Australian Customs Notice 1996 32

**THE POLICY BY-LAW SYSTEM (ITEMS 43, 45, 46, 47, 52, 55,**

**56, 57 and 60)**

**Note:** [**ACN97/49**](https://borderauthor.border.gov.au/Busi/Cust/Aust/Australian-Customs-Notice-1996-32) provides information on the required format of Items 45,46 &amp; 56 requests

This Australian Customs Notice (ACN) provides advice on changes to the operation of the Policy By-Law (PBL) System, in accordance with the Government's proposals announced on 8 May 1996, and recently passed by the Commonwealth Parliament in legislative amendment contained in the Customs Amendment Act 1996 (CAA) and the Customs Tariff Amendments Act (No. 1) 1996 (CTAA). This ACN details the legislative changes to the PBL System contained in both Acts, together with the new policy initiatives and administrative requirements to be applied when processing requests under the System. The legislative policy changes will commence on **15 July 1996,** being the date fixed by Proclamation for the new Acts to commence. ACN No.95/74 will cease to have effect from that date.

# 1. INTRODUCTION

Schedule 3 to the Customs Tariff Act 1995 (the Tariff) establishes the rate of duty to be paid on goods imported into Australia. The principal objective of the duties imposed by that Schedule is to provide assistance to Australian manufacturers of goods. However, the structure of the Tariff is such that some goods not made in Australia also become subject to duty. Under certain conditions, the Government will forgo the collection of the full duty on goods not made in Australia.

Section 18 of the Tariff provides the authority for goods specified in Schedule 4 of that Act to enter at a rate of duty below that set out in Schedule 3. The items contained in Schedule 4 provide the legal basis for concessional entry of certain goods in prescribed circumstances. For example, Items 50 and 50A of Schedule 4 provide for the concessional entry of goods that are the subject of Tariff Concession Orders (TCO) made through the Tariff Concession (TC) System.

Other Items in Schedule 4 provide for the concessional entry of goods to suit a wide range of specified circumstances and to satisfy particular Government objectives. Of particular relevance to this ACN, Schedule 4 contains a number of items that allow goods to be entered at concessional rates of duty where the entry of those goods is considered to contribute significantly to the Government's overall industry policy objectives, in particular, through a reduction in business input costs in specified circumstances.

This latter category of nine items constitutes what is known as the PBL System. The items that are generally considered to fall within the ambit of the PBL system include items 43, 45, 46, 47, 52, 55, 56, 57 and 60 of Schedule 4 to the Tariff.

This ACN is intended to serve as a guide to the operation of the revised system. It endeavours to clarify the legal, policy and administrative criteria underpinning the System and to provide advice on the processes for lodging requests for concessional entry which will apply from 15 July 1996.

The key legislative and policy changes to commence on 15 July 1996 include:

1. the revocation of current policy by-laws instruments (both by-laws and determinations) made under items 43, 45, 46, 52 and 56, together with the treatment of any requests for a by-law or determination made under any of those five items as at 15 July 1996 as a request subject to the new legislative and policy criteria applying to those five items post 15 July 1996 (item 42 of the CAA);
2. introduction of in-transit arrangements for goods falling within items 43, 45, 46, 52 and 56 (item 43 of the CAA);
3. the retention of a free duty rate on each of the PBL items, except item 47, which will attract a 3% rate and items 43 and 52, which will attract the rate applicable to the whole good (items 3, 4, 5 and 6 of the CTAA);
4. the amendment of item 45 to cover "Capital equipment for use in the mining and resource processing industries, as prescribed by by-law" (item 3 of the CTAA);
5. the amendment of item 46 to cover "Capital equipment for use in the agricultural, food processing and food packaging industries, as prescribed by by-law" (item 4 of the CTAA);
6. removal of the 'designed for use' test from both items 45 and 46 (items 3 and 4 of the CTAA);
7. the removal of the legal requirement from items 56, 57 and 60 that goods be ineligible for a Tariff Concession Order (items 8, 9 and 10 of the CTAA);
8. the introduction of a new project-based eligibility threshold for concessions available under items 45, 46 and

56. These items will only be available in respect of major projects, which are considered to be projects having a capital equipment value in the order of A$10 million or more; and

1. concessional entry under items 43 and 52 to be available only for split consignments of whole goods which are unable to be transported in a single consignment, typically because of the size of the goods or inadvertent shipping delays.

# OVERVIEW

The PBL System permits the concessional entry of certain goods in specified circumstances where it can be clearly demonstrated that the imported items are intended for use in export enhancement or import replacement activities that would generate, in broad industry policy terms, a quantifiable benefit to Australia.

In order to be eligible for consideration of a PBL concession, applicants will be required to demonstrate that; the goods to be imported satisfy the legal terms of the relevant Item in Schedule 4 to the Tariff;

that the granting of a PBL concession for the specific goods is consistent with prevailing Government policy,

as contained in this ACN;

that applicants have implemented, as part of their project development considerations, measures to adequately consider local supply, before orders are placed overseas; and

that the imported goods are not available from an Australian manufacturer.

