



# **Certain Inputs to Manufacture (Items 46 – 47) Policy & Administrative Guidelines**

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# 1. About this Document

These Guidelines are intended to serve as a guide to importers lodging applications seeking concessional entry under item 46 and item 47 of Schedule 4 to the *Customs Tariff Act 1995* (Tariff Act).

Items 46 and 47 are delivered by the Department of Industry and Science's single business service through AusIndustry's national network.

The review and interpretation of Government policy as it relates to these by-law items is the responsibility of the Portfolio Strategic Policy Division of the Department of Industry and Science.

The collection of customs duties is the responsibility of the Australian Customs and Border Protection Service (Customs and Border Protection).

# 2. Background

Schedule 3 to the Tariff Act establishes the rate of duty to be paid on goods imported into Australia. The principal objective is to assist Australian manufacturers. The structure of the Tariff Act is such that some goods not made in Australia become subject to duty when they are imported. Under certain conditions, the Government may forego the collection of duty on imported goods.

Sections 8 and 18 of the Tariff Act provide the authority for goods specified in Schedule 4 to the Tariff Act to be imported at a rate less than that set out in Schedule 3. The items contained in Schedule 4 provide the legal basis for the concessional entry of certain imported goods in prescribed circumstances.

Items 46 and 47 of Schedule 4 to the Tariff Act give effect to the Government's policy to provide duty free entry for certain inputs to production that are substantially and demonstrably superior in certain respects to comparable goods produced in Australia. The objective of these concessions is to improve the competitiveness of Australian industry.

Item 46 covers:

*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 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.*

The range of raw materials and intermediate goods classified under heading 5903 or within Chapter 28, 29, 32, 34, 35, 37, 38, 39 or 48 consists of chemicals, plastics and paper goods.

In accordance with subsection 3(1) of the Tariff Act, the expression "substitutable goods produced in Australia" derives its meaning from Part XVA of the *Customs Act 1901* (Customs Act), which provides for the making of concession under the Tariff Concession System.

Item 47 covers:

*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.*

Effectively, there are three elements all of which must be satisfied before goods can legally enter under item 46 or item 47, namely:

- (a) the goods must fall within the scope of goods covered by the item;

- (b) an appropriate opinion must be formed by the relevant Minister (currently the Minister for Immigration and Border Protection) or his or her delegate; and
- (c) a by-law or determination must be made by the Chief Executive Officer (CEO) of Customs or his delegate pursuant to section 271 or 273, respectively, of the Customs Act.

In practice, in response to applications for concessions under items 46 and 47, opinions are formed and determinations are made by officers within AusIndustry who have been delegated with those functions and powers by the Minister for Immigration and Border Protection and the CEO of Customs, respectively.

Before making a determination under item 46 or 47 the delegate<sup>1</sup> considers whether or not the application for concession is consistent with the policy and administrative requirements set out in these guidelines. The delegate may refuse to make a determination granting a concession without referring the matter to the Minister's delegate for opinion where any of the other legal or policy requirements have not been met.

### 3. Overview

Items 46 and item 47 of Schedule 4 to the Tariff Act provide an avenue for duty relief for certain imported goods which have a substantial and demonstrable performance advantage in the production of a specific end product over substitutable goods (item 46) or materials and goods (item 47) produced in Australia.

Applicants seeking concessional entry for goods to which item 46 or item 47 is capable of applying will be required to lodge a detailed application with AusIndustry. If the application otherwise satisfies the terms of the item and satisfies the policy criteria, the AusIndustry delegate may make a determination under section 273 of the Customs Act to permit the concessional entry of the goods.

Each application will be considered on its merits. The delegate will conduct an evaluation of an application to ensure that established legal, policy and administrative requirements have been satisfied. Applicants are required to ascertain the capacity of Australian industry to manufacture the particular goods that they require.

Applicants should contact AusIndustry at an early stage to enable AusIndustry to provide assistance in the preparation of their application.

### 4. Policy criteria

In order to be eligible for a determination under section 273 of the Customs Act applicants will be required to demonstrate that:

- (a) the relevant item in Schedule 4 to the Tariff Act is capable of applying to the goods; and
- (b) the granting of a concession is consistent with prevailing Government policy.

