

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2010/57

**Expiry of 11 TCOs due to the operation of the *Legislative Instruments Act 2003***

Customs and Border Protection advises that 11 Tariff Concession Orders (TCOs) have expired because of the operation of the *Legislative Instruments Act 2003* (the Legislative Instruments Act).

Customs and Border Protection was operating on the basis that sunsetting or expiry of legislative instruments, which includes TCOs, would not occur under the Legislative Instruments Act before 1 April 2015 (10 years and 3 months after the commencement of that Act). Customs and Border Protection recently received advice that this was not the case and a small number of TCOs are affected. The relevant expiry dates range from 1 October 2006 to 1 April 2010. The effect of a TCO expiring under the Legislative Instruments Act is equivalent to the revocation of the TCO. The relevant TCOs and expiry dates are listed below.

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| --- | --- | --- |
| **TCO number\*** | **Summary of wording**  **(full description at Attachment A)** | **Date expired** |
| 0710336 | Ferrules | 01/10/2006 |
| 0803658 | Polyvinyl | 01/10/2006 |
| 0803659 | Polyvinyl | 01/10/2006 |
| 0803660 | Polyvinyl | 01/10/2006 |
| 0803661 | Polyvinyl | 01/10/2006 |
| 0704890 | Poultry plucking fingers | 01/04/2007 |
| 0711125 | Machinery parts | 01/04/2007 |
| 0613442 | Welding guns | 01/04/2008 |
| 0612103 | Cleaning jet | 01/10/2009 |
| 0706698 | Ribbons | 01/04/2010 |
| 0712635 | Speaker sets | 01/04/2010 |

\*Unless expressly stated otherwise, all references to the expiry of TCOs in this notice are references to the TCOs in this table and the relevant expiry dates are the dates in this table.

You can find out more about the Legislative Instruments Act on the Attorney-General’s Department website at:

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Administrativelaw\_BackgroundtotheLegislativeInst](http://www.ag.gov.au/www/agd/agd.nsf/Page/Administrativelaw_BackgroundtotheLegislativeInstrumentsAct2003) [rumentsAct2003](http://www.ag.gov.au/www/agd/agd.nsf/Page/Administrativelaw_BackgroundtotheLegislativeInstrumentsAct2003)

Customs and Border Protection is considering options for the future treatment of TCOs under the Legislative Instruments Act.

# Replacement TCOs

On 22 December 2010, a delegate of the Customs and Border Protection Chief Executive Officer declared under section 269J of the *Customs Act 1901* (Customs Act) an intention to

make replacement TCOs for some of those TCOs that have expired already. Specifically, the delegate has declared an intention to make replacement TCOs for TCO 0710336 (Ferrules), 0704890 (Poultry plucking fingers), 0613442 (Welding guns) and 0706698 (Ribbons).

However, the delegate has decided not to declare an intention to make replacement TCOs for the other expired TCOs for the following reasons. TCOs 0803658 (Polyvinyl), 0803659 (Polyvinyl), 0803660 (Polyvinyl) and 0612103 (Cleaning jet) because industry has not used those TCOs in the last 2 years; TCO 0712635 (Speaker sets) because the delegate identified substitutable goods made in Australia; and TCO 0711125 (Machinery parts) and TCO 0803661 (Polyvinyl) because the illustrative descriptive material was insufficient to allow the delegate to properly classify all the goods.

Once a delegate makes a declaration under section 269J, the usual process for assessing and making TCOs follows. Importantly, and provided all the relevant conditions are satisfied, the resulting TCO instrument will have effect from the day that the delegate made the declaration.

The delegate’s declarations will appear in the *Commonwealth of Australia Gazette: Tariff Concessions* on 22 December 2010, which you can find found on the Customs and Border Protection website at: <http://www.customs.gov.au/site/page4402.asp>

Interested parties may lodge an objection to any of the proposed TCOs in the usual way, by using the Approved Form B444. In addition, interested parties may lodge fresh applications for any of the goods by using the Approved Form B443.

# Recovery action

Customs and Border Protection will not seek recovery of any relevant duty foregone since the expiry of these TCOs unless there is evidence that the person who received the concession did so through inappropriate conduct such as fraud.

# In-transit arrangements

Customs and Border Protection will administratively apply in-transit arrangements to goods covered by the expired TCOs where the relevant goods were:

* imported into Australia on or before the date of this notice (22 December 2010), and are entered for home consumption , before, on, or within 28 days after, that day.
* in-transit to Australia on the date of this notice (22 December 2010), and are entered for home consumption before, on, or within 28 days after the day on which they were imported into Australia.

Goods shall be taken to be in transit to Australia if, and only if, they have left for direct shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported.

