ltd is as transparent in its commercial operations as other privately owned grain trading companies.

**(iv) Export assistance**

Question from the European Union

*Question: We note local content requirements in the context of export assistance. Could you please provide details and how this can be reconciled with Australia's WTO obligations in particular with Art 3,1b of the WTO Subsidies Agreement?*

Answer: The EMDG scheme is a widely available program which is not specific within the meaning of the WTO Agreement on Subsidies and Countervailing Measures (SCM). While intended to develop an export culture within Australia, foreign-sourced goods, components, labour costs etc are not excluded from the scheme. Benefits are therefore not contingent on the use of domestic over imported goods.

**(c) Free trade export zones and similar schemes**

Question from Japan

*Question: Please explain the details of incentive packages offered in the Darwin Trade Development Zone scheme as a free-trade zone (FTZ). Do the incentive schemes operated in this Zone contain exported-oriented measures? If yes, please explain how these schemes can be justified in relation to Article 3 of the SCM Agreement.*

Answer: The Darwin Trade Development Zone Scheme is not a Free Trade Zone (FTZ) as known in countries throughout the world. It is a scheme designed to attract investment into regional Australia, more particularly the Northern Territory. It is administered by a NT legislation, the *Trade Development Zone Act 1999* (NT) and *Trade Development Zone Regulations 1987* (NT). No Free Trade Zone or Foreign Trade Zone Legislation exists in Australia.

The incentive schemes offered in the Trade Development Zone (TDZ) are in two categories:

- 1) those businesses that qualify to hold a licence to operate in the Trade Zone; and
- 2) those available to all investment that is attracted to the NT.

Under the first category, eligibility is based on the continued satisfaction of the licence criteria (including financial resources, industrial experience or technical skills necessary to carry on a business). Eligibility for a license is not contingent on exporting or export performance.

The second category of incentives available to TDZ operators involve one-off discretionary inducements to either relocate into the TDZ or to expand their business operations. The criteria for these types of incentives is not based on export activity and businesses that wish to relocate to the NT or expand their existing operations into new endeavours, are able to apply for such incentives.

Question from Chinese Taipei

*Question: Referring to paragraph 103, no further information was available from the authorities on the set of incentives and the employment/production/trade benefits from operating the Darwin Trade Development Zone. Could Australia please provide an example showing the characteristics of the incentive packages and their justification under the WTO SCM Agreement.*

Answer: Please see Australia's response to the Government of Japan.

Since the introduction of the Darwin Trade Development Zone in 1985, industry in the Northern Territory has been dynamic and its needs and prioritisations have changed significantly. The financial incentives available have shown little evidence of providing any significant benefit to licensees.

In August 2001 a new Government was elected into the Northern Territory, Australia. It has called for a review of all its Economic Development Strategies including the Darwin Trade Development Zone. The review will consider the impact of the incentives offered to licensees of the Darwin Trade Development Zone, investment attraction strategies and trade enhancement schemes on a sectorial basis.

Discretionary incentives granted to businesses under the second category (see response to Government of Japan para 103) have taken the form of interest rate subsidies and payroll tax, stamp duty and land tax exemptions.

Questions from the United States

*Question: Please provide all notification information as required under Article 25 of the Agreement on Subsidies and Countervailing Measures for each of the "individually tailored" incentive packages provided under the Darwin Trade Development Zone (FTZ), including subsidies for up-front property, plant, and equipment costs, and relocation assistance; as these did not appear to be included in your notification on December 4, 2001.*

Answer: In terms of Australia's notification of investment incentives, please see page 18 of G/SCM/N/71/AUS of 4 December 2001.

*Question: Please state whether receipt of these incentives is contingent upon exportation.*

Answer: None of these incentives are contingent upon exportation.

*Question: Please provide more information about your manufacture-in-bond (MiB); specifically, whether or not it confers any prohibited subsidies to Australian companies.*

Answer: The manufacture-in-bond (MiB) scheme was designed to allow firms to use Australia as a base for hub operations servicing the Asia Pacific region without incurring duty liability on imported goods re-exported or used as inputs to exports.

Exemption from duties and GST is provided for goods which are imported into an MiB warehouse and subsequently exported either in their original form or as components of a new product. Imports brought into the warehouse and subsequently entered for home consumption incur a duty and GST liability at the time they leave the warehouse.

The premises in which the firm intends to undertake MiB must be licensed by the Australian Customs Service as a bonded warehouse under Section 79 of the *Customs Act 1901*.

The MiB scheme exempts an exported product from duties or taxes borne by the like product when destined for domestic consumption, providing the remission of such duties or taxes in amounts is not in excess of those which have accrued. The scheme does not confer prohibited subsidies on Australian companies.

*Question: As the operation of the zone is under review, please provide further information on the set of incentives and the employment/production/trade benefits from operating the zone.*

Answer: Since the introduction of the Darwin Trade Development Zone in 1985, industry in the Northern Territory has been dynamic and its needs and prioritisations have changed significantly. The financial incentives available have shown little evidence of providing any significant benefit to licensees.

*Question: If no further information is available from the authorities, please explain why this information is not available.*

Answer: Information has been provided.

**(e) WTO notification**

*Questions from the United States*

*Question: Please state why each of the programs listed in this paragraph are non-notifiable under Article 25. What distinguishes these programs from the two that Australia has notified (e.g. Automotive Competitiveness and Investment Scheme, and Textiles, Clothing and Footwear Strategic Investment Programme)?*

Answer: The Textile Clothing and Footwear Import Credits Scheme expired on 30 June 2000. The Passenger Motor Vehicle (PMV) Export Facilitation Scheme terminated on 31 December 2000. The Export Market Development Grants (EMDG) scheme is not a specific subsidy within the meaning of the WTO Agreement on Subsidies and Countervailing Measures and is therefore not notifiable.

**(4) Measures Affecting Production and Trade**

**(ii) Production assistance**

Questions from the European Union

*Questions: We note that since 1998 part of Australia's support programmes and certain sub-Commonwealth programmes have been notified to the WTO Committee on Subsidies and Countervailing Measures. Please indicate if there are any other notifiable programmes in force?*

Answer: Australia has in fact notified its support programmes for both federal and sub-federal jurisdictions covering financial years 1995/1996 and onwards. Australia's subsidy notification contained in document G/SCM/N/38/AUS, G/SCM/N/48/AUS, G/SCM/N/60/AUS circulated 11 May 2000 contained a new and full notification relating to sub-federal programmes backdated from financial year 1995/1996 and onwards.

Document G/SCM/N/71/AUS contains Australia's latest notification reporting on programs to the end of financial year 2000/2001, i.e. 30 June 2001, and reflects a comprehensive listing of assistance programs by federal and sub-federal jurisdictions.

Questions from the United States

*Question: The paragraph states these programs "were to benefit rural exporters and tourism operators". Please provide additional information about these programs, and please either notify the schemes discussed in this paragraph, or explain why "the authorities consider these subsidies to be non-notifiable".*

Answer: These schemes are widely-available and non-specific within the meaning of the WTO Agreement on Subsidies and Countervailing Measures (SCM). They are therefore not notifiable under the SCM.

**(iii) Competition and consumer policy**

Questions from Brazil

*Question: In document WT/TPR/S/104, pages 74 and 75, Australia presents its Competition Policy legislation. It states that Competition (and consumer protection) legislation is contained in the Trade Practices Act 1974 (TPA) and is intended to promote and preserve fair and free competition in the domestic market. Each State and Territory also has legislation that mirrors the provisions of the Commonwealth legislation. Are these laws based on "rule of reason" or "per se" standards?*

Answer: To the extent that State and Territory legislation apply the provisions of the schedule version of Part IV of the *Trade Practices Act 1974*, those Acts mirror the standards contained in the Commonwealth Act. The competition provisions of the Act contain both "rule of reason" and "per se" standards. For example, mergers are subject to a substantial lessening of competition test, whereas resale price maintenance is subject to a per se prohibition.

*Question: The TPA contains provisions on anti-competitive agreements; misuse of substantial market power; exclusive dealing; resale price maintenance; access to essential infrastructure; and anti-competitive acquisitions. What about public policies? What is the Australian reference and position regarding industrial policies and its relationship with Competition Policies and Laws?*

Answer: The TPA's anti-competitive conduct provisions apply generally to all sectors of the economy, including Government business activities. However, for industries where special rules are justified (eg telecommunications), the TPA contains industry-specific provisions. Exemptions from the competition provisions of the TPA have also been made where it is considered that competition would produce an undesirable outcome or where it is considered that other legislation should regulate a particular activity. One example of such an activity is collective bargaining between employers and employees, which enjoys an exemption from the TPA because industrial relations are already regulated by the *Workplace Relations Act 1996*.

Question from Chinese Taipei

*Question: As indicated in the Secretariat report (WT/TPRS/104), a legislative review programme to release unnecessary restrictions and improve competition was scheduled to be finalized by June 2002. Chinese Taipei would appreciate knowing the details of the results as well as learning how this review could be translated into government reforms, particularly with regard to the amendments of the Trade Practices Act.*

Answer:

Legislation Review

In 1995, all Australian Governments entered into three agreements establishing National Competition Policy (NCP).<sup>1</sup> Under the *Competition Principles Agreement* (CPA) Governments agreed to undertake a program for the review and, where appropriate, reform of legislation (including Acts, enactments, ordinances or regulations) that restricts competition.

The principle guiding these reviews is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

New legislation that restricts competition must also be shown to meet these principles.

The CPA provides guidance on the issues that a review should consider. Without limiting the scope of the review, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restrictions; and
- consider alternative means for achieving the same result including non-legislative approaches.

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<sup>1</sup> The three agreements that underpin NCP are: the *Competition Principles Agreement*, the *Conduct Code Agreement* and the *Agreement to Implement the National Competition Policy and Related Reforms*.

In 1996 all Australian Governments published a schedule for reviewing its restrictive legislation. Approximately 1800 pieces of legislation have been identified for review over seven years.

The review and reform processes represent an extremely comprehensive reform effort over a relatively short period and has proved to be more challenging than envisaged at the beginning of this process. Consequently, no Australian Government has completed its review and reform program by the 30 June 2002 deadline. However, substantial progress has been achieved and much of the work still underway is expected to be completed over the next twelve months or so.

#### Main regulatory reform projects arising from the reviews

The scope of legislation being subject to this review process is broad. Governments have reviewed and reformed regulation of many significant activities, of which a number have been characterised by endemic restrictions. These activities include: agricultural marketing arrangements, fishing and forestry; transport services including taxi licensing; professions and occupations; compulsory insurance arrangements; retail matters such as retail trading hours and liquor licensing; the education sector; gambling activities; communications sector including telecommunications and post; and planning, construction and development services.

The National Competition Council (NCC) — an independent agency — assesses annually Governments' progress against agreed NCP reforms, which includes review of legislation that restricts competition. Assessments are available on the NCC's website ([www.ncc.gov.au](http://www.ncc.gov.au)).

The NCC also produces a Legislation Review Compendium that reports progress with the legislation being reviewed by Australian Governments. This publication is also available on the website (<http://www.ncc.gov.au/publication.asp?publicationID=111&activityID=36>).

The CPA obliges all Governments to produce annual reports outlining their progress against their NCP obligations. The aim of these reports is to provide full public reporting on NCP activity by Governments. The Commonwealth National Competition Policy Annual Report is available on the Commonwealth Treasury website ([www.treasury.gov.au](http://www.treasury.gov.au)).

#### Trade Practices Act Review

On 15 October 2001, the Prime Minister announced that there would be an independent review of the competition provisions of Australia's competition law – the *Trade Practices Act 1974* (TPA) and their administration.

In setting the terms of reference for the review the Government stated that it was timely to review some key provisions of the TPA in view of the significant structural and regulatory changes that are occurring in Australia that impact on the competitiveness of Australian businesses, economic development and affect consumer interests.

In establishing the review, the Government made reference to:

- Australian businesses being increasingly faced with global competition and the need to be able to compete locally and internationally;
- the fact that excessive market concentration and power can be used by businesses to damage competitors; and

- the need for businesses to have reasonable certainty about the requirements for compliance with, or authorisation under, the TPA.

The Review Committee has been specifically instructed to examine the operation of the competition, authorisation and associated penalty provisions of the TPA to determine whether they:

- inappropriately impede the ability of Australian industry to compete locally and internationally;
- provide an appropriate balance of power between competing businesses, and in particular businesses competing with or dealing with businesses that have larger market concentration or power;
- promote competitive trading which benefits consumers in terms of services and price;
- provide adequate protection for the commercial affairs and reputation of individuals and corporations;
- allow businesses to readily exercise their rights and obligations under the TPA, consistent with certainty, transparency and accountability, and use compliance or authorisation processes applicable to their circumstances; and
- are flexible and responsive to the transitional needs of industries undergoing, or communities affected by, structural and/or regulatory change and to the requirements of rural and regional areas.

The Committee is to report to the Government by end of November 2002. Further information about the review, including copies of all public submissions, can be found on the review website at: <http://tpareview.treasury.gov.au>. The Government will consider its response after receipt of the inquiry report.

#### **(iv) Intellectual property rights**

##### **International treaties**

###### Question from Argentina

*Question: In paragraph 133 [paragraph 134 of the English text] of the Secretariat Report it is stated that Australia participates in 12 out of 19 treaties administered by the World Intellectual Property Organization (WIPO). Nevertheless, Australia has yet to take action for acceding to and implementing treaties such as the WIPO Performances and Phonograms Treaties and the Patent Law Treaty. Does Australia plan to accede to the WIPO Performances and Phonograms Treaties or the Patent Law Treaty? What are the reasons for the delay in taking such a decision?*

**Answer:** The new rights for producers of sound recordings in the WIPO Performances and Phonograms Treaty (WPPT) were implemented in the Copyright Amendment (Digital Agenda) Act 2000. While the Australian Government commenced consulting on the additional rights for performers in the WPPT in December 1997, it subsequently deferred further action pending the holding of the WIPO Diplomatic Conference in December 2000 on the protection of audiovisual performances. Following the inconclusive outcome of that Conference, the Government has committed itself to developing legislation for rights for performers which will enable Australia to accede to WPPT, and substantial progress has been made towards preparing a proposal for legislation.