All applications for concessional entry under item 46 or item 47 will be assessed against the Government's industry policy objectives as determined by the Government from time to time. The Minister for Industry and Science is the Minister responsible for the policy guidelines for these items. Concessional entry under these items will be administered by AusIndustry with policy development

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<sup>1</sup> Unless specifically stated otherwise, a reference in these guidelines to "the delegate" refers to the delegate of the CEO of Customs for the purposes of section 273 of the Customs Act.

and advice being provided by the Portfolio Strategic Policy Division of the Department of Industry and Science..

## **Prospective applications**

It is fundamental to the objectives of concessional entry under these items that importers seeking concessions should first take steps to maximise the opportunities for Australian manufacturers to produce the particular goods. To accord with this philosophy, the Government's industry policy directive is that duty concessions under items 46 and 47 are to be prospective. If an application is lodged after the materials or goods have been imported, the application is retrospective and will be refused.

Applicants should be aware that the date of importation of the goods, not the date they are entered, will be compared with the date on which AusIndustry receives an application to establish whether the concession sought is prospective or retrospective.

## **Additional policy criteria**

Additional policy criteria and related administrative requirements for applications under item 46 and item 47 are set out in Attachments A and B respectively.

## **5. Date of effect and duration of concessional instruments**

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 an application was lodged. The validity period caters for possible changes in industry policy or Australian manufacturing capability, and allows for periodic review of prevailing industry policy considerations.

Holders of determinations may apply 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) by making a new application. In such cases, the delegate must be satisfied that all applications comply with the current Government policy objectives and that the legal terms of the item have been addressed, irrespective of the considerations that may have applied at the time the determination was made granting the original concession.

A new application will also be required prior to the arrival of any goods that are additional to those identified in an application or approved in a determination. Such applications must be submitted to AusIndustry incorporating the same level of detail as required for the original application.

If a concession is granted for a specific end use, that concession may be used by any importer to cater for bona fide end users of the raw materials and intermediate goods in the case of item 46 and metal materials and goods in the case of item 47.

A new application is required if the end product or the circumstances of the production is different to those covered by the original item 46 application and determination.

## **6. Disclosure of Information**

Applicants should note that the Department of Industry and Science, Customs and Border Protection and the Industry Capability Network (ICN) may review material provided with applications.

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

In some cases, meetings or site inspections might be required. Applicants are therefore requested to identify any information that is to remain confidential and identify any person or organisation to which disclosure should not be made. Where an applicant does not indicate that information is confidential, AusIndustry will presume that the information provided may be used as needed including referral to the relevant ICN for comment.

Please note that as delegates of the CEO of Customs, the delegates would be bound by the secrecy and disclosure provisions of section 16 of the *Customs Administration Act 1985* which prohibit the unauthorised disclosure of information held by Customs and Border Protection or information which comes to the knowledge or into the possession of the delegate when he or she is performing his or her duties under section 273 of the Customs Act.

## 7. How to apply

Applications for concessions under item 46 and 47 should be made by, or on behalf of, an end user of the particular materials or goods.

Applicants must comply with the following procedures.

An applicant seeking a determination for the purposes of item 46 or item 47 must post or email a formal application to AusIndustry addressed to:

The Programme Manager  
Certain Inputs to Manufacture  
AusIndustry  
GPO Box 9839  
Canberra ACT 2601

Email: [CIM@industry.gov.au](mailto:CIM@industry.gov.au)

If the application is emailed an original copy should also be forwarded by mail within five business days. An application received by the Programme Manager, Certain Inputs to Manufacture in Canberra before 5 pm (Eastern Standard Time) on a business day would be taken to have been lodged on the day of receipt. An application received after that time is taken to have been lodged on the next business day.

AusIndustry will acknowledge receipt of an application for concessional entry within five business days.

There is no predetermined format for an application. However, the information required in an application is set out below in section 8 and 9 of these guidelines. Where more specific requirements exist in respect of a particular item, they have been identified in the relevant attachment to these guidelines.

The information required by these guidelines is the minimum upon which AusIndustry could be satisfied that the policy objectives of the various items are met. Where an application does not include the information set out in these guidelines, it will be refused.

