



VALUATION, ORIGIN AND CLASSIFICATION

TARIFF CONCESSIONS – A GUIDE FOR APPLICANTS

Introduction

This guide is designed to explain the Tariff of New Zealand concession system as it relates to reference 26 and 99 tariff concessions. It provides information about the background to New Zealand's current tariff policies and the criteria on which tariff concessions are granted.

The guide sets out the process for applying for a tariff concession and describes the various categories of tariff concession that are available.

The information contained in this guide is not to be regarded as providing a definitive statement of law.

THE TARIFF OF NEW ZEALAND

The Tariff of New Zealand (the Tariff) comprises two parts:

- **Part 1** "The Standard Tariff" sets out the classification of all goods in international trade together with their substantive rates of duty on importation into New Zealand. It follows an internationally agreed format and rules in relation to its structure and interpretation.
- **Part 2** "Concessions" sets out concession categories under which the duty that would otherwise be levied under Part 1 of the Tariff may be removed. While there are limits to how detailed Part 1 can be in describing individual goods, Part 2 allows for more flexibility. In Part 2 it is possible to facilitate duty free entry by providing for specific categories of goods (e.g., passengers' baggage) and more precisely defined individual products. There are currently 17 tariff concession references which exist for social/humanitarian, Customs facilitation, trade policy and industry assistance purposes. In this way, the tariff concession system provides an administratively simple means of exempting certain goods from tariff duty without having to involve Parliament with numerous tariff amendments by Order in Council.

Reference 26 and 99 Tariff Concessions

The basic premise of the Government's tariff policy is that New Zealand producers and manufacturers are entitled to the levels of tariff assistance set out in Part 1 of the Tariff. The levels of tariff assistance provided are reviewed from time to time.

However, there are occasions where the tariff duty imposed on imported goods under Part 1 of the Tariff is not necessary. Removing such unnecessary duty imposts under Part 1 of the Tariff assists the economy by lowering costs. Part 2, reference 26 and 99 tariff concessions generally cover products which are eligible for duty free entry because of the absence of a suitable alternative locally produced or manufactured product. Tariff concessions are, of necessity, expressed in very precise and specific terms to distinguish the goods that are covered by the tariff concession from broader groups of goods which are produced or manufactured in New Zealand.

THE CRITERIA FOR REFERENCE 26 AND 99 TARIFF CONCESSIONS

The criteria used to consider reference 26 and 99 tariff concession applications are whether "suitable alternative" goods are available from New Zealand producers or manufacturers.

Definition of "suitable alternative"

Suitable alternative goods are goods which perform the same or a similar function to the imported goods for which a tariff concession is sought; and where the imported goods would compete directly with New Zealand produced or manufactured goods. Price and quality are not normally taken into consideration when deciding on whether suitable alternative goods are produced or manufactured in New Zealand.

The term "suitable alternative" is not to be interpreted in the narrow sense of requiring that the imported goods should be identical to locally produced or manufactured goods, but rather, that goods produced or manufactured in New Zealand are a suitable alternative.

In administering tariff concession policies Customs will usually disregard arguments made by applicants based on alleged deficiencies in the locally produced or manufactured goods or any shortcomings in their performance. In terms of specification, if locally produced or manufactured goods are available which are broadly capable of providing most, if not necessarily all, of the functions provided by the imported goods, the tariff concession application is unlikely to be approved.

Applications for general tariff concessions based on technical considerations will not generally warrant concessionary entry. Importers must appreciate that the choice of whether to import or purchase locally produced or manufactured goods is at their own prerogative. The Government has an obligation to provide local manufacturers with the level of assistance provided by the substantive rates in Part 1 of the Tariff.

HOW TO APPLY FOR A TARIFF CONCESSION

Applications for a tariff concession are to be made on NZCS 245 (Application for a Tariff concession or a modification of an existing Tariff concession) and lodged with the Valuation, Origin and Classification section of the New Zealand Customs Service.

In the case of a tariff concession application for woven fabric containing wool (classified in chapter 51 or chapter 55 of the Tariff) for use in the manufacture of apparel, NZCS 246 (Additional information sheet for Tariff concession applications involving woven fabric containing wool (classified in chapter 51 or chapter 55 of the Tariff) for use in the manufacture of apparel) must also be completed and accompany a completed NZCS 245 form.

NZCS forms can be downloaded from Customs website at www.customs.govt.nz .

Application fee

A prescribed fee of \$398.67 (incl. GST) must be paid in full before the application can be processed by Customs.

