



Space Concession (item 41) Policy and Administrative Guidelines

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Table of Contents

| | |
|--|----|
| 1.INTRODUCTION | 3 |
| 1.1 Legislative Provisions | 3 |
| 1.2 Policy Objectives | 3 |
| 2.ITEM 41 CONCESSION | 3 |
| 2.1 Administration..... | 3 |
| 2.2 Access to the Item 41 Concession | 3 |
| 2.3 Australian Customs and Border Protection Service Requirements..... | 4 |
| 3.STAGE 1: SPACE PROJECT AUTHORISATION | 4 |
| 3.1 Eligibility Criteria..... | 4 |
| 3.2 Other Key Considerations..... | 5 |
| 3.3 Applicant Details, Project Description and Other Information..... | 5 |
| 3.4 Australian Industry Participation Plan..... | 5 |
| 3.5 Contractors, sub-contractors and technology providers | 6 |
| 3.6 Notification of Space Project Authorisation..... | 6 |
| 4.STAGE 2: ELIGIBLE GOODS APPLICATIONS | 6 |
| 4.1 Identification of Eligible Goods for use in an Authorised Space Project..... | 6 |
| 4.2 Eligibility Criteria..... | 6 |
| 4.3 Item 41 Determinations..... | 7 |
| 4.4 Effective Period of Item 41 Determination | 7 |
| 5.ITEM 41 APPLICATION PROCEDURES | 7 |
| 5.1 How to Submit Applications | 7 |
| 5.2 Incomplete Applications..... | 8 |
| 5.3 Compliance and Audit..... | 8 |
| 5.4 Review Process of Item 41 Eligibility..... | 8 |
| 6.DISCLOSURE OF INFORMATION | 8 |
| 7. DISCLAIMER | 9 |
| ATTACHMENT A | 10 |

1. INTRODUCTION

1.1 Legislative Provisions

To encourage the development of the Australian space industry, the Commonwealth Government has legislated to provide concessional entry for certain goods imported for use in space projects.

On 27 June 2001, Item 41 was inserted in Schedule 4 to the *Customs Tariff Act 1995* (the Tariff Act). Item 41 enables the duty-free entry of certain goods imported into Australia for use in authorised space projects, provided specific conditions are met. The concession became effective on 1 August 2001.

Item 41 covers:

Goods, as prescribed by by-law, that are for use in a space project authorised by the Minister administering the Space Activities Act 1998

While Item 41 may confer a concession for Customs duties, it does not affect other obligations to pay taxes and charges.

1.2 Policy Objectives

The objective of the Item 41 concession is to increase the competitiveness of the space industry in Australia and ensure compliance with international obligations. It is intended to facilitate the transfer to Australia of sophisticated space-related technology and technical expertise. It is expected to be of significant benefit to companies proposing to establish and develop operations in the high technology, high value-added space sector in Australia.

2. ITEM 41 CONCESSION

2.1 Administration

The Minister for Industry and Science (the Minister) is the Minister responsible for the underlying policy and administration of the Item 41 concession. Item 41 is administered by AusIndustry, a Division of the Department of Industry and Science, by employees who are delegates of the CEO of Customs under section 273 of the *Customs Act 1901*. Policy advice is provided from within the Department of Industry and Science on behalf of the Minister.

2.2 Access to the Item 41 Concession

The following two stages must be followed to access the Item 41 concession:

- **Stage 1 – Space Project Authorisation** - An applicant must obtain from the Minister, or a person authorised by the Minister to exercise power for and on behalf of the Minister, authorisation of the “space project” for the purposes of the Item 41 concession.
- **Stage 2 – Eligible Goods Determination** - An applicant must obtain a Determination under section 273 of the *Customs Act 1901* from a delegate of the CEO of Customs in AusIndustry that the goods to be imported fall within the scope of Item 41 and are for use in an authorised “space project”.

An applicant for a Space Project Authorisation must be the project proponent. An applicant for an Eligible Goods Determination must be the project proponent or a person the project proponent declares in writing to be participating in the authorised project. Applications may be lodged by an agent authorised in writing.

