

DEPT. OF THE SENATE	
No.	396
Presented	27 MAY 1957
<i>Acting</i> CLERK OF THE SENATE	

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE.

ELEVENTH REPORT

From the

STANDING COMMITTEE

ON

REGULATIONS AND ORDINANCES

(BEING THE FIRST REPORT OF THE 1957 SESSION, AND THE ELEVENTH
REPORT SINCE THE FORMATION OF THE COMMITTEE).

PERSONNEL OF COMMITTEE.

Chairman:

Senator Ian Wood.

Members:

Senator J.J. Arnold.

Senator C.B. Byrne.

Senator K.A. Laught.

Senator the Hon. H.S. Seward.

Senator D.R. Willesee.

Senator R.C. Wright.

Functions of Committee. -

Since 1932, when the Committee was first established, the principle has been followed that the functions of the Committee are to scrutinise regulations and ordinances to ascertain -

- (a) that they are in accordance with the Statute;
- (b) that they do not trespass unduly on personal rights and liberties;
- (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative rather than upon judicial decisions;
- (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.

REGULATIONS AND ORDINANCES COMMITTEE.

1. The Committee has had before it Statutory Rules 1956, No.93, being the Customs (Import Licensing) Regulations, made under the Customs Act. These Regulations were made and gazetted on 14th December, 1956, and tabled in the Senate on the first day of the present session (19th March, 1957).

2. The Committee, in its scrutiny of Regulations and Ordinances referred to it under Standing Order No. 36A, follows the principles which previous Committees have followed since 1932. Its main function is to "scrutinise regulations and ordinances to ascertain -
 - (a) that they are in accordance with the Statute;
 - (b) that they do not trespass unduly on personal rights and liberties;
 - (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative and not upon judicial decisions;
 - (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment."

3. When the original Customs Act was passed the enactment of the customs duty on any particular import was possible only by Act of Parliament. That is still the position.

But the original Act declared a list of goods prohibited, specifying the categories. One category included goods "prohibited by proclamation". After the Parliament jealously claimed the right to review executive decisions of this nature in the critical thirties Parliament in 1934 altered the word "proclamation" to "regulation" for the specific purpose of bringing the prohibition under review by Parliament so that improper regulations for the purpose could be disallowed by either House.

The Executive issued regulations containing a list of goods importation of which was prohibited. These regulations survived a

challenge in the High Court as to their legality (in 59 C.L.R.189) notwithstanding a strong dissenting judgment by Dixon and Evatt JJ. The regulations were reissued in the universal form^{of} the present regulations on 1st December, 1939 (No. 163 of 1939). Their actual legality survived another challenge to the High Court in Poole's case (1947) 75 C.L.R. 229 (Latham CJ Williams and McTiernan JJ holding them to be valid but Dixon, Starke and Rich JJ declaring them to be invalid) on the casting vote of the then Chief Justice.

This Committee in its Fourth Report presented on 23/6/38 said -

"The Committee held the view that an important matter of policy such as trade diversion should have been the subject of parliamentary enactment and it is this view which the Committee desires to emphasise in this report"

On the 3rd June 1952 the Committee presented its Eighth Report to the Senate drawing attention to the precarious legal basis for the actual validity of the regulations then being used for import licensing and said "The present Committee records its agreement with the opinion expressed by the 1938 Committee that important matters of Government policy should be the subject of parliamentary enactment and recommends accordingly".

Parliament thereupon enacted an amendment of the Customs Act in the following form on 19th November 1952 (No. 108 of 1952) -

" Division 1. - Prohibited Imports.

Prohibition
of the
importation
of goods

"50. - (1) The Governor-General may, by regulation, prohibit the importation of goods into Australia.

"(2) The power conferred by the last preceding sub-section may be exercised -

- (a) by prohibiting the importation of goods absolutely;
- (b) by prohibiting the importation of goods from a specified place; or
- (c) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

"(3) Without limiting the generality of paragraph (c) of the last preceding sub-section, the regulations -

- (a) may provide that the importation of the goods is prohibited

unless a licence or permission to import the goods has been granted as prescribed by the regulations;

- (b) may provide that a licence or permission so granted may be subject to conditions or requirements to be complied with by the person to whom the licence or permission is granted, either before or after the importation of the goods in respect of which the licence or permission has been so granted; and
- (c) may provide that the grant or continuance in force of a licence or permission so granted shall be subject to the condition that the applicant for, or the holder of, the licence or permission furnishes to the Customs security for compliance with this Act and for compliance with the conditions or requirements to which the licence or permission is subject.

Prohibited imports.

"51. Goods, the importation of which is prohibited under the last preceding section, are prohibited imports."

That enactment put an end to the doubt as to the legal authority of the Executive pursuant to that amendment to make import licensing regulations.

4. On 14th December, 1956, almost exactly four years after the amending Act was passed, enabling the making of regulations, the regulations before the Committee were gazetted. The Departmental explanatory note to the Committee on these Regulations was certainly not provoking. It consisted merely of a statement that -

"The Customs (Import Licensing) Regulations have been re-issued to conform with the new provisions enacted in Act 108 of 1952.