Importers seeking concessional entry for goods covered by a particular PBL Item will be required to lodge a detailed request with the Australian Customs Service. If the request satisfies the terms of the item and there are sound policy reasons for allowing concessional entry, the Chief Executive Officer of Customs, or his delegate, may issue a legal instrument (by means of a By-law or determination made under either section 271 or 273 of the Customs Act 1901) that will permit concessional entry of the goods. Unlike the TC System, PBL concessions are usually one-off instruments that will normally place limitations on the type and quantity of goods that may be entered, usually within a specified time frame and in many cases limited to a designated project.

Importers should not assume that their request will be automatically approved. Each request will be considered on its merits. In all cases the ACS will conduct an evaluation of the request to ensure that the established legal and policy criteria have been satisfied. Broadly based or unsupported assertions on the part of applicants that goods are not available from Australian manufactures will not be accepted. The revised PBL System places an obligation on applicants (other than for items 43, 52 and 55) to ascertain the capacity of Australian industry to manufacture the particular goods that they require.

# POLICY ISSUES

The PBL System is essentially an industry development tool. All requests for concessional entry under the System will be assessed against prevailing industry policy objectives, which are determined by the Government. The Minister responsible for the administration of the PBL System is the Minister for Small Business and Consumer Affairs, who is also the Minister responsible for Customs matters. The PBL System will be administered by the ACS with policy advice being provided by the Minister and the Department of Industry, Science and Tourism (DIST), as required. The Chief Executive Officer of Customs is vested under the Customs Act with the authority to issue by-laws and determinations.

From a policy perspective, the over-riding principle behind the PBL system is to reduce costs to industry where there are sound reasons to do so, through the encouragement and enhancement of investment in Australia. It will be necessary to demonstrate that the anticipated investment will result in the establishment and development of world class mining, resource processing, industrial or downstream processing projects, while at the same time maximising the involvement of Australian manufacturers in these projects.

Applicants will be required to produce evidence that they have assessed the benefits of sourcing locally as an integral element of their initial design and acquisition policy. Applicants will also be expected to identify and make contact with potential Australian manufacturers early in the design phase, particularly to ensure that local manufacturers are not 'designed out' of a particular project. The types of processes envisaged include use of the existing TCO procedures, open tendering, seeking active participation and advice from the Industrial Supplies Office (ISO), or local equivalent thereof, and/or pursuing direct contact with relevant industry associations, Chambers of Commerce and the like, which represent the interests of local manufacturers.

Where applicants cannot demonstrate that they have given adequate consideration to potential Australian manufacturers in the early planning stages of particular importations or major projects, it is unlikely that a PBL request will be successful.

To reiterate, applicants for concessional treatment under the PBL system will be required to satisfy certain industry policy objectives by demonstrating that they have:

maximised the opportunities for local industry to become involved in the provision of major equipment and/or the overall development of the particular project; and

made serious efforts to seek out local manufacturers, or potential local manufacturers, of the required goods, prior to committing to overseas orders.

Applicants should particularly note that price differential will not generally be considered as a relevant factor when assessing the capacity and availability of Australian manufactured goods as viable substitutes for imported goods.

# PROJECT STATUS

Under the new arrangements, applicants for concessional entry under items 45, 46 and 56 will be required to satisfy a new, project-based eligibility criterion that is integral to the request process. A new project status benchmark has been established by the Government, which includes major projects with a capital equipment value in the order of A$10 million or more. The capital equipment value of a particular project will be assessed against the aggregate value of both the domestic and the overseas capital equipment to be integrated into that project. *As a general guide, capital equipment eligible under these PBL items will be taken to mean significant items of machinery and equipment that are integral to the company's resource processing activities and that are utilised to add value to the transformation of primary/natural resources, including intermediate stage processing. Final stage processing may also be included where it is integrated with the company's primary or intermediate stage processing operations.*

In broad terms, applicants for concessional entry under items 45, 46 and 56 will be required to provide information that quantifies:

the type, source and value of both the domestic and the imported capital equipment involved. Applicants must establish from the outset that they satisfy the major project test, for which the benchmark is currently A$10 million in capital equipment; and

the capacity (or otherwise) of Australian industry to manufacture the required equipment.

It is recommended that applicants seeking project status concessions under items 45, 46 and 56 initiate early discussions with the ACS to identify the approach that they intend to adopt to identify the capacity for local manufacturers to participate in the project, particularly to ensure that the process will achieve an appropriate outcome and that the process itself is transparent in nature.

Project applicants should note that the previous legal requirement attached to PBL item 56 that required goods to be ineligible for a TCO before a PBL could be issued has now been removed by item 8 of the CTAA. Nevertheless, the Customs TCO process is, in itself, a viable and acceptable mechanism that applicants may continue to utilise to establish the capacity of domestic industry to manufacture the goods in question.

