AusIndustry

INDUSTRY
SCIENCE
RESOURCES

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Mr John Cosgrove
Commissioner
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Cosgrove,

Productivity Commission General Tariff Review - Business Competitiveness and Development Division and AusIndustry, Department of Industry, Science and Resources

Thank you for your letter of 25 February 2000 requesting input to the review of Australia's general tariff arrangements and specific questions on the Project and Policy By-Laws. This letter responds to questions you asked by way of background information, within the area of responsibility of both the Business Competitiveness and Development Division, questions 1 to 3, and AusIndustry, questions 4 to 9.

The responses from AusIndustry are based on the period since the transfer of administrative responsibility from the Australian Customs Service (ACS) on 15 April 1999. Requests for information on delivery arrangements prior to that time are best directed to the Australian Customs Service.

- Attachment 1 responds to questions 1 to 3.
- Attachments 2 and 3 respond to question 4. Attachment 2 provides a brief overview of the processes involved in the administration of the Project By-law Scheme - items 45, 46 and 56; and Attachment 3 to of the processes for items 57 and 60 under the Policy By-laws program. Attachment 2 also responds to question 5 by providing an outline of the role of ISONET and the ISOs in the process.
- In relation to question 6, ie, duty foregone under item 60, AusIndustry has not yet had an application for item 60 since the program was transferred to AusIndustry.
- The workload and appeals data you requested in question 7 are shown in Attachment 4.
- The costs of AusIndustry administration are shown in Attachment 5.

You may also be aware that, consistent with the Government's industry statement, 'Investing for Growth', AusIndustry has been restructuring its operations to be a customer-focused agency for the delivery of a wide range of new and existing industry programs. This re-orientation has involved a number of reforms, including a business process review, the development of an improved quality system, and the putting in place of an on-going program of process re-engineering. In this context, AusIndustry is looking to improve its operational delivery arrangements, including for Policy By-Laws, the wind-down of TEXCO, and the implementation of the new Tradex program.

I note your request for comments on policy issues raised by some participants in their submissions and at the public hearings. The Department is of the view that it would not be appropriate to respond to such issues at this point of the review.

I look forward to the outcomes of the Productivity Commission's review, and its effect on future policy development in this important area of micro-economic reform and on development of future program delivery processes within AusIndustry. Any queries can be directed either to Hellen Georgopoulos on 6213 6749 or to Bill Peel on 6213 7470.

Yours sincerely

Hellen Georgopoulos
Head
Business Competitiveness and Development Division

20 April 2000

W Peel
Deputy Executive General Manager
AusIndustry

20 April 2000

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Question 1.

Define the coverage of the Policy By-Law system and the Project By-Law arrangements in terms of the schedule 4 items they cover. (Our current understanding is that the Policy By-Law system covers items 43, 45, 46, 47, 52, 56, 57, and 60, of which items 45, 46 and 56 are considered as the Project By-Law arrangements - is this correct? Also, what is the situation with item 55, which was previously included as a policy by-law?)

- The term "Policy By-Law system" refers to items 57 and 60.
- The term "Project By-Law arrangements" relates to items 45, 46 and 56 of Schedule 4.
- Until Australian Customs Notice 98/22 dated 1 August 1998 the Policy By-Law System referred to items 43, 45, 46, 47, 52, 55, 56, 57, and 60.
- Australian Customs Notice 98/27 dated 1 August 1998 described items 43, 47, 52, 57 and 60 as "Schedule 4 items".
- Items 43 and 52 are also "split consignment items".
- Item 55 was introduced to reflect changes to the *Bounty (Machine Tools and Robots) Act 1985*. It related to a full concession on machine tools for working advanced metals. It was repealed by Australian Customs Notice 99/31 dated 29 April 1999.

Question 2.

Provide a summary of the policy rationale underlying each by-law item at the time it was instituted. What changes, if any have been made in this regard since the by-laws were instituted and why? (For example, we understand that changes have been made to item 43 in relation to ports of export, and to the project by-law items in relation to the eligibility threshold. What were the reasons for these and other policy changes?)

Items 43 and 52:

Item 43 was first notified in Australian Customs Notice 88/214 dated 8 November 1988. Prior to this item, a concession could be given allowing machinery to be imported in split consignments with duty payable at the rate for a complete unit, provided the consignments were sent from a single supplier and a single point of departure.

ACN 88/214 advised (retrospectively from January 1st 1988) of the Tariff treatment of single machines imported in split consignments. Item 43 permitted original sub-assemblies or components of single machines identified to chapters 84, 85 and 90 to be entered at the rate of duty applicable to the complete goods, regardless of whether they had been sourced from different suppliers and/or shipped separately. The concession also allowed the sourcing of Australian made components for the functional unit without altering the rate of duty applicable to the imported components. This was explicitly stated as a positive incentive for local industry involvement. While not prescribing any definitive particulars or format for an application, the details expected to be provided by the applicant were listed. Approval was given directly by the Minister for Industry, Technology and Commerce, on the recommendation of the Department of Industry, Technology and Commerce. The Australian Customs Service advised the Department of Industry, Technology and Commerce that the goods met the legal terms of the item. The Australian Customs Service granted the concession once it was approved by the Minister.