2. The only material change in their terms is contained in draft Regulation 12 in that an import licence may now be issued subject to a requirement to be fulfilled after importation of goods as authorized by Act 108.

3. Certain other changes of a drafting nature only are proposed on the advice of the Parliamentary Draftsman."

5. The Committee has carefully examined the Regulations and has heard evidence from an officer of the Department of Customs and Excise and

reports as follows -

6. This Committee is not concerned with Government policy sought to be achieved by the regulations and it is important to note that this immunity of the Committee from responsibility for Government policy imposes on the Committee an impartial duty to determine whether regulations conflict or comply with the above standards whether the importance of the regulations to Government policy be great or small.
7. But the Committee is concerned to prevent parliament-authority being undermined by the making of regulations of the character above referred to by the Executive, and so exposing individual rights and liberties to Executive decision as distinct from parliamentary enactment without proper safe-guards for the individual to invoke the process of judicial review.
8. It is not expected that anyone will be found to deny that the total restriction of imports without a licence in respect of each individual consignment is an important measure restricting the individual right to trade. The ambit of the restriction is tremendously wide -
- (I) As expressed in the regulation, the importation of all goods into Australia without a licence is prohibited.
 - (II) The licence may be subject to such conditions as are specified in the licence.
 - (III) The Minister may, even after the issue of ^a licence, vary existing conditions or, by direction in writing to the licensee, add new conditions.
 - (IV) The conditions may refer to requirements to be complied with by the licensee after the importation as well as before.
 - (V) The scope of conditions which the Minister may impose is limited only by the judgment or discretion of the Minister or licensing officer.
 - (VI) The conditions may be different for, and discriminate between, individuals in exactly the same position.
 - (VII) A licensing officer may require security, "in such sum as the licensing officer considers sufficient for compliance with the

Customs Act ~~and for compliance with the Customs Act~~ and for compliance with the conditions of the import licence."

(VIII) The Minister may revoke a licence at will.

(IX) The decision of the Minister is final and not open to review.

As Dixon CJ said in Poole's case (1947) 75 C.L.R. page 235 in relation to similar regulations -

"There is nothing to indicate the grounds upon which his (the Minister's) discretion should be exercised. It will be seen that the purpose of the regulation is to prohibit all importation, whatever the goods, unless a licence for the particular consignment or importation is obtained from the Minister or the goods are excepted. It places the entire inward trade of the country under the control of his particular discretion or that of his delegate, exercised in respect of every separate parcel or consignment of goods which it is sought to import."

9. Do these regulations provide for mere administrative detail for the implementation of an existing Act of Parliament, or are they the basis of a new policy appropriate to parliamentary debate and definition? In the Committee's opinion the answer to that question is clear. In war-time the Executive usually has conferred on it wide powers. Regulations are employed in war-time for many purposes. But in peace-time retail rationing would not be expected to be acceptable to a parliamentary democracy in the form of regulation. But this is import rationing. It rations the trade of every importer. The Committee is of the opinion that this policy should pass into law, if at all, only in the form of a Statute through Parliament undergoing the process of free parliamentary debate and scrutiny; it is of such fundamental character as to be inappropriate to enactment by Cabinet or an individual Minister by regulation.

10. But further, it is transparently plain that the regulations deny every individual in the Australian import trade any right of access to the Courts to adjudicate as to complaints as to discrimination, refusal to consider applications, unjust treatment or delays - all of which can ruin a man's business. The regulations are couched in terms which make

it practically impossible for the Minister's decision to be reviewed in any Court. No reflection is made upon the integrity of the Minister. But "amid the cross-currents and shifting sands of public life, the Law (not the Minister's opinion) is like a great rock upon which a man may set his feet and be safe." (Mansion House speech of Sankey L.C. 5/7/1924). Not a majority imputes to the Department want of good faith. But "good faith is, in my view, not sufficient in itself; some of the most honest people are the most unreasonable, and some excesses may be sincerely believed in, quite beyond the limits of reasonableness." (as Scrutton L.J. said, R.v.Roberts 1924, 2KB, 695, at 719).

Denning L.J. has put it quite cogently. (Freedom under the Law, p.100) "An official who is the possessor of power often does not realise when he is abusing it. Its influence is so insidious that he may believe he is acting for the public good, when, in truth all he is doing is to assert his own brief authority. The Jack in office never realises he is being a little tyrant."

The system expressed in these regulations deprives every trader of his right to import without the Minister's consent, and the right to complain to any Court of any unfair decision of the Minister.

11. In this Committee's opinion, the Senate ought not to permit a law of such a character to be made by the Executive. The result would be, if not a "new despotism" - yet a despotism not made any better because we have become somewhat cynical of it.

This Committee therefore is bound to report to the Senate its opinion that the regulation ought to be disallowed.

12. Two further observations ought to be made for the consideration of the Senate -

- (a) By virtue of the Acts Interpretation Act and section 6 of the Customs Act 1901-1954 the term "The Minister" in this regulation means the Minister for Customs and Excise, yet in actual administration the authority conferred by the Regulations is exercised by the Minister for Trade.