Potential applicants developing major projects are urged to lodge their PBL requests with the ACS early in the planning stages of the project and certainly well prior to entering into any commitment to import goods. By Government policy directive, the PBL System operates on a prospective basis.

The A$10 million benchmark will be assessed against each significant phase of a particular project. Eligibility for downstream upgrades of an existing project, for example, will be assessed independently of the initial setup costs.

# REQUEST FOR PROJECT STATUS

Requests for concessions under the 'project' items will be required to identify the capacity of Australian industry to manufacture the particular goods. In the case of items 45, 46 and 56, the mechanisms that may be utilised include:

active participation by the Industrial Supplies Office (or local equivalent thereof);

direct contact with relevant industry associations, Chambers of Commerce and other organisations representing local manufacturers interests;

direct contact with all known Australian manufacturers of equivalent goods; utilisation of open tendering procedures; and/or

the Customs TCO system.

Applicants will also be required to establish the dimensions of the import replacement/export enhancement activity that will be generated as a result of the commissioning of the project.

Specific details will be required to identify the actual machinery or equipment to be imported and the intended program for transporting those goods to Australia.

More information concerning the level of detail that is required to be included within a 'project' request is contained later in this ACN and also in the 'Specific Item' attachments hereto.

# RETROSPECTIVE REQUESTS

It is fundamental to the objectives of the PBL system that importers seeking PBL concessions should first take appropriate steps to maximise the opportunities for Australian manufacturers to produce the particular goods. To accord with that philosophy, Government industry policy dictates that the PBL System should be prospective in nature. Clearly, the lodgement of a request for a PBL concession after goods have been imported would be inconsistent with this objective.

In the interests of uniformity, it is proposed to retain the practice, adopted in 1994, whereby PBL concessions will not be granted retrospectively.

Applicants should be aware that the date of importation of the goods, not the date the goods are entered, will be compared against the date of receipt of the request by Customs (including a facsimile advance copy) to establish whether the concession sought is prospective or retrospective.

# DURATION OF CONCESSIONAL INSTRUMENTS

Concessional instruments will identify both the goods to be imported and the time frame within which the importation may occur. Applicants will be required to identify the proposed shipping schedules for the imported goods and, in the case of extended major projects, will also need to identify expected commissioning dates.

If a concession is granted, the concession will normally operate from the date of receipt of the request by Customs.

Instruments will not normally be issued with a validity exceeding two years from date of request. Lengthy projects may need to be considered as several inter-related requests and each phase of the project may be subject to audit before successive PBL requests are considered. The two year validity benchmark caters for possible changes in industry policy and/or domestic manufacturing capability and allows for periodic review of the prevailing industry policy considerations.

Requests to extend the validity date of an instrument (for example, to cover goods that did not arrive in the time frame specified in the instrument) will require the lodgement of additional detailed information, usually in the form of a new request In such cases the delegate must be satisfied that the goods continue to meet both the terms of the item as well as current Government policy objectives, irrespective of the considerations that may have applied at the time of granting the original concession.

A new PBL request will also be required prior to the arrival of any goods that are additional to those identified in the original request or approved in an original concession. Such requests must be submitted to the ACS incorporating the same level of detail that is required for the original request.

Applicants should not assume that any additional or extended concession is automatic. Requests will only be considered after a review has been conducted of how effectively the original concession was utilised and whether or not the Government policy intent was met.

# THE PBL REQUEST PROCESS

Importers seeking a PBL concession will be required to lodge a formal request with the Australian Customs Service, addressed as follows:

The Chief Executive Officer Australian Customs Service 5 Constitution Avenue Canberra City ACT 2600

ATTENTION: National Manager, Tariff, Valuation &amp; Origin Branch.

Any subsequent correspondence about a request should be addressed in the same manner.

There is no predetermined format for a PBL request, however, the range of issues that are required to be addressed are set out below. Where more specific requirements exist in respect of a particular item, they have been identified in the Specific Item attachment to this ACN.

Applicants should note that the completeness of the request and attention to the quality and detail of the information provided will greatly assist and expedite the assessment process.

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.

# INFORMATION REQUIRED

* 1. **Applicant Details:**

Name of applicant, address, telephone and facsimile details, owner code.

# Representative Details:

Formally identify the applicant's representative status, including an authority from the principal concerned authorising the ACS to deal with the representative on any aspect of the PBL request.

* 1. **Terms of the Item:** The request should identify the item(s) under which concessions are being sought and, having regard to the specific terms and conditions of that item, should elaborate on why it is appropriate for a concession to be granted. Requests for PBL concessions that do not satisfy the terms of the item will be refused.

*Further details concerning the legal and administrative requirements particular to each PBL item are addressed in the attachments to this ACN.*

# Details of Goods to be Imported:

**The following information is necessary to identify the good:**

written and illustrative descriptive material,

details/copies of any Tariff Advice relevant to the specific goods to be imported, **\*\*** Customs value of the goods,

duty payable without concession, duty payable with concession, confirmed source of supply, proposed shipping arrangements, expected arrival dates.

