



AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2011/18

Intention to revoke certain Tariff Concession Orders following review

On 11 May 2011, a delegate of the CEO of Customs and Border Protection published a Notice in the *Commonwealth of Australia Gazette: Tariff Concessions* indicating an intention to revoke 22 Tariff Concession Orders (TCOs) under subsection 269SD (1AA) of the Customs Act.

The delegate believes the TCOs may provide access to duty concessions for goods that is broader than permitted by the *Customs Act 1901* and the *Customs Regulations 1926*. Specifically, the TCOs may provide concessional entry for some goods to which a TCO must not extend because of paragraph 269SJ(1)(b) of the Customs Act, paragraph 185(1)(b) of the Customs Regulations, and relevant items of Schedule 2 of the Customs Regulations (commonly described as the Excluded Goods Schedule).

The delegate believes three TCOs are invalid because they apply only to goods listed on the Excluded Goods Schedule. The delegate believes that a further 19 TCOs are sufficiently ambiguous that a person could construe the description of the goods in the TCOs as extending to goods on the Excluded Goods Schedule. A complete list of the inconsistent TCOs (described as Category A TCOs) and the ambiguous TCOs (described as Category B TCOs) is attached.

Following publication of the delegate's intention to revoke certain TCOs in the *Commonwealth of Australia Gazette: Tariff Concessions*, we invite any person affected by the revocation to provide a written submission by 8 June 2011 concerning the proposed revocation. Within 60 days, the delegate will decide, having regard to any submissions made and any other relevant matters, whether he or she is satisfied that the TCOs should be revoked. If revocation occurs, then the operative date of the revocation would be 27 April 2011.

Please note that the legislation does not permit the automatic making of narrower replacement TCOs in these circumstances. If importers wish to apply for a narrower TCO, then they must apply in the usual way using the B443 form.

In-transit provisions

In-transit provisions will not apply if the delegate revokes TCOs listed in Category A.

In-transit provisions, as allowed under subsection 269SG of the Customs Act, will apply if the delegate revokes TCOs listed in Category B, provided the goods do not contravene the Excluded Goods Schedule.

Recovery of duty

Customs and Border Protection will not seek recovery of any duty foregone under the Category A TCOs unless there is evidence that the person who received the concession did so through inappropriate conduct such as fraud or was aware that the goods for which they received the concession should not have been covered by the TCO.

To date, Customs and Border Protection has not identified goods imported under Category B TCOs that would be inconsistent with the Excluded Goods Schedule. Should such evidence emerge in the future, Customs and Border Protection will consider its position on recovery of duty at that time.

Refund Claims

Refunds will not be payable for revoked Category A TCOs. Refunds will be payable for revoked Category B TCOs where the goods do not contravene the Excluded Goods Schedule.

Interpreting TCOs

Customs and Border Protection's view is that each of the TCOs in question should be read down by reference to the prohibition in s269SJ(1)(b) so that they only apply to goods which:

- comply with the classification and word description of the relevant TCO, and
- are not goods to which a TCO must not extend because of the Excluded Goods Schedule.

We advise importers that TCOs keyed to tariff heading 8708 should not be used, nor refunds claimed for goods "for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes". In addition, TCOs keyed to tariff classifications 9405.10.00, 9405.20.00, 9405.40.00 and 9405.99.00 should not be used, nor refunds claimed, for goods "of ceramic."

Enquiries

Customs and Border Protection prefers enquiries to be in writing to tarcon@customs.gov.au. However, you can also direct enquiries concerning these matters to the following contacts: Manager, Tariff Concessions (02) 6275 6041.

(Signed)
Anthony Seebach
National Manager
Trade Services Branch
11 May 2011

Category A TCOs

Tariff Classification	TCO Number	TCO Description	EXCLUDED GOODS SCHEDULE restriction, and exclusion to restriction
4818.50.00	0400851	GOWNS, SURGICAL, disposable	Item 12 - 4818.50.00 - Clothing accessories and urinary continence pants
9403.90.00	0612694	ADJUSTERS, TABLE, STEPLESS HEIGHT	Item 48A –9403.90.00 - Metal drawer slide components
9405.99.00	9310953	LAMPBASES, being ALL of the following: (a) cast and turned earthenware pottery with a raised slip outline of the design; (b) colour applied to the unfired object prior to being fired twice at 1130 degrees centigrade using a low soluble glaze	Item 53 – 9405.99.00 – Parts, other than of ceramic

Background

Due to item 12 of the Excluded Goods Schedule, a TCO cannot be made that extends to any goods classified under 4818.50.00, with the exception that a TCO can be made in relation to “clothing accessories and urinary continence pants”. Surgical gowns are neither. Therefore, the delegate believes that TCO 0400851 is wholly invalid and should be revoked.

Due to item 48A of the Excluded Goods Schedule, a TCO cannot be made that extends to any goods classified under 9403.90.00, with the exception that a TCO can be made in relation to “metal drawer slide components”. Therefore, the delegate believes that TCO 0612694 for “Adjusters, table, stepless height” is wholly invalid and should be revoked.

Due to item 53 of the Excluded Goods Schedule, a TCO cannot be made that extends to any goods classified under 9405.99.00 that are “of ceramic”. Therefore, the delegate believes TCO 9310953, which applies to certain “earthenware pottery” lamp bases, is wholly invalid and should be revoked.

