

ARTHUR ROBINSON & HEDDERWICKS  
LIBRARY

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF BILL 1995

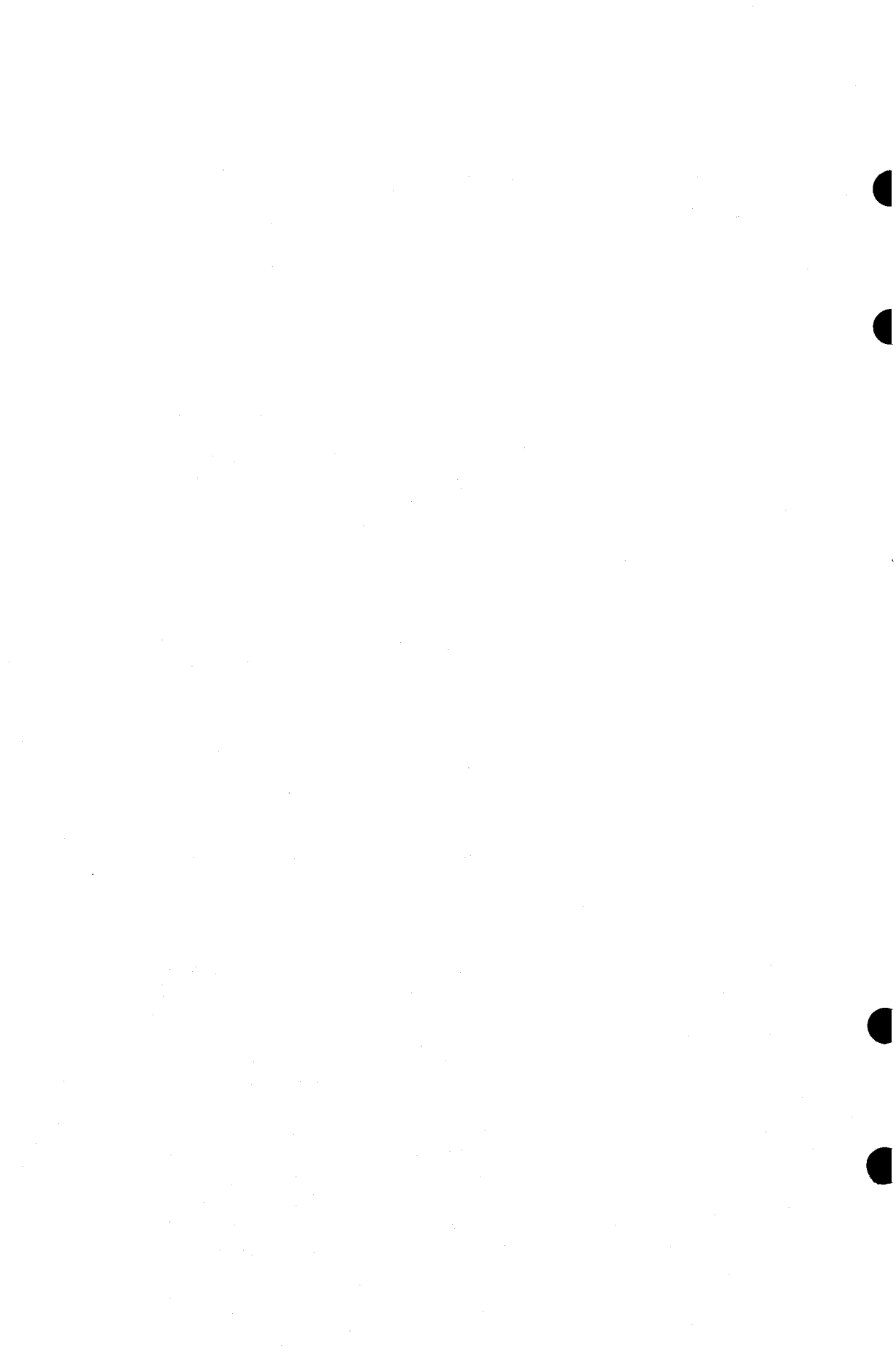
EXPLANATORY MEMORANDUM

(Circulated by the Authority of the  
Minister for Industry, Science and Technology  
Senator the Honourable Peter Cook)

75273 Cat. No. 95 5483 1 ISBN 0644 34234X



9 780644 342346



## GENERAL OUTLINE

This Bill proposes the introduction of a new Customs Tariff based on the Harmonized Commodity Description and Coding System (HCDCS) which is the international tariff system sponsored by the World Customs Organization (WCO) in Brussels. Australia has been a signatory to the HCDCS since 1987. The *Customs Tariff Act 1987*, which is repealed by this Bill, was also based on the HCDCS.