Customs will issue an invoice with payment instructions upon receiving your application.

Proposed tariff concession wording

It is important that the proposed tariff concession wording accurately describes the goods in such a way that the description is easily understood and capable of consistent enforcement at the border. If a tariff concession cannot be worded without compromising the duty status of other goods, the tariff concession will not be approved. Similarly, tariff concessions will be withdrawn if they are later found to be not capable of enforcement.

End-use - tariff concessions are not approved for goods where eligibility depends on a particular end-use or condition. End-use concessions are not capable of enforcement at the border and there is no effective way of Customs enforcing tariff concessions issued on this basis once the product is in the marketplace. Tariff concessions are directed at serving a general rather than an individual need.

Brand name – tariff concessions containing brand names are considered only where it can be demonstrated convincingly that there are no reasonable alternative means of describing the goods. This is to ensure that tariff concessions are freely available to any importer and not only companies holding particular agencies or marketing rights.

GOODS FOR WHICH A TARIFF CONCESSION IS UNLIKELY TO BE APPROVED (THE NEGATIVE LIST)

The *Negative List* is a list of goods within certain chapters of the Tariff in respect of which it is unlikely that tariff concessions will be approved.

Unless there are very particular circumstances, tariff concessions will not be approved for goods falling in the following Tariff chapters:

The Negative List

Chapter	Goods	Chapter	Goods
2	Meat	17	Sugars and sugar confectionary
3	Fish	18	Cocoa and cocoa preparations
4	Dairy produce	19	Preparations of cereals
6	Live trees etc., ornamental foliage	20	Preparations of vegetables and fruits
7	Vegetables	21	Miscellaneous edible preparations
8	Fruit and nuts	22	Beverages, spirits, and vinegar
9	Coffee, Tea etc.	23	Waste from the food industries
10	Cereals	24	Tobacco
11	Produce of the milling industry	32	Paints, varnishes, etc.
12	Grains and seeds	33	Toilet preparations
15	Animal/vegetable fats and oils	44	Wood
16	Preparations of fish and meat		

CONSULTATION FOR TARIFF CONCESSION APPLICATIONS

Consultation with local industry

Customs may consult with local industry to identify whether there is any possibility for “suitable alternative” goods to be supplied or produced locally. Customs may also consult with industry to clarify information as part of the application. This consultation could be with industry bodies or direct with known manufacturers or producers. Consultation will be considered on a case-by-case basis.

Public notification of tariff concession applications

All applications for new concessions will be reviewed and evaluated by Customs to assess their validity and potential impact on Domestic Industry. Given the possible disadvantages to local producers if a concession is approved, full opportunity must be given for comment when an application for a new concession is being considered. This opportunity is generally given by way of advertising the application on the New Zealand Customs website (customs.govt.nz).

The existence of an objection does not necessarily mean a concession application will be declined, and the absence of an objection does not necessarily mean that a concession application will be approved.

Not all concession applications will be advertised, particularly if there is already a known local manufacturer or producer of a suitable alternative good.

Submissions to object to an application should be made in writing by the closing date.

Who is able to object to a tariff concession?

A New Zealand producer or manufacturer (or a person acting on their behalf) producing or manufacturing a suitable alternative good to the good for which a tariff concession is sought or is capable of producing or manufacturing a suitable alternative good may lodge an objection to the tariff concession application.

A New Zealand producer or manufacturer is taken to be an enterprise that in the ordinary course of business is capable of producing commercially available suitable alternative goods which have a domestic content of not less than 25 percent of their ex-factory production cost.

THE GROUNDS THAT MUST SUPPORT AN OBJECTION TO A TARIFF CONCESSION APPLICATION

Availability of product

The New Zealand producer or manufacturer must be able to satisfy Customs that their product is freely available on the open market (e.g., open to all purchasers in the market and not restricted to contracted buyers). Tariff concessions are not usually approved when it is evident that the item has been produced regularly in the recent past by an objecting New Zealand producer or manufacturer or is of a type where production is inherently seasonal or sporadic in nature and an objector has a history of producing the same or similar goods.

Ability or potential ability to manufacture

Where a New Zealand producer or manufacturer does not currently produce or manufacture a suitable alternative good, to be able to lodge a valid objection to a concession application they must

be able to prove that they are capable and willing to produce the goods under consideration.

A history of past production would indicate the producers or manufacturers' production capabilities if the goods concerned are not of a standard stock production type e.g., engineering products.

