

Australian Customs Service

Tariff concessions

Volume 13

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FOREWORD

This is the sixth major reprint of Australian Customs Service Manual Volume 13, which has been revised to reflect current practice.

This manual comprises the procedures and principles followed by the Tariff Concessions Branch of the Australian Customs Service as they normally apply to the administration of the Tariff Concession System.

The purpose of the manual is to assist persons to lodge Tariff Concession applications, object to Tariff Concession applications, and to lodge requests for the revocation of Tariff Concession Orders.

The manual is not intended to be read as a mandatory set of instructions. The Administrative Decisions (Judicial Review) Act (Section 5(2)(f)) provides that *the improper exercise of a power shall be construed as including a reference to: an exercise of a discretionary power in accordance with a rule of policy without regard to the merits of a particular case.* Customs Officers are required to make decisions based on the facts of each individual case using the principles given in the manual.

The Tariff Concessions System is one of several provisions which reduce or remove duty on certain imported goods. For other provisions, refer to Schedule 4 of the Tariff.

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Division 1: Introduction

Section 1: Objectives of the Tariff Concession System (TCS)

- 1.1.1 The TCS assists industry to become more internationally competitive and reduces costs to the general community by the reduction of duties where there is no local industry to protect.
- 1.1.2 Customs objective is to make Tariff Concession Orders (TCOs) where the criteria for issuing those Orders are met, while administering the TCS in an efficient and effective manner, and providing well reasoned decisions.
- 1.1.3 The TCS is administered by Customs under comprehensive legislation contained in Part XVA of the *Customs Act 1901*.
- 1.1.4 Once granted, a TCO will be available to all importers of goods falling to that tariff classification and meeting the description set out in the Order, until it is revoked.
- 1.1.5 TCO's are available as hardcopy in Part 1 of the Schedule of Concessional Instruments (SCIs), and in electronic format by way of the Tariff And Precedents Information Network (TAPIN).

Section 2: Tariff Concessions and the Customs Tariff

- 1.2.1 The rates of duty in the *Customs Tariff Act 1995* are set principally to assist local manufacturers compete with imports.
- 1.2.2 The rates are normally decided by the Government following inquiry and report by the Productivity Commission formerly the Industry Commission. This involves studies of Australian industry which may be both time consuming and expensive.
- 1.2.3 Classifications in the *Customs Tariff Act 1995* can be broad, and frequently goods for which no substitutable goods are produced in Australia may be classified with goods having assistance rates of duty.
- 1.2.4 The TCS reduces pressure for frequent industry assistance reviews as its flexibility allows levels of assistance provided by the Customs Tariff to be removed or reinstated to reflect changes in Australian manufacturing.

Section 3: Concessional Rates of Duty

- 1.3.1 Schedule 4 to the Customs Tariff details the concessional items and the rates of duty that apply to them. Most TCOs are issued under Item 50 and most of the information presented in this manual relates to the administration of this Item.
- 1.3.2 The rate of duty applying to most Tariff Concessions is 3%. Only TCOs for consumption goods, which are covered by Item 50A, are rated at "Free". To be eligible for this provision, goods must be categorised, as "consumption goods" in accordance with the United Nations Statistical Papers entitled "Classification by Broad Economic Category".

Division 2: Interpretation of Terms

Section 1: General

- 2.1.1 Where, after considering an application for goods the CEO, or delegate, is satisfied that, on the day the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business he / she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.
- 2.1.2 In general terms a TCO will only be granted where it is proven that substitutable goods are not made in Australia.
- 2.1.3 Additionally, the CEO or delegate shall refuse to make a TCO if the making of the order would be contrary to an international agreement.
- 2.1.4 The CEO must not make TCOs for goods that are excluded by Regulation from consideration under the TCS. Customs Regulation 185 and Schedule 2 to Customs Regulations set out those goods which are not eligible for concessional entry.
- 2.1.5 A reference to a delegate means an officer or officers to whom the CEO has delegated powers in respect of the TCS.

Section 2: Core Criteria

- 2.2.1 The relevance of the core criteria stems from the requirement to make a decision on an application for a TCO. S269P of the *Customs Act 1901* provides that the CEO must, within 150 days from gazettal of a valid application, reach a decision as to whether or not he / she is satisfied that the application meets the core criteria.
- 2.2.2 The delegate should be satisfied on the balance of probabilities that the application meets the core criteria, rather than beyond reasonable doubt. The delegate should examine the relevant evidence that is presented before him/her and exercise judgement on those facts based on the delegate's knowledge and understanding of the core criteria.
- 2.2.3 The sole ground for a TCO is that there are no substitutable goods produced in Australia. The core criteria specifies:
- "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."
- 2.2.4 The core criteria contains a number of elements which need to be addressed by the delegate in order that he / she is able to determine whether or not a TCO is granted. They are:
- What are the substitutable goods, if any?
 - Are those substitutable goods produced in Australia in terms of s269D of the *Customs Act 1901*?
 - Is the production in the ordinary course of business?

Section 3: Substitutable Goods

- 2.3.1 Closely aligned to the core criteria is Customs interpretation of substitutable goods. Customs takes a practical and realistic approach to the question of substitutability.
- 2.3.2 Substitutable goods are defined in terms of physical use in s269B of the *Customs Act 1901*. They are:
- "...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;"
- 2.3.3 It is important to note that the definition specifies "corresponds with" a use, not identical use. The substitutability test therefore requires a focus on the locally manufactured goods and whether those goods are in fact used or are capable of being used in a manner which corresponds with a use to which the goods the subject of the application can be put.
- 2.3.4 The reference to design use, in relation to goods the subject of the TCO application, reflects the fact that there may be new technology goods that have not actually been used previously. Even though there may be no evidence of actual use in respect of these goods, there will be an objective purpose for the good which can be ascertained from illustrative descriptive material, specifications and similar literature. A realistic approach to the good's purpose should be taken in this regard, since a claim that a computer can be used as an anchor might be possible, but hardly plausible.
- 2.3.5 In the case of a TCO application for goods having multiple functions, it would be sufficient in terms of the substitutability test if the locally produced good was used for only one of those functions.
- 2.3.6 In its interpretation of substitutability Customs will have regard to AAT decisions as precedents.
- 2.3.7 Other factors when determining substitutability are:
- (1) Quality distinctions will not be a factor, for example:
 - in the issue of quality wood barrels for red wine - American oak versus Australian wood.
 - (2) Specifically designed components, for example:
 - if a locally produced part for a washing machine cannot fit into an imported washing machine, that is not grounds to say that locally produced goods do not exist.