Australian Customs Notice 90/64 dated 9 May 1990 explained and clarified issues involved in preparing and submitting item 43 applications, including:

- The minimum details required for the application;
- An indicative timeframe of approval from the date of receipt by Customs (4 weeks); and
- The scope of the scheme, including;

- Item 43 only applied to original components of a nominated functional unit classified in accordance with Note 4 to section 16 or Note 3 to section 90 of the Tariff. Even though other goods (hand tools, commissioning spares) may be included with the original shipment, they would not be considered original componentry of a functional unit;
- Item 43 had application only where the functional unit was classified within Chapters 84, 85 or 90 of the Tariff; and
- Generally, item 43 did not apply to fittings, pipework, and the like linking a functional unit to another unit or other parts of a manufacturing complex. In addition to this, it was emphasised that *classification of a complete plant as a functional unit did not of itself entitle all the equipment and parts making up the complete plant to entry under the split consignment provisions*. It was ***not*** intended that the split consignment provisions cover a complete civil engineering plant.

Two points were given special emphasis in the Australian Customs Notice;

- Item 43 was designed to minimise the input costs for industrial projects assisting in the development of internationally competitive industries in Australia, while at the same time encouraging maximum involvement of competitive Australian industry by applying the split consignment provisions to parts of a functional unit where the balance of the unit was being made in Australia; and
- Item 43 could only be used to vary the rate of duty payable on imported goods, it could not be used to vary the identification and subsequent tariff classification of goods as imported. That is, goods imported on a single ship or aircraft and identified as a single machine (or, for that matter, a number of components having the essential character of a single machine) still had to be classified as that single machine. The machine could not be notionally disassembled to apply better rates of duty to the various components making up the machine.

Australian Customs Notice 91/108 dated 8 July 1991 notified of a streamlining provision to expedite item 43 applications. Previously, determinations were issued for each shipment in each project. This was changed so that a single determination was issued for each project once Ministerial approval was received.

Australian Customs Notice 94/27 dated 6 May 1994 notified the discontinuance of retrospective claims, except in exceptional circumstances for both items 43 and 52.

Australian Customs Notice 95/74 dated 14 December 1995, which referred to items 45, 46, 47, 55, 56, 57 and 60 as well as 43 and 52, consolidated and clarified earlier ACNs. There was no change in either Government policy or the accompanying legal framework, the Notice clarifying Australian industry participation and use of TCO and ISO procedures and other administrative issues. More specifically, the ACN highlighted:

- Concessional entry available where the good or project concerned could generally be used in export or import replacement activity, or was primarily associated with an export or import replacement activity;
- The Tariff Concession System (TCS), now having replaced the Commercial Tariff Concession System (CTCS), would normally be used to demonstrate enhancement of Australian industry participation;
- The position on retrospective applications notified in ACN 94/27 was confirmed. Applicants were informed that the date of importation, not the date of entry for home consumption, would be compared to the application date (nominated as "generally the date of the receipt of the application by Customs") to establish whether an application was prospective or retrospective;

- The Tariff Concession Order (TCO) refusal condition would be considered where the complete machine was not being imported, as it was consistent with Government policy; and
- Any concession granted would generally commence from the date a TCO was refused. A new TCO application was not required if a TCO had been refused within the last 12 months. Where an application was lodged more than one month after TCO refusal, however, the start date for the concession would generally be the date the application was received.

Australian Customs Notice 96/32 came into force on July 15th 1996. It superseded the operation of previous Australian Customs Notices including 95/74, notifying of the following major legislative and policy changes:

- The revocation of current policy by-laws instruments (both by-laws and determinations), together with the treatment of any requests for a by-law or determination as at 15th July 1996 as a request subject to the new legislative and policy criteria applying to those items post 15th July 1996;
- Confirmation that the duty rate was as for the whole good;
- Connectional entry to be available only for split consignments of whole goods which were unable to be transported in a single consignment from a single supplier and a single port, typically because of size of the goods or inadvertent shipping delays.

Australian Customs Notice 98/27 dated 1 August 1998 consolidated the guidelines and policy for both items.

Items 45, 46 and 56:

Australian Customs Notice 89/74 dated 30 June 1989 notified the establishment of items 45 and 46. The definitions given were:
45: Goods designed for use in the mining industry, as prescribed by by-law.
46: Goods designed for use in the agricultural industry, as prescribed by-law.

The intent of the scheme was to boost Australian exports, through measures that would reduce the costs of mining and construction equipment and parts.

Australian Customs Notice 91/122 dated 31 July 1991 notified the expansion of *item 45* to include the **mineral processing industry**, after the Governments Industry Statement of 12 March 1991. The ACN also clarified the background and procedures for applying for a concession.

In its industry statement on 12 March 1991, 'Building a Competitive Australia', the then Government indicated its intention to consider a policy item to allow the concessional entry of state of the art capital equipment not made in Australia (item 56). Australian Customs Notice 91/164 dated 14 October 1991 outlined the procedures for gaining a concession.

Item 56 was intended to:

- Improve the competitiveness of the purchaser of capital equipment by allowing duty free access to imported equipment if it was better in certain respects than comparable locally made equipment;
- Encourage the purchaser to source locally in other cases through the maintenance of the duty: and
- Encourage local suppliers to improve their equipment by removing the duty otherwise payable on imported equipment if the imported equipment was superior in certain respects.

Australian Customs Notice 94/27 dated 6 May 1994 notified the discontinuance of retrospective claims for all three items.