Category B TCOs

Tariff Classification	TCO Number	TCO Description	EXCLUDED GOODS SCHEDULE restriction, and exclusion to restriction
9405.10.00	0818098	LIGHTS, movement activated	Item 49 – 9405.10.00 – Goods, other than of ceramic
9405.20.00	0704799	LAMPS, electric, incorporating bulbs OR tubes, having BOTH of the following: (a) wattage not less than 13 W and NOT greater than 25 W; (b) illumination formula blend of NOT less than 5 rare earth phosphors	Item 50 – 9405.20.00 – Goods, other than of ceramic

Tariff Classification	TCO Number	TCO Description	EXCLUDED GOODS SCHEDULE restriction, and exclusion to restriction
9405.20.00	9904228	LAMPS, NOVELTY, electric, comprising BOTH of the following: (a) colour changing optical fibres; (b) rotating base	Item 50 – 9405.20.00 – Goods, other than of ceramic
9405.40	8805389	LIGHTS neon indicator, incorporating a neon discharge lamp, a resistor and fitted insulator leads or terminal pins affixed for direct mounting into appliances	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40	9008667	MOVING LIGHTS SYSTEM, comprising ALL of the following: (a) light source; (b) gobo or slide wheel; (c) colour disc wheel; (d) moving mirror assembly; (e) computerised control equipment	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40.00	0510890	LIGHT ASSEMBLIES, GAMING TOWER ILLUMINATION, comprising ALL of the following: (a) lamps; (b) lamp bases; (c) plugs	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40.00	9902814	LIGHTS, OUTDOOR, COACH, movement and light sensor activated	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40.00	0839147	LIGHTS AND LIGHT FITTINGS, LIGHT EMITTING DIODE (LED), being ANY of the following: (a) strip lights; (b) downlights; (c) spotlights; (d) flat lights; (e) stick lights	Item 51 – 9405.40.00 – Goods, other than of ceramic

9405.40.00	9305028	NIGHT LIGHT, having ALL of the following: (a) automatically activated in the absence of external light; (b) automatically de-activated in the presence of external light; (c) cordless	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40.00	9305386	LIGHT ASSEMBLIES, garden, 12V, being either a single unit or a set having ALL of the following: (a) plastic staked light fittings; (b) transformer; (c) cable	Item 51 – 9405.40.00 – Goods, other than of ceramic
9405.40.00	0109213	CHRISTMAS LIGHT SETS, including replacement lamps	Item 51 – 9405.40.00 – Goods, other than of ceramic
8708.30.19	0614516	PARTS, BRAKE, COMMERCIAL VEHICLES AND/OR TRUCKS, being mounted pads	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.30.93	0614519	POWER CHAMBERS, spring brake	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.30.99	0614522	PARTS, BRAKE, COMMERCIAL VEHICLES AND/OR TRUCKS, being ANY of the following: (a) callipers; (b) pneumatic disc brakes; (c) connecting cables	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.30.99	0614526	SLACK ADJUSTORS, BRAKE	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.30.99	0614527	POWER CHAMBERS, BRAKE ACTUATOR	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes

8708.30.99	0614528	BRAKE CHAMBERS, comprising ALL of the following: (a) combined double diaphragm spring brake actuator; (b) service diaphragm; (c) release diaphragm	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.40	8532897	TRANSMISSIONS, power shift, having ALL of the following: (a) hydraulically activated clutch; (b) designed minimum power input capacity exceeding 70 kW; (c) at least one forward and one reverse gear ratio; (d) capable of changing gear ratios under full input power	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes
8708.94.59	0614563	PARTS, STEERING, COMMERCIAL VEHICLES AND/OR TRUCKS, being ANY of the following: (a) torque rods; (b) tie rods; (c) ball sockets; (d) drag links; (e) columns; (f) bushings	Item 42 – 8708 – Goods, other than parts and accessories for the original equipment manufacture of motor vehicles having a gross weight of not more than 3.5 tonnes

Background

Due to Item 49, 50, 51 and 53 of the Excluded Goods Schedule, a TCO cannot be made that extends to goods in 9405.10.00, 9405.20.00, 9405.40.00 and 9405.99.00 that are “of ceramic.” It is construed that goods are “of ceramic” if they are made solely, predominantly or significantly of ceramic. This is intended to prevent the capture of goods with only a minimal ceramic content such as a bulb holder, and where the ceramic material is of a minor nature. The delegate believes that a person could construe the description of the goods in the relevant TCOs as extending to goods on the Excluded Goods Schedule, that is, goods made solely, principally or significantly of ceramic. Therefore, the delegate believes the relevant TCOs should be revoked.

Due to Item 42 of the Excluded Goods Schedule, a TCO cannot be made that extends to goods in tariff classification 8708 that are parts and accessories for the original equipment manufacture of motor vehicles with a gross weight of not more than 3.5 tonnes. The delegate believes that a person could construe the description of the goods in the relevant TCOs as extending to goods on the Excluded Goods Schedule, that is, parts and accessories for the original equipment manufacture of motor vehicles with a gross weight of not more than 3.5 tonnes. Therefore, the delegate believes the relevant TCOs should be revoked.