The Bill comprises 23 sections and 4 Schedules.

Many of the sections contained in the *Customs Tariff Act 1987* have been redrafted to ensure greater clarity or to incorporate ad hoc changes made since 1987 in a more logical sequence. The sections have also been renumbered. The changes to the previous provisions contained in the 23 sections are of an administrative nature and their intent has not been altered by these amendments.

### Schedule 1

#### Classes of countries and places in relation to which preferential rates of duty apply

This Schedule lists those countries and places which, for the purposes of the Bill, are Forum Island Countries or Developing Countries and Places treated as Developing Countries. The changes made in this Bill are to categorise countries which are eligible for similar preferential rates of duty in like groups.

### Schedule 2

#### Rules for the Interpretation of Schedule 3

These internationally applicable rules are used to determine the tariff classification of goods within Schedule 3.

### Schedule 3

This is the Schedule used to determine the classification and rates of duty applicable to imported goods. The systematic structure of the Schedule follows that of the HCDCS done at Brussels in 1983. The first six figures of any classification are taken from the international system with the seventh and eighth figures inserted by Australia. This provides for a separate structure for goods within the same tariff groupings; by this means Australia is able to impose different rates of duty for domestic purposes.

The main amendments are the incorporation of approximately 350 classification changes agreed by signatory countries to the HCDCS. Most member countries will introduce the changes on 1 January 1996, however, with the current Australian tariff phasing regime reaching its completion on 1 July 1996, it was decided to delay implementation in Australia until that date. The Government has decided to maintain the existing tariff levels. To achieve this, it has been necessary to provide some additional 200 national tariff splits to those recommended by the WCO.

The changes to Schedule 3 are further explained in the Summary of Amendments issued in conjunction with the tabling of this Bill and should be read as one with this Explanatory Memorandum.

The Government will provide an administrative appeals mechanism by which interested parties may appeal situations where the rate of duty on goods changes as a result of the enactment of the Bill. The appeals will be accepted for twelve months after the implementation of this Act (up to 30 June 1997).

#### Schedule 4

Schedule 4 of the Customs Tariff provides concessional rates of duty for goods imported by prescribed persons and authorities, prescribed classes of goods and goods for use in certain industries or certain end uses. The text of some of the items in this Schedule has been reworded to provide better defined and administerable concessions.

These changes are explained in the Summary of Amendments issued in conjunction with the tabling of this Bill and should be read as one with this Explanatory Memorandum.

#### FINANCIAL IMPACT STATEMENT

The amendments provided in the legal provisions and Schedules 1 and 3 are revenue neutral. There appear to be unquantifiable revenue savings through the changes to Schedule 4.

## CUSTOMS TARIFF BILL 1995

### NOTES ON SECTIONS

A Bill for an Act relating to duties of Customs.

#### PART 1 - PRELIMINARY

##### Short title

Section 1 is the name of the new Act.

##### Commencement

Section 2 provides a commencement date of 1 July 1996.

##### General Administration of Act

Section 3 provides that the Chief Executive Officer has the general administration of the Act.

##### Definitions

Section 4 provides an explanation of the words and terms used in the Act.

##### Headings in Schedule 3

Section 5 This section contains similar provisions to section 6 of the *Customs Tariff Act 1987*.

It defines headings as having either 4 digits in the first column or 8 digits in the first column not opposite to a dash or dashes in the second column. It specifies that headings can be subdivided into subheadings and that these subheadings can be further subdivided. It further defines subheadings as having 5, 6, 7, or 8 digits in the first column opposite to a dash or dashes in the second column.

