13th January, 2000

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The Productivity Commission,
P.O. Box 80,
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Dear Sirs,

Re: **Review of Australia's General Tariff Arrangements**

As a Licensed Customs Broker of 36 years and having devoted the majority of my time in the past four (4) years to addressing the Customs aspects in respect of major projects which utilise the Item 50 / 45 / 46 / 56 Policy By-laws, I forward this submission in the hope the information contained herein, is both informative and proves to be of assistance to the Commission in respect of the above inquiry.

The opinions I express in this submission refer essentially to the impact that the abolition of the Item 50 Tariff Concession System and other Policy By-law would have in respect of imported equipment, in particular, in respect of major projects.

During the past ten (10) years I have been fortunate to be able to attend a number of International Customs Brokers Conferences in various parts of the world at which representatives of the WTO have presented position papers on their organisation's policies etc. I am also aware of Australia's International commitments including those under APEC which have necessitated the current review.

I would like to say at the outset, that my own personal opinion is that the Government should consider maintaining the current status quo in respect of duty rates at this point in time until other WTO country members demonstrate the same degree of commitment which has been shown by Australia in the past ten (10) years to achieving the WTO's objective of a global free trade environment.

At this point in time, it would seem that Australia is well ahead of other countries in implementing reductions of import tariffs and whilst such an imbalance continues, the possibilities of achieving a level playing field for world trade, are reduced. Having stated my personal objections to further reductions, I also acknowledge that the Government does have international commitments and that there are areas of our own Tariff Policies which are both too interpretative and too costly to continue to administer in their present form.

Item 4 of the Terms of Reference of the inquiry makes mention of a number of issues which need to be taken into account when constructing a preferred option. The full implications of quite a number of these issues would be unable to be assessed by the average man in the street and naturally, specialists in these areas would be the only people with the capacity to assess the full impact of such issues on the proposed possible further tariff reductions.

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The Information Paper provided by the Productivity Commission in dealing with the issues of concessional arrangements, states that the closer that general tariff rates get to zero, the less assistance the particular concession schemes will confer.

In dealing specifically with the Item 50 and Items 45 / 46 /56 by-laws, I offer the following opinions:-

(A) Item 50

There is no denying that the current Item 50 Tariff Concession System has a number of short-comings, the most significant of which are : -

- The extremely interpretative nature of the Policy criteria used to determine Item 50 eligibility.
- The high monetary cost of preparing pursuing and administrating individual Item 50 applications.
- The highly controversial method of determining availability of local manufacturer capability in respect of goods the subject of an Item 50 application.

The above three aspects alone, I believe, constitute more than enough grounds to consider a review of the existing Item 50 Tariff Concession system, should such a scheme continue to operate after the final decision is made in respect of the current Tariff Review.

There are no doubt many instances where the 2% duty saving which is generated by virtue of an Item 50 Tariff Concession are insufficient incentive for the importer to proceed with such an application. Under the present system, the onus is on the importer to provide evidence to the Australian Customs Service in respect of lack of local manufacturer capability to produce substitutable goods.

The current process then dictates that once an application is accepted, it is advertised in the Commonwealth Gazette to enable all local manufacturers to examine the reference with a view to raising objections if they consider that they currently produce, or are capable of producing, in the normal course of business, goods which could be considered substitutable to those covered by the reference.

With all due respect to the local manufacturers, it seems to be commercially unfair to the importer that they are burdened with the expense of firstly endeavouring to establish the lack of local manufacturer capability prior to the lodgment of an application and are then subject to scrutiny by all local manufacturers who may raise subsequent objections to the granting of an application if they so desire. Surely the burden of responsibility could be shared by eliminating the first process thus adopting a system whereby the local manufacturers have the opportunity to object at the time of publication of the proposed concession.

The elimination of the need to conduct an up-front assessment of local manufacturer capability by an applicant, would certainly result in substantial cost savings to the importer.

It should also be remembered that, as well as granting a 2% saving to an applicant who is successful in obtaining an Item 50 Tariff Concession, the Item 50 approval also, in due course, is an integral part of Item 45 submissions relating to major projects which can result in full duty savings of 5%.

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(B) Items 45 / 46 / 56

Irrespective of whether or not the Item 50 Tariff Concession System is retained either in its present or modified form, I strongly believe that there are many commercial reasons why the Items 45 / 46 and 56 (State of the Art equipment) Policy By-laws should be retained.

No doubt from a total revenue point of view for statistical purposes, a tariff reduction of 2% which then leaves a 3% duty impost on the remainder of imported goods in general, because of the substantial number of duty free Tariff Classifications which currently exist, would result in an average duty of considerably than 3% (possibly as low as 1% on average).

However, in respect of major projects, it has been my experience that the majority of equipment imported for such projects would normally attract the general tariff rate operative at the time of import. As we are all well aware, that rate is currently 5% and if a 2% reduction was the preferred option by the Commission and accepted by the Government, the majority of equipment imported for such projects, would then attract a 3% duty impost. 3% duty imposed on a $60 million project results in $1,800,000.00 in duty being applicable at the time of import.

I have always been of the opinion that the policy of the Government and that of the Policy By-law Scheme is to provide an avenue of duty relief for certain imported capital equipment items for major projects which cannot be sourced from Australian manufacture. If the Government is sincere in this approach, they must acknowledge that in any major project which invariably involves sums in the millions of dollars, that even a 3% duty impost is a considerable additional cost to be borne by the project proponent.