PUBLIC NOTIFICATION OF TARIFF CONCESSION DECISIONS

Tariff concession decisions will be published on the New Zealand Customs public website.

All decisions to withdraw or modify an existing concession will also be published in the Customs Edition of the New Zealand Gazette.

Tariff concessions which have been approved as "General concessions" are also listed in the Consolidated List of Approvals Relating to Part II of the Tariff of New Zealand which is published at two monthly intervals. It is suggested that importers check the Consolidated List of Approvals and recent decisions/Gazette Notices before lodging a concession to ensure that a valid tariff concession is not already in use.

RECONSIDERATION OF A TARIFF CONCESSION DECISION

An applicant who is dissatisfied with a decision to not approve a tariff concession, may, within 20 working days after the date on which notice of the decision is given, request that decision be reconsidered. The request will need to outline the reasoning and include a convincing case for the decision to be changed.

Requests for consideration should not be made if the facts have changed; in such cases, a new application must be submitted.

EFFECTIVE DATE OF A TARIFF CONCESSION

Tariff concessions are normally effective from the first day of the month in which the application is received by Customs and ends on the last day of the month of expiry. Customs will only consider issuing a start date for a concession prior to the month of application where there are very particular circumstances.

WHO MAY USE A TARIFF CONCESSION

General tariff concessions may be used by any importer of goods into New Zealand. When lodging the Customs Import Declaration (import entry), the concession reference number must be stated in the relevant field of the declaration.

Where a concession is limited in its use to a specific importer (see 'Categories of Tariff concessions' below) the tariff concession reference approval number is for the applicant's use only and is not published in the Consolidated List of Approvals.

ENFORCEMENT OF THE TARIFF

The enforcement of the Tariff (which includes the interpretation of existing tariff concessions) is also a function undertaken by Customs. There is provision within the Customs and Excise Act 2018 for a person to obtain a Customs ruling on whether particular goods are covered by a specific tariff duty concession.

If the applicant of the Customs ruling is dissatisfied with the Customs ruling issued, there is provision within the legislation for the applicant to appeal the decision to the Customs Appeal Authority.

REVOCATION OF A TARIFF CONCESSION

A tariff concession may be withdrawn in cases where the tariff concession cannot be interpreted or enforced in terms of its original intent. However, tariff concessions will not be withdrawn where local industry commences manufacture of the goods covered by a tariff concession or extends its range of existing production to include a good for which a tariff concession already exists.

Tariff concessions that have been unused for a period of five years may be withdrawn from the Consolidated List of Approvals. Concessions that are removed are notified by Gazette notice and on the Customs website.

CATEGORIES OF TARIFF CONCESSIONS

The following is an outline of the various categories of tariff concessions which are available.

General tariff concession

The most common type of tariff concession is a general tariff concession. These tariff concessions are freely available for unlimited use by any importer and have no end date. As mentioned previously, general tariff concessions are listed in the Consolidated List of Approvals.

Inputs to manufacturing

This category enables the granting of tariff concessions to manufacturers for specific quantities of goods required for inputs into manufacturing (e.g., certain knitted fabrics). It is confined to situations where a tariff concession would not normally be approved under the suitable alternative criteria, but a particular situation justifies the approval of a temporary tariff concession. In general, such tariff concessions are only approved with the agreement of the potential New Zealand suppliers with the onus on the applicant of the tariff concession to seek appropriate agreement from them.

Tariff concessions under this category have a time limit and are only for use by a specified manufacturer. Although these tariff concessions are notified on the Customs website, they are not published in the Consolidated List of Approvals.

Shortfalls of manufacturing inputs

Applications from manufacturers for shortfall tariff concessions will be considered if an input into the manufacturing process is not able to be supplied in normal quantities due to an unforeseen and unusual identifiable event, and a manufacturer is unable to obtain alternative supplies from within New Zealand (e.g., shortage of fresh fruit for canning resulting from storm).

All applications under this category require the support from the applicant's usual suppliers (if they themselves are not the applicant).

Tariff concessions under this category can only be used by those manufacturers who have suffered as a direct consequence of the shortfall of goods. Tariff concessions approved under this category are for an agreed period and restricted to the quantity which is in shortage at the time.

Shortfalls of other than manufacturing inputs

Applications for shortfall tariff concessions will be considered under this category where there is a shortage of other than manufacturing inputs due to unforeseen and unusual identifiable events (e.g., shortage of canned fruit resulting from storm).

All applications require support from the applicant's usual suppliers to verify the shortfall (if they themselves are not the applicant). Tariff concessions approved under this category are published on the NZ Customs website and are generally available to all importers but are issued for a limited period. Tariff concessions approved under this category are not published in the Consolidated List of Approvals.