A hierarchical structure is necessary in Schedule 3 as the Interpretation Rules (in Schedule 2) require that in classifying goods, headings be compared with other headings and not with subheadings, and that a subheading can only be compared with other subheadings of that heading at the same level (i.e. with the same number of dashes in the second column).

##### Items in Schedule 4

Section 6 This section contains similar provisions to section 7 of the *Customs Tariff Act 1987*.

It provides for the structure of the concessional schedule, Schedule 4. However, unlike Schedule 3, there is no hierarchical structure to the items of Schedule 4. An item in Schedule 4 applies to goods if the goods are described in the second column of that item (Section 9 applies).

### Tariff classification

Section 7 This section contains similar provisions to section 9 of the *Customs Tariff Act 1987*.

The Interpretation Rules are described in Schedule 2 of this Bill. These rules govern determination of the heading of Schedule 3 that applies to goods, and if that heading is subdivided into subheadings, the subheading of that heading that applies to the goods.

This section provides that the tariff classification under which those goods are classified is that heading or subheading which, by application of the Interpretation Rules, applies to the goods and which contains in its third column a rate of duty.

### Rules for classifying goods in Schedule 3

Section 8 This section contains similar provisions to section 10 of the *Customs Tariff Act 1987*.

The Interpretation Rules are an integral part of the Harmonized System Convention and have been drafted so that their application will ensure internationally consistent tariff classification of goods in the Harmonized System Nomenclature. Australia, as a national administration, is required to apply the rules and the World Customs Organization has provided administrations with Explanatory Notes to assist in this regard. The Explanatory Notes provide explanations and examples of the intended coverage of headings and subheadings of Schedule 3 and are therefore to be used as a guide in the classification of goods.

### Application of Schedule 4

Section 9 This section contains similar provisions to section 11 of the *Customs Tariff Act 1987*.

Schedule 4 provides a number of concessional items for goods imported by-

- Prescribed Persons, Bodies, Authorities or Countries;
- Prescribed Classes of Goods; and
- Goods used for Specified End-use.

Unlike Schedule 3, there is no hierarchy to Schedule 4. An item of Schedule 4 applies to goods if the goods are described in the second column of that item.

Recourse may only be had to Schedule 4 if an item of Schedule 4 applies to the goods and the amount of duty payable under that item is less than the duty that would have been payable under Schedule 3.

Subsection (3) contains certain definitions used in the *Customs Act 1901* for the purpose of issuing Tariff Concession Orders. The definitions ensure parity between the *Customs Act 1901* and this Act.

Subsection (4) ensures that the definitions continue to apply to arrangements which were in place prior to 1 April 1993 in relation to Commercial Tariff Concession Orders.

#### Rates of duty - ad valorem duties

Section 10 This section contains similar provisions to section 13 of the *Customs Tariff Act 1987*.

Unless the contrary intention appears, a reference to a percentage in relation to goods or in relation to a part, component or ingredient of goods, is a reference to that percentage of the value of the goods, or of that part, component or ingredient of the goods, as the case may be.

"Value" defined in Section 4 of this Bill means the value of the goods for the purpose of this Section.

#### Certain words etc. are rates of duty

Section 11 This section contains similar provisions to section 14 of the *Customs Tariff Act 1987*.

The section provides that words or words and figures (including the word "Free") to be rates of duty unless the contrary intention appears.

This section is required as sections 17 and 19 provide that the amount of duty payable shall be ascertained by reference to the rates of duty.

#### Rates of duty - phasing rates

Section 12 This section contains similar provisions to section 16 of the *Customs Tariff Act 1987*.

It provides that where a duty rate or a number of duty rates are set out in the third column adjacent to the word "From" and a date in the second column, those duty rates will only be operative from the date specified adjacent to them. Those rates become inoperative on the next earliest date

following the word "From" set out adjacent to another duty rate or other duty rates. Only one set of duty rates may be operative at any one time.

Classes of countries and places in relation to which special rates apply

Section 13 This section contains similar provisions to section 17 of the *Customs Tariff Act 1987*.

It provides that countries listed in Schedule 1 shall be eligible for special rates of duty. Schedule 1 contains three separate categories being -

- Forum Island Countries specified in Part 1;
- Developing Countries and Places treated as a Developing Country which are subject to the phase-out of the 5% margin of preference are specified in Part 2; and
- Developing Countries and Places treated as a Developing Country which have retained the 5% margin of preference are specified in Part 3.