**\*\****Both the request for a PBL concession and any related TA or TCO must specify the actual goods to be imported, rather than identifying in generic terms a final project of which the goods are merely a component. Concessional entry will not be granted for components of a project by obtaining a notional classification for a whole good of which the components are parts.*

# Production Details

Applicants should provide details on expected production capacity, reason for plant upgrade, etc. It is essential that detailed evidence be provided to highlight the anticipated import replacement or export enhancement capabilities that are expected to be achieved through acquisition of the particular goods/plant.

# TCO Details

Details should be provided of any relevant TCO or other avenues of concessional entry utilised or potentially to be utilised in respect of the goods.

# Details of Approaches to Local Manufacturers

Applicants are expected to make reasonable endeavours to source goods locally before making arrangements to purchase goods from overseas suppliers. In the broader industry development context, applicants must be able to demonstrate that full consideration has been given to the capacity of Australian manufacturers to provide the required goods.

Accordingly, applicants are required to:

seek to maximise local manufacturing capability in the provision of equipment or the development of the project; and

identify in their request the level of Australian content and the reasons why the remaining goods are to be imported.

All requests (except those for items 43, 52 and 55) shall provide detailed information on the applicant's efforts to purchase locally made goods. Evidence of approaches to representative industry groups and supplier associations, contact with the Industrial Supplies Office, evidence of tender procedures undertaken (and the reasons behind subsequent tender decisions) and contact with local manufacturers and producers will be taken into account when evaluating the request. Unsubstantiated assertions by applicants that 'no Australian manufacturer can supply the goods' will not be accepted.

# Authorisation for Customs to Provide Information to DIST

Applicants should note that both Customs and DIST may be required to review the material provided with PBL requests. To ensure that consideration of the request can proceed in a manner consistent with the ACS's statutory confidentiality obligations, applicants are requested to include a written approval for Customs to exchange information concerning the request with DIST officers.

# Other Details

Applicants should include any other supportive information considered relevant to the request.

# AUSTRALIAN MANUFACTURING CAPABILITY

Australian companies to make suitable goods will need to take into consideration whether manufacturers are: producing now for production line items;

have made goods capable of meeting the same requirements within the last two years for one-off items; or are capable of producing in Australia within a reasonable time frame.

The unavailability of the specific goods may be an acceptable rationale for importing, but not in circumstances where unrealistically tight time frames are imposed. Price is also generally not a consideration.

# PBL REQUEST ASSESSMENT PROCESS

Notwithstanding the policy nature of the PBL System, the Government wishes to ensure that the process for examining requests for PBL concessions is as transparent, fair and equitable as possible. With this objective in mind, procedures have been developed to ensure that all requests are treated in a uniform manner. The assessment process is described in broad terms below.

# Preliminary Evaluation

1. Customs conducts an initial assessment of the request to determine whether the documentation satisfies the terms and conditions of the concessional item applied for and, prima facie, meets the policy criteria set out in this ACN.

Where the delegate is of the opinion that additional information may add support to a request for PBL concessions, the ACS will seek further details and advise the applicant of a time frame in which to provide the information. If the information is not received in a reasonable time frame, the PBL request will be assessed on the basis of the original information provided.

If, in the opinion of the delegate, the request submitted does not establish a prima facie case for consideration of a concession, the request will be refused.

# Detailed Evaluation

1. Customs then conducts a complete assessment of the PBL request. The delegate must be satisfied that the request meets the terms of the particular item. In some cases, meetings and/or site inspections will be required. The ACS may also initiate consultation with potential Australian manufacturers, industry associations and the like where that course of action is considered necessary to clarify and validate technical issues.
2. Applicants are requested to specifically identify any information contained in a request that they do not wish to be disclosed in any consultation process, or any person or body to which disclosure should not be made. Where a request is silent on this issue the ACS will deal with the request on the basis that there is no objection to disclosure of its contents.
3. The legal terms of items 56, 57 and 60 require that the Minister form an opinion on certain matters as part of the assessment process. Requests for concessions under these three items will be forwarded to the Minister, who will advise Customs on any policy considerations that should be taken into account by the Delegate when deciding whether to grant or refuse a PBL concession.
4. The Chief Executive Officer of Customs, or a delegate, will then consider whether a PBL concession should be granted, based on whether or not the information provided satisfies the legal terms of the item and complies with prevailing policy. The decision to grant a PBL concession rests with senior executives of the ACS. The current delegates responsible for making PBL decisions are the Deputy Chief Executive Officer, the National Manager Tariff and Valuation and, where the National Manager is unavailable, the Director, Policy By-Laws.
5. Applicants are advised in writing of the outcome of their request. If a request is refused the reasons for the refusal will be detailed in a formal advice.