Section 4: Parts for Complete Goods

- 2.4.1 General
- (1) For the purposes of tariff classification and consideration for concession, a part or component incorporated into a complete item is not separately identified and therefore loses its identity as a part.

- (2) It follows, then, that it is not possible to issue a TCO for parts or components incorporated into other goods. Likewise, parts or components incorporated into other goods may not be entered under a TCO which would otherwise apply to those parts or components if they were imported separately.

Section 5: Goods Produced in Australia

- 2.5.1 Goods can only be considered to be "produced in Australia" for the purposes of the core criteria under the conditions set out in s269D of the *Customs Act 1901*.
- 2.5.2 S269D (1) of the *Customs Act 1901* states that goods, other than unmanufactured raw products, shall not be taken to have been produced in Australia unless:
- the goods were wholly or partly manufactured in Australia; and
 - not less than 1/4 of the factory or works costs of the goods is represented by the sum of:
 - (i) the value of labour of Australia;
 - (ii) the value of materials of Australia; and
 - (iii) the factory overhead expenses incurred in Australia in respect of the goods.
- 2.5.3 S269D (2) of the *Customs Act 1901* states that goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.
- 2.5.4 The legislation does not specify as to what operation constitutes a substantial process in the manufacture of the goods, but rather what does not constitute a substantial process. Operations that do not meet the terms of the legislation are:
- operations to preserve goods during transportation or storage;
 - operations to improve the packing or labelling or marketable quality of goods;
 - operations to prepare goods for shipment;
 - simple assembly operations;
 - operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.
- 2.5.5 Defining a phrase such as "substantial process" by way of an exclusion list means that the delegate will be required to make a value judgement on a case by case basis, in deciding whether a claimed process which falls outside the processes that are listed in section 2.5.4 is considered substantial or not.
- 2.5.6 Of the operations that are excluded from being a substantial process, a "simple assembly operation" also involves a value judgement on the part of the delegate. There are no legislative guide-lines as to what constitutes a simple assembly operation, and therefore consideration will have to be given to the nature of the operation and the goods in question.

- 2.5.7 The factory or works costs of goods includes:
- the cost of imported materials received into factory, including any duties or other taxes paid or payable in respect of such materials;
 - the cost of Australian produced materials received into factory;
 - the value of labour in Australia; and
 - factory overhead expenses, which includes all such expenses directly relating to the production of the goods in question, but excludes such costs as administrative overheads not directly related to the production of the goods, for example, selling expenses, profit, etc.
- 2.5.8 As per section 2.5.2, in order to meet the requirements of s269D (1) of the *Customs Act 1901*, at least 1/4 of the factory or works costs must be represented by the cost of Australian produced materials received into the factory, the value of labour in Australia, and the factory overhead expenses.
- 2.5.9 In assessing whether expenses should properly be regarded as factory or works costs, regard is had to normal accounting principles.

Section 6: The Ordinary Course of Business

- 2.6.1 S269E of the *Customs Act 1901* defines the ordinary course of business in terms of a number of criteria that need to be satisfied before a person can be said to be producing goods in Australia in that manner.
- 2.6.2 It should be first noted that the legislation differentiates between substitutable goods that are so called "normal" goods and those which are "made to order capital equipment".
- 2.6.3 "Normal" goods are taken to be produced in Australia in the ordinary course of business if:
- they have been produced in Australia in the 2 years before the application was lodged; or
 - they have been produced, and are held in stock, in Australia; or
 - they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged,
- and a producer in Australia is prepared to accept an order to supply them.
- 2.6.4 Note that the definition of ordinary course of business, as it relates to "normal" goods, requires a local manufacturer to produce evidence of actual production of substitutable goods, not merely a stated intention to do so. It is not enough for a local manufacturer to only declare that he / she could produce the goods.
- 2.6.5 Also note that in addition to providing evidence of actual production, the local manufacturer has to be prepared to accept an order to supply the substitutable goods. This does NOT mean that the local manufacturer must be prepared to accept any particular order, or an order from the applicant/importer.

Section 7: Made to Order Capital Equipment

- 2.7.1 Made to order capital equipment is defined as being a particular item of capital equipment that is made in Australia on a one off basis to meet a specific order rather than being in regular or intermittent production. Goods that are produced in quantities that indicate a production run will not be regarded as "made to order" capital equipment.
- However, the production of two large dam spillway valves made to specific order on a one off basis would still constitute made to order capital equipment.
- 2.7.2 Capital equipment is itself defined in S.269(B)1 of the *Customs Act 1901* as being goods which, if imported into Australia, would be classified within Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1995*.
- 2.7.3 Goods that are "made to order capital equipment" are taken to be produced in Australia in the ordinary course of business if a producer:
- has made goods requiring the same labour skills, technology and design expertise in the 2 years before the application was lodged; and
 - could produce the substitutable goods with existing facilities; and
 - is prepared to accept an order to supply the substitutable goods.
- 2.7.4 Unlike the definition of ordinary course of business for "normal" goods, the definition of ordinary course of business as it relates to goods that are "made to order capital equipment", does not require a local manufacturer to have made substitutable goods. It only requires the local manufacturer to demonstrate that he / she has the infrastructure to make goods that require similar expertise and technology to those that are substitutable to the goods specified in the TCO application.
- 2.7.5 A claim by a local manufacturer that he / she would be willing to build a new plant or enhance an existing plant is not valid for the purposes of objecting to a TCO application.
- 2.7.6 As with "normal" goods, a local manufacturer has to be prepared to accept an order to supply the substitutable goods for "made to order capital equipment".

