



Law Council
OF AUSTRALIA

Business Law Section

The Hon Josh Frydenberg MP
Parliamentary Secretary to the Prime Minister
P.O Box 6022
House of Representatives
Parliament House
Canberra ACT 2601

c.c
Ms. Glenys Beauchamp PSM
Secretary
Department of Industry
P.O Box 9839
Canberra ACT 2601

4 August 2014

Dear Mr Frydenberg,

I am writing to you in my capacity as the Chairman of the Business Law Section of the Law Council of Australia (LCA) and its Customs and International Transactions Committee (CITC).

The LCA has a long history of providing assistance to the government of the day by offering considered, non-partisan opinions on the regulation that affects Australian business. It is from this perspective that the LCA welcomes the recent initiatives regarding the reduction of red tape, in order to improve the efficiency and effectiveness of policy delivery in general and in particular, reduce the burden of business regulation.

The CITC has identified an area of the Customs Act dealing with import duty concessions, that have previously been economically important to the successful delivery of major capital projects in Australia, but which have been subject to progressively complex administrative arrangements. The concessions are concurrently administered by the Customs and Border Protection Service (Customs) and AusIndustry.

It is of concern to the LCA that government statistics demonstrate that one of the concessions, the Enhanced Project By-Law Scheme (EPBS) is not being accessed by major project proponents and that this is due to both to the substantial costs arising from satisfying the current administrative arrangements of the scheme as well as uncertainty about the application of eligibility guidelines. I note that the EPBS' stated purpose is to reduce the cost of major projects that delivered either innovation to the Australian economy or provided assistance in building capability in Australian industry. Unfortunately, an EPBS application has become a complex, lengthy and expensive process.

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The EPBS also needs to be seen in the context of other import duty concessions. Importers can obtain, pursuant to the Customs Act, what is known as a Tariff Concession Order (TCO) where there are no substitutable goods produced in Australia in the normal course of business. When a TCO is granted, the relevant wording of the TCO is published in the Government Gazette. If an importer wishes to utilise a TCO, then it must ensure its goods precisely meet the terms of the TCO.

The problem that arises is that there are many instances where there is a TCO for a large item of capital equipment but due to its size, it is either not ready all at the one time or the importer wishes to receive it in stages to allow for its staged commissioning.

In the situation where the TCO goods are all actually ready at the one port at the same time, but are shipped on two different ships for logistical reasons, they will still qualify for the TCO pursuant to what is known as the "Split Shipment" By-Law (which is administered by Customs).

However, if the goods are not all ready at the one time or are not so required, then the Split Shipment by-law cannot be used. This means that the importer of a large plant whose goods, if imported as one, would qualify for a TCO, is in fact unable to use the TCO.

The only thing such an importer can do, is to see if the goods qualify for entry under the complex EPBS process. This and other caveats contained within the terms of these concessions serve to artificially reduce their potential application to a wide range of circumstances that would otherwise reduce cost and allow a range of logistics efficiencies in deploying equipment in Australia.

Given the increasingly complex nature of global procurement relating to these important projects and the significance of even minor changes in taxes and costs, such as customs duty, we believe that it is appropriate to consider revising existing concessions and customs by-laws to be more relevant to business needs and commercial reality, but at the same time maintaining the fundamental purpose of the original law. The key points relating to these concessions are:

1. In terms of major projects, there is potential to provide assistance to industry and major projects by expanding or improving the application of existing by-laws (such as EPBS and "split shipment") in recognition of the complexity of providing inputs to major projects and capital expenditure generally.
2. These concessions exist in recognition of the fact that large scale manufacturers often cannot deliver a complete item for shipment to Australia so that it arrives at the border as a single unit and therefore need to be examined for their currency and administrative ease of use.

3. We consider that significant improvement in the operation of these concessions can be achieved by administrative means rather than legislative changes.

It is the view of the LCA that the EPBS and “split shipment would benefit from scrutiny under the current drive to reduce “red tape” for business. The LCA would be pleased to offer assistance in reviewing the scheme for the purpose of identifying areas of potential reform.

The Chair of the CITC, Mr Bill Cole, would be pleased to expand on these points with you at your convenience. Mr Cole may be contacted by phone on 03-8603 6043 or via email: bill.cole@au.pwc.com

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal flourish extending to the right.

John Keeves
Chairman, Business Law Section