Australian Customs Notice 95/74 dated 14 December 1995, which referred to items 43, 47, 52, 55, 57 and 60 as well as 45, 46 and 56, consolidated and clarified earlier ACNs. There was no change in either Government policy or the accompanying legal framework, the Notice clarifying Australian industry participation and use of TCO and ISO procedures and other administrative issues. More specifically, the ACN highlighted:

- Concessional entry available where the good or project concerned could generally be used in export or import replacement activity, or was primarily associated with an export or import replacement activity;
- The TCS (now having replaced the CTCS) would normally be used to demonstrate enhancement of Australian industry participation. However, if project status was granted alternate methods should be used. The three acceptable processes were the use of Industrial Supplies Office network, open tendering arrangements, or contacting the relevant supplier industry association;
- The position on retrospective applications notified in ACN 94/27 was confirmed. Applicants were informed that the date of importation, not the date of entry for home consumption, would be compared to the application date (nominated as "generally the date of the receipt of the application by Customs") to establish whether an application was prospective or retrospective;
- The TCO refusal condition would be considered for items 45 and 46, as it was consistent with Government policy, and was confirmed as a legal requirement for item 56; and
- Any concession granted would generally commence from the date a TCO was refused. A new TCO application was not required if a TCO had been refused within the last 12 months. Where an application was lodged more than one month after TCO refusal, however, the start date for the concession would generally be the date the application was received.

Australian Customs Notice 96/28 dated 15 July 1996 dealt with reforms to the TCS. The major amendment which had a long term impact on the operation of the Project By-law scheme was the introduction of a 3% duty rate on Tariff Concession Orders relating to inputs for business.

Australian Customs Notice 96/32 came into force on July 15th 1996. It superseded the operation of previous Australian Customs Notices related to the Project By-law scheme, including 95/74, notifying of the following major legislative and policy changes:

- The Overview to the ACN included as a requirement for a concession, "that the imported goods are not available from an Australian manufacturer";
- The revocation of current policy by-laws instruments (both by-laws and determination), together with the treatment of any requests for a by-law or determination as at 15th July 1996 as a request subject to the new legislative and policy criteria applying to those items post 15th July 1996;
- The retention of a duty free rate for all three items;
- Amendment of item 45 to cover "Capital equipment for use in the mining and resource processing industries, as prescribed by by-law;
- Amendment of item 46 to cover "Capital equipment for use in the agricultural, food processing and food packaging industries, as prescribed by by-law;
- Removal of the "designed for use" test for items 45 and 46;
- Removal of the legal requirement that goods be ineligible for a Tariff Concession Order for item 56; and

- The introduction of a new project-based eligibility threshold. This only being available in respect of a major project, considered to be a project having a capital equipment value in the order of $10 million or more.

Australian Customs Notice 98/18 dated 27 February 1998 clarified the meaning of capital equipment for items 45, 46 and 56.

Australian Customs Notice 98/22 dated 1 August 1998 was a further consolidation of items 45, 46 and 56 into a "Project By-law Scheme" (as opposed to individual project by-law *items* within the Policy By-law scheme). The ACN incorporated the Capital Equipment guidelines of ACN 98/18. The key policy and administrative changes to commence on 1 August 1998 included:

- Removal of the requirement that the project be directed towards import replacement or export enhancement;
- Removal of the requirement for an applicant to demonstrate that opportunities had been maximised for Australian manufacturers across the entire project;
- Introduction of a new requirement to advertise in national newspapers or trade journals and with relevant industry associations for expressions of supply from Australian manufacturers;
- Introduction of a new requirement for evidence to be provided by an applicant that the equipment to be imported was not produced in Australia;
- Clarification of an applicant's responsibility to provide the minimum amount of information (as set out in this ACN) to enable Customs to properly assess whether the Government's policy objectives were met. Requests containing insufficient information to be rejected;
- Introduction of transitional arrangements for outstanding requests; and
- Reduction of the time frame in which requests would be processed: from 30 to 25 days for a project advice and from 120 to 90 days for a goods request.

Item 47:

Item 47 was created to compensate for shortcomings in the CTCS prior to the change to TCS in 1992. Under the CTCS, manufacturers of parts of certain capital equipment for use in the mining, construction and agricultural sectors could object to the granting of a concession for the whole good. The item was intended to allow the entry of complete capital equipment at concessional rates where a TCO had been granted which excluded certain original components that could be made in Australia. This enabled importers of such equipment to avoid having to remove components excluded by a TCO and shipping those components separately or obtaining them locally, in order to obtain the benefit of the concession for the balance of the equipment.

Australian Customs Notice 96/32 dated 15 July 1996 notified of the amendment of the duty rate to 3% in line with changes to the TCS notified in ACN 96/28.

Australian Customs Notice 98/27 dated 1 August 1998 consolidated the guidelines and policy.

Item 55:

This item was created 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 intended to allow the concessional entry of goods which, if produced in Australia, would have been eligible for a bounty payment.

Australian Customs Notice 95/74 dated 14 December 1995, which referred to items 43, 45, 46, 47, 52, 56, 57 and 60 as well as item 55, highlighted several policy issues related to submissions, without notifying of any changes to policy.

Items 57 and 60:

In September 1991 the Government decided to introduce by-laws for certain chemicals and bookbinding cloth. Item 57 was inserted into Schedule 4 of the Customs Tariff Act 1987 by Customs Tariff Proposal No.9 (1991) with an operative date of 1 October 1991.