Australian patent legislation is now in compliance with the Patent Law Treaty. However, we are yet to undertake the formal consultation process necessary before the Government can take action on possible accession.

Question from Japan

*Question: Japan would like to welcome Australia's implementation of the main obligations of the WIPO Copyright Treaty (WCT). Please explain the future prospects of Australia's accession to WCT.*

Answer: The Copyright Amendment (Digital Agenda) Act 2000 introduced protection of copyright works on on-line that was intentionally in conformity with the obligations of the WCT, including sanctions against circumvention of technological copyright protection and against tampering with rights management information. Before Australia can consider formally acceding to the WCT, the Copyright Act has to be further amended to extend the existing term of protection for photographs under the Act. The government is committed to introducing legislation to make that amendment, and consultations have been undertaken with stakeholders.

*Question: Please also explain the measures which are necessary for acceding the WIPO Performances and Phonograms Treaty (WPPT), which was adopted simultaneously with the WCT, as well as the future prospects of its accession by Australia*

Answer: Before Australia can consider acceding to the WPPT, the Copyright Act will have to be amended to introduce the Rome-plus and TRIPS-plus rights for performers that are required by the WPPT. The government is committed to introducing legislation to make those amendments, and has undertaken consultations with stakeholders.

Question from Brazil

*Question: In document IP/C/W/233, Australia pointed out the existence of an increasing number of transactions involving intellectual property rights not necessarily captured by goods or services commitments (e.g. license fees, royalties). How do these transactions affect the task of classification? What is Australia's position on the treatment of such intellectual property transactions?*

Answer: When intellectual property is involved in an electronic transaction, TRIPS will apply to that intellectual property. To the extent that services or goods are involved, GATS or GATT would also apply. Assessment of which agreements apply should be made on a case-by-case basis. Most electronic transactions involve services, and will consequently be subject to GATS. Australia will continue to participate actively in the Work Program on Electronic Commerce, which, inter alia, is seeking to determine an appropriate response to the issues raised in the question.

**Enforcement and parallel imports**

Question from Chinese Taipei

*Question: Referring to paragraph 139, please explain the legal implications of lifting the restrictions on parallel imports. Is it in compliance with the TRIPS Agreement? In allowing parallel imports, how is Australia able to effectively protect the rights of the intellectual property rights holders in this area.*

Answer: Australia's parallel importation policy is to ensure that consumers have access to world competitive prices for legitimate goods and are not subject to differential pricing based on the ability

to control access to our market. Australian legislation permitting parallel imports reflects a sound policy balance where the Australian Government is acting in the best interests of the Australian people and the Australian economy.

The legislation is TRIPS-consistent. The TRIPS Agreement is designed to reduce distortions and impediments to international trade and to ensure that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade. Parallel importation is not prohibited by the TRIPS Agreement. Article 6 provides that "nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights." In addition, the Objective of the TRIPS Agreement (Article 7) is to protect and enforce IP rights "to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

There is no evidence that allowing parallel importation into Australia has increased the likelihood of trade in pirated goods. Australia is amongst those countries with the lowest rates of copyright piracy. To maintain this situation, appropriate safeguards are provided in Australian copyright legislation. As part of the parallel importation reforms in respect of sound recordings, legislation was amended so that in a civil action for infringement of copyright arising from the commercial importation of sound recording, the defendant has the legal burden of proving that an imported copy is a non-infringing copy.

#### Questions from the United States

*Question: Video cassettes copied from Video CDs (VCDs) and DVDs, parallel imported Zone 1 DVDs (i.e. DVDs that are programmed for playback and distribution in North America only) and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy. Counterfeit DVDs imported from Asia are also an emerging problem. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in Australia to be US\$21 million in 2001. However, it appears that Australia's Central and State Governments assign a relatively low priority to IPR enforcement. The Australian Copyright Act, its interpretation by Australian courts in some instances, and the position of the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to enforcement. Civil remedies have not proven effective against piracy. We note that Zone 1 DVDs are released in Australia three to six months prior to the local video release, and frequently coincide with the Australian theatrical release. It is also estimated that 20 percent of DVDs in Australia are parallel imports, adversely affecting the theatrical and video markets in Australia.*

**Answer:** The claim 'that 20 percent of DVDs in Australia are parallel imports, adversely affecting the theatrical and video markets in Australia' is incorrect. While it is possible to parallel import legitimate copies of sound recordings (CDs), films (including DVDs) are not open to parallel importation in Australia. The amendments contained in the Copyright Amendment (Parallel Importation) Bill 2002 reflect the policy of allowing parallel importation of printed material and software. The amendments provide for situations where short film clips are included in a computer program or music CD as an accessory. This is necessary to prevent the copyright in a film accessory being used to prevent parallel importation of the computer program or CD (for example, software in a computer game that generates moving pictures may also be 'film' in this context). The amendments do not allow parallel importation of feature films, which are defined as a film produced for television broadcast and/or distribution in cinemas of greater than 20 minutes duration, or with short films on their own.

The assertion that the *"position of the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to enforcement"* is incorrect. In fact, the Australian Federal Police has recently carried out a number of successful investigations including one which ended in the conviction and deportation of persons involved in importing quantities of infringing CDs into Australia. In another recent case the AFP took part in a successful international operation coordinated by US authorities against a major software piracy group. (For further information on the AFP see [www.afp.gov.au](http://www.afp.gov.au)).

*Question: What is the time line for Australia Acceding to and implementing the WIPO Performances and Phonograms Treaty?*

Answer: Before Australia can consider acceding to the WIPO Performances and Phonograms Treaty (WPPT), the Copyright Act 1968 (Cth) will have to be amended to introduce the rights for performers required by the WPPT that are not already in the Act. The Government is committed to introducing legislation to make those amendments, and has undertaken consultations with stakeholders.

While the Australian Government commenced consulting on the additional rights for performers in the WPPT in December 1997, it subsequently deferred further action pending the holding of the WIPO Diplomatic Conference in December 2000 on the protection of audiovisual performances. Following the inconclusive outcome of that Conference, the Government has committed itself to developing legislation for rights for performers which will enable Australia to consider accession to the WPPT and subject to priorities of the Government, passage of legislation and treaty accession processes may occur concurrently.

*Question: Please describe the mechanisms adopted to ensure efficiency and transparency in copyright management. Were any changed made to the Copyright Act of 1968 in order to establish these mechanisms?*

Answer: We would be grateful for clarification of this question, particularly the reference to "mechanisms to ensure efficiency and transparency in copyright management".

*Question: What is the schedule for debate on the Copyright Amendment (Parallel Importation) Bill 2002? If possible, please provide a copy of that legislation.*

Answer: The Copyright Amendment (Parallel Importation) Bill 2002 is on the Government business list for the House of Representatives for its current sitting period. The text of the Bill may be found on the website of the Parliament of Australia in the folder "Current Bills by Title" (see [www.aph.gov.au](http://www.aph.gov.au)).

*Question: What is the current effect of the July 2000 Cabinet decision to remove the restriction on parallel imports for printed material and computer software?*

Answer: The Copyright Amendment (Parallel Importation) Bill 2002 will amend the Copyright Act 1968 to enable the legal parallel importation and subsequent commercial distribution of computer software products, including interactive computer games, books, periodical publications (such as journals and magazines) and sheet music.

A similar Bill was introduced in the previous Parliament and lapsed with the calling of the federal election in October 2001. In its election policy for the arts (*Arts for All*) the Coalition promised that it would re-introduce legislation to remove outdated parallel importation restrictions on computer

software, books and periodicals, ensuring that Australians no longer have to pay higher prices in an unnecessarily limited market.

Details of the effect of the Bill are set out in the explanatory Memorandum

[http://search.aph.gov.au/search/ParlInfo.ASP?action=view&item=0&from=browse&path=Legislation/Current+Bills+by+Title/Copyright+Amendment+\(Parallel+Importation\)+Bill+2002/Explanatory+memoranda&items=1](http://search.aph.gov.au/search/ParlInfo.ASP?action=view&item=0&from=browse&path=Legislation/Current+Bills+by+Title/Copyright+Amendment+(Parallel+Importation)+Bill+2002/Explanatory+memoranda&items=1)

*Question: Has Australia studied the connection between allowing parallel importation and copyright piracy? Please describe the process under which the Australian government decided to stop banning parallel imports and provide any related materials.*

Answer: There have been extensive studies undertaken in Australia on this issue including the 1995 Industry Commission Report, Computer Hardware, Software and Related Services Industries, the 1998 Copyright Law Review Committee Report as well as research undertaken by the Prices Surveillance Authority, and the Australian Consumer and Competition Commission. (These reports are usefully summarised in the Explanatory Memorandum to the draft Copyright Amendment (Parallel Importation) Bill 2002 currently before Parliament: see website of the Parliament of Australia in the folder "Current Bills by Title" (see [www.aph.gov.au](http://www.aph.gov.au)). The report of the Intellectual Property and Competition Review Committee, 'Review of intellectual property legislation under the Competition Principles Agreement', which was produced in 2000, contained a report on parallel importing and CD piracy. It stated that "since mid-1998, there is little evidence of the increase in CD piracy predicted by opponents of liberalisation" (see [www.ipcr.gov.au](http://www.ipcr.gov.au)). This view was also expressed by the Federal Court in the matter *Australian Consumer and Competition Commission v Universal Music Australia Pty Ltd* [2001] FCA 1800 (see [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2001/1800.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2001/1800.html)).

There is no evidence that allowing parallel importation into Australia has increased the likelihood of trade in pirated goods. Australia is amongst those countries with the lowest rates of copyright piracy. To maintain this situation, appropriate safeguards are provided in Australian copyright legislation. As part of the parallel importation reforms in respect of sound recordings, legislation was amended so that in a civil action for infringement of copyright arising from the commercial importation of sound recording, the defendant has the legal burden of proving that an imported copy is a non-infringing copy. Software piracy rates have also decreased since the introduction of parallel importation of copyright goods in New Zealand according to industry statistics (see [www.bsa.org](http://www.bsa.org)).

*Question: The Australian Patents Act 1990, Section 50(1)(a) permits the Commissioner to refuse a patent application or to grant a patent for an "invention the use of which would be contrary to law."*

*Please explain how this provision of the patent law is in compliance with TRIPs Article 27.2 that states that Members shall not exclude inventions from patentability merely because the exploitation of the invention is prohibited by law.*

*The Australian Patents Act 1990, Section 50(1)(b) permits the Commissioner to exclude from patentability "a substance that is capable of being used as a food or medicine (whether for human beings or animals and whether for internal or external use) and is a mere mixture of known ingredients" or processes of preparing such a substance "by mere admixture."*

*Please explain how this provision of the patent law is in compliance with TRIPs Article 27.1 that requires that "patents shall be available for any inventions, whether products or processes, in all*

*fields of technology provided they are new, involve an inventive step and are capable of industrial application.”*

Answer: Paragraph 50(1)(a) of the Patents Act is interpreted to be limited to inventions where the only use described for it would be punishable as a crime. That is, the application of paragraph 50(1)(a) will result in the refusal of a patent if its ONLY use is contrary to criminal law. Thus guns are patentable since they can be used for both lawful and unlawful purposes. Consequently exclusions beyond the scope of Article 27(2) of TRIPs cannot arise.

Paragraph 50(1)(b) of the Patents Act is the codification of a specific instance of the more general law of inventive step. A “mere mixture of known ingredients” is a mixture exhibiting only the aggregate of the known properties of the ingredients. Not only must the ingredients be known, but the property which makes the ingredients useful for the purpose of the invention must also be known.

*Question: We note in your submission that you provide 5 years of data protection for Agricultural and Veterinary chemicals; could you please describe your data protection regime for pharmaceuticals?*

Answer: The data protection regime for pharmaceuticals

Confidential information about active components submitted to the Therapeutics Goods Administration (the “TGA”) in connection with applications to register new products in the Australian Register of Therapeutic Goods (“the Register”) is accorded a “five year data protection” under section 25A of the *Therapeutic Goods Act 1989* (the TG Act). “New” products are active components, in therapeutic goods, that have never been included in the Register. The five year data protection applies to “new” therapeutic goods registered on or after 17 April 1998 and commences on the day the “new” goods is included in the Register. Information submitted in relation to the “new” therapeutic goods is described as “protected information”

When evaluating therapeutic goods for registration, the TGA cannot use information about therapeutic goods that is protected information. During the five year data protection, any other company seeking to register a generic copy of the registered product containing, or consisting of the active component will not be able to rely on protected information in the possession of the TGA to facilitate inclusion of the generic product in the Register. The company will either have to obtain the permission of the sponsor of the original product to access the protected information to facilitate inclusion of the generic product in the Register, or alternatively lodge full documentation required for a full evaluation of the generic product to take place.

An active component for the purposes of data protection under section 25A of the TG Act is a substance or one of the substances that together are, primarily responsible for the biological or other effect identifying the goods as therapeutic goods.

Applicant’s seeking to register generic products containing “new” active components which have five year data protection may still do so. However, they must develop and lodge their own full data package, instead of lodging an abbreviated package that demonstrates bioequivalence with a new active component.

Information is accorded protection under section 25A of the TG Act:

- if the information was given in relation to an application to register therapeutic goods: containing, or consisting of active components;

- the information is not available to the public;
- when the application to register the new therapeutic goods, no other therapeutic goods consisting of, or containing the active component were included in the Register; and
- no such therapeutic goods had been included in the Register at any time before then.

The five year data protection does not apply to therapeutic or medical devices.

Please find below the relevant section of the TG Act.