Schedule 1 also lists the abbreviations for those countries (required by section 15).

When goods are the produce or manufacture of a particular country or place

Section 14 This section contains similar provisions to section 18 of the *Customs Tariff Act 1987*.

This section provides that goods are to be treated as the produce or manufacture of a country or place if and only if they meet the conditions prescribed in Division 1A of Part VIII of the *Customs Act 1901*.

Application of rates of duty in relation to countries and places

Section 15 This section is a redraft of section 19 of the *Customs Tariff Act 1987*.

Section 19 of the previous Act was comprehensively amended in 1993 to provide for the phasing out of the margin of preference on certain goods from countries now listed in Part 2 of Schedule 1. The amendment created a new category for the tariff treatment of Developing Countries.

Section 15 of this Bill now takes account of the 1993 amendment. This section provides that a rate of duty will apply in relation to New Zealand, Papua New Guinea, Forum Island Countries, Hong Kong, Republic of Korea, Singapore, Taiwan Province, every Developing Country specified in Parts 2 and 3 of Schedule 1, or Canada if the appropriate abbreviation is specified in relation to that rate. It also provides in relation to a particular Forum Island Country or Developing Country if the abbreviation for that country is specified, that rate of duty applies in relation to that country.



## PART 2 - DUTIES OF CUSTOMS

### Imposition of duties

Section 16 This is a similar section to section 21 of the *Customs Tariff Act 1987* which provides for a definite commencement date for the section.

The purpose of this section is to establish that the duties of Customs under this Act are imposed on goods entered for home consumption on or after 1 July 1996 on -

- goods imported into Australia on or after the commencement day; and
- goods imported into Australia before the commencement day and entered, or again entered, for home consumption on or after the commencement day.

### Calculation of duty

Section 17 This is an expanded version of section 22 of the *Customs Tariff Act 1987* which complements the changes made in section 15.

This section specifies the rate of duty which is applicable to a particular country or group of countries. Subject to sections 18, 19, 21 and 23 -

- Subsection 17(a) provides that the general rate of duty will apply to all goods the produce or manufacture of a country that is not a Preference Country;
- Subsections 17(b), 17(c), 17(e), and 17(h) provide that goods the produce or manufacture of New Zealand, Papua New Guinea, of a Forum Island Country or a Developing Country listed in Part 3 of Schedule 1 respectively will be free of duty unless a rate of duty is specified in relation to that Preference Country in the third column of Schedule 3;
- Subsection 17(d) provides that the general rate of duty applies to goods which are the produce or manufacture of Canada unless a rate of duty is specified in relation to Canada in the third column;
- Subsection 17(f) provides that the general rate of duty applies to goods which are the produce or manufacture of Hong Kong, Republic of Korea, Singapore or Taiwan Province unless a rate of duty is specified in relation to Preference Countries listed in Part 2 of Schedule 1 or a rate of duty is specified in relation to Hong Kong, Republic of Korea, Singapore or Taiwan Province;
- Subsection 17(g) provides that goods the produce or manufacture of a Developing Country, other than Hong Kong, Republic of Korea,

Singapore or Taiwan Province, listed in Part 2 of Schedule 1 will be free of duty unless a rate of duty is specified in relation to those Preference Countries.

#### Rates for goods with constituents

Section 18 This section contains similar provisions to section 24 of the *Customs Tariff Act 1987*. The new section contains clarifying words to explain constituents of goods in subsection 18(3).

It provides that, subject to sections 19, 21 and 23, where a tariff classification in Schedule 3 contains phrases that describe goods and which begin with the words "In respect of", the duty in respect of the whole goods is the sum of the duty payable on each of the constituents described after the words "In respect of".

Subsection (2) provides that the words "In respect of remainder" describe all goods of the classification within which it appears other than goods to which another phrase beginning with "In respect of" refers.