(b) Section 50(2)(b) of the Customs Act authorises regulations to provide for prohibition except under licence upon specified conditions. The most natural meaning of that expression would require the conditions to be specified in the regulations and of general application to various categories or circumstances and not left to be specified in each individual licence.

Len Wood

Senate Committee Room.
2nd May, 1957.

CHAIRMAN.

REGULATIONS AND ORDINANCES COMMITTEE

Minutes of Evidence.

(Taken at Canberra)

THURSDAY, 21th APRIL, 1957.

PRESENT:

Senator Wood (Chairman)

Senator Byrne

Senator Willesee

Senator Seward

Senator Wright

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WILLIAM CALLAGHAN, Chief Inspector of Licensing, Department of Customs and Excise, called and examined.

THE CHAIRMAN. - This Committee has been considering statutory rule No. 93 of 1956, and should be glad of your assistance. I shall ask Senator Byrne to explain what is in our mind and the nature of the information we desire from you.

SENATOR BYRNE. - The Committee has considered the powers conferred by this regulation, more particularly in connection with section 12, and should like some information on the approach of the Customs and Excise Department in administering regulations of this kind, which have to do with the granting of import licences and the imposition of conditions at the time of the granting of the licence, or subsequent to the issue of the licence, or at a later date, as provided in section 12. Although it looks as if the powers are almost arbitrary and extensive, we find that there may be practical problems associated with them, and that the drafting in another form might interfere with the administration. That is the background to our inquiry. Could you tell the Committee how you impose these particular conditions in relation to import licences?

MR. CALLAGHAN. - The need for the power to impose these conditions arose almost solely from the importation of motor cars particularly American motor cars. These have given a lot of trouble in recent years. There is now a virtual prohibition under the balance of payments restrictions on cars from the U.S.A. A few cars are allowed to come in; some of the larger American cars are allowed in as a kind of token importation to enable the makers to keep their names on the Australian market. Otherwise there is no importation of American cars because exchange is not made available for their purchase. There are some exceptions however. The main exceptions relate to people who come from the U.S.A. to live in Australia as permanent residents. It is thought to be reasonable that they should bring their cars with them. The same attitude is adopted towards Australians returning to this country after an absence of three years or more. Others in this category include visitors to Australia. They are allowed to bring their cars with them for use temporarily while in this country. At one stage there was an extensive business in what were called gift cars. Because of the inability to import American cars a number of people made gifts of cars for all sorts of reasons. However, after dealing with a number of cases which appeared at first to be genuine cases, and in which we accepted the stories as being true, we found that in a number of instances the gift of a car was merely a means of getting around the restrictions. In some cases cars were imported against an undertaking not to sell them within a certain period. These cars were sold on what amounted to a black market, and generally they were sold at an enormous profit because of the restrictions that were in force.

SENATOR BYRNE. - What power did you have at that stage?

MR. CALLAGHAN. - We had no power. I am speaking of the time up to the introduction of these regulations, and in particular of the

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years 1953-54-55.

SENATOR BYRNE. - What was the nature of the arrangement you eventually made?

MR. CALLAGHAN. - We would agree to issue an import licence to a person wanting a car against an undertaking, in the case of a resident not to sell the car within two years, and in the case of a visitor, an undertaking to export the car within twelve months.

SENATOR BYRNE. - What happened in the event of default?

MR. CALLAGHAN. - We attached conditions which meant that it would be unprofitable to sell the car, but we discovered that our power to do that was limited to the point of clearance from customs. We had no power to attach conditions afterwards. We could apply conditions up to the point of importation, but once the vehicle was cleared from customs our powers existed no longer.

SENATOR BYRNE. - The condition not to export within twelve months or to sell within two years was a condition imposed subsequent to the release from customs control.

MR. CALLAGHAN. - It was imposed before release, but it applied after release. We had no power to hold them to the conditions.

SENATOR BYRNE. - Even though the condition was imposed before release?

MR. CALLAGHAN. - We had no power after we released the car from control.

SENATOR BYRNE. - Was the power challenged?

MR. CALLAGHAN. - Yes, several times. Our position was so weak that either we released people from securities or did not press for securities.

SENATOR BYRNE. - What effect did that have on your policy?

MR. CALLAGHAN. - Almost automatically the policy became more harsh. The department found itself in difficulty and reached the position where it was unable to believe what it was told. The result was that gift motor cars were ruled out.

SENATOR BYRNE. - You say that this position arose almost solely in connection with motor cars? It did not apply generally?

MR. CALLAGHAN. - No.

SENATOR BYRNE. - Yet regulation 12 is wide and would apply generally. It is not restricted?

MR. CALLAGHAN. - We have had no particular trouble, but we do issue import licences with other conditions. For example, special allocations have been made with respect to textiles. We issue import licences on condition that importers will use the textiles in manufacture and not sell them in the open market.

SENATOR BYRNE. - Was that done prior to this?

MR. CALLAGHAN. - Yes.

SENATOR WILLESEE. - Then the regulations apply to more than American cars?