The Item 41 concession operates on a prospective basis only. Therefore, applications in respect of both Stages 1 and 2 must be lodged before the goods are imported into Australia. An application lodged after the goods have been imported may be refused.

An applicant must meet the requirements of Stage 1 before an application regarding Stage 2 will be assessed. An applicant may, however, lodge an application simultaneously in respect of both Stages.

Each application will be considered on its merits. In all cases the application will be assessed to ensure that established legal, policy and administrative requirements have been satisfied.

2.3 Australian Customs and Border Protection Service Requirements

Importers are reminded that, in accordance with subsection 18(1) of the Tariff Act, imported goods which attract a rate of duty of “free” in their own right under Schedule 3 to the Tariff Act, are ineligible for a duty concession. Importers should also be aware that goods imported into certain external territories of the Commonwealth are not subject to duties of Customs. Therefore, importers and their customs brokers must verify that the goods are initially dutiable at a substantive rate at the time of lodging an application for a concession with AusIndustry, and when entering the goods for home consumption.

Importers wishing to avail themselves of the Item 41 concession are required to enter the goods under their normal tariff classifications and statistical codes, as set out in Schedule 3 to the Tariff Act. The concession may be claimed by quoting the treatment code 741 and the appropriate Determination.

It is the responsibility of importers to ensure that goods imported with the intention of using the Item 41 concession are, in fact, goods that come within the terms of the appropriate Determination. Importers may be audited to ensure that the entry of any goods is consistent with the correct use of any Determination and with normal Customs and Border Protection import requirements.

Other Government legislation including the *Quarantine Act 1908*, the *Environment Protection and Biodiversity Conservation Act 1999*, the *Customs Act 1901*, the *Motor Vehicle Standards Act 1989* etc. must also be complied with.

Information on Customs and Border Protection related matters may be obtained from the Customs Information Centre on 1300 363 263 or the Customs and Border Protection website at customs.gov.au.

3. STAGE 1: SPACE PROJECT AUTHORISATION

To access the Item 41 concession, the project must first be authorised as a “space project”. Space Project Authorisation Applications must be lodged with AusIndustry prior to the importation of the goods. The application must include an Australian Industry Participation Plan that demonstrates how the project will give Australian suppliers full, fair and reasonable opportunities to supply goods and services to the project.

The Minister, or a person authorised by the Minister to exercise power for and on behalf of the Minister, will assess the application and decide whether the project should be authorised as a “space project” for the purposes of the Item 41 concession.

3.1 Eligibility Criteria

To be eligible for authorisation as a “space project”, a project must:

- Involve activities between parties from Australia and other countries involving joint investment, research or manufacturing, or the supply of equipment or technologies by one party to another for the purpose of the joint activity; and
- Be in the field of the exploration of outer space, remote sensing, material processing in space, space medicine and biology, space communications and information technologies, satellite navigation systems and technologies, automated and manned space apparatus

and systems and corresponding ground equipment, protection of the outer space environment, or space launch services.

3.2 Other Key Considerations

When considering applications for the authorisation of a “space project”, the Minister, or a person authorised by the Minister to exercise power for and on behalf of the Minister, will also have regard to the extent to which the project advances Australia’s contribution to international efforts in the exploration and peaceful uses of space;

- Facilitates Australia’s participation in international space programs and initiatives;
- Provides net economic benefits to Australia through space-related activities, including increases in employment, business investment and R&D capacity;
- Complements Australia’s areas of competitive advantage in space-related research and industry;
- Has provided Australian industry with full, fair and reasonable opportunity to participate in the space project;
- Is consistent with Australia’s national security interests and international obligations;
- Where appropriate, is consistent with Commonwealth Government policies; and
- Where appropriate, is consistent with the provisions of the *Space Activities Act 1998* and the *Space Activities Regulations 2001*, concerning the licensing of space launch facilities and the granting of launch permits.

3.3 Applicant Details, Project Description and Other Information

The applicant for a Space Project Authorisation must be the project proponent. An application may be lodged by an agent authorised in writing by the project proponent.