**25A When the Secretary must not use protected information**

- (1) When evaluating therapeutic goods for registration, the Secretary must not use information about other therapeutic goods that is protected information.
- (2) Information is *protected information* if:
  - (a) the information was given to the Secretary in relation to an application to register therapeutic goods (the *new goods*):
    - (i) not being therapeutic devices; and
    - (ii) consisting of, or containing, an active component; and
  - (b) the information is about the active component and is not available to the public; and
  - (c) when the application to register the new goods was lodged:
    - (i) no other therapeutic goods consisting of, or containing, that active component were included in the Register; and
    - (ii) no such therapeutic goods had been included in the Register at any time before then; and
  - (d) the new goods became registered on or after the commencement of this subsection; and
  - (e) 5 years have not passed since the day the new goods became registered; and
  - (f) the person in relation to whom the new goods are registered has not given the Secretary permission in writing for the Secretary to use the information.
- (3) For the purposes of subsection (2), an *active component*, in relation to therapeutic goods, is a substance that is, or one of the substances that together are, primarily responsible for the biological or other effect identifying the goods as therapeutic goods.
- (4) The use of protected information contrary to subsection (1) does not render the Commonwealth, the Secretary or a delegate of the Secretary liable to a person in respect of loss, damage or injury of any kind suffered by the person as a result of, or arising out of, the use of that information.

Question from Japan

*Question: What kind of right holders would be granted the right of operation? Please describe the reason for the Australian Cabinet decision in 2000 to relax the restrictions on parallel imports for printed material and computer software. Was there any opposition for relaxing the restrictions?*

Answer: Australia's parallel importation policy is to ensure that consumers have access to world competitive prices for legitimate goods and are not subject to differential pricing based on the ability to control access to our market. Australian legislation permitting parallel imports reflects a sound policy balance where the Australian Government is acting in the best interests of the Australian people and the Australian economy.

Some sections of the relevant industries opposed the removal of parallel import restrictions on printed material and books when the relevant amendments were introduced into Parliament in 2001. The present Government made an election promise before the November 2001 federal election to re-introduce the amendments if it were returned to office. The position of the non-government parties will be apparent when the legislation is considered by each House of Parliament

**(a) Industrial property**

Question from Chinese Taipei

*Question: Australia promulgated its Innovation Patent Act on 24 May 2001 to provide protection for these inventions by requiring a lower inventive threshold than is required for a standard patent and to repeal the petty patent system. Could Australia please provide information as to the number of applications from SMEs and the percentage of all patents that are innovation patents. Meanwhile, has any innovation patentee successfully lodged a claim for damages? Please clarify whether the Innovation Patent Act complies with Section V, Part II of the TRIPs Agreement.*

Answer: IP Australia has received 1203 filed innovation patent applications between 24 May 2001 and 30 June 2002. Our records indicate that approximately 85% are lodged by an individual or SME. There were 1002 granted innovation patents between 24 May 2001 and 30 June 2002 which is approximately 6% of all the patents granted in Australia.

There are currently two Innovation patents that are before the courts. One involves infringement and revocation proceedings. The other has infringement proceedings before the Court, with an opposition before the Commissioner. We would not expect a final decision of the court in either matter before next year.

Australia's obligations under Part II of Section 5 of the TRIPS Agreement are met by the standard patent system.

The innovation patent system is an alternative form of protection for inventions that may not meet the requirements of the standard patent system. In this respect it is TRIPS plus.

The innovation patent system is not intended to meet Australia's obligations under the TRIPS Agreement. It replaced the petty patent system, which had been in place since 1979, and is analogous to the utility model systems that are offered in many countries. It offers protection to lower level and incremental inventions, therefore it has a lower inventive threshold and a shorter term of 8 years.

## Copyright and related rights

### Questions from Japan

*Question: Please provide detailed information on the amendment to the Copyright legislation for greater copyright protection to works on-line.*

Answer: Many of the amendments introduced by the *Copyright Amendment (Digital Agenda) Act 2001* increased the protection of copyright works online. The most important of these were:

**The creation of a new right of communication to the public** - Copyright owners now have the exclusive right to control how their work is electronically transmitted to the public or made available online. This right is designed to be technology neutral and covers a broad range of uses of copyright material, from broadcasting and cable-diffusion to e-mail, Intranets and web publishing. Previously, copyright owners were dependant upon the reproduction right to enforce their rights over the Internet. This meant that they could take action against the person accessing the material (eg the person opening the website) but not necessarily the person who had actually made the material available (eg the person who created the website).

**The introduction of a ban on hacking tools** - It is now illegal to make or deal commercially in devices or services that have only a limited commercial purpose other than the circumvention of technological protection measures used to protect copyright material online, such as access codes, encryption and software locks. A limited set of 'permitted purpose' exemptions applies to this ban. Individuals may obtain circumvention devices in order to access computer programs for security testing, error correction or to make interoperable products. Educational and cultural institutions may obtain circumvention devices in order to gain access to 'locked' material that they are entitled to copy under existing exceptions.

**The protection of electronic rights management information** - Criminal penalties now apply to tampering with copyright information attached to electronic documents, eg information giving the details of the copyright owner, or setting out terms of use. It is also an offence to deal in works that have had this information tampered with.

**The introduction of higher penalties where copyright infringement occurs in the digital environment** - Higher criminal penalties and additional civil damages may now be applied where an infringement occur in the digital environment, or involves the first digitisation of analogue material.

Further information on the *Copyright Amendment (Digital Agenda) Act 2000* is available at the following internet links:

<http://www.ag.gov.au/publications/copyfactsheet/copyfactsheet.html> and [http://www.dcita.gov.au/Article/0,,0\\_1-2\\_12-3\\_460-4\\_13287,00.html](http://www.dcita.gov.au/Article/0,,0_1-2_12-3_460-4_13287,00.html)

*Question: Does the Australian government survey piracy of copyright Australian copyrighted materials abroad?*

Answer: No.

*Question: Please explain the details of "recommendations mentioned in the para. 151, page 81 of the Report. Do they address the strengthening of copyright enforcement on the Internet?"*

Answer: The recommendations referred to in para 151 (i.e. recommendations to amend legislation so as to make it easier for copyright holders to defend their rights in civil actions and to increase the criminal penalties for commercial infringement) were made by the House of Representative Standing Committee on Legal and Constitutional Affairs, following its enquiry into the enforcement of copyright in Australia. The Government's response to the report is pending. A list of the Committee's recommendations can be found in the Committee's report, which is available at:

<http://www.aph.gov.au/house/committee/laca/copyrightenforcement/contents.htm>.

*Question: Please explain the judicial remedies for copyright violation in Australia. Are there any systems of statutory compensation or penal compensation?*

Answer: Remedies

(i) Civil actions

Copyright owners have a number of civil remedies available where their copyright is infringed:

- Damages. A person whose copyright is infringed is entitled to damages as compensation for infringement. In the case of a blatant infringement, or where some particular benefit has accrued to the defendant, additional (punitive) damages may be awarded to a copyright owner. In determining the amount of damages for copyright infringement, a court may consider whether the infringement involved converting hardcopy material into digital form.
- Account of Profits. Alternatively, the court may order payment to the owner of copyright of the profit made by the infringer as a result of the infringement.
- Conversion damages. Where the infringement was deliberate, the Copyright Act also provides for the owner of the copyright in a work or other subject-matter to be in substantially the same position as if he or she owned the infringing copies of the material. Subject to the discretion of the court, there is a provision for a copyright owner to have any infringing copies of the material in the hands of the infringer (including any device used in making the copies) delivered up to him or her.
- Provisional remedies. A court may grant relief for infringement in the form of an interlocutory injunction to restrain an infringement of copyright occurring or continuing.. Injunctions may be granted ex parte if the circumstances require such action. In addition, a copyright owner may seek an ex parte order for the inspection and seizure of evidence (Anton Piller Orders).
- Border controls. A notice in writing may be given to Customs objecting to the importation of copies of copyright materials suspected to be infringing copies. A copyright owner giving such a notice is required to lodge security for enforcement costs. Once a notice is accepted, Customs may seize the copies to which the notice applies and hold them for a specified period to enable the objector to commence a civil action for infringement of copyright. Importers of copies that are non-infringing can counterclaim for damages arising from the infringement proceedings.

(ii) Criminal offences

Under the Copyright Act, the following are criminal offences:

- making an article for sale or hire, selling or offering for hire such an article, commercially importing or distributing the article for the purpose of trade or to any other extent that affects prejudicially the copyright owner, if the person knows or ought to have known the article to be an infringing copy;
- being in possession of one of those articles for one of those purposes, if the person knows or ought to have known the article to be an infringing copy;
- being in possession of equipment known to be used for making infringing copies;
- causing public performances of a work, film or sound recording at a public venue knowing the performance to be infringing;
- advertising the supply of copies of computer programs that are known to be infringing.

The Copyright Act also contains a number of criminal offence provisions that support enforcement regimes for circumvention devices or services; abuse of rights management information and broadcast decoding devices.

There are very high penalties. Under the Copyright Act, criminal penalties range from a maximum of 5 years imprisonment or fines of up to \$A93,500 for individuals or \$A467,500 for corporations.

Statutory compensation

Australian legislation does not provide a scheme of statutory damages for copyright infringement.

*Question: Please provide us with the "Parliamentary report on copyright enforcement" mentioned in the para 153, page 81 of the Report.*

Answer: The Parliamentary report is available at the following Internet link: <http://www.aph.gov.au/house/committee/laca/copyrightenforcement/contents.htm>

*Question: Please explain the system of collaboration among related government authorities for fighting against piracy.*

Answer: The system of collaboration is via a consultative group on IP enforcement chaired by the Australian Federal Police. There is a wide representation of government agencies including those from the national office of government prosecutors, the Australian Customs Service, various Australian State police services and, as appropriate, national criminal intelligence and organised crime investigation bodies. Key IP industries that suffer from criminal activity such as music, film, business software, computer entertainment, toys, subscription broadcast industries and trade mark representatives covering a range of industries, are represented. Such representatives are persons or bodies tasked by the industries with investigation of, or legal action against, infringements. Membership is generally required to be on behalf of a recognisable industry or segment of an industry.

The group meets approximately every 4 months. It has been developing a crime management strategy for IP enforcement and provides a forum for consideration of practical issues in improved activity and intelligence gathering to defeat IP crime. This may include review of recent operations and investigations.

*Question: Is public lending right covered in the Australian Copyright legislation? If yes, please explain the provision. Please also explain how the exhaustion of the distribution right is covered in the copyright legislation."*

Answer: Public lending right is not covered under the Australian Copyright Act. The *Public Lending Right Act 1985* provides the legislative framework for the Public Lending Right (PLR) scheme. Under the scheme payments are made to eligible Australian creators and publishers. In 2001-02 PLR payments totalling \$5.937 million were made to 8,193 creators and 308 publishers.

Exhaustion of the right under the Copyright Act to control distribution varies according to the category of copyright subject-matter. The right is expressed as a right of action in relation to prejudicial distribution of infringing copies, which for some copyright subject-matter includes legitimate, i.e., non-pirate copies imported into Australia. The effect is that for that subject matter there is exhaustion of the right over distribution of copies of that subject matter after first authorised transfer in Australia (national exhaustion). However, legitimate copies of sound recordings (and copyright material that constitutes packaging and labelling) imported into Australia are not treated as infringing copies, so that for sound recordings there is effectively international exhaustion of the right over distribution. That is also the case with printed material (including books) first published overseas and not simultaneously published in Australia. Legislation is before the Parliament that would have the effect of making books and also computer software and software products subject to full international exhaustion of the right over distribution of copies in Australia.

*Question: Please explain the fair compensation system of reproduction for private use. (Is the system applied to multi-purpose machines such as personal computers? Does the system cover not only digital media but also analog media?)*

Answer: The Copyright Act does not have provision for a statutory licence for the private copying of copyright materials in return for fair compensation, other than live broadcasts. That is, private copying of materials other than broadcasts is subject to the exclusive right of the owners of copyright. The Act provides for a free licence for the copying of broadcasts for private purposes; the licence does not apply to the copyright in any underlying works or sound recordings in broadcasts so the licence would be of practical use to record only certain live broadcasts such as those of sport.

## **Trade secrets**

### Question from Argentina

*Question: In paragraph 145 [paragraph 146 of the English text], the Secretariat Report states that undisclosed information and trade secrets are protected by common law. Under the National Registration Scheme for Agricultural and Veterinary Chemicals, test data protection for agricultural and veterinary chemicals is provided through the Agricultural and Veterinary Chemicals Administration Act 1994 and its Regulations. A review of the current data registration protection system is underway to establish a level of protection that provides incentives to undertake innovative research and development with regard to agricultural – veterinary chemicals and maintains competition (and reasonable prices) in the chemicals market. What will be the main features of the new system?*

Answer: The objective of the proposed data protection scheme is to ensure an appropriate balance between:

- protecting the commercial interests of registrants, approval holders and other data owners, who have invested in data in support of the approval, registration and continuance of registration of agvet chemicals; and
- the level of competition in the market, so as to:
  - create incentives for investment in agvet chemical research and innovation;
  - encourage investment in the generation of data required for approval and registration purposes;
  - increase the on-label availability of agvet chemicals to Australian primary producers and other users for pest and disease management purposes including in chemicals that may currently be available to their overseas competitors but not in Australia;
  - increase the availability of more effective and safer agvet chemicals, with the added benefit to the economic and environmental sustainability of Australian agriculture;
  - maintain the current relative affordability of chemicals; and
  - not adversely impact on the viability of farming which in turn can have indirect impacts:
    - on rural communities through loss of primary industries; and
    - through the re-introduction of former environmentally-harmful farming practices such as regular soil tilling for weed control.
- This will be achieved through:
  - establishing a scheme of specific circumstances and periods of time when the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) is permitted to reference 'protected' data in making its determinations for the purposes of:
    - granting approvals for use of active constituents in Australia;
    - registration of chemical products;
    - registration of new formulations and product uses; and
    - affirmation of approvals and registrations.