# Refund claims

Customs and Border Protection does not intend to pay refunds for goods imported into Australia after the expiry of the relevant TCOs. These goods have already been entered for home consumption and no reliance was placed on the concession when imported.

# Integrated Cargo System

Given the unique circumstances in this matter and Customs and Border Protection's approach to recovery action, we will record the expiry of the TCOs in the Integrated Cargo System as the date of this notice (22 December 2010), notwithstanding that the TCOs actually expired on the dates listed in the table above. This should ensure the ICS does not hold future transactions for possible debts accrued since the legal end date of the relevant TCO. Please note that you should not construe anything in this notice or the information in the ICS about the expired TCOs as the Commonwealth waiving any debts accrued because of the operation of the Legislative Instruments Act.

# Enquiries

If you have any questions about this notice, please direct those questions to the Manager, Tariff Concessions on telephone number (02) 6275 6041 or by email to [tarcon@customs.gov.au.](mailto:tarcon@customs.gov.au)

Anthony Seebach National Manager Trade Services Branch CANBERRA ACT

22 December 2010

Attachment A – Expired TCOs

# ATTACHMENT A – EXPIRED TCOs

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| **TCO** | **Wording** |
| 0710336 | FERRULES, wire rope splicing |
| 0803658 | POLYVINYL ALCOHOL MATERIAL, weighing NOT more than 25 g/m2, in rolls |
| 0803659 | POLYVINYL ALCOHOL MATERIAL, weighing more than 25 g/m2 but NOT more than 70 g/m2, in rolls |
| 0803660 | POLYVINYL ALCOHOL MATERIAL, weighing more than 70 g/m2 but NOT more than 150 g/m2, in rolls |
| 0803661 | POLYVINYL ALCOHOL MATERIAL, weighing more than 150 g/m2, in rolls |
| 0704890 | FINGERS, POULTRY PLUCKING, rubber |
| 0613442 | WELDING GUNS OR TORCHES, being ANY of the following:   1. gas metal arc; 2. flux cored; 3. submerged arc; 4. tungsten inert gas; 5. carbon arc gouging; 6. manual metal arc |
| 0612103 | SHOWERS, FELT CLEANING, PAPER OR PAPERBOARD MAKING MACHINE,  traversing jet |
| 0706698 | RIBBONS, THERMAL, polyester film carrier, wound on a plastic core, having BOTH of the following:   1. maximum width 110 mm; 2. maximum length 450 m |
| 0712635 | SPEAKER SETS, MULTI-MEDIA, magnetically shielded, comprising BOTH of the following:   1. power supplies; 2. amplifier |
| 0711125 | PARTS, POULTRY PROCESSING MACHINERY, being ANY of the following:   1. adjusting arms; 2. adjusters; 3. anti rotators; 4. arms; 5. base plates; 6. bird washers; 7. blade holders; 8. blades; 9. blocks; 10. cam guides; 11. cam rollers; 12. cam wheels; 13. carriers; 14. catching arms; 15. cells; 16. clamp bushes; 17. collars; 18. cones; 19. corner wheels; 20. crankshaft handwheel; 21. cutters; 22. cutting edges; 23. cutting segments; 24. cutting wheels; 25. cylindrical knives; 26. detecting plates; (aa) discs;   (ab) eccentric wheels; (ac) end pieces;  (ad) extensions; (ae) feelers; |

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|  | (af) finger discs; (ag) flanges; (ah) funnels;  (ai) guide fittings; (aj) guide rails; (ak) guides;  (al) guiding blocks;  (am) guiding/counterhold plates; (an) handles;  (ao) hashers;  (ap) holders, sleeve; (aq) holders;  (ar) holding plates; (as) housings;  (at) index wheels; (au) inner rings;  (av) intestine release rollers; (aw) joints;  (ax) knife holders; (ay) knives;  (az) leg spreaders; (ba) lifters;  (bb) links;  (bc) motor brackets; (bd) packing horn; (be) peeler rollers; (bf) peelers;  (bg) pipes;  (bh) plastic wheels; (bi) rails;  (bj) releasers; (bk) rings;  (bl) rollerheads; (bm) rollers, spiral; (bn) rollers;  (bo) saddles;  (bp) scraper plates; (bq) screens;  (br) segment holders; (bs) segments;  (bt) sensors; (bu) separators; (bv) silencers;  (bw) sliding spoons; (bx) stabilizers;  (by) stays;  (bz) suction handles;  (ca) suspension splice plates; (cb) tensioners;  (cc) tighteners; (cd) timers;  (ce) toothed wheel; (cf) tracks;  (cg) unit probes; (ch) vacuum pipes; (ci) vacuum tubes;  (cj) water distribution pipes; (ck) water levellers;  (cl) wheels;  (cm) wing cutters;  (cn) wing holders; (co) Y-pieces |