Section 8: Use of Trade Names, Model or Part Numbers

- 2.8.1 S269SJ (1) of the *Customs Act 1901* directs that Customs only make TCOs that are described in generic terms. As there is no definition of generic provided in the legislation, the common or dictionary definition must be used. In short, this indicates that the description must be general rather than specific or special, and refer to the "genus" or type of goods.
- 2.8.2 S269SJ (1A) of the *Customs Act 1901* further qualifies the term generic by specifying that it does not include descriptions that indicate the goods are of a particular brand or model, or that a particular part number applies to the goods.

Section 9: TCOs Described by Reference to Intended End Use

- 2.9.1 S269SJ (1) of the *Customs Act 1901* directs that Customs not make TCOs that are described in terms of their intended end use.
- 2.9.2 TCOs that are described in terms of intended end use conflict with the free availability of a TCO to all importers of those goods.

Section 10: The Excluded Goods Schedule (EGS)

- 2.10.1 Within certain classes of goods there exists a wide and comprehensive range of both Australian made and imported goods which, notwithstanding differences in character, construction, quality, price, etc., basically compete with each other in the market place. Such goods are excluded by Regulation from concessional entry.
- 2.10.2 Among those goods excluded are foodstuffs, apparel, footwear, jewellery and furniture. A complete list can be found in Regulation 185 and Schedule 2 to the Customs Regulations (the "Excluded Goods Schedule"). Refer to Appendix B.
- 2.10.3 Amendments to this Schedule are made at the request of the Minister of Industry, Tourism and Resources, after consultation with the appropriate Ministers.
- 2.10.4 Tariff Concession applications received for goods on the EGS will be rejected.
- 2.10.5 In extraordinary circumstances, it may be possible to have particular goods removed from the EGS. An application for a TCO in respect of such goods will only be considered after the Minister's approval and the amended regulation has been put in place. Applications cannot be lodged in anticipation of the Minister's approval.

Division 3: The Application Process

Section 1: The Application

- 3.1.1 An application for a TCO must be submitted on the approved form, "Application for a Tariff Concession Order (TCO)" - B443 (s269F of the *Customs Act 1901* refers). Application forms are available from Customs Houses throughout Australia, and are also available on the internet.
- 3.1.2 To be valid under the terms of s269F of the *Customs Act 1901*, the application must contain the information required by the approved form.
- 3.1.3 An application that does not present the required information cannot be accepted as a valid application
- 3.1.4 Invalid applications will be rejected and the applicant notified accordingly. Rejected (invalid) applications will not be further processed. If a subsequent, valid application is successful, the operative date of the concession will be the date on which the subsequent application was lodged, NOT the date on which the initial, invalid application was lodged.
- 3.1.5 Applications that are deemed valid are published in the Gazette.
- 3.1.6 A TCO can only be made for the goods specified in the application and keyed to the tariff classification that in the opinion of the CEO applies. The applicant may notify the CEO that he / she proposes to amend the application by altering the description (but not including the tariff classification) contained in the application following consideration of submissions lodged by local manufacturers.
- 3.1.7 Any change to the tariff classification after initial publication within the Gazette, will be considered under the terms of s269N of the *Customs Act 1901* - Reprocessing of TCO applications. (See Div.3.12)
- 3.1.8 TCO applications for used or second hand goods require an application to be lodged in the same manner as if the goods were new.
- 3.1.9 An application may be lodged in accordance with the instructions contained in the application form.

Section 2: The Applicant

- 3.2.1 The applicant has a responsibility to establish that on the basis of:
- all information that he or she has, or can reasonably be expected to have; and
 - all inquiries that he or she has made, or can reasonably be expected to make,
- there are reasonable grounds for asserting that there are no substitutable goods produced in Australia.

- 3.2.2 Also prescribed is a requirement that, while screening the application, the delegate:
- has to be satisfied that the applicant has discharged his or her responsibility under s269FA of the *Customs Act 1901*; and
 - be unaware of any Australian producer of substitutable goods in accordance with s269H (1) of the Act.
- 3.2.3 The applicant must submit a complete application in an approved form. The form should be accompanied by illustrative descriptive literature and / or a sample(s) of the goods to which the application relates.
- 3.2.4 The application process requires applicants to identify producers of substitutable goods. It is anticipated that this information will come from the applicant's efforts to source goods and his / her knowledge of the uses of the imported goods.
- 3.2.5 Enquiries to potential local producers of substitutable goods must allow adequate time for the manufacturer to consider the enquiry and respond. A period of ten working days from the date of receipt is considered adequate.
- 3.2.6 If no response to an initial approach has been received in that time, the applicant may assume that the manufacturer is not concerned by the application.
- 3.2.7 Any response by a potential local manufacturer indicating that they produce substitutable goods locally must be resolved before lodgement of the application, OR a reasoned case as to why the applicant feels the application should proceed must be provided.
- 3.2.8 Certain bodies e.g. Local or State Government, require purchases to be made following the calling of tenders or quotations. An open tender process meets the requirement for the applicant to make enquiries to establish potential local producers.
- 3.2.9 However, the failure of Australian manufacturers to submit tenders or quotes does not mean that a TCO would automatically follow.
- 3.2.10 Where an application has been refused under s269P (1) or s269Q (1) of the *Customs Act 1901*, the applicant has the right to have the decision reviewed. Review provisions are described in Division 5.

Section 3: The Local Manufacturer

- 3.3.1 Local manufacturers may oppose the granting of a concession where they consider that in the ordinary course of business they produce substitutable goods.
- 3.3.2 Sections 269D and 269E of the *Customs Act 1901* provide an interpretation of "goods produced in Australia" and "the ordinary course of business" for the purposes of the TCS.
- 3.3.3 When responding to a notice in the Gazette, manufacturers must lodge a formal submission of objection in an approved form. The submission must contain the information as the form requires. The approved form "Submission Objecting to the Making of a Tariff Concession Order (TCO)" - B444 s available from Customs Houses throughout Australia and is also available on the Internet.

