Australian Customs Notice 1998 19

**TARIFF CONCESSION ORDER (TCO) APPLICATIONS**

1. Since introduction of amendments to the Tariff Concession System (TCS) on 15 July 1996, Customs has become increasingly concerned with the inadequacy of TCO applications. The revocation of Commercial Tariff Concession Order (CTCO) Number 8734172 - "The Parts Bylaw" - and subsequent lodging of TCO applications for goods affected by the revocation, provides an opportune time to re-affirm the responsibilities of TCO applicants.
2. The TCS permits reduction of the rate of duty specified in the Customs Tariff. While Customs accepts its responsibility to assist all applicants through the TCO process, it cannot proceed to grant a TCO unless an application meets the core criteria.
3. The emphasis therefore is on TCO applicants satisfying the Chief Executive Officer (CEO) of Customs (or his delegate) at the outset that their goods are entitled to concessional treatment. Applicants must satisfy all requirements of Part XVA of the Customs Act 1901 (the Act), in accordance with the instructions set out in Volume 13 of the Australian Customs Service Manuals, for a TCO to be granted. If the CEO is not satisfied that a TCO should be granted, the normal tariff rate will apply.

28 Day Screening Period for New Applications

1. Section 269H of the Act provides for a 28 day screening period for the delegate to be satisfied that the TCO application meets the criteria set out in s269F and s269FA. This period allows time for the CEO's delegate to confirm:

that the wording proposed by the applicant is acceptable; the tariff classification of the goods,

and be satisfied that applicants have, prior to lodging the TCO application, discharged their responsibility in establishing that local manufacturers of the TCO goods do not exist and that there are reasonable grounds for asserting that the application meets the core criteria, viz that:

*"... on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business".*

1. The screening period is not for TCO applicants to obtain a commencement date for their TCO and, once having established that operative date, to then have an additional 28 days in which to be assisted by the delegate to complete their application prior to it being published in the Tariff Concessions edition of the Commonwealth of Australia Gazette.

Requirements of the Application Form

1. A valid TCO application form must contain complete answers to all the questions at the time the application is lodged with Customs. Incomplete or insufficient applications will be rejected.

Question One

1. The completed application form must, in respect of Question One:
   1. contain a full description of the TCO goods identifying the physical features of the product. Applications should describe the TCO goods or list what they comprise - not state what the TCO goods do. Applications must not use terminology where the use of those terms preclude manufacture by all but the overseas supplying company. For example, stating that a product is covered by a particular patent does not preclude a substitutable product being produced by a local manufacturer.

Applications that use the terms 'assemblies', 'systems', 'devices', 'components', 'modules', 'mechanisms', 'preparations', 'kits', 'sets', 'units', 'parts', or similar collective terminology, without then explaining what the assemblies, systems, etc comprise, will not be accepted;

* 1. where industry terms are used, provide evidence that those terms are widely used throughout the particular industry;
  2. in respect of parts, fully describe the individual parts in order that the tariff classification may be confirmed.

The goods descriptions should relate to the parts to be covered by the TCO and not be a comprehensive description of the complete machine with a brief reference to the parts.

Parts that are listed in TCO applications may be mentioned in their own right in the Customs Tariff, or be parts of general use, and thus classified within a different heading / subheading to the complete good for which they are a part.

It is not sufficient to merely forward a catalogue without identifying the relevant parts therein, nor is it appropriate to identify the parts by reference to part numbers; and

* 1. forward copies of the relevant pages of Standards that are quoted in the TCO application. A Standard should only be used to provide additional descriptions for a particular good.

Customs will only accept officially recognised:

* + 1. Australian Standards;
    2. New Zealand Standards; and
    3. International Standards, being:

ISO Standards, published by the International Organization for Standardization; IEC Standards, published by the International Electrotechnical Commission;

Standards published by other international bodies having similar standing to that of ISO or IEC; and

national or regional standards which, in the absence of an International Standard, are so widely used internationally that it is generally recognised as being the de-facto International Standard.

Question Two

1. The application must, in respect of Question Two, be accompanied by relevant illustrated descriptive material (IDM) and / or a sample. Where IDM such as a catalogue or brochure is forwarded, the goods for which the TCO is sought must be highlighted or identified (for example, by numbering) in the IDM in a clear manner.
2. If the IDM / sample is not available at the time the application is to besubmitted, the application should not be forwarded to Customs.

Question Three

1. For Question Three, it is necessary to show the tariff classification for the particular good covered by the TCO application. If the application is for a number of goods, for example, parts, all the goods that are the subject of the application must have the same classification.
2. Separate TCO applications should be lodged for goods having different tariff classifications. Questions Five and Six
3. The application must, in respect of Questions Five and Six:
   1. be accompanied by written confirmation that applicants have attempted to establish that local manufacturers do not exist.

It is not acceptable to:

* + 1. merely provide evidence to indicate that local manufacturers have been contacted and that applicants are awaiting replies. Replies from local manufacturers are to be obtained prior to submitting, and then forwarded with, the application.

When contacting local manufacturers, TCO applicants must forward the complete proposed TCO wording together with the question, "Do you make substitutable goods?". Factors such as market share or cost have nothing to do with goods being substitutable in terms of the Act;

* + 1. merely cite an existing CTCO / TCO, or cite that the application is a replacement for a CTCO / TCO (revoked due to the Customs initiated revocation programme, for example, 'end use' or 'not a full description') as a reason a TCO should be granted.

CTCOs and TCOs granted before 15 July 1996 were subject to different core criteria. The absence of objections when a concession was originally granted does not mean that local manufacture does not now exist. (Customs is currently reviewing all concessions and revoking those where local manufacture is established);

* + 1. merely indicate that the applicant has had many years in the trade and that to the best of his / her knowledge, there are no producers of substitutable goods;
  1. provide documentary evidence that applicants have attempted to source local manufacturers for all goods that are listed / described. Proof of recourse to the Industrial Supplies Office, Kompass or relevant trade directories are examples of acceptable evidence.

Evidence determining that complete goods are not manufactured in Australia does not necessarily mean that parts for those goods are not locally manufactured.

1. When completing the TCO Application Form, applicants are reminded of the provisions of s234(1) (d) and (g) of the Act, ie:

*"A person shall not:*

* + 1. *knowingly or recklessly:*
       1. *make a statement to an officer that is false or misleading in a material particular: or*
       2. *omit from a statement made to an officer any matter or thing without which the statement is misleading in a material particular;*

*...*

*g. refuse or fail to answer questions or to produce documents ...".*

1. As from the date of this Notice, failure to comply with the above requirements will result in immediate rejection of the application, in accordance with s269H (1) of the Act, (and re-inforced by instruction number 3 of the TCO Application form), with consequential loss of the TCO operative date.
2. Enquiries concerning this Notice may be directed to the Director, Tariff Concessions on 02 62756383.

Marion Grant National Manager Industry

for Chief Executive Officer Canberra ACT

5 March 1998