**(v) Other measures (environmental)**

Questions from Brazil

*Question: Environmental concerns have been addressed by the introduction/enforcement of new legislation (e.g. Environment Protection and Biodiversity Conservation Act), national environment-protection measures and a product stewardship (oil recycling) scheme. Please explain which are the main points of the new legislation that could affect trade. What has been done in order to avoid trade distortion caused by environmental legislation?*

*Answer: The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), came into force on 16 July 2000. The following are the list of relevant Acts and its regulations:*

- Environment Protection and Biodiversity Conservation Act 1999
- Environment Protection and Biodiversity Conservation Regulations 1999
- Environment Reform (Consequential Provisions) Act 1999

Under the assessment and approval provisions of the EPBC Act, actions that are likely to have a significant impact on a matter of national environmental significance are subject to a rigorous assessment and approval process. An action includes a project, development, undertaking, activity, or series of activities.

The Act currently identifies six matters of national environmental significance:

- World Heritage properties;
- Ramsar wetlands of international significance;
- listed threatened species and ecological communities;
- listed migratory species;
- Commonwealth marine areas; and
- nuclear actions (including uranium mining).

Actions that are likely to have a significant impact on the environment of Commonwealth land (even if taken outside Commonwealth land) may require approval under the EPBC Act. Australia has implemented measures to conform to MEAS such as CITES, the Montreal Protocol and the Basel Convention; for example exports of protected wildlife, some heritage items and other internationally controlled goods (e.g. hazardous waste, ozone depleting substances) are prohibited or subject to export permit. Amendments to the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 have streamlined many of the processes for the export of native wildlife and CITES-listed species and their products, thus further ensuring these measures are least trade restrictive so industry groups and individuals can conduct reasonable and legitimate trading activities.

#### IV. TRADE POLICIES BY SECTOR

##### (1) OVERVIEW

###### Questions from the United States

*Question: Please discuss the following programs in further detail, noting any subsidy elements that are specific:*

- a. Petroleum Products Freight Subsidy Scheme*
- b. Diesel Fuel Rebate Scheme*
- c. Diesel and Alternative Fuels Grant Scheme*

Answer: The Petroleum Products Freight Subsidy Scheme is a national subsidy scheme providing assistance to offset the cost of freighting eligible petroleum products to remote Australian areas. The Scheme acts to benefit purchasers in those places by reducing the freight component of the purchase price of fuel.

The Scheme covers automotive distillate, motor spirit, aviation gasoline and aviation turbine fuel. The Scheme applies only to deliveries to certain sites or locations. The places currently eligible for inclusion are retail sites, airports, safe anchorages, remote places or large volume users (for example, mine sites).

The Scheme is funded by Commonwealth grants to Australian States and the Northern Territory. Oil companies and independent fuel distributors are required, upon application for registration, to sign an undertaking to pass on the benefit of the subsidy to purchasers at the time of sale.

(iii) Selected agricultural and livestock items

###### Question from the European Union

*Question: Reference is made of the support for the sugar sector. We are aware that on 10 September 2002 the outline of a new \$A150mn sugar industry assistance package was announced, to be largely funded by a levy on domestic sugar sales, including imports. Can the details of this package be provided, including the measures being introduced and their funding sources?*

Answer: The 10 September announcement of a support package for sugar stated that the details of the package were yet to be finalised. Australia will provide appropriate notification to WTO members once details of the package have been settled.

###### Question from Mauritius

*Question: On page 93 of the Secretariat's report, it is mentioned that sugar has enjoyed domestic support, owing to the industry's importance in sustaining many rural and regional economies, as well as its position as a leading export commodity for Australia. We would appreciate hearing about the philosophy behind this initiative.*

Answer: Domestic support to the Australian sugar industry has been provided in response to a specific set of circumstances and meets Australia's agricultural policy objectives. Agricultural support in Australia is now largely decoupled from agricultural production after having undertaken

significant adjustment in domestic agricultural policies over the past 30 years. Australia's agricultural policies are targeted at building business and risk management skills, encouraging innovation, developing leaders who can assist industry to self determine their future, placing farmers, processors and other players in the supply chain in strategic alignment and working in partnership with regional and local communities to address natural resource management and wider rural issues. In essence our approach is to try to ensure that government intervention in the market place is strategic and works with, and not against, market signals.

The Sugar Industry Assistance Package (Canegrowers) provided short term assistance in response to an unusual combination of circumstances. These include serious effects of a combination of adverse climatic and pest conditions and the impacts of low world prices caused in part by high support and protection policies in other countries.

(a) Crops

Questions from the United States

*Questions: Paragraph 28 of the Secretariat's report mentions that Australia provided \$A 83 million in assistance to the sugar industry in 2000 as part of a "temporary" Assistance Package. Some of the benefits from the package extend through 2002. In addition the Queensland Government allocated \$A 10 million in concessional loans for replanting and establishment of sugar cane crops. How does Australia plan to notify this additional support to the sugar industry?*

Answer: Queensland Government subsidies on concessional loans for planting and sugar cane will be notified to the WTO for the financial year in which the funds have been expended.

(b) Livestock

*Question: Paragraph 31 of the Secretariat's report mentions that Australia provided an assistance package on lamb in response to the imposition of a tariff rate quota from the U.S. The GOA provided 19 grants, ranging between \$A 70,000 and \$A 700,000. How does Australia plan to notify that support?*

Answer: Australia notified the lamb package as *de minimis* support in the Aggregate Measure of Support in 1999-2000 (G/AG/N/AUS/36).

*Question: In para 35, page 95, it is said that it seems that no element of the federal program for the adjustment of the dairy sector is linked to exports of dairy products. At the other hand, the exported products seem to be exempted from the levy under the title of this program (page 94, para 34). How could this apparent contradiction be explained?*

Answer: There is no contradiction in the operation of the Dairy Industry Adjustment Program (DIAP), the 3 elements of which are the Dairy Structural Adjustment Program (DSAP), Dairy Exit Program (DEP) and the Dairy Regional Assistance Program (RAP).

It is correct that no element of the program is linked to exports of dairy products:

- DSAP payments to eligible farmers (dairy farmers who delivered milk in 1998-99) are fixed and made to farmers to compensate them for the removal of regulated pricing arrangements. DSAP payments have been notified in the AMS.

- DEP payments are available to dairy farmers who exit the industry. These payments have been notified within the green box (Annex 2:9).
- Dairy RAP payments to assist regional communities adjust to deregulation. These have been notified as green box payments (Annex 2:5).

It is also correct that the levy does not apply to exported product:

- The levy which is collected to fund the DIAP is a domestic sales tax applied at the retail level on all sales of liquid milk.

**(iv) Forestry**

Question from Japan

*Question: (Please describe in more detail the aim and structure of the export restriction and licensing system in the forestry sector referred to in para. 38, page.95 of the Report.*

Answer: Regulations relating to export controls for hardwood wood chips are intended to ensure the appropriate consideration of environmental values in the management of Australia's forests.

The control of Australian exports is governed by the *Export Control Act 1982* (the Act). The Act provides for the making of Regulations to prohibit the export of prescribed goods from Australia, either absolutely or subject to certain conditions or restrictions.

Regulations created under the abovementioned Act include *The Export Control (Hardwood Wood Chips) Regulations 1996*. These Regulations were amended in April 2000 to ensure that hardwood woodchips could only be exported from a region if a Regional Forest Agreement (RFA) applied to that region or if they are exported under a restricted shipment licence.

Regional Forest Agreements cover 10 regions in Australia. They are Tasmania; the Central Highlands, East Gippsland, Gippsland, North East, and West regions of Victoria; the South-West forest region of Western Australia; and Eden, North East, and Southern regions of New South Wales. The agreements are between the Commonwealth and State Governments and take account of conservation and industry requirements.

Under *The Export Control (Hardwood Wood Chips) Regulations 1996* export of hardwood woodchips from areas not covered by RFAs is only permitted if a restricted shipment licence has been granted for that purpose. The Regulations ensure each application is considered by the Minister on a shipment-by-shipment basis, having due regard to the need to protect areas that are or may be required to establish a comprehensive, adequate and representative (CAR) national forest reserve system and any other relevant matter.

As well as being required to comply with the above regulatory requirements under the Act, the Minister (or delegate) has also had to consider all relevant matters relating to the granting, or refusal to grant, a licence including issues of natural justice (for example if there is an adverse matter raised about an application, the applicant should be given adequate opportunity to respond to such a matter).

Further, when considering an application for a licence, the Minister or delegate must consider relevant obligations under the Commonwealth environment and heritage legislation.

Further Information:

A copy of the Regulations is available at: <http://scaleplus.law.gov.au/html/pastereg/2/1323/top.htm>

A copy of CAR reserve criteria is available at: <http://www.affa.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060B0A02033>

**(ii) Energy**

**(a) Hydrocarbons**

Questions from the United States

*Question: Does Australia accord market access and national treatment for pipeline transportation and local distribution of natural gas, including the authorization to construct as well as the right to own and operate pipelines and pipeline facilities or networks? Please indicate the regulatory agencies that authorize these activities.*

Answer: There are no market access or national treatment limitations in respect of construction of gas transmission pipelines and distribution networks. Technical approvals and licenses are issued by relevant State Governments and a range of departments are usually involved. The lead departments in the major states are Department of Natural Resources and Mines (Qld), Ministry of Energy and Utilities (NSW), Department of Natural Resources and Environment (Vic), Primary Industries and Resources (South Australia), Department of Mineral and Petroleum Resources (WA), Department of Infrastructure Energy and Resources (Tas) and Department of Mines and Energy (NT).

The pipeline transportation market (transmission) is regulated by the Australian Competition and Consumer Commission (ACCC), and the Office of Gas Access Regulation (OffGAR) in Western Australia. Some pipelines which operate in a competitive environment are not subject to economic regulation (e.g. Duke Energy International's Eastern Gas Pipeline). There is no discrimination in the regulatory regimes against foreign companies.

*Question: Can consumers of natural gas choose their natural gas supplier?*

Answer: At the distribution level, regulation is generally effected by State regulatory authorities. Full retail competition (i.e. choice of gas supplier) is in the process of being implemented across all Australian States and Territories. In all jurisdictions, firms from large industrial through to small commercial users will be able to choose their gas supplier. New South Wales has already introduced full competition in gas to the household level, and Victoria will do so over the next one or two months. Other States and Territories have committed to the introduction of full competition at the household level over the next two years.

*Question: How is third party access implemented? Please indicate the regulatory agencies that implement such access.*

Answer: Third party access to natural gas pipelines and networks is implemented principally through the National Gas Code, which provides a framework for commercial negotiations between infrastructure owners and access seekers, underpinned by a mandatory set of terms and conditions (including standard transportation tariffs) approved by independent regulators. The National Gas Code is part of the Gas Pipeline Access Law, a nationally consistent legislative framework for third party access in the pipeline and network sectors of the gas industry developed as part of the National

Competition Policy, and implemented through agreement by the Council of Australian Governments in 1997.

Third party access arrangements to gas distribution networks are approved by State and Territory regulators, such as the Essential Services Commission (Vic), the Independent Pricing and Regulatory Tribunal (NSW), the South Australian Independent Pricing and Access Regulator (SA), Queensland Competition Authority, the Independent Competition and Regulatory Commission (ACT), Office of the Tasmanian Energy Regulator, OffGAR (WA) and the Department of Business Industry and Resource Development (NT).

#### **(4) MANUFACTURING**

##### **(ii) Pharmaceuticals**

###### Questions from the United States

*Questions: Please provide further details on the Pharmaceutical Benefits Scheme (PBS) and Pharmaceutical Industry Investment Programme (PIIP) discussed in these paragraphs. These programs do not appear to be notified. Please explain why these programs are non-notifiable?*

Answer: The PBS provides universal access to medicines by Australian residents when they purchase medicines on PBS prescriptions from community pharmacists. It does not involve the payment of a subsidy within the meaning of the WTO Agreement on Subsidies and Countervailing Measures (SCM) and is therefore not notifiable under the SCM.

The PIIP was notified in G/SCM/N/60/AUS/Rev.1 on 19 December 2000 and in G/SCM/N/71 on 4 December 2001.

###### Question from Switzerland

*Questions: Referring to the Pharmaceutical Benefits Scheme (PBS) and the Pharmaceutical Industry Investment Programme (PIIP): Do only domestic firms benefit from these programmes or can also foreign drug manufacturers apply for such financial support? If PBS and PIIP are only given to domestic firms: How does Australia justify a possible discrimination of foreign manufacturers against domestic enterprises? How can these financial aids be justified in the light of the WTO Agreement on Subsidies and Countervailing Measures?*

Answer: Both domestically-owned and foreign-owned firms can access the PBS and PIIP and do participate in the schemes.

*Questions (paragraph 61): So called "springboarding" provisions allow regulatory approval for generic products still under patent. How does Australia justify such measures in the light of obligations resulting from the WTO TRIPS Agreement? Will it also be allowed to sell the approved generics on the market even though the patent on the reference drug is still valid?*

Answer: (i) The Australian pharmaceutical "springboarding" provisions enable generic manufacturers to undertake otherwise infringing activities solely for the purposes of meeting pre-marketing regulatory requirements for therapeutic use in humans. Under the Australian system, springboarding is restricted to patents which have been granted an extended patent term.

The TRIPS Agreement sets out a patent holder's exclusive rights, in Article 28. It also permits, in Article 30, limited exceptions to those rights, provided that these exceptions do not unreasonably

conflict with the normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

The Australian "springboarding" provisions, so far as they impact on the exclusive rights in Article 28, are entirely consistent with the exceptions permitted under Article 30.

(ii) No. The provisions, in the Australian *Patent Act*, enable a generic manufacturer to produce a substance solely for the purposes of obtaining regulatory approval, not for sale, while the patent is still in force.

