Australian Customs Notice 1996 28

**AMENDMENTS TO THE TARIFF CONCESSION SYSTEM INCLUDING 3% DUTY ON TARIFF CONCESSION ORDERS AND COMMERCIAL TARIFF CONCESSION ORDERSCUSTOMS AMENDMENT ACT 1996 (CAA)CUSTOMS TARIFF AMENDMENT ACT (No. 1) 1996 (CTAA)**

The CAA and the CTAA will come into effect on 15 July 1996 and provide respectively: substantial amendments to the Tariff Concession System (TCS), and

a 3% duty rate for Item 50 and the introduction of new Item 50A applying a "Free" duty rate to consumption

goods covered by a Tariff Concession Order (TCO) or Commercial Tariff Concession Order (CTCO).

The CAA amending Part XVA of the Customs Act was passed by Parliament on 27 June 1996. Part XVA of the Customs Act contains the legislative provisions for the TCS.

The CAA implements the significant amendments to the TCS which were recommended in the 1995 joint Department of Industry, Science and Technology/Customs evaluation of the TCS.

The CTAA was passed by Parliament on 28 June 1996. It prescribes 3% duty for Item 50 of Schedule 4 to the tariff, but with provision for duty free entry of consumption goods under new Item 50A. Attached to this ACN is a list of tariff classifications identifying consumption goods.

Changes to the TCS were foreshadowed in the February 1996 election campaign and the Government's intentions were clarified in subsequent round table discussions with industry. The Government also took note of options proposed by a Department of Industry, Science and Tourism/Customs task force, which was set up to consider issues resulting from the round table discussions.

The TCS reforms complement the Government's revenue demands for its budget deficit reduction programme and will lead to streamlined TCS administration. The administrative burden of requiring local manufacturers to object to every TCO application for which there are substitutable goods will be removed.

# KEY TCS REFORMS

The **key** reform to the TCS involves deleting paragraph 269C(b) from the core criteria against which TCO applications are assessed. This provision is generally referred to as the "market test" and has been a highly contentious element of the TCS.

From 15 July 1996 a TCO application will be assessed against core criteria requiring that, on the day a TCO application is received by Customs, no substitutable goods were produced in Australia in the ordinary course of business.

The definition of substitutable goods as set out in subsection 269B(1) is further clarified to ensure that no defacto market test is injected into the definition.

New ss269B(3) provides that in determining whether goods produced in Australia are put, or are capable of being put, to a use that corresponds with a use that goods the subject of a TCO or TCO application can be put, no account will be taken of whether the Australian made goods actually compete in any market with the TCO goods. The focus of the substitutable goods definition is solely upon the correspondence of use or capability of use between the locally made good and the imported good. Evidence of direct competition in a market to establish whether locally made and imported goods are put to corresponding uses, and therefore substitutable, is completely irrelevant.

The CAA now provides the following main definitions: **Core Criteria - S269C**

"For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business."

# Substitutable Goods

"Substitutable goods", in respect of goods the subject of a TCO application or of a TCO, means goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put."

New ss269B(3) provides:

"In determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use to which goods the subject of a TCO, or of an application for a TCO, can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market."

Other changes include the following:

TCO applicants will be responsible for establishing to Customs satisfaction that there are reasonable grounds for asserting a TCO application meets the core criteria (new S269FA). Applicants must discharge this statutory obligation on the basis of:

all information the applicant can reasonably be expected to have, and all inquiries the applicant can reasonably be expected to make;

TCO applications will be rejected at pre screening stage if either:

1. Customs is not satisfied that the applicant has discharged the responsibility concerning the inquiries now required of applicants as to whether or not substitutable goods are produced in Australia; OR
2. Customs itself is aware of an Australian producer of substitutable goods (new ss269H(i));

In order to satisfy the new responsibility, TCO applicants have the opportunity of approaching prescribed organisations to obtain information about producers of substitutable goods. It is intended to amend the Customs Regulations to prescribe the Industrial Supplies Office network operating in all States and the Northern Territory for this purpose (new ss269F(3);

the definition of made-to-order capital equipment in ss269E(3) has been narrowed. Additional conditions now require made-to-order capital equipment to be made on a "one-off" basis and not be produced in quantities indicative of production runs. The amendments will ensure that only specialised (typically large) items of capital equipment will qualify under the definition;

the TCO date of effect will be the date a valid application is received by Customs, i.e. TCO applications received after 15 July 1996 will no longer have a date of effect commencing 28 days before the date of receipt by Customs (new S269C and ss269S(1));

TCO applicants will have 28 days from notification of local manufacturer's objections to propose wording which narrows the gazetted description. Previous legislation only allowed 14 days to propose amended wording (new ss269L(2) and (3));

narrowed TCO wording will be regazetted to allow for further objections, however, the original operative date will be preserved (new ss269L(4B) and (4C));