Australian Customs Notice 92/43 dated 27 February 1992 notified of an amendment to the scope of item 57 to allow a greater range of goods. It read, "*Raw materials and intermediate goods, as prescribed by by-law, classified under subheading 1519.2 or heading 5903 or within Chapters 28,29,32,34,35,37,38,39 or 48 of schedule 3 which are ineligible for a Commercial Tariff Concession Order and in the opinion of the Minister have a substantial and demonstrable performance advantage, in the production of a specific end product, over goods serving similar functions which are produced in Australia.*"

Additional refinement was given to the definitions used in the ACN. Thus, for administrative purposes:

- A raw material or intermediate good referred to an input to the production of a product which was incorporated into the product, a catalyst to the production of the product, or was consumed in producing the product;
- An end user referred to a legal entity that used and added value to a raw material or intermediate good in the production of a product (being a final product or an intermediate good); and
- Applicants had to demonstrate improved competitiveness, and a substantial and demonstrable performance advantage. This had to be on the basis of fitness for purpose for a specific end use, focussing on customer requirements, and providing one or more of the following:
  (a) **productivity advantage**, benefiting applicants or their customers in the form of:
    - Greater production efficiency (such as reduced processing time, fewer production steps, lower capital costs, lower operating costs, or reduced pollutants);
    - Improved yield (such as increased output from a given input, less waste product, lower reject or re-work rate); or
    - Any other productivity advantage arising from the use of the good; or
  (b) **a marketing advantage**. For example, the applicants customers demanded AND the imported raw material or intermediate good provided the applicants' product with:
    - More appropriate physical or chemical properties (such as strength, durability, flexibility or viscosity); or
    - An ability to meet recognised Australian and/or international standards (including quality and environmental standards).

Australian Customs Notice 92/130 dated 30 July 1992 notified of the creation of a new concessional item 60 in Schedule 4 to the Customs Tariff Act 1987 as from July 1st 1992. Item 60 referred to, "Metal materials and goods, as prescribed by by-law, classified within Chapters 72 to 82 of the Customs Tariff which, in the opinion of the Minister, had a substantial and demonstrable performance advantage in the packaging of food over materials and goods available in Australia and which were ineligible for a Tariff Concession Order".

Australian Customs Notice 94/27 dated 6 May 1994 notified of the discontinuance of retrospective claims.

Australian Customs Notice 95/74 dated 14 December 1995, which referred to items 43, 45, 46, 47, 52, 55 and 56 as well as 57 and 60, highlighted several policy issues related to PBL submissions, without changing any policy:

- Concessional entry was available where the good concerned could generally be used in export or import replacement activity, or was primarily associated with an export or import replacement activity;
- The TCS (now having replaced the CTCS) would be used to demonstrate enhancement of Australian industry participation;
- The position on retrospective applications notified in ACN 94/27 was confirmed. Applicants were informed that the date of importation, not the date of entry for home consumption, would be compared to the application date (nominated as "generally the date of the receipt of the application by Customs") to establish whether an application was prospective or retrospective;
- The TCO refusal condition was confirmed as a legal requirement; and
- Any concession granted would generally commence from the date a TCO was refused. A new TCO application was not required if a TCO had been refused within the last 12 months. Where an application was lodged more than one month after TCO refusal, however, the start date for the concession would generally be the date the application was received.

Australian Customs Notice 96/32 came into force on July 15th 1996. It superseded the operation of previous Australian Customs Notices including 95/74, notifying of the following major legislative and policy changes:

- The retention of a duty free rate; and
- The removal of the legal requirement that goods be ineligible for a Tariff Concession Order.

Australian Customs Notice 98/27 dated 1 August 1998 consolidated the guidelines and policy.

Question 3.

What processes, if any, are there for regular review of the policy intent of these by-laws?

Various mechanisms have existed for review, including:

- The former Industry Commission had sole responsibility for creating and amending Policy By-Law items. The last review was in March 1991.
- In 1996, Australian Customs Notice 96/32 was generated as a result of a Government decision following a review by the Department and the Australian Customs Service.
- Review occurred prior to the issue of Australian Customs Notices.
- The Department of Industry, Science and Resources has committed to an evaluation strategy being developed by 30 December 2000 or after the Government has responded to the Productivity Commission Review of the General Tariff Arrangements.

Attachment 2

Administration of the Project By-law Scheme - items 45,46 and 56

Application Procedures

Applications under the Project By-law Scheme (PBS) are processed by AusIndustry under the guidelines and provisions of Australian Customs Notice (ACN) 98/22. A project proponent seeking a tariff concession is required to lodge by hand, post or facsimile, a formal application with AusIndustry. A Project By-law Scheme application is processed in two stages:

- Stage 1 - project advice; and
- Stage 2 - goods request.

Applicants must meet the requirements of both stages to obtain a determination of a zero tariff concessional rate for the specific imported capital equipment item(s).

Project Advice

At the Project Advice (PA) stage, an applicant provides information about the project in which the capital equipment is to be used. This enables AusIndustry to assess whether the project meets certain criteria in respect of which a Project By-law concession could be granted, namely:

- whether the project has been advertised in national newspapers or trade journals and with relevant industry associations for expressions of supply from Australian manufacturers;
- whether the project satisfies the $10 m capital equipment eligibility threshold;
- whether the project meets specific policy requirements for the relevant item;
- for *item* 56, whether the imported equipment falls within an eligible tariff classification; and
- whether the project comprises an eligible activity, eg transportation activities, such as pipelines, are not eligible industrial activities. Infrastructure proposals, such as stand-alone power stations that are not dedicated to an eligible industrial activity are not eligible for a Project By-law Scheme determination

AusIndustry will accept a project advice if it is satisfied that all policy criteria are met. Acceptance of a project advice facilitates the further consideration of the application in respect of particular items of capital equipment which are the subject of a Goods Request. Granting a PA does not mean that a Project By-law tariff concession has been, or will be, granted.