CAPITAL EQUIPMENT

In line with Government policies which are aimed at reducing costs to businesses and in recognition of the increasingly competitive situation faced by New Zealand businesses and the consequential need that they have for the most efficient and most technologically advanced capital equipment, a limited category has been created for capital equipment goods. If similar goods are produced in New Zealand, the applicant of the tariff concession must be able to show that such equipment has greater efficiency and higher performance and productivity characteristics than the goods that are available from New Zealand producers or manufacturers.

Coverage

Capital equipment is taken to mean most goods classified in Tariff chapters 84 to 90 inclusive; the exceptions being electrical appliances, and dutiable motor vehicles. Consideration under this tariff concession category will be given to items of machinery and equipment even where a tariff concession would normally be declined concessionary entry on account of production of suitable alternative goods in New Zealand.

Requirements placed on an applicant

Applicants for a tariff concession under this category need to demonstrate that they have:

- maximised the opportunities for local industry to become involved in the project (e.g., called for expressions of interest, distributed itemised procurement schedules, provided tender opportunities); and
- made serious efforts to seek out local producers (including potential producers) of the required goods, prior to committing to overseas purchase; and
- given local manufacturers a reasonable period for quoting/tendering and delivery of the plant and equipment.

Requirements of the local manufacturer

For a capital equipment category concession, an objection from a local manufacturer would need to demonstrate that:

- similar goods requiring the same labour skills, technology and design expertise have been made by the local manufacturer in the recent past; and/or
- similar goods could be manufactured by the local manufacturer within existing facilities and within a reasonable period; and
- the local manufacturer would be prepared to accept an order for the supply or manufacture of the goods.

Decision process

Decisions on whether a tariff concession will be approved under the capital equipment category are made with regard to the discretionary nature of tariff concession law against the background and

direction of the Government's strategic objectives. While previous decisions may be used as a guide they will not necessarily be regarded as a precedent. Issues such as price, warranties, performance guarantees and advanced technology may form part of the consideration to approve a tariff concession under this particular category.

Standalone machines

If the tariff concession is for capital equipment that is a single standalone machine, it needs to be ascertained whether the machine is technologically more advanced, more efficient or more productive than locally produced machinery, considering the following criteria:

- greater speed in completing a process or increased output over time;
- greater flexibility in performing tasks, i.e., through being able to switch between tasks or tooling or greater facility in changing production schedules and production runs;
- lower unit production and operating costs;
- ability to attain improvements in or meet recognised quality standards (this may include stringent environmental controls); and
- increased productivity.

Functional units (including turnkey plants)

Applications will be considered for machinery (including a combination of machines) consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to perform a clearly defined function. Although the total plant may be covered by one tariff concession application, applicants must list each unit of the plant individually to enable local manufacturers the opportunity to identify each separate unit to determine if they have grounds for objection. Minor items of peripheral equipment need not be itemized (i.e., minor items that function directly with an individual unit and not with a series of units or with the total plant). Proposed tariff concessions wordings such as "Plant and equipment (irrespective of tariff classification) for the construction of ..." are not acceptable.

The proposed tariff concession wording should read "Plant and equipment for the construction of ..." and then go on to list the individual units.

Customs will examine the application to confirm that the goods are, in fact, a functional unit (rather than a stand-alone machine) and consider the following:

- the ability of local manufacturers to make any of the individual units; and
- details of the project including overall project costs, a breakdown of local and imported content in the project.

The approval of a concession will not be considered in respect of:

- Fittings or pipework linking the units to each other or other parts of the manufacturing complex;
- Kitset buildings or components of buildings; and
- Other fabricated engineering components are readily available from local engineering firms.

Projects which include modernizing, refurbishing, or extending existing facilities will be considered under this tariff concession category.

Project developers who are likely to apply for a tariff concession are encouraged to inform the Valuation, Origin and Classification section of Customs at an early stage of the development process, where this is commercially practicable.

Tariff concessions approved under this category are specific to an importer, may specify suppliers, and may be time bound. The decision is published on the NZ Customs website, but it is not published in the Consolidated List of Approvals.

Manufacturer's samples

Tariff concession applications are considered for imports of limited quantities of samples not for resale i.e., for use by a particular company. The tariff concession is issued to a particular company, may specify supplier, and is quantity and time bound. Tariff concessions approved under this category are not published in the Consolidated List of Approvals. Tariff concessions for samples are approved with the condition that the goods must not be sold, despite general policy against end-use conditions. This provision expands the duty free entry of samples covered under regulation 65 of the Customs and Excise Regulations 1996.