MR. CALLAGHAN. - Yes. The position in connection with cars from the United Kingdom and the Continent of Europe has been good. In any case, the Holden car is the equivalent of most of those cars, and

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there is no great demand that cannot be met. There is a plentiful supply of United Kingdom, Continental and Australian cars, but there is a big demand for luxury American cars,

SENATOR BYRNE. - What principle did you apply in the case of textile and other things? What kind of condition did you impose?

MR. CALLAGHAN. - We agreed that licences would be granted against an undertaking that the goods would be used for a particular purpose or exported within a certain time.

SENATOR BYRNE. - What rules would you apply subject to that condition? Would it be the need of the industry, and would there be preference to one manufacturer or distributor?

MR. CALLAGHAN. - There would be no preference. A manufacturer would really have to show that he was unable to get sufficient supplies from his usual sources of supply. Some importers were selling goods across the counter instead of selling them to manufacturers. The result was that manufacturers were unable to obtain adequate supplies of textiles from people who held quotas. We gave special allocations to manufacturers. After the first few special allocations had been granted we found that some manufacturers were as bad as the people they complained about. They themselves sold the goods instead of manufacturing them.

SENATOR BYRNE. - They imported materials for manufacture but did not manufacture them.

MR. CALLAGHAN. - That is so.

SENATOR BYRNE. - Would it not have been logical to impose conditions on the importer of piece goods?

MR. CALLAGHAN. - That was not considered advisable. A quota holder can import for free sale. He was importing goods against a quota that arose from the base year imports. We endeavoured to influence importers to take care of specific manufacturers. It was not considered advisable to force them to do so. The solution seems to be to give some assistance to manufacturers rather than give the benefit of a relaxation to the importers of textiles.

SENATOR BYRNE. - You have mentioned motor cars and textiles. Would these conditions be confined to those fields?

MR. CALLAGHAN. - There may be some other fields, such as machinery for copying purposes, demonstration purposes and so on. That applied particularly to importations from the dollar area.

SENATOR BYRNE. - They would be subject to prohibition against re-sale?

MR. CALLAGHAN. - They would be subject to the requirement to re-export the goods.

SENATOR BYRNE. - There were two types of conditions imposed - re-sale or re-export and the question of defaulting in particular cases?

MR. CALLAGHAN. - Yes, re-exportation within a certain period or importation for a particular purpose.

SENATOR WRIGHT. - As to these conditions, would it be possible for you to tell the Committee the full list of conditions that you have imposed? You said that they applied mainly to re-sale and re-export of goods. I am interested to know over what range of thought or conditions as expressed in the administration of these regulations as drafted, a full list of the conditions that have been expressed as conditions of licence?

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MR. CALLAGHAN. - The full list is the list that I have given to Senator Byrne. We have so far imposed conditions against re-sale within a certain period, and a condition to export before the expiration of a given period, and conditions to use goods for specific purposes. In the past the obtaining of securities has applied mainly to motor cars. We propose in future to ask the importer of motor cars, in cases where we are doubtful of his bona fides and suspect that a car may be put on the market without authority, thus giving him a big profit, to enter into a security to pay to the Collector of Customs a sum to be determined at the time. The sum decided on would be an amount about equal to the profit he would be likely to make.

SENATOR WRIGHT. - You take power in the regulation to vary the conditions after the original issue of a licence, or to add to the licence conditions which are entirely new. Could you give us an example of the application of that power to vary conditions or to impose additional conditions?

MR. CALLAGHAN. - An example would be a case where a licence had been granted to import a car for a certain period, or against re-sale within a period, without conditions, and the department suspected an intention to break the undertaking. An unconditioned licence would be granted in the first place, but if we suspected an intention to sell the car we could impose a condition under which the importer would have to give a security.

SENATOR WRIGHT. - Do these conditions apply only to cars of American origin?

MR. CALLAGHAN. - They apply almost solely to cars of American origin.

SENATOR WRIGHT. - Do you get any trouble in respect of cars of European origin in excess of the quota?

MR. CALLAGHAN. - Not until recently. There is at the moment a slightly greater demand for some expensive English cars than can be supplied. However, the recent relaxations that have been decided on should meet the position and we do not expect present conditions to last for long. The position then will probably be that the difficulties will apply almost solely to American cars.

SENATOR WRIGHT. - How was the allocation of dollars under currency control originally fixed?

MR. CALLAGHAN. - That question brings us into the field of policy which is not within the functions of the Customs and Excise Department. There is an interdepartmental policy committee which considers the amount of dollars to be allocated.

SENATOR WRIGHT. - Who decides what categories of goods are entitled to absorb that dollar allocation?

MR. CALLAGHAN. - That is a policy question which I am afraid I cannot answer.

THE CHAIRMAN. - If matters of policy are involved, perhaps we should not question Mr. Callaghan further along those lines.

SENATOR WRIGHT. - I am interested to know who specifies the quantity of American cars to be allowed into this country in a given period under currency control.