## 8. Applicant and representative – general details

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

- (a) name;
- (b) address;
- (c) contact name, telephone, facsimile, e-mail and website (if applicable) details;
- (d) Australian Business Number (if applicable);
- (e) Australian Company Number;
- (f) Customs Client Identifier; and
- (g) written authority for the authorised representative to act for the applicant.

## 9. Description of goods and other key information

The following information is required to identify the goods and to assess whether the application satisfies the relevant policy objectives:

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

Applications must also include an independent technical assessment as outlined in Attachments A and B to these guidelines.

## 10. Assessment process

To ensure that the assessment process is transparent, fair and equitable the following application and assessment procedures apply.

### Preliminary evaluation

AusIndustry conducts an initial assessment of the application to determine whether it otherwise satisfies the legal terms and conditions of the concessional item applied for and, prima facie, meets the policy criteria set out in these guidelines.

Where the delegate is of the opinion that additional information should be provided in support of an application for a concession, he or she will seek further details and advise the applicant of a time frame within which the applicant must provide the information. If the information is not received within this time frame, the application will be assessed on the basis of the original information provided.

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

## Detailed Evaluation

If, in the opinion of a delegate, an application does establish a prima facie case for consideration of a concession, the delegate then conducts a comprehensive assessment of the application. The delegate must be satisfied that the goods meet the terms of the particular item. In some cases, meetings and/or site inspections will be required. Potential Australian manufacturers, industry associations and the like may be consulted where that course of action is considered necessary to clarify and validate technical issues.

Applicants are requested to specifically identify any information contained in an application that they do not wish to be disclosed in any consultation process, or any person or body to which disclosure should not be made. When an applicant does not indicate that information is confidential, the delegate will presume that the information provided may be used, as needed, in the course of assessing an application. The delegate will then consider whether a determination should be made granting a concession, based upon whether or not the information provided otherwise complies with prevailing policy and satisfies the legal terms of the item.

Applicants are advised in writing of the outcome of their application. If an application is refused, the reasons for the refusal will be set out in the advice.

## Decision to refuse

An applicant whose application for concessional entry under item 46 or item 47 is refused does not have a statutory right to have that decision reviewed by a delegate. However, if an applicant provides relevant new information, which addresses the reasons for the refusal, then a delegate may reconsider the decision. The new information will be treated as constituting a new application lodged on the day the new information was received. Any determination made granting a concession after reconsideration would operate from the date the new information was received.

Applicants should note that they are entitled to seek judicial review of a decision to refuse to make a determination for duty-free entry of goods under item 46 or item 47. The decision to refuse to make a determination is subject to judicial review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. Applicants should seek their own legal advice in this respect.

# 11. Additional Information

## Compliance

As with any importation, the responsibility for correctly entering goods under a concessional item lies with the importer. Importations of goods that claim duty concessions may be subject to Customs and Border Protection audit procedures.

## Application Advice

An applicant who is uncertain of the requirements or wishes to explore concession options is encouraged to seek additional information by visiting [business.gov.au](http://business.gov.au) or

calling 13 28 46

Any guidance or advice offered by officials before receipt of an application would not determine the outcome of an application.

## Attachments

Specific policy criteria for item 46 and 47 are at Attachments A and B respectively.



# Attachment A

## Specific policy criteria & additional information required for item 46

Item 46 of Schedule 4 to the Tariff Act reads:

*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 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.*

Item 46 of Schedule 4 to the Tariff Act 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, in the Minister's opinion, the imported raw material or intermediate goods offer a substantial and demonstrable performance advantage in the production of a specific end product over a substitutable goods produced in Australia.

To meet the legal and policy requirements of item 46, applicants must demonstrate that the goods to be imported:

- are raw materials or intermediate goods;
- offer a substantial and demonstrable performance advantage in producing a specific end product over substitutable goods produced in Australia<sup>2</sup>; and
- are classified to heading 5903 or within a Chapter specified in item 46.

In accordance with the terms of item 46 the delegate of the Minister for Immigration and Border Protection must form the 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. AusIndustry needs to ensure that sufficient information is available to the Minister's delegate to enable an informed opinion to be made on the matter.