**(iii) Automotive**

Questions from Republic Of Korea

*Questions: Since 2001, the Australian Government has maintained the ACIS (Automotive Competitiveness and Investment scheme) and the "Review of Automotive Assistance" announced by the Australian Productivity Commission indicates that the scheme will last even after 2005. Our concern is that the scheme includes specific support to industries producing automotive vehicles and parts, thus creating unfair competition conditions for foreign companies in Australia.*

*Does Australia have any plans to eliminate this scheme? And what is the view of the Australian government on the WTO-consistency of this scheme.*

Answer: ACIS is scheduled to conclude on 31 December 2005. The Productivity Commission is conducting a review of post 2005 assistance arrangements for the automotive manufacturing sector in Australia. The Government will consider the recommendations of the Review of Automotive Assistance later this year.

ACIS is consistent with the WTO Agreement on Subsidies & Countervailing Measures (SCM) and other WTO Agreements.

Questions from the United States

*Questions: Please provide further details on the programs discussed in these paragraphs (eg "[o]ther government support includes customs duty and sales tax relief, export insurance and financial services, immigration assistance, and a variety of R&D support schemes," excluding the Automotive Competitiveness and Investment Scheme (ACIS) which Australia has already notified.) These programs do not appear to have been notified. Please explain why these programs are non-notifiable.*

Answer: These "[o]ther government support" programs are generic policy arrangements that are not specific to the automotive industry. Most of these are described elsewhere in the text of the WTO report.

The Automotive Market Access and Development Strategy concluded on 30 June 2002 and no replacement or substitute policy measure has been introduced.

Questions from Chinese Taipei

*Questions: Based on a report from the Australian Productivity Commission, Chinese Taipei believes that as a developed country, Australia's import tariffs on textiles, clothing and footwear (TCF), and on passenger motor vehicles (PMV) are relatively high, and notes that TCF and PMV account for the*

*largest shares of domestic support. Please could Australia say whether it will further reduce import tariffs and domestic support on PMV and TCF.*

Answer: Australia has unilaterally and systematically reduced its import tariffs on passenger motor vehicles and components over recent years and has no tariff quotas on motor vehicles. Import duty on passenger motor vehicles and components is currently 15 per cent and will fall to 10 per cent on 1 January 2005. Light commercial and off-road vehicles are subject to a 5 per cent import duty. The government will decide later this year on post 2005 policy arrangements for the Australian automotive industry.

The Australian Government undertook an extensive review of the textiles, clothing and footwear (TCF) industry in 1997. This review resulted in a commitment by the Government to maintain tariff levels at year 2000 levels until 2005. This commitment provides an environment of certainty for Australia's TCF firms as they adjust to increasing global competition.

The Government has announced a commitment to undertake a substantive inquiry in late 2002 of post 2005 assistance to the TCF industry.

*Questions: It was noted that a \$A2.8 billion Automotive Competitiveness and Investment Scheme (ACIS) is in effect for the period 2001 to 2005. Please provide details of this scheme including the figures on how many companies are benefiting from the scheme and the amount of credit claimed. Please also clarify whether this scheme is consistent with the WTO SCM Agreement.*

Answer: The Automotive Competitiveness and Investment Scheme (ACIS) is directed towards encouraging new investment and innovation in the Australian automotive industry. The scheme commenced on 1 January 2001 and will conclude on 31 December 2005.

ACIS rewards strategic investment, research and development and the production of eligible motor vehicles through the issue of import duty credits to registered participants. These credits can be used to discharge customs duty on eligible automotive imports, or alternatively, can be sold or otherwise transferred.

Eligible participants in the scheme include motor vehicle producers (MVPs), automotive component producers (ACPs), automotive machine tool and tooling producers (AMTPs), and automotive service providers (ASPs).

Eligible ACIS incentives are calculated as follows:

#### **MVPs**

##### **Capped incentives**

- 25% of the value of all other production of PMVs (other than PMVs sold in Australia and New Zealand), multiplied by the current PMV tariff rate.
- 10% of the value of investment in plant and equipment averaged over the preceding three years

### **ACPs, AMTPs and ASPs**

#### **Capped incentives**

- 25% of the value of investment in plant and equipment, averaged over the preceding three years
- 45% of the value of investment in R&D, averaged over the preceding three years

The total amount of capped incentives payable under ACIS is limited to \$2 billion over five years. Furthermore, no participant will be permitted to receive incentives exceeding 5 per cent of its annual sales in the preceding year.

Currently, there are approximately 200 participants in ACIS, with capped credit payments to these participants broadly averaging \$100 million over each of the first six quarters of the scheme's operation. Uncapped incentives, which are only available to MVPs, are estimated to total approximately \$825 million over the operation of ACIS and will be spread broadly over the years 2001 to 2005.

ACIS is compliant with Australia's WTO obligations.

*Questions: Referring to paragraph 70, the Productivity Commission was expected to report the findings of its review of post-2005 assistance measures for the automotive industry and present its recommendation to the Australian government. Please provide details of this report.*

Answer: The Productivity Commission has concluded its *Review of Automotive Assistance* and forwarded its final report to the Australian government on 30 August 2002. The government is considering the report and will release it within twenty five Parliamentary sitting days from the date of receipt. Following its release, the report can be accessed at <http://www.pc.gov.au/inquiry/auto/index.html>. The Productivity Commission's preliminary findings are now available in a position paper which can be viewed at <http://www.pc.gov.au/inquiry/auto/positionpaper/index.html>.

#### *Questions from Republic Of Korea*

*Questions: Since 2001, the Australian Government has maintained the ACIS (Automotive Competitiveness and Investment scheme) and the "Review of Automotive Assistance" announced by the Australian Productivity Commission indicates that the scheme will last even after 2005.*

*Our concern is that the scheme includes specific support to industries producing automotive vehicles and parts, thus creating unfair competition conditions for foreign companies in Australia.*

*Does Australia have any plans to eliminate this scheme? And what is the view of the Australian government on the WTO-consistency of this scheme.*

Answer: ACIS is scheduled to conclude on 31 December 2005. The Australian government will decide later this year on post 2005 policy arrangements for the automotive industry.

ACIS is compliant with Australia's WTO obligations.

Question from the European Union

*Question: We note the reference to the Productivity Commission's inquiry into Post-2005 Assistance Arrangements for the Automotive Manufacturing Sector. The Productivity Commission submitted its final report at the end of August, but (at the time of tabling the question) has not yet been made public. Can Australia indicate what are the main recommendations of this report and the Government's response, notably in terms of tariffs, luxury car tax and the Automotive Competition and Investment Scheme?*

Answer: The Australian government is considering the Productivity Commission's final report on *Review of Automotive Assistance*. The report can be accessed at <http://www.pc.gov.au/inquiry/auto/index.html>. The Productivity Commission's preliminary findings are now available in a position paper which can be viewed at <http://www.pc.gov.au/inquiry/auto/positionpaper/index.html>.

The Australian government will decide later this year on post 2005 policy arrangements for the automotive industry.

**(iv) Shipbuilding**

Question from the United States

*Questions: Please provide further details on the Shipbuilding Innovation Scheme (SIS). Do any measures under this program constitute actionable subsidies?*

Answer: The Shipbuilding Innovation Scheme (SIS) enables shipbuilders registered under the Bounty (Ships) Act to access payment of a research and development bounty. It provides payment at the rate of 50% of innovation expenditure up to a total of 2% of the eligible construction costs of a bountable vessel. The SIS applies to eligible research and development expenditure bounty for vessels completed on or before 30 June 2004.

Australia has notified this program contained in Australia's subsidy notification (document G/SCM/N/71/AUS).

**(5) SERVICES**

Question from India

*Question: In February 2001, arrangements were made by the Australian Government to allow easier travel of IT professionals from overseas countries including India. On 16 July 2002, the Australian Government announced suspension of priority visa processing arrangements for Information and Communication Technology (ICT) workers. It feared that the new visa regime would have an adverse impact on movement of IT professionals/personnel, who may be required to visit Australia at short notice in connection with their on-site assignments on behalf of their Indian software employer firms or on behalf of their Australian IT employer firm(s) as services providers/IT professionals. In view of the above, is Australia considering reintroducing the priority visa processing arrangements for information and communication technology (ICT) workers/professionals from overseas including India*

Answer: The Australian Government ceased giving priority treatment to IT professionals seeking to enter Australia on a permanent basis under the skilled migration program in 2002. The Government

has no plans to restore priority treatment for IT professionals seeking to enter Australia on a permanent basis under the skilled migration program. As a result, applications from IT professionals will become part of the general caseload of migration and temporary entry applications that are processed in the order in which they are received.

The ability of IT professionals to gain temporary entry to Australia is not affected by that decision.

- temporary caseload processing times are generally only a matter of several weeks, with there being adequate scope to give higher priority to any applications where the circumstances indicate that such is warranted.

Question from Brazil

*Question: In mode 4 horizontal commitments, "specialists" are subject to individual compliance to labour market testing. Which are the applied criteria? Shall the specialists be employed by a company from their home countries?*

Answer: Australia does not require labour market testing for specialists seeking long stay temporary entry to Australia.

**(ii) Domestic support**

Question from Japan

*Question: In Australia's schedule of commitments, the subsidies for research and development are "unbound". Please clarify if there are any domestic support measures in Table IV.5, which are not applied in a non-discriminatory manner to foreign service providers. If there exist any such measures, Japan is interested in knowing whether they are classified as subsidies for research and development. Please provide information on the objectives, scope, application requirements and procedures, criteria for eligibility etc. of the 'Export Market Development Grant Scheme'. Please also provide information on 'Investment incentives to IBM' in Table IV.5.*

Answer: There is no impediment to foreign owned companies accessing the R&D support programs listed in Table IV.5, subject to the following conditions:

Cooperative Research Centres

CRC grants require the participation of at least one Australian higher education institution in research collaboration. International participation from overseas universities and government-sector groups in CRC programs is encouraged, provided that program funds are used for research within Australia. Companies based and owned overseas may also participate in CRCs.

R&D Start Programs

Assistance for R&D through the R&D Start and related programs is provided on a competitive basis to non-tax exempt companies, provided they are incorporated in Australia.

R&D tax concession

Tax concessions for R&D expenses are available to foreign-owned companies incorporated in Australia. Except in special circumstances, R&D activities must be conducted in Australia.

### Innovation Investment Fund (IIF)

Access to the IIF requires companies to be incorporated in Australia, with a majority of its employees (by number) and assets (by value) inside Australia at the time IIF facilitated investment. The company must use the whole of the initial investment within Australia.

### Biotechnology Innovation Fund (BIF)

To access the BIF, companies must be incorporated in Australia.

## **Export Market Development Grants (EMDG) Scheme**

### Objectives

The primary objective of the program is to encourage small and medium sized Australian businesses to develop an export culture. Funding is paid by way of taxable grant to firms and other legal persons who are seeking to enter export markets.

### Scope

Any Australian individual, partnership, company, association, co-operative, statutory corporation or trust that has carried on business in Australia during the year for which they wish to apply for a grant is eligible to apply. In addition, the applicant must:

- have income of less than \$50 million in the grant year;
- have export earnings of less than \$25 million;
- have incurred at least \$15,000 of eligible expenses under the scheme (first time applicants can combine two year's expenses).
- Applicants are reimbursed 50% of their expenditure on eligible promotion and marketing activities, less the first \$15,000. The minimum grant is \$5,000. The maximum grant is \$200,000, subject to available funds. About 3,000 grants averaging A\$45,000 each are paid each year.

### Application requirements

Applicants must submit an application form providing relevant details, including the expenses incurred on eligible marketing expenditure, after the financial year in which they incurred that expenditure has closed.

Austrade, the agency which administers the scheme, assesses the application and determines and pays the relevant amount of grant, if any.

### Investment incentive to IBM

In 2000/01, the Australian Government provided awarded a strategic investment incentive through *Invest Australia's* Strategic Investment Coordination (SIC) program, to facilitate an A\$37m investment by IBM Australia to build an E-business Innovation Centre in Sydney for education and training and IT skills development. The underlying rationale of the SIC program is to attract

additional capital investment in strategic industries located in Australia. The incentives are open to foreign and domestic investors.

Questions from Brazil

*Question: In mode 3 horizontal commitments, there's an "unbound" for subsidies for research and development. Please clarify the scope and applicability of the regime.*

Answer: There is no impediment to foreign owned companies accessing the R&D support programs listed in Table IV.5, subject to the following conditions:

Cooperative Research Centres

CRC grants require the participation of at least one Australian higher education institution in research collaboration. International participation from overseas universities and government-sector groups in CRC programs is encouraged, provided that program funds are used for research within Australia. Companies based and owned overseas may also participate in CRCs.

R&D Start Programs

Assistance for R&D through the R&D Start and related programs is provided on a competitive basis to non-tax exempt companies, provided they are incorporated in Australia.

R&D tax concession

Tax concessions for R&D expenses are available to foreign-owned companies incorporated in Australia. Except in special circumstances, R&D activities must be conducted in Australia.

Innovation Investment Fund (IIF)

Access to the IIF requires companies to be incorporated in Australia, with a majority of its employees (by number) and assets (by value) inside Australia at the time IIF facilitated investment. The company must use the whole of the initial investment within Australia.

Biotechnology Innovation Fund (BIF)

To access the BIF, companies must be incorporated in Australia.

*Question: In mode 4 horizontal commitments, "specialists" are subject to individual compliance to labour market testing. Which are the applied criteria? Shall the specialists be employed by a company from their home countries?*

Answer: Australia has eliminated its labour testing provisions.

*Question: Labour market testing is not required for specialists if the position in question is within a labour agreement for the entry of specialists from overseas. Is there any labour agreement in force?*

Answer: See answer to question above.

*Question: If so, which are the signatory countries? How many foreign workers were admitted to Australia in the last four years?*

Answer: See answer to question above.