Applicants are encouraged to lodge applications for project advice well in advance of importation of the goods for which a concession is sought and preferably before the goods are ordered.

This allows AusIndustry an opportunity for the applicant to resubmit a new application before the goods arrive, if necessary.

Upon receipt by AusIndustry each application is assessed for completeness against the requirements of the item, using a standard checklist. Any deficiencies in the application for project status will be notified to the applicant together with a copy of the checklist by facsimile within 24 hours. If the checklist indicates the application is complete, the application is registered and placed on file. AusIndustry then provides the applicant with a written acknowledgment of the receipt of a satisfactory application within 5 working days.

After the application is registered and placed on file, a customer service officer undertakes an assessment of each application in detail against the terms of the item and the policy and

administrative guidelines, and makes recommendation(s) to the Manager, Policy By-laws Section of AusIndustry. The Manager considers the application and the assessment report and makes a decision whether to approve the project. The Project Advice decision is to be provided within 25 calendar days after lodgement.

Goods Request

After positive status of Project Advice has been established, AusIndustry will consider Goods Requests that have been lodged for goods to be imported for that particular project. The applicant provides detailed information about the particular items of capital equipment for which a concession is sought. Multiple Goods Requests may be lodged but each Request must precede the date of importation of the particular goods. Where an application at the Goods Request stage is retrospective it will be refused.

Each Goods Request application is assessed for completeness against the requirements of the item, using a standard checklist.[1] At the Goods Request stage, AusIndustry will consider and assess whether the granting of a concession would be consistent with policy objectives. The following is an excerpt of the advice contained in the Goods Request checklist.

> This Checklist provides applicants with an early indication as to whether their submission is sufficiently complete in terms of the requirements of ACN 98/22 to allow consideration to proceed. All the information required by that ACN is necessary to assess the Goods Request against the Government's policy objectives. The ***Checklist is not a decision on the request*** but seeks to identify problems that prevent acceptance of the submission as a valid Goods Request that will set an operative date.
>
> If the Checklist indicates that the submission is incomplete, it would be in the applicant's interest to submit either a new complete application or replace the incomplete section with full and complete information in accordance with ACN 98/22. Provided the new information satisfies the requirements of ACN 98/22, an operative date will start from the date the new material is received. Where the Checklist indicates that the preliminary assessment is satisfactory, a comprehensive assessment will be undertaken before a decision on the Goods Request is reached.

If initial assessment identifies any deficiencies in the application for a Goods Request application the Assistant Manager forwards a copy of the checklist to the applicant by fax within 24 hours. If the checklist indicates the application is complete, the application is registered and placed on file. AusIndustry then provides the applicant with a written acknowledgment of the receipt of an application and a copy of the checklist within 5 working days.

After the application is registered and placed on file, a customer service officer undertakes an assessment of each application in detail against the terms of the item and the policy and administrative guidelines. The level of detail required to enable an informed consideration of a Goods Request application is set out in the Annex to this Attachment.

For complete applications AusIndustry provides a Goods Request application decision within 90 calendar days, commencing on the first business day after lodgement.

An additional step is involved in consideration of item 56 goods requests, which requires that:

> *'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.'* (underline added)

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[1] See Annex to Attachment 2

The additional step, therefore, is to obtain Ministerial opinion on the technological superiority of the goods proposed to be imported. *Item* 56 was inserted into Schedule 4 to improve the international competitiveness of Australian industry. This provides that concessional tariff rates will only be given to the entry of 'state-of-the-art' capital equipment where it can be demonstrated that the equipment has higher performance characteristics than any similar equipment manufactured in Australia. A PBL Scheme concession under *item* 56 requires that there is equipment currently made in Australia against which a suitable comparison can be made.

All *item* 56 goods requests must be supported by an independent technical assessment of the imported equipment to precisely quantify the degree of technological advancement, efficiency or productivity of the capital equipment to be imported in comparison to equipment that is or can be produced in Australia. The assessment must establish the degree of significant performance advantage of the imported equipment achievable over locally made equipment, rather than assessing the qualities or attributes of the goods produced by the capital equipment.

Duration of Concessions

Where a Project By-law Scheme determination is granted, the earliest date of effect of the determination is the date on which AusIndustry received a completed goods request.

The determination will identify the particular goods to which it applies and the period for which the determination will remain in force. Usually a determination will remain in force for a period not exceeding two years from the date the goods request was lodged.

> Lengthy projects may need to be considered as several inter-related projects and each phase of the complete undertaking may be subject to confirmation before successive Project By-Law Scheme applications are considered.

The two-year validity benchmark caters for possible changes in industry policy or domestic manufacturing capability and allows for periodic review of prevailing industry policy considerations.

Applications to extend the date of effect of an instrument (for example, to cover goods that did not arrive in the time frame specified in the instrument) will require lodgement of a new goods request. In such cases the particular goods must meet the terms of the item and the prevailing Government policy objectives, irrespective of considerations that may have applied at the time the original concession was granted.

A new Project By-law Scheme application will be required before any goods arrive additional to those identified in an original application or approved in an original concession.

Delegated decision-making for the Project By-law Scheme

The Minister for Customs, Senator Vanstone, has delegated her powers to form an opinion under *item* 56 to three senior executive service officers within AusIndustry and ISR. AusIndustry staff prepare a brief for the delegate's consideration to enable the required opinion to be formed. A favourable opinion is required in each instance to enable an application to meet the terms of the item.

