Australian Customs Notice 1998 71

**CUSTOMS TARIFF ACT 1995 SCHEDULE 4 - ITEM 42 - VESSEL CONSTRUCTION, MODIFICATION AND REPAIR**

# Introduction

This Australian Customs Notice (ACN) provides guidance to importers who seek to use *item* 42 of Schedule 4 to the *Customs Tariff Act 1995* (the Tariff) to obtain concessional entry of goods.

Schedule 3 to the Tariff establishes the rate of duty to be paid on goods imported into Australia. Sections 8 and 18 of the Tariff provide the authority for goods specified in Schedule 4 to the Tariff to enter at a rate below that set out in Schedule 3. Goods to which *item* 42 of Schedule 4 to the Tariff applies, are therefore eligible for duty free entry.

# Background

Item 42 is intended to provide assistance to the Australian ship building industry by reducing input costs to shipbuilders. *Item* 42 reads:

*"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."*

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 gain concessional entry under *item* 42, importers must demonstrate that the goods are:

1. parts of vessels, or materials; and
2. for use in the construction, modification or repair of vessels.

In administering the entry of goods under *item* 42, Customs will construe the terms of that item according to the guidelines set out in this ACN. **"Vessels"**

A vessel for the purposes of *item* 42 is a vessel which exceeds 150 gross construction tons. The number of tons in the gross construction tonnage is ascertained using the formula provided in the *Bounty (Ships) Act 1989*, set out on the first page of this ACN. Such a vessel would:

normally be classified in Chapter 89 of the Tariff, other than heading 8907 or 8908

operate in the marine environment; and

generally have the characteristic of being navigable, irrespective of how this is achieved.

# "Parts"

The word "part" normally connotes something which is a constituent or component of the whole entity without which the entity would not function as such an article. In *item* 42, the expression "parts of vessels" means something which is a constituent or component of the whole vessel, without which the vessel would not function as a vessel. It does not extend to goods which may become parts of vessels post importation.

The main factor indicating that an article is a part of a vessel is whether that article is subsumed into the vessel and is permanently fixed or designed to be permanently fixed to the vessel. Other factors include:

whether the article is so committed by design or manufacture that it can only be used as a component of a vessel; or

whether the article is necessary for the completion of the vessel. Whilst this does not necessarily mean that the article is a part, it distinguishes "parts" of vessels from "accessories" to vessels.

Articles that are not necessary to the functioning of the vessel may still be parts of vessels if they are built into the vessel in the course of manufacture.

Articles of a portable nature, whether or not attached to the vessel for the sake of convenience, are unlikely to be parts of vessels. For example, furniture, crockery, linen, jet skis, bicycles, domestic appliances and hand tools are not parts of vessels. While these articles may form part of a vessel's inventory, they are not parts of that vessel.

Similarly, articles used upon or in connection with vessels are not normally parts of vessels. For example rope, life jackets, buoys, runabouts, zodiacs, lifeboats, life-rafts, drill pipe, drill strings, marine risers, blow-out preventers and saturation diving systems are not parts of vessels.

# "Materials"

The word "materials" normally means the substance or substances of which a thing is made or composed; anything serving as crude or raw matter for working upon or developing. In *item* 42, "materials" means the raw materials of which a vessel is made or composed. Therefore consumables such as fuels, lubricants, gases, cleaning or degreasing agents, drill bits, grinding discs and refrigerants are not considered to be "materials" because they are not the materials of which the vessel is made or composed.

# "Use in the construction, modification and repair"

To be eligible for concessional entry, the parts of vessels, or materials, must be for use in the construction, modification and repair of vessels. These terms will be construed according to their ordinary meanings in the context of item 42 as follows:

"construction â?¦.. of vessels" means the building of vessels by assembling and combining parts.

"modification â?¦ of vessels" means the alteration of the form or qualities of vessels. The alteration will normally be of a long term nature, and require the vessel to be re-surveyed.

"repairâ?¦ of vessels" includes the renewing, replacement of parts, restoring to sound condition, mending and strengthening of vessels.

# 4. Additional information

Additional information on the eligibility of particular goods in terms of *item* 42 should be addressed in the first instance through the normal tariff classification procedures. Urgent matters may be referred to the senior tariff officer in the region concerned.

Any classification issues which cannot be resolved through these avenues will be decided by the Director Tariff Classification. Overall policy responsibility for *item* 42 rests with the Policy By-law section.

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