- 3.3.4 Where producers have either commenced or ceased manufacture of the goods during the processing of an application, the TCS provides for TCOs to be made for the period in which local manufacture was not being undertaken. Refer to section 3.11.

Section 4: The Delegate

- 3.4.1 Within 28 days of lodgement of an application a delegate is required to decide whether the application complies with s269F of the *Customs Act 1901*. If the delegate agrees that the application complies, the application will be gazetted. If the application does not comply with the legislation the application will be rejected and the delegate will notify the applicant in writing, giving the reason(s) for the rejection.
- 3.4.2 TCO applications will be advertised in the Gazette when the delegate is satisfied that they comply with s269F of the *Customs Act 1901*. The Gazette notice date will mark the commencement of the 150 day period allowed for determining an application.
- 3.4.3 An application made under s269F of the *Customs Act 1901* must be considered by the delegate under s269P of that Act. Where the applicant satisfies the delegate that the core criteria has been met, a TCO must be made.
- 3.4.4 Where the delegate is not satisfied that the core criteria has been met then a notice of refusal under s269P (1) or s269Q (1) of the *Customs Act 1901* must be provided to the applicant.
- 3.4.5 If the delegate fails to make a decision in respect of an application within 150 days after the gazettal day, the delegate is taken to have made a decision that he / she is not satisfied that the application meets the core criteria.

Section 5: Gazettal of Proposed Tariff Concession Orders

- 3.5.1 Once an application has been accepted as valid, the delegate will arrange for the proposed TCO to be advertised as soon as practicable in the Commonwealth Gazette.
- 3.5.2 Gazettal of a proposed TCO provides an opportunity for all parties who may be affected, to have their views taken into consideration before a decision is made on the application. This reflects the Government's policy that the system should be open to public scrutiny, equitable in the decision making process and provide the most predictable and certain environment for those sections of the community who may be affected by any proposed TCO.
- 3.5.3 The Gazette provides details of:
- the Customs reference number;
 - a description of the goods, including the tariff classification, for which a TCO is proposed;
 - the prescribed item of Schedule 4 to the Customs Tariff for which the TCO is sought;

- the commencement date;
- the expiry date, where applicable;
- the stated use(s) of the goods;
- the applicant; and
- (where relevant) the importer.

3.5.4 Refer to Division 6 for information on purchasing the Commonwealth Gazette. Interested parties may view the Gazette at major Customs Houses.

Section 6: Objection to a Gazetted Application

3.6.1 By Local Manufacturers

- (1) It is the responsibility of local manufacturers to examine advertised applications and consider whether they produce substitutable goods in the ordinary course of business.
- (2) Australian manufacturers who wish to contest the granting of a TCO for the goods advertised are invited to lodge a submission, in writing, to Customs within 50 days after the day of the publication of the Gazette.
- (3) Any such submission should be in an approved form "Submission Objecting to the Making of a Tariff Concession Order (TCO)" - B444. S269K of the *Customs Act 1901* refers. Submissions must include all information as the form requires.
- (4) A submission may be lodged in accordance with the instructions contained in the Objection form.

3.6.2 Follow up Action by Customs and Applicant

- (1) In relation to a particular application Customs may invite submissions from a person they consider may have reason to oppose the making of the TCO. Customs may also seek other information, documents or material from any person where they feel it is relevant to the consideration of the application.
- (2) After the expiry of the gazettal period the delegate will inform the applicant, in writing and within 14 days, of any local manufacturer's objection including a short statement of the grounds on which each objection is based. The applicant has the opportunity to propose an amendment to the application by narrowing the description of goods (within the gazetted tariff classification) within 28 days after Customs provides notification of the objections.
- (3) The delegate must, within 7 days of receipt of the proposed amendment, consider the amendment and inform the applicant that the delegate is satisfied or is not satisfied with the proposed wording. If the delegate is not satisfied with the proposed wording he / she must provide the applicant with the reasons for being not satisfied. S269L (4) of the *Customs Act 1901* refers.

- (4) If the delegate:
- considers that the proposed amendment does not narrow the description of the goods; or
 - is of the opinion that the proposed amended description may cause the goods to be covered by a different tariff classification to that which was originally gazetted,
- the delegate must continue to consider the application as it was originally made. S269L (4A) of the Customs Act 1901 refers.
- (5) When the delegate is satisfied with the proposed amended description, he / she must, within 14 days:
- notify each objector of the proposed amended description, and further invite that objector to respond to the proposed amendment within 14 days; and
 - publish the proposed amended description in the Gazette and invite any person to make a submission in response to the proposed amendment within 14 days of publication.
- (6) If the original objector(s) does not respond to the proposed amended description, he / she is taken as wishing to proceed with the objection.
- (7) The delegate will consider objections in accordance with the procedures outlined in sections 2.4, 2.5, 2.7 and 3.3. Where the claims of a local manufacturer are not accepted advice in writing of the reasons for the decision will be given.
- (8) If, at any time after consideration of objections and proposed amended description, the delegate is satisfied that a TCO should not be made, the delegate will notify the applicant in writing of the reason(s) for the decision.

Section 7: Approval Procedure

- 3.7.1 After consideration of objections and the expiry of all time limits for amendment, if the delegate is satisfied that no matters have been raised which require further consideration, the delegate will consider the application under s269P of the *Customs Act 1901* and where satisfied must:
- make a written order in respect of the goods; and
 - arrange for, as soon as practicable, the order to be published in the Schedule of Concessional Instruments and notified in the Gazette; and
 - arrange for the update of the COMPILE reference file and TAPIN.
- 3.7.2 TCO legal instruments are held in a Customs register.
- 3.7.3 All orders made under the TCS will be notified in the Gazette, giving details of:
- the goods, including the tariff classification, under which an application has been considered and to which the TCO applies;
 - the prescribed Item in Schedule 4 to the Customs Tariff which will apply to the goods;
 - the commencement date of the TCO;

- the expiry date, where applicable; and
- the Customs reference number.

3.7.4 Failure by Customs to notify decisions in the Gazette does not affect the validity of any decision or of any order to which it has led.