There are a number of major projects in which I have been involved in recent years where the import duty savings achieved under the Policy By-law Scheme have been a significant factor in those projects being established in Australia.

Not only do I strongly believe that Items 45, 46 and 56 should all be maintained to provide this avenue of duty relief for major projects, but that the scope of the policy items should be thoroughly examined to allow a wider range of goods to be eligible under the terms of the various items as well as, consideration of a more commercially orientated interpretation of the Policies in specific areas.

I refer to particular aspects of the current Policy By-law criteria as follows : -

1. The limited scope of the "Policy By-law" definition of capital equipment.
2. The need to address individually, importations of progressively manufactured large items of plant and machinery imported for assembly into a complete entity in Australia.
3. The high cost of pursuing Policy By-law issues which involve sub-contractor importations.
4. The role of the Industrial Supplies Office (ISO) in determining local manufacturer capability.

The above four concerns have been raised on a number of occasions with the Department of Industry Science Resources requesting that they be taken into account when any reviews are considered in respect of Policy By-law criteria. The most recent submission on these issues was on the 28th May, 1999 which was acknowledged on the 22nd July, 1999. I have had no communication from the Department of Industry Science Resources on these matters since that date.

In essence, the four (4) issues in question are as follows : -

(a) Capital Equipment Definition.

Although on numerous occasions we have been successful in obtaining Item 50 approval on specialised material items required to be imported for major projects, because such goods are not items of machinery etc. as set out in the Policy criteria for Capital Equipment, it is necessary to pay 3% import duty on them at time of importation. In one instance, on a single importation, $180,000.00 duty was required to be paid because of the restrictive interpretations placed on the term "Capital Equipment" by Customs.

(b) Progressive Manufacture

As commercial reality and economies of scale dictate that particular items of equipment must become larger in order to produce the required outputs, more and more we are faced with the prospect that specific items of equipment are too large to either be imported as a single unit or even constructed totally in the one location overseas. The Customs Act currently requires that goods be duty paid "as imported". It therefore follows that unless the items of equipment in question are able to meet the terms of Item 43 being the Split Shipment Provision which allows identification to be accepted as a single entity, then it becomes necessary for each importation to be addressed "as imported" both for duty assessment and for local manufacturer capability.

Such a policy interpretation ignores the fact that not only are the shipments in question an integral part of a particular entity which must be made to exact specifications to be able to be assembled into that complete entity progressively, but also that the commercial issues in respect of warranty etc. would be voided by the manufacturer if miscellaneous items of a complete entity were required to be sourced here in Australia merely to comply with and maximise the current policy by-law provisions. It is obvious that either amendments to the current legislation or at the very least, a more realistic and commercial approach needs to be adopted by the Government in their assessment of equipment of this nature.

In my experience in the past four (4) years, I would estimate that there has been many millions of dollars required to be paid on imported equipment because of the present policy interpretation on goods for which there is no way that any locally produced equipment could be considered as a viable commercial substitute.

(c) Subcontractor Importations

From experience, I have found that in every major project there is a considerable amount of material required to be imported from overseas for use by subcontractors to the project to supplement equipment being supplied by them here in Australia.

In the majority of instances, because of the requirements to identify goods "as imported" and the need to assess duty on each individual shipment, the cost involved in the preparation of an Item 50 submission, the investigation through the ISO in respect of local manufacturer capability and the follow up action required in relation to an Item 45 Goods Request, in many instances, exceeds the duty saving that could possibly be generated.

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These aspects, coupled with the fact that there is a possibility that under the present criteria, the application my be refused totally because of a claim by a local manufacturer to be able to supply substitutable goods, in many instances results in no alternative but to apply commercial reality and elect to pay the duty as it could well turn out that the amount of duty paid is the lower of the two (2) costs involved.

In the majority of instances the subcontractor, being a local manufacturer themselves, is well aware of the range of equipment which is available from local supply and is also fully aware of the requirements of the equipment being produced for the specific project in question. For any policy by-law system to be commercially acceptable in respect of subcontractor equipment, it would require not only a streamlined version of the current policy system, but also an acceptance by the Government of statements made by the subcontractors in respect of the reasons why the specific equipment being imported is necessary to be obtained from overseas for that particular project.

As there are currently many other aspects of Customs policies which are risk-assessed, surely a similar policy could be adopted to reflect commercial reality in relation subcontractor situations.

(4) The Industrial Supplies Office

Finally, I am of the opinion that the role of the ISO, particularly in relation to Item 45, 46 and 56 submissions, should be minimal. Such submissions stand or fall on the basis that the goods in question are "equivalent" as opposed to "substitutable".

It is no secret that the primary role of the ISO is to encourage and foster Australian Industry and Manufacture. To require such an organisation to act as an impartial adjudicator in determining the extent of such local manufacture capability in respect of specific goods being imported for a major project, seems to be a conflict of interests.

The ISO certainly have a role to play in the early stages of major projects in the identification and notification to a project proponent of potential local manufacturers of equipment of the nature to be used in the project itself. They also currently provide a source of identifying "substitutable goods" in respect of Item 50 applications.

I question whether they should have the responsibility to assess at some further stage down the line, particular goods produced in Australia as being capable of performing the required functions in specific projects in line with the Policy requirements of Items 45 / 46 / 56.

I will be attending the public hearings in Sydney on both Thursday the 27th January and Friday the 28th January and would be prepared to talk to the Commission in respect of this submission if required.

Yours faithfully,
MAYNE Logistics E A ROCKE

COLIN H. DAVEY
MANAGER, CONSULTANCY