Australian Customs Notice 1997 49

**POLICY BY-LAW SYSTEM REQUIRED FORMAT OF ITEMS 45, 46 &amp; 56 REQUESTS**

Australian Customs Notice (ACN) No. [96/32,](https://borderauthor.border.gov.au/busi/cust/aust/Australian-Customs-Notice-1997-49) issued in July 1996, details the policy and administrative requirements of the Policy By-Law (PBL) System. This ACN should be read in conjunction with ACN 96/32.

The purpose of this ACN is to advise potential applicants of the required format of PBL requests in respect of the project based items, namely items 45, 46 and 56. All PBL requests received after 1 August 1997 should be presented in this format. This advice replaces advice in ACN 96/32 that there is no predetermined format for a PBL request as well as the PBL procedures set out in the Attachment to ACN 96/32, as they relate to items 45, 46 and 56. This ACN also introduces target processing timeframes to apply to requests in this format.

# The PBL Request Process

The PBL request process consists of two elements, namely:

1. *Project Advice; and*
2. *Goods Request.*

The "Project Advice" element includes the project based requirements which are primarily addressed in **Sections 4 and 5 of ACN No. 96/32.** Potential applicants are urged to lodge the "Project Advice" early in the planning stages of the project preferably before entering into any commitment to import goods.

The "Goods Request" element includes the more specific requirements of items 45, 46 or 56 which are addressed in Sections **9.4** and **10** and the **Attachment to ACN No. 96/32.**

Note: an applicant may lodge all of the information required either in a single submission (ie. information required for both elements lodged together) or in the format of a "Project Advice" followed by one or more specific "Goods Requests".

3. Information Required

## Project Advice

The following matters are required to be addressed in a Project Advice.

|  |  |  |
| --- | --- | --- |
| **Section** | **Matters to be Addressed** | **Details** |
| A1 | Applicant and representative details | name; address;  contact name, telephone &amp; facsimile details; |

|  |  |  |
| --- | --- | --- |
|  |  | owner code; and  Australian Company No. (ACN) |
| A2 | Project Outline | detailed information identifying the overall scope and dimensions of the project including total value of project (company documents such as board submissions and shareholder advice will lend weight to descriptions of the project);  description of project including major works;  description of mining, resource processing or manufacturing process including where the goods fit into the process eg. a process flowchart; production details: details of expected production capacity, reason for plant upgrade etc  details of proposed shipping arrangements |
| A3 | Value of capital equipment | list of capital equipment (both local and imported) and expected value as evidence that the capital equipment **1**value of the project is in the order of A$10 million or more |
| A4 | Preliminary identification of goods | general description of the type and value of the capital equipment likely to be imported for the project;  required format is described in Section 5 of this ACN |
| A5**2** | Legal terms of item 45 or 46 | prima facie evidence that the project is an industry covered by the item |
| A6**3** | Legal terms of item 56 | prima facie evidence the equipment is classified to a relevant tariff heading; nomination of local equipment to be used in the comparison; and  outline of independent technical assessment process to be undertaken in order to quantify precisely the degree of technological advancement/efficiency/productivity over the Australian made equipment |
| A7 | Maximisation of local supply (items 45 and 46 only) | evidence of the steps to be taken prior to ordering of goods to establish the capacity of Australian industry to manufacture the required goods eg. utilisation of the TCS**4**, ISO**5** network, open tendering processes. See Sections 9.6 and 9.7 of ACN 96/32 |
| A8 | Export enhancement/import replacement | evidence quantifying anticipated import replacement or export enhancement capabilities expected to be achieved through the project |
| A9 | Consideration of request by DIST | written approval authorising Customs to disclose information, if required, to Department of Industry Science and Tourism |
| A10 | Other details | any other supporting information the applicant considers relevant to the request eg. details of any meetings with Customs or DIST ( including whether Major Program Facilitation status has been accorded by the Minister for Industry Science and Tourism) or previous advice given by Customs in relation to the request |

**1**capital equipment is generally taken to mean significant items of machinery and equipment that are integral to the company's processing activities

**2**A5 or A6 to be completed, but not both **3**A6 or A5 to be completed, but not both **4**TCS denotes Tariff Concession System **5**ISO denotes Industrial Supplies Office

Customs will endeavour to respond to a Project Advice in the required format within 30 days. The nature of the response may be prima facie acceptance that the project satisfies the Government's project requirements, reasons for non-acceptance of the project, or matters upon which more evidence is required before a decision can be made.

Note: prima facie acceptance of a project does not guarantee that some or all of the goods for the project will be granted a concession. Concessions are granted after the assessment of individual Goods Requests.

## Goods Request

The following matters are required to be addressed in a Goods Request.

|  |  |  |
| --- | --- | --- |
| **Section** | **Matters to be Addressed** | **Details** |
| B1 | Reference | cross reference to Project Advice, including any change in applicant or representative details |
| B2 | Detailed description of goods | for format see section 5;  written and illustrative descriptive material including technical drawings illustrating where the specific goods fit into the process; and  copies of TA's**6**, TCO's**7**, purchase orders, bid summaries/evaluations, etc relevant to the specific goods to be imported |
| B3**8** | Legal terms of item 45 or 46 | evidence that specific goods as they are to be imported are:   * items of capital equipment as defined in ACN 96/32 * for use in an industry covered by the item |
| B4**9** | Legal terms of item 56 | evidence that specific goods to be imported are: terms of capital equipment;   * classified to a relevant heading * evidence of technological advancement/efficiency/productivity over the Australian made equipment |
| B5 | Maximisation of local supply (items 45 and 46 only) | evidence of efforts to source goods from Australian sources, as set out at A7 |

**6**TA denotes Tariff Advice

**7**TCO denotes Tariff Concession Order

**8**B3 or B4 to be completed, but not both

**9**B4 or B3 to be completed, but not both

For item 45 or 46 requests Customs will endeavour to finalise the assessment of Goods Requests in the required form within 120 days of receiving a completed request. In the case of item 56 requests the target processing timeframe is 180 days. The need to seek additional information may delay finalisation. These timeframes will be subject to review.

The nature of the response to a Goods Request will be either the granting of a determination(s) to cover specific importation of goods or a refusal letter which will provide reasons for the refusal.

A concession will not be issued for item 56 if there is no evidence supplied of local manufacture of goods able to perform a similar function and a comparison of these goods with the imported goods.

***Note:* Customs legislation does not contain any provisions for internal review of decisions made under sections 273(1) of the Customs Act 1901. A statutory right of review of a decision on PBL requests is available under the provisions of the Administrative Decisions (Judicial Review) Act 1977 Act. However, this is not a merit review.**

**Operative Date**

Section 7 of ACN No. 96/32 refers to a concession normally operating from the date of receipt of the request by Customs. Section 8 of ACN No. 96/32 advises that incomplete submissions, including Notices of Intention to lodge a request, will not be accepted by Customs for the purpose of establishing an operative date for any subsequent concession sought by the applicant.

Customs will consider that a complete submission for particular goods has been received when both the Goods Request and the related Project Advice have been fully completed and lodged with Customs.

# Identification of Goods

In order to satisfy the legal requirements of the PBL items, a necessary step is to clearly identify the goods as they will be imported.

Section 7 of ACN No. 96/32 also advises that any concessional instruments will identify both the actual goods to be imported and the timeframes within which the importation may occur. A single tabular format is to be used to assist both project proponents and Customs to avoid confusion and unnecessary delays in preparing and assessing requests for concessions.

The recommended format is shown in the Attachment to this ACN and is also available from the ACS in an electronic version upon request. The electronic version may also be downloaded from the ACS Internet Site, where it is incorporated with this ACN.

This table should accompany a request for a PBL concession and, as in the examples shown, should break the capital equipment into readily identifiable discrete units. Any supporting documentation supplied by applicants should be clearly cross referenced to column 1 of this table.

A 'preliminary identification of goods' for the purposes of a Project Advice will consist of at least columns 1, 2, 3, 4 &amp; 8. It is acceptable for some groupings of goods to be described in generic terms only, on the understanding that a more detailed breakdown will be provided as part of a Goods Request.

For a **Goods Request** to be valid (and to establish a date of effect for any concession granted) goods need to be correctly identified in the form they will be imported. All columns except 11 &amp; 12**,** which cover entry details, must be completed.

Should the finalisation of a **Goods Request** occur after the importation of the goods, Customs will ask the applicant to update columns 11 and 12. ***Note:* It is important that the reference numbers are consistent with those used in the Project Advice.**

# Additional Information

Additional information on the administration of the PBL Scheme may be obtained from:

National Manager Industry Branch

Australian Customs Service 5 Constitution Avenue CANBERRA CITY ACT 2600

Contact officer for any telephone enquiries is **Mr Declan King**, Director Policy By-Laws, telephone (06) 275 5901 and facsimile (06) 275 6147. Marion Grant

National Manager Industry

FOR CHIEF EXECUTIVE OFFICER CANBERRA ACT 2601

**Identification of Goods Subject of a Policy By-law Request**