

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.](mailto: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:   1. cast and turned earthenware pottery with a raised slip outline of the design; 2. 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:   1. wattage not less than 13 W and NOT greater than 25 W; 2. 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:   1. colour changing optical fibres; 2. 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:   1. light source; 2. gobo or slide wheel; 3. colour disc wheel; 4. moving mirror assembly; 5. 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:   1. lamps; 2. lamp bases; 3. 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:   1. strip lights; 2. downlights; 3. spotlights; 4. flat lights; 5. stick lights | Item 51 – 9405.40.00 –  Goods, other than of ceramic |

|  |  |  |  |
| --- | --- | --- | --- |
| 9405.40.00 | 9305028 | NIGHT LIGHT, having ALL of the following:   1. automatically activated in the absence of external light; 2. automatically de-activated in the presence of external light; 3. 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:   1. plastic staked light fittings; 2. transformer; 3. 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:   1. callipers; 2. pneumatic disc brakes; 3. 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:   1. combined double diaphragm spring brake actuator; 2. service diaphragm; 3. 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:   1. hydraulically activated clutch; 2. designed minimum power input capacity exceeding 70 kW; 3. at least one forward and one reverse gear ratio; 4. 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:   1. torque rods; 2. tie rods; 3. ball sockets; 4. drag links; 5. columns; 6. 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.