3.7.5 Customs will notify the applicant in writing of the decision.

Section 8: Refusals

3.8.1 Where applications are refused, applicants will be advised in writing, outlining the reason for the decision, e.g., details of Australian manufacturers who are considered to produce substitutable goods.

Section 9: Applications Deemed Lodged in Certain Circumstances

3.9.1 The delegate may make a declaration in writing that consideration should be given to the making of a TCO despite the absence of an application. The declaration must also include the proposed description of goods (including the tariff classification).

Section 10: Commencement Date of TCOs

3.10.1 TCOs will operate with effect from the day on which an application lodged in accordance with s269F of the *Customs Act 1901* was received by Customs in accordance with the instructions contained on the form. There is no provision to backdate a TCO.

3.10.2 It is recommended that importers address the question of a TCO before ordering goods. Applications should be lodged as soon as practicable as refunds of duty cannot be paid on goods entered on a day prior to the operative date of the TCO. The day on which goods are entered for home consumption is set out in s71A of the *Customs Act 1901*.

Section 11: Effect of Commencement or Cessation of Local Manufacture

3.11.1 S269SA (1) and (2) of the *Customs Act 1901* provide for the termination date and operative date of a TCO to be fixed in circumstances where an Australian producer commences or ceases production during the processing of the application.

3.11.2 S269SA (1) of the *Customs Act 1901* provides for the granting of a TCO with effect until the day before local manufacture of substitutable goods commences.

3.11.3 S269SA (2) of the *Customs Act 1901* provides for the granting of a TCO with effect from the day that local manufacture of substitutable goods ceases.

Section 12: Reprocessing

- 3.12.1 The processing of a TCO application must recommence in situations where the CEO is satisfied that:
- because of an amendment of the Customs Tariff;
 - with regard to a decision of a court, or the AAT; or
 - a tariff classification originally Gazetted is considered to be wrong,
- the tariff classification originally stated in the Gazette no longer applies to the goods the subject of the application.
- 3.12.2 Reprocessing will also occur where the CEO is satisfied that there was a transcription error in the description of goods or the tariff classification, when the CEO published the notice in the Gazette.
- 3.12.3 Customs will notify the applicant and any persons from whom submissions have been received or sought, that it is necessary to reprocess the application. A new notice will be published which will substitute for the original notice. The operative date will not be affected by reprocessing.

Section 13: Interpretation of TCOs

- 3.13.1 Officers in Regions dealing with Customs Entries (as distinct from Tariff Concessions, Canberra) in each State office are responsible for interpreting the coverage of TCOs.
- 3.13.2 Central Office Tariff Classification Section, as part of the Commercial Division, provides internal interpretative advice on concession order matters to the Tariff Concessions Section.

Division 4: Revocation of TCOs

Section 1: Reasons for Revocation

- 4.1.1 Item 38 (1) of the *Customs Amendment Act 1996* specifies:
"In spite of subsection 20 (1) of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992*, after the commencing time, the revocation of a CTCO in force immediately before that time is to be decided under the Customs Act as amended by this Act as if it were a TCO made under the Customs Act as amended by this Act."
- 4.1.2 Item 38 (1) directs that although s20 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* (No. 89 of 1992), preserves existing CTCOs made under a previous edition of Part XVA of the Customs Act, the revocation of such CTCOs is now to be decided under the legislation that is currently in force for TCOs.
- 4.1.3 As the revocation of a CTCO is to be decided as if it were a TCO, the procedures set out in Division 7 will apply to either type of concession.
- 4.1.4 It should also be noted that revocation requests for CTCOs must be lodged on the approved form, "Request for Revocation of a Tariff Concession Order (TCO) or Commercial Tariff Concession Order (CTCO)" - B441(7/96). Requests not lodged on the approved form will not be accepted.
- 4.1.5 The core criteria for the existence of a TCO is solely the non existence of substitutable goods. The core criteria of s269C of the *Customs Act 1901* states:

"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."
- 4.1.6 Where an existing TCO no longer meets the core criteria either a local manufacturer of substitutable goods or Customs may seek to revoke the TCO. Refer to section 4.7 for Customs initiated revocations.
- 4.1.7 Revocation may also be necessary where:
- a tariff classification change occurs; or
 - a decision of a court or of the AAT is received in regard to a tariff classification decision; or
 - a transcription error has occurred in the description of goods the subject of the TCO including the tariff classification.

Section 2: Requests for Revocation of TCOs

- 4.2.1 Requests for the revocation of a TCO must be lodged on the approved form, "Request for Revocation of a Tariff Concession Order (TCO) or Commercial Tariff Concession Order (CTCO)" - B441. The form is available from Customs Houses throughout Australia. It is also available on the Internet. Requests that are not

lodged on the approved form will not be accepted. The submission must contain all the information that the form requires.

- 4.2.2 A request for revocation may be lodged in accordance with the instructions contained in the Revocation request form.

Section 3: Considerations of the Delegate

- 4.3.1 Before deciding whether a TCO should be revoked the delegate will need to be satisfied that the claims of a local manufacturer are legitimate and substantiated and that the goods being produced are in fact "goods produced in Australia" in "the ordinary course of business" as defined by s269D and s269E of the *Customs Act 1901* respectively.
- 4.3.2 The delegate must then decide whether or not he / she is satisfied that on the day the request for revocation was lodged, if the TCO were not in force, and an application for that TCO were to be made, the TCO would not be granted.
- 4.3.3 A delegate may see a need to visit the manufacturer's premises before making a decision. Should the delegate require any further information he / she should invite, in writing, the local manufacturer or any other party to submit the information in writing.

Section 4: Date of Revocation

- 4.4.1 A revocation comes into force on the day on which the request to revoke the TCO was lodged.

Section 5: Notification

- 4.5.1 As soon as practicable after a decision is made, the delegate must notify the decision in writing to the applicant who sought the revocation. The delegate must also inform all interested persons of the decision by publishing the decision in the Gazette.

Section 6: Publication

- 4.6.1 Issue of the relevant reprint page of the Schedule of Concessional Instruments will be arranged as soon as practicable after the decision is made.
- 4.6.2 Failure by Customs to notify decisions in the Gazette does not affect the validity of any decision or of any order to which it has led.