Once the opinion is formed that the imported equipment is technologically more advanced, more efficient or more productive than equipment currently available from Australian manufacture the

matter passes to the AusIndustry delegate of the CEO of Customs who makes the decision as to whether a concession is to be granted.

The Industrial Supplies Office

In relation to *question 5*, applicants are encouraged to approach the ISO before ordering capital equipment so as to ensure that a bona fide effort has been made to source capital equipment from an Australian supplier.

> Where capital equipment has been ordered from overseas prior to ISO involvement, the ISO may decline to consider the issue of equivalent goods. In such circumstances applicants will only be able to satisfy this criterion through the Tariff Concession Order process of ACS.

Applicants for a Tariff Concession Order (TCO) from ACS are required to satisfy the CEO Customs that there are reasonable grounds for asserting that no substitutable goods are produced in Australia. A person considering a TCO application may discharge the onus of undertaking the research into possible substitutable goods production in Australia by obtaining advice from a "prescribed organisation".

A new regulation was gazetted on 14 April 1997 which lists the eight bodies making up the Industrial Supplies Office Network (ISONET) as prescribed organisations.

Annex to Attachment 2

The level of detail required to enable an informed consideration of a Goods Request application includes the following.

- Reference linking the goods the subject of a Goods Request application to an approved project;
- Description of the goods to be imported
- Description of the goods in tabular format (see attached);
- Quantity of the goods to be imported;
- Tariff classification of the goods to be imported;
- Tariff Advice number (except in the case where a TCO has been sought by the applicant for these goods – in which case the TCO application reference will suffice.);
- Number of any TCO which applies to the goods - OR - a statement from Industrial Supplies Office (ISO) stating that it is not aware of an Australian manufacturer producing or capable of producing the equipment or an equivalent good for the applicant's project;
- Customs duty and duty rate applying without a Project By-law determination;
- Customs value of the imported good;
- Confirmed source of supply;
- Country of origin;
- Date of importation (expected if actual unknown);
- Supporting arguments to support the claim that the imported goods are items of capital equipment that meet the terms of the particular item; and
- Customs entry number(s) when available.

AusIndustry will conduct a complete assessment from this, and may need to consult with potential Australian manufacturers and industry associations where it is considered necessary to clarify and validate technical issues.

It is of major importance in the assessment process that the applicant demonstrate that the capital equipment to be imported is not produced in Australia in the ordinary course of business. This can be demonstrated by:

- identifying a Tariff Concession Order (TCO) for the equipment which is in force when the goods request is lodged; or
- providing a statement from an Industrial Supplies Office (ISO) stating that it is not aware of an Australian manufacturer producing or capable of producing the equipment or an equivalent good for the applicant's project.

The 'equivalent good' criterion is more a design specific criterion than the 'substitutable good' criterion applicable to a TCO assessment. Goods are equivalent goods if they meet the applicant's engineering and technical requirements. They do not need to be identical to the equipment to be imported, nor do they have to meet the applicant's unduly specific criteria in terms of proprietary materials, technologies or the like.

Applicants are advised that price differentials, inability to meet supply time frames or unduly specific design criteria are not considered as relevant factors when assessing equivalence or substitutability of Australian manufactured equipment.

Attachment 3

Administration of the Items 57 and 60 under the Policy By-laws Program

Context:

The Policy By-laws Program transferred from Australian Customs Service to AusIndustry/ISR on 15 April 1999 comprises *items 45, 46, 56, 57 and 60* of *Schedule 4* of the *Customs Tariff Act 1995*. The first three of these items are delivered under the Project By-law Scheme (PBS) described separately.

Application Procedures

Applications under item 57 and 60 are processed under the Policy By-law Scheme by AusIndustry in accordance with procedures currently described in Australian Customs Notice 98/27.

Applicants are requested to provide information to demonstrate that the goods to be imported satisfy the terms of the relevant item in Schedule 4 and whether the granting of a concession is consistent with prevailing Government policy criteria, namely:

- whether the request precedes importation of the goods;
- whether the imported goods are intended for use in export enhancement or import replacement activities that would generate a quantifiable and significant benefit to Australia; and
- whether the imported goods falls within an eligible tariff classification.

Applicants are encouraged to lodge applications well in advance of importation of the goods for which a concession is sought and preferably before the goods are ordered.

Upon receipt by AusIndustry each application is assessed for completeness against the requirements of the item, using a standard checklist. If this initial assessment identifies any deficiencies in the application an Assistant Manager within the Policy By-laws Section forwards a copy of the checklist to the applicant by facsimile within 24 hours. If the checklist indicates the application is complete, the application is registered and placed on file. AusIndustry then provides the applicant with a written acknowledgment of the receipt of each application and a copy of the checklist within 5 working days.

After the application is registered and placed on file it is passed to a customer service officer who undertakes an assessment of each application in detail against the terms of the item and the policy and administrative guidelines.

For complete applications AusIndustry provides a decision within 90 calendar days, commencing on the first business day after lodgement. The level of detail required to enable an informed consideration of an *item* 57 or 60 application is set out in the Annex to this Attachment.

The terms of *item* 57 are as follows:

> *'Raw materials and intermediate goods, as prescribed by By-law, classified under heading 5903 or within Chapter 28,29,32,34,35,37,38,39 or 48 of the 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.'* (underlining added)

Item 57 permits 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, in

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

The terms of *item* 60 are as follows:

> *"Metal materials and goods, as prescribed by By-law, classified under heading 5903 or within Chapter 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."* (underline added).