TCO applications which describe goods other than in generic terms must now be rejected. Descriptions which, either directly or by implication, indicate that goods are of a particular brand or model, or that a particular part number applies, must not be used. TCO descriptions are not to apply to particular products of a manufacturer, but to goods of that description generally (new ss269SJ(1) and (1A));

Customs will have the discretion to revoke obsolete TCOs and CTCOs, ie those not used in the preceding 2 years (new ss269SD(1A) and item 38(1) of the CAA);

all existing TCOs and CTCOs will be subject to revocation under the revised TCS criteria (ie no Australian manufacturers make substitutable goods). It is stressed that all existing TCOs and CTCOs will not be automatically revoked on 15 July 1996. TCOs and CTCOs in force on 14 July 1996 will continue in force after that date. However, revocation consideration may be initiated either by Customs on the basis of known and verified local manufacture of substitutable goods or following a request by a local manufacturer (new ss269SD(1AA) and (1AB));

the existing TCS "intransit" provisions for revoked TCOs are retained (S269SG), but only made-to-order capital equipment, as explained above, will retain access to a revoked TCO under ss269SG(4). This provision requires the made-to-order capital equipment to be on firm order before the revocation date;

persons who have not participated in an internal review process will generally only be made a party to any subsequent Administrative Appeals Tribunal (AAT) proceedings if they apply within 60 days of publication of a Gazette notice of the AAT appeal. The AAT may however, allow a person to join in an AAT action after this date if the AAT is satisfied the person was not reasonably able to apply within the 60 day period;

documents to be relied upon in an AAT hearing must be filed with the Tribunal and served on the other parties to the proceedings not less than 28 days before the hearing date. The AAT may allow later filing if there are reasonable grounds for not meeting the 28 day time limit.

# SUBSTITUTABLE GOODS DEFINITION

There is no new definition - only a technical amendment re "capability" consequential upon removal of the market test.

Customs intends to be practical and realistic in its approach to the definition of substitutable goods in ss269B(1), which will now be the primary test for TCO eligibility.

Discussions will be held with the Customs Brokers Council of Australia and importer's representatives prior to 15 July 1996, to identify any concerns about Customs' intentions for administering the substitutable goods definition.

# APPROVED FORMS

New approved forms for TCO applications, objections to applications and requests for revocations have been printed and are available from Customs Information Centres in all Capital City Customs Houses. Information Centre addresses are given at the end of this ACN.

# GENERIC TCO DESCRIPTIONS

In addition to taking into consideration the requirements of new para 269SJ(1)(aa) and ss269SJ(1A), TCO applicants should ensure that the TCO drafting guidelines in Vol 13 of the Customs Manual are followed and excessively detailed TCO descriptions are avoided.

# REVOCATION OF CTCOs

From 15 July 1996 CTCOs will be subject to the same revocation provisions applying to TCOs. CTCO revocation requests must be made on the approved form and will be considered against the TCS core criteria of S269C.

Customs must complete revocation action within the 60 day time limit set out in ss269SC(1) and ss269SD(1AB).

It should be noted that CTCO revocation decisions will take effect from the day the revocation request was received or initiated by Customs. Post action will apply where a CTCO is revoked but was used during the period Customs was considering the revocation request. This situation currently applies to TCO revocations and should be taken into account by importers.

The extended intransit provision of ss269SG(4) applying to made-to-order capital equipment will now apply to revoked CTCOs.

CTCO revocation decisions made on revocation requests initiated after

15 July 1996 will now become appealable to the AAT, under the same circumstances applying to TCO revocation decisions.

# CUSTOMS INITIATED REVOCATIONS OF TCOs AND CTCOs

New ss269SD(1AA) of the Customs Act and Clause 38 of the CAA allow Customs to initiate revocation procedures for TCOs and CTCOs. Customs must Gazette its intention to revoke an Order and any person who might be affected by the revocation is invited to lodge a submission within 28 days of the Gazette notice.

Importers are advised that Customs will adopt a 'tops down' approach to selecting current TCOs and CTCOs for possible revocation action.

TCOs and CTCOs used in the 12 months before 15 July 1996 will be ranked with Orders having the greatest total value of duty foregone heading the list.

Delegates will, subject to workload priorities, work down through the list assessing Orders against the core criteria.

Revocation action will only be initiated after consideration of any submissions received in response to the Gazette notification and when Delegates are satisfied that evidence proves that substitutable goods are produced in Australia in the ordinary course of business.

Customs initiated revocation decisions will be appealable to the AAT. **TRANSITIONAL PROVISIONS**

# TCO Applications Lodged Prior to and Undecided on 15 July 1996

Applications for TCOs which have not been finally determined prior to the 15 July 1996 commencement date will be considered under the pre-existing law. Any TCO granted under the market test of criterion of S269C(b) however, will only be valid from the date of effect to 14 July 1996 when it will cease to have effect as if it had been revoked. Intransit provisions in force from 15 July 1996 will apply to these revocations.