Section 7: Customs Initiated Revocations

- 4.7.1 Sections 269SD (1AA) and (1AB) of the *Customs Act 1901* refer. They empower Customs to revoke existing TCOs on its own initiative on the basis that if an application were to be received now for that TCO, it would not be granted.
- 4.7.2 Customs also will revoke the following categories of TCOs:

- that haven't been used for over two years - s269SD (1A) of the *Customs Act 1901* refers;
- that are now keyed to free rates in Schedule 3 of the Tariff - s269SD (1) of the *Customs Act 1901* refers;
- that are written in terms of intended end use - s269SJ (1) of the *Customs Act 1901* refers; and
- that are written in other than generic terms - s269SJ (1) and (1A) of the *Customs Act 1901* refer.

4.7.3 A notice of intention to revoke a TCO will be published in the Gazette.

- (1) The CEO will invite any interested party to lodge a written submission relating to the proposed revocation within 28 days of the Gazette notice.
- (2) The CEO must decide within 60 days of publication of the Gazette notice whether or not to revoke - s269SC (1) and 269SD (1AB) of the *Customs Act 1901* refer.

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

- (1) Customs will need to verify that locally produced goods meet the 25% content requirement and have been made during the two years preceding the TCO application or the alternative periods set out in s269E of the *Customs Act 1901*.
- (2) Revocation will take effect from the date of publication of the notice of intention.

4.7.5 Revocations that are Customs initiated are appellable before the AAT.

Section 8: In Transit Provisions

4.8.1 When a TCO is revoked under S269SC (3) or (4) (at the request of a local manufacturer) or S269SD (1AB) (Customs initiated - local manufacturer sourced) or (1A) (Customs initiated - not used in the previous 2 years), it may continue to be claimed in certain circumstances:

- in respect of goods being imported (arrived) but not having been entered for home consumption, prior to revocation - the goods must be entered for home consumption within 28 days of the date of the revocation decision; or
- in respect of goods being "in transit", that is, the goods have left for direct shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported, prior to revocation - the goods must be entered for home consumption within 28 days of being imported (arrival) into Australia.

4.8.2 A further "in transit" provision exists for made to order capital equipment, on the proviso that Customs is satisfied that a firm order for goods that are deemed to be made to order capital equipment had been placed before the date that the TCO was revoked. Made to order capital equipment is defined at section 2.7.

4.8.3 In transit provisions DO NOT apply to TCO's revoked for end use or non - generic descriptions, or due to a "Free" Tariff rate or amendment to the Excluded Goods Schedule.

Section 9: Post Action

- 4.9.1 Post action will apply where a TCO is revoked but was used during the period Customs was considering the revocation request.

Division 5: Avenues For Review

Section 1: General

5.1.1 As provided for by s269SH of the *Customs Act 1901*, affected persons aggrieved by decisions to refuse, make, revoke or refuse to revoke TCOs may request the reconsideration of the decision, not later than 28 days after gazettal of the decision. A request for reconsideration must be in writing and include the grounds on which the objection is being raised.

5.1.2 A request for reconsideration may be lodged by:

- posting it by prepaid post to:

The National Manager, Tariff Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601; or

- delivering it to the ACT Regional Office located at Customs House, Canberra
- forwarding it by facsimile to:

The National Manager, Tariff Branch
Facsimile No. (02) 6275 6376

- e-mailing it to tarcon@connect.net.au

Section 2: The Internal Review Process

5.2.1 Where a review officer reconsiders a decision made on a TCO application, he / she must decide, not later than 90 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute another decision in its place. In the case of a review of a decision on a request for revocation, the decision must be made within 60 days.

5.2.2 In undertaking a review of a decision, the review officer may only have regard to the application or request for revocation, and any submissions, information, documents and materials which the decision maker was entitled to take into account in considering the initial application or request, and any new matter produced to the review officer within 28 days after notification of the original decision in the Gazette.

5.2.2 If the review officer fails to make a decision on a review within the time allowed, he or she is taken to have made a decision to affirm the original decision.

5.2.3 As soon as practicable after a decision is made, the review officer must notify the applicant for reconsideration, in writing, of the decision and publish a notice in the Gazette to inform other interested parties. Any request for review will be published in the Gazette as soon as practicable after receipt.

Section 3: AAT Review

- 5.3.1 Persons that are affected by decisions to reject, refuse, make, revoke or refuse to revoke TCOs may seek recourse before the AAT.
- 5.3.2 In most instances internal review is a mandatory precondition to AAT review. Exceptions to the internal review precondition are:
- a decision to reject a TCO application under s269H or s269HA of the *Customs Act 1901*; and
 - Customs initiated revocation decisions under s269SD of the *Customs Act 1901*.
- 5.3.3 The AAT is an independent body set up by Government to review a range of Government decisions. In TCO matters it normally comprises a three member panel chaired by a lawyer. The other members usually have commercial experience. The AAT conducts a complete and independent review of the decision by Customs after hearing evidence and submissions from the applicant, from Customs, and from any other parties who are joined to the AAT application.
- 5.3.4 Anyone whose interests are affected by the Customs decision can seek to be joined. Once joined a party can lead evidence and make submissions to the AAT. Persons who wish to be joined as a party to the AAT proceedings should apply to the AAT registry to which the request for review was lodged.
- 5.3.5 Persons who wish to seek recourse before the AAT should apply directly to the AAT registry in the capital city of their State or Territory. The address for the AAT is GPO Box 9955 in the Capital City of each State or Territory except the Northern Territory (which is covered by Brisbane).