*Question: Australia scheduled commitments across a range of services under the GATS. However, there's no commitments for the following: postal services; courier services; audiovisual services; data base services; and distribution services for agricultural raw materials, food, beverages and tobacco (wholesale and commission agents' services), among other ones. Are there any restrictions of Market Access, National Treatment and/or domestic regulation that limit the provision of those services? Is Australia willing to bind commitments on those sectors in the new round of negotiations?*

Answer: Our preference would be to discuss these issues in the context of the GATS negotiations.

*Question: Please explain the horizontal limitation regarding restriction of foreign investment subject to "national interest" considerations as committed by Australia in its the GATS schedule of specific commitments. Has Australia considered the need to schedule this restriction to foreign investment bearing in mind Articles XIV (General Exceptions) and XIVbis (Security) Exceptions of the GATS?*

Answer: Notification and examination under Australia's foreign investment policy and the Foreign Acquisitions and Takeovers Act 1975 is a horizontal commitment to the GATS under mode 3. This is a horizontal commitment because Australia's foreign investment policy covers investments in all sectors.

All proposals submitted to the Government are examined with regard to the national interest. In preparing its advice to the Treasurer, the Foreign Investment Review Board considers whether the proposal is inconsistent with:

- existing government policy and law — taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- national security interests; and
- economic development.

Australia is not considering scheduling this exception.

#### Question from Canada

*Question: Paragraph 79 states that Australia has submitted to the WTO Council for Trade in Services negotiating proposals on areas such as professional services (i.e., legal, accountancy, architecture, and engineering services). Please advise if there have been developments in terms of regulatory reform in the area of professional services since Australia's trade policy review in 1998.*

Answer: Yes, there have been developments in terms of regulatory reform in the area of professional services since Australia's trade policy review in 1998. We will revisit this issue when formulating our response to the requests received from Member countries.

#### Questions from Chinese Taipei

*Question: Paragraph 78 states that there exists restriction of foreign investment subject to national interest considerations in Australia's GATS commitments. Chinese Taipei requests from Australia examples of what would constitute "national interest considerations". It would be appreciated if Australia would also provide relevant information regarding its current application of restrictions.*

Answer: For the temporary business long stay visa, the visa applicant can receive up to four years at a time. In principle, there is no limit to the number of four years visas that they can receive.

## **Legal services**

### Questions from the United States

*Question 1: Is Australia contemplating removal of its requirement that foreign law firms in New South Wales, Victoria and Queensland must have at least one equity partner who is a resident?*

*Question 2: Is Australia willing to remove its restrictions on the practice of foreign law, specifically that individuals practising foreign law only join a local firm as an employee or as a consultant and may not enter into partnership with or employ local lawyers?*

Answer:

### Background

In March 1996, the Attorneys-General of each State and Territory Government and the Federal Government, i.e. the Standing Committee of Attorneys-General (SCAG), unanimously agreed that there should, at the very least, be a clear statutory indication that there is no barrier to the practise of foreign law in Australia.

That policy position resulted in the development of a model Bill setting out two options:

- Option A - provides for a comprehensive framework for the regulation of foreign legal practice in the relevant State or Territory; and
- Option B - provides for a limited approach simply stating that a person does not commit an offence by practising foreign law in the relevant State or Territory.

To date, the States of Victoria and New South Wales as well as the Australian Capital Territory (ACT) and the Northern Territory (NT) have implemented legislation based on Option A. Legislation based on Option B has been implemented in South Australia. Pre-existing legislation in Tasmania provides a simple mechanism for obtaining the right to practise foreign law by foreign lawyers, either on their own account, or in combination with a local lawyer. The States of Queensland and Western Australia have indicated that they intend to implement foreign lawyer legislation based on Option A in the near future. There is no legislative bar to the practise of foreign law in Queensland or Western Australia. However, the Law Society of Queensland has issued guidelines on the practice of foreign law in that State.

### Answer to question 1:

Yes. Legislation in New South Wales and Victoria no longer requires at least one equity partner to be resident. The Queensland guideline with the residency requirement was removed in late 2000.

### Answer to question 2:

In the Australian States of greatest economic significance, New South Wales and Victoria, foreign lawyers can enter into partnership with or employ local lawyers. This is also the situation in Tasmania, the ACT and the NT. Queensland guidelines also provide for partnership between foreign and local law firms. As indicated earlier, Western Australia intends to implement legislation on the

practise of foreign law which would provide for partnership between local and foreign lawyers as well as employment of local lawyers by foreign lawyers. There is no legislation in South Australia that provides for the employment of local lawyers by foreign lawyers or for partnership between local and foreign lawyers. Australia will continue to review the situation concerning comprehensive foreign lawyer legislation in Australia.

Question from the United States

**Accounting services**

*Question: Is Australia contemplating removal of its permanent residency requirement for the licensing of auditors or liquidators?*

Answer: This issue has recently been the subject for discussion at the Australian Securities and Investments Commission (ASIC). It is most unlikely that the current policy will be altered due to the inability of ASIC to monitor and discipline auditors and liquidators who live and work offshore.

**Education services**

Question from Norway

*Question: Norway would like to underline that trade in educational services constitute a growing international business. Since the beginning of the 1990s the number of Norwegian students studying in Australia has doubled, meaning that there are currently some 4,300 Norwegian students enrolled in Australian colleges and universities. Norwegian students have experienced a fluctuation in their tuition, which tends to follow our national subsidy level given to higher education.*

*Norway would like to emphasise the importance of non-discriminatory principles and would be pleased if Australia could explain how the tuition facing international students are calculated. Moreover, we wonder if there are any institutional variations or differences in tuition fees depending on the nationality of the student.*

Answer: The majority of international students are full-fee paying unless they are recipients of aid scholarships. Institutions are required to charge, as a minimum, fees designed to recover full economic costs applicable to the course on offer, in order to ensure that resources provided to Australian governments for the education of Australian students are not diverted to the provision of services to overseas students. The Government sets the minimum charge for courses based on the cost of provision. The Government does not set differential minimums based on country of origin of the student. Above that threshold fees for overseas students are deregulated and universities, as autonomous institutions, can set individual course fees according to market demand.

**(v) Financial services**

**(a) Banking and finance**

Question from Brazil

Question: In relation to Banking and other Financial Services, mode 3 limitations on market access, which are the "prudential requirements" and "competition policy considerations" that shall be satisfied by a company who seeks to operate in Australia?

Answer: Banking licences are issued in Australia by the Australian Prudential Regulation Authority (APRA), an independent regulatory body, under Section 9 of the Banking Act 1959. Since mid-1999 all applications for licences have been considered by the Cross-Divisional Licensing Committee within APRA. This Committee recommends to executive management whether an application should be accepted or rejected. Since this Committee was formed, no licence applications have been refused. In a few instances potential applicants have not been able to satisfy APRA that they can meet the authorisation requirements and their draft applications have not been presented to the Licensing Committee.

(Note: Australia could not identify this statement in our Trade Policy Review and would appreciate further clarification if the above information does not suffice.)

Questions from Chinese Taipei

*Questions: Chinese Taipei welcomes Australia's financial reforms undertaken since 1997 and would like to raise the following questions based on the material prepared by the WTO Secretariat.*

*Question: Paragraph 86 states that foreign banks operating as branches can only accept deposits exceeding A\$250,000 and that this restriction was to protect retail depositors, as foreign bank branch operations are subject to more liberal regulatory requirements. Please explain the rationale behind the application of different regulatory requirements to foreign bank branches from those applied to domestic banks. Chinese Taipei would also appreciate knowing whether the Australian authorities have any plans to remove the restriction in the future.*

Answer: Foreign banks can choose their preferred form of commercial presence in Australia. Foreign banks wishing to operate in the 'wholesale market' may operate through a branch structure and thereby not be required to maintain endowed capital in Australia or be subject to any capital-based large exposure limits (as these are the responsibility of the home supervisor).

As the Australian Prudential Regulation Authority (APRA) would not have direct oversight of the capital adequacy of foreign bank branches, those foreign bank branches are not subject to the depositor protection provisions of the Banking Act 1959 and are not permitted to accept "retail deposits".

There are no explicit deposit insurance arrangements in Australia. Retail depositors are protected through the priority claims afforded depositors of locally-incorporated banks by the depositor protection provisions of the Banking Act 1959. APRA, through its supervision of the capital adequacy of locally-incorporated banks, seeks to support such claims. As APRA does not have direct oversight of the capital adequacy of foreign bank branches, those foreign bank branches are not subject to the depositor protection provisions of the Banking Act 1959 and are not permitted to accept "retail deposits". Foreign bank branches are, nevertheless, permitted to engage in all other activities open to locally-incorporated bank branches. The purpose of the measure is to ensure that APRA can effectively protect retail depositors in Australia.

The prudential practices governing foreign bank branches in Australia are consistent with the Basel Committee on Banking Supervision's core principles applicable to the supervision of banks and the cross-border business operations of banks.

We are not in a position to comment on future plans.

*Question: According to the specific commitments in Australia's service sector, when applying for entry to the Australian financial market, foreign banks qualify only because their entry is justified on the grounds of their contributing benefit to the competitiveness of Australia's financial market, according to the economic needs test. Please explain how this conforms to the WTO obligations on transparency.*

Answer: The Australian Prudential Regulation Authority (APRA), an independent regulatory body, issued its 'Guidelines for Authorisation of ADI's' after being given responsibility for authorising banks and insurers. These guidelines are publicly available on APRA's website [www.apra.gov.au](http://www.apra.gov.au), and indicate that prospective applicants do not need to meet an "economic needs test" or "demonstrate their potential contribution to competition".

*Question: According to the Financial System Inquiry, Australia stated that the large-scale transfer of ownership of the financial system into foreign hands would be contrary to the national interest. Please explain the definition of "large-scale" and the reasoning behind the assumption.*

Answer: The term 'large-scale' originates from the Final Report of the Financial System Inquiry. This independent inquiry, inter alia, stated that;

'The Inquiry is of the view there would be no economic disadvantage in some increase in the percentage of foreign ownership of the Australian financial system. Its view in this regard extends equally to the majors as to smaller institutions. Foreign ownership can bring with it a range of benefits for countries, including: injections of capital; access to new skills and technologies; and enhanced competitive pressure on the domestic market. However, the Inquiry does not consider that a large scale transfer of ownership of the Australian financial system to foreign hands would be in the national interest. Such an eventuality could restrict the options for the future development of the financial system and Australia's place in the regional and global economy. The general scheme of regulation of foreign investment is sufficient to meet this objective.'

On 9 April 1997, the Treasurer issued the Government's response to the Final Report in Press Release No.28 (1997), which, inter alia, stated that;

'The Government has decided to remove the former Government's blanket prohibition on foreign takeover of any of the major banks. Any proposed foreign takeover or acquisition will need to be assessed, like any other proposed foreign takeover or acquisition, on a case by case basis and on its merits in accordance with the Foreign Acquisitions and Takeovers Act of 1975. In making assessments, however, the Government will apply the principle (as was concluded by the Inquiry) that any large scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest.'

#### Questions from the European Union

*Question: Could Australia specify in which respect the regulatory requirements for foreign bank branch operations are more liberal than for subsidiaries or local companies?*

Answer: Foreign bank branches are not required to maintain endowed capital in Australia and are not subject to any capital-based large exposure limits as these are the responsibility of the home supervisor. The Australian Prudential Regulation Authority (APRA), however, monitors credit risk concentrations and other risk exposures borne by foreign bank branches as part of its prudential oversight of their local operations.

Australia's prudential practices governing foreign bank branches are consistent with the Basel Committee on Banking Supervision's core principles applicable to the supervision of banks and the cross-border business operations of banks.

*Question: What has been the practice of the national interest test for licensing of foreign banks? How many licences have been refused in recent years? We would also like to seek clarification whether the acquisition by a foreign institution of one of the four major banks (NAB, ANZ, Westpac or Commonwealth) would be considered as a larger-scale transfer of ownership and hence contrary to the national interest?*

Answer: Banking licences are issued by the Australian Prudential Regulation Authority (APRA), an independent regulatory body, under Section 9 of the Banking Act 1959. APRA has stated that relevant factors in the national interest test are that applicants must have the capacity and commitment to conduct banking business with integrity, prudence and competence on a continuing basis.

Since mid-1999 all applications for licences have been considered by the Cross-Divisional Licensing Committee within APRA. This Committee recommends to executive management whether an application should be accepted or rejected. Since this Committee was formed, no licence applications have been refused. Before reaching the Committee, detailed discussions are held with applicants in order to develop workable licensing proposals. In a few instances potential applicants have not been able to satisfy APRA that they can meet the authorisation requirements and their draft applications have not been presented to the Licensing Committee.

The acquisition by a foreign institution of one of the four major banks (NAB, ANZ, Westpac or Commonwealth) would be assessed, like any other proposed foreign takeover or acquisition, in accordance with the Foreign Acquisitions and Takeovers Act 1975, on a case by case basis and on its merits.

Question from Hong Kong

*Question: It is noted that foreign investors holding a share greater than 15% in a financial sector company must obtain the approval of the Treasurer, who will take into account the national interest of the case. The Australian authorities stated that any large-scale transfer of the ownership of the financial system to foreign investors would be contrary to national interest. Is there any benchmark signifying "what is a large-scale transfer"?*

Answer: The term 'large-scale transfer' originates from the Final Report of the Financial System Inquiry. This independent inquiry, inter alia, stated that;

'The Inquiry is of the view there would be no economic disadvantage in some increase in the percentage of foreign ownership of the Australian financial system. Its view in this regard extends equally to the majors as to smaller institutions. Foreign ownership can bring with it a range of benefits for countries, including: injections of capital; access to new skills and technologies; and enhanced competitive pressure on the domestic market. However, the Inquiry does not consider that a large scale transfer of ownership of the Australian financial system to foreign hands would be in the national interest. Such an eventuality could restrict the options for the future development of the financial system and Australia's place in the regional and global economy. The general scheme of regulation of foreign investment is sufficient to meet this objective.'