# UNDETERMINED PBL REQUESTS

Policy By-law instruments (either by-laws made under section 271 of the Customs Act or determinations made under section 273 of the Customs Act) made in relation to items 43, 45, 46, 52 and 56 of the Tariff are taken to be revoked from the 15 July 1996 commencement of the CAA Act. The same legislation also provides that all requests for concessions under these items which are undetermined at 15 July 1996, the date of commencement, will be treated as if they were received at the commencement of the new legislation. Applicants with undetermined requests might therefore elect to submit a fresh request addressing the new requirements set out in this ACN. Such requests will be subject to the new legislative and policy requirements now applying to these PBL items.

Any applicant wishing to withdraw an undetermined request should so inform the ACS by 15 August 1996.

# IN-TRANSIT PROVISIONS

Special provision has been made in the CAA to accommodate goods falling within items 43, 45, 46, 52 and 56 that are either 'in transit' or are 'capital equipment on firm order' at 15 July 1996, the date of commencement of the new arrangements. The in-transit provisions cater for three particular situations, which are outlined below:

goods which have been imported on or before the 15 July 1996 date of revocation of the concession instrument, provided they are entered for home consumption within 28 days of that date;

goods on direct shipment to Australia before the 15 July 1996 date of revocation of the concession instrument, provided they are entered for home consumption within 28 days of importation; or

goods which are made-to-order capital equipment (as defined for the purposes of the Tariff Concession System **##**), provided such goods are imported and entered for home consumption under one of the these items by 15 February 1997.

**##**Note: For the purposes of the TCS, "made to order capital equipment" means goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the Tariff apply that are particular items of capital equipment.

* 1. that is made on a one-off basis to meet a specific order rather than being subject of regular or intermittent production; and
  2. that is not produced in quantities indicative of a production run.

If any of the above in-transit circumstances are considered relevant to an applicant, specific advice may be sought from the ACS to clarify eligibility.

1. **ACQUITTAL PROCESS** As with any importation, the responsibility to correctly enter goods using a concessional instrument issued under any of the PBL items lies with the importer. PBL concessions will be subject to regular Customs audit procedures to verify entry particulars and compliance with administrative requirements.

# CONTACT OFFICERS

Where applicants are not certain of the requirements or seek to explore PBL concession options in more detail, they are encouraged to seek advice. Preliminary discussions and meetings with ACS (or DIST) staff are intended to assist applicants to develop and focus their requests for PBL concessions.

Any guidance or advice offered by officials prior to receipt of a request is provided without prejudice to the outcome of the matter.

The final decision to grant or refuse a PBL concession rests solely with the ACS.

# ATTACHMENTS

Summary sheets outlining the administrative and policy considerations relevant to the individual PBL items are attached hereto.

# ADDITIONAL INFORMATION

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

National Manager

Tariff, Valuation and Origin Australian Customs Service 5 Constitution Avenue CANBERRA CITY ACT 2600

Contact may also be made by telephone (06) 275 6462 or facsimile (06) 275 6377.

Richard Janeczko

for Chief Executive Officer 10 July 1996

# Contact Officers:

**Richard Janeczko: 06 275 6462**

# Peter Kittler: 06 2756466

**Geoff Mann: 06 275 6388 ATTACHMENT TO ACN NO.96/32**

# SPECIFIC ITEM CONSIDERATIONS.

**Items 43 and 52**

# Items 43 and 52 in Schedule 4 to the Tariff read:

*43 "Goods, as prescribed by by-law, being original components of machinery classified under a heading or subheading in Chapters 84, 85 or 90 of Schedule 3."*

*52 "Original components of complete equipment classified under a heading or subheading in Chapter 86, 87 or 89 in Schedule 3, as prescribed by by-law."*

Background

Items 43 and 52 were established to overcome a situation where tariff treatment of split consignments of complete equipment resulted in the application of more duty to the individual components than would apply if the same goods had been imported as a complete unit.

To comply with the legal requirements of Items 43 and 52, applicants will be required to demonstrate that the goods to be imported are original components of complete equipment or machinery classified to a heading or subheading specified in Item 43 or 52.

Broadly, concessional entry of goods under items 43 and 52 is only available where:

there are logical and economically sound reasons for industry to import the components in separate consignments (for example, because of the physical size of the goods or because certain sensitive but integral components must be transported by air); or

circumstances arise beyond the control of the importer, such as inadvertent transport or shipping delays, which preclude shipment on a single vessel or aircraft.

An important pre-condition for access to a PBL concession under items 43 or 52 is that the goods concerned must be ordered from, and shipped by, a single supplier. The goods must be available as an identifiable, whole entity at a place of manufacture or export. Split shipment from different suppliers in different locations are not eligible for concessional treatment under these items.

The concession does **not** apply to replacement parts, components or spares used in modernising or refurbishing existing machinery or equipment. Initial spare parts, maintenance tools and the like that may be supplied as part of the original shipment(s), do not constitute original components. Replacement components and spare parts are clearly not eligible for concessional entry under items 43 or 52.

# PBL Request Procedures

Requests for item 43 and 52 concessions will generally be dealt with at the port of entry of the goods. If special circumstances arise that are considered to fall outside the terms of the Standing By-Law, the ACS region concerned may refer the matter to Central Office for consideration.