MR. CALLAGHAN. - No officer of my department has any final right of control. Officers make recommendations to the Minister. The department prepares a dollar budget which is passed by the Minister. Any action that is taken is taken with the Minister's approval.

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SENATOR WILLESEE. - You are dealing with visitors to Australia and Australian residents returning to this country? Do you say that the numbers are few?

MR. CALLAGHAN. - There are some importations in addition to those. I mentioned earlier an arrangement had been made to enable manufacturers of cars to keep their names on the Australian market. The evils that arose came from the general restriction on American cars as a whole.

SENATOR WRIGHT. - Chevrolet, Ford and Studebaker cars come from America?

MR. CALLAGHAN. - Yes.

SENATOR BYRNE. - Not all Ford cars come from America?

MR. CALLAGHAN. - They - those you see here - nearly all come from outside America.

SENATOR WRIGHT. - The restrictions apply to Chevrolet, Cadillac and Buick cars. Was an importer trading in that line of business given any quota on a base year, or was it brought down to nothing?

MR. CALLAGHAN. - It was not established on a base year. It was an allocation made against the overall amount of dollars available.

SENATOR WRIGHT. - Cars from American sources came in for particular scrutiny in comparison with other American goods that the nation had need of?

MR. CALLAGHAN. - Yes.

SENATOR WRIGHT. - Has that policy operated uniformly throughout the years of import control or has it varied, say, up 5% in one year and down 5% in the following year?

MR. CALLAGHAN. - It has varied as the dollar ceiling went up or down.

SENATOR WRIGHT. - The final fixation of the volume rests with the Minister?

MR. CALLAGHAN. - Yes.

SENATOR WRIGHT. - With regard to the particular conditions that you thought were proper to impose on cars, has the department power to impose different conditions in respect of any individual?

MR. CALLAGHAN. - Yes.

SENATOR WRIGHT. - It has an unfettered right to discriminate between individual importers?

MR. CALLAGHAN. - Yes, that would be so.

SENATOR WRIGHT. - You have directed your mind to these regulations that we are considering which empower you to impose conditions after importation?

MR. CALLAGHAN. - Yes.

SENATOR WRIGHT. - Would the department's purpose have been capable of fulfillment if the old regulations were simply altered in respect of cars of American origin to provide that the Minister may impose conditions for periods after importation?

MR. Callaghan. - Our purpose would be met solely in relation to cars of American origin.

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SENATOR WRIGHT. - Have you experienced a need for power to impose importation conditions in respect of anything but cars of American origin?

MR. CALLAGHAN. - We have had need for power in relation to machinery for exhibition, and goods for copying, samples for manufacture and so on.

SENATOR WRIGHT. - What conditions do you impose in relation to machinery?

MR. CALLAGHAN. - Certain goods would not normally be licensed for permanent importation, but if goods are required for copying, or as samples, or for exhibition purposes, we are willing to issue an import licence on the condition that the goods will be re-exported within a given time. Unless we have that power and are able to impose such a condition, once the goods are cleared from customs it would amount practically to their permanent importation.

SENATOR WRIGHT. - Are you referring to machinery of American origin?

MR. CALLAGHAN. - Yes, in the main, but it could apply to machinery of other origin. The imposition of these conditions gives the department a better opportunity to meet demands for import licences which we were not fully capable of meeting in the past.

SENATOR WRIGHT. - I understand that you imposed conditions as to payment and then felt that your legal position was too weak to enforce them. Why did not the department immediately prepare a regulation and submit it to the appropriate authority asking for the necessary legal power? Why avoid the justification, by law if necessary, of anything that is imposed on a trader?

MR. CALLAGHAN. - I do not think we reached the situation where we actually refused a licence because we were doubtful of our power. We avoided the issue of licences where we could but we took a chance in some cases. We then proceeded to have the regulation varied as quickly as possible. It is not a quick process.

SENATOR SEWARD. - Why should it take a long time?

MR. CALLAGHAN. - In order to obtain the power to impose conditions after importation an amendment of the Customs act was necessary. We had no power to do so under the act, and so it had to be amended. After that, the regulations had to be framed.

SENATOR WRIGHT. - This weakness developed before the act was amended in December 1952.

MR. CALLAGHAN. - The weakness was apparent then.

SENATOR WRIGHT. - Do you seriously justify a delay of four years after the act was amended before getting this power?

MR. CALLAGHAN. - The delay arose because the act was amended in relation to all prohibitions. It covered prohibitions on the importation of narcotic drugs and other things.

SENATOR WRIGHT. - When the act was passed in December 1952, the difficulty was overcome. Where is the justification for this post-importation condition? That weakness was permitted to continue from November 1952 to December 1956 before any regulation thought to be appropriate to overcome the weakness was gazetted?

MR. CALLAGHAN. - Yes.

SENATOR WRIGHT. - Do you, as the Chief Executive Officer of the Licensing Branch, seriously say that, having permitted a period of

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four years to elapse, that weakness was really an urgent impediment militating against the efficacy of import control?

MR. CALLAGHAN. - Not against import control as a whole, but it was difficult in dealing with applications from individuals for exceptional treatment.