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 46 application.

The independent technical assessment report should objectively present and quantify the performance advantage of the imported goods over Australian-produced goods. The submission should include:

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

Applicants should be aware that a concession will only be granted where, for the purposes of an independent technical assessment, the applicant has nominated substitutable goods produced in Australia that appear suitable for use in the production of the relevant end product for comparison purposes. AusIndustry will reject an application where no Australian manufacturer of a comparable

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<sup>2</sup> In accordance with subsection 3(1) of the Tariff Act, the expression "substitutable goods produced in Australia" derives its meaning from Part XVA of the Customs Act, which provides for the making of concessions under the Tariff Concession System.

good is nominated for comparison purposes. Such cases would not be referred to the Minister's delegate for opinion.

A valid comparison of imported goods with Australian equipment is generally not possible where the imported goods are covered by a TCO. In such cases importers should seek duty relief under the Tariff Concession System.

The objective data must be capable of presenting a reasonable case for the Minister or his or her delegate'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.

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 or international standards; and
- any other pertinent characteristics that demonstrate a significant commercial advantage (other than relative cost) compared to suitable Australian-made materials.

Applicants should note that eligibility for concessional entry under item 46 is confined to goods which are inputs to a manufacturing process 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 imported goods are not sufficient to satisfy the industry policy intent of the item. The performance advantage must be quantifiable, and must arise from the use of the raw materials or intermediate goods in the production of the specific end product.

It is also useful if statements from buyers of end products are provided indicating why the quality or performance features required by them cannot be provided by Australian manufacturers of end products using Australian made inputs.

AusIndustry may consult with potential Australian suppliers, manufacturers or representative industry groups to validate the claims made about the perceived advantages of the imported goods.

## Attachment B

### Specific policy criteria & additional information required for item 47

Item 47 of Schedule 4 to the Tariff Act 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.*

Item 47 of Schedule 4 to the Tariff Act was introduced by the Government to allow the concessional entry of metal materials and goods for use in food packaging, where the Minister or his or her delegate is satisfied that the imported metal materials and goods 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.

To meet the legal and policy requirements of item 47 applicants must demonstrate that the goods to be imported:

- are metal materials or metal goods;
- are classified within Chapters 72 to 82 of Schedule 3 to the Tariff Act; and
- offer a substantial and demonstrable performance advantage in the packaging of food over materials and goods currently available in Australia.

In accordance with the terms of item 47 the delegate of the Minister for Immigration and Border Protection must form the opinion that the imported metal materials and goods have a substantial and demonstrable performance advantage in the packaging of food over similar materials and goods currently available in Australia. The applicant needs to ensure that sufficient information is available to the Minister or his or her delegate, to enable him or her to make an informed opinion.

The principal means of assessing the degree of 'substantial and demonstrable performance advantage' is by means of an independent technical assessment that must accompany each application.

The independent technical assessment should objectively present and quantify the performance advantage of the imported metal materials and goods over materials and goods available from Australian manufacture. The submission should include the:

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

Applicants should be aware that a determination granting a concession will only be made where an applicant has, for the purposes of an independent technical assessment, nominated materials and goods currently available in Australia which appear suited to the task of food packaging. AusIndustry will reject an application that fails to nominate materials and goods currently available in Australia for this purpose. Such applications would not be referred to the Minister's delegate for opinion.

A valid comparison of imported materials or goods with materials or goods currently available in Australia is generally not possible where the imported metal materials or goods are covered by a TCO. In such cases importers should seek duty relief under the Tariff Concession System.

The objective data provided in the independent technical assessment report must be capable of presenting a reasonable case for the Minister's delegate's consideration that the metal materials or goods to be imported have a substantial and demonstrable performance advantage over materials or goods currently available in Australia.

The 'demonstrable advantage' can be in the form of an identifiable production or marketing advantage.

It is also useful if statements from buyers of end products are provided indicating why the quality or performance features required by them cannot be satisfactorily provided by Australian manufacturers of end products using Australian made inputs.

Applicants should note that AusIndustry may consult with potential Australian manufacturers or representative industry groups to validate claims made about the perceived performance advantages of imported materials or goods.