Standing By-law 8840091 is revoked and replaced by new by-laws 9640116 and 9640117 respectively, which reflect the policy intent of items 43 and 52.

# Special Considerations

The item 43/52 concessions may only be utilised in respect of identifiable items of imported machinery or equipment that are ordered and supplied by a single manufacturer, where the imported items clearly constitute a fully functioning 'whole' unit that is being imported in split shipments for sound and logical reasons. This concession is not intended to apply to such generic or notional entities as complete plant, "greenfield" or civil engineering projects.

# Items 45 and 46

Items 45 and 46 in Schedule 4 to the Tariff read:

1. *"Capital equipment for use in the mining and resource processing industries, as prescribed by by-law."*
2. *"Capital equipment for use in the agriculture, food processing and food packaging industries, as prescribed by by-law."*

# Background

Items 45 and 46 were introduced to encourage the establishment of major new development projects by allowing duty free entry of certain goods not normally made in Australia.

Under the revised procedures, requests for concessions under items 45 and 46 will be restricted to items of capital equipment which are to be incorporated in projects which have a total capital equipment value in the order of A$10 million or more. Applicants will be required to provide detailed evidence quantifying the precise dimensions of the level of capital equipment investment that is intended for the particular project, to ensure that this fundamental eligibility criterion is satisfied.

To comply with the legal requirements of these items, applicants must demonstrate that the goods to be imported are for use in either the mining and resource processing industries or the agriculture, food processing and food packaging industries. P&gt; This item is not intended to cover goods imported for stock, or for on-sale by independent importers. PBL requests should be lodged by project proponents.

For the purposes of item 45 eligibility, *resource processing industries are generally taken to mean industries which transform primary/natural resources into value added products. This includes industries utilising inputs from recycled or waste products.*

In accordance with Government policy, the delegate will take into account whether: substitutable goods are made in Australia, or

whether the imported goods are not normally made in Australia (para 10. Australian Manufacturing Capability

refers)

# PBL Request Procedures

In addition to the general information required for all PBL requests outlined in the ACN, applicants will be required to provide the following specific material in support of an Item 45/46 request:

detailed information identifying the overall scope and dimensions of the planned project, with specific supporting evidence confirming the type, capacity and value of the capital equipment that is intended to be utilised;

in particular, evidence will be required to quantify the overall level of capital investment proposed to be undertaken (including both domestic and overseas capital inputs). It will be essential to quantify the precise level of capital equipment investment so that the request can be assessed against the A$10 million project eligibility benchmark;

evidence that the goods are 'for use' in the relevant industry;

evidence to support the tariff classification of the imported capital equipment, in the form of a Tariff Advice; details of the amount of duty savings to be achieved on each planned importation, if a concession is granted; evidence of the steps taken to establish the capacity of Australian industry to produce the required equipment. This may be established either through utilisation of the TCO System and/or by adoption of one of the agreed alternative mechanisms; and

evidence to identify the dimensions of the import and/or export replacement activity that will be generated as a result of the particular project going ahead.

# Special Considerations

In processing PBL requests, officers of Customs and, where appropriate, DIST, will evaluate the rationale for importing particular components and determine whether the imported goods are eligible under the terms of the respective item and also that concessional entry accords with prevailing Government policy.

Applicants are reminded that requests for retrospective concessions will not satisfy the Government's industry policy intent and will therefore not be granted.

# Item 47

Item 47 in Schedule 4 to the Tariff reads:

*"Goods as prescribed by by-law, being machinery that incorporates, or is imported with, other goods which render the machinery ineligible for a current Tariff Concession Order made under Part XVA of the Customs Act 1901."*

# Background

Item 47 was created to compensate for shortcomings in the earlier Commercial Tariff Concession Scheme (CTCS) in relation to certain capital equipment for use in the mining, construction and agricultural sectors. These shortcomings were largely overtaken by the implementation of the TCO system in 1992. Unlike the TCO system, the CTCS provided a capacity for manufacturers of parts to object to the granting of a concession for whole goods.

Item 47 is intended to allow the entry of complete capital equipment at concessional rates where a CTCO has been granted which excludes certain original components that could be made in Australia. This enables importers of such equipment to avoid having to remove components excluded by a CTCO and shipping those components separately or obtaining them locally, in order to obtain the benefit of the concession for the balance of the equipment. The duty rate attached to item 47 is currently 3%.

The decision making process will focus on the likely impact concessional imports will have on Australian manufacturing capability.

# PBL Request Procedures

The general information required for all PBL requests should be provided, as outlined earlier in the ACN. **Item 55**:

Item 55 in Schedule 4 to the Tariff reads:

*"Machine tools and parts thereof, as prescribed by by-law, being machine tools for working advanced materials."* **Background**

This Item was inserted to reflect changes to the Bounty (Machine Tools and Robots) Act 1985 which extended bounty payment to machine tools for working advanced metals. Government industry policy intends to allow the concessional entry of goods which, if produced in Australia, would be eligible for a bounty payment.