Subsection (3) provides that where goods are described after the words "In respect of", the duty applicable to those goods worked out in accordance with sections 22 and 23 shall be worked out as if -

- the tariff classification of the whole goods were the tariff classification that contains the phrase beginning with the words "In respect of"; and
- the duty rate or duty rates specified in the third column of that tariff classification in relation to those goods to which the phrase relates were the only rate or rates set out in that classification.

#### Calculation of concessional duty

Section 19 This section contains similar but expanded provisions to section 25 of the *Customs Tariff Act 1987*. This section has been expanded to cater for the different categories of Preference Countries.

It provides that, subject to sections 21 and 23, where an item in Schedule 4 applies to goods and the amount of duty applicable to the goods under that item is less than the amount of duty that would be applicable by virtue of sections 17 and 18, then the duty payable is the amount payable, if any, under that item in Schedule 4.

Subsection (2) provides that the duty will be worked out by the same method as outlined in section 17.

#### Indexation of rates of duty

Section 20 This section is similar to section 26 of the *Customs Tariff Act 1987*.

It provides for the automatic indexation of rates of duty applicable to certain alcohol, tobacco and petroleum products based on bi-annual movements of the Consumer Price Index. The primary mechanism is contained within section 6A of the *Excise Tariff Act 1921*. This section requires that movements of the excise duty rates caused by the operation of section 6A be mirrored by a similar movement in the appropriate excise component of Customs duty.

The table in section 20(1) relates to those goods subject to Consumer Price Indexation movements.

Subsection (3) requires the Chief Executive Officer publish for the information of the public a notice in the Gazette advertising the new rates and the goods to which they apply either on, or as soon as practicable after, the day the rates are changed.

#### Duty where goods consist of certain containers and certain contents

Section 21 These are the same provisions that are contained in section 27 of the *Customs Tariff Act 1987*.

It provides that if goods consist of a container and contents which, if manufactured in Australia, would be subject to Excise duty and under the Interpretation Rules the container and contents would be classified under the classification appropriate to the container as if imported separately, then the duty payable on the goods is the duty that would be payable if the container and contents had been imported separately.

This section is a revenue protection measure. Because of the decorative nature of certain containers, application of the Interpretation Rules might lead to the classification of such containers imported containing, for example, spirits in the classification appropriate to the container. In the absence of this provision, such a classification would result in the Excise equivalent duty that would otherwise be payable on the spirits not being paid.

### PART 3 - MISCELLANEOUS

#### Repeal

Section 22 This section is similar to section 28 of the *Customs Tariff Act 1987* but provides in subsection (1) for the repeal of the 1987 Act.

Subsection (2) provides that despite the fact that goods were imported into Australia before 1 July 1996, duties of Customs are not payable in respect of those goods under an Act repealed by this Act if duties of Customs are imposed on those goods by section 16. This subsection ensures that Customs duty will not be levied twice on goods.

Subsection (3) provides that the Act repealed by subsection (1) as in force immediately before the commencement day shall be deemed to have been amended in accordance with the Customs Tariff Proposals introduced into the House of Representatives in 1995 and 1996. While Parliament is sitting it is usual practice to vary the duty rates applicable to goods by using the device of Customs Tariff Proposals introduced into the House of Representatives. Customs Tariff Proposals do not amend the Customs Tariff Act but rather enable the collection of the revised duties until an amendment of the Customs Tariff Act is made (or for a maximum period of twelve months).

As this Bill comes into operation on 1 July 1996, any Proposals introduced into the House of Representatives between the last Customs Tariff Amendment Bill of 1995 and the commencement day of this Bill will not have been enacted before the *Customs Tariff Act 1987* is repealed. To enact those Proposals in the normal manner would require passage by the Parliament of a Bill to amend a repealed Act. Subsection (3) removes the necessity by deeming such Proposals to have been enacted.

Subsection (4) provides the means for either House of Parliament to reject a particular Customs Tariff Proposal.

### Transitional

Section 23 This section contains similar provisions to section 29 of the *Customs Tariff Act 1987*.

This section caters for certain goods entered both before and after the commencement day of this Bill. It ensures that there is no conflict between this legislation and the *Customs Act 1901* by providing that where goods are entered for home consumption both before and after the commencement day, the duty payable on the goods is the duty that would have been payable when the goods were first entered for home consumption.

