



## **AUSTRALIAN CUSTOMS NOTICE NO. 2010/44**

### **Intention to revoke Tariff Concession Orders 9801683, 0509577 and 0509830 for certain light trucks**

On 8 September 2010, 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 three tariff concession orders (TCOs) for certain light trucks classified to tariff subheading 8704.21.10.

The delegate believes the TCOs are not worded correctly as they provide access to duty concessions for some light trucks that is broader than permitted by the *Customs Act 1901* (Customs Act) and the *Customs Regulations 1926* (the Regulations). Specifically, the TCOs provide concessional entry for trucks with a gross vehicle weight (g.v.w.) of 3.5 tonne or less when these goods are excluded from obtaining concessional entry by Regulation 185 and item 39 of Schedule 2 (the Excluded Goods Schedule) of the Regulations.

Interested parties have 28 days from the publication of the notice in the Gazette to provide reasons why any of these TCOs should not be revoked. Within 60 days of the publication of above notice, the delegate will decide, having regard to any submissions made within the 28 days and any other relevant matters, whether to continue with the revocation of the TCOs. If the TCOs are revoked, then the operative date of the revocation will be 6 September 2010.

Please note that the legislation does not permit the automatic making of a narrower replacement TCO in these circumstances. If importers wish to apply for a narrower TCO (i.e. one for trucks exceeding a g.v.w. of 3.5t) then they must apply in the usual way using the new B443 form.

#### **In-transit provisions**

If a decision is made to revoke the TCOs, then subsection 269SG(2) of the Customs Act provides for in-transit provisions to apply for goods that:

- were imported into Australia by the day the revocation came into effect (i.e. revocation operative date), and are entered for home consumption within 28 days thereafter, or
- were in transit to Australia on the day the revocation came into effect (i.e. revocation operative date), and are entered for home consumption within 28 days thereafter.

In-transit provisions will apply, but only in respect of vehicles with a g.v.w. exceeding 3.5t, which are the goods to which the TCO validly applies.

#### **Recovery action**

In most cases, Customs and Border Protection will not seek to recover any relevant duty foregone. However, that general rule will not apply if Customs and Border Protection finds evidence indicating that a person who received the concession did so through fraudulent conduct or was aware that the vehicle for which they received the concession should not have been covered by a TCO.

## **Refund Claims**

Customs and Border Protection does not intend to pay refunds for trucks with a gross vehicle weight (g.v.w.) of 3.5 tonne or less. These goods have already been entered for home consumption and no reliance was placed on the concession when imported.

## **Interpreting the TCOs**

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

- are classified to heading 8704.21.10
- comply with the description of the relevant TCO, and
- have a g.v.w. exceeding 3.5 t.

## **Enquiries**

Customs and Border Protection prefers enquiries to be in writing to [tarcon@customs.gov.au](mailto:tarcon@customs.gov.au).

However, you can also direct enquiries concerning these matters to the following contacts:

- Tariff Concession revocations - (03) 9244 8706; and
- Tariff Concession applications - (02) 6275 6041.

(Signed)  
Anthony Seebach  
National Manager  
Trade Services Branch  
8 September 2010