On 9 April 1997, the Treasurer issued the Government's response to the Final Report in Press Release No.28 (1997), which, inter alia, stated that;

‘The Government has decided to remove the former Government’s blanket prohibition on foreign takeover of any of the major banks. Any proposed foreign takeover or acquisition will need to be assessed, like any other proposed foreign takeover or acquisition, on a case by case basis and on its merits in accordance with the Foreign Acquisitions and Takeovers Act of 1975. In making assessments, however, the Government will apply the principle (as was concluded by the Inquiry) that any large scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest. ‘

**(v) Financial Services**

Question from China

*Question: I am instructed to raise concerns over the market access conditions in Australia in trade in services, including telecom, financial services, air and marine transportation, etc. Foreign equity interests in those areas are subject to an upper limit, usually less than 50%, and qualification examination from administrative agencies of foreign participants is also required. China believes that the market access threshold to those sectors can be further lowered to promote the free trade in the service area, particularly in view of Australia's competitiveness in these sectors as a developed economy. As an illustration for the problems encountered by Chinese services providers, I would like to mention the application to establish a branch in Sydney by the Industrial and Commercial Bank of China (ICBC). The application was turned down on a number of occasions by the financial administration of Australia over considerations including Non-Performing Loan Rate, return on capital, risk management system and rating given by major financial institutions. My Government believes that the reason given by Australia failed to reflect the real operative situation of ICBC and this rejection of the application lacks legitimate ground. We hope that a more objective approach can be employed by the financial administration in Australia in dealing with this issue with a view to an early appropriate solution.*

Answer: In general the services market in Australia is open and liberal as reflected in our schedule of commitments. No restrictions have been placed on the establishment of a commercial presence in the telecommunication sector or the financial services sector provided that potential entrants can satisfy prudential requirements. While not entirely excluding foreign ownership, there are, however, foreign investment limitations in respect of Qantas, Telstra, the four major banks (Commonwealth, Westpac, ANZ and National) and newspapers and television stations (the media). These limitations are judged to be in the national interest.

As regards the more particular case of efforts by the Industrial and Commercial Bank of China (ICBC) to establish a branch in Sydney, Australia would like to advise that banking licences are issued by the Australian Prudential Regulation Authority (APRA), an independent regulatory body, under Section 9 of the *Banking Act 1959*. Since mid-1999 all applications for licences have been considered by the Cross-Divisional Licensing Committee within APRA. This Committee recommends to executive management whether an application should be accepted or rejected. Since this Committee was formed, no licence applications have been refused. Before reaching the Committee, detailed discussions are held with the applicants in order to develop workable licensing proposals. In a few instances potential applicants have not been able to satisfy APRA that they can meet the prudential requirements.

**(b) Insurance**

Questions from Chinese Taipei

*Question: Chinese Taipei noted that foreign insurance companies in Australia face limitations e.g. they are prohibited from establishing new foreign branches of life insurers and from placing life insurance business with foreign insurers. Please explain the reasons for such limitations and whether Australia is considering any deregulation in this area in the new round of GATS negotiations.*

Answer: The prohibition on life insurance branching was introduced in a context of major prudential reform which saw, among other things, the establishment of new, technically detailed liability valuation and capital requirements, and detailed requirements in respect of the equitable allocation of company profits (Surplus) between shareholders and policyholders. In view of these innovative reforms it was considered that satisfactory prudential supervision could best be achieved where the life company is an Australian incorporated entity.

The statement that 'foreign insurance companies in Australia... are prohibited from... placing life insurance business with foreign insurers' may be misleading. Under recent reforms to the Corporations Act 2001, all general insurance and life insurance participants (including insurers, agents and brokers) must comply with a new and uniform licensing, disclosure and conduct regime that applies to most areas of the financial services sector. The new regime is designed to improve consumer protection and market integrity.

Foreign insurance companies also have the opportunity to apply for a licence through the independent regulator, the Australian Securities and Investments Commission. However foreign insurance companies who do not chose to apply for a licence under the new regime can still access the Australian market, though must provide their products through a licensed insurance intermediary (such as an agent or broker).

Under the new regime, the disclosure requirements relating to unauthorised foreign insurers have been reduced for certain consumers. The requirement that clients provided or recommended policies with unauthorised foreign insurers must receive greater disclosure (e.g. be informed that the insurer is not subject to the usual regulation for insurers in Australia) still applies for 'retail' clients. However, sophisticated clients deemed to be 'wholesale' clients, which includes those involved in business, are no longer required to be provided with this information concerning unauthorised foreign insurers.

If Chinese Taipei wishes to make a request in the context of the current GATS Financial Services negotiations, Australia will consider it.

*Question: Paragraph 91 states that in the case of any persons wishing to gain influence over a registered insurance company, the Treasurer's approval is required. The Treasurer may approve an application if it is in the "public interest", and if the persons influencing the company are "fit and proper". Please explain the criteria involved in the "fit and proper" test and explain how the measures comply with GATS requirements.*

Answer: The Insurance Acquisitions and Takeovers Act 1991(IATA) protects the public interests by ensuring that the affairs of Australian registered-insurance companies are carried out in a prudential manner and that unsuitable persons do not gain a position of influence over Australian registered-insurance companies.

Any person (foreign or domestic) wishing to gain influence over a registered insurance company would require the Treasurer's approval under IATA. The Treasurer will approve an application if it is in the 'public interest'. When determining if an application is in the 'public interest', the Treasurer will look at the concentration of economic power in the insurance industry, the national interest and whether persons influencing the company are fit and proper.

When considering if a person is 'fit and proper' the Australian Prudential Regulation Authority (APRA), an independent regulatory body, refers to, the individual's formal qualifications and work experience and demonstrated ability in a previous role as evidence that the person is fit to discharge the functions of the role for which they are being considered.

Fit is formally defined as "qualified, competent, worthy". Propriety is defined as the "correctness of morals and behaviour". This is assessed by reference to: a person's conduct in the discharge of their duties; the reputation and character of the individual including whether the individual has engaged in unlawful or improper conduct or is an undischarged bankrupt

Having a 'fit and proper' criteria is consistent with international regulatory requirements under the Basel Committee's "Core Principles for Effective Banking Supervision", the "Insurance Supervisory Principles" of the IAIS, and the Joint Forum's "Fit and Proper Principles". As a domestic Regulation IATA is exempt from the Market Access provisions of GATS under Article 2 of the Annex on Financial Services.

#### Questions from the European Union

*Question: What is the rationale of not allowing direct branching of foreign life insurance companies, whereas it is allowed in general insurance?*

Answer: The prohibition on life insurance branching was introduced in the context of major prudential reform which saw, among other things, the establishment of new, technically detailed liability valuation and capital requirements, and detailed requirements in respect of the equitable allocation of company profits (Surplus) between shareholders and policyholders. In view of these innovative reforms it was considered that satisfactory prudential supervision could best be achieved where the life company is an Australian incorporated entity.

*Question: What has been the practice of the public interest test for licensing of foreign insurance companies? How many licences have been refused in recent years?*

Answer: Insurance licences are issued by the Australian Prudential Regulation Authority (APRA), an independent regulatory body, under Section 12 of the Insurance Act 1973 and Section 21 of the Life Insurance Act 1995.

Since mid-1999 all applications for insurance licence have been considered the Cross-Divisional Licensing Committee within APRA. This Committee recommends to executive management whether an application should be accepted or rejected. Since this Committee was formed, no licence applications have been refused. Before reaching the Committee, detailed discussions are held with applicants in order to develop workable licensing proposals. In a few instances potential applicants have not been able to satisfy APRA that they can meet the authorisation requirements and their draft applications have not been presented to the Licensing Committee.

*Question: Is there any plan to open to competition third party motor insurance, which is provided under a monopoly regime in several States?*

Answer: Under Australia's National Competition Policy, all State and Territory Governments have committed to review and, where appropriate, reform legislation that restricts competition. As part of this process, States and Territories have reviewed compulsory third party insurance regimes.

Some Governments have introduced competition into the provision of third party insurance, and some are still considering their review recommendations. Where Governments decide to retain a monopoly insurance provider, they must be satisfied that the benefits to the community from restricting competition outweigh the associated costs.

Question from Hong Kong

*Question: Similar to banking and finance services, any foreign investor wishing to gain influence over a registered insurance company needs the approval of the Treasurer, who can approve the application if it is in the public interest. Grateful if the Australian authorities could elaborate on the equity level which foreign investors have to seek the Treasurer's approval. Have any applications been rejected by the Treasurer so far?*

Answer: Equity levels beyond which foreign investors have to seek the Treasurer's approval under the Foreign Acquisitions and Takeovers Act of 1975 and Foreign Investment Policy are set out on the Foreign Investment Review Board website [www.firb.gov.au](http://www.firb.gov.au) <<http://www.firb.gov.au>> .

In addition, any person wishing to exceed a 15% equity limit in, or to gain influence over a registered insurance company would require the Treasurer's approval under the Insurance Acquisitions and Takeovers Act 1991 (IATA). The IATA applies equally to foreign and domestic persons and protects the public interests by ensuring that the affairs of Australian registered-insurance companies are carried out in a prudential manner and that unsuitable persons do not gain a position of influence over Australian registered-insurance companies.

During the recent re-authorisation period, 29 insurers either had their authority revoked or went into run-off. Of these, 16 were foreign-owned and made this decision either: as part of a restructure their subsidiaries in Australia; as part of a head office decisions to cease business worldwide or in Australia; or due to mergers of foreign parents. In addition, nine insurers have been placed on transition plans in order to increase their capital to the higher levels required under recent legislative changes. Three of these insurers were foreign owned.

Question from Japan

*Question: The report states that clients that are provided or recommended policies with unauthorized foreign insurers must be informed that the insurer is not subject to the usual regulation for insurers in Australia, and that consideration should be given to the need for further information about the insurer's country of incorporation and the legal framework for dispute resolution. Does the same condition apply to the reinsurance and MAT-insurance sectors, in which Australia commits the cross-border supply?*

Answer: Yes, however it should be noted that these disclosure requirements are exempt from GATS under the General Exemptions outlined in Article XIV Subsection (c)(i).

**(vi) Communications**

**(a) Telecommunications**

Questions from Canada

*Question: Paragraph 94 mentions that the Government of Australia has reduced its ownership of Telstra to 51.1% and plans to sell its remaining equity at some future point. Please indicate when this may take place.*

Answer: The Government intends for Telstra to be fully privatised. However, the Government has undertaken not to proceed with the further sale of Telstra until it is fully satisfied that arrangements are in place to deliver adequate telecommunication services to all Australians. An assessment of such arrangements is currently underway, and is due for completion by November 2002.

Questions from Chinese Taipei

*Question: Chinese Taipei welcomes Australia's deregulation in the telecommunications sector made since 1997. However, could Australia please provide the following: (1) the timetable for the opening of the market to foreign investment, (2) the timetable for the privatization of Telstra, and (3) information on whether Australia is in the process of further deregulating the restrictions on the foreign ownership of Telstra's equity.*

Answer: With the exception of foreign investment in Telstra, investment in the Australian telecommunications sector is subject only to oversight by the Foreign Investment Review Board.

*Question: Referring to paragraph 96, investment proposals in telecommunications above the notification thresholds are dealt with on a case-by-case basis and are approved unless judged contrary to the "national interest". Chinese Taipei would appreciate Australia providing information regarding its justification of this under the requirements of GATS Article VI.*

Answer: Australia's foreign investment policy is administered in a transparent and impartial manner. It is reasonable and objective. We have a policy summary which is widely accessible and identifies exactly what the policy is, as well as the Foreign Investment Review Board's (FIRB) procedures. The summary distinguishes exempt proposal types from those requiring approval and identifies our sensitive sectors.

In terms of telecommunications, the policy clearly identifies the restrictions on foreign investment in Telstra and is very liberal in terms of acquisitions of other businesses in the industry and the establishment of new businesses in the industry.

Proposals in all sectors can expect to be approved unless considered contrary to the national interest.

The FIRB has recently streamlined the application process, with new easy-to-use application forms. An online application system will also be available soon.

*Question: Could Australia please explain the reasons for its institutional setting for the telecommunications sector into ACA, ACIF and TIO and whether or not the setting would result in difficulties in terms of telecommunications market access.*

Answer: The Australian regime provides for:

- Access and competition regulation (by the Australian Competition and Consumer Commission);
- Standards setting and quality of service monitoring (by the Australian Communications Authority);
- Industry development and administration of technical and operating arrangements (by the Australian Communications Industry Forum); and
- An independent, industry-funded consumer complaints watchdog (through the Telecommunications Industry Ombudsman)

These agencies collectively promote the continued development of a competitive, fair, efficient and consumer-focussed telecommunications industry and do not impede access to the Australian telecommunications market. As an indication of this, there are currently 81 active licensed carriers in Australia (30 June 2002 figures).

Questions from the United States

*Question: Please provide details on the time frame in which Australia plans to full privatize Telstra and whether these plans also include eliminating foreign ownership restrictions in Telstra.*

Answer: The Government intends for Telstra to be fully privatised. However, the Government has undertaken not to proceed with any further sale of Telstra until it is fully satisfied that arrangements are in place to deliver adequate telecommunication services to all Australians. An assessment of such arrangements is currently underway, and is due for completion by 8 November 2002.

The current statutory limits on foreign ownership of Telstra are 35% (of the 49.9% of Telstra which is privately held) and 5% of the privately held equity for individual or associated group foreign investors. The Government has stated that foreign equity limits would continue to be in place on full privatisation of Telstra.

*Question: Under its Reference Paper obligation, Australia is obliged to require its major supplier (Telstra) to make its interconnection agreements publicly available, or to make available a reference interconnection offer. Has Australia imposed these requirements on Telstra?*

Answer: Telstra is required under Part XIC of the *Trade Practices Act 1974* to supply its “declared” services to access seekers (*Section 152AR*). Failing agreement with an access seeker, Telstra must supply a declared service on terms and conditions set out in an “access undertaking”<sup>2</sup> or, where there is no such undertaking in effect, on terms and conditions determined by the regulator (*Section 152AY*), the Australian Competition and Consumer Commission.