To give effect to Government policy, the ACS takes into consideration whether goods included in an Item 55 PBL request would be eligible for a bounty under the Bounty (Machine Tools and Robots) Act 1985.

# PBL Request Procedures

In addition to the general information required for all PBL requests outlined earlier, applicants will be required to provide specific details relating to bounty eligibility.

# Item 56

Item 56 in Schedule 4 to the Tariff reads:

*56. "Capital equipment classified under a heading or subheading in Chapter 84, 85, 86, 87 (excluding goods covered by the plan known as the Passenger Motor Vehicle Manufacturing Plan), 89 or 90 of Schedule 3 which, in the opinion of the Minister, is technologically more advanced, more efficient or more productive than equipment currently available from Australian manufacture, as prescribed by by-law."*

# Background

Item 56 was introduced to foster the concessional entry of 'State-of-the-Art' capital equipment where it can be demonstrated that the equipment has significantly higher performance characteristics than goods manufactured in Australia.

Under the new policy criteria, requests for concessions under item 56 will be restricted to items of capital equipment that are to be incorporated into projects which have a total capital equipment value in the order of A$10 million or more. Applicants will be required to provide detailed evidence quantifying the dimensions of the total capital equipment value that is proposed for the particular project to ensure that major project status is established.

To comply with the legal requirements of Item 56 applicants must demonstrate that the goods to be imported: are capital equipment, supported by a tariff classification, in the form of a Tariff Advice;

are classified to the relevant Chapters specified in Item 56;

are not covered by the Passenger Motor Vehicle Plan; and

are technologically more advanced, more efficient or more productive when compared to equipment currently available from Australian manufacturers. In making a comparison between local goods and the imported good, applicants must present objective data and information on which the Minister can reasonably form an opinion. Assertions unsupported by appropriate evidence will not be accepted.

The Minister is required to form an opinion that the imported goods are, in fact, more advanced, more efficient or more productive than equipment currently available from Australian manufacture, before the delegate can issue a determination.

Factors that will be taken into account when assessing whether or not the imported goods are technologically more advanced, more efficient or more productive than the local goods include such characteristics as:

greater speed in completing a process or increased output over time;

greater flexibility in performing tasks, i.e. through being able to switch between tasks or tooling or greater facility in changing production schedules and production runs;

lower unit production costs; lower operating costs;

ability to attain improvements in or meet recognised quality standards (this may include stringent environmental controls); and

increased productivity.

This PBL item is not intended to cover goods imported for stock or for on-sale by independent importers. **PBL Request Procedures**

In addition to the general information required for all PBL requests earlier, applicants will be required to provide the following specific material in support of an item 56 request:

details of the overall scope and dimensions of the planned project, with specific supporting evidence confirming the type, value and capacity of the capital investment to be undertaken (including both domestic and overseas capital inputs);

evidence to support the tariff classification of the capital equipment to be imported, in the form of a Tariff Advice;

details of any TCO application made or anticipated which is relevant to the actual goods being imported, identifying potential local goods for comparison with the imported goods;

details of the amount of duty savings to be achieved on each planned importation, if a concession is granted; evidence of the steps taken to establish the capacity of Australian industry to produce the required equipment. It will be necessary for all item 56 requests to be supported with an independent technical assessment of the equipment to quantify precisely the degree of technological advancement/efficiency/productivity over the Australian made equipment;

evidence of the dimensions of the import and/or export replacement activity that will be generated as a result of the project going ahead; and

details of the planned shipping arrangements.

# Special Considerations

Under the terms of item 56, applicants will be required to focus on establishing the degree of significant performance advantage achievable over goods that are made in Australia which, on face value, may appear suited to the task.

Both the ACS and DIST will be required to ensure that sufficient information is available to allow the Minister to form an opinion on the matter. Applicants should note the very high likelihood of consultation being initiated with

potential Australian manufacturers and/or industry groups as a means of validating the claims made about the perceived advantages of the imported goods.

Applicants are reminded that requests for retrospective concessions will not satisfy the Government's industry policy intentions and will therefore not be granted.

# Item 57

Item 57 in Schedule 4 to the Tariff reads:

*"Raw materials and intermediate goods, as prescribed by by-law, classified under heading 5903 or within Chapters 28, 29, 32, 34, 35, 37, 38, 39 or 48 of Schedule 3 and in the opinion of the Minister, have a substantial and demonstrable performance advantage, in the production of a specific end product, over substitutable goods produced in Australia."*

# Background

Item 57 was introduced by the Government to allow the concessional entry of a range of raw materials and intermediate goods (consisting of chemicals, plastics and paper used in the production of certain products) where the imported good offers a production performance advantage over substitutable goods produced in Australia.

The eligibility criteria for item 57 is not linked to a major project consideration.

To comply with the requirements of item 57 applicants must demonstrate that the goods to be imported: are a raw material or an intermediate good;

offer a substantial and demonstrable performance advantage in the production of a specific end product, over substitutable goods produced in Australia; and

are classified to a heading or subheading specified in item 57.