# Internal Review and Administrative Appeals Tribunal (AAT) Appeals

Applications for Internal or AAT Review (whether made before 15 July 1996 but not finally decided OR made on or after 15 July 1996) that arise out of TCO applications lodged before 15 July 1996, will be subject to the same processes outlined above for undecided TCO applications. Such requests will be decided according to the pre- existing law but any TCOs granted under the market test criterion will only be valid from the date of effect to 14 July 1996, when the TCO will cease to have effect as if it had been revoked. Intransit provisions in force from 15 July 1996 will apply to such revocations.

# 3% DUTY ON GOODS COVERED BY CTCOs AND TCOs - EXCEPT WHERE ORDERS COVER CONSUMPTION GOODS

The CTAA was passed by Parliament on 28 June 1996. It prescribes 3% duty for Item 50 of Schedule 4 to the tariff. All existing CTCOs and TCOs, as well as TCOs made after 15 July 1996, will continue to prescribe Item 50 of Schedule 4.

New Item 50A however, reflects the compromise reached in the Parliament between the Government and the Opposition to maintain a "Free" duty rate for CTCOs and TCOs which cover consumption goods.

Item 50A applies to: "Goods that:

1. a Tariff Concession Order declares are goods to which item 50 applies: and
2. are categorised, at the time when they are entered for home consumption, as consumption goods in accordance with the United Nations Statistical Papers entitled "Classification by Broad Economic Category" and Standard International Trade Classification Revision 3"

The Australian Bureau of Statistics has provided a list of tariff classifications which identifies consumption goods in accordance with the United Nations Statistical Papers referred to in Item 50A. The list of tariff classifications is attached to this ACN.

Entries for home consumption lodged on and after 15 July 1996 will need to specify treatment code 505 for Item 50 (3% duty rate) or treatment code 506 for TCOs eligible for Item 50A ("Free" duty rate) and keyed to tariff classifications listed in this ACN.

# Change in Rate of Duty

The change in duty rate for Item 50 will apply in the same way that any tariff rate change takes effect. The rate of duty payable for goods claiming a concession is the rate in force when the goods are entered for home consumption.

Accordingly, if goods (other than consumption goods) are entered for home consumption on and after 15 July 1996 under a CTCO or TCO, they will be subject to duty at a rate of 3%. If goods (other than consumption goods) to be entered under a TCO or CTCO are "on the water" prior to 15 July 1996, they will be subject to the 3% duty when entered for home consumption.

# ADVANCE ENTRIES

Advance entries lodged before 15 July 1996 for goods arriving on or after this date and quoting CTCOs or TCOs, should be amended or replaced to take account of the new duty liability and treatment codes.

Marion Grant

for CHIEF EXECUTIVE OFFICER CANBERRA

5 July 1996

Contact Officers:

**Tariff Concessions:**

**Joe Eastmure** 06 275 6383 or

**Brian Thomas** 06 275 6484

**Legal Services:**

**Ken McInnis** 06 275 6748

**Sharon Nyakuengama** 06 275 6752

**CUSTOMS INFORMATION CENTRE ADDRESSES**

**New South Wales:** 1st Floor, North Wing

Sydney Central Building 477 Pitt Street

Sydney NSW 2000 Postal: GPO Box 8 Phone: 02 9213 2000

**Western Australia:** Customs House

2 Henry Street

Fremantle WA 6160 Postal: PO Box 396 Phone: 09 430 1446

Facsimile: 09 430 1391

# Victoria:

Ground Floor Customs House 414 La Trobe Street Melbourne Vic 3001

Postal: GPO Box 2809AA Phone: 03 9244 8000

Facsimile: 03 9244 8010

# Tasmania:

2nd Floor MBF Building

25 Argyle Street

Hobart TAS 7001 Postal: GPO Box 148B Phone: 002 30 1294

Facsimile: 002 30 1262

**Northern Territory:** Customs House Harry Chan Avenue Darwin NT 0800 Postal: GPO Box 210 Phone: 089 46 9842

Facsimile: 089 46 9936

# Queensland:

3rd Floor Australia House

363 Adelaide Street

Brisbane QLD 4001 Postal: GPO Box 1464 Phone: 07 3835 3255

Facsimile: 07 3835 3493

**South Australia:** Customs House

220 Commercial Road Port Adelaide SA 5015

Postal: PO Box 50 Phone: 08 479 211

Facsimile: 08 479 349

# Australian Capital Territory: Unit 14

Centrecourt Building 1 Pirie Street

Fyshwick ACT 2609 Postal: PO Box 148 Phone: 06 280 6999

Facsimile: 06 280 7128