SENATOR WRIGHT. - I should like that to be understood - a weakness in dealing with individual cases calling for exceptional treatment.

THE CHAIRMAN. - Mr. Callaghan has been abroad for a number of years and returned to Australia only about two months ago.

SENATOR WRIGHT. - I hope that the organization responsible for implementing this legislation that is said to be important does not depend on the presence in Australia of any particular individual. The situation is that under these regulations all goods are prohibited from entry into this country except with the consent of the Minister.

MR. CALLAGHAN. - Yes, other than cases which are excepted.

SENATOR WRIGHT. - What is the range of goods that have been excepted up to date?

MR. CALLAGHAN. - There is a small range. An Exception Notice was published in the Gazette of the 14th March last. The range covers mainly, goods which would not, in any case, incur the expenditure of exchange overseas, such as gifts and the like and re-imported goods. Here is an extract from Gazette No. 17 of the 14th March, 1957 :-

[Extract from "Commonwealth of Australia Gazette", No. 17, dated 14th March, 1957.]

CUSTOMS (IMPORT LICENSING) REGULATIONS.
EXCEPTION NOTICE A1.

I NORMAN HENRY DENHAM HENTY, the Minister of State for Customs and Excise, in pursuance of the powers conferred upon me under regulation 17 of the Customs (Import Licensing) Regulations do hereby except from the application of those Regulations the goods specified in the schedule to this notice.

This notice shall be read and construed so that only the goods or classes of goods specified in that schedule shall be deemed to be excepted from the application of those regulations.

For the purposes of this notice—

"Tariff Item" means an item in the schedule to the Customs Tariff 1933-1956 as amended from time to time or as proposed to be amended from time to time by a Customs Tariff alteration proposed in the Parliament;

"the dollar area" includes the following countries, Canada, United States of America, Alaska, Hawaiian Islands, Puerto Rico, the Virgin Islands of the United States of America, Guam, American Samoa, Bolivia, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Republic of Honduras, Liberia, Mexico, Nicaragua, Panama, Philippine Islands, Salvador, Venezuela.

THE SCHEDULE.

Item No.	Description of Goods.
1	Goods to which Tariff Items 51 (A), 229A, 338 (n), 338 (n), 338 (c), 396, 400, 401, 404, 409 (s), 410 (n) (1), 410 (n) (2), 410 (c), 412, 417 (n), 417 (b), 423, 424 (c), 427 (A), 427 (c) and 434 apply
2	Goods to which Tariff Item 195 applies when those goods have been imported empty for repair or refilling
3	Goods to which Tariff Item 339 applies and which have been published in and imported from any country not in the dollar area when imported by Universities, Public Libraries, Colleges and Schools for their own purposes

THE SCHEDULE—continued.

Item No.	Description of Goods.
4	Goods of a value not exceeding £5 to which Tariff Item 339 applies and which have been published in and imported from any country not in the dollar area
5	Goods to which Tariff Items 250 (A), 376 (n), 376 (n), 376 (p) and 408 apply when imported containing solely goods which are excepted from the application of those Regulations
6	Goods, other than motor cars, motor vans and motor trucks, to which Tariff Item 409 (A) applies
7	Motor cars, motor vans and motor trucks to which Tariff Item 409 (A) applies and which the Collector is satisfied will not be sold or disposed of in Australia within two years from the date of importation
8	Motor vehicles which are permitted importation under Carnets de Passage en Douanes or Triptyques and which the Collector is satisfied will not be sold or disposed of in Australia
9	Goods which in the opinion of the Collector are not related to any commercial transaction
10	Goods which in the opinion of the Collector have no commercial value
11	Goods the produce or manufacture of and shipped direct from a Territory of the Commonwealth
12	Samples and advertising films permitted importation temporarily in conformity with the provisions of the International Convention to Facilitate the Importation of Commercial Samples and Advertising Matter signed at Geneva on 7th November, 1952

Dated this twenty-seventh day of February, 1957.

DENHAM HENTY
Minister of State for Customs and Excise.

SENATOR WRIGHT.- Could you describe the goods referred to in item No.1?

MR. CALLAGHAN.- Tariff item 51 (A) relates to fresh fish. Item 229 (A) covers fuel imported in aircraft tanks and not unloaded in Australia. Item 338 (B) covers printed matter and photographs the property of any public institution and intended for deposit or exhibition therein. Item 338 (D) refers to trade catalogues, non-advertising pricelists etc., in single copies. Item 338 (G) covers catalogues and pricelists from the United Kingdom. The point is that they do not involve the expenditure of exchange overseas. These catalogues are usually sent here by people overseas. We are trying to facilitate their entry. Item 396 refers to antiquities for public institutions. Item 400 covers goods re-introduced after repair and goods imported for repair and export. Item 401 covers re-imported goods and item 404 refers to samples of negligible value. Item 410 (B) (1) covers paintings by Australian residents abroad, and item 410(B)(2) covers paintings not for sale bequeathed to a person or institution in Australia. Item 410 (G) refers to paintings imported by, or presented to, public institutions, cathedrals or churches. Item 412 covers illustrations, casts and models imported by universities, schools, colleges and public institutions. The other items refer to goods in similar categories.

SENATOR WRIGHT. - That gives the Committee an indication of the variety of goods referred to. Have you a written list that could be attached? Would you give the Committee some information regarding item No. 7 which deals with motorcars, motor vans and motor trucks, to which tariff Item 409 (A) applies, and which the Collector is satisfied will not be sold or disposed of in Australia within two years from the date of importation?

MR. CALLAGHAN. - The item refers to motorcars, vans and trucks which are admissible as passengers' personal effects. - their property on arrival in this country. They must have been in the passenger's possession and in use overseas for eighteen months.

SENATOR WRIGHT. - Does it cover cars from the dollar area?

MR. CALLAGHAN.- The goods could be cars from the dollar area.

SENATOR WRIGHT.- They are excepted from the regulations.

MR. CALLAGHAN. - Only if the Collector is satisfied that they will not be sold within two years.

SENATOR WRIGHT.- The regulation as to the post-importation condition would not be applicable to them?

MR. CALLAGHAN.- That is so.

SENATOR WRIGHT. - The regulations apply to all goods other than those excepted. Has it been the practice to gazette lists of excepted goods at all times since import restrictions have applied?

MR. CALLAGHAN. - Yes. This notice replaces a notice issued in 1939 under the previous regulations.

SENATOR WRIGHT.- That notice was issued about 1939?

MR. CALLAGHAN.- The first exception notice was issued at the time of the imposition of import restrictions.

SENATOR WRIGHT.- Intermediate notices have been gazetted between then and the present time.

MR. W. CALLAGHAN

MR. CALLAGHAN. - Yes. There have been amendments.

SENATOR WRIGHT. - We heard something about percentages and importer's base year. How was that applied in relation to import licences?

MR. CALLAGHAN. - If you look at the whole arrangements for import licensing - I am speaking of non-dollar licences - where goods are to be licensed on a quota basis and not dealt with on the merits of each application, the quota is set at a percentage of the base year imports made in a particular year. In the case of goods in the (B) category the base year is 1954-55. The quota for (B) category goods today works out at about one and two-thirds of thirtythree and one-third percent. The last period of quota was thirtythree and one-third percent of the imports in 1954-55. Within this licensing period there has been a two-thirds increase on the previous period. That is about 45% or 46% on the base year.

SENATOR WRIGHT. - Who fixes the categories?

MR. CALLAGHAN. - The Department of Trade.

SENATOR WRIGHT. - Are they gazetted?

MR. CALLAGHAN. - No. They are published as licensing instructions.

SENATOR WRIGHT. - What categories exist today?

MR. CALLAGHAN. - There are four categories. The first is Administration, under which each application is dealt with on its merits. Then there is category (A), which deals with goods of more essential types, and category (B) which covers the less essential goods. The fourth category is Administration World Licence group under which licences are issued for particular goods and the goods may be purchased in any part of the world. It covers mainly raw materials.

SENATOR WRIGHT. - Who fixes the percentages?

MR. CALLAGHAN. - The Department of Trade. Our advice is obtained from the Department of Trade.

SENATOR WRIGHT. - Is that gazetted?

MR. CALLAGHAN. - No.

SENATOR WRIGHT. - As to the Administration Category, the quantity to be imported by each individual importer is solely in the discretion of the department or the Minister?

MR. CALLAGHAN. - Yes. The decision in respect of each application is made by the department and the Minister.

SENATOR WRIGHT. - I saw something in the press about the removal of paper from category (B) and its transfer to category (A)?

MR. CALLAGHAN. - That is so.

SENATOR WRIGHT. - Was that done by ministerial direction?

MR. CALLAGHAN. - That would be so. This matter is now outside the functions of the Department of Customs and Excise. We merely issue licences on advice given to us by the Department of Trade.

SENATOR WRIGHT.- The person who really decides the matter is the Minister for Trade.

MR. CALLAGHAN.- That is so.

SENATOR WRIGHT.- The staff that actually scrutinises applications in the Administration category is a staff directly under the Minister for Trade?

MR. CALLAGHAN.- That is so.

SENATOR WRIGHT.- Until the last announcement those officers were located in Sydney?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- All applications throughout Australia for goods in that category have to be submitted to Sydney?

MR. CALLAGHAN.- Yes, with minor exceptions in order to facilitate the issue of Administration licences for goods of small value. In respect of such goods the Collector of Customs can issue licences up to £100 in each application.

SENATOR WRIGHT.- Is that since the last announcement?

MR. CALLAGHAN.- That situation has existed throughout the whole of the licensing period. It has been varied. The discretion has been restricted or relaxed from time to time. Since the last announcement the discretion has been considerably relaxed. The Collector can issue an Administration licence for goods up to £100 if he is satisfied of the merits of the application.

THE CHAIRMAN.- Was it not for a smaller amount at one time?

MR. CALLAGHAN.- It has always been £100 for non-dollar licences.

SENATOR WRIGHT.- This direction from the Minister for Trade and his officers comes from the Department of Trade to the Department of Customs and Excise?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- Is there any gazetted document for persons to see in law pursuant to which their entitlement may be varied?

MR. CALLAGHAN.- No. A public notice is issued by the department, and copies are made available to interested importers.

SENATOR WRIGHT. - They are departmental directives?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- I take it that there was a policy reason for lifting paper out of category (B) and placing it in a different category?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- Is (A) category an Administrative category?

MR. CALLAGHAN.- No, it is a quota category with a greater percentage than category (B).

SENATOR WRIGHT.- What was the alteration with regard to paper?

MR. CALLAGHAN.- Under category (A) the quotas were increased by 10%. Had paper remained in category (B) it would have been increased by sixtysix and two-thirds percent.

SENATOR WRIGHT.- That alteration was made simply by ministerial direction?

MR. CALLAGHAN.- The Department of Trade advised the Department of Customs and Excise to issue licences on that basis.

SENATOR WRIGHT.- From the point of view of departmental arrangements how was the staff for import licensing set up under the authority of the Department of Trade?

MR. CALLAGHAN.- The staff had been attached to the Department of Trade and Customs until January, 1956. Then arrangements were made whereby the function on the policy side was transferred to the Department of Trade and the staff also was placed under the control of that department.

SENATOR WRIGHT.- There is an arrangement under which all matters covered by the Customs Act are assigned to the Minister for Customs. The only matter coming under the jurisdiction of the Minister for Trade is the Customs tariff and New Zealand preference. I am speaking from memory. Has there been any variation?

MR. CALLAGHAN.- No. The administration of import licensing, that is the issue of licences and the setting up of quotas, etc., is still a part of the function of the Department of Customs and Excise. We are guided in carrying out that function by advice received from the Department of Trade.

SENATOR WRIGHT.- Did you not say that applications in connection with the Administration category go to Sydney where they are dealt with by members of the staff of the Department of Trade?

MR. CALLAGHAN.- They are dealt with to the extent that they are considered. If licences are to be issued they are passed on to the Department of Customs and Excise which issues the licences. Consideration of Administration licences is carried out by the Department of Trade.

SENATOR WRIGHT.- That department, in fact, makes the decision?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- Over the signature of officers of your department licences are issued?

MR. CALLAGHAN.- We carry out the issue of licences.

SENATOR BYRNE.- As to the delay in the promulgation of these regulations. You suggested that the regulations before they were amended were actually operating harshly against individuals because of your deficiency of power. You said that that caused the department to adopt a harsh policy. These regulations enable you to impose conditions which extended more liberality?

MR. CALLAGHAN.- That is so. These conditions will not hurt any importer who is prepared to abide by them and is telling the truth.

SENATOR BYRNE.- The effect of the delay has been to assist the import policy?

MR. CALLAGHAN.- Yes.

SENATOR BYRNE.- The liberalisation of conditions has favoured the individual?

MR. CALLAGHAN.- Yes.

SENATOR BYRNE. Any delay has told solely against individuals rather than against the policy?

MR. CALLAGHAN.- Yes. When the act was amended in 1952 the section concerned, section 1 of Division IV, was to be introduced on a date to be proclaimed. The reason was that all prohibited import regulations under the act had to be remade. Certain prohibitions were contained in the act and others were dealt with by customs regulations. It was thought advisable to include them all under the prohibited import regulations. We were faced with reviewing the film censorship regulations as well as the Customs import licensing regulations and regulations dealing with literature. Our departmental assessment at that time was that they would all be tabled by mid-1953 at the latest. However, on the advice of the Attorney-General's Department we commenced a complete overhaul of the regulations, and in particular the Customs prohibited import regulations which had not been overhauled for a number of years. That overhaul took some time. In some instances it involved consultation with international organisations, as for instance, those dealing with narcotic drugs. The work involved going back to the source of over more than 100 items. Moreover it had to be done in addition to the normal work of the Department. While the job was proceeding the old regulations stood and were administered. That is my explanation of the delay.

SENATOR WRIGHT. Can you say whether categories of goods as now existing in the general level of entitlement are available to the public in book form?

MR. CALLAGHAN.- We issue notices, or schedules of categories, giving the information, but so far as the general public is concerned they are difficult to follow. A person must have a knowledge of the customs tariff to follow them. This is a schedule of categories which sets out against such category item the licensing treatment.

SENATOR WRIGHT.- It refers to items in the tariff?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- The duties appropriate to each individual item in the tariff are always subject to an act of Parliament?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- You would not vary a duty by regulation?

MR. CALLAGHAN.- No, we cannot do that.

SENATOR WRIGHT.- Parliament retains that authority to itself?

MR. CALLAGHAN.- Yes.

SENATOR WRIGHT.- The question whether a Chevrolet motorcar shall be subject to a certain percentage of duty is fixed by Parliament, but whether it comes in or not is decided by the Department?

MR. CALLAGHAN.- Government policy determines that.

SENATOR WRIGHT.- An officer of the department determines it in accordance with the policy laid down by the Parliament.

MR. CALLAGHAN. - Yes.

(The witness withdrew; the Committee adjourned)