Item 60 permits 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.

Both *items* 57 and 60 were inserted into Schedule 4 to improve the international competitiveness of Australian industry and enhance export growth. They each require the Minister, or his or her delegate, to form an opinion that the imported goods "have a substantial and demonstrable performance advantage in the production of a specific end product over substitutable goods produced in Australia", before AusIndustry can consider issuing a determination.

The principal means of assessing the degree of significant and demonstrable performance advantage is by means of an independent technical assessment that must accompany each *item 57* or *item 60* application. AusIndustry consults with potential Australian suppliers, manufacturers or representative industry groups to validate the claims made about the perceived advantages of the imported goods.

Where a determination is made under *item 57* or *60*, the earliest date of effect of the determination is the date on which AusIndustry received a complete application in accordance with the requirements set out in this notice.

A determination will identify the particular goods to which it applies and the period for which it will remain in force, usually up to two years from the date the an application was lodged. The two-year period caters for possible changes in industry policy or Australian manufacturing capability, and allows for periodic review of prevailing industry policy considerations.

Applications to extend the date of effect of a determination (for example, to cover goods that did not arrive in the time frame specified in the determination) require the lodgement of a new application.

Delegations under the Policy By-laws programs

The Minister for Customs has delegated powers to form an opinion under *items* 57 and 60 to three senior executive service officers within AusIndustry and ISR. AusIndustry staff prepare a brief for the delegate's consideration to enable the required opinion to be formed. A favourable opinion is required in each instance to enable an application to meet the terms of the item. If the delegate forms the required favourable opinion, that decision is communicated to the delegate of the CEO of Customs within AusIndustry.

Once the opinion is formed that imported goods have a substantial and demonstrable performance advantage in the production of a specific end product over substitutable goods produced in Australia, the matter passes to the AusIndustry delegate of the CEO of Customs who makes the decision as to whether a concession is to be granted.

Annex to Attachment 3

The level of detail required to enable an informed consideration of an item 57 or 60 application includes the following.

- The applicant or the applicant's authorised representative should provide the following details about the applicant, the authorised representative and associated importer(s), as applicable:

(a) name
(b) address
(c) contact name, telephone and facsimile details
(d) owner code (if applicable)
(e) Australian Company Number; and
(f) written authority for authorised representative to act for the applicant.

- the item under which concessional entry is being sought;
- a clear description of goods in the form that they are to be imported, including written and illustrative descriptive material, and technical drawings if applicable;
- details and/or copies of relevant Tariff Advices;
- expected Customs value of the imported goods (per annum);
- duty rate and expected annual Customs duty (without a concession);
- proposed shipping arrangements;
- confirmed source of supply and country of origin;
- details of Tariff Concession Order (TCO) application refusal or written advice from Industrial Supplies Office (ISO) detailing Australian manufacturers (where relevant to the item);
- submissions about why granting a concession would be consistent with the policy applicable to the relevant item; and
- any other supporting information considered relevant to the application.

Item 57 or *60* applications must also supply an independent technical assessment which should objectively present and quantify the performance advantage of the imported goods over Australian-produced goods. The application should include:

- the names of Australian suppliers or manufacturers used in the comparison as supported by evidence from the ISO; and
- the relevant qualifications of an independent technical expert undertaking the technical assessment.

The objective data must be capable of presenting a reasonable case for the Minister's consideration that the imported materials and goods have a substantial and demonstrable performance advantage, in the production of a specified end product, over substitutable goods produced in Australia. Applicants are advised that it is also useful if statements from customers are provided indicating why the quality or performance features required by them cannot be provided by Australian manufacturers.

AusIndustry will conduct a complete assessment from this, and may need to consult with potential Australian manufacturers and industry associations where it is considered necessary to clarify and validate technical issues.

Attachment 4

Workload Information

DUTY FOREGONE FOR ITEMS 45, 46, 56 & 57 ($'000)

PERIOD	*Item 45*	*Item 46*	*Item 56*	*Item 57*
95-96	42,467	2,011	5,083	9,558
96-97	9,254	1,270	3,876	5,860
97-98	16,776	1,546	4,837	7,538
98-99	10,685	2,082	1,030	7,017
99-00	3,672	43	0	4,767

Sources: **1. Australian Customs Quarterly Statistical Bulletin Issue 15 June Quarter 1999.**

2. TRACE.

WORKLOAD DATA FOR ITEM 45 FOR PERIOD 1995-2000

ITEM 45

Project Advice	95/96	96/97	97/98	98/99	99/00	Total
Lodged	3	41	37	11	8	100
Accepted		3	47	20	6	76
Rejected			13	3	1	17
Withdrawn		1	2			3
Partial						

NB: Decision on four (4) projects to be finalised.

Goods Request	95/96	96/97	97/98	98/99	99/00	Total
Lodged		88	233	170	45	536
Accepted		1	115	212	46	374
Rejected		3	32	25	13	73
Withdrawn			21	20	7	48
Partial			10	11	5	26

NB: Decision on fifteen (15) goods request application to be finalised.

WORKLOAD DATA FOR BY-LAW ITEMS FOR PERIOD 1995-2000

ITEM 46

Project Advice	95/96	96/97	97/98	98/99	99/00	Total
Lodged	1	13	7	5	2	28
Accepted		1	14	3	1	19
Rejected			3	1	1	5
Withdrawn			3			3
Partial			1			1

Goods Request	95/96	96/97	97/98	98/99	99/00	Total
Lodged	1	12	24	16	11	64
Accepted			9	24	4	37
Rejected			2	6		8
Withdrawn			2	3		5
Partial			3	2		5

NB: Nine (9) Goods Request applications yet to be finalised.