The project proponent or authorised agent should provide the following details, as applicable:

- name of project;
- address of project location;
- name of project proponent;
- address of project proponent;
- contact name, telephone, facsimile details, e-mail and website addresses (if applicable);
- Customs Client Identifier (if applicable);
- Australian Company Number;
- Australian Business Number;
- details of any agents, contractors or sub-contractors who or which will be authorised to act on behalf of the project proponent; and
- details of the project management structure including procurement and subcontracting responsibilities.

3.4 Australian Industry Participation Plan

Applicants seeking authorisation of a “space project” must provide the Minister with an Australian Industry Participation (AIP) Plan together with their application. The AIP Plan should discuss plans to engage Australian industry in space projects and to actively facilitate the engagement of the Industry Capability Network (ICN) through ICN Limited (ICNL) in the identification of Australian capability.

The AIP Plan should reflect the elements of the model AIP Plan as set out in the *Australian Industry Participation Plan* guidelines at [Attachment A](#). In preparing the plan, consideration must also be given to complying with Australia’s international obligations, including multilateral and

bilateral treaties and arrangements that impact on the project. Applicants should be aware that not all criteria included in the AIP Plan will be relevant to their projects.

3.5 Contractors, sub-contractors and technology providers

Duty concessions granted under Item 41 are available to all parties - including contractors, subcontractors and technology providers - supplying eligible goods to an authorised “space project”, provided that they are identified in the application.

3.6 Notification of Space Project Authorisation

The Minister, or a person authorised by the Minister to exercise power for and on behalf of the Minister, will notify the applicant in writing of his or her decision, within 40 days of the date of receipt of the completed application.

4. STAGE 2: ELIGIBLE GOODS APPLICATIONS

4.1 Identification of Eligible Goods for use in an Authorised Space Project

For the purposes of assessing Stage 2, AusIndustry requires applicants to complete an Eligible Goods Application. This application must be lodged before the goods are imported into Australia.

Goods for the purposes of Item 41 cover a very broad range of items. Certain types of plant, equipment and materials used in the construction and operation of a commercial spaceport and other space-related activities may be eligible goods.

However for a good to be eligible where it is also capable of a non space-related application, a delegate must first be satisfied that the goods are necessary for, or integral to, the development or operation of the authorised “space project”, and are for use solely in that project. Applicants seeking an Eligible Goods Determination must therefore provide as much information as possible about the project and establish a clear and direct link between the particular goods for which the concession is being sought and the authorised project.

As mentioned at paragraph 2.3 under the heading “**Australian Customs and Border Protection Service Requirements**”, applicants seeking to avail themselves of the Item 41 concession are required to identify the goods according to their normal tariff classifications, duty rates and statistical codes as set out in Schedule 3 to the Tariff Act, and indicate how each of the goods will be used in the authorised “space project”.

4.2 Eligibility Criteria

For goods to be eligible for the Item 41 concession:

- The project must be authorised as a “space project”;
- The Eligible Goods Application must be prospective;
- The intended date or period that the goods will be entered for home consumption must satisfy the requirements of the *Customs Act 1901*;
- The goods must have been identified in the application by reference to their normal tariff classifications, duty rates and statistical codes as set out in Schedule 3 to the Tariff Act;
- The goods must be dutiable, and therefore eligible for access to a concessional Item in Schedule 4 to the Tariff Act; and
- The goods must be for use in the authorised project.

4.3 Item 41 Determinations

If Stages 1 and 2 are satisfied, a delegate of the CEO of Customs in AusIndustry, authorised under the *Customs Act 1901*, may make a Determination that identifies the importer, the authorised

project, the Determination number and specifies the goods that are eligible for the Item 41 concession. Written notification of the Determination will be sent to the applicant:

- where an application is received and the space project has already been authorised, within 60 days of receipt of the application; or
- where an application is received and the space project has not already been authorised, within 60 days of the project being authorised.

4.4 Effective Period of Item 41 Determination

Where an Item 41 Determination has been granted, the earliest date of effect for the Determination is the date on which AusIndustry received the Eligible Goods Application, completed in accordance with the requirements set out in these guidelines.