Canberra ACT 2601	telephone: 02 6243 4611 facsimile: 02 6247 0962
Sydney NSW 2001	telephone: 02 9391 2400 facsimile: 02 9283 4881
Melbourne Vic 3001	telephone: 03 9282 8444 facsimile: 03 9282 8480
Brisbane Qld 4001	telephone: 07 3361 3000 facsimile: 07 3361 3001
Adelaide SA 5001	telephone: 08 8201 0600 facsimile: 08 8201 0601
Perth WA 6001	telephone: 08 9327 7200 facsimile: 08 9327 7299
Hobart TAS 7001	telephone: 03 6232 1712 Facsimile: 03 6232 1701

Division 6: Commonwealth Gazette

Section 1: Tariff Concessions Edition

6.1.1 Tariff Concession legislation requires Customs to publish in the Commonwealth of Australia Gazette details of Tariff Concession activity.

6.1.2 Customs publishes details of TCO activity such as:

- Applications for TCOs - s269K (1) of the *Customs Act 1901*;
- Withdrawal of applications - s269G (3) of the *Customs Act 1901*;
- Notification of decisions on applications - s269R (1) of the *Customs Act 1901*;
- Notification of revocation request decisions - s269SE (1) and (2) of the *Customs Act 1901*;
- Determinations relating to factory and works costs - s269D (4) of the *Customs Act 1901*;
- Reconsideration of decisions - s269SH (10) of the *Customs Act 1901*;
- Revocation of prescribed goods - s269SJ (3) of the *Customs Act 1901*;
- Requests for revocation - s269SC (1A) of the *Customs Act 1901*; and
- Requests for reconsideration of decisions (Internal Review) - s269SH (3A) of the *Customs Act 1901*;

6.1.3 The Tariff Concessions edition of the Gazette is published weekly and can be obtained by subscription from Ausinfo, Canberra. Orders for the Gazette should be placed to:

Ausinfo, Mail Order Sales,
GPO Box 84
CANBERRA ACT 2601.

Division 7: Drafting Procedures

Section 1: Introduction

- 7.1.1 TCOs are legal instruments and as such are subject to interpretation by courts of law and the AAT. These bodies have the benefit of expert advice and legal argument in arriving at a decision.
- 7.1.2 The procedures that are set out in this division have no effect on legal interpretation of TCOs. They are for use by officers and applicants in accurately defining the intended scope of TCOs and will assist in the interpretation of TCOs.
- 7.1.3 It is anticipated that these instructions may be amended from time to time to take into account legal rulings and Court and Tribunal decisions.

Section 2: Tariff Classification / TCO Interpretation

- 7.2.1 TCOs are conditioned to apply to goods of a specified tariff heading / subheading. This has the effect of limiting the scope of a concession. Thus, the correct tariff classification is essential for a correctly worded TCO.
- 7.2.2 The relationship between tariff classification and TCO interpretation has been the subject of AAT deliberation.
 - (1) In the matter of Voxson Sales Pty Ltd and the Collector of Customs, reference was made to an earlier court decision where it was stated that "... In determining the meaning of words in a TCO these words carry their ordinary meaning unless it can be proved that they have acquired some generalized secondary meaning through trade usage in commerce. If so, that meaning is preferred".
 - (2) In the matter of Greig Novelties Pty Ltd and the CEO of Customs, it was further determined that it is a fundamental requirement that before the subject goods could fit within a TCO they must be within the tariff classification to which the TCO is keyed. There is no rule of statutory interpretation that would allow the incorporation of Schedule 2 to the *Customs Tariff Act 1995* (the Interpretation Rules for the Tariff) into Part XVA of the *Customs Act 1901* (the legislation governing the operation of the TCS).
 - (3) The Greig Novelties judgement provides an example of the interpretation set out in section (2) above, in dealing with a concession for:

"Toys, representing animals ... stuffed ...",

keyed to subheading 9503.41. The goods were in fact unstuffed and while they can be classified as a stuffed toy using Interpretation Rule 2(a) as an incomplete or unfinished article, they cannot be granted the benefit of the TCO because they are, in fact and in the ordinary meaning of the term, not stuffed.
- 7.2.3 A TCO shall not apply to "sets", "kits" "assemblies" or "systems" unless they are specifically referred to in the wording of the Order together with a list of the goods making up the set, kit, assembly or system.

Section 3: Evaluation of a Proposed Concession

- 7.3.1 A description of goods to be used in a concession should be a positive description of the goods intended to be covered, and should not be written in a negative form, for example one that principally describes goods excluded from the concession.
- 7.3.2 A proposed description should be critically examined in conjunction with the tariff to ensure that the description (including the tariff classification) clearly reflects the intentions of the applicant and is suitable for a TCO.

Section 4: Drafting Procedures

7.4.1 Structure

- (1) Where a hierarchical structure is required within a concession the following shall apply:

Goods as follows:

- (a) paragraph
 - (i) sub-paragraph
 - sub-sub-paragraph
 - (ii) sub-paragraph
- (b) paragraph

For example:

HANDLING MACHINERY, ALUMINA, comprising ALL of the following:

- (a) silo filler being:
 - (i) expansion bins having EITHER of the following capacities:
 - 100 cu m;
 - 200 cu m;
 - (ii) breather valves;
- (b) silo extractor feed chutes

7.4.2 Headwords, Headword Phrases and General Format

- (1) Concessions should begin with an identifying noun or phrase having the unit meaning of noun. The choice of headwords is dependant on the structure of the subject tariff heading / subheading and should be consistent with it.

For example:

8459.21 DRILLING MACHINES, chuck capacity EXCEEDING 50 mm

- to put the noun first would result in "Machines, drilling". As heading 8459 covers only machines, such a structure would not assist in categorising the goods.
- (2) Following from the headword or headword phrase the typical concession may continue with descriptive words or phrases (often a series of) that define further the goods.
- This format allows reading of the headword and its description in reverse order so that a description such as "INDUSTRIAL GAS FILTER CARTRIDGES" as it may be expressed in normal grammatical use can be drafted as "CARTRIDGES, FILTER, INDUSTRIAL GAS".

- It must be remembered that as all words after "cartridges" are used in the adjectival sense they must be expressed in the singular form.

7.4.3 Upper and Lower Case

Upper case characters are to be used in the following situations only:

- headword or headword phrase;
- full word emphasising limitations to the scope of a concession, for example ANY, NOT, BUT, ALL, EITHER, AND, OR;
- in standard abbreviations.