The terms of item 57 require that the Minister must form an opinion that the imported goods do, in fact, have a substantial and demonstrable performance advantage, in the production of a specific end product, over substitutable goods produced in Australia, before the delegate can consider issuing a determination. Clearly both the ACS and DIST will be required to ensure that sufficient information is available to the Minister to enable an informed opinion to be developed on the matter.

# PBL Request Procedures

Requests should be made by, or on behalf of, an end user of the particular raw material or intermediate good. However, once a PBL concession is granted for a specific end use, that particular concession may be used by any importer to cater for bona fide end users of the raw material or intermediate good, provided the approved end use criteria are satisfied.

In addition to the general information required for all PBL requests outlined earlier, applicants will be required to provide an independent technical assessment quantifying the precise parameters of the perceived performance advantage.

It would also be useful if statements could be provided from customers indicating which quality or performance features required by them cannot be satisfactorily provided by local manufacturers.

# Special Considerations

The principal means of assessing the degree of significant and demonstrable performance advantage will be by means of an independent technical assessment that will be required to accompany each PBL request. Applicants should note the very high likelihood of consultation being initiated with potential Australian manufacturers and/or representative industry groups as a means of validating the claims made about the perceived advantages of the imported goods.

Applicants are reminded that requests for retrospective concessions will not satisfy the Government's industry policy intent and will therefore not be granted.

Factors that will be taken into account when assessing the 'substantial and demonstrable performance advantage' include, but are not limited to:

greater production efficiency, including reduced processing time, fewer production steps, lower capital costs, lower operating costs, improved yield, reduced energy usage;

superior physical or chemical properties, including improved strength, durability or flexibility;

compliance with Australian/international standards; and

any other pertinent characteristics that demonstrate a significant commercial advantage (other than relative cost) compared to suitable locally available materials.

Applicants should note that eligibility for concessional entry under item 57 is confined to goods for which a manufacturing process is undertaken in Australia. Processing which does not alter the essential nature or use of the goods is not sufficient to warrant concessional treatment. Simple cutting, shaping, wrapping or similar processes which do not alter the essential character of the imported good are not sufficient to satisfy the industry policy intent of the item. The performance advantage must arise from the use of the raw material or intermediate good in the production of the specific end product.

Item 57 request will be evaluated in close consultation with officers of DIST to ensure that the industry policy intent of the item is satisfied.

# Item 60

Item 60 in Schedule 4 to the Tariff reads:

*"Metal materials and goods, as prescribed by by-law, classified within Chapters 72 to 82 of Schedule 3 and, in the opinion of the Minister, have a substantial and demonstrable performance advantage in the packaging of food over materials and goods currently available in Australia."*

# Background

Item 60 was introduced by the Government to allow the concessional entry of metal materials and goods for use in food packaging, where the Minister is satisfied that the imported materials offer a performance advantage in the packaging of food over similar materials currently made in Australia. The intent of the item is to enable the Australian food processing industry to improve its international competitiveness and enhance export growth.

The eligibility criteria for item 60 is not linked to a major project consideration.

To comply with the requirements of Item 60 applicants must demonstrate that the goods to be imported: are metal materials or metal goods;

are classified to the Chapters specified in Item 60; and

offer a substantial and demonstrable performance advantage in the packaging of food over materials and goods currently available in Australia.

The terms of item 60 require that the Minister must form an opinion that the imported goods do, in fact, have a substantial and demonstrable performance advantage in the packaging of food over similar materials and goods currently available in Australia, before the delegate can issue a determination. Both the ACS and DIST will be required to ensure that sufficient information is available to the Minister to enable an informed opinion to be developed on the matter.

The 'demonstrable advantage' can be in the form of an identifiable production and/or marketing advantage. **PBL Request Procedures**

Requests for PBL concessions under item 60 should be made by, or on behalf of, an end user of the particular materials . In addition to the general information required for all PBL requests outlined earlier, applicants will be required to supply an independent technical assessment which should quantify the precise dimensions of the perceived performance advantage achievable through using the imported goods. Applicants will also be required to demonstrate and quantify the expected material improvement in export competitiveness that will be achieved by using the applicant's product.

# Special Considerations

The principal means of assessing the degree of 'substantial and demonstrable performance advantage' will be by means of an independent technical assessment that will be required to accompany each PBL request. Applicants should note that consultation will be undertaken with potential Australian manufacturers and/or representative industry groups as a means of validating the claims made about the perceived advantages of the imported goods. Item 60 requests will also be required to address the expected improvement in export competitiveness that is anticipated to be achieved through the use of imported metal materials and goods, as opposed to local product.

Applicants are reminded that requests for retrospective concessions will not satisfy the Government's industry policy intent and will therefore not be granted.

Concessional entry of materials will not be granted until any potentially detrimental effects to local manufacturers of similar materials and goods have been fully evaluated.

Item 60 requests will be evaluated in close consultation with officers of DIST to ensure that the policy intent of the item is satisfied.