

AUSTRALIAN CUSTOMS NOTICE NO. 2005/68

Parts of vessels and materials for use in the construction, modification and repair of vessels

Concession Item 42 – Schedule 4 *Customs Tariff Act 1995*

This Australian Customs Notice (ACN) is provided as a guide for importers and Customs brokers seeking to use Item 42 of Schedule 4 to the *Customs Tariff Act 1995* (the Tariff). This notice replaces all previous advice and ACN’s relating to Item 42, including ACN 98/71.

# Introduction

Item 42 provides assistance to the Australian ship building industry by reducing input costs to shipbuilders through the concessional admission of vessel parts and materials. The concession applies to:

*"****Parts of vessels, and materials, for use in the construction, modification and repair of vessels exceeding 150 gross construction tons as defined in the Bounty (Ships) Act 1989****."*

The application of the *Bounty (Ships) Act 1989* is limited solely to the calculation for “*gross construction tons*”. In accordance with subsection 4(3) of the *Bounty (Ships) Act 1989*, the number of tons in the gross construction tonnage of a vessel shall be ascertained in accordance with the formula:

**Z / 2.83**

Where Z is a number equal to the number of cubic metres in the total volume, measured in relation to their moulded lines, of the enclosed spaces in the vessel, including between-deck spaces, water ballast spaces, voids, cofferdams, machinery spaces, erections, superstructures, houses, casings, funnel spaces, mast spaces and, in the case of an air- cushion vehicle, the area enclosed by the inflatable skirt under normal inflation.

# Guidelines

In order to qualify for a concession under Item 42, it is a legislative requirement that all goods are initially classified under their substantive classification in either Schedule 3, 5 or 6 of the Tariff. Importantly, goods are ineligible to claim access to Item 42 if they are classified to a tariff classification in Schedule 3, 5 or 6, which attracts a “free” rate of duty.

Item 42 may only be claimed on a consignment-by-consignment basis. Importers must comply with the specific terms, conditions and requirements of the concession. To gain access to Item 42, importers must be able to demonstrate that their goods meet three criteria.

These criteria are:

1. That the goods are parts of vessels and/or materials for use in vessels.
2. That the goods are intended for use solely in the construction, modification and repair of vessels.
3. That the vessel involved exceeds 150 gross construction tons.

Importers and Customs brokers are reminded that, for compliance purposes, they must be able to establish intent to comply with the requirements of Item 42 at the time the goods are entered for home consumption. Documentary evidence should be retained and be available to assist in Customs compliance audits. Evidence that may be utilised in identifying goods as parts and materials of vessels, include ships plans and ships modification plans, contracts to supply, invoices etc.

Item 42 may also apply to vessels parts, components and materials originally imported then subsequently sent overseas for repair, reconditioning, replacement or maintenance and then re-imported.

If only a portion of imported goods, are intended to be used in the prescribed manner then only that amount can be claimed. Where vessel parts and materials are imported with the intention to be offered for further commercial sale, and the importer cannot demonstrate the intended use, as the concession requires, then they are ineligible to claim access to the concession Item.

Should an importer or Customs broker have concerns over their eligibility to claim Item 42 at the time of importation, the use of the “*Amber Line*” is recommended.

# The ordinary meaning of the word "part"

In its ordinary English meaning, the word ‘part’ means something, which is a constituent or component of something else. A part is something necessary for the completion of an article, but it is not necessarily essential to the functioning of the whole. However, something that is consumed during the operation of something else is not a part of that thing.

# What is a part of a vessel for the purposes of Item 42?

For the purposes of Item 42, a part of a vessel exceeding 150 gross construction tons is something, which, with others may make up a whole of such a vessel. It could also be an article, a subsystem or functioning unit of such a vessel including a ship’s hull, equipment or machinery, or a part thereof. A part need not be subsumed into the vessel, or be permanently fixed to it. However, if it is not subsumed into the vessel or permanently fixed to it, it would have to be intended by its design or manufacture to be used in the operation of such a vessel.

Equipment might be a part of a vessel if it is not a consumable and:

1. it has been included in the design specifications of the vessel; and/or
2. it is equipment of a kind supplied at fit out prior to first sailing of the vessel; and/or
3. it is equipment of a kind that Regulatory controls require to be on board the vessel at the time of sailing.

Importers, claiming that imported goods are parts for a vessel, must be able to establish at import that the parts have an association as equipment or as a part of equipment used on a vessel greater than 150 gross construction tons. The characteristic could be that it has been especially adapted for the vessel or is a component for a machine identified in the vessels specifications. (For example, a part for a crane is just a part for a crane and is unable to claim Item 42, unless that crane is a part of cargo handling equipment that has been built into or is a functioning component or part of the container/cargo vessel).

To be a part of a vessel the equipment must normally be something that has a permanent or semi permanent nature, and is not being constantly withdrawn or replaced. For example, depending on the circumstances anchors, cables, hawsers, mooring ropes, sails, ropes and such things may be said to be part of a ship’s equipment, albeit that they may have to be renewed from time to time.

# "Materials"

The word, "materials" normally means the substance or substances of which a thing is made or composed, or anything serving as crude or raw matter for working upon or developing a thing. Within the context of Item 42, "materials" means the raw materials, of which a vessel of greater than 150 gross construction tons is made or composed.

Materials may be used directly by the shipbuilder in respect of goods that are:

1. Actually incorporated in the vessel or in the modification of the vessel, as the case requires; or
2. Consumed in the construction or modification of the vessel, as the case requires.

# Goods Not Eligible for Item 42

The following goods are not considered to be eligible for concessional treatment under Item 42:

* Ships Stores being stores for the use of all the passengers or crew of a ship, or for the service of a ship.
* Goods for the service of a vessel including consumables such as oil, fuel, lubricants, food, beverages, plates, cutlery and the like.
* Tools (including specialist hand tools).
* Specified Goods (being vessels parts, components and materials) imported under the legislation provisions of the “*Tradex Scheme Act 1999*” by the holder of a tradex order.

# "Use in the construction, modification and repair"

To be eligible for Item 42, the parts of vessels of greater than 150 construction tons, or materials, must be for use in the construction, modification and repair of such vessels. The terms construction, modification and repair are given their ordinary dictionary meanings.

For the purposes of Item 42:

* "**Construction of Vessels**" means the building of vessels by assembling and combining parts usually resulting in the surveying of the vessel.
* "**Modification of Vessels**": modification means the act of modifying, the state of being modified, partial alteration, a change in form, an enhancement, refurbishment, upgrade, alteration or repair.

Modification, in relation to a vessel, includes changing the structure or specification of the vessel to alter its capacity or capability, but does not include any changing of that structure or specification before the construction of the vessel has been completed. It also includes an alteration of the form or qualities of vessels. A modification or alteration of a vessel would normally be of a long-term nature, and require the vessel to be re-surveyed.

* "**Repair of Vessels**": repair means the renewing, modification or conversion, painting, installation and replacement of parts and components, overhaul, defect rectification, restoring to sound condition, mending and strengthening of vessels.

# Additional information

Inquiries concerning this notice may be directed to the Manager Tariff Policy on telephone number (02) 6275 6571 or fax number (02) 6275 6471.

Sue Pitman National Manager Trade Branch CANBERRA ACT

29 November 2005