All other characters are to be lower case.

7.4.4 Notes

- (1) In some instances it may be appropriate to add a Note to a TCO. Distinction should be made between Notes (statements) that are:

- advisory; and those that
- add meaning or qualify the terms of a TCO.

- (2) Notes are not a preferred way of administering TCOs but where Notes are considered essential the following applies:

- advisory statements do not become part of the legal instrument. The statement will be placed below the TCO and published in the gazette and SCIs (if the TCO is issued) headed:

"Note (for information purposes only)".

- advisory statements will be prefaced by:

"In respect of TC....".

- statements which add meaning or qualify should be placed below the TCO terms (but remaining within the body of the Order) and commence with:

"For the purposes of the Order... ". The term "Note" should not be used.

7.4.5 Tables

Listing goods within a TABLE can be an effective way to simplify potentially complex concession orders - refer to the second example in section 7.4.6.

7.4.6 Tolerances

- (1) Specification of an absolute value in a TCO does not allow any tolerance in interpretation. Values should therefore normally be specified in a value range.

For example:

- The correct procedure is:

"PAPER, GLAZED, in the range 50 to 60 g/sq m" (assuming 5 g/sq m tolerance)

- Do not use:

"PAPER, GLAZED, 55 g/sq m"

- (2) At times it may be more appropriate to express the tolerance in a "+ or -" format.

For example:

- "TUBES, SEAMLESS, having ANY of the dimensions listed in THE TABLE

	THE TABLE	
	OD	WT
(a)	63 mm	6 mm;
(b)	76 mm	7 mm;
(c)	88 mm	8 mm

For the purposes of this Order tolerances allowable on the OD and WT listed in THE TABLE are:

- (a) OD + or - 5%
- (b) WT + or - 10%

7.4.7 Comparative Adjectives

- (1) Non definitive terms such as "soft", "large", "heavy" etc, must not be used.
- (2) "Automatic", "semi-automatic", "integrated", "shockproof", "fuel resistant", etc should also be avoided where possible. In many instances they may create difficulties in interpretation. More suitable words or a change in format can usually be found.

7.4.8 End Use

- (1) S269SJ (1) of the *Customs Act 1901* directs that TCOs must not be made in terms of their intended end use, therefore TCO applications must describe the goods without stipulating an end use for those goods.

For example, TCO applications describing goods in the following format:

- "STERILISING APPARATUS used for cleaning contact eye lenses"; or
- "STERILISING APPARATUS designed to clean contact eye lenses",

will not be accepted. In this particular instance the following would be acceptable:

- "STERILISING APPARATUS, CONTACT EYE LENS"

- (2) Apart from "designed for", the following phrases are also not to be used:

- "of a kind used for";
- "commonly used for";
- "principally used for";
- "suitable for"
- "capable of".

7.4.9 TCOs TO BE WRITTEN IN GENERIC TERMS

- (1) TCO descriptions are not to apply to particular brands or models in a manufacturer's range, but to goods of that description generally. For example, a TCO written in the following terms is not acceptable:
 - "valves manufactured by John Smith and Company".
- (2) TCO descriptions which, either directly or by implication, indicate that goods are of a particular brand or model, or that a particular part number applies, will result in the application being rejected. For example, a TCO written in the following specifics, that implies it can only be a washing machine, model 123 of ABC Company, is not acceptable:
 - "washing machines of 5 kg capacity, having 6 washing cycles chosen by a black and chrome knob, 3 temperature combinations selected by black switches, stainless steel tub with 450 water holes, nylon lint filter which measures 3.5 cm x 10 cm, attached to a moulded grey plastic frame".
- (3) In drafting a description for a Tariff Concession Order, applicants should make the description as broad (generic) as possible, bearing in mind that minor changes in specification may result in an order no longer applying to the goods under application.
- (4) Applications will be decided on substitutability, not on specification. Descriptions given in a TCO application only serve to limit the goods which can be imported, not the locally produced substitutable goods which may give rise to an objection.

7.4.10 Use of the Term "Nominal"

Descriptions using the term "nominal", for example:

"ELBOWS in ANY of the following nominal bore sizes:

- (a) 12.7 mm;
- (b) 25.4 mm;
- (c) 50.8 mm"

are ambiguous and are not to be used.

7.4.11 Units of Measurement

- (1) Units should normally be stated in accordance with metric standards. Imperial equivalents may be included in brackets if required.
- (2) An exception to the above is where goods described are referred to only in imperial terms. (for example, Whitworth spanners, British Standard Fine B.S.F. nuts and bolts).

Section 5: Tariff Concession Terminology

7.5.1 Tariff

When referring to the tariff it is cited as "The *Customs Tariff Act 1995*".

7.5.2 TCO

The legal instrument for a Tariff Concession is cited as "a Tariff Concession Order made under Part XVA of the Customs Act".

7.5.3 Tariff Classification

The tariff classification of goods within the Harmonized Tariff is the 8 digit heading or subheading in Schedule 3 against which a rate of duty is set out (refer to s6 of the *Customs Tariff Act 1995*).

7.5.4 Tariff Headings / Subheadings

The structure of tariff headings and subheadings is described in s4 of the *Customs Tariff Act 1995*.

7.5.5 Interpretations of Common Phrases that are Used in TCO Descriptions

- (1) "with a basis of"
 - the component named is the most important ingredient in its contribution to the character of the whole either by weight or volume.
- (2) "comprising"
 - to include a collection of parts or components. It does not necessarily mean an exhaustive listing.
- (3) "consisting of"
 - means that the goods are no more and no less than the components listed under the description of the goods. It is an exhaustive listing.
- (4) "whether or not including"
 - where the incorporation of additional features and / or components may alter the identification of goods and their eligibility for concession, use of the term "whether or not including" ensures that goods with these "extras" are not ruled inadmissible.

7.5.6 Sets, Kits and Assemblies

- (1) Care is to be taken to establish, when considering applications for "sets", "kits" and "assemblies" that the goods to be imported are "sets", "kits" or "assemblies" for tariff purposes.
- (2) When drafting concessions for "sