Parliament of the Commonwealth of Australia

Joint Committee of Public Accounts

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Report 325

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The Midford Paramount Case and Related Matters

Customs and Midford Shirts - The Paramount Case of a Failure of Customs

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1. Appointed 6 March 1991
2. Discharged 6 March 1991

DUTIES OF THE COMMITTEE

Section 8(1) of the *Public Accounts Committee Act 1951* reads as follows:

Subject to sub-section (2), the duties of the Committee are:

(a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the *Audit Act 1901*;

(aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;

(ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;

(b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;

(c) to report to both Houses of the Parliament, any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and

(d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

PREFACE

This Report details the Committee's findings on its examination of one particular Customs investigation and prosecution case, involving the firm of Midford Paramount. Although only one aspect of this multifaceted Customs investigation actually proceeded to litigation, the Committee was able to examine in some detail and draw conclusions on the other aspects of the case that did not reach the stage of actual Court proceedings. The case arose in New South Wales and was predominantly handled by the Customs investigation officers in that State, with some involvement by Headquarters based Customs officers in Canberra. The Committee is therefore mindful that any conclusions it reaches may be discounted by claims that its examination covered a single case involving a relatively small number of individuals that may not necessarily be representative of the general standard of Customs investigations either within the New South Wales operations of Customs or those of any other State in Australia.

For the reasons set out elsewhere in this Report, the Committee was unable to examine in any detail the many other cases for which particulars were provided to the Inquiry. However, at face value these cases would tend to confirm the Committee's view that all is or at least was not well within Customs, particularly in New South Wales, and that many of the shortcomings identified during the Inquiry are not unique to the Midford case.

The Committee stresses that the Midford Case is not just about accountability for the actions of Australian Customs Service officers operating in a devolved public administration environment. It also involves considerations of liaison between the policy formulation functions conducted by Department of Indusry, Technology and Commerce and the administrative or implementation responsibilities in respect of that policy performed by the Australian Customs Service, together with the interaction between the above agencies, the Australian Federal Police, the Australian Government Solicitor and the Commonwealth Director of Public Prosecutions where prosecution action is contemplated. The Midford case also involved the Departments of Foreign Affairs and Trade and Prime Minister and Cabinet, the Ombudsman, Administrative Appeals Tribunal, Unions, industry bodies, consultants, agents and individuals. Even questions as diverse as the relationship between senior and junior Ministers, adequate compensation for detrimental administrative actions and threats made against witnesses have been addressed during the Inquiry.

The Committee believes that there are many valuable lessons to be learnt from this Inquiry that have application or validity far beyond just the Australian Customs Service and recommends that the Report be examined within a much wider public administration context.

Inquiries such as this require the work of many people and I take this opportunity to thank the Committee's Sectional Committee A for their perseverance in what has been a long, complex and at times unpleasant Inquiry. I also thank the Auditor-General for making available one of his officers, Mr David Spedding, for the duration of the Inquiry. The Committee is most appreciative of the support given to the Inquiry by Mr Spedding and other members of its secretariat.

Hon G F Punch, MP
Chairman

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EXECUTIVE SUMMARY

1. This Report presents the results of the Committee's findings in relation to its Inquiry into the Midford Paramount Case and Related Matters.

2. The Inquiry was referred to the Committee by the Senate in December 1990 following a number of attempts by Senate Estimates Committee A to examine the circumstances surrounding the failure of a major Crimes Act prosecution of a well known importer and manufacturer of shirts. At that time it was believed that the costs to the Commonwealth arising from the failed prosecution exceeded $1 million.

3. After two years of investigation, the Committee established that the total costs to the Commonwealth could not be readily ascertained, but up to the time of commencement of this Inquiry were likely to have reached about $8 million. Evidence received indicated that the total costs to the defendants in the Midford case were also of a similar magnitude. The Committee was disappointed with inadequacies in the costing data provided by various Government bodies and has recommended that more comprehensive data on the costs incurred by them be provided to the Senate.

4. Charges in relation to an alleged misuse of quotas involving a fraud of $4.5 million were laid against the Directors of Midford Paramount Pty Ltd and its Tariff Advisor in June 1988. Committal proceedings commenced one year later, in June 1989, and were discontinued soon after when the DPP withdrew the charges.

5. In February of the following year the Magistrate awarded costs against the Commonwealth of around $365 000. In so doing, he was highly critical of the manner in which the case had been prepared and presented and severely castigated the two principal witnesses, one from the ACS and the other from DITAC. Under cross examination these two witnesses had departed significantly from their sworn statements previously tendered to the committal proceedings and it was established that in a number of key areas the evidence contained in those statements was incorrect or unsupportable.

6. Despite the withdrawal of the charges against Midford and its Tariff Advisor and the award of costs by the Magistrate, the Committee noted that the defendants had suffered enormous financial losses through unreimbursed legal fees and diminution in the values of their respective businesses. Specific actions by the ACS, in particular, had resulted in the latter. In effect, the defendants had been severely punished notwithstanding that they had not been convicted of any crime.

7. Evidence was also received that Midford's former Customs Agent had been threatened that he would be made unemployable if he gave evidence to the Committee that was unfavourable to the ACS. Further evidence was tendered towards the close of the Inquiry by the Agent, claiming that those threats had been carried through to fruition. The Committee intends to report separately on this matter when its investigations have been completed.

8. In the interim, however, the Committee has recommended that the defendants in the Midford case and others be compensated for their unrecovered material and legal costs.

9. Examination of the quota matter and the reasons for the failure of the committal proceedings revealed to the Committee that this was only one of a series of prosecutions the ACS had sought to bring against Midford. In respect of these other matters, for various reasons, none proceeded to the stage where charges were actually laid. The Committee discovered serious shortcomings, however, in the investigatory work undertaken by the ACS in relation to these other matters and concluded that they may well have suffered the same fate as the quota matter if they too had progressed to court proceedings. Inadequacies in the investigation conducted by the ACS was also one of the primary causes for the failure of the prosecution on the quota matter.

10. As the Inquiry progressed the Committee discerned an emerging pattern about the investigatory methods and abilities of the NSW based Customs investigators. All too often they, along with some Central Office based Customs officers, misunderstood or misconstrued the evidence before them, jumped to unsupportable conclusions and ignored or even deliberately suppressed evidence beneficial to or explanations provided by those individuals subject to investigation. It was also evident that at times the ACS actively sought to prevent the provision of such explanations.

11. Midford also made innumerable representations through various elected representatives at both the State and Federal level and to the Ombudsman, all of which were apparently deflected by the ACS. Instances were also noted by the Committee where Ministers had not been fully informed or had been misled by the ACS in relation to matters under consideration in the Midford case. It has recommended that an investigation be conducted into at least one of these instances where the misleading of the Minister appears to have been blatant.

12. Similarly, it was observed that ACS Senior Management exhibited an inadequate knowledge and understanding of the complexities of what was to be the largest Customs fraud case investigated to date and one of the first ACS cases to be dealt with under the Crimes Act, rather than the Customs Act. Planning, management, reporting and accountability in respect of the case were all found to be deficient.

13. The Committee was concerned that ACS officers at relatively junior or intermediate levels possessed unlimited powers to seize imported goods. The discovery that the ACS had seized 162 000 shirts valued at $1.8 million in the Midford case for an alleged underpayment of some $83 000 truly shocked the Committee. In its view, this action was excessive, ill considered, unsupportable and designed to demolish a high profile company that had operated successfully in Australia for over 40 years. Having dealt such a severe blow to the company, it was considered extraordinary that the ACS should also then seek to institute prosecution proceedings against it in relation to the same issue after also withdrawing its ongoing entitlements to import quotas.

14. The Committee has therefore recommended that warrants for search and seizure action in Customs non-narcotics matters only be issued by judicial officers and only upon written application. Present powers under the Customs Act enabling officers of the ACS to issue such warrants should be revoked. It has also recommended that a system of delegation limits be implemented within the ACS to ensure that high value seizure proposals are considered at sufficiently senior levels within the ACS before an application for seizure is forwarded to the judiciary. Limiting the value of the proposed seizure in commercial cases to no more than twice the amount of duty alleged to have been evaded has also been recommended. It is recognised, however, that such limitations should not apply where only one item is available for seizure.

15. In total, the Committee has made 134 recommendations in this Report. Any cursory reading of those recommendations would indicate that many of the improvements suggested by the Committee are simple, straightforward matters which could be described as either common sense or basic good management practice. Overall, the Report represents a terrible indictment of the ACS and it is a poor reflection on that organisation that many of the more fundamental matters raised therein needed to be said.

16. The Committee is well aware, however, that its examination of the ACS was not wide ranging and wishes to make it clear that its comments, in the main, are based upon its review of a part of only one of several Sub-programs within the ACS. Further still, that examination was confined primarily to the actions of Customs officers in New South Wales, and, to a lesser extent, the ACS Central Office. For this reason, and to enable a wider independent perspective on the operation of the

Investigations Sub-program to be obtained, the Committee has recommended that consideration be given by the Australian National Audit Office to conducting an Australia wide efficiency and skills audit of the Investigations Sub-program. In addition, the Committee has recommended that a formal evaluation of the training provided to ACS investigations staff be conducted by a panel comprising representatives of various entities with which the ACS normally deals in the conduct of its investigations and prosecutions.

17. Establishment of a specialist unit within the Commonwealth Ombudsman's Office has been recommended to investigate individual complaints made against the ACS. The Committee has also called for increased resources to be allocated to the Ombudsman. Other matters raised in the public submissions to this Inquiry that do not relate specifically to the Midford case should be examined by that unit. At face value many of the issues raised in these other submissions appear to be legitimate complaints about the actions of the ACS that warrant closer investigation. It is therefore a matter of regret to the Committee that it did not have the resources to examine these other issues during the conduct of its Inquiry.

18. In part, the reason why the Inquiry took much longer than originally anticipated and did not extend to examination of matters other than those relating to the Midford case was that it became bogged down in the large number of highly complex and important issues that arose and the unprecedented quantities of documentary evidence received. An excessive number of inconsistencies, inaccuracies and contradictions were encountered in the evidence provided by key witnesses from government agencies. In addition, many of the answers to questions posed by the Committee appeared to be evasive. The Inquiry certainly did not prove to be an easy task for the Committee to complete.

19. Overall, the evidence before the Committee did indicate that the ACS was at best incompetent, or at worst conspiratorial and deceitful. In this regard, should further evidence emerge demonstrating that the Committee was deliberately misled, appropriate action will be taken under the full powers of the Parliament.

20. The Committee recognises, however, that the Comptroller-General cannot be held personally responsible for all of the actions of his individual subordinate officers. Nevertheless, he must accept responsibility for the overall lack of efficiency and effectiveness of the performance of the ACS, the prevailing culture in the Service and for the changes that must be made.

21. In the Committee's view, the ACS neglected to implement adequate management, accountability and reporting systems and to ensure that its staff was sufficiently trained and suited to the duties they were required to carry out in the devolved operational environment adopted by that organisation. Supervision of the

more technical complexities and even of the routine basic tasks conducted by those officers was also found to be absent or superficial.

22. It was observed that the ACS investigators not only lacked understanding and expertise in the matters they were dealing with, but more importantly, these officers failed to recognise their limitations and to seek appropriate assistance where required. It was the Committee's view that adequate management systems should have been in place to detect these problems. Even basic tasks such as the taking of statements from witnesses and the collection and collation of other documentary evidence were found to have been performed poorly, erroneously or in a biased manner. In short, it appeared that the ACS had lost sight of the principles of natural justice and the presumption of innocence during its investigations in the Midford case.

23. In relation to the above matters the Committee has recommended that the Comptroller-General of Customs review the levels, functions and suitability of the ACS officers involved in the Midford case, together with the attendant lines of responsibility and supervision. The results of this review should be reported to the Committee within twelve months of the tabling of this Report.

24. Similarly, but on a more general level, the Committee expects considerable improvement to occur within the ACS and has recommended that it report back to the Committee within the same timeframe with details of the progress of the reforms recommended by this Inquiry.

25. Although the primary focus of the Inquiry was the actions undertaken by the ACS during the Midford case, the interactions of a number of other Commonwealth agencies involved in the prosecution were also examined. In particular, the respective roles played by the DPP and DITAC were investigated. To a lesser extent the AGS, Attorney-General's Department, DFAT and Prime Minister and Cabinet were also involved.

26. The Committee found that witnesses from DITAC had an unclear understanding of the policy requirements in respect of quotas and that they failed to detect or correct misunderstandings of those requirements by officers responsible for the implementation of that policy within the ACS. Deficiencies were also noted in the mechanisms used by DITAC to convey the intent of the quota policy to the ACS. It was noted that misconceptions by the ACS Investigators remained uncorrected right through until raised by the defence in the conduct of the committal hearings.

27. Whilst the Committee was, in part, sympathetic to the position the DPP found itself within, in that as prosecutor of the case, it had received sworn evidence from senior bureaucrats that purported to represent the policy requirements which were later found not to be reliable, it was the opinion of the Committee that the case could and should have been better prepared and managed. Evidence dismissed as irrelevant at a relatively junior level within the offices of the DPP, when later tendered by the defence, highlighted discrepancies in the evidence given by key prosecution witnesses and resulted in the complete withdrawal of the proceedings.

28. In addition, it was noted that the available evidence had not been examined in its proper chronological context by the ACS or DPP and that when this was done that material was found not to be supportive of the prosecution case. It was also established that the way in which the case had been prepared and presented added unnecessarily to the costs incurred by the defendants and taxpayers.

29. The Committee hopes that its Inquiry and resulting Report will be a catalyst for considerable improvements in the efficiency, effectiveness, public accountability and equity of operation of the ACS. Further scrutiny of Customs, as recommended by the Committee, should build on this base.

RECOMMENDATIONS

The Committee has made a number of recommendations which are set out below, grouped under various headings. The recommendations are cross-referenced to their location in the text.

The Committee recommends that:

Major Recommendations

1. The defendants in the Midford Case and others be compensated for their unrecovered material and legal costs. (24.20)

2. Customs warrants only be issued by judicial officers and only upon written application, and the present powers under the Customs Act enabling officers of Customs to issue warrants for search and seizure action be revoked. (6.105)

3. The Government establish a dedicated unit within the Commonwealth Ombudsman's office to investigate individual complaints made against Customs. Additional resources should be provided by the Government to establish this unit. It should report to Parliament through the Ombudsman's Annual Report. The Committee considers that the present practice of Customs officers being seconded to the Ombudsman is unacceptable. (30.7)

4. Matters raised in the public submissions to the Inquiry that do not relate specifically to the Midford case be investigated by the Ombudsman. (30.7)

5. The Australian National Audit Office give appropriate consideration to conducting an efficiency and skills audit of the Australian Customs Service Investigations function. (32.139)

6. Customs report back to the Committee within twelve months of the tabling of this Report detailing the progress of the reforms recommended by this Inquiry. (32.139)

7. Whilst the Committee recognises the importance of test cases, the desire to obtain a prosecution and attendant publicity should not be a factor in determining whether or not the Commonwealth should prosecute a case. In particular, Commonwealth agencies should not lose sight of the legal presumption of innocence. (11.23)

Recommendations Concerning General Procedures

8. Section 81.1g of the *Customs Act 1901* be amended to allow the use of electronic accounting systems for bondstores and that this be reflected in the Customs Manual. (9.92)

9. Representatives from both the Department of Industry, Technology and Commerce and Customs attend any meetings where it is known that the discussions will involve the actions or responsibilities of both entities. Officers from both organisations should adequately prepare for such meetings, ensuring that they are in full possession of the facts within their respective areas of responsibility. (12.62)

10. Improved checking procedures be introduced in the Department of Industry, Technology and Commerce to ensure that advice provided to importers and their advisors correctly reflects government policy, including where applicable, verification to source documentation such as Cabinet documents. (12.62)

11. The Australian Customs Service focus increased attention on the provision of all statements under the Administrative Decisions (Judicial Review) Act and the Administrative Appeals Tribunal Act within the statutory time limits and procedures be introduced within the Australian Customs Service to monitor the progress of supplying Statements under these Acts with a view to ensuring that their provision is timely. (13.28)

12. Statements of Reasons prepared within the Australian Customs Service contain full and complete disclosure of all reasons taken into consideration in arriving at the decision in question. (13.28)

13. Statements of Reasons be prepared by the Australian Customs Service officer who made the original decision, unless valid reasons to the contrary are shown. (13.28)

14. Requests for Statements of Reasons within the Australian Customs Service shall be a means of prompting an independent review of the decision in question, irrespective of the applicant's right to pursue formal avenues of review. (13.28)

15. For Australian Customs Service officers travelling overseas, there should be formal briefings from the Department of Foreign Affairs and Trade, and when legal proceedings are likely to eventuate, from the Australian Government Solicitor or the Director of Public Prosecutions. (18.68)

16. There be a review of OSCORD with a view to setting up a formal set of procedures for liaising with overseas bodies. (18.68)

17. The Australian Customs Service implement a policy of no open-ended tickets for any travel undertaken by its officers. (18.68)

18. The arrangements for Australian Customs Service officers undertaking overseas activities include formal notification of Australia's representatives in that country. (18.68)

19. Customs not seek to redetermine values for duty purposes beyond the statutory time limit of 12 months. (28.20)

Recommendations Concerning Investigations Procedures

20. Australian Customs Service officers never again alter an importer's invoices by removing existing figures and substituting others. (6.105)

21. Australian Customs Service Investigations officers seek appropriate expertise where they do not fully understand the technicalities of explanations provided by importers or agents. (6.105)

22. Senior Australian Customs Service Investigations officers thoroughly check the work of more junior Investigations officers before agreeing to undertake raids or other action proposed. (6.105)

23. Where Australian Customs Service Investigators seek to rely on investigatory work conducted by other groups within or outside of the Australian Customs Service, a formal meeting or meetings be held to ensure correct interpretation of that work and minutes of these meetings be made and retained. (6.105)

24. Expert opinions be obtained in all cases where the evidence sought or under consideration involves technicalities beyond the competence, training or experience of the Australian Customs Service investigators assigned to the case. (14.97)

25. Senior Australian Customs Service Investigations officers undertaking the role of 'Case Officer' remain alert to the potential for Investigations officers to encounter situations where the evidence or explanation necessitates expert interpretation and ensure such expertise is obtained where required. (14.97)

26. Checking mechanisms be introduced within the Australian Customs Service to detect instances where Investigations officers misconstrue or misunderstand the documentary evidence subject to their examination. (14.97)

27. Procedures within the Australian Customs Service be implemented to ensure that its officers only take the statement of the witness, not what Customs would like the witness to say. (17.59)

28. Australian Customs Service Investigations officers be required to be 'accredited' prior to taking witness statements and that such accreditation involve appropriate training and testing of the officers. (17.59)

29. The Australian Customs Service should make more use of foreign Customs services and Australian overseas representatives to collect information in other countries. (18.68)

30. The Australian Customs Service and the Australian Government Solicitor or Director of Public Prosecutions, as appropriate, should produce a formal document to be given to foreign Customs Services and Australian overseas representatives to acquaint them with the methods and requirements for collecting information so that information conforms to State Evidence Acts. (18.68)

31. The Australian Customs Service officers manual should include a section on behaviour expected of officers engaged in overseas investigations. (19.111)

That section should state that:

- upon knowledge of a Court Order having been obtained the officers should cease activities and remain in the country and not attempt to circumvent the order;

- upon receipt of details of a Court Order, whether formally served or not, the officers are expected to obey it forthwith. (19.111)

32. Australian Customs Service Management should ensure that there is consistency in the keeping of dairies and notebooks by their officers. The correct method should be specified in the Australian Customs Service officers manual and management should ensure it is complied with. (19.111)

33. Australian Customs Service Management shall ensure that, in accordance with the Customs Manual, entries in official notebooks, besides being signed and dated, shall indicate the time at which they were made. (19.111)

34. The Australian Customs Service officers manual instruct officers in Australia to return documents obtained in overseas investigations which became subject to Court Orders if the return is officially requested by the equivalent Customs department of that country. (19.111)

35. The Australian Customs Service examine and implement procedures designed to ensure briefs and reports on investigations are timely, accurate and informative. (32.139)

36. The Australian Customs Service introduce formalised systems for planning, budgeting and costing of all Investigations activities for commercial cases. (32.139)

Recommendations Concerning the Seizure of Documents or Goods

37. In accordance with the law, documents only be seized by Customs that relate to the alleged offence specified on the warrant. Customs should initiate steps to ensure that all staff are cognisant of this requirement. (6.105)

38. Certified copies of documents seized by the Australian Customs Service be provided to the owner within seven days. (6.105)

39. No document be seized without firstly recording sufficient details to enable its identification on a receipt to be provided to the owner. (6.105)

40. The underlying facts supporting an application for seizure action be checked within the Australian Customs Service at a suitably senior level prior to forwarding the application for approval. (8.98)

41. Tamper proof seals be placed on all containers of goods subject to seizure. (8.98)

42. The quantity of goods seized be counted and documented as soon as possible after seizure is effected. Such documentation should be retained. (8.98)

43. Breaking of the tamper proof seals and Australian Customs Service verification of the quantity of seized goods be witnessed by a nominated representative of the importer. (8.98)

44. To prevent situations arising where importers can be accused of interfering with seized goods, all such goods subject to seizure action be removed from the importer upon seizure, or actions be taken to prevent access by anyone other than the seizing officer. (8.98)

45. Whilst acknowledging that circumstances may arise where both seizure and prosecution are necessary, the Australian Customs Service give greater consideration to pursuing a course of prosecution without invoking seizure action where prosecution action appears warranted. That is, where appropriate, a conscious choice be made for seizure or prosecution, not both. (8.98)

46. Appropriate delegations be introduced for Australian Customs Service officers supporting recommendations for seizure action such that commercial (non narcotics) cases exceeding $50 000 must be endorsed by the National Manager, Investigations, all cases exceeding $100 000 in value be endorsed by the Deputy Comptroller-General, and cases exceeding $250 000 be personally endorsed by the Comptroller-General prior to forwarding an application for seizure to a judicial officer. A range of delegations should also be established for State based Australian Customs Service officers covering seizures of up to $50 000 in value. These amounts should be regularly reviewed by the Minister, by regulation, to keep pace with the consumer price index. (8.98)

47. Seizure notices clearly quantify the alleged underpayment or evasion of duty. (8.98)

48. For commercial cases where seizure action is contemplated, the value of goods proposed to be seized be limited to no more than twice the amount of the duty allegedly underpaid or evaded. (8.98)

49. Owners of goods seized by the Australian Customs Service be promptly advised of the amount of any security bond payable for the return of those goods. (8.98)

Recommendations Concerning the Preparations for Legal Proceedings

50. Each Australian Customs Service legal brief be checked by a suitably senior and qualified officer not involved in its preparation and that such a check be evidenced on the brief. (4.64)

51. All documents included in Australian Customs Service briefs be fully described and indexed. (4.64)

52. Australian Customs Service officers contemporaneously document verbal legal advice received. (4.64)

53. Where additional documentation is perused by legal advisors in connection with the subject matter of briefs, all such material be complete, identified and recorded. (4.64)

54. Australian Customs Service management should ensure that in accordance with existing Australian Customs Service procedures, all briefs be forwarded to the Legal Support Section for checking prior to on-forwarding to the appropriate external legal advisors. (4.64)

55. All Australian Customs Service briefs for the large and more complex investigations or prosecutions be examined by the Legal Services Section within the Australian Customs Service before those briefs are provided to the Australian Government Solicitor, Director of Public Prosecutions or Counsel. (4.64)

56. The Australian Customs Service, in conjunction with the Australian Government Solicitor and Director of Public Prosecutions, develop a checklist of minimum requirements for legal briefs emanating from the Australian Customs Service. (4.64)

57. Customs retain copies for its records of all briefs prepared. Such copies should only be destroyed or returned to source if ordered by a Court or explicitly required as part of a settlement agreement. (4.64)

58. Australian Customs Service officers take appropriate notes during attendance at meetings with legal advisors where legal advice is sought or provided. Such notes should be retained. (5.81)

59. Director of Public Prosecutions officers preparing or endorsing briefs and submissions check all facts contained therein to appropriate source documents. (10.56)

60. All briefs, whether prepared by the Australian Customs Service, Australian Government Solicitor or Director of Public Prosecutions, include a listing or presentation of the available evidence in chronological order. (10.56)

61. Cases not be prosecuted by the Director of Public Prosecutions where there is reliance on an expectation that further evidence detrimental to the defendants will emerge during the committal hearings. (10.56)

62. The Director of Public Prosecutions and Australian Government Solicitor assume a greater role in ensuring that evidence collected and presented by Australian Customs Service investigators is thoroughly understood by those officers and that assertions sought to be made by the investigators or other witnesses have reasonable foundation. (10.56)

63. Evidence preparation arrangements not be entered into between the Director of Public Prosecutions or Australian Government Solicitor and the Australian Customs Service that would call into question the independence, impartiality or objectivity of the two prosecutorial entities. In particular, whilst not excluding normal consultative mechanisms, the practice of stationing Customs officers in the offices of the Director of Public Prosecutions should cease. (10.56)

64. The Government conduct a review into the operation of the Proceeds of Crime Act to establish whether its application by the Director of Public Prosecutions is consistent with the intention of that legislation. (10.56)

65. Where officers of the Director of Public Prosecutions responsible for preparation of cases seek to dismiss documentary evidence as irrelevant, supervisory checks include an examination of that evidence to ensure that an informed corporate view on its relevance can be formed. (10.56)

66. Cases selected for consideration of Crimes Act prosecution be subjected to closer attention by Senior Australian Customs Service management prior to referral to the Director of Public Prosecutions. (11.23)

67. Where questions of a legal nature arise or are likely to arise in cases where the importer and the Commonwealth disagree over interpretations, the Department of Industry, Technology and Commerce seek appropriate independent legal advice. (12.62)

68. When preparing briefs of evidence, Australian Customs Service Investigators clearly distinguish between the inclusion of known facts based on evidence available and unsupportable assertions or suppositions. (14.97)

69. Care be taken by the Australian Customs Service not to misrepresent or misconstrue legal opinions provided, especially in relation to the sufficiency of existing evidence to support charges. (14.97)

70. Briefs of evidence be vetted and reviewed at senior levels within the Australian Customs Service to improve accuracy and completeness prior to referral to the Australian Government Solicitor, Director of Public Prosecutions or Counsel. These officers should also, to the extent that it is possible, be those who will represent the Australian Customs Service during court proceedings. (14.97)

71. The Australian Customs Service refrain from seeking legal opinions where a full brief of evidence is not available for examination by the relevant legal advisor. (14.97)

72. Where legal opinions are sought by the Australian Customs Service, adequate time be allowed for consideration of the evidence by the legal advisor. (14.97)

73. Procedures be implemented within the Australian Customs Service to ensure that explanations provided by defendants or potential defendants are not dismissed without adequate investigation. (14.97)

74. The Australian Customs Service provide a formal brief to the Director of Public Prosecutions for cases where the advice of the Director of Public Prosecutions is sought. (17.59)

75. Documentation of the steps in the prosecution decision making processes be improved so that a permanent audit trail is available. (17.59)

76. Where Cabinet documents are likely to be of importance to intended Commonwealth prosecution proceedings, the Australian Government Solicitor or Director of Public Prosecutions be permitted to access and copy those documents so that adequate legal consideration can be given to their contents and relevance. By this the Committee does not, however, wish to preclude the placing by the Cabinet Office of appropriate restrictions on that access by the Commonwealth prosecuting agencies preventing any wider dissemination of the material so obtained. (20.29)

77. The Cabinet documents pertaining to the Midford case be released into the public domain. (20.29)

78. Witness statements and other evidence gathered by the Australian Customs Service and intended for use in Commonwealth prosecution proceedings be more critically examined by the Director of Public Prosecutions to detect errors prior to that evidence being tendered. (22.29)

79. Potential witnesses for the Commonwealth thoroughly prepare for court proceedings and review all relevant material prior to tendering written or oral evidence. (23.19)

80. Statements and other evidence to be used in prosecution proceedings be prepared in a balanced and objective manner, disclosing all relevant facts for which the witness has first hand knowledge. (23.19)

81. Adequate time and resources be devoted by the Director of Public Prosecutions to ensuring that witness statements obtained are relevant to the proposed proceedings and do not contain hearsay evidence or other inadmissible material. (23.19)

82. The Director of Public Prosecutions take a more pro-active involvement in the selection of witnesses for Commonwealth prosecution proceedings, and greater consideration be given to their selection, including increased emphasis on selection for ability to provide first hand knowledge and lesser emphasis on the standing of the witness in the bureaucracy. (23.19)

83. Documents, statements or other material collected for use in prosecution proceedings be presented in a form which is logical, coherent and readily comprehensible to Counsel, the judiciary and the defendants. If this requires the material to be arranged in other than chronological order, a chronology should also be provided. (23.19)

84. Every major case where prosecution action is recommended by the Australian Customs Service be reviewed upon finalisation by each Commonwealth entity involved to identify potential areas for improvement. (25.28)

85. The outcome of all major or significant prosecution cases, whether resulting in success or failure, be included in the Australian Customs Service annual report. (25.28)

86. The Australian Customs Service allow adequate time for proper legal consideration by the Australian Government Solicitor of any proposed terms of settlement. (27.27)

87. The Australian Customs Service allow sufficient time for adequate consideration of the settlement provisions by other parties to any proposed settlement. (27.27)

Recommendations Concerning Disciplinary Actions and Internal Investigations

88. Where Australian Customs Service administrative decisions are challenged, an internal review be made by a suitably senior and qualified officer independent of the original decision. (5.81)

89. An investigation be conducted into the apparently false representations made by the Australian Customs Service to the Minister in connection with his letter to Midford and its Tariff Advisor dated 18 January 1988. (12.62)

90. An independent investigation be undertaken into allegations received by the Committee in a submission that an Australian Customs Service officer forged evidence during a recent Crimes Act prosecution case. (14.97)

91. The Comptroller-General review the levels, functions and suitability of the Australian Customs Service officers involved in the Midford case, together with the lines of responsibility and supervision that were clearly inadequate according to the evidence before the Committee. The Comptroller-General should report his findings to the Committee within twelve months of the tabling of this Report. (15.80)

92. All Australian Customs Service Investigations officers be informed that demonstrating a belligerent approach towards members of the import/export industry is unacceptable behaviour and that officers exhibiting such an attitude will be transferred to other more suitable duties. (17.59)

93. Leaks of confidential information which could have come from Customs, or for which Customs is accused as being the source, be investigated either internally or, in the case of serious breaches, by the Australian Federal Police. (26.31)

94. In all cases of leaks of confidential information, the Minister should be advised formally; such advice to include the accusation, if one has been made, the nature of the leak, the details of the investigation, and any resulting action. (26.31)

95. In addition to information about specific leaks, a summary sheet outlining all the leaks occurring during the year be supplied to the Minister at the time of the Annual Report. (26.31)

96. Customs Central Office demonstrates to the satisfaction of the Committee that it has taken steps to reassert its authority over its NSW branch. (26.31)

97. Internal investigation into complaints against Australian Customs Service officers be carried out by officers with no present or past connection with the area under investigation. (32.139)

98. Officers carrying out the internal investigation provide a summary of their findings to the Comptroller-General outlining the nature of the complaint, the findings of the investigation and the action taken. This summary should also be provided to those making the original complaint. (32.139)

Recommendations Concerning General Communications

99. Advice provided to Ministers and/or importers concerning anticipated timing of Court proceedings be based on documented advice from the respective Court Registrar. (12.62)

100. The Australian Customs Service include in its Annual Report a listing of all cases where Statements under the Administrative Decisions (Judicial Review) Act and the Administrative Appeals Tribunal Act were not provided within the statutory time limit, showing the extent of the delay together with the relevant reasons. (13.28)

101. Procedures must be implemented to improve the co-ordination of Australian Customs Service investigations, particularly the dealings by all agencies of the Commonwealth with representatives of persons or firms who are subject to investigation by the Australian Customs Service. (17.59)

Recommendations Concerning Communications Involving the Public

102. Documents provided by importers or agents in response to Customs queries be date stamped upon receipt by the Australian Customs Service. (6.105)

103. Customs never again refuse to meet with representatives of entities or individuals under investigation or refuse to allow an opportunity for explanations to be provided. (12.62)

104. Representations from entities or individuals under investigation be formally acknowledged upon receipt and given appropriate consideration. (12.62)

105. Where representations do not fully clarify the matters at issue, this be conveyed to the affected parties. (12.62)

106. Questions placed on notice to Customs by Parliamentary Committees be answered, such responses be provided in a timely manner and where answers are provided, they be checked for relevance and accuracy at a sufficiently senior level prior to forwarding to the Committee. (15.80)

107. All Australian Customs Service officers be instructed not to discuss the progress of cases under investigation or before the Courts with anyone outside of the performance of their official duties. (17.59)

108. Where redeterminations of Customs values are made, the importer be notified within seven days of the date of the redetermination, such advice to also include details of the importer's right to appeal against the decision and the mechanisms for lodging any appeals. (28.20)

Recommendations Concerning Communications Involving the Department

109. Appropriate checks be conducted to ensure that advice provided to Ministers by Customs or the Department of Industry, Technology and Commerce is factual. (12.62)

110. Policy requirements be more clearly spelled out within the Department of Industry, Technology and Commerce so that its officers and consultants fully understand the requirements of the policies they provide advice upon. (16.34)

111. Adequate and systematic liaison between the Department of Industry, Technology and Commerce and Customs be implemented to ensure that policy requirements are clearly and succinctly conveyed to the Australian Customs Service for implementation. (16.34)

112. Feedback mechanisms be put in place to ensure that Customs clearly understands the policies conveyed to it by the Department of Industry, Technology and Commerce. (16.34)

113. Immediate remedial action be taken by the Department of Industry, Technology and Commerce where there are indications that Customs has misunderstood the policy requirements. (16.34)

Recommendations Concerning Communications Involving Parliament

114. Comprehensive data on the costs incurred from inception of the Midford case in September 1987 to announcement of the Inquiry in December 1990 be provided to the Senate by all Commonwealth bodies involved in the case. (3.32)

115. Departmental secretaries and their equivalents introduce procedures to ensure the completeness and accuracy of costing data provided to Parliamentary Committees. (3.32)

Recommendations to Improve the Quality of Investigations Staff

116. Australian Customs Service Investigations officers receive further instruction in the basic legal presumption of innocence and their responsibility to conduct investigations in a manner that is, and is seen to be, thorough and unbiased. (14.97)

117. Training given to Australian Customs Service officers in the gathering of written statements be reviewed and improved. (17.59)

118. The Australian Customs Service further develop and promptly implement effective strategies for improving the performance of its investigation workforce. (32.139)

119. The Australian Customs Service further develop the performance measures for the Investigations Sub-program. (32.139)

120. All Australian Customs Service investigators attend the Advanced Investigation Course within six months of joining the Investigations function. (32.139)

121. Action be taken to train all current Australian Customs Service investigators who have not attended the Advanced Investigation Course. (32.139)

122. The Australian Customs Service improve its monitoring of training delivery to detect anomalies and deficiencies as revealed in the disproportionate attendance of Victoria based investigators at the Advanced Investigations Course. (32.139)

123. All Australian Customs Service investigators receive structured legal training in the principles of natural justice and relevant aspects of administrative law. (32.139)

124. Short refresher courses and updates be regularly provided to Australian Customs Service Investigators. (32.139)

125. A formal evaluation be conducted of the training provided to Australian Customs Service investigations officers by a panel consisting of representatives from the Attorney General's Department, the Director of Public Prosecutions, the Australian Government Solicitor, the Law Council of Australia and the Customs Brokers Council of Australia. (32.139)

126. Specific training in Crimes Act investigation requirements be provided to Australian Customs Service investigators prior to engagement in Crimes Act investigations. (32.139)

127. Adequate consideration be given by the Australian Customs Service to engage or second specialists with skills and knowledge relevant to Crimes Act investigations and prosecutions. (32.139)

128. The Australian Customs Service set and monitor target rates of training for Investigations staff, with particular emphasis on technical training. (32.139)

129. The Australian Customs Service increase its efforts to recruit and retain suitably qualified staff to the Investigations function from institutions and organisations external to the Australian Customs Service. (32.139)

130. The Australian Customs Service conduct a review of the staffing establishment in the Investigations component to determine whether any changes are required to better match classification levels with the complexity of work required to be performed. (32.139)

131. The Australian Customs Service establish within the Investigations component a suitable number of officers with specialist knowledge and expertise in Crimes Act investigations. (32.139)

132. Where an Australian Customs Service investigation involves Crimes Act considerations, at least one member on the investigation team should have specialist knowledge and expertise in conducting such investigations. (32.139)

133. The Australian Customs Service improve its efforts to match the allocation of commercial fraud cases with the expertise, training, experience and developmental requirements of individual Investigations officers. (32.139)

134. Supervision and checking of the more complex or technical work undertaken by Investigations officers be improved. (32.139)

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACN	Australian Customs Notice
ACR	Australian Customs Representative
ACS	Australian Customs Service
ADJR	Administrative Decisions (Judicial Review)
AFP	Australian Federal Police
A-G	Attorney-Generals
AGS	Australian Government Solicitor
AHC	Australian High Commission
ARS	Anomalies Reserve Scheme
ASEAN	Association of South East Asian Nations
CAMS	Case Analysis and Management System
CG	Comptroller-General
CO	*Central Office*
DAS	Department of Administrative Services
DC	Developing Country
DFAT	Department of Foreign Affairs and Trade
DITAC	Department of Industry, Technology and Commerce
DPP	Director of Public Prosecutions
EEC	European Economic Community
FA	Financial Accommodation
FCL	Full Container Load
FOB	Free on Board
GATT	General Agreement on Tariffs and Trade
IAC	Industries Assistance Commission
IDC	Inter Departmental Committee
JCPA	Joint Committee of Public Accounts
KL	Kuala Lumpur
LC	*Letter of Credit*
Midford	Midford Paramount Pty Limited
MM	Midford Malaysia Sdn Bhd
MP	Midford Paramount
NSW	New South Wales
OSCORD	ACS Overseas Co-ordination Section
POC	Proceeds of Crime
PIP	Past Import Performance
QC	Queens Counsel
RMC	Royal Malaysian Customs Service
SPS	Senior Private Secretary
TCF	Textiles Clothing and Footwear
UK	United Kingdom
US	United States of America
VFD	Value for Duty

Chapter 1

INTRODUCTION

Background

1.1 The Joint Committee of Public Accounts last examined matters concerning the Australian Customs Service in its Report No 224 of October 1984 into Excise and Deferred Customs Duties and its follow-up Report No 234 of September 1985 on the Department of Finance Minute response to the Committee's 224th Report. Report 234 stated that the Committee was not satisfied in several respects with the response to its earlier Report.[1]

1.2 More recently, wide ranging reviews of the operations of the Australian Customs Service were conducted by the House of Representatives Standing Committee on Finance and Public Administration. Appendix D to this Report lists the Parliamentary Inquiries and other major reviews into the Australian Customs Service since 1970. Like this Inquiry, many of the previous reviews highlight problems predominantly in the New South Wales operations of the Australian Customs Service.

1.3 Questions concerning the failed prosecution in the Midford case were first raised in the Parliament in Senate Estimates Committee A during October 1989.[2]

1.4 In December 1990 the Senate referred a number of matters in connection with the case to the Joint Committee of Public Accounts for its examination.

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1. JCPA 234th Report, Excise and Deferred Customs Duties - Response, p.1.
2. Estimates Committee A Hansard pp. A622-62.

Terms of Reference

1.5 The terms of reference for the Inquiry were set out in a resolution of the Senate passed on 5 December 1990 requiring the Committee to inquire and report by 15 May 1991,[3] on the following matters:

- the cost to the Commonwealth, amounting to more than $1m, of the actions of the Department of Industry, Technology and Commerce and the Australian Customs Service in fulfilling their administrative responsibilities in the handling of the failed prosecution of Midford Paramount Pty Ltd;

- the methods of operation of the Australian Customs Service in preparation and conduct of prosecutions and settlements and, in particular, their actions throughout the preparation, prosecutions and settlement of the Midford Paramount Pty Ltd case, including the reasons for the Director of Public Prosecution's discontinuance of the prosecution;

- the practice, propriety and method of the Australian Customs Service of gathering evidence for prosecutions and dealing with the public in the course of such investigations;

- the actions of the Minister for Industry, Technology and Commerce and successive Ministers responsible for Customs in addressing the propriety of administrative actions within the Industry, Technology and Commerce portfolio and the Australian Customs Service, in particular; and

- the need for effective definition of the lines of ministerial control of the Australian Customs Service and, in particular, the actions of the Minister for Industry, Technology and Commerce in oversighting successive Ministers responsible for Customs in relation to the operations of the Australian Customs Service.

The Inquiry

1.6 The Committee called for submissions from interested parties in January 1991. Submissions were received continuously from February 1991 to December 1992. Public hearings scheduled to be conducted during early April 1991

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3. Subsequently extended to 19 December 1992.

were postponed at short notice towards the end of March 1991, following the Committee's consideration of a request from the then Commonwealth Director of Public Prosecutions (DPP). The DPP advised the Committee that there was a risk that the conduct of hearings for the Inquiry in public would prejudice the fair trial in another matter before the Courts at the time. In April 1991 the Committee met with the DPP to discuss his advice and the Inquiry's public hearings subsequently commenced in August 1991, following notification from the DPP that the taking of evidence in the other matter had been completed.

1.7 Because of the particular non-disclosure provisions of the Deed of Release entered into as part of the settlement between the Commonwealth and Tamota Pty Ltd (formerly Midford Paramount Pty Ltd), the Committee was advised in February 1991 by the Attorney-General's Department that it would be necessary to summons various government bodies in order for them to provide the Committee with copies of documents relating to the settlement arrangements. A large number of documents were subsequently provided to the Committee on a confidential basis. The Committee noted that the vast majority of these documents did not appear to have any connection with the settlement matters contained in the Deed of Release. On this basis and also on the grounds of public interest considerations, the Committee explored the possibilities of obtaining consent from the providers of those documents to placing all of the material received in confidence on the public record, including various Cabinet documents which the Committee considered to be essential to a proper understanding of the circumstances surrounding the withdrawal of legal proceedings in the Midford Case. At the time of preparation of this Report the Committee had achieved some success in obtaining public release of the material provided in confidence.

1.8 Evidence was taken at 14 public hearings and five in-camera hearings between 8 August 1991 and 17 December 1992 from a total of 39 witnesses. Details of the conduct of the Inquiry are provided in Appendix A. Some further details, however, are provided below.

1.9 The Committee sought and received from the Senate five extensions to the reporting date for the Inquiry. Details are also provided in Appendix A.

1.10 Submissions were received from Commonwealth Government agencies, industry and other associations and individuals. A list of all submissions authorised for publication is at Appendix B. Exhibits received during the Inquiry and authorised for publication are listed at Appendix C.

1.11 The transcripts of the public hearings and other evidence authorised for publication have been incorporated in separate volumes and copies are available from the Committee secretariat or available for inspection in the Parliamentary

Library. References to evidence in the text of this Report relate to page numbers in these volumes. References prefixed by an 'S' refer to the Submissions whilst those prefixed by a 'K' refer to documents taken as Exhibits. Unprefixed references refer to the transcripts of evidence.

1.12 Two particularly notable features of the Inquiry were the large number of highly complex and important issues that arose and the unprecedented quantities of paper received. The task faced by the Committee was made even more difficult by an excessive number of inconsistencies, inaccuracies and contradictions in the evidence provided by key witnesses and the evasive nature of many of the answers provided to questions posed by the Committee.

1.13 The Public Accounts Committee is not a Court of Law and expressed at the outset of this Inquiry that it did not have the powers, resources, qualifications or inclination to conduct a retrial of the Midford Directors and their Tariff Advisor. Whilst to some outside observers the detailed questioning of certain Commonwealth witnesses may have appeared excessive, or even at times incomprehensible, the Committee at all times strived to unravel the truth of the matters under consideration. As the Inquiry progressed it became increasingly clear that the cavalier approach to presenting evidence to the Committee by some Commonwealth agencies, both orally and in writing, necessitated closer examination and testing of the accuracy of that evidence. The Committee also found that although these agencies seemly swamped the Inquiry with voluminous evidence of little or no relevance to the Inquiry, it was an extremely difficult and protracted process to extract from these witnesses the documents and testimony required to properly address the matters at issue.

1.14 Not surprisingly, given the finite resources available to it, the Inquiry eventually reached the point where the Committee decided that it could not continue with the Inquiry. In short, it reached the stage where it could no longer trust the answers provided by the witnesses from the ACS. Although the Committee has the powers under its Act to formally summons witnesses and require the production of documents and other evidence, it is reluctant to invoke this mechanism, as it does not have the resources and neither should it be required to issue summonses in cases where it wishes to obtain evidence from Public Service witnesses in relation to the conduct of its Inquiries.

1.15 The evidence before the Committee does indicate that the ACS was at best incompetent, or at worst deceitful. In this regard, if further evidence emerges to show that the Committee was deliberately misled, action will be taken under the powers of the Parliament.

1.16 Despite having received a number of extensions to the reporting deadline, it is a matter of regret to the Committee that several substantial issues directly related to the Midford aspects of the Inquiry remain to be addressed at the time this Report is tabled. Due to the priority afforded to the Midford matters, the Committee was also unable to examine in any detail the issues raised in submissions and other evidence received that did not directly impinge on the Midford case. Recommendations for further action on these matters are included elsewhere in this Report.

1.17 In many respects the conduct of the Committee's Inquiry was like a replay of the committal proceedings which went before the Court during the Midford Case. The same patterns emerged and were repeated even though the Committee's examination extended beyond the quota matters that were the subject of the committal proceedings to the other aspects in dispute that did not actually get to Court. Midford and its Tariff Advisor protested their innocence and defended the allegations made against them, whilst the witnesses from the Commonwealth agencies made bold, confident assertions that in too many cases were easily disproved, insisted that they were right without checking the facts already in their possession or readily available with minor additional investigative effort, selectively interpreted and presented the evidence available and either did not investigate or give serious consideration to the explanations offered by the accused parties. The Committee sincerely hopes that the Commonwealth witnesses involved will not complete the repetition of this cycle in its entirety by pronouncing when this Report is presented that the Committee also got it wrong, just as was done when the magistrate delivered his judgement on the failed committal proceedings.

1.18 Indicative of the size and complexity of this Inquiry is that the Committee took almost 2 200 pages of transcript, 169 submissions numbering some 11 600 pages, 109 exhibits covering some 8 000 pages, about 3 000 pages of confidential material and had recourse to tens of thousands of pages of other material that is already on the public record in one form or another, including such things as annual reports, legislation, Senate Estimates Hansards, reviews and reports, court transcripts and so forth. By any measure this has been an enormous task with a multiplicity of complex issues to be addressed.

1.19 Although there were occasional moments of some levity, in the main the Inquiry has not been a pleasant task for the Committee or the witnesses.

1.20 The Committee recognises that the Comptroller-General cannot be held responsible for all actions of individual subordinate officers. However, he must accept responsibility for the overall lack of efficiency and effectiveness of the performance of the ACS, the prevailing culture in the Service and for the changes that must be made.

Structure of the Report

1.21 To attempt to report on all the events that occurred in the Midford Case is a task that is well beyond the resources and capacity of this Committee. A brief history of the case is provided in Chapter 2 that should allow a sufficient overview of the events and issues involved to put into context the matters addressed in the chapters that follow.

1.22 To the extent that it was possible to do so, the costs incurred during the case are addressed in Chapter 3. The remaining chapters, with the exception of those mentioned below, all examine the methods of operation of the Australian Customs Service in the preparation and conduct of prosecutions. Chapter 10 discusses the briefs and submissions prepared within the offices of the DPP, whilst Chapter 16 covers the evidence given by DITAC. Chapters 20 to 25 all touch upon the involvement of the ACS, DPP and DITAC in the prosecution action undertaken during the case. Chapter 30 provides suggestions for dealing with the numerous submissions received during the Inquiry that were unable to be addressed due to time and resource constraints. Ministerial control of the ACS is addressed in Chapter 31.

Chapter 2

BRIEF HISTORY OF THE MIDFORD CASE

Background

2.1 Between 1972 and 1974, Midford established a factory in Malaysia and incorporated its subsidiary, Midford Malaysia Sdn Bhd to manufacture garments principally for the Australian market, with some production going to the USA and EEC.

2.2 During the years 1982 to 1987 Midford's Australian and Malaysian operations became increasingly unprofitable. One factor was increasing wage rates in Malaysia, where Midford had several hundred employees in its substantial factory premises.

2.3 The company explored the possibilities during 1983 and 1984 of selling its total operations in Australia and Malaysia. The intended sale fell through and in early 1985 Midford decided to restructure its Malaysian operations.

Alleged Financial Accommodation Scheme

2.4 The case commenced when the Australian Customs Service (ACS) raided the offices of a customs consultant who had assisted clients to claim refunds of duty and reduce on-going duty payable on imported goods by the legitimate deduction of interest charges from the invoiced cost of goods imported. Customs claimed they obtained evidence that in Midford's case, no genuine interest was charged and/or paid and that Midford and its advisers had contrived to illegally avoid duty payable of approximately $16 000.

Import Quota Manipulation

2.5 In December 1987 Midford's Australian offices were raided by ACS officers in connection with what Customs perceived to be the systematic undervaluation of goods imported by Midford from its factory in Malaysia. Based on records held on Customs files, ACS officers formed the opinion that shirts were imported during 1984 at an invoiced cost some 30 per cent below the production cost

believed to have been previously verified by one of their officers who had visited Midford's Malaysian factory in late 1981 and early 1983. Closer examination of this matter by the Committee, however, revealed that the Customs officers initiating and approving the raid misinterpreted the costing data available. Whilst examining the Company's records obtained during the raid, Customs officers formed the view that Midford had arranged its affairs with its Malaysian subsidiary to allegedly deceive the Commonwealth of $4.5 million through Import Quota manipulation.

2.6 This view formed by Customs officers was based on their understanding of the conditions under which quota had been allocated to Midford. Documents obtained during the raid indicated that Midford's Malaysian factory had ceased production in December 1985 when the factory premises and plant had been sold. Midford Malaysia, which continued to exist as a corporate entity, had restructured its operations and entered a joint manufacturing agreement in early 1986 which effectively meant that the assembly or manufacture of garments from materials supplied by Midford was conducted by a sub-contractor. Midford continued to own and design the garments, undertake quality control and the like, but did not actually own the machines upon which the finished garments were produced. This was because the firm it had selected as its joint manufacturer, Pen Apparel Sdn Bhd, rejected the machinery Midford had intended to relocate in its premises, due to the age and type of that machinery. As the Inquiry progressed it became evident that the Customs officers misunderstood or misconstrued the eligibility requirements for the quotas granted to Midford, and that in some cases these basic misconceptions persisted right up to the time the Committee examined the individual Customs witnesses in the latter part of the Inquiry.

Cancellation of Import Quotas

2.7 As a result of the alleged import quota manipulation Midford's remaining 1987 quotas for importing garments were cancelled by the ACS in December of that year, without providing Midford an opportunity to discuss the matters under consideration in accordance with normal natural justice provisions. This action was taken despite objections from Custom's internal legal advisors, one of whom described the case as 'devoid of all morality'. Quotas that would have been issued to Midford for the 1988 year were also affected. This led to considerable job losses both in Australia and Malaysia.

Bond Store Deficiencies

2.8 Between December 1987 and March 1988, 162 000 shirts with a market value of $1.8 million were seized, mostly from Midford's Wollongong warehouse, in connection with the alleged underpayment of $16 000 in duty arising

from the financial accommodation matter. It was later alleged by Customs that over 16 000 Malaysian shirts seized from Midford's Bond Store were missing and that shirts manufactured in Australia, China and other countries had been substituted. Duty allegedly shortpaid on these shirts was around $100 000. The Committee subsequently found that the documentation supplied by Customs did not support the claims that there had been unauthorised removal and subsequent substitution of stock in Midford's Bond.

2.9 There is evidence to suggest that Customs deliberately delayed the seizures of shirts, awaiting arrival into Midford's Bond Store of shipments that would increase the quantity of shirts available. The timing of the seizures of shirts was such that it had a maximum impact on Midford's business.

2.10 Midford re-exported a large quantity of garments intended for entry to Australia in early 1988, following Customs' seizure of a trial shipment of goods entered by the company that did not contain deductions for the financial accommodation arrangements and the simultaneous issue by Customs of demands for very detailed manufacturing and costing records in respect of the trial shipment of goods. The Committee examined the entry documents in respect of the trial shipment and confirmed they did not contain the deductions that Customs claimed were made.

2.11 During 1988 ACS officers also re-determined the values for Customs duty purposes of all Midford's imports from Malaysia for the years 1986 and 1987, to take into account the amounts previously deducted by Midford in respect of financial accommodation and freight forwarding charges. For all but a small number of these re-determinations, Midford was not advised of the action taken by Customs, despite such notification and consequent appeal mechanisms being a requirement of the *Customs Act 1901*. It also appeared that the majority of these retrospective redeterminations were made well after the time limits specified in the Act had expired.

2.12 In January 1988 the offices and home of a Canberra based tariff consultant who had advised Midford for the previous ten years were raided. Customs officers then developed their case against Midford and associated persons for alleged fraud and conspiracy on the quota issue. Customs believed that Midford and their advisers were aware that the quota was conditional and interpreted the evidence in their possession as proof that Midford had been deliberately vague in providing details of the restructuring of its Malaysian operations. Evidence was received that material was taken by Customs during the raids of Midford's premises and those of its Tariff Advisor, that was not within the terms of the warrants issued and that the return of that material was unduly delayed.

Unconditional Quotas

2.13 For reasons which were not made clear, a deliberate decision was made at a senior level within Customs not to specify any conditions with the legal *determinations issued to Midford for the 1987 and 1988 annual import quotas*, notwithstanding that this was required by the Customs Act. Quotas issued in previous years had specified conditions, but Midford was separately notified of conditions attaching to the 1987 quota in a letter advising that the quota had been granted. It was subsequently discovered that the sender of that advice did not hold the necessary delegation at the relevant time.

2.14 Where conditions were specified on the annual quota instruments for the years prior to 1986, the words used stated that the goods had to be 'sourced from Midford Malaysia'. However, the wording on the advices sent to Midford during 1986 and 1987 simply stated that the quota was 'claused to an individual offshore supply source'. The view adopted by Customs and DITAC was that these conditions meant the goods were to be 'manufactured by' Midford Malaysia. Midford, its Customs Agent, Tariff Advisor and the Committee disagreed with this view.

2.15 In January 1988, the quota matter was referred to the DPP on the recommendation of the Australian Government Solicitor (AGS) for consideration of a prosecution under the *Crimes Act 1914*. This recommendation was based on the information provided to the AGS by Customs officers, notwithstanding that two ACS internal legal advisers had expressed the opinion that there were no grounds for quota withdrawal or prosecution action against Midford. In June 1988, in conjunction with the laying of charges under the Crimes Act, the assets of the company, its Directors and of its Tariff Advisor were frozen under the newly proclaimed provisions of the *Proceeds of Crime Act 1987*.

2.16 Midford was charged under the Crimes Act with defrauding the Commonwealth and the individuals with being knowingly concerned in the commission of that offence. All the defendants were also charged with conspiring with one another to defraud the Commonwealth.

Customs Investigations in Malaysia

2.17 Later in 1988, on the advice of the DPP, two Sydney based Customs officers not previously involved in the Midford case, who were travelling to Singapore on an unrelated Customs prosecution matter, continued on to Malaysia to collect evidence for the Midford case. The Committee received evidence that Customs did not advise the Australian High Commission in Kuala Lumpur of the

intended visit by the two officers and that they did not contact the Commission upon arrival in Malaysia.

2.18 With the assistance of the Royal Malaysian Customs Service and the Malaysian Department of Trade and Industry, the officers visited the factory of Pen Apparel in Penang from which it was believed Midford Malaysia operated. They interviewed officials from Pen Apparel and obtained copies of documents relating to its exports to Midford Australia. They did not interview Midford Malaysia's sole employee, but did interview her estranged husband and take documents from his home. Copies of newspaper articles from Australia were shown to potential witnesses by the Customs officers in order to elicit their assistance in gathering evidence to support the charges already laid.

2.19 Subsequently the officers were provided with copies of Malaysian Customs records relating to exports from Malaysia to Midford Australia. These, together with documents obtained from Pen Apparel, were perceived by the Customs officers to indicate that Midford Malaysia acted as little more than an agent and reinvoicing facility for Midford Australia.

Malaysian Injunction and Court Cases

2.20 In the meantime, Midford Malaysia obtained an Ex-Parte Order in the High Court of Malaysia preventing the Customs officers from undertaking any further enquires in Malaysia and requiring the return of the documents they had already received. The injunction also had application to the Malaysian Customs and the Commonwealth of Australia. Midford claimed the documents were seized illegally and presented sworn affidavits alleging illegal search and seizure, threatening behaviour and offering bribes and inducements to potential witnesses. It was also alleged that the Customs officers were made aware of the injunction. According to Customs, however, the officers had acted properly and legally and left Malaysia before service of the injunction was effected. On the day the injunction was granted, one officer left hurriedly for Singapore with the documents whilst the other officer returned to their hotel to check out and pick up the luggage. Customs state that a copy of the injunction was sighted by the second officer when he was on his way to the airport, some four hours after the first officer had left for Singapore. However, the affidavits alleged that both officers were advised by phone of the granting of the injunction and sighted a faxed copy of the order several hours before they departed for Singapore.

2.21 Subsequent court action in Malaysia ensued between Midford Malaysia and the respondents. The Malaysian Supreme Court eventually upheld an appeal by the Commonwealth of Australia which rendered the injunction invalid and

overturned all previous orders. This decision was in turn appealed, but to date has not been heard. The grounds used to overturn the orders by the Commonwealth of Australia were based on the doctrine of sovereign immunity and did not involve examination of the alleged acts or omissions of the two Australian Customs Service officers whilst they were in Malaysia.

2.22 The Committee discovered that although the Malaysian Customs Service considered it was providing assistance under the terms of the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention), the Australian Customs officers professed no knowledge of this treaty and in fact breached its provisions.

Prosecution of Midford

2.23 Committal proceedings against Midford and others on the Crimes Act charge of conspiracy to defraud the Commonwealth commenced in a Sydney Local Court in June 1989. The charge stemmed from the defendants' alleged deception in continuing to accept quota to which they were not entitled and the benefit derived therefrom. The other Crimes Act charges were dropped immediately before commencement of the committal proceedings. This was one of the first cases where the Crimes Act was used rather than bringing charges under the Customs Act. The defendants faced custodial sentences of up to 20 years and fines of up to $200 000 each.

2.24 The Committee received evidence that there was pressure within the Commonwealth's agencies to achieve results using the provisions of the Crimes Act rather than the Customs Act against high profile importers and much publicity was given to the raids, laying of charges and subsequent court case.

Withdrawal of Charges

2.25 Written evidence was tendered in the committal proceedings from some 50 witnesses. The statements and other documentary evidence provided to the Court amounted to tens of thousands of pages. The first two witnesses, one from Customs and the other from DITAC, were called to give oral evidence but both departed significantly from their sworn statements. This caused doubt in the Magistrate's mind as to the Government's policy in the allocation of the special quota received by Midford. The cross examination of the witnesses raised the question of whether Midford needed to source its goods solely from Midford's Malaysian factory or whether it was free to obtain them from any ASEAN country. Reference was also made to 'a secret arrangement between Australia and Malaysia'

initiated in 1977 by the Fraser Government, which contravened the General Agreement on Tariffs and Trade.

2.26 In a rare if not unprecedented action, the Magistrate castigated the Commonwealth witnesses, commenting that these bureaucrats had only hearsay evidence and were never in a position to prove the conditions. He concluded that they misled the prosecution and selectively provided information to their superiors. Cabinet submissions and other documents covering the 1977 secret arrangements were made available to the Prosecution but apparently were dismissed by them as not relevant to the case. The Defence subpoenaed the Cabinet documents and received them very shortly before the committal proceedings commenced, after overcoming resistance to the release of the documents by the Department of Prime Minister and Cabinet. The Magistrate was also critical of the way the Prosecution case had been prepared and a mass of statements and other documents attempted to be tendered by the Prosecution were ruled to be irrelevant or inadmissible.

2.27 The Director of Public Prosecutions (DPP) withdrew the charges on 30 June 1989 and the hearings ended. Subsequent advice from Senior Counsel in relation to proceeding on alternative Crimes Act charges was not pursued by the DPP. In early 1990 costs of $365 000 were awarded against the Commonwealth for the committal proceedings.

Consideration of Customs Act Charges

2.28 Following the decision by the DPP not to bring alternative Crimes Act charges, the Australian Customs Service then gave further consideration to the financial accommodation matter which had lost precedence to the quota matter. New advice from the Australian Government Solicitor and Senior Counsel, based on information supplied by Customs, was interpreted by that organisation as confirming a strong case for prosecution under the Customs Act.

2.29 The Australian Customs Service also gave internal consideration to bringing forward Customs Act charges in respect of the alleged substitution of shirts and alleged undervaluation of imports resulting from the deduction of freight forwarding charges, but these matters were overtaken by other events and did not get referred to the AGS or DPP. In respect of the financial accommodation matter, the Committee discovered evidence that Customs misunderstood and misrepresented the financial arrangements between Midford and its suppliers and that they failed to properly investigate these considerations despite the explanations provided by Midford and specific instructions from the Senior Counsel engaged by the Commonwealth to advise on this matter.

Representations by Midford

2.30 Throughout this case, Midford made many representations to Ministers, Members of Parliament, the ACS, DITAC, DPP, the Ombudsman and Malaysian officials in respect of the possibility of prosecution, the return of its stock that had been seized in the course of the Customs investigations, and the reinstatement of its cancelled import quotas. Amazingly, all these representations were somehow deflected by the ACS. The company also took action under the *Administrative Decisions (Judicial Review) Act 1977* and in the Federal Court. Customs did not provide crucial responses within the statutory time limit and there is evidence that the responses provided were deficient or defective. The delays in provision of the statements effectively thwarted Midford's attempts to quickly resolve the matters through the Courts.

2.31 The Committee found indications that the senior management within Customs was not kept fully and accurately informed of the developments in the case and that Customs incorrectly advised the Minister concerning certain aspects of the case. It is also evident that whilst DITAC was doing everything possible to assist Midford to regain its quotas, Customs was operating at the opposite extreme and insisting on prosecution. This culminated in a demarcation dispute between the two agencies which ended when a NSW based Customs officer wrote directly to the Secretary of DITAC requesting that the Department discontinue its efforts to assist the company. Customs also made some fundamental misunderstandings regarding the quota eligibility conditions, which were either not detected or not corrected by DITAC.

Claims for Compensation

2.32 Following the withdrawal of the prosecution case and the delivery of the Magistrate's judgement, Midford claimed compensation of $9 million from the Commonwealth, together with reinstatement of its previous quota entitlements. These claims were rejected by the ACS.

Disposal Action for Seized Shirts

2.33 In respect of the 162 000 seized shirts, acting on legal advice, Midford did not bring an action to recover the goods within the four month statutory time limit set by the Customs Act. Some two years later, in December 1989, Customs scheduled the goods for public auction, but withdrew them one week before the auction was to be held. It was evident that the NSW based ACS officers had scheduled the auction of the shirts at the same time as the ACS Central Office was

negotiating with Midford for their return to the Company. Due to damage whilst in storage and changes in fashions, the shirts deteriorated significantly in value.

Settlement of the Case

2.34 Midford made a number of offers to settle all outstanding matters, which the Australian Customs Service ultimately agreed to on 13 September 1990. However, Customs decided not to reinstate quotas beyond a small adjustment to which it considered the company was entitled, based on the quantities of garments imported by Midford in previous years. As part of the settlement, Midford bought back the shirts that Customs had seized from it. Even on the matter of past import performance, Midford and their legal representatives endured a protracted battle with Customs to eventually obtain their basic entitlement to quota, as Customs erroneously maintained that Midford's relevant entitlement period ceased when the Malaysian factory premises were sold, rather than taking into consideration the goods manufactured before, but imported to Australia after the closure of the factory.

2.35 As indicated above, notwithstanding the revelations during the committal hearings and the subsequent withdrawal of charges, Customs refused to reinstate Midford's quota entitlements for the remainder of 1987 and for 1988 and 1989. Evidence was received that attempts were made to create further publicity that was prejudicial to Midfords interests and that whilst these were initially unsuccessful, detailed information regarding the terms of settlement entered into were in fact leaked to the media shortly after the confidential agreement was signed.

2.36 The Midford case arose from a government body responsible for enforcing the Customs Act unwarrantedly judging a company as guilty of an offence and subsequently targeting that company.

2.37 ACS seems to have 'shoe-horned' evidence so that breach after breach was 'discovered' whilst evidence beneficial to the company's position was ignored or deliberately suppressed. Midford was assailed on all fronts and this persisted notwithstanding the collapse of the only prosecution to which it was subjected.

2.38 The combined effect of the Customs seizures of Midford's stock, the withdrawal of quota entitlements and the unrecovered legal expenses incurred by Midford during the case led to the demise of a company that had operated successfully for more than 40 years in Australia.

2.39 Midford subsequently sold its clothing import and manufacturing business and in August 1990 the company changed its name to Tamota Pty Ltd.

Chapter 3

COSTS OF THE MIDFORD CASE

Introduction

3.1 This Chapter provides a summary of some of the costs incurred by the various agencies of the Commonwealth in fulfilling their administrative responsibilities in the handling of the failed prosecution of Midford. It also includes some indications of the costs incurred by Midford, its Customs Agent and Tariff Advisor.

Australian Customs Service

3.2 In February 1991 the Australian Customs Service advised the Committee that the costs it had incurred from commencement of the investigation on 3 December 1987 up to the time of settlement on 13 September 1990 was $283 894. A schedule setting out the major components of those costs was provided.[1]

3.3 On 20 February 1991, the Committee questioned the validity of some of the figures provided and requested that the ACS review the schedule of costs it had tendered.[2] A revised schedule and explanatory notes were provided on 13 March 1992[3] together with an acknowledgment that the original schedule did not take into account several items of expenditure. The revised total of costs provided was $337 484.

3.4 Figure 3.1 shows the cost components from the two schedules provided.

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1. Evidence, pp. S208-9.
2. Evidence, p. 1518.
3. Evidence, pp. S4254-64.

Figure 3.1 Schedule of ACS Costs

Item of Expenditure	First Schedule[4]	Revised Schedule[5]	Variation
Direct Salaries	$	$	$
. Executive Levels	16 000	20 000	+ 4 000
. NSW Investigation Team	157 475	157 475	-
. Officers in Malaysia	-	3 500	+ 3 500
. Other	5 000	5 000	-
Overtime (NSW Investigation Team)	20 000	27 000	+ 7 000
Storage Charges for Seized Goods)	67 500	72 000	+ 4 500
Transportation Costs (ACS Staff)			
. Local (NSW Investigation Vehicles)	5 000	5 000	-
. Interstate	3 050	3 050	-
. Overseas	335	335	-
Travel Allowance/Expenditure			
. Local	3 750	3 750	-
. Overseas	1 750	3 296	+ 1 546
Cartage of Seized Goods			
. Ex Wharf to DAS St Marys	-	670	+ 670
. Ex Midford to DAS St Marys	-	10 069	+ 10 069
. Ex DAS St Marys to Midford (Return of Non-Malaysian Shirts)	-	678	+ 678
. Ex DAS St Marys to Auction and Return	-	832	+ 832

4. Evidence, p. S209.
5. Evidence, p. S4255.

Item of Expenditure	First	Revised Schedule[6]	Variation Schedule[7]
DAS Labour Costs			
. Loading Trucks	-	1 613	+ 1 613
. Checking at DAS St Marys	-	912	+ 912
ACS Labour Costs at St Marys	-	5 146	+ 5 146
Auction			
. Auctioneer	-	7 817	+ 7 817
. Printing, Postage and Advertising	-	5 307	+5 307
Other			
. Legal Fees	2 800	2 800	-
. Witness Expenses	450	450	-
. Forensic Document Examination Services	644	644	-
. Retainer for Interview Transcription Services	140	140	-
TOTALS	283 894	337 484	+ 53 590

3.5 The Comptroller-General of Customs described the differences in the costing data provided by the ACS, amounting to almost 19 percent, as 'minor'.[8] The Committee does not share this view and notes that the revised costing data provided by the ACS does not include any of the costs incurred by that organisation in relation to the Midford case after the Deed of Settlement was signed on 13 September 1990. It is evident that some costs would have continued in relation to the case through to the time the Inquiry was announced in December 1991. The ACS indicated that at times up to 50 Customs officers were working on the Midford case.[9] In view of the duration and magnitude of the case, the Committee has continuing reservations regarding the accuracy of the figures supplied, particularly for direct salaries, which it notes were not revised by the ACS, but these reservations were not pursued with Customs during the Inquiry.

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6. Evidence, p. S209.
7. Evidence, p. S4255.
8. Evidence, p. 2131.
9. Evidence, p. 1256.

3.6 It should also be pointed out that considerable costs have been incurred by the ACS in responding to the Committee's Inquiry, which is a direct result of the failed prosecution case. No quantification of these costs has been sought by the Committee.

3.7 The revision to the costs for storage of the goods Customs siezed from Midford also calls into question an answer provided to the Senate following the Additional Estimates hearings of May 1991.[10]

Department of Industry, Technology and Commerce

3.8 The Department of Industry, Technology and Commerce (DITAC) submitted that it incurred very few direct costs in this case. However, it failed to identify those costs.[11]

3.9 DITAC submitted that the indirect costs it incurred accounted for less than 'four man-months of effort' and that this represents approximately $15 000.[12] The basis for arriving at this estimate was not provided to the Committee.

3.10 The Committee considers that the estimate provided would barely reflect the costs in direct salaries of the actions of two Departmental officers identified at paragraphs 62 and 69 of the DITAC submission[13] and suspects that the costs of the more senior DITAC officers involved in the case were not included. In particular, it would appear that the time spent by the DITAC witness to the Committal proceedings was not considered when the estimate was prepared. This Canberra based officer had a number of meetings with the ACS, DPP, Midford and his Minister,[14] attended the committal proceedings in Sydney, which presumably also involved costs for travel and accommodation, and tendered two lengthy written statements in the prosecution proceedings.[15] During the hearings the Secretary of the Department did acknowledge that 'there were some very small travel costs, about $500' and that there was also a great deal of other time spent on trying to assist Midford.[16]

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10. Addition Information Provided During Estimates Committee 'A' Examination of Proposed Additional Expenditure For 1990-91, Volume 2 page 025.
11. Evidence, p. S740.
12. Evidence, p. S740.
13. Evidence, pp. S738-9.
14. Evidence, pp. S738-9.
15. Evidence, pp. S6894-905 and Exhibits, pp. K564-73.
16. Evidence, p. 798.

3.11 The Committee considers DITAC's suggestion that the costs it incurred were only in the vicinity of $15 000 to be severely lacking in credibility.

Director of Public Prosecutions

3.12 The DPP submitted that total costs exceeding $606 000 were incurred by that organisation in respect of the prosecution case.[17]

3.13 The costs advised to the Committee are detailed in Figure 3.2.

Figure 3.2 Schedule of DPP Costs

ITEM	AMOUNT
Committal Proceedings -	
Defendant's Costs	365 000
Proceeds of Crime Act -	
Defendant's Costs	11 460
Direct Salary Costs (Estimate)	112 000
Counsel	103 662
Costs Consultants	5 601
Witness Expenses	1 936
Transport	2 146
Removal Costs	215
Malaysian Solicitors	13 000
TOTAL	606 020

3.14 Midford put the view that the legal costs incurred by the Commonwealth exceeded $3.6 million.[18] Evidence was also received that indicated the DPP paid the airfares for the two Customs officers who travelled to Singapore and on to Malaysia,[19] some apportionment of which is not apparent in the figures shown above. However, the Committee did not question the witnesses from the DPP on the costs incurred during the case.

17. Evidence, p. S138.
18. Evidence, p. S4.
19. Evidence, p. K2948.

Attorney-General's Department

3.15 The Attorney-General's Department advised the Committee in February 1991 in its six page public submission that it had no submission in respect of three of the Committee's Terms of Reference, including that concerning the costs to the Commonwealth of the Midford Case.[20]

3.16 This is indeed surprising, as much evidence was subsequently received during the Inquiry concerning interactions between the ACS and the AGS. It is clear to the Committee that the AGS had a considerable involvement in this case from at least as early as 10 December 1987,[21] which continued through to the time of drafting the Deed of Settlement between the Commonwealth and Midford in September 1990.[22]

3.17 The AGS obviously incurred substantial costs, particularly in respect of its considerations of a number of Customs Act prosecutions sought to be brought against Midford. The submission from the Attorney-General's Department does, however, acknowledge an involvement in the legal proceedings in Malaysia.[23]

3.18 The Committee did not call representatives of the Attorney-General's Department to appear before it during the Inquiry.

Department of Foreign Affairs and Trade

3.19 The Department of Foreign Affair and Trade (DFAT) advised the Committee in February 1991 that it was not in a position to make a substantive submission addressing the Inquiry's Terms of Reference. DFAT's submission failed to include any quantification of the costs incurred by it during the Midford Case.[24]

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20. Evidence, p. S178.
21. Evidence, pp. S3866, S3873-4 and Exhibits, p. K4418.
22. Evidence, p. K7940.
23. Evidence, p. S178.
24. Evidence, p. S120.

3.20 It is clear that the Department incurred costs in respect of the Ex-Parte Order against the two Australian Customs Service officers operating in Malaysia, the resulting Malaysian High Court proceedings against the Commonwealth and in its general role as a communications conduit between Australia and Malaysia. The legal costs for the Malaysian solicitors who represented the Commonwealth, however, were paid for by the DPP, as indicated in Figure 3.2 above.

3.21 DFAT representatives were not called to appear as witnesses before the Committee.

Revenue Loss To Commonwealth

3.22 Midford submitted that as a result of this case the Commonwealth incurred losses of normal revenue totalling $6.5 million in respect of company taxes and import duties which would have been paid if its quotas had not been revoked and trading stock seized.[25] Midford also pointed out that trade and other relations which were developed and nurtured over many years with Malaysia had been severely strained and damaged.[26]

Costs To Midford

3.23 Midford advised the Committee that the legal costs it incurred during the conduct of the case exceeded $1.2 million.[27] However, this was offset by the $356 000 awarded to the company following the Commonwealth's withdrawal from the committal proceedings. The company also suffered a substantial reduction in the value of its business which it estimated at several million dollars.[28] In November 1989, one Member of Parliament who had made numerous representations on behalf of Midford advised the relevant Ministers that the penalty on the company totalled some $9 million.[29]

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25. Evidence, pp. S5-8, S801-2 and S809.
26. Evidence, pp. 12, S20, S25, S50, S802, S9629, S9770, ABC Radio: *World Today,* 17 April 1991, S9629 and S9770.
27. Evidence, pp. S4 and S764.
28. Evidence, pp. S762 and S772.
29. Evidence, p. S7860.

3.24 Hundreds of job losses in Australia and Malaysia were also a consequence of the Midford case[30] and evidence was received that the Directors, their families and others associated with the company suffered personally.[31]

Costs to Midford's Tariff Advisor

3.25 Midford's Tariff Advisor submitted that his legal defence costs totalled almost $300 000[32] and that he was left with approximately $200 000 of unrecovered legal expenses after the costs awarded to him following withdrawal of the charges during the committal proceedings.[33]

3.26 He also advised that the prosecution launched by the Commonwealth agencies effectively ruined his reputation, caused all staff then employed in the consultancy to leave and substantially diminished both the worth and income of his consultancy business.[34] It was further submitted that his health and family also suffered.[35] No finite quantification of the losses incurred by the consultant was provided, but it was indicated that these amounted to many times his legal costs of $300 000.[36]

Costs to Midford's Customs Agent

3.27 The Customs Agent who acted for Midford advised the Committee in August 1991 that he had received anonymous threats some months earlier to the effect that he would be ruined and made unemployable if he presented evidence to the Committee's Inquiry.[37] In August 1992 the Agent advised the Committee that the threats had in fact been carried through to fruition.[38] Further details are in Chapter 25.

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30. Evidence, pp. S801, S806, S794, S808-9 and S7544.
31. Evidence, pp. S769, S799-803, S809, S827-8, S7530 and S7544.
32. Evidence, p. S37.
33. Evidence, p. S30.
34. Evidence, pp. 395 and S30.
35. Evidence, p. S37.
36. Evidence, p. S37.
37. Evidence, pp. 287-8.
38. Evidence, pp. S11428-34 and S11451-5.

3.28 Although the Agent did not submit any indications of the costs he had incurred during the case, evidence received suggests that he spent a considerable amount of time responding to requests from the ACS and Midford, liaising between these organisations and preparing witness statements for the prosecution proceedings.[39]

Total Costs

3.29 The Committee concluded that the true costs to the Commonwealth of the Midford case could not be readily ascertained, but that they were certainly in excess of $1 million, and may have reached as much as $8 million or more.

3.30 The total financial costs to Midford, its advisor and others would appear to even exceed the costs incurred by the Commonwealth. Ongoing non-financial costs to those individuals are also of considerable magnitude. That the costs on both sides could have exceeded $16 million is staggering.

3.31 The Committee was displeased with the inadequate data provided by various government bodies in relation to the costs they had incurred. It was even more displeased with those bodies which had obviously incurred costs but had either failed to recognise that they had done so or deliberately chosen not to provide details to the Committee. The accountability of such bodies was considered to be less than satisfactory.

Recommendations

3.32 **The Committee recommends that:**

- **comprehensive data on the costs incurred from inception of the Midford case in September 1987 to announcement of the Inquiry in December 1990 be provided to the Senate by all Commonwealth bodies involved in the case; and**

- **departmental secretaries and their equivalents introduce procedures to ensure the completeness and accuracy of costing data provided to Parliamentary Committees.**

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39. Evidence, pp. 285-390.

Chapter 4

LEGAL BRIEFS PREPARED BY CUSTOMS

> *The Australian Customs Service defines a Brief of Evidence ... as being an assembly of evidence, largely in documentary form, accompanied by a memorandum of facts, seeking advice as to the probative value of that evidence.*[1]

First Quota Brief to Attorney-Generals

4.1 The first of several briefs prepared by the Customs investigators in this case was dated 10 December 1987 and was compiled following examination by the investigation team of the documents siezed six days before from Midford.[2]

4.2 The brief consisted of a four and a half page narrative and 70 pages of attachments covering the alleged quota fraud.[3] It was addressed to the Chief Inspector within the Sydney Customs Investigations Section (not the AGS) and was signed by the Senior Inspector of the team. It was not signed off as having been seen by the Chief Inspector. There was no evidence that it had been cleared or vetted within the ACS other than as indicated above prior to delivery to the AGS. It was evidently hurriedly prepared, was far from comprehensive and appeared to have been selectively compiled to only include those documents supporting the conclusions already reached by the Investigations team.

4.3 The brief could not be described as balanced, the attachments were not indexed, there was no attempt to place the documents that it did contain in their proper context, and it leaped to conclusions that, at least in retrospect, were not supportable. The Committee noted that at this stage the brief did not contain any stated estimate of the alleged fraud involved, but as indicated elsewhere in this report, the AGS was advised verbally that the fraud amounted to $6.6 million.

4.4 Having closely examined the brief and with the benefit of hindsight, the Committee is not surprised that the AGS officer and the Counsel who was also

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1. Evidence, p. S6009.
2. Evidence, p. K7740.
3. Evidence, pp. S8717 and K7664-7740.

called in to examine the brief[4] formed the opinion, at that time, that a massive fraud had been perpetrated on the Commonwealth. It is clear that the legal advisors accepted as fact many of the assertions made by the Customs investigators both in the written brief and the discussions which ensued. This is not unreasonable in itself as the AGS advisor had previously worked in Customs,[5] was experienced in Customs prosecutions in his role at the AGS office and was related to a then currently serving Customs Investigator within the same Branch in Sydney.[6] That ACS officer was acting as Chief Inspector, Investigations at the time. It was evident that he was involved in the case as he endorsed the recommendation that Midford's premises be raided.[7] (See Chapter 6) As well, at that stage there was little to indicate to either of the legal advisors that any of the enthusiastic claims made by the Customs investigators were incapable of proof. The AGS officer had earlier reported to Government that 'at least $3 billion worth of Customs revenue (was) being lost through major Customs fraud.[8] It is clear that the legal advice provided to the investigators was based around a reliance upon their technical expertise in Customs matters and expected skill and experience as Investigation officers.

4.5 However, cases of this magnitude would presumably not occur very often nor be discovered so easily and these would seem to the Committee to be reasons enough to exercise extreme caution in ascertaining all the relevant facts before launching into actions that may have severe financial and personal consequences for the suspected wrongdoers.

4.6 The Committee noted that the advice provided by the ACS and Counsel on 10 December 1987 in relation to the brief was verbal only and that it was not recorded in note form by the Customs officers in attendance.[9] Minutes were recorded by the AGS officer (dated 14 December 1987)[10] and following some insistence by an ACS in-house legal adviser[11] a written advice was eventually provided on 30 December 1987[12] recommending the case be referred to the DPP. Significant decisions on actions taken concerning the case were made between 10 December 1987 when the verbal legal advice was provided and 30 December 1987 when the written opinion was despatched, leaving an opening for consideration of the possibility that the written advice contained some element of retrospective justification for the actions already taken by the Customs investigators. The major differences in opinion between the internal ACS legal advisors and the shared views

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4. Evidence, pp. 1742 and S3593.
5. Evidence, p. 403.
6. Evidence, p. S4350.
7. Evidence, p. K7634.
8. Evidence, p. 403.
9. Evidence, p. 1742.
10. Evidence, p. K4418.
11. Evidence, pp. S3958 and S4185.
12. Evidence, pp. S3958 and S4185.

of the Customs investigators and AGS, referred to at Chapter 5 of this Report, also developed during this period.

4.7 The Committee is of the view that the first brief prepared in the case was an inadequate basis for the severe actions that followed.

First Brief to DPP

4.8 On 4 January 1988 the Director of Customs Investigations in Sydney hand delivered a brief on the Midford case to the Sydney office of the DPP.[13] The case was referred to the DPP on the advice of the AGS[14] in accordance with the recommendations of the then recently released Report on fraud on the Commonwealth, which called for consideration of criminal sanctions for cases involving major fraud on Customs.[15]

4.9 The brief consisted of a one page covering letter and three attachments totalling eight pages. The first attachment was a copy of a three page minute from the Chief Inspector to the Director, Investigation which put the fraud at $6.6 million. It also advised of the alleged undervaluation which resulted in the raids on Midford's premises, the withdrawal of the offshore quotas, the seizure of Midford's stock and recommended raids be undertaken on the premises and home of Midford's Tariff Advisor.

4.10 The second document was a copy of the three and a half page written advice from the AGS recommending the case be referred to the DPP. It noted that:

> ... the brief of evidence ...(provided by Customs) ... is not yet complete but is sufficient for the purposes of this advice.[16]

13. Evidence, pp. S6101 and K7852-3.
14. Evidence, pp. S406-9.
15. Evidence, p. S2006.
16. Evidence, p. K7846.

and also stated that:

> Because of the conclusion to which I have come, it is not necessary for me to exhaustively traverse the evidence presently available.[17]

4.11 The AGS advice also included a reference to the potential sale of Midford's quota rights for $1.3 million.[18]

4.12 The third document was a copy of another minute from the Chief Inspector to the Director of Investigation advising that the written opinion from the AGS had been received.[19]

4.13 The Committee noted that at this stage the DPP was not even provided with copies of the documents that were included in the earlier brief to the AGS. That the DPP relied on the advice of the AGS and Customs is clear. On that same day (4 January 1988) the DPP officers assisted the Customs investigators to draft the search warrants for the Tariff Advisor's office premises and residence.[20]

4.14 It is a matter of concern to the Committee that the DPP seems to have supported the conclusions reached by the AGS and Customs investigators based on the limited documentation presented to it at that time.

4.15 However, an internal minute by one of the Customs investigators recorded that the DPP predicted difficulties with the Information and Warrants that the Customs officers had already provided to the Australian Federal Police for the proposed search, which were said to have been drawn up by the AGS. Other members of the investigation team were contacted and they advised that the Information 'had already been sworn, the warrants signed and they were about to proceed.'[21]

4.16 After a series of phone calls, it was agreed that no action was to proceed until the documents were redrafted by the DPP.[22] In so doing, it appears

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17. Evidence, p. K7847.
18. Evidence, p. K7847.
19. Evidence, p. K7849.
20. Evidence, pp. S127, S3877 and K7853.
21. Evidence, p. K7853.
22. Evidence, p. K7853.

that the DPP attended the offices of the Customs investigators on the following day and completed the redrafting after 'sighting particular documents'.[23] What these documents included was unfortunately not specified. The Committee did not pursue this question with witnesses from the DPP.

Second Brief to DPP

4.17 The Committee expected that the next brief of evidence provided to the DPP would have been more substantial. In fact the brief that was delivered to the DPP by Customs on 15 January 1988 consisted solely of a five and a half page submission addressed to the DPP which was signed by the Senior Inspector of Customs Investigation.[24] Again there is no indication that it was checked or vetted by anyone else prior to despatch, or that there were any documents attached.

4.18 In the Committee 's view, the author again made significant inferences or leapt to conclusions that were not supported. The amount of duty evaded was claimed to be $4.6 million and it was stated that this would have been $6.6 million if Midford had been able to utilise all of its 1987 quota.[25] (This was prevented by the seizure of Midford's remaining and incoming stock on 21 December 1987. - See Chapter 8)

4.19 The brief also indicated that a number of policy files obtained from the DITAC covering the offshore quota issue had been received but only the latest papers on the current working file had been examined by the Investigations team. The document was later described by Customs as:

> ... a narrative ... as to how we saw the structure of the fraudulent activity together with a request for their return advice.[26]

4.20 For the next several months the Customs investigation team assigned to the Midford Case were physically relocated to the DPP's premises in Sydney and co-jointly worked on obtaining witness statements and preparing the evidence required for the case. All subsequent briefs to Counsel on the quota matter were issued under the auspices of the DPP. Numerous internal DPP briefings were also prepared. Whilst the DPP briefs were of a significantly higher standard than those

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23. Evidence, p. K7853.
24. Evidence, pp. K7613-8.
25. Evidence, pp. K7613-8.
26. Evidence, p. S6010.

prepared in the ACS, the Committee noted than also suffered from a number of deficiencies and inaccuracies, as indicated at Chapter 10 of this Report.

4.21 In respect of the brief eventually prepared as the basis for the committal hearings, the ACS submitted to the Committee that:

> ... In departure from normal procedures, but with the agreement of both the management of the Australian Customs Service and the office of the DPP, all documents and relevant material was removed to the DPP where the brief for the quota fraud developed in situ.[27]

The reasons for embarking on this unusual course were not provided.

4.22 During the hearings the Committee attempted to explore this area, with little success.

> **Witness** - We have a process and the process was not applied in this case. I think I have said earlier that what happened here was that we actually had officers up at the DPP assembling the evidence. So all the evidence as it was gathered was taken straight to the DPP. This was an exceptional case where the brief was not prepared within the investigations section. It was prepared within the DPP itself, and so all evidence that was gathered -
>
> **Chairman** - Why was that such an exceptional circumstance?
>
> **Witness** - It was just the way that the matter eventuated.[28]

4.23 In relation to this matter, the Committee was in full agreement with the views expressed by one witness that:

> It must surely be of the gravest concern that the rationale for the Office of the DPP, as an independent scrutineer, becomes

27. Evidence, p. S6010.
28. Evidence, p. 1782.

subverted when it seeks the help of the relevant bureaucracy to overcome its own resource inadequacies.[29]

4.24 Because of the way the briefs were prepared, the Committee had great difficulty in ascertaining what exactly was contained in each brief. This was particularly crucial in relation to the documentation setting out the quota conditions and eligibility requirements. The Committee encountered what appeared to be a great deal of reluctance on the part of Customs in identifying and providing the briefs and their attachments to the Inquiry.

4.25 For instance, it was not until the Inquiry's twentieth month that the actual contents of the first brief to the AGS were identified.[30] These documents had been received by the Committee some three months earlier, but as alluded to at section 4.2 above, there was nothing within those documents to indicate to the Committee that they constituted the brief that was provided to the AGS.

Third Brief to DPP

4.26 The Committee noted a reference to what was described as a submission from Customs to the DPP on 8 April 1988,[31] which was recorded in the minutes of the Comptroller-General's meeting with the Minister for Science, Customs and Small Business on 11 April 1988.

4.27 If such a document did exist, no copy was provided to the Committee despite its persistent requests for copies of all the briefs, nor was it included in lists of briefs and correspondence obtained from the ACS[32] or mentioned anywhere in the material provided to the Committee by the DPP.

29. Evidence, p. S7497.
30. Evidence, p. S8717.
31. Evidence, p. S252.
32. Evidence, pp. S6008-10 and S6098-100.

No Briefs to DPP

4.28 In a somewhat curious twist, one of the more senior Customs witnesses to the Inquiry even stated when questioned about briefs provided to the DPP that:

> The collection of documents that went to the DPP was not the responsibility of one person only. As we have said in evidence, a lot of time was spent physically in situ at his offices. The DPP came to the ACS office. There was no situation where a collection of documents was obtained in Customs and went to the DPP in relation to (the matters which are the subject of) this inquiry; that did not happen.[33]

His comments did not sit well with other evidence received. In addition to the briefs identified above covering the quota matter, Chapter 14 identifies other briefs forwarded to the DPP in respect of the financial accommodation issue.

Further Confusion by ACS on Briefs

4.29 In February 1992 the Chief Inspector advised the Committee that:

> One of the last investigation acts of this was to forward (to the AGS) a brief of evidence in respect of the difference between the manufacturing cost and the invoice cost.[34]

4.30 A copy was requested by the Committee. On 23 March 1992, the officer advised the Committee when questioned on this matter during the public hearing that 'I have examined the transcript ... and I was mistaken in saying that.'[35]

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33. Evidence, p. 1878.
34. Evidence, p. 1278.
35. Evidence, p. 1695.

4.31 On that same day the ACS submitted that the officer:

> ... was mistaken when he said a brief of evidence had been forwarded in respect of the difference between the manufacturing cost and the invoice cost. He was referring to the brief of evidence relating to financial accommodation as per his written statement.[36]

4.32 At the next hearing, on 21 May 1992, the Committee was advised by another ACS officer that:

> There were two prosecution briefs, as I recall. One was for undervaluation (for) financial accommodation. There was another brief, and I do not know whether it came to fruition or not, which related to cost of production where goods were alleged to be 30 per cent below production costs.[37]

4.33 The Committee again sought a copy of the latter mentioned brief.

4.34 The ACS responded that:

> (The officer) was referring to a collection of documents which were being worked up to eventual brief level.
>
> The matter was not progressed as no further action was taken on the matter of production costs.[38]

A copy of that 'collection of documents' was not provided to the Committee.

Does Anyone Check ACS Briefs?

4.35 The Committee received confirmation from the NSW Director of Investigations that the briefs of evidence prepared by the Senior Investigator and forwarded to the AGS and DPP were not checked by any of his supervisors in the

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36. Evidence, p. S4347 - See his statement at S3884.
37. Evidence, pp. 1922-3.
38. Evidence, p. S8923.

ACS.[39] He said that 'I think the check that (the Senior Investigator) would give it would be adequate.'[40] The Committee, however, was not impressed with this officer's ability to check his own work.

4.36 The Comptroller-General advised the Committee that briefs of evidence prepared by the Investigations officers are submitted to the AGS or DPP for assessment as to whether a prima facie case exists. He said 'Customs does not take that decision. So if you like, the work of those officers is being checked, in a legal sense, by the crown law authorities of the Commonwealth.'[41]

4.37 Earlier, the Customs Officer's Association had submitted that established procedures required briefs to be checked by officers of the Legal Support Sections in Customs prior to referral to the AGS, DPP or Counsel, but that this practice was discontinued. Thenceforth, Investigations officers dealt directly with the external legal advisors and the briefs were not checked before leaving the ACS.[42]

4.38 The Committee asked the Comptroller-General whether he thought Customs should have its own legal people to 'exercise a far more legislative and legally based ethos over Customs to ensure that something like this does not happen again?'[43]

He said:

> If you put to me, Mr Chairman, whether I would want a legal section in Customs to overview that work, my response is no, because that work would be really replicating what is done by the likes of the AGS as the Commonwealth law authority.[44]

4.39 Prior to this, the NSW Director of Investigations had the following exchange with the Committee:

> **Chairman** - Can you just tell us what procedures were then followed within Customs to ensure that the briefs were

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39. Evidence, p. 1793.
40. Evidence, p. 1793.
41. Evidence, p. 1840.
42. Evidence, p. S1307.
43. Evidence, pp. 1841-2.
44. Evidence, p. 1842.

accurate and, importantly, complete? Were they checked by a legal services section or anyone else who was independent of the actual investigation? What second eye was put over it?

Witness - I do not believe that they should be checked by a legal services section. We have a legal support section in Sydney; there are no lawyers there so it is no good really asking them to check it. They are more of a conduit.

Chairman - You have a legal support section, but there are no lawyers in it?

Witness - To my knowledge there is not.[45]

4.40 The witness added that 'we did not run the matter through the legal support area.'[46]

4.41 The question was again put to the witness, as follows:

Chairman - I keep going back to my initial question that kicked this off. It was this: what procedures are followed within Customs to ensure that briefs are accurate and complete? I prefaced that by saying that the legal opinions given are very much determined by the brief given to the legal advisers. That is why I wanted to know whether they were checked by the Legal Services Section, or anyone else who was independent of the actual investigation. We are dealing with very serious matters here ... We have got to be sober and sensible about these things. What we have got to make sure of is that the structure and course of things are correct, so that at the end of the day a group of individuals or an individual does not find himself on the sharp end of the apparatus of the state when he should not be. Part of that is obviously making sure that the state is very confident that what it has done, it has done correctly.

Witness - I am of the view that the best legal opinion, the best checked in the legal sense, is from outside the agency. To have it too close is not a very good check, so that is why we do have them.[47]

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45. Evidence, p. 1781.
46. Evidence, p. 1782.
47. Evidence, pp. 1787-8.

4.42 In attempting to ascertain the date that a particular brief had been prepared, the Committee was advised by Customs that:

> Normal practice is for the document (brief) to be prepared (by the investigators) for ACS Legal Service Section who examine the paper prior to on-forwarding.'[48]

4.43 To the Committee, this response appeared to be in direct conflict with earlier evidence presented by both the Comptroller-General and the Customs Officers Association. The Committee had previously ascertained that the Legal Services Section is based in the ACS Central Office, staffed by legally qualified personnel and was part of the Executive Services Sub-program.[49] Legal Support Sections, however, existed in most ACS Regions and were a component of the Investigations Sub-program.[50] Further clarification was sought.

4.44 This elicited a response that the answer given at section 4.42 above 'should be amended to read Legal Support.'[51]

4.45 The response continued by claiming that 'at that time it was not protocol for Investigation officers to deal directly with the AGS. This was done through Legal Support.'[52]

4.46 However, the Comptroller-General later appeared to contradict this evidence when questioned by the Committee about what stage Customs ensured, from a corporate viewpoint, that the briefs are correct before they leave the ACS. He said the brief is prepared by the Investigator and reviewed by the case officer (Chief Inspector, Investigations) and:

> The quality of that brief is overviewed by a legal support section to make sure the appendices are there and the documents are tabbed so that when it gets to the legal people within the Australian Government Solicitor it is a complete document.[53]

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48. Evidence, p. S7100.
49. Evidence, p. S6545.
50. Evidence, p. S6545.
51. Evidence, p. S9044.
52. Evidence, p. S9044.
53. Evidence, p. 2062.

4.47 The Committee reiterated that the Legal Support Section had no lawyers. The witness responded thus 'I am not talking about a legal overview. I am taking about an administrative overview.'[54]

4.48 The Committee expressed concern that the officers dealing with the documentation had no legal training, but the witness maintained reliance on the AGS, as 'the legal advisor of the Commonwealth, including Customs'. [55]

4.49 Notwithstanding the views expressed by the Comptroller-General, the Committee remains of the view that it is simply not good enough for the ACS to rely on the AGS or DPP to undertake quality control on Customs briefs of evidence.

4.50 In view of the potentially confusing evidence received the Committee sought to clarify whether:

(i) all briefs in the Midford case were vetted by the Legal Support Section;

(ii) the practice at that time was for briefs to be so vetted; and

(iii) the current practice is for briefs to be so vetted or to be sent directly from the Investigations area to the AGS or DPP.

4.51 The ACS responded that:

(i) No briefs in the Midford case were vetted by Legal Support. This occurred because the Midford Crimes Act prosecution brief was prepared in the DPP office under the direction of DPP staff and therefore the normal administrative oversight undertaken by Legal Support was not necessary;

(ii) The normal practice was that Legal Support vetted briefs prior to on-forwarding to the AGS;

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54. Evidence, p. 2062.
55. Evidence, p. 2063.

(iii) Current practice is for briefs to be vetted by Legal Support.[56]

4.52 In relation to the first answer, the Committee noted the explanation provided did not sit well with its knowledge that numerous briefs were sent by the ACS to the AGS. In addition, some briefs were sent to the DPP by the ACS prior to the officers of both entities co-jointly preparing the briefs that emanated from the DPP's offices. It is clear that for all the briefs in relation to Midford that were prepared by the ACS, the normal practices were not followed. It was disappointing that Customs could not provide a plausible explanation.

4.53 Returning to the question of ACS mechanisms to ensure the accuracy of its legal briefs, the Comptroller-General advised that:

> There is a clear responsibility on the part of the investigation officers to ensure that the brief is complete. There is an absolute responsibility on the part of the case officer to ensure the totality of the brief before it is referred to the AGS. There is no mechanism within Customs that says that the contents of a particular brief needs to come to a regional manager, a national manager or the Comptroller-General for overview because we rely on the skills of our officers in putting the brief together. We then have that further reliance, through the legal system, that the Australian Government Solicitor will say, 'Yes, we believe there are prima facie cases here. Go ahead.'[57]

4.54 On the final day of hearings for the Inquiry the Comptroller-General claimed that:

> ... the Australian Government Solicitor, as the head of the agency that handles the bulk of the ACS prosecution briefs, has advised me that the quality of ACS briefs submitted in each State for prosecution action is good.[58]

4.55 Had the Committee more time and resources, it would have liked to pursue this claim and examine what the AGS reportedly said in its full context. In

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56. Evidence, p. S11015.
57. Evidence, p. 2064.
58. Evidence, p. 2132.

the Committee's view, not one of the many ACS briefs it examined during the Inquiry came close to fitting the AGS description of 'good.' This could, however, signify that there has been a considerable improvement in the quality of ACS briefs since those prepared in relation to the Midford matters.

Does Customs Retain Copies of Briefs?

4.56 In relation to the financial accommodation brief, which is discussed in Chapters 14 and 15, the Chief Inspector advised the Committee that Customs did not retain a copy of the brief prepared for that matter.[59] When the Committee requested that the brief be provided as evidence to the Inquiry, Customs had to obtain a copy from the AGS.[60]

4.57 It was ascertained that the Senior Investigator had returned the documents 'from whence they came.'[61] The Committee found it extraordinary that Customs had not retained on its files a complete copy of what was sent to the AGS in relation to the financial accommodation issue.[62] The ACS did not even retain an index of what documents were included in the brief.[63]

4.58 The Senior Inspector assured the Committee that:

> It is not unusual, I might say, Mr Chairman, and it is not sinister that we have not since kept a copy of that financial accommodation brief.[64]

4.59 However, the Committee would hope that it was the usual practice of the ACS to retain copies of every brief it prepared. The same officer later told the Committee 'I suppose it is fortunate that we have kept what we have.'[65] Further inquiry into the reasons why no copy had been retained elicited the response that the Deed of Release between Tamota and the Commonwealth required the return of all copies of documents involving Midford.[66] When the Committee pointed out

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59. Evidence, pp. 1405-6.
60. Evidence, p. 1405.
61. Evidence, pp. 1406 and 1409.
62. Evidence, p. 1405.
63. Evidence, p. 1409.
64. Evidence, p. 1409.
65. Evidence, p. 1418.
66. Evidence, pp. 1410 and 1418.

that this was not in fact required by the Deed, Customs reiterated its earlier response.[67]

4.60 The Committee again queried this response, to which the ACS again stood by its earlier responses.[68] A final attempt to clarify the matter was made by the Committee on 18 August 1992, to which the ACS advised that it:

> ... accepts the view of the Committee that the Deed of Release required only those documents ontained (sic) during the S.214 action to be returned ...

and acknowledged that:

> Copies had been taken to form a brief for Customs (Act) charges and ADJR proceedings.[69]

4.61 It was also indicated that these copies would be returned to the source or destroyed upon completion of this Inquiry.[70] As the Customs Act charges mainly related to the financial accommodation issue, the intent of the penultimate part of the ACS response was unclear.

4.62 Notwithstanding that the Committee found it difficult to adopt the interpretation of the provisions of the Deed of Release[71] that Customs tried to insist upon, it was clear to the Committee that the ACS had not returned all copies of the documents seized from Midford anyway, as a proportion of the documentation included in the ACS submissions and exhibits to the Inquiry obviously originated from the raid on Midford's premises.

4.63 In respect of the attempted prosecution on the quota matter, the Committee found that the inadequate manner in which the briefs provided to the AGS and DPP had been prepared by the ACS was a contributing factor to the eventual failure of the prosecution. Had those briefs been of a more balanced and complete nature, presenting only the known and supportable facts and clearly

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67. Evidence, p. S4349.
68. Evidence, p. S8660.
69. Evidence, p. S11006.
70. Evidence, p. S11006.
71. The Deed was received by the Committee in confidence and has not been published.

distinguishing those facts from conjecture, the AGS and more particularly the DPP would almost certainly not have committed so readily to pursuing charges under the Crimes Act.

Recommendations

4.64 The Committee recommends that:

- each Australian Customs Service legal brief be checked by a suitably senior and qualified officer not involved in its preparation and that such a check be evidenced on the brief;

- all documents included in Australian Customs Service briefs be fully described and indexed;

- Australian Customs Service officers contemporaneously document verbal legal advice received;

- where additional documentation is perused by legal advisors in connection with the subject matter of briefs, all such material be complete, identified and recorded;

- Australian Customs Service management should ensure that in accordance with existing Australian Customs Service procedures, all briefs be forwarded to the Legal Support Section for checking prior to on-forwarding to the appropriate external legal advisors;

- all Australian Customs Service briefs for the larger and more complex investigations or prosecutions be examined by the Legal Services Section within the Australian Customs Service before those briefs are provided to the Australian Government Solicitor, Director of Public Prosecutions or Counsel;

- the Australian Customs Service, in conjunction with the Australian Government Solicitor and Director of Public Prosecutions, develop a checklist of minimum requirements for legal briefs emanating from the Australian Customs Service; and

Customs retain copies for its records of all briefs prepared. Such copies should only be destroyed or returned to source if ordered by a Court or explicitly required as part of a settlement agreement.

Chapter 5

THE WARNINGS

Eager to press ahead on all possible charges - advised not to talk to Midford or (its Tariff Advisor).

Diary note of 27 December 1987
ACS Director of Quota Operations.[1]

Midford's Customs Agent

5.1 Evidence was received from Midford's Customs Agent that the first warnings about the action to cancel the quota were provided to the ACS as early as 11 December 1987,[2] one day after the decision to cancel the quotas and refer the case for consideration of prosecution action under the provisions of the Crimes Act.[3]

5.2 The Agent contacted the officer who had revoked the quotas, the Director of Quota Operations in the Central Office of the ACS, advising him that:

a) his action in cancelling the quotas was incorrect;

b) Midford had obtained their quotas under an agreement between the Australian and Malaysian Governments;

c) the quota instruments clearly stated that the goods had to be 'sourced from' not 'manufactured by' Midford Malaysia; and

d) 'sourcing' would permit sub-contracting or out-working provided Midford Malaysia sold the goods to Midford Australia.[4]

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1. Evidence, p. S1271.
2. Evidence, p. S1245.
3. Evidence, pp. K4420 and S406-9.
4. Evidence, p. S1245.

5.3 The reaction from the ACS officer was basically to disregard the information he received, stating that the quotas would remain cancelled. There is no evidence that he undertook any action personally to verify what had been advised by the Agent nor to refer the matter elsewhere for follow-up and investigation. If there is one chief characteristic of the ACS revealed in the Midford case and this Inquiry, it is that reflected in the scenario set out above. Explanations were offered time and again that should have led to further investigation and inquiry, but were summarily disregarded by the ACS apparently due to them already making up their minds about the matters in hand.

5.4 The Customs Agent repeated the same explanation to the Sydney based Customs investigators.[5] It seems that he made equally futile progress with them. He subsequently twice relayed the same advice to the Minister's office, both before and again after charges were laid.[6] It is not clear what action, if any, was taken in that quarter. He even approached the DPP case officer on a number of occasions to put the above facts to her.[7] As an aside, he also pointed out to the Committee the curious absence of any mention of these events in the numerous submissions and other documents received by the Inquiry from the ACS and DPP.[8] The Committee has commented on the prevalence of this phenomenon during the Inquiry in respect of Commonwealth witnesses throughout this Report.

5.5 During the hearings the Committee asked the Director of Quota Operations why he ignored the advice from Midford's Custom Agent.[9] He responded that:

> I did not ignore this. I was acting on the advice of the solicitors in Sydney that, despite the fact that there was no legal reason why Midford could not use the determination to clear goods from sources other than their own factory because there was no condition on the determination, it was their view that, while we had written to them to say that they should source the goods from Midford Malaysia, we were obliged to cancel the determination itself if they ceased to do that. In other words, the basis for the issue of the determination was what was at question, not the conditions on the determination itself.[10]

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5. Evidence, p. S1247.
6. Evidence, pp. S1247-8.
7. Evidence, pp. S1247-8.
8. Evidence, p. S1248.
9. Evidence, p. 1746.
10. Evidence, pp. 1746-7.

5.6 The Committee was not particularly enlightened by this answer, especially as Midford had not ceased to 'source' its imports from Midford Malaysia. In addition, the Committee could not agree that the officer had not ignored the advice from Midford's Customs Agent, since it appears he made no efforts to check the origins of the quota. It was ascertained that he did not obtain copies of the relevant originating documents until much later, as discussed in subsequent chapters of this Report.

Midford

5.7 Once Midford received advice of the cancellation of their quotas, immediate representations were made for their restoration, initially to Customs and DITAC and then as the case progressed, to State and Federal Ministers and Members of Parliament, the Prime Minister and the Ombudsman. Action was also taken by Midford under the Administrative Decisions (Judicial Review) Act and in the Federal Court. A chronological list of the representations made by or on behalf of Midford is included at Appendix F. Further comments on these matters are included at Chapters 7, 12 and 13.

Customs Response to Representations from Midford

5.8 To the best of the Committee's knowledge such a quantity of representations over a prolonged period from a single entity is unprecedented in the history of public administration in Australia. All the representations seem to have resulted in the same fate as the first protestations by Midford's Custom Agent. They were either brushed aside or elicited a restatement of the entrenched Customs position without any independent revisitation of the matters at issue to determine whether there was any possibility that the affected parties may actually be correct. Even the investigations undertaken by the Ombudsman seem to have been limited to a mere questioning of Customs about whether the complaints lodged by Midford and their Tariff Advisor had any foundation.[11] There is no evidence that Customs responded to any of the representations by conducting an independent internal review, as might be expected to occur and indeed as is a feature of the Administrative Review provisions adopted in other government agencies.

5.9 As far as the Committee can ascertain, whenever representations were made they were filtered through the same channels within Customs such that they were responded to by the same officers who had been responsible for the aggrieved decisions in the first place. This in itself would not be such a problem if those officers had re-examined the material before them with some degree of clinical

11. Evidence, pp. 701-11 and 719-725.

detachment and taken into consideration the alternate views offered by the affected parties. However, this clearly did not occur. The Committee gained an impression that there is an entrenched attitudinal problem within Customs that elicits a standard response whenever their decisions are questioned. The poor history that Customs has before the AAT and the Courts and the numerous submissions to the Committee raising cases that are not connected with the Midford matters would seem to be adequate testament to the existence of this problem.

5.10 Indeed there were countless examples of this same mindset encountered during the Committee's Inquiry, only some of which have been chronicled in this Report.

Customs' Determination to Prosecute

5.11 In retrospect it seems that Customs became committed to the Crimes Act prosecution route on 10 December 1987 and nothing that occurred subsequently could sway them from that path. Their enthusiasm seems to have swept along the AGS and DPP and once the investigation and prosecution was set in motion, everyone jumped on board as it gathered momentum and no one was able to stop the runaway locomotive. The sheer size of the investigation, with up to fifty Customs Officers working on the case, obviously carried the connotation that it was justifiable and any internal detractors would certainly need to have been courageous to attempt to stop what was occurring.

5.12 Evidence came out during the Inquiry that the warnings were there, but it is obvious that they were drowned out by the noise of the rapidly passing steam train or, if heard at all, were ignored by those in the engine compartment stoking the boiler and driving the train. In view of what has emerged during the Inquiry, the Committee wonders whether any of those who sounded the warnings in effect actually got trapped in the tunnel and with no room to manoeuvre, got run over by the on-coming train.

Doubts about the Prosecution

5.13 Following withdrawal of the prosecution proceedings, the Director of Quota Operations, who was also the key witness from the ACS during thoseproceedings, wrote on 6 July 1989 that he had earlier expressed doubts about proceeding with prosecution action. He wrote that:

> I have personally never doubted the right, or propriety of cancelling Midford's off-shore quota once the sale of their factory and machinery became apparent. I have, however, expressed doubts about pressing charges against Midford in respect of importations made before the quota was cancelled. These prosecutions have been launched at the suggestion of the DPP and Counsel. Only following advice from them that we had a good chance of success did we proceed.[12]

5.14 The Committee attempted to ascertain when it was that this officer expressed doubts and to whom about pressing charges against Midford. The response was not very illuminating. He stated that:

> Doubts were expressed at a meeting on 10 December 1987 in Sydney with (the AGS and Counsel) and representatives of the DPP. At a later meeting (with Counsel) those doubts were once again raised.[13]

5.15 The Committee noted that there were no officers from the DPP at the meeting on 10 December 1987 and that the notes taken by the AGS did not record any reservations about proceeding to prosecution. Clarification was sought from the ACS on this matter. On 28 August 1992 Customs advised that the Director of Quota Operations erred in his earlier statement and that he met with the AGS on 10 December 1987.[14]

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12. Evidence, p. S572.
13. Evidence, p. S8655.
14. Evidence, p. S11005.

Eagerness to Prosecute

5.16 Also of interest in relation to the claim by the Director of Quota Operations that he had expressed doubts about proceeding to prosecution, was his own diary note of 27 December 1987, in which he recorded the following words:

> Eager to press ahead on all possible charges - advised not to talk to Midford or (its Tariff Advisor).[15]

5.17 Questioning by the Committee resulted in the following evidence:

> **Chairman** - Who was eager to press ahead on all possible charges?
>
> **Witness** - I understand that was the DPP.
>
> **Chairman** - This is 22 December 1987.
>
> **Witness** - Yes.
>
> **Chairman** - It did not go to the DPP until earlier the next month, as I understood.
>
> **Witness** - It must have been the investigation branch, in that case.
>
> **Committee** - Are you sure it was not your wish to proceed?
>
> **Chairman** - Somebody is eager, but we are not sure who.
>
> **Witness** - It must have been the Sydney investigation, in that case.
>
> **Committee** - Are you sure that is not a personal note and that it was you who were eager to press ahead?
>
> **Witness** - No. That was not relating to me at that stage.
>
> **Committee** - Were you eager to press ahead?

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15. Evidence, p. S1271.

Witness - I would have liked to have seen a prosecution if it were possible, yes.

Committee - Were you aware of the possibility of the Crimes Act at this stage?

Witness - No, I was not.[16]

The shifting in the evidence given by the witness above did not end there.

5.18 The Committee discovered that the possibility of Crimes Act charges had in fact been discussed at the meeting held on 10 December 1987 with the AGS and Counsel, which was also attended by the witness.[17] This was put to Customs, who responded with an answer attributed to the Director of Quota Operations that:

> There was a technical discussion on which charges should be laid. I took no part in that discussion and I have no recollection of the details.[18]

5.19 Returning to comments made by the witness when the committal proceedings failed, it was also noted that he wrote that he was 'concerned that the advice to abandon the prosecution was based on shaky premises' and that 'we should insist that every possibility of further action is explored'.[19] Such comments were immediately preceded by, but did not sit well with, those contained at sections 5.13 and 5.14 above.

5.20 The Committee noted some illuminating comments recorded in internal DPP minutes, some of which unfortunately were only provided after the witnesses from that organisation had appeared before the Committee. One minute dated 16 March 1988 said:

> The Sydney Office of the DPP has been subjected to intense pressure from Customs from the commencement of receiving the file for advice. No specific reason for this pressure has been given, but guarantees have been sought at every meeting

16. Evidence, pp. 1763-4.
17. Evidence, p. K4420.
18. Evidence, p. S8659.
19. Evidence, p. S571.

> that charges would be laid. This office has always followed the usual procedure in relation to such requests and refused to give such guarantees.[20]

5.21 The Committee did get an opportunity to question Customs about the pressure for prosecution emanating from them. The response indicated that pressure was placed on the NSW Investigation team by the ACS Central Office, particularly the two successive occupants of the position of National Manager, Investigations.[21] However, the response to the question of who placed the pressure on the DPP could best be described as stonewalling.[22] It seems clear, however, that the NSW Director of Investigations was applying that pressure.

DPP's Concern About Eagerness to Prosecute

5.22 An interesting comment recorded in an internal DPP minute was that:

> At this stage I should mention the difficulties the office has encountered in this matter. So much so that I raise my concern about the conduct of certain personnel in the Australian Customs Service ... There is no doubt that varying degrees of pressure have been placed on the investigation team from various quarters within Customs.[23]

5.23 Again the Committee made little progress in prising out some elaboration of this comment.

5.24 So strong was the pressure from Customs for prosecution action to proceed that on 17 March 1988 the then DPP raised his concerns about it directly with the then Comptroller-General.[24]

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20. *Evidence*, p. S2220.
21. Evidence, pp. 1772-3.
22. Evidence, p. 1776.
23. Evidence, p. S2214.
24. Evidence, pp. S3270 and S4209.

5.25 The Committee did not obtain any records of that conversation from the DPP but did receive from the ACS a copy of the minute by the then Comptroller-General made following the call. He recorded that:

> (The DPP) phoned to raise two separate matters concerning the Midford investigation.
>
> The first concerned the pressure that he understood was coming from me for the initiation of an early prosecution.
>
> (He) said that his office wanted to get the prosecution 'right' and he would not want to see the success of the prosecution put in jeopardy by premature action. He pointed out that his office had only had the case for a couple of months and that the investigation had only been current for a few months longer than that. In his view it would be wrong to put the Commonwealth's position in jeopardy by undue haste. (He) acknowledged however that it was my prerogative to 'crack the whip'. I responded to (him) that I was placing a lot of pressure on 'the system' to have some action in place as soon as possible. I recognised however that this had to defer to a DPP view that this could put the case in jeopardy. We both agreed that it was entirely appropriate that there be different perspectives between us on the question of how quickly an effective action could be mounted.
>
> The second matter concerned the problems we have had within the ACS in ensuring that there was adequate co-ordination between the investigation and our responses under admin law. I readily acknowledged that we had had some internal difficulties in this respect and said that we would be tightening our procedures. Once an investigation was mounted into a particular matter we would see to it that any other related actions by the ACS including under admin law would liaise closely with our Investigation program. In an overall sense the investigation action will be the centrepiece of the ACS's concern.[25]

5.26 Also included in that minute was a prophetic paragraph that:

> (The DPP) then expressed a concern that within our organisation, probably unknown to me, there might have

25. Evidence, p. S4209.

been discussions, actions and/or records which could conceivably be used to embarrass a prosecution. I said that there was only one answer to that. I gave (him) an unqualified assurance that we would not hold back any matter or record that had any bearing on the case. I would be as distressed as the DPP to find things coming to light in a criminal trial that had not been thoroughly aired and discussed by us with the DPP in the development of the Commonwealth's position. I made it clear, however, and (he) understood, that I was not speaking on behalf of DITAC. (He) said something would have to be done about that; juries did not understand fine distinctions between various arms of the Commonwealth.

The undertaking of mine to the DPP in the above paragraph places a heavy obligation on all officers within the ACS who have had anything to do with the Midford case.[26]

5.27 The current Comptroller-General was unable to shed any further light on this issue.[27]

Customs Internal Legal Advisors

5.28 On 14 December 1987, three days after Midford's quotas were cancelled, an internal ACS legal adviser met with the Director of Quota Operations in Canberra to provide 'legal advice as to the Administrative law ramifications of his decision'[28]

5.29 Why this advice was sought following, rather than prior to making the decision to cancel the quotas was not made clear. Copies of the documents seized from Midford's premises were provided to the legal officer for his examination and he subsequently met with the Directors of Midford on 17 December 1987.[29]

5.30 On the following day he wrote a minute to the Manager Tariff Concessions and Quota Component, who was the immediate line superior of the

26. Evidence, p. S4209.
27. Evidence, pp. 2122-24.
28. Evidence, p. S4184.
29. Evidence, p. S4184.

Director of Quota Operations.[30] That minute comprised three pages and commenced with the following recommendation:

> That you approve the immediate reinstatement of Midford(s) 1987 off-shore quota cancelled by the Comptroller's delegate on 11 December 1987.[31]

5.31 He also wrote that:

> ... the issue which causes me some doubt is whether the ACS (in conjunction with DITAC) have accepted the substantial restructuring of (Midford Malaysia) and is now precluded from asserting that the restructuring has disentitled (Midford) to off-shore quota.

and concluded by stating that:

> I am of the view that (Midford) have an arguable case that they have satisfied our criteria and I believe that a Court may be sympathetic to such an argument. In the circumstances I therefore consider that the ACS would be viewed as acting unreasonably were it to maintain its decision to revoke the quota pending clarification of the allocation criteria.

5.32 It seemed that he had reached this view irrespective of the complications the absence of conditioning on the quota instruments had presented.[32]

5.33 The above quoted internal legal opinion was not volunteered to the Committee by the ACS and no references to its existence were included in their submissions, apart from the obscure comment that:

> Within the ACS itself, the officers who were involved with these representations formed the opinion that (Midford's) 1987 quota entitlement should be restored and recommended

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30. Evidence, pp. S3944-46.
31. Evidence, p. S3946.
32. Evidence, p. S3944.

to the ACS officers responsible for quota administration that they do so. This recommendation was not acted upon.[33]

5.34 The document was, however, tabled in the Senate by the ACS in May 1991 in response to a question taken on notice at an earlier Estimates Committee hearing.[34]

5.35 The response to the legal advisor's recommendation came from the Manager, Tariff Concessions and Quota Branch on 21 December 1987. He refused to reinstate the off-shore quota. This document was also tabled in the Senate.[35]

5.36 The Committee noted that one of the reasons cited by the Manager for not reinstating the quota was that Midford 'no longer had a major financial interest in an off-shore operation.'[36]

5.37 This was factually incorrect, but seems to have gone unnoticed until queried by the Committee. The Committee established that in fact the restructured Midford Malaysia at that time had a book value of some $4 million, an annual turnover of about $3.7 million[37] and that it was 100 per cent owned by Midford Australia.[38] Although DITAC could not specify the criteria that defined what percentage actually constituted a major financial interest, the Committee is convinced that Midford well and truly qualified.

5.38 According to the DPP, on 22 December 1987 the ACS internal legal advisor again met with Midford and its Tariff Advisor.[39] However, it appeared to the Committee that in fact the DPP had been misinformed in relation to this by members of the ACS Investigations team. Further details are provided in section 5.76 below.

5.39 On that same day the Manager, Legal Services within Customs 'claimed the ACS case was devoid of all morality'.[40]

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33. Evidence, p. S3269.
34. Additional Information Provided During Estimates Committee 'A' Examination of Proposed Additional Expenditure for 1990-91, pp. 26-28.
35. ibid. pp. 29-30.
36. ibid.
37. Evidence, pp. S5814 and S6613.
38. Evidence, p. 1363.
39. Evidence, p. S2218.
40. Evidence, p. S1271.

5.40 At this stage the Director of Quota Operations recorded that:

> I objected in strong terms to his opinion and his request to re-instate quota. (The National Manager, Industry Assistance) instructed me not to re-instate quota without his personal agreement.[41]

Advice from AGS

5.41 On the following day the ACS internal legal adviser actively pursued his reservations concerning the decisions taken by Customs with the AGS in Sydney.[42] Two days later he requested that the AGS confirm its earlier verbal advice in writing.[43]

5.42 Having examined the written legal advice provided by the AGS dated 27 January 1988[44] he then wrote on 10 February of that year to the Attorney-General's Office, expressing his disagreement with the advice provided and seeking clarification.[45] A further letter was despatched by him to the Attorney-General's Office one week later regarding the absence of conditions on the quota instruments.[46]

5.43 On 19 February 1988 a response from the Attorney-General's Office was sent to the ACS which confirmed the earlier advice of 27 January 1988.[47]

5.44 What documentation, if any, that was perused by the Attorney-General's staff in formulating the opinion provided was not clear to the Committee, other than the six attachments included by the ACS legal advisor with his letter. Of

41. Evidence, p. S1271.
42. Evidence, p. S4185.
43. Evidence, p. S4185.
44. Evidence, p. S4094.
45. Evidence, p. S3975.
46. Evidence, p. S3980.
47. Evidence, p. S4098.

particular interest to the Committee, however, was the following comment by the Attorney-General's Office on the earlier legal opinion provided by the AGS. It stated that the earlier advice:

> ... was on the basis that the documents show that the off-shore quota was originally given to Midford and renewed annually, including the renewal in November 1986, on certain understandings including that Midford would continue to manufacture shirts in Malaysia in a factory set up by its subsidiary company.[48] (emphasis added)

5.45 As indicated elsewhere in this Report, there was never a provision requiring Midford Malaysia to manufacture shirts, the conditions on the quota instruments and in the enabling Cabinet Decisions merely required that the garments be 'sourced from' Midford Malaysia.

5.46 The AGS advice dated 27 January 1988, in the Committee's view, suffered two fundamental inaccuracies which rendered it flawed.[49] It stated that:

> ... briefly the documents ... show that the off-shore Quota was originally given to honour the Company's adherence to a government policy which had existed in the 1970's but which has since been superseded and reversed. The Quota was given and renewed annually on the strict understanding that the importer would continue to manufacture shirts in Malaysia in a factory set up by its subsidiary company and that certain other conditions would also be complied with.[50] (emphasis added)

5.47 It is clear from the identical words used that the subsequent advice from the Attorney-General's Office confirming the earlier AGS opinion suffered from its reliance on the conclusions of the AGS regarding the crucial assumption that Midford was required to 'manufacture' rather than 'source' its imports from Midford Malaysia.

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48. Evidence, p. S4099.
49. Evidence, p. 1745.
50. Evidence, p. S4094.

Misinterpretation of the Quota Instruments

5.48 Customs was well aware at this time of the vagueness of the conditions attaching to Midford's offshore quotas. The Director of Quota Operations and the Investigation team had been alerted to the question of sourcing verses manufacturing at least as early as 11 December 1987.[51] Had Customs sought a definitive legal opinion specifically on this question at the time, the entire case may well have taken a different route and many millions of dollars of taxpayers' and individual's money could have been saved. It should be noted, however, that this was not the basis for the failure of the committal proceedings, but in the Committee's view it was a second major plank that would have been presented by the Midford legal representatives to successfully defend the charges brought against the company. As it turned out, the case was dropped before this aspect could be raised in the proceedings.

5.49 Such was the mindset within Customs about what the conditions should have been, rather than what they actually were, that the Director of Quota Operations in an undated internal minute which was later said to have been written 'during January 1988'[52] stated that 'The term "sourced from" is insufficiently accurate where the condition is intended to read "manufactured by".'[53]

5.50 The Director of Quota Operations was questioned about the AGS references to the Government policy being superseded and reversed.[54] He claimed that these references were to changes to the policy that were to become effective in 1989.[55]

5.51 The transcript records the following:

> **Chairman** - Yes. But, what has that got to do with two years beforehand? I do not understand why you are raising this point.
>
> **Witness** - When (the AGS) is talking about it having been superseded and reversed, I think that he is talking about the future there. That would be my understanding of it.

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51. Evidence, pp. S1245-6.
52. Evidence, p. S8718.
53. Evidence, p. S4214.
54. Evidence, p. 1745.
55. Evidence, p. 1745.

> **Chairman** - If that is the case, that just compounds the problem. That really compounds the error. Because what Midford is being judged on there was a prospective event.[56]

Retaining Ownership of the Factory

5.52 Further evidence that Customs revoked the quota without adequate understanding of the conditions under which it was granted is contained in a letter dated 29 January 1988 from the Director of Quota Operations to the solicitors representing Midford. He wrote that:

> On the company's own admission it has not fulfilled the condition requiring it to retain ownership of the factory.[57] (emphasis added)

5.53 Unfortunately there was no such admission by Midford, and there was no condition imposed in any of the quota instruments, Cabinet documents or correspondence requiring the company to retain ownership of the factory.

5.54 In fact, some two and a half years earlier, on 2 May 1985, DITAC had specifically granted permission for Midford to sell their factory.[58]

5.55 Copies of the actual document granting this approval were included in the brief provided to the AGS on 10 December 1987 and was discussed at the two meetings the same ACS officer attended on that day with the AGS and Counsel. He also discussed the same document with the internal ACS legal advisor on 14 December 1987 and references to the document were included in all the legal opinions provided to him.

5.56 In addition, the Committee noted that Midford's Tariff Advisor wrote to the Quota Control Branch on 1 May 1985 clearly advising the ACS of the proposed restructuring. He wrote that:

> Essentially this restructuring will involve the selling off of the land and buildings currently owned by Midford Malaysia.

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56. Evidence, p. 1746.
57. Evidence, p. S565.
58. Evidence, pp. S381-2 and S549-51.

> Plant, which will be still owned by Midford, will be transferred to another facility and the garments owned by Midford, will be manufactured within the confines of another plant in Malaysia. The garments will still be exported by Midford Malaysia.[59]

5.57 Evidence was also received that this letter was apparently suppressed by the ACS, as it was not included in the material which Customs gave to the DPP or Counsel and it was also not included in any ACS submissions to the Committee.[60]

5.58 When the Committee questioned the Director of Quota Operations about his apparent misunderstanding of the quota conditions in respect of the need to retain ownership of the factory, the following evidence was obtained:

> **Chairman** - When did you find out that you had actually misunderstood the quota conditions?
>
> **Witness** - I do not believe I had, Mr Chairman.
>
> **Committee** - Do you mean that, despite the fact that the court has told you that you got it wrong, that everybody else knows that you got it wrong, you are still sitting there to this very day saying that you got it right?[61]

No answer was provided to this last question.

5.59 The transcript continued with the following:

> **Chairman** - You said in that letter, several weeks after you had cancelled the quotas, that it was a condition of the quotas that Midford retain ownership of the factory.
>
> **Witness** - Yes.[62]

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59. Evidence, p. K2477.
60. Evidence, p. 420.
61. Evidence, p. 1752.
62. Evidence, p. 1752.

5.60 When the Committee then pointed out that permission to sell the factory had earlier been granted, his response was 'That is news to me.'[63]

5.61 The Committee then slowly and painstakingly went through the conditions step by step,[64] ending with the following exchange:

> **Chairman** - My question to you before was: when did you realise that you had made a blue? I guess the answer is now.
>
> **Witness** - I still do not accept that Mr Chairman.[65]

5.62 The transcript does not record the extreme exasperation felt at the time by the Committee.

5.63 That witness had even advised the Committee that when the DITAC officer:

> ... wrote that letter to Midford, in reply to their request to be let off the conditions in 1985, he rang me and sent me a copy of the letter and we discussed it at the time.[66]

Supplying to US and EEC Markets

5.64 An additional indication that Customs did not understand the quota conditions was contained in a file note dated 17 December 1987 by the Manager, Tariff Concessions and Quota Branch which recorded details of his discussions with DITAC on that day. He wrote:

> DITAC were also informed that it is understood that the quota was initially made available in order to accommodate the total manufacturing capability of Midford Malaysia within the Australian market. Indications are that Midford Malaysia were also supplying the US and EEC markets and it was only when those markets folded that the Malaysian interest also

63. Evidence, p. 1753.
64. Evidence, pp. 1754-6.
65. Evidence, p. 1756.
66. Evidence, pp. 1753-4.

> was run down. This breach of understanding raises the question of whether Midford should have had this off-shore quota in the first place.[67]

5.65 Unfortunately the actual quota conditions clearly permitted Midford to supply to the US and EEC markets so long as the output of its Malaysian subsidiary was substantially directed to the Australian market.[68] This was done, as Midford Malaysia exported 80 per cent of its products to Australia.[69] In fact, there was ample evidence in the correspondence to Midford showing positive encouragement for it to seek markets outside of Australia.[70]

5.66 In fact as early as 25 February 1976 the then Minister for Manufacturing Industry wrote to Midford advising of the quota allocation for imports to Australia, stating that:

> As regards the balance of the production of the Malaysian factory, I suggest that you actively seek other export markets to make full use of the factory's production capacity.[71]

5.67 Much of the correspondence between Midford and the relevant Ministers and Departments over the subsequent years contained references to Midford's utilisation of overseas markets.[72] Even the letter to DITAC from Midford's Tariff Advisor dated 16 April 1985 which featured in the ACS briefs of evidence contained clear references to the fact that part of the production from Midford's Malaysian factory was directed to the EEC and US markets.[73]

5.68 How the Manager, Tariff Concessions and Quota Branch could apparently be unaware of this when the documentation was actually in his possession mystified the Committee.

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67. Evidence, p. S2773.
68. Evidence, p. S6684.
69. Evidence, p. S6771.
70. Evidence, pp. 693 and 699.
71. Evidence, p. S6656.
72. Evidence, pp. S6659, S6716, S6726, S6739, S6771 and S6774.
73. Evidence, p. S6788.

5.69 Curiously enough, a copy of the file note by that officer, referred to at 5.64 above, was not provided to the Committee in the Customs submissions. It was, however, included in the papers provided by the DPP and DITAC.[74]

5.70 Of equal concern to the Committee was the lack of rectification of the Manager's incorrect perceptions about this matter by the other officers within the ACS and, more particularly, in DITAC. The Committee endeavoured to ascertain whether anyone in DITAC detected the error either at the time or at some subsequent stage of the proceedings. The answers provided, in the Committee's view, may be taken as confirmation that they did not.[75] Further details are at Chapter 16.

5.71 Such was the continuing confusion about what the eligibility requirements were that one of the DITAC witnesses even put to the Committee later during the hearing on 8 November 1991 that 'a percentage of output directed to Australia or other markets was not one of the criteria'.[76]

Why were the Misconceptions Made?

5.72 The Committee found it extremely difficult to accept that the two officers directly responsible within the ACS for the administration of quotas, namely the Director of Quota Operations and the Manager, Tariff Concessions and Quota Branch could so fundamentally misinterpret the conditions under which the quotas were granted to Midford. Of all the officers within the ACS, their positions were such that it is not unreasonable to expect they should have had the very best knowledge within the organisation on this topic.

5.73 Although the Committee did not specifically ask these two officers how long they had been in those positions prior to the end of 1987, there was no suggestion that they had only recently beforehand taken up duties in their respective positions. Even if they had, it is incomprehensible that they could both interpret the documents within their possession in the manner in which they apparently did. One of the officers, however, even indicated that he had first hand knowledge obtained during the late 1970s and early 1980s concerning the off-shore quota matters.[77]

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74. Evidence, pp. S2772 and S6813.
75. Evidence, pp. 693-4 and S2036.
76. Evidence, p. 710.
77. Evidence, pp. 1747-8.

5.74 Further comment on other administrative actions by both these officers is included elsewhere in this Report. Even the Customs submission provided to the Committee on 20 February 1991 continued the error, claiming that:

> ... a response from DITAC, dated 2 May 1985, ... reaffirmed that the quota entitlement was dependent upon (Midford's) continued ownership of (Midford Malaysia), and in turn (Midford Malaysia's) continued ownership of the premises, plant and equipment used to manufacture the goods exported to (Midford) under the allocation.[78] (emphasis added)

5.75 The Committee did not ask Customs which of its officers wrote that particular section of the submission.

Discrediting the Internal Legal Advisor

5.76 In March 1988 the ACS internal legal advisor met with the DPP to 'dispel the DPP's concerns' over the differences in views on the actions taken and proposed against Midford.[79] It is apparent that the ACS Investigations team had made certain allegations to the DPP about perceived actions and views of the internal legal advisor, which the officer considered to be 'illfounded'.[80]

5.77 As indicated at section 5.38 above, officers of the DPP were under the impression that the ACS internal legal advisor had numerous meetings and discussions with Midford and its Tariff Advisor that 'may have irretrievably prejudiced the DPP's prosecution of the Company.'[81]

5.78 Following his meeting with the DPP, the officer advised the ACS Manager, Legal Services that:

> Upon the basis of information supplied the DPP had prepared a chronology which suggested that I had held or at least attended three separate meetings with representatives of the company during the period December 1987 to February 1988. The DPP were alarmed that such meetings were held

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78. Evidence, p. S222.
79. Evidence, p. S3990.
80. Evidence, p. S3990.
81. Evidence, pp. S3990 and S2217-20.

at a time when the company was subject to investigation with the view to the instigation of criminal proceedings. The DPP feared that what was said during these meeting (sic) may prejudice there (sic) investigation.

The chronology is inaccurate and it is of concern that it was prepared and acted upon by the DPP without reference to myself nor to any other officer within the Courts Section.[82]

5.79 He said that 'I attended only one meeting with the company's representatives and that was the meeting of 17 December 1987.'[83]

5.80 It seems clear that the false information came from the NSW Investigations team, who appear to have waged a campaign to discredit the officer because his views on the propriety of the actions taken and proposed against Midford differed from those of the investigators.

Recommendations

5.81 **The Committee recommends that:**

- **where Australian Customs Service administrative decisions are challenged, an internal review be made by a suitably senior and qualified officer independent of the original decision; and**

- **Australian Customs Service officers take appropriate notes during attendance at meetings with legal advisors where legal advice is sought or provided. Such notes should be complete, catalogued and retained.**

82. Evidence, p. S3988.
83. Evidence, p. S3988.

Chapter 6

IMPOUNDMENT OF MIDFORD'S DOCUMENTS

The Elliot Ness style of raid is still prevalent.

Law Council of Australia.[1]

Targeting of Midford for Investigation

6.1 Since 1981, the Customs Act has allowed interest paid by an importer to an overseas supplier for extended terms of payment to be excluded from the value of goods for Customs duty purposes. In mid 1987 the Customs Act was amended to require that the agreement for credit to be extended and interest charged between the overseas supplier of the goods and the importer must be in writing. Prior to this it was not necessary for such agreements to be formally documented. For the purposes of this Report, such arrangements will from here on be termed financial accommodation.

The Customs Viewpoint

6.2 In 1986 the ACS investigated a motor vehicle importer who had used a financial accommodation arrangement in respect of its imports. In so doing, according to Customs, they found that a Sydney based Customs Consultancy firm had advised the importer and 'had promoted and implemented schemes designed to minimise customs duty liability.'[2]

6.3 Customs also advised the Committee that in the main, these schemes as implemented, were considered by the ACS to be artificial and illegal:

> Most were subsequently tested before both the Administrative Appeals Tribunal and the Federal Court, which upheld the ACS position in the majority of cases. Ultimately, the DPP advised that there was insufficient evidence to proceed

1. Evidence, p. S69.
2. Evidence, p. S3869.

against (the Customs Consultancy firm) or any of its principals under the Crimes Act.[3]

6.4 The Committee discovered that some of the so called schemes had never been tested.[4]

6.5 Following the investigation of the Customs Consultancy firm, the ACS commenced the systematic examination of its clients to identify those that had implemented any of the schemes in questionable circumstances.[5]

6.6 The ACS submitted that:

> Some 47 of the consultant's clients were scrutinised before it came to Midford's turn. Of these, four were further investigated, two of which were eventually successfully prosecuted. Outstanding duty was recovered from the remaining two.[6]

6.7 In relation to Midford, the ACS advised the Committee that documents seized from the consultancy firm:

> ... cast serious doubts on the amount of interest claimed by (Midford) and whether there was in fact any interest component in the export prices quoted by (Midford Malaysia). (Midford) had obtained refunds of Customs duty totalling $30,868.99 for interest it claimed it had paid on imports between December 1981 and December 1982. Subsequent imports were entered showing customs values exclusive of amounts claimed as interest.[7]

6.8 In fact, the Committee was advised by Midford that it had overpaid about $140 000 in duty and was precluded from obtaining a refund of about $70 000 due to the expiry of the statutory time limit of 12 months and because of incomplete

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3. Evidence, p. S3869.
4. Evidence, p. 1287.
5. Evidence, p. S3869.
6. Evidence, p. S3870.
7. Evidence, p. S3264.

documentation.[8] It also found that the ACS had carefully checked and approved Midford's financial accommodation arrangements in September 1983 before allowing the refunds to be paid to the company.[9]

The Committee's Viewpoint

6.9 From the documentation provided, the Committee surmised a somewhat different scenario to that put to it by Customs, as follows.

6.10 The changes to the Customs Act in 1981 allowed financial accommodation charges to be deducted in arriving at the value for duty. Many importers paid financial accommodation, but were not aware that it was an allowable deduction. The Customs Consultancy firm circulated its current and prospective clients advising that it could assist them in relation to ensuring that they paid no more duty than legally required to do so. In 1982 Midford's auditors recommended that the company have its practices and procedures reviewed by the consultant.[10] That firm undertook, for a fee, to seek refunds on Midford's behalf for any overpaid duty where financial accommodation had not been deducted on previous shipments. The fee was calculated at '20 per cent of duty refund claims approved, plus 15 per cent of duty savings achieved over one year forward.'[11] The total fee paid was just under $6 000.[12]

6.11 Further comment on how the Customs investigation officers perceived these arrangements is included at section 6.23 below. Chapter 14 deals with the subsequent events in respect of the financial accommodation issue.

Customs' Initial Contact with Midford

6.12 On 14 September 1987, two Customs officers from the Import/Export Branch met with Midford and its Customs Agent to discuss the forwarding agent's charges shown on the Midford Malaysia invoices for shirts imported to Australia. As part of their inquiries they requested that a copy of the written agreement between Midford Australia and Midford Malaysia covering the financial accommodation

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8. Evidence, pp. 105-8 and S3386-7.
9. Evidence, pp. 1357, S3376-9 and S3383-5.
10. Evidence, pp. 107, 109 and 757.
11. Evidence, p. S3369.
12. Evidence, p. S3390.

arrangements be provided to them.[13] The requirements for such agreements to be evidenced in writing came into force some two and a half months earlier.

6.13 Customs submitted that when their officers went to get a copy of the agreement 'Midford were unable to produce the document.'[14] During the hearings, the Senior Investigator told the Committee that:

> Midford could not supply the agreement.
>
> **Committee** - So it could not or it would not?
>
> **Witness** - They could not.
>
> **Committee** - They just did not have it at all?
>
> **Witness** - Yes.[15]

6.14 However, other evidence was received that put a different perspective on this bold statement by Customs. The Committee was advised that the Midford personnel could not immediately locate a copy of the agreement and as the Customs officers could not wait for it because of other commitments, it was agreed that the document would be delivered to the ACS later.[16] The Midford office was said to be chaotic, with papers everywhere.[17]

6.15 Shortly after the ACS officers departed, Midford located the document, dated 9 July 1986[18] and it was collected by the Customs Agent, who delivered it to Customs on the following day, 15 September 1987.[19]

6.16 According to a sworn statement made by one of those ACS officers, he was told by the officer on that day 'I now have the agreement for Midford and the query on financial accommodation has been solved.'[20]

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13. Evidence, p. K1909.
14. Evidence, p. S4350.
15. Evidence, p. 1506.
16. Evidence, p. 369.
17. Evidence, pp. 369 and 1442.
18. Evidence, pp. 369-70.
19. Evidence, pp. S5978 and S4350.
20. Evidence, p. K7230.

6.17 In a totally unrelated exercise, during that same month a Senior Investigator of the NSW Investigations section commenced the initial scrutiny of Midford.[21]

6.18 The ACS submitted in February 1992 that:

> His research found that files for the company in relation to the customs valuation of its imports were held both in Sydney and Canberra offices. These files showed that in 1984/85 an inquiry had been conducted by the then Australian Customs Representative in Hong Kong into the eligibility of Midford Malaysian imports for Developing Country preferential duty treatment. The ACR had visited Midford's Malaysian factory and verified the production costs of goods manufactured there. All goods were found to qualify for DC preference.
>
> (He) then compared the invoiced values of various goods imported by Midford from Malaysia with their verified production costs, at a similar time period. He found that the invoiced values were approximately one-third less than the production costs. (He) concluded that these goods had been undervalued for customs duty purpose and had been falsely entered.
>
> This led to the action, pursuant to Section 214 of the Customs Act, which was conducted against Midford on 3 December 1987.[22]

6.19 However, the original ACS submission claimed that:

> In 1985 (Midford) had submitted (Midford Malaysia's) production costings to the ACS to prove that its imports qualified for Developing Country preferential duty rates. A comparison of these costing with (Midford Malaysia's) invoiced prices to Midford around the same time showed that on average, the claimed cost of producing the goods in

21. Evidence, p. S3870.
22. Evidence, p. S3870.

Malaysia was approximately 30% higher than the price they were sold to (Midford) inclusive of purported interest. This reinforced the suspicion of undervaluation.[23]

6.20 The Chief Inspector gave evidence during the hearings that the Customs representative from Hong Kong visited Midford Malaysia in 1984,[24] and that the costings for the 1984 shipment used as the basis for the section 214 action in 1987 were actually verified by that officer.[25]

6.21 Unfortunately, the Committee found that none of these versions of the events were particularly accurate. Further details are provided below.

6.22 On 12 October 1987, the Senior Investigator wrote a three and a half page minute to his Senior Inspector headed 'Possible false refund claims based on Financial Accommodation charges being non dutiable'.[26]

6.23 In that minute he claimed, based on the documents he examined in the files seized from the Customs Consultancy firm and the ACS file covering Midford's refunds of duty, that:

- a typical scheme was put into effect;
- the whole scheme ... was concocted ... on advice from (the Customs Consultancy firm)
- refunds ... were paid erroneously and the approval when given was based on misleading information;
- entries post 1983 ... are false; and
- amounts shown on entries as deductions from (Free on Board) prices for payment terms appear to be inflated.[27]

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23. Evidence, p. S3264.
24. Evidence, pp. 1345-6.
25. Evidence, p. 1292.
26. Evidence, p. S3347.
27. Evidence, pp. S3347-50.

6.24 He also twice referred to the Agreement between Midford Malaysia and Midford Australia dated 9 July 1986 as having been attached to the Customs file in July 1986.[28] In addition, he stated that an entry of 11 December 1986 was prepared 'after the written agreement was produced to Customs.'[29] The significance of this is addressed later at section 6.90 of this Chapter.

6.25 The officer's conclusions seem in hindsight to have been arrived at because be found draft letters, which he assumed on unknown grounds to have been written by the Customs Consultancy firm, sent between Midford Malaysia and Midford Australia that were 'lacking in detail and had spaces to be completed.' He also found complete letters as per the drafts but with the spaces completed. Of particular concern to him was that:

> A draft letter (undated) made out to M.M. explained the advice that financial accommodation charges were non dutiable. On page 2 of the draft after an example of 'Payment Terms', it states 'The rates should of course relate to those charged to us from time to time.' This statement is out of context with the rest of the letter and appears to be a reminder to hold the contrived rates to a believable level. The whole context of the draft letter (probably written by (the Customs Consultancy firm) suggests that M.P. had no knowledge of any interest charges on extended credit.[30]

6.26 That the officer saw matters in a particularly uncompromising light, had limited understanding of commercial and financial practices and arrived at conclusions that were not supported by the evidence, were all hallmarks that featured prominently throughout the entire Midford case and subsequent Inquiry by the Committee. The witness even told the Committee that the Customs Consultancy firm's practices 'suggested something sinister.'[31] During the hearings he again stated that the refunds of overpaid duty should not have been made,[32] even though the Committee ascertained that he did not contact the section within Customs that had approved those refunds to ensure that he correctly understood the basis for making them.[33] His Chief Inspector, who was acting as Director at the relevant time, told the Committee that he 'relied upon the report of the (Senior Investigator) of 12 October 1987.'[34]

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28. Evidence, pp. S3347-50.
29. Evidence, pp. S3347 and S3349.
30. Evidence, pp. 1355 and S3348.
31. Evidence, pp. 1281-2.
32. Evidence, p. 1311.
33. Evidence, p. 1359.
34. Evidence, p. 1309.

6.27 In an undated one and a half page follow-up minute, which the Committee later ascertained to have been forwarded on 16 November 1987, the Senior Investigator recommended to his supervisor that Midford's premises be subject to action under section 214 of the Customs Act.[35] Such action essentially involves raiding the premises and seizing all documentation in relation to the firm's imports for the previous five years.

6.28 The minute records that the officer queried the validity of the Developing Country clause on Midford Malaysia invoices and was informed by the ACS Central Office that the claim by Midford, enabling it to bring goods in at a lower rate of duty, was correct. [36] Later events indicated he must have disagreed with this advice.

Customs' Evaluation of Allowable Duty

6.29 The Senior Investigator obtained copies of the costing records used to verify Midford's entitlements to claim the Developing Country Preference rate of duty and compared them to the prices for two of Midford's entries shown on the respective invoices, which were dated 30 November 1984.

6.30 Using cost reference numbers and the corresponding unit costs of manufacture set out on the schedules supplied for validation of Developing Country Preference entitlements, the officer identified identical cost reference numbers on the invoices but with different and substantially lower unit costs. These are reproduced in Table 6.1 below.

Table 6.1 ACS Comparison of Costing Data[37]

COST REF	COST	INVOICE UNIT PRICE
1241	13.78	9.95
1242	16.16	11.15
1243	12.32	8.41
1244	14.56	9.69
1289	12.64	8.68

35. Evidence, p. S3393.
36. Evidence, p. S3393.
37. Evidence, p. 3393.

6.31 The minute continued with:

> It should be noted that the total cost as indicated on cost references supplied would be somewhat higher as selling, administration, marketing and profit are not included in the costings.
>
> Based on the different unit prices presented to Customs, a comparison of F.O.B. prices and duty was calculated on produced and made up invoices.
>
> Entry A 4348 0007
>
> | | F.O.B. | DUTY |
> |---|---|---|
> | Produced invoice | M$ 88,636.71 | $ 19,560.98 |
> | Made up invoice | M$125,757.30 | $ 27,744.40 |
> | Difference | M$ 37,120.59 | $ 8,183.42 |
>
> Entry A 4348 0009
>
> | | | |
> |---|---|---|
> | Produced invoice | M$ 16,298.24 | $ 3,596.77 |
> | Made up invoice | M$ 23,501.48 | $ 5,184.76 |
> | Difference | M$ 7,203.24 | $ 1,587.99 |
>
> NOTE - An amount for financial accommodation was deducted in all instances. The amount was calculated as shown on invoices because the actual amount deducted could not be read due to the bad quality of the entry and dissection sheet copies. The actual duty shortpaid will, in fact, be higher as inclusions as outlined in my para 5 (Section 6.31 above) are absent from the unit costings.[38]

6.32 In relation to the poor quality of the entry and dissection sheet copies the officer calculated the figure he thought would have been deducted for financial accommodation because the actual figures were unreadable. Of greater concern to the Committee was that his quoted figures for duty payable also appear to have been calculated, but using an incorrect and higher rate than was applicable to those particular imports.

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38. Evidence, p. S3393.

6.33 That is, the amounts shown by him for the Customs duty were calculated at the rate of 50 per cent, rather than the rate of 40 per cent applicable to Midford because it was entitled to enter the garments under the Developing Country Preference arrangements.

6.34 The effect of this was to further inflate his claims regarding the amount of duty evaded. Curiously, as stated at section 6.28 above, his minute commenced by highlighting that he had been advised by Canberra that the use of the Developing Country Preference by Midford was correct.[39]

6.35 In addition, it appears that he did not obtain and file copies of that part of the entry documentation showing the actual amounts of duty paid. Instead he calculated what he considered these should be. When the Committee later requested copies of these documents, Customs advised that the records had been destroyed in August 1990.[40]

6.36 The officer then concluded that 'on the above calculations, (the entries) are false in a particular contrary to section 234(1)(d) of the Customs Act.'[41] This section of the Act states that a person 'shall not ... make or give any entry which is false in any particular.' Other issues that he stated could be resolved during the proposed section 214 action included financial accommodation, commissions and the Developing Country Preference claimed by Midford.[42]

Problems with ACS Evidence

6.37 During its examination of this issue the Committee experienced some major and protracted difficulties with both the documentary and oral evidence obtained from the ACS.

6.38 Closer inspection of the claim by the ACS Investigations officers that the cost reference numbers were a unique identifier that enabled the manufacturing cost, purportedly verified by the ACS in Malaysia, to be linked and compared with costs shown on the invoices, proved to be false.

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39. Evidence, p. S3393.
40. A certificate of destruction dated 2 August 1990 was provided to the Committee in September 1992.
41. Evidence, p. S3394.
42. Evidence, p. S3394.

6.39 The costing data used for the comparisons was found to relate to a different period from that in which the shirts had been manufactured, and this costing data had not in fact been verified by the ACS, as it related to periods subsequent to the last visit by their representative to Midford's factory in Malaysia. That officer last conducted verification in Malaysia in February 1983,[43] whereas ACS's costing related to November 1984. In addition, the cost reference numbers were not unique and the Committee concluded that Customs had effectively attempted the proverbial comparison of apples with oranges. It was also established that no officers from the Investigation team attempted to contact the officer who had performed the cost verifications to discuss the matters at issue.[44]

6.40 Many long hours were spent with Customs over this issue as they united and steadfastly defended what, in the Committee's view, was indefensible. Midford Malaysia had used a system of cost reference numbers and style numbers to identify the costs of manufacture of individual garments but, at any point in time there were over 500 styles being imported,[45] each with an identifiable individual cost. Many styles were linked to the same cost reference numbers but had vastly different manufacturing costs. It is also of note that at no time did the Customs officers ever check with Midford or its advisers to ensure that they fully understood the costing data. [46]

The 'Made Up' Documents

6.41 Another matter the Committee discovered which caused it great consternation was in connection with 'produced and made-up invoices' used by the Senior Inspector to 'prove' there was undervaluation by Midford and that action under section 214 should therefore be approved. The officer apparently copied the invoices used to enter the goods, removed the original figures for the costs shown with correction fluid and substituted his own figures calculated using the higher amounts which in his opinion reflected the true costs of manufacture. He thus presented a picture that Midford had evaded nearly $10 000 in duty on the two entries chosen for examination, but in such a way that it was not at all clear to anyone examining the file that the made up invoices had in fact been created by him rather than Midford.[47] The witness said, however, 'but there is nothing sinister in that'.[48]

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43. Evidence, p. K4276.
44. Evidence, pp. 1330 and 1346.
45. Evidence, p. S5905.
46. Evidence, pp. 1327 and 1421-2.
47. Evidence, pp. 1376-87.
48. Evidence, p. 1381.

6.42 The Committee attempted to ascertain whether the 'made up' document was given to the AGS and DPP, since it was only evident from the original still held on the Customs file that the figures had been changed. The initial answer was 'I do not know'.[49] So was the next answer.[50] Then it was 'No',[51] followed by 'probably not'[52] and then 'Yes'.[53] However, it then became 'No'.[54]

Were Customs' Officers Out of Their Depth?

6.43 An example of the lack of understanding by the Customs investigators of the matters they were dealing with was revealed during the hearings when the Chief Inspector quoted his Senior Inspector's minute regarding the explanation of the financial accommodation arrangements between the Companies which had been provided by the consultant to the ACS in May 1983.

> **Committee** - (To Chief Inspector) Do you understand that.
>
> **Witness** - No.
>
> **Committee** - You nonetheless accept that there was some wrongdoing resulting from it, despite the fact that you did not understand it.
>
> **Witness** - I cannot understand the complexity of it.
>
> **Committee** - (To Senior Investigator) Did you understand it.
>
> **Witness** - I understood that it was pretty complex, but -
>
> **Committee** - Do you understand the way in which the Malaysian banks apply interest rates?
>
> **Witness** - No, I do not.[55]

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49. Evidence, p. 1383.
50. Evidence, p. 1390.
51. Evidence, p. 1391.
52. Evidence, p. 1394.
53. Evidence, p. 1410.
54. Evidence, p. 1595.
55. Evidence, pp. 1358-9.

The 214 Raid on Midford

Gaining Approval

6.44 On 20 November 1987 the Senior Investigator conducted reconnaissance of Midford's premises in preparation for the raid.[56]

6.45 A subsequent minute from the Senior Inspector to his Chief Inspector supported the Senior Investigator's recommendation to conduct the raid.[57] Curiously, this minute, dated 23 November 1987, records that 'information has been sworn by (the) Senior Investigator ... that Midford did unlawfully enter goods on 13 December 1984.'[58] (emphasis added) However, the only copies of the Information provided to the Committee reveal that it was sworn on 1 December 1987, more than one week after the minute had reported that it had been sworn.[59]

6.46 The Chief Inspector, who was temporarily acting as Director Investigations on 1 December 1987, advised the Regional Manager and the Collector on that date that examination had:

> ... revealed a substantial discrepancy between the manufacturing cost of certain goods, as submitted to the ACS to satisfy a preference inquiry, and the invoiced value of identical goods produced for entry purpose.[60]

6.47 He also said that:

> ... it is suspected, as the evidence indicates that imports have been undervalued over a significant period of time. If this is the case, then approximate duty shortpayment could be in the order of $1 million.[61]

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56. Evidence, p. S4350.
57. Evidence, pp. S3395-6.
58. Evidence, p. S3395.
59. Evidence, pp. S3399-3400.
60. Evidence, p. S3397.
61. Evidence, p. S3397.

6.48 The basis for this estimate was not disclosed. It was a quantum leap from the $10 000 assumed by the Senior Investigator. One officer who was acting as Chief Inspector on 1 December 1987 wrote to the Director that he had examined the two page report of the Senior Inspector and was satisfied that section 214 action was justified.[62] All officers in the hierarchy approved the action but it appears that none bothered to check whether the basic premises made by the most junior officer were supportable. Each only seems to have read the report of the officer immediately below them in the chain of command without reference to the underlying documentation. At this stage there was not a devil's advocate in sight.

The Issuing of Warrants

6.49 The Notice to Produce Documents and Customs Warrants for 11 officers were issued on 2 December 1987.[63]

6.50 If the proof of the pudding is in the eating, the Committee noted that despite Customs' propensity to pursue Midford at every opportunity, no prosecution action was ever initiated in respect of the alleged undervaluation issue.[64] The Committee regarded this as tacit acceptance that the ACS realised with hindsight that it did, in fact, get this aspect of the case wrong.

The Grounds for the Warrants

6.51 The Information sworn by the Senior Inspector before a Justice of the Peace covered the first and larger of the two entries only. It referred to a schedule dated 12 December 1984 submitted by Midford 'listing manufacturing costs on various shirt styles each having a unique cost reference number' and added that:

> ... included in the submitted schedule were identical unique cost references to those shown on (the) invoice.
>
> The entry was false in that it showed the price as $42,114.82 whereas the true price was in excess of $59,735.07.[65]

62. Evidence, p. K7634.
63. Evidence, pp. K7620-31.
64. Evidence, p. 1694.
65. Evidence, pp. S3399-400.

6.52 Closer examination of the quoted schedule by the Committee disclosed that it referred to 'new styles for which (Developing Country) preference margins are sought'[66] and that 'Midford are hoping to import a number of these styles in the near future'.[67]

6.53 Clearly, the figures quoted did not relate to shirts produced earlier in 1984. They related to a new range of shirts intended for production during 1985 that were different in style and cost to those manufactured during the previous year. The Committee considered that even if the styles had been identical, it escaped Customs' consideration that production and fabric costs would vary over time and that the per unit costs might vary with different production quantities. It also seems to have escaped the attention of Customs that when their Hong Kong representative visited the Midford Malaysia factory on 24 February 1983 to examine the costings[68] his subsequent report drew attention to the different methods of allocating overhead costs and production efficiency levels shown on the Developing Country Preference schedules to those utilised for calculating the costs shown in invoices. His conclusion was that:

> ... regardless of the variations in the two types of costings the shirts (on the earlier lists he examined) qualify for preferential entry.[69]

6.54 There is evidence that the Senior Inspector at least read the report and noted it made reference to variations between the two types of costings. It is not clear to the Committee how he then concluded that 'it has therefore been established that the invoice prices were lower than the factory or work cost as far back as 1983.'[70]

6.55 It is not known whether he read a little further into the file to where Midford's Tariff Advisor stated that:

> The company believes that the costing figures provided to the Australian Customs Representative late last year do not provide an accurate record of the true Australian and

66. Evidence, p. K7591.
67. Evidence, p. K7591.
68. Evidence, p. K4276.
69. Evidence, p. K4279.
70. Evidence, p. S3396.

> Malaysian costs incurred in the production of each style of garments.[71]

6.56 However, the Chief Inspector gave evidence that he could not recall whether he ever looked at the file, but he did see extracts of it.[72] The Senior Inspector, however, advised that he did see the file in question.[73]

6.57 The file revealed that revised costing data was provided to which it was stated that:

> The most important area in which an adjustment has been made to costs is the inclusion of factory cost administration, production, design and other work undertaken in Australia for Midford Malaysia.[74]

6.58 These costs were allocated on a pro-rata basis to each unit of production. The Chief Inspector even told the Committee that 'we selected that one shipment for which we had the best evidence to trigger the 214 action.'[75]

6.59 The level of understanding and expertise that the Customs officers possessed in matters relating to the costing data was less than adequate. The questioning of the officers by the Committee during the Inquiry and leading of them through the data and what it actually meant was testament to the continuing existence of these deficiencies. Their propensity to misunderstand financial and commercial matters and arrangements, also demonstrated in other aspects of the case, is commented upon at section 6.43 below and elsewhere in this Report.

6.60 In relation to the procedural matters involved in obtaining search warrants and Notices to Produce Documents, the Committee was advised by Customs that information regarding breaches of the Customs Act was all that was required.[76] Authority under the Act to issue Warrants and Notices is held by the Collector of Customs. Whilst the Committee found that there was compliance in this case with the requirements set out in the Act and Customs procedures, the

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71. Evidence, p. K4283.
72. Evidence, pp. 1345-6.
73. Evidence, p. 1346.
74. Evidence, p. 1346.
75. Evidence, p. 1317.
76. Evidence, pp. 1283, S218 and S8643.

information in writing given under oath to the Collector that goods had been entered unlawfully was incorrect.

6.61 Other than to suggest that more care be taken by Collectors and those in the chain supporting the recommendation that section 214 action be approved, the Committee could not formulate any recommendations that would overcome the basis of knowingly or unknowingly falsely sworn information. That these powers to undertake raids and seize documents result in some of the most contested activities undertaken by Customs is evidenced by the string of legal and Administrative Appeals Tribunal cases that have examined the propriety of the exercise of these functions.[77] In addition to featuring in many of the submissions to the Inquiry for cases separate from the Midford matter, the Committee noted that Customs actions under section 214 attracted wide criticism, including the following from the Law Council of Australia, which drew attention to the:

> ... lack of accountability ... reflected in the cavalier approach adopted by investigations officers when conducting their inquiries. The 'Elliott Ness' style of raid is still prevalent and there are numerous examples of investigation officers acting in a threatening manner towards importers and their staff. Issues of serious concern include the reliance upon defective Notices to Produce Documents and Warrants by Customs officers who demand immediate access to all documents and records in particular premises and then threaten repercussions if asked to relinquish the notice or warrant or to wait for a few moments while senior management is notified or legal advice is sought.[78]

6.62 The Committee noted the Law Reform Commission proposals to enable Customs warrants only to be issued by a judicial officer on application in writing and the removal of the ability to issue such warrants from officers of Customs.[79] The Commission also proposed limiting search powers to documents that relate to the offence suspected.[80] The Committee endorses these proposals.

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77. Evidence, pp. S32 and S62-71.
78. Evidence, p. S69.
79. Law Reform Commission Report No 60 pp. 74-5.
80. Clause 369, Bill for the Customs and Excise Act 1992.

Conducting The Raid

6.63 On 3 December 1987 the section 214 raid was carried out on Midford. The ACS submitted that eight officers were in attendance at Midford's Miranda premises and three officers at the Kembla Grange premises.[81] Midford voluntarily complied with the Notice to Produce documents and therefore it was not necessary to execute the warrants held by each of the Customs officers.[82] Despite Midford's claim that ACS officers secretly recorded the raid,[83] the Committee was assured that no officers carried a tape recording device.[84]

6.64 *Customs also said:*

> Being mindful of the need to minimise disruption to business routine, the resources allocated to the operation were commensurate with the large volume of documents estimated to be involved. The operation took approximately five hours to complete, which is considered normal in the circumstances. No complaints were voiced about any aspects of the operation or officers' behaviour.[85]

6.65 All documentation in relation to Midford's imports for the previous five years was seized from Midford.[86] The Senior Investigator in charge of the section 214 action said in respect of Midford's claims that conversations during the raid had been secretly taped by ACS officers with recording equipment strapped to their bodies,[87] that:

> I was not wired and I do not believe any other officer was wired. If somebody formed that opinion after reading the notes taken at the time then I take that as a compliment to the note taking ability of (the officer who took the notes).[88]

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81. Evidence, p. S3843.
82. Evidence, p. S3843.
83. Evidence, p. S11.
84. Evidence, p. S3843.
85. Evidence, p. S3872.
86. Evidence, p. K4414.
87. Evidence, p. S11.
88. Evidence, p. S3885.

6.66 Midford submitted that the ACS positioned guards in unmarked cars at the front and rear of the premises and that the officers carried walkie talkies.[89] Customs later claimed that only one officer carried a radio and that all vehicles used in the raid were parked in the carpark underneath the building.[90] The ACS also stated that 'the premises were not surrounded and no vehicles were parked at the rear of the building.'[91]

6.67 The Committee finds it difficult to accept that Customs would not have guarded the exits from the building during the earliest phases of the raid. Where they later parked those vehicles following the full co-operation extended to them by the Midford Directors and staff is of no interest to the Committee. Whilst it may be true that 'no officer carried a tape recording device',[92] the Committee through experience during the Inquiry noted a propensity of the Customs officers to answer questions in a precise, but misleading manner. The Committee noted, for instance, that the possibility that the officers carried a bugging device which radioed the conversations to a tape recorder located nearby in one of the vehicles, was not eliminated by the attempts by Customs to rebut Midford's claims. However, the Committee did not pursue these matters with Customs.

6.68 On 3 December 1987 Midford's solicitors advised the Collector of Customs in Sydney that:

> We write to advise that our client strenuously denies the allegations in the aforesaid Notice to Produce that it did unlawfully enter goods into Australia on the 13th December, 1984. We trust that at the completion of your enquires you will come to the same conclusions.[93]

6.69 It is fairly clear from this and the whole demeanour of Midford in extending full co-operation during the raid that the company believed there was nothing to hide and expected that the misunderstanding on Customs' part would quickly be corrected. Unfortunately, this was not to eventuate.

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89. Evidence, p. S10.
90. Evidence, p. S3843.
91. Evidence, p. S3843.
92. Evidence, p. S3843.
93. Evidence, p. K7639.

The Seizing of Documents

6.70 Midford advised the Committee that the Customs officers took documents during the raid that were not covered by the Notice to Produce documents. They submitted that:

> There was indiscriminate and wholesale removal of the company's record and documents, despite the fact that we were told that only documents would be taken which were referred to in the notice. This placed the company in an extremely difficult position, not being able to function normally. It was 3 months later, and only following application to the Court, that we were able to obtain photocopies of some of the documents.[94]

6.71 Customs said that:

> The sourcing of documents on the day was far from indiscriminate however in such a complex process, it is inevitable that some documents not covered by the notice would be caught up in the process. This did happen.[95]

6.72 However, evidence was received that the ACS took the contents of whole drawers from filing cabinets without more than a cursory reference to what they might contain and advised Midford that they would be sorted out at the Customs office, with papers not covered by the Notice being returned as soon as possible.[96] Midford was also advised that certified copies of any documents covered by the Notice that they may require would be provided by Customs.[97] The first of these documents were returned to Midford on 9 December 1987[98]

6.73 Over the next few months Midford made a number of representations that included references to the difficulties they were experiencing in obtaining the return of originals or copies of their documents.

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94. Evidence, p. S11.
95. Evidence, pp. S3843-4.
96. Evidence, pp. 84-5.
97. Evidence, p. K4411.
98. Evidence, p. S3875.

6.74 On 5 February 1988, two months after the raid, Midford's solicitors wrote to Customs formally demanding the return of the seized documents and copies.[99]

6.75 On 8 March 1988 the solicitors wrote to the DPP on this matter, pointing out that numerous requests had been made to the ACS and that:

> To date only some documents have been returned or copies supplied and we enclose a schedule of those files which were seized from our clients premises and which have not been returned nor copies provided.
>
> As our previous requests have been largely ignored our client does not intend to wait any further for the return or copying of those outstanding documents and has instructed us to commence proceedings in the Federal Court to recover the documents and for various ancillary orders should the documents or copies thereof not be returned to us by 10.00am Wednesday 9 March.[100]

6.76 Customs submitted in February 1992 that the process of returning documents to Midford:

> ... continued until the end of March 1988, by which time all documents taken pursuant to Section 214 had been provided in either original or certified copy form.[101]

6.77 However, even up to the time of the hearings for this Inquiry, Midford continued to claim that some of its documentation remained outstanding.[102]

The ACS Interview with Midford

6.78 On 11 December 1987, the same day that Midford was advised of the cancellation of their offshore quota, Customs officers interviewed a Midford Director and Senior Manager in respect of the undervaluation and financial accommodation

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99. Evidence, pp. S11436-7.
100. Evidence, p. S11436.
101. Evidence, p. S3875.
102. Evidence, pp. 84-85 and 1423.

issues.[103] Midford had contacted Customs on 9 December 1987 to arrange the meeting so that they could prove there was no undervaluation involved.[104] The interview was openly tape recorded with Midford's permission and a caution was issued at the commencement of the proceedings.[105]

6.79 Customs emphasised that the interview did not cover quota matters[106] as, in the words of one officer:

> I was aware that the ACS had formally invited Midford to make representations as to why the quota should not have been cancelled.[107]

6.80 Considerable dispute emerged later during the Inquiry about the disclosures made during the interview. According to Customs, the company representative admitted that Midford Malaysia did not extend any credit to Midford Australia[108] and that Midford Australia did not pay Midford Malaysia for the goods. Closer examination of the transcripts of that interview revealed that Midford indeed did not make any such admissions.[109] In respect of the interview transcripts, the AGS commented that:

> I must admit that the transcript is not an easy one to follow as it is difficult to find particular admissions which are not to some extent qualified or appear to be the result of some insistence on the part of those asking the questions.[110]

6.81 In many cases multiple questions were asked of the Midford representatives and it is not clear to which of these the resulting answers were provided.[111] In other cases it appears that Customs heard different answers to those recorded on the transcript. Whilst it is evident that the ACS interpreted the answer in a certain manner that suited their purposes, Midford continued to refute the 'admissions' that Customs claimed had been made.

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103. Evidence, pp. S3845-6.
104. Evidence, pp. K4424 and K7761.
105. Evidence, pp. S3845-6.
106. Evidence, pp. S3846, S3866 and K7763.
107. Evidence, p. K4424.
108. Evidence, p. S3265.
109. Evidence, pp. S3401-18.
110. Evidence, p. S3504.
111. Evidence, p. S3505.

6.82 Counsel later engaged to examine the financial accommodation matter also commented on the presence of defects in the interview transcript.[112]

6.83 On 15 December 1987 the Senior Investigator, in a minute directed to his Senior Inspector, wrote that as a result of the interview with the Midford representatives a satisfactory explanation had been received in respect of the suspected undervaluation issue arising from the differences in costings on invoices and costing sheets submitted for approval of Developing Country Preference entitlements.[113]

6.84 This was a very unspectacular end to what had been alleged by the ACS only two weeks earlier to be a major fraud involving more than $1 million in duty evaded.[114]

The Alleged Financial Accommodation Irregularity

6.85 However, in respect of the financial accommodation issue the Senior Investigator continued in his minute to the Senior Inspector that:

- no payments are made to Midford Malaysia
- when questioned as to whether Midford Malaysia extended credit to Midford Australia (the Midford Director) stated they did not
- It is reasonable to concluded that financial accommodation never existed (and) an evasion scheme was put into place; and
- In relation to post November 1985 it is certain that financial accommodation does not exist and that revenue has been evaded.[115]

112. Evidence, p. S6048.
113. Evidence, p. K7762.
114. Evidence, p. K7635.
115. Evidence, p. K7763.

6.86 He then added that the estimates of revenue shortpaid for 1986 and 1987 were placed at $50 000 and that for earlier years it had not yet been extrapolated.[116] No basis for these calculations was evident.

6.87 That such unfounded statements could be made and conclusions drawn by an experienced Customs Investigator in obvious contradiction to the documentation then in his possession truly astounded the Committee. Even more surprising was the fact that his supervisors, some of whom had even been present during the interview, concurred with his views.

6.88 The Committee examined the witness about his conclusion that financial accommodation never existed, as follows:

> **Chairman** - Did you examine any pre-1986 payments before you concluded that interest had not been paid in respect of these entries?
>
> **Witness** - We got a few from the 214. We examined them, but we did not go into any depth with them, Mr Chairman.
>
> **Chairman** - They are pre-1986 payments?
>
> **Witness** - There was a couple of pre-1986 ones.
>
> **Chairman** - How many? Two or one or -
>
> **Witness** - There were only very few - two or three, from memory.
>
> **Chairman** - And when you say, 'We examined them, but we did not go into any depth, did you do your calculations on those, or what?
>
> **Witness** - Even though I wrote that - and I do not deny writing it - we did not come to any conclusion that financial accommodation did not exist when Midford Malaysia was manufacturing. That was an observation I made at that time.
>
> **Chairman** - As far as the pre-1986 payments are concerned, you are not alleging any wrongdoing?

116. Evidence, p. K7763.

Witness - On financial accommodation, no.[117]

6.89 From the many instances like this encountered during the Inquiry, the Committee concluded that the claims by Midford and its Tariff Advisor concerning the willingness of Customs to selectively interpret and misconstrue the available evidence were not only correct, but understated. Unfortunately, as revealed in the following sections of this Report, this trend continued unabated.

The Financial Accommodation Agreement

6.90 Sections 6.12, 6.13, 6.14 and 6.24 above discussed the agreement between Midford Australia and Midford Malaysia dated 9 July 1986.

6.91 Customs investigators tried to claim that because the document could not immediately be located at Midford's premises on 14 September 1987, the copy provided to the ACS had been manufactured on 14 or 15 September 1987, even though the agreement was dated more than one year earlier.[118] In an attempt to further support this claim, Customs pointed out that the two signatories to the agreement were both Directors of Midford Australia.[119] However, the Committee rejected the claims made by Customs as it was clear that the Director who signed the agreement binding Midford Malaysia was in fact a Director of that company.[120] It was disappointing that Customs could advise the Committee that both signatures were Directors of Midford Australia, without also drawing attention to the fact that they both were also Directors of Midford Malaysia. Such an answer as was provided may be factual, but could not be said to be 'the whole truth' and in the Committee's opinion, was designed to mislead the Inquiry. The whole Inquiry was plagued by answers of a similar calibre, which imposed considerable and unnecessary obstacles in the path of the Committee.

6.92 As stated at section 6.24 above, the Committee discovered conflicting evidence against the claims by the witness that the Agreement was created in 1987, in that the Senior Investigator had also previously made three written references to the Agreement being placed on the Customs file 'in July 1986' or prior to December 1986.[121] In addition, the same witness also told the Committee during the hearing on 19 February 1992, that the Agreement had been supplied to Customs in

117. Evidence, p. 1702.
118. Evidence, p. 1506.
119. Evidence, pp. S4350 and S4410.
120. Evidence, p. S8586.
121. Evidence, pp. S3347 and S3349.

1986.[122] On 20 February 1992, however, he then twice claimed that it had been supplied in 1987.[123]

6.93 The Committee therefore asked for the Customs file to be produced as evidence so that a check of the sequencing of the agreement within the file could be conducted to determine the date that it had been placed in that file.[124] A photocopy of the agreement was found which had been annotated on the reverse to indicate the original had been extracted for the proposed prosecution proceedings in respect of the financial accommodation issue. Customs claimed that the Committee held the original.[125] However, these documents had long been returned to Customs.[126] There was no date stamp on the photocopied agreement indicating when the document had been received, there was incomplete and amended numbering of the folios on the file.[127] In addition, there was a complete absence of material to indicate how, why or when the document had been placed on the file. The Committee could not be sure that the document was in the correct place on the file and there was certainly nothing on the file to prove the document had not been placed there before 15 September 1987.[128]

6.94 The Committee pointed out to the Senior Investigator that his own notes thrice referred to the Agreement being placed on the file in 1986 and that it was at a loss to understand how he could later tell the DPP and maintain before the Committee that the document was manufactured a year later.[129] The Committee's own examination of the *Customs Act* amendments and the *Australian Customs Notices* revealed that it was not even necessary for Midford to evidence the Agreement in writing until 1 July 1987 anyway.[130] Accordingly, if Midford were of the mind to 'create' the document they would presumably only need to backdate it to 1 July 1987, or they could have chosen 1 January 1986 to reflect the date of the restructuring of the Malaysian operations or some even earlier date.

6.95 The witness responded that the references in his submissions to the Agreement being placed on the Customs file in June 1986 must have been typographical errors and should have read July 1987.[131] However, the Committee was sceptical that the same error could be made in three different places, especially

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122. Evidence, p. 1309.
123. Evidence, pp. 1506-7.
124. Evidence, pp. 1931 and 1992.
125. Evidence, pp. 1991-2.
126. Evidence, pp. 1991-2.
127. Evidence, pp. 1992-3.
128. Evidence, p. 1993.
129. Evidence, p. S4411.
130. Evidence, pp. S4417, S5978, and K7202.
131. Evidence, pp. 1991-2.

as there was a distinct reference to an entry of 11 December 1986 being made after the written Agreement was produced to Customs, (see section 6.24 above).The new claims by the witness also left unexplained how the document could have suddenly appeared on the file in July 1987, and in addition, it still conflicted with the position Customs was trying to maintain that the document had been concocted in mid-September 1987. To this the response from Customs was that:

> (The Senior Investigator) was in error when he stated at S.3347 that the agreement was attached to file N80/7423 in July 1986. That should have read September 1987.[132]

6.96 Presumably this implies that he was also in error on the other two occasions where he had written that it was received in 1986 and in the verbal evidence he presented to the Committee.

6.97 Notwithstanding that there was contrary evidence available and an absence of proof of the claims by Customs, their insistence that the Agreement had only been created by Midford after the ACS had requested a copy was perplexing for the Committee. A request was therefore made to present to the Inquiry any further evidence that would support the claims made by Customs. In response, it was submitted that the DPP supported the ACS contention regarding the Agreement and that:

> (The Senior Investigator) is prepared to provide further evidence in camera to substantiate his reasons.[133]

6.98 The 'support' from the DPP amounted to no more than a speculation that the Agreement appears to have been directly prepared from an earlier handwritten draft, rather than having been the subject of further legal advice or consideration. The DPP said this was:

> ... consistent with the document having been prepared in a hurry and tends to support the suspicion of your officers that it was typed up very quickly to answer a subsequent inquiry by your officers, for a written agreement as to the interest payments, in about August 1987.[134] (emphasis added)

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132. Evidence, p. S8791.
133. Evidence, p. S4351.
134. Evidence, p. S4411.

6.99 The Committee could not agree that the apparent absence of further legal advice on the draft agreement could lead to a conclusion that it was typed up in a hurry more than a year after the purported date of the agreement.

6.100 Customs also submitted that the Senior Investigator had telephoned two Midford employees to inquire as to their knowledge of the document. It was stated that 'neither could recall the Agreement in any form.'[135] Again this was not particularly supportive of the ACS claims, as the Midford staff had not been shown the Agreement in question and they were not the signatories to the Agreement anyway.

6.101 It is equally, if not more likely that Midford was satisfied with the Agreement as drafted by its consultant. That Customs and the DPP could draw such detrimental conclusions on the basis of 'evidence' of this calibre shows just how desperate they were to 'get' Midford.

6.102 No indication was given about why the further evidence could not take place on the public record, but without any high expectations the Committee agreed to move into an in-camera session.

6.103 It is not possible to disclose the specifics of the confidential evidence put forward by the Senior Investigator, however, it can be said that it amounted to a preposterous claim that the Agreement must have been made up later as it was typed on a word processor in Midford's Head Office in Australia by the person who did all Midford's private and confidential typing and there was purportedly evidence that one of the Midford employees had at one time seen blank Midford Malaysia letterheads in a drawer at Midford's offices.[136]

6.104 The Committee simply could not follow how this could lead to the conclusions reached by the witness. Implicit in his evidence was some stipulation that unless the document was typed in Malaysia it must have been false. However, the Companies were related and it didn't matter to the Committee who typed the Agreement nor where it was typed. There was absolutely no evidence to suggest that the document had not been created and signed in mid 1986.

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135. Evidence, p. S4351.
136. Evidence, pp. K4041-2.

Recommendations

6.105 The Committee recommends that:

- Australian Customs Service officers never again alter an importer's invoices by removing existing figures and substituting others;

- Australian Customs Service Investigations officers seek appropriate expertise where they do not fully understand the technicalities of explanations provided by importers or agents;

- Senior Australian Customs Service Investigations officers thoroughly check the work of more junior Investigations officers before agreeing to undertake raids or other action proposed;

- where Australian Customs Service Investigators seek to rely on investigatory work conducted by other groups within or outside of the Australian Customs Service, a formal meeting or meetings be held to ensure correct interpretation of that work and minutes of these meetings be made and retained;

- Customs warrants only be issued by judicial officers and only upon written application, and the present powers under the Customs Act enabling officers of Customs to issue warrants for search and seizure action be revoked;

- in accordance with the law, documents only be seized by Customs that relate to the alleged offence specified on the warrant. Customs should initiate steps to ensure that all staff are cognisant of this requirement;

- certified copies of documents seized by the Australian Customs Service be provided to the owner within seven days;

- no document be seized without firstly recording sufficient details to enable its identification on a receipt to be provided to the owner; and

documents provided by importers or agents in response to Customs queries be date stamped upon receipt by the Australian Customs Service.

Chapter 7

DECISION TO CANCEL QUOTAS

> *In all the circumstances I considered it necessary to make an immediate decision without giving Midford an opportunity to be heard at that time.*
>
> *ACS Director of Quota Operations*[1]

Making the Decision

7.1 Following examination of the documents seized from Midford's premises on 3 December 1987, the Customs investigation team formed the view that Midford had utilised import quotas for which they were not entitled. The first indication of this is on 7 December 1987 when a Senior Inspector in Sydney contacted the Director Quota Operations within the ACS Central Office and 'gave him a skeletal analysis of the situation.'[2]

7.2 In relation to this conversation the same officer recorded in a file note dated the following day that:

> The purpose of the call was to seek clarification on the conditions for the approval of an off shore quota entitlement.
>
> The impression I established from reading the documents was that certain stringent conditions were attached to this entitlement, with the major condition being that the company seeking the entitlement must have a manufacturing capability and facility in the country of export, in this case Malaysia.
>
> An examination of documents indicated that Midford Paramount had ceased production in Malaysia, they had sold their land and buildings in Malaysia, had sold their plant and equipment used to manufacture the goods, and had terminated the employment of their production staff.

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1. Evidence, p. S392.
2. Evidence, p. K7739.

> However, they maintained in submissions that they still maintained this facility.[3] (emphasis added)

7.3 In respect of the quota matter, this was the first in a long and sad history of mistakes in the Midford Case.

7.4 The Senior Inspector recorded that the Director phoned back after he had examined the relevant file[4] and 'on the information supplied, he indicated that an offshore quota entitlement was not appropriate.'[5]

7.5 Copies of the 'relevant documentation' were then sent to the Director for his perusal.[6]

7.6 On 10 December 1987 the Senior Inspector provided his Chief Inspector with a submission outlining his conclusions that Midford was not entitled to off-shore quota and that their Tariff Advisor wilfully misled officers of DITAC. He also recommended that immediate legal advice be sought.[7]

The Minute of 9 December 1987

7.7 However, to step back to the previous day, the Director forwarded a minute to the Chief Inspector Quota Operations on 9 December 1987 stating that:

> There is some uncertainty regarding Midford's imports from Malaysia and the legality of the conditions tying those imports to Midford's off-shore operations. Please have the rest of Midfords 1987 off-shore quota revoked and a new instrument issued with the conditions attached. The action should date from tomorrow if possible.[8]

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3. Evidence, p. S329.
4. Evidence, p. S329.
5. Evidence, p. K7739.
6. Evidence, p. S329.
7. Evidence, pp. S3865-6 and S330-4.
8. Evidence, p. 8654.

7.8 For reasons which were not made clear, no reference to the existence of this minute was included in the submissions from Customs. Questioning of the Director about his minute resulted in the following exchanges:

> **Chairman** - You have got a minute of 9 December 1987 which deals with (the Chief Inspector Quota Operations): is there any reason why that cannot be made public?
>
> **Witness** - Which document is this?
>
> **Chairman** - Your minute of 9 December 1987.[9]
>
> **Chairman** - What I am concerned about ... is that there is a document, 9 December 1987.
>
> **Witness** - Yes.
>
> **Chairman** - Do you have that?
>
> **Witness** - I do not think I have got a copy. I am not quite sure which document. I cannot remember a minute from (him).
>
> **Chairman** - No, that is a minute by you to (him), as I understand it.
>
> **Witness** - Is that the minute in which I instructed him to revoke the -
>
> **Chairman** - I am asking you. Did you. Is there such a minute?
>
> **Witness** - I sent <u>one</u> to (him) asking him to revoke the determination. (emphasis added)
>
> **Chairman** - To cancel the quotas and then reissue them with conditions?
>
> **Witness** - Yes, that is true. I did not tell him to reissue them with conditions. I told him to put the conditions on the determinations in case they were ever reinstated, so that they would apply for the future.[10]

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9. Evidence, p. 1749.
10. Evidence, pp. 1751-2.

7.9 As the evidence provided by the Director seemed inconsistent with what was apparent from the wording of his minute, ie 'please have ... a new instrument issued with the conditions attached. The action should date from tomorrow if possible' (emphasis added) and because it was also aware that a similar minute dated the following day existed, the Committee attempted to clarify this issue. Section 7.22 below provides details.

7.10 Reference to a further event on 9 December 1987 that may shed some light on the Director's minute of that date was located by the Committee in the diary of the ACS Assistant Director, Legal Services. The entry for 29 March 1988, in part, recorded that at a meeting with the AGS and Counsel on that day, the Director of Quota Operations:

> ... for the first time referred to (another AGS officer's) advice of 9 December 1987 that (the Director) should sign the cancellation (of the quota) and bring it with him to the meeting with counsel.[11]

This meeting was held on the following day.

7.11 *It is hoped that the significance of this reference will become clearer* in the following sections.

Meetings with the AGS

7.12 On 10 December the Director of Quota Operations and some of the NSW based investigation officers attended two meetings with officers from the AGS in Sydney. The second meeting involved all the above officers attending with Counsel.[12]

7.13 One version of the events put by an officer at those meetings says that:

> (Counsel) advised that the quota should be immediately cancelled by (the Director), as delegate of the Comptroller, and that (he) should write to Midford informing them what

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11. Evidence, p. S4051.
12. Evidence, pp. S3873-4 and K7843.

> he had done and inviting reasons why the action should not be maintained. (The Director) then, in our presence, prepared a revocation of Midford's outstanding quota balances in longhand and a suitable letter was drafted for him to forward to the company. This letter was forwarded the following day.[13]

7.14 A somewhat difference sequence of events was recorded by the Director in his diary entry for 10 December 1987, as follows:

> Met (the Senior Inspector and Chief Inspector) in Sydney. In their company consulted (an AGS officer) and senior A-G's staff. Later saw (other AGS officers) and (Counsel). Following conference advised to cancel Midford off-shore quota instantly. Letter drafted by (Counsel) informing Midford despatched over my signature.[14]

7.15 A copy of the above diary entries had been provided to the Committee by Midford.[15] However, many months later when the Committee questioned Customs over whether its officers had made any notes of the two meetings on 10 December 1987, the ACS responded that:

> No notes were taken during meetings with AGS and Counsel on 10 December 1987 by NSW Investigation officers. There are no records of any other notes taken by CO personnel.[16]

7.16 More comprehensive minutes of the conferences held on 10 December 1987 were made by one of the AGS officers in attendance.[17] From these it is fairly clear that Customs advised the others at those meetings that:

(a) a fraud of $6 million had been committed;[18]

(b) Correspondence between Midford and its Tariff Advisor clearly indicated an intention to mislead Customs and conceal the fact

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13. Evidence, p. S3874.
14. Evidence, p. S1271.
15. Evidence, p. S1271.
16. Evidence, p. S4350.
17. Evidence, pp. K4418-23.
18. Evidence, p. K4418.

that the quota conditions were no longer being complied with;[19]

(c) Customs wanted to cancel the quota immediately[20] as Midford was about to import about 200 000 shirts;[21] and

(d) undervaluation had taken place in respect of a recently imported consignment of shirts.[22]

Unclear Wording on Quota Instruments

7.17 However, the legal officers did highlight to Customs that there were difficulties with the wording used in the correspondence and quota instruments issued to Midford. The AGS officer recorded that:

> The language used is vague and broad and has quite a number of inherent difficulties, e.g., the word 'supply' or 'supplier' is used frequently when the real intention is 'manufactured' or 'manufacturer'; again the word 'sourced' is used when 'manufacture' is intended. On another occasion 'claused' is used in a rather cumbersome short-hand attempt to incorporate the conditions specified elsewhere.[23]

7.18 It was also pointed out that the formal quota instruments did not contain any reference to the conditions to be attached[24] and that the 'vague and imprecise words' in the correspondence 'may render the conditions ... ineffectual'.[25] He then recorded that:

> It is also noted that a deed has been entered into by Midford's Malaysian counterpart with two other Malaysian companies or identities which seems to be a partnership agreement to produce shirts and it may well be that if that

19. Evidence, p. K4418.
20. Evidence, p. K4419.
21. Evidence, p. K4421.
22. Evidence, p. K4420.
23. Evidence, p. K4419.
24. Evidence, p. K4422.
25. Evidence, p. K4422.

agreement has been implemented the vague conditions will be complied with.[26]

7.19 The second meeting on that day was convened to obtain Counsel's opinion 'to confirm that of the (AGS) ... because of the vast amount of money involved and the repercussions that may flow.'[27]

The Order to Revoke

7.20 Following the Customs officer's advice to Counsel that Midford intended to enter another consignment of goods on the next day (11 December 1987) Counsel:

> ... expressed the opinion that we now had a degree of urgency that would require immediate action and suggested that the proper procedure would be for (the Director) as delegate of the Comptroller, to act as he indicated that he desired to act and immediately cancel the quota for 1987 and to write to Midford informing them of what he had done and inviting them to give him reasons why the action should not be maintained. The letter should also indicate that, if a sufficient reason was forthcoming, the quota would be re-instated.[28]

7.21 The Minutes by the AGS officer then record that the Director:

> ... in our presence wrote out in longhand a revocation of the (quota) for Midford and a suitable letter was drafted for him to forward to Midford inviting them to give reasons why the quota should be reinstated.[29]

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26. Evidence, p. K4422.
27. Evidence, p. K4421.
28. Evidence, pp. K4421-2.
29. Evidence, p. K4422.

7.22 The revocation of the quota comprised a handwritten minute addressed to the Chief Inspector Quota Operations dated 10 December 1987 and signed by the Director which simply stated that:

> All outstanding quota balances for offshore quota for Midford Paramount Pty Ltd are hereby revoked.
>
> My minute of 9/12/87 to you regarding Midford Paramount Pty Ltd is also revoked.[30]

7.23 The Director also telephoned the ACS Central Office to arrange for the computer through which all customs entries are processed to be programmed so as to reject any entries involving Midford's offshore quotas.[31]

Advice To Midford

7.24 The one page advice of the cancellation of the quota forwarded to Midford on 11 December 1987 said that the Director had 'formed the view that (the) company ought to no longer be eligible to hold off-shore quota entitlements.'[32]

7.25 The reasons given were rather vague and stated that this view was formed following consideration of the documentation obtained during the raid and the matters of:

> (a) the nature of your company's relationship with its Malaysian manufacturers and supplier; and
>
> (b) the representations made by your company or its agents to officers of the Department of Industry, Technology & Commerce; or
>
> (c) beliefs as were held by officers of the Department & made known to your company in correspondence without correction of erroneous perceptions.[33]

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30. Evidence, p. S383.
31. Evidence, p. K4422.
32. Evidence, p. S384.
33. Evidence, p. S384.

7.26 The letter concluded with the following invitations:

> If there are circumstances which your company believes ought to entitle it to utilize the balance of your 1987 off-shore quota entitlements you should make urgent representations seeking re-instatement.
>
> Additionally, your eligibility for 1988 off-shore quota entitlements is being considered afresh. Representations as to why your company believes it will be eligible ought to be promptly conveyed to me and in particular within seven (7) days of the return of photocopies of your documents.[34]

Was the Revocation Justified?

7.27 Although Midford experienced considerable delays in the return of photocopies of their documents, as discussed at Chapter 6, the specified allowance of only seven days to make representations was considered by the Committee to be somewhat restrictive, especially when contrasted with the five months it took Customs to provide the company with a Statement of Reasons for the cancellation of the quota (see Chapter 13).

7.28 The Committee noted that the advice of the cancellation of its quotas sent to Midford was less than informative about the reasons for taking that action and Midford was not allowed an opportunity under normal natural justice provisions to discuss the allegations made against them prior to the summary cancellation of its entitlements. The AGS officer's minutes of the meetings shows that the natural justice rules were considered but were 'negated' because of 'the imminent arrival of some 200,000 shirts'.[35]

7.29 In the Committee's opinion, the possibility of further imports by Midford cannot be justified as the sole reason for immediate cancellation of its quota entitlements, without reference to the company, particularly in view of the problems highlighted by the legal advisors with determining and conveying to the company the actual conditions surrounding the granting of those quota entitlements and Counsel's advice that the joint manufacturing arrangements entered into by Midford could well mean that the conditions had been met.

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34. Evidence, p. S384.
35. Evidence, p. K4422.

7.30 In the Committee's view, insufficient consideration was given to other options available to protect the revenue of the Commonwealth. The decision to revoke the quotas was, at least in part, driven by the Customs officers' conviction that Midford and its Tariff Advisor were guilty of the biggest fraud ever discovered in public administration in Australia. They also were clearly convinced that Midford was guilty of understating the value of the shirts it imported so as to reduce the amount of Customs duty payable[36] and had decided that the current shipment of goods should be seized[37] whilst being fully aware of 'the disruption that such seizure would cause as to goods intended to be sold during the month of January for returning school children to wear as part of their uniform.'[38]

7.31 The decisions to cancel the quotas and seize Midford's stock were clearly intended to inflict maximum damage on the company. The documentation examined on that day by the legal advisors was far from comprehensive, examined out of content and obviously misconstrued by the officers present. Even the minutes taken by the AGS confirm that the examination of the documentation brought to the first meeting was 'superficial'[39] although at the subsequent meeting with Counsel it was 'examined with more care'.[40] Yet still later the officer stated when confirming in writing the advice provided at those meetings that:

> Because of the conclusion to which I have come, it is not necessary for me to exhaustively traverse the evidence presently available.[41]

7.32 The conclusion reached by the Committee is that the officers in attendance convinced each other that they had discovered a massive fraud and from that point on the dollars outweighed sense, despite some reservations about the existing evidence, to which it was assumed by Customs that further evidence could be obtained to overcome these deficiencies.

7.33 The Director of Quota Operations even gave evidence to the Committee that he sought the legal advice to confirm the decision that he had already made beforehand to cancel the quota.[42]

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36. Evidence, p. K4422.
37. Evidence, p. K4422.
38. Evidence, p. K4221.
39. Evidence, p. K4420.
40. Evidence, p. K4422.
41. Evidence, p. S408.
42. Evidence, p. 1750.

The Declaration of War

7.34 Having obtained legal advice supporting the actions proposed by them, the ACS effectively at that time declared the opening of its war on Midford and its Tariff Advisor that continued unabated for the next five years. Having formed and had confirmed their opinion, no amount of contrary evidence could sway them from their views. December 10, 1987 was therefore a truly tumultuous day for the ACS Investigation officers.

The Role of the AGS and Counsel

7.35 The Committee noted that the conference with Counsel on that day lasted for only two and a half hours.[43] As an aside, it was also noted that he charged for four hours, although the Committee did not inquire into the possibility that there could be some minimum charging period involved.[44] It appears the earlier meeting was of a similar duration.[45] Counsel's advice was arranged at short notice[46] and there was no time beforehand for him to be briefed or to examine the relevant documentation. Whether he read all 70 or only a lesser number of selected pages of the brief and whether he took any notes during the meeting is not known. It is assumed, however, that he relied on verbal summations of the evidence from the ACS and AGS officers present. It is also not known whether he retained a copy of the brief for later examination. No written advice was ever provided by him following that meeting.[47]

7.36 As the ACS brief was taken by the Customs officers to the first meeting on that day it is also clear that the AGS officers would not have had any time to absorb the documentation, other than that available during those meetings. It is also not known if the AGS retained a copy of the brief for closer examination after the meetings nor whether the written advice provided was based solely on the minutes taken during the meeting or following a more thorough re-examination of the documents included in the brief. That there was some verbal communication between the Director and one of the AGS officers on the day prior to the meeting is evident from the later comment by the Director recorded in the diary of the Assistant Director, Legal Services, which is quoted at section 7.10 above. If such advice was provided on the day before the meetings with the AGS and Counsel by

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43. Evidence, p. K4422.
44. Evidence, p. S4049.
45. Evidence, p. S4049.
46. Evidence, p. K4421.
47. Evidence, p. 1742.

the AGS without reference to any documentation whatsoever, together with the other events it establishes that:

a) the matter was pre-judged by the AGS;

b) heavy reliance was placed on the verbal briefings from the Director of Quota Operations;

c) those briefings misled the AGS and Counsel as to the facts of the matters at issue; and

d) the advices provided by the AGS and Counsel were flawed because of the inaccurate bases used to formulate that advice.

Was the Minute Deliberately Forgotten?

7.37 Returning to the evidence given by the Director regarding his minute of 9 December 1987, discussed at sections 7.7 to 7.9 above, the Committee formed the view based on those answers and the non-inclusion of the minute in the ACS submissions that there were attempts made to cover up its existence. The ACS was requested to advise why the existence of the minute was apparently denied by the officer who wrote it and why it had not been included in the ACS submissions. The responses were that:

> ... the minute was not included as it had been revoked;[48]
>
> and
>
> I do not believe that I denied the existence of the minute of 9/12. I had no copy of the minute in front of me and I thought the committee were referring to the minute of 10/12 and I was seeking confirmation of that but was cut off.[49]

Neither response is satisfactory to the Committee.

7.38 Clarification was attempted by the Committee over the Director's denial that he instructed his Chief Inspector on 9 December 1987 to reissue the

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48. Evidence, p. S8651.
49. Evidence, p. S8650.

quotas with conditions. (See sections 7.7 to 7.9 above) He claimed in response that he was actually referring to his minute of the following day.[50]

7.39 The Committee was unable to elicit any explanations from Customs whatsoever regarding how the Director became aware of the uncertainties regarding Midford's quotas and the legality of the conditions tying those imports to Midford's off-shore operations on the day before these issues were raised in the meetings with the AGS and Counsel. If he had discovered these himself, it is reasonable to assume that there would be no difficulty in conveying this fact to the Committee. The submissions sent to him by the Sydney ACS investigators certainly did not draw attention to these uncertainties. The whole matter left the Committee with the impression that there must be more to this part of the saga.

ACS Contacts with DITAC and the Minister

7.40 It is significant to note that Customs did not test its understanding of the quota conditions with DITAC before cancelling the quotas. The first contact with the Department about the quota issue did not occur until 15 December 1987.[51] The reasons given more than five months later by the Director for not allowing Midford the opportunity to provide explanations before the quota was cancelled included that:

> The information that Midford was about to enter approximately 200,000 shirts caused me to have anxiety for the revenue. I had concern regarding Midford's ability to meet demands for additional duty amounting to $1 million in the event of the A.C.S. being obliged to seek recovery of this sum. In all the circumstances I considered it was necessary to make an immediate decision without giving Midford an opportunity to be heard at that time.[52]

7.41 Elsewhere the same officer had been recorded as stating that there was insufficient time to provide Midford with an opportunity to comment before cancellation of its quota.[53]

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50. Evidence, p. S8652.
51. Evidence, p. S736.
52. Evidence, p. S392.
53. Evidence, p. S3937.

7.42 Further comment on the belated statement of reasons provided to Midford under the ADJR Act is included at Chapter 13 of this Report.

7.43 The Committee asked the Director of Quota Operations whether the Minister knew at the time of the decision to cancel the quota. He responded that:

> I think that the Minister was informed immediately at the time (sic) the determination was cancelled and also informed that we were awaiting Midford's efforts to have it reinstated.[54]

7.44 However, the quota was cancelled on 10 December 1987, yet the first advice to the Minister regarding this matter appears to have been a letter dated Saturday, 18 December 1987 from Midford's Tariff Advisor protesting at the cancellation of the quota.[55]

7.45 Other evidence before the Committee shows that the first contact from Customs with the Minister on this matter was a briefing given to the Minister's office on 21 December 1987.[56] This is the same day that Midford's goods were seized. No details of the contents of that briefing have been provided to the Committee.

7.46 The Committee could not agree with the witness that the Minister was informed 'immediately at the time' the quota was cancelled.

Recommendations

7.47 As all quotas will be phased out by 1 March 1993, the Committee has made no recommendations on this issue.

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54. Evidence, p. 1753.
55. Evidence, p. S3172.
56. Evidence, p. S1271.