The regulator has published indicative terms and conditions for key declared services in the form of access pricing principles and an approved access code under *Section 152BE*. The pricing principles and the access code inform the market of the regulator’s indicative views on relevant terms and conditions for interconnection, including price.

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<sup>2</sup> An access undertaking is a written undertaking, approved by the regulator under *Section 152BV*, setting out terms and conditions upon which a carrier will comply with its access obligations.

*Question: With regard to its Reference Paper obligation, does Australia impose a time limit for resolution of interconnection disputes between Telstra and its competitors?*

Answer: The Australian regulatory regime does not specify a timeframe for interconnection dispute resolution. The Australian regime is based upon a negotiate/arbitrate model which is designed to encourage commercial negotiation of interconnection agreements. If parties cannot reach a commercially negotiated outcome they have recourse to arbitration by the regulator. Although there is an absence of a particular timeframe for these arbitrations there is an obligation on the regulator to resolve disputes as quickly as possible. This is considered to be an effective way of balancing the need for quality of regulatory decision making with the expediency of decision making desired by parties. In addition there are mechanisms within the regulatory framework, such as interim determinations, that the regulator can use to ensure that interconnection can take place even if there is still a dispute subject to arbitration.

*Question: Since Australia has often claimed that Internet access and transport is a basic telecommunications service, does it require Telstra, its major supplier of basic telecommunications services, to offer competing Internet Service Providers (ISPs) cost-based interconnection, or to publish its Internet peering arrangements with other ISPs? If not, why not?*

Answer: No. Australia's approach to interconnection is explained at Question 2 above. Internet Service Providers have access to the same negotiating processes and arbitral mechanisms in the event of an interconnection dispute. Accordingly, the Australian interconnection regime treats all carriage service providers on the same terms.

**(b) Broadcasting and audiovisual**

Question from Japan

*Question: For the purpose of upholding identity, character and the cultural diversity of Australia, there exists a transmission quota for Australian programmes and advertisements, as well as government support for the Australian film industry. Please provide information on the criteria required to be regarded as Australian programmes, advertisements or films which can uphold the Australian identity, character and cultural diversity.*

Answer: Under the Australian content standard (ACS) that applies to free-to-air commercial television licensees, an Australian program must meet the 'creative elements test' set out in Part 3 of the ACS. It is based on the premise that if Australians have creative control, the programs they make will be Australian.

In summary, the test requires Australians in the following roles:

- Producer or producers (additional non-Australian co-producers and executive producers permitted);
- Either writer or director;
- At least 50 per cent of the leading actors (including voice actors and on-screen presenters); and
- 75 per cent of major supporting cast in a drama program.

Under the ACS, all programs other than Australian news, current affairs and sports programs filmed overseas must be produced and post-produced in Australia.

The Australian content in Advertising Standard similarly requires Australian creative control through the following positions or activities:

- the producer of the advertisement (other than a producer employed by the advertising agency);
- the principal director;
- the director of photography;
- the writers of the script and storyboards;
- the visual editing;
- the production of the sound track, including recording, sound editing and mixing;
- the role of featured talent appearing in the advertisement;
- all performance, including voice over, on the sound track; and
- the music used in the advertisement.

In order to be consistent with the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement, the ACS and the Advertising standard recognise New Zealand programs and Australian/New Zealand programs equally with Australian programs for the purposes of compliance.

Questions from Chinese Taipei

*Question: New Zealand programmes and Australian/New Zealand programmes are counted as Australian in the local-content requirements of the broadcasting services sector. What are the identification criteria in this regard? If companies of other countries co-produce programmes with Australian companies, would these programmes be counted as foreign? What qualifies as an Australian/New Zealand programme?*

Answer: In order to be consistent with the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement, the Australian content standard (ACS) that applies to free-to-air commercial television licensees, and the Australian content in Advertising standard, recognise New Zealand programs and Australian/New Zealand programs equally with Australian programs for the purposes of compliance.

Under the ACS, an Australian program must meet the 'creative elements test' set out in Part 3 of the ACS. It is based on the premise that if Australians have creative control, the programs they make will be Australian.

In summary, the test requires Australians in the following roles:

- Producer or producers (additional non-Australian co-producers and executive producers permitted);

- Either writer or director;
- At least 50 per cent of the leading actors (including voice actors and on-screen presenters); and
- 75 per cent of major supporting cast in a drama program.

Under the ACS, all programs other than Australian news, current affairs and sports programs filmed overseas must be produced and post-produced in Australia.

Co-productions provide a means for Australian producers to join with producers in other countries to make films and high budget television productions that can access both nations' quotas and production support mechanisms. The Commonwealth Government and the Australian Film Commission (acting as an 'authority' of the Government) have entered into co-productions treaties or arrangements with the United Kingdom, Canada, Italy, France, Israel, Northern Ireland, Germany, and New Zealand. Television drama produced under unofficial co-production arrangements must meet the creative elements test to qualify as Australian content for content quota purposes.

*Question: According to Article II of GATS, Annex of Article II Exemptions, the exemption period for MFNs should not last in principle for more than 10 years. For how long does Australia intend to list audiovisual services as an exemption? Will the exemption period be shortened? Under what conditions will Australia maintain audiovisual services on the list of exemptions? In the current round of negotiations, will Australia consider opening up the audiovisual market?*

Answer: The MFN exemption that Australia holds in audiovisual services relate to international film co-productions and measures taken to respond to unreasonable actions by another Member with an MFN exemption.

In response to Chinese Taipei's questions concerning Australia's intentions to liberalise the sector, it should be noted that Australia's audiovisual sector is critical to the achievement of our key social and cultural objectives. We therefore approach negotiations to liberalise the audiovisual sector with some degree of caution.

*Question: The national broadcasters in Australia are required to televise live certain designated events. Apart from sporting events, what other kinds of programmes are included under "designated events"? For what purposes does Australia require the national broadcasters to televise certain designated events live? Do the programmes of the live designated events have to be Australian?*

Answer: Anti-hoarding rules are contained in Part 10A of the *Broadcasting Services Act 1992* (BSA). The main purpose of these provisions is to maximise the opportunities for full and live free-to-air coverage of major events, particularly sporting events, by encouraging commercial television broadcasting licensees and national broadcasters to use, rather than hoard, any rights acquired by them to live television coverage of such events.

The anti-hoarding provisions require commercial broadcasters with live broadcast rights to a designated event or series of events to offer to the ABC and/or SBS (for a nominal payment), within a specified time, any rights they do not propose to use by televising those events live themselves. Where one national broadcaster does not intend to fully televise a designated event live, the offer of excess rights must be made to the other national broadcaster. Similarly, the national broadcasters are required to offer such unused rights to each other.

The list of designated events comprises domestic and international sporting events in 11 categories including cricket, tennis, golf, motor sports and the football codes. There are currently no non-sporting events in the list of designated events.

*Question: Could Australia please explain whether cable television broadcasters must carry the programmes of the free-to-air television broadcasters. If so, are they required to bear the costs, and on what basis?*

Answer: Australia does not require cable television broadcasters to carry the programs of the free-to-air television broadcasters.

*Question: Australia, on the basis of preserving its cultural heritage, imposes restrictions on foreign-produced TV commercials, requiring that at least 80% of advertising time broadcast each year by commercial television licensees between the hours of 6am and midnight must use advertisements produced in Australia. Furthermore, Australia has not set the broadcasting of TV advertising services in the schedule of Specific Commitments on Services. Chinese Taipei would appreciate receiving Australia's explanation of the relationship between the production of TV commercials and the preservation of its cultural heritage. It would also like to know whether Australia has any plan to open up the services market related to the broadcasting of TV advertising and to cancel the requirements for Australian content in the programmes? And if so, is there a timetable?*

Answer: Audiovisual services, and particularly television, are the most immediate and pervasive media for creative expression and mass communication. They play an integral role in developing and reflecting a sense of national and cultural identity within Australia's multicultural society. They provide opportunities for almost universal access by Australians to their own experiences and narratives.

The legitimacy of such cultural considerations is recognised by many Members.

It is in the national interest to ensure that Australians have access to their own images and stories in the cinema and on television, whether through programs or commercials. Therefore, there are no plans to further open up the services market relating to the broadcasting of television advertising, or to cancel the requirement for Australian content in programming.

## **(vii) Transport**

### Question from Norway

*Question: Shipping is by far the most important sector for Norway in the bilateral trade with Australia. Norway therefore appreciates the Australian efforts and support for inclusion of maritime transport in the WTO/GATS in a proper way, as well as the substantial Australian commitments in this sector in the schedule under the GATS agreement.*

*We have, however, information indicating that the Australia-New Zealand trade has been subject to some trade union measures, which restricts the competition to Australian and New Zealand vessels. If such measures prevail they would undermine the commitments made by Australia under the GATS agreement for maritime transport. It would therefore be of interest for us to know if maritime transport between Australia and New Zealand is without restrictions. More specifically, would Australian authorities have the adequate legal possibility to remedy such a situation in order to provide for an open market situation in this particular trade?*

Answer: In the past an unofficial accord existed between maritime unions in Australia and New Zealand that was aimed at reserving trans-Tasman cargoes to ships manned by Australian or New Zealand crews. That accord, which was a purely inter-trade union arrangement, has since completely broken down. This was confirmed in 1998 after the Minister then responsible for maritime transport referred the matter investigation by the Australian Competition and Consumer Commission. Consequently, there are no restrictions of this nature in maritime transport between Australia and New Zealand.

Australia is confident that the *Trade Practices Act 1974* provides adequate remedies in the event of any attempt to create another such agreement.

**(vii) Transport**

**(a) Shipping**

Question from Chinese Taipei

*Question: Referring to paragraph 109, coastal operations are carried out through a system of licences and permits that are available to both Australian and international operations. Furthermore, licences are not restricted to Australian registered, owned or crewed vessels and may be issued to a ship of any flag, regardless of crew nationality or ownership. Could Australia please explain why the cabotage is not included in Australia's schedule of the Maritime Transport Service Sector of the GATS commitments. Chinese Taipei would be grateful if Australia would provide details of the criteria applying to ships with foreign flags as regards their carrying out coastal operations.*

Answer: Strictly speaking, Australia does not have a "cabotage" regime as such. Foreign flag ships may engage in the Australian coasting trade provided they obtain either a license or a permit.

A foreign flag ship may obtain a coasting trade licence by making application to the Maritime Regulation section of the Department of Transport and Regional Services and paying the requisite fee (currently A\$22). Licenses are issued subject to two conditions: 1 that the crews are paid Australian rates of pay while the ships are engaging in the Australian coasting trade; and 2 that the crew has access to any library provided for passengers unless there is a separate library provided for the crew. It is an offence (penalty A\$5,000) if the master, owner and agent is receiving, directly or indirectly, any subsidy or bonus from the Government of a country other than Australia (or will receive such a subsidy or bonus, or has in the 12 months immediately preceding the ship engaging in the coasting trade).

A foreign flag ship may apply for a coasting trade license covering a single voyage or for a period of time. A permit may be granted only if there is no licensed ship available for the cargo or if the service provided by licensed ships is inadequate, and if the issue of a permit is in the public interest. To ensure only ships of good quality obtain permits, applicants for permits for tankers or bulk carriers must supply a ship report that is less than 6 months old. Permits may be issued subject to certain conditions. Single Voyage Permits (the majority of permits) are issued with a single condition: that within 14 days of sailing, the permit holder should complete a Statement of Cargo Actually Carried, and return it to the Department of Transport and Regional Services. Continuing Voyage Permits, issued for up to 6 months for specified ports, may contain a variety of other conditions.

Question from Japan

*Question: According to Australia's schedule of commitments, Part X of the Trade Practice Act 1974 allows Australian flag operators to apply to the Trade Practices Commission to examine whether conference members and non-conference operators with substantial market power are hindering Australian flag shipping operators from engaging efficiently in the provision of outward liner cargo services. Japan would like to know how many examinations have been held so far, as well as the results of respective examinations.*

Answer: There have been no cases of the Australian Competition and Consumer Commission (formerly the Trade Practices Commission) enquiring into whether parties to a conference agreement or a non-conference carrier with substantial market power are hindering Australian flag shipping operators from engaging efficiently in the provision of outwards liner cargo shipping services to an extent that is reasonable.

Question from the European Union

*Question: The report mentions that foreign investment is unrestricted up to 49% for companies operating of airports services. Does this also apply to services provided in airports as well - such as groundhandling? Has this option been used?*

Answer: There are no sector-specific foreign investment restrictions applying to ground handling in airports."

**(b) Air transport**

Question from the United States

*Question: We note that the portions of Para 111 of the Secretariat's report that address Australia's negotiation of open skies agreements and the United States could be made more precise. First, the United States and Australia signed a cargo-only skies agreement on Dec. 14, 1999. We would like to make note of this fact for the record.*

*Another portion of Para 111 says, "...Australia intends to negotiate other open skies arrangements when this is in the national interest; discussions are being held with Singapore, the United Kingdom, and the United States". We would like to note for the record that these negotiations are not currently active.*

Answer: Negotiations with these countries are active.

**(viii) E-commerce**

Question from Canada

*Question: According to Paragraph 116, Australia considers that multilateral trade rules must encourage e-commerce development, while discouraging "burdensome, trade-restrictive regulation and anti-competitive practices". Please clarify how Australia plans to approach these objectives in its participation in the WTO Work Programme on Electronic Commerce.*

Answer: As with other aspects of the Work Program on Electronic Commerce, on the whole, the challenges posed for competition policy are simply accentuated forms of the general competition

issues faced by WTO members. Australia looks forward to continuing to participate actively in the Work Program on Electronic Commerce and also the Working Party on Trade and Competition.

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