ITEM 56

Project Advice	95/96	96/97	97/98	98/99	99/00	Total
Lodged	1	9	8	6	2	26
Accepted		4	5	3	1	13
Rejected		1	4	3		8
Withdrawn			3	1	1	5
Partial						

Goods Request	95/96	96/97	97/98	98/99	99/00	Total
Lodged		12	13	17	1	43
Accepted			4	26		30
Rejected			1	5	1	7
Withdrawn			1	3		4
Partial						

NB: Two (2) Goods Request applications yet to be finalised.

ITEM 57

Project Advice	95/96	96/97	97/98	98/99	99/00	Total
Lodged		2	5	1		8
Accepted			4	2		6
Rejected			1	1		2
Withdrawn						
Partial						

Goods Request	95/96	96/97	97/98	98/99	99/00	Total
Lodged		3	4	4		11
Accepted			4	4		8
Rejected			1	2		3
Withdrawn						
Partial						

Source: CASBAR - PBL reporting database.

NB: Accurate/complete data for 95-96 period not available as reporting database became operational in 96-97.
Data is for period to date 9 March 2000.

FEDERAL COURT APPEALS FOR PBL SECTION 1995 - 2000

1997 - 1998

Centaur Mining and Exploration Ltd - Centaur Mining and Exploration Limited applied to the Federal Court in September 1997 for a review of a decision to refuse to grant determinations for the purposes of items 45 and 56 of Schedule 4 of the Customs Tariff Act in respect of two brick lined titanium clad steel reactor vessels imported for use in the Cawse Nickel Project.

The case was settled on 23 October 1998.

1998-1999

BTR Nylex - BTR Nylex applied to the Federal Court for review of a decision not to grant determinations for the purposes of item 56 in respect of an injection moulding machine imported for BTR Nylex. The order for review to the Federal Court was lodged on 6 May 1999.

On 10 December 1999 the applicant withdrew the application after it was granted concessional entry of the goods as robotic machines under item 30 of Schedule 4 of the Customs Tariff Act.

IPMG - Independent Print Media Group applied to the Federal Court for review of decision to refuse to grant a determination in respect of coated and uncoated paper imported by the applicant under item 57 of Schedule 4 of the Customs Tariff Act.

It was withdrawn in early 1999.

Mitco DB Pty Ltd - An order for review was lodged in the Federal Court on 21 January 1999. Mitco applied to the Federal court for review of the decision not to make an item 56 determination for granite grinding and polishing machine.

The Federal Court granted Mitco an extension of time to seek review of decision on 26 May 1999. Settlement negotiations are still taking place.

Vodaphone - Vodaphone applied to the Federal Court for review of a decision not to grant determinations for the purposes of item 56 in respect of digital mobile base station equipment. The order for review was lodged in the Federal Court for an extension of time on 24 September 1998. Minister of Finance refused an ex gratia payment.

The applicant withdrew the application to the Federal court and proceedings were discontinued on 15 December 1998.

1999-2000

South Blackwater Coal Ltd - AusIndustry made a decision on 21 September 1999 to refuse an application for a determination granting concessional entry for controlled start transmission units imported for use at the company's Kenmare Coal mine project. The application was retrospective and the issue of local manufacturing capability not satisfactorily addressed. An application for an Order of Review was filed in the Federal Court on 31 December 1999 in respect of that decision.

AGS Sydney has been instructed to represent the Commonwealth in the matter. The matter is listed for further directions on 20 April 2000.

BHP Direct Iron Ore

Applicant is seeking review of a decision on 28 June 1999 to refuse an application for a determination under Section 273 of the Customs Act that items 45 and 56 of Schedule Tariff Act applied to particular imported locomotives for use at BHP's Iron Ore Expansion Project. An application for an Order of Review was filed in the Federal Court on 28 July 1999 in respect of that decision.

The applicant has made a settlement offer to withdraw from these proceedings if it received the benefit of a TCO currently under review before the AAT. The matter is currently on hold pending resolution of the related Customs AAT matter.

Previous Cases

ACS has advised AusIndustry that at least three additional earlier legal cases exist for items 45 and 56. It is understood that ACS records show that requests for Federal Court review were received on behalf of:

- BHP (item 45 - reactor vessels) in July 1996;
- Centaur Mining (item 45 - autoclave parts and materials) in June 1997; and
- BTR Nylex (item 56 - automotive carpet backing line and associated goods) in August 1998.

Further information on these matters can be obtained from ACS.

Attachment 5

AusIndustry Administrative Cost Information

Estimates of AusIndustry's administrative costs for Policy By-Laws and TEXCO are shown below. The estimates, prepared in April 2000, are for the full 1999-2000 year.

AusIndustry does not administer Manufacture in Bond or duty drawback, and information on the administration costs of these programs can be obtained from ACS.

1999-2000 estimates

Policy By-Laws

Average staff level 7

Salaries	$430,000
Admin	$40,000
Total	$470,000

TEXCO

Average staff level 4.5

Salaries	$280,000
Admin	$40,000
Total	$320,000

Notes:

- Salaries include on-costs.
- AusIndustry provides sufficient resources to undertake the effective and efficient delivery of the programs, and other staffing resources may be provided on a part time basis as required, for example, part of a Senior Executive Service Level 1.