Special situations

A special situation category has been created to allow for a concession to be approved for goods covered by extraordinary circumstances. Goods won in legally recognised lotteries, contests, or overseas sporting events may be considered under this category.

Tariff concessions in such cases are the exception, rather than the rule. Tariff concessions for such goods may also require undertakings that the goods will not be sold for a set period. Any tariff concession approved is for a specific person, is limited to the specific goods to be imported and has a specific period. Tariff concessions approved under this category are not published in the Consolidated List of Approvals.

TARIFF CONCESSIONS FOR WOVEN FABRICS CONTAINING WOOL (CLASSIFIED IN CHAPTER 51 OR CHAPTER 55 OF THE TARIFF) FOR USE IN THE MANUFACTURE OF APPAREL

This scheme is available to apparel manufacturers who wish to import woven fabrics that may be technically within the range of New Zealand production but where quantities or other factors make New Zealand supply uneconomic or inappropriate.

The following are details of how this scheme operates:

Direct application to Customs

Applications are made on NZCS 245 form (Application for a Tariff concession or a modification of an existing Tariff concession) and lodged with the Valuation, Origin and Classification section of the New Zealand Customs Service.

In addition, NZCS 246 (Additional information sheet for Tariff concession applications involving woven fabric containing wool (classified in chapter 51 or chapter 55 of the Tariff) for use in the manufacture of apparel) must also be completed for each fabric quality. The additional information sheet seeks full information about the fabric including whether it is a woollen or worsted fabric, its fibre content; weight; the amount of fabric required; its end use; and its landed price.

To enable Customs to make an informed decision on an application as quickly as possible, applicants must also provide a sample of each fabric quality for which a tariff concession is sought.

Time limit for tariff concessions approved

Tariff concessions approved under this scheme are generally approved for a nine-month period.

Consultation with the woollen mills

Applications may be advertised in the normal way, but Customs will also, in most cases, contact woven fabric manufacturers to obtain their views on the tariff concession application. Once Customs has considered any objections from the woollen mills, Customs will decide whether to approve or decline the tariff concession application. Decisions will be notified on the Customs website.

Although not required to do so, applicants may wish to contact individual woollen mills prior to making an application to expedite the process. If no objections to the tariff concession application are made by the mills, this supporting information should be provided to Customs at the time the application is made. Provision of such information is likely to ensure a quicker decision on whether the tariff concession application will be approved or declined.

Tariff Concession for small quantities of woven fabric containing wool

A Part II tariff concession is listed against chapters 51 and 55 of the Tariff for "woven fabrics containing wool for use in the manufacture of apparel where the quantity in each shipment does not exceed 60 lineal metres (90m²)". The concession reference number is 991130J and should be used in such cases.

AVAILABILITY OF PUBLICATIONS

1. ***Application for a Tariff Concession or a modification of an existing Tariff concession (NZCS 245):*** can be downloaded from Customs website www.customs.govt.nz
2. ***Additional information sheet for Tariff concession applications involving woven fabric containing wool (classified chapter 51 or chapter 55 of the Tariff) for use in the manufacture of apparel (NZCS 246) —*** can be downloaded from Customs website www.customs.govt.nz
3. ***The New Zealand Gazette:*** can be viewed on the Department of Internal Affairs website www.dia.govt.nz or subscribed through Department of Internal Affairs, NZ Gazette, PO Box 805, Wellington 6140, Telephone 04 470 2930 Email: gazette@parliament.govt.nz
4. ***Consolidated List of Approvals Relating to Part II of the Tariff of New Zealand:*** can be viewed on Customs website www.customs.govt.nz or subscribed through New Zealand Customs Service, Corporate Support, PO Box 2218, Wellington 6140. Telephone 04 901 4500, Facsimile 04 901 4555 Email: corporate.support@customs.govt.nz
5. ***The Working Tariff Document of New Zealand:*** can be viewed on Customs website www.customs.govt.nz or subscribed through New Zealand Customs Service, Corporate Support, PO Box 2218, Wellington 6140. Telephone 04 901 4500, Facsimile 04 901 4555 E-mail: corporate.support@customs.govt.nz

FURTHER INFORMATION

Further information about tariff concessions is available from:

Valuation, Origin and Classification section

Email: voc@customs.govt.nz

Website: https://www.customs.govt.nz