A 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 of when the complete Eligible Goods Application was lodged, and taking into account:

- The intended date of arrival, or arrival period, for the goods; or
- The intended date or period that the goods will be entered for home consumption as per the requirements of the *Customs Act 1901*; or
- The two-year validity benchmark allows for periodic review of prevailing industry policy considerations.

A new Eligible Goods Application must be lodged to extend the date of effect of a Determination, for example, to cover a good or goods that did not arrive in the time frame specified in the Determination. In such cases, the particular goods must meet the terms of Item 41 in accordance with the Government policy objectives that prevail at the time the new application is lodged. The original Determination will have no bearing on the assessment of the new application.

Applicants seeking to extend the coverage of an Eligible Goods Application to other space-related goods must complete a new application. Such applications must be submitted incorporating the same level of detail that is required for all applications.

5. ITEM 41 APPLICATION PROCEDURES

5.1 How to Submit Applications

An applicant seeking an Item 41 concession must lodge with AusIndustry by hand, post or facsimile, a Space Project Authorisation Application (including an AIP Plan) and an Eligible Goods Application.

Applications should be addressed to:

Program Manager, Space Concession
AusIndustry
Department of Industry and Science
GPO Box 9839
Canberra ACT 2601

If the application is sent electronically, a signed original copy should be forwarded by mail within five business days to the above address.

Application forms are available from the Program Manager by calling 13 28 46.

An application received by AusIndustry before 5.00pm (Eastern Standard Time) on a business day is 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 within five business days receipt of each Space Project Authorisation Application or Eligible Goods Application.

Frequently asked questions and a fact sheet on the Item 41 concession are available at business.gov.au.

All inquiries concerning Item 41 applications should be [made through AusIndustry on 13 28 46](#).

5.2 Incomplete Applications

Where an application is incomplete, AusIndustry will ask the applicant to provide the additional information which is required to enable the applicant to complete the application. If the applicant fails to provide the further information requested by AusIndustry, AusIndustry will process the application on the basis of the information available to it and may, thereafter, refuse the application.

5.3 Compliance and Audit

Under the *Customs Act 1901*, importers are obligated to ensure that all information provided to Customs and Border Protection, in respect of imported goods, is accurate. As such, it is the responsibility of importers to ensure that goods imported to Australia by them under Item 41 determinations are entered correctly.

To monitor compliance, importers may be subject to post-clearance audits and are therefore required to retain all documentation relating to the imported goods for a period of five years. If a false or misleading statement or omission is identified through these compliance activities, an administrative penalty may be imposed.

5.4 Review Process of Item 41 Eligibility

A decision to refuse an Item 41 concession may be subject to internal review. Requests to review a decision must be made to AusIndustry within 28 days of the date of the decision. An internal review will be undertaken by a delegate other than the delegate who made the original decision. Except where AusIndustry determines that extraordinary circumstances apply, decisions will only be reviewed once. Requests for internal review must be supported by the reasons why the applicant wants the relevant decision to be reversed and address the grounds of the original decision to refuse the application.

Applicants should also note that they are entitled to seek judicial review of decisions made in respect of applications for Item 41 concessions. Such decisions are subject to judicial review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. Applicants should seek their own independent legal advice in this regard.

6. DISCLOSURE OF INFORMATION

Information provided in applications will be treated as 'commercial-in-confidence'. AusIndustry will conduct a complete assessment of each Item 41 application. As part of this assessment AusIndustry may need to consult with, and provide material from the application to other areas of the Department of Industry and Science, Customs and Border Protection and/or the Industry Capability Network. In addition it may be necessary to consult with other Government departments, Australian industry and industry associations to clarify and validate technical details in an application. Applicants are therefore requested to identify any information that should remain confidential and identify any person or organisation to which disclosure should not be made. Where an application does not indicate that information is confidential, AusIndustry will presume that the information provided may be disclosed to the extent necessary to enable it to adequately assess the application. Applicants should be aware that information provided by them will be used for the assessment and review of the Program.

Determinations are made under the *Customs Act 1901*. The CEO of Customs has delegated his power to make determinations under subsection 273(1) of the *Customs Act 1901* to certain employees of AusIndustry.