### SCHEDULE 1

#### CLASSES OF COUNTRIES AND PLACES IN RELATION TO WHICH SPECIAL RATES APPLY

This Schedule contains similar provisions to Schedule 1 to the *Customs Tariff Act 1987*. The list of the countries whose goods are able to claim preferential rates of duty were displayed in two Parts in the *Customs Tariff Act 1987*. Because the treatment of Developing Countries was changed in 1993, this Schedule now displays the list of countries in three Parts.

SCHEDULE 2GENERAL RULES FOR THE INTERPRETATION OF SCHEDULE 3

Except for the heading to this Schedule, the provisions are the same as for the *Customs Tariff Act 1987*.

SCHEDULE 3CLASSIFICATION OF GOODS AND GENERAL AND SPECIAL RATES OF DUTY

This Schedule has been the subject of about 350 changes agreed by signatory countries to the HCDCS. By the application of national tariff splits to preserve the rates of duty previously legislated that number has risen to some 550 changes. There are five commodities where existing duty rates were not able to be preserved or there is some doubt that the rates were not maintained. After extensive industry consultation, a compromise situation has been agreed. These commodities are:

- . Food preparations containing cocoa - Chapter 18 or 19;
- . Tyre cord fabrics of woven glass fabrics - Chapter 70;
- . Graded or ungraded pearls, whether or not strung for the convenience of transport - Chapter 71;
- . Input/output units for computers - Chapter 84; and
- . Waste and scrap of batteries of various Chapters.

Should any anomalous situation become apparent after the introduction of this Bill and prior to the implementation of the new Act on 1 July 1996, suitable alterations will be made by Customs Tariff Proposals to rectify the situation.

There are also a small number (about 30) amalgamations of national tariff subheadings where the rates of duty were the same. This action will make it easier for importers to classify their goods.

The changes to Schedule 3 are further explained in the Summary of Amendments issued in conjunction with the tabling of this Bill and should be read as one with this Explanatory Memorandum.

SCHEDULE 4CONCESSIONAL RATES OF DUTY

This Schedule provides for the concessional entry of goods for -

- . Prescribed Persons, Bodies, Authorities or Countries;
- . Prescribed Classes of Goods; or
- . Goods imported for Specific End-use.

The Government has examined the coverage of some of these concessional items and has decided to make some textual changes to ensure the original intent of these items is met. In some cases, the new wording will exclude some goods from concessional entry. For example in item 17, which covers goods which are exported and reimported without having been altered, will now exclude goods which have been the subject of any type of industrial processing. This will prevent gemstones which have been sent overseas for cutting and/or polishing from being entered under this item. Although the returned gemstones will not attract customs duty, sales tax will be applicable on the value added overseas. Likewise, bulk oil seed sent overseas for packaging will not meet the requirements of item 17 in future. Other similar practices will also be excluded from using this item.

Items 18 and 20 cover goods which are sent overseas for repair under warranty. Item 18 contained two specific criteria covering situations in which goods sent overseas for repair and return could return duty free. The changes proposed here are to separate each category of goods into a different item. This will allow separate by-laws to be issued for each item with a specific set of conditions to apply. A new condition has been created in item 18C allowing goods, which are replaced under a global recall by the manufacturer, to have duty free status.

The existing conditions of item 20 have been retained in new item 20A.

A new concession is contained in item 20B. Due to developing technological changes and international best practice, many international manufacturers have instituted batch repair processing and centralised their equipment and overhaul function in one geographic location. Manufacturers replace defective parts with an operational part from the central store free of cost at the time the fault occurs. Then, when sufficient defective parts of the same type are at hand, batch repair is undertaken. Under existing concessions importers would pay full duty on the replaced part as it was not the same part that was exported. The new concession will allow importers to import these goods by paying customs duty of the assessed repair cost of the replacement part, subject to certain conditions approved by the Australian Customs Service.

Some of the previous items had coverage of two or more types of goods and it has been difficult to issue specific by-laws for these goods. These goods have been split into separate items. This will ease the administration of the new items.

The changes to Schedule 4 are further explained in the Summary of Amendments issued in conjunction with the tabling of this Bill and should be read as one with this Explanatory Memorandum.

D

D

D

D