Delegates are bound by the secrecy and disclosure provisions of section 16 of the *Customs Administration Act 1985* which prohibit the unauthorised disclosure of certain information held by the Australian Customs and Border Protection Service including information which comes to the knowledge of or into the possession of a person to whom the CEO of Customs has delegated a power or function under section 273 of the *Customs Act 1901*.

7. DISCLAIMER

Where applicants are uncertain of the requirements or seek to explore Item 41 concession options in more detail, they are encouraged to seek further information from AusIndustry. Preliminary discussions and meetings with AusIndustry Customer Service Managers are available to assist applicants to develop and make their applications.

Any guidance or information provided by Department of Industry and Science employees is intended to assist applicants in making their applications. The Department of Industry and Science is not thereby explicitly or implicitly representing that applicants shall be entitled to an Item 41 concession, and expressly disclaims all and any liability to any person for any loss flowing from any act, error or omission of Department of Industry and Science employees in providing guidance or information/assistance.

Attachment A

AUSTRALIAN INDUSTRY PARTICIPATION PLAN

Introduction

Applicants are required to complete and submit an AIP Plan in accordance with the requirements set out below. In developing their Plan, applicants should give consideration to Australia's international obligations, including multilateral and bilateral treaties and arrangements that impact on their projects. Such international arrangements include, but are not limited to, the *Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes*.

Key Elements of the Model Australian Industry Participation Plan

The AIP Plan should outline the processes and procedures to be adopted by the proponent to provide full, fair and reasonable opportunity for Australian industry to participate in the project. Full, fair and reasonable, as included in the AIP Framework, are defined as:

- **Full:** Australian industry has the same opportunity afforded to other global supply chain partners to participate in all aspects of an investment project (e.g. design, engineering, project management, professional services, IT architecture);
- **Fair:** Australian industry is provided the same opportunity as global suppliers to compete on investment projects on an equal and transparent basis, including being given reasonable time in which to tender; and
- **Reasonable:** tenders are free from non-market burdens that might rule out Australian industry and are structured in such a way as to provide Australian industries the opportunity to participate in investment projects.

To achieve this objective, the project proponent should complete the Model AIP Plan (see Part A) and could give effect to the Plan by applying appropriate methods as specified in Part B.

PART A – Model AIP Plan

Project proponents should:

1. Describe the project including the economic impacts of the project on Australian industry, in terms of employment, skills transfer, strategic alliances and regional development, and the value of exploring ongoing opportunities for Australian industry participation in investment projects.
2. Provide detail on the project's communication strategy that provides for:
 - The early identification of opportunities for Australian participation; and
 - The effective transfer of information on opportunities for Australian industry participation through all tiers of supply (eg. along sub-contracting chains).
3. Describe strategies to incorporate Australian industry through all tiers of supply (ie. through design, procurement, construction, operation and whole-of-life support).
4. Describe and support longer term industry development by:
 - Supporting training and skills development initiatives;
 - Undertaking R&D and encouraging innovation as appropriate;
 - Facilitating strategic partnering and consortia building to develop critical mass; including with small-to-medium enterprises;

- Supporting the integration of Australian industry into global supply chains; and
 - Encouraging suppliers to adopt world's best practice standards and, where appropriate, to gain international standard accreditation.
5. Report on progress in implementing the AIP Plan, including the success or otherwise of initiatives to involve Australian industry in the space project.

PART B – Methods to give effect to the AIP Plan

Project proponents could:

1. Work constructively with the Industry Capability Network (ICN) and other relevant organisations to gain greater knowledge of the capabilities of Australian suppliers.
2. Develop an effective and appropriately resourced communication strategy that provides for the:
 - early identification of opportunities for Australian participation; and
 - effective transfer of information on opportunities for Australian industry participation through all tiers of supply (eg. along sub-contracting chains).
3. Structure tender documents to ensure that Australian suppliers are provided the same opportunity as existing supply chain partners to participate in the project, by structuring tenders to provide full, fair and reasonable opportunity for Australian industry participation, and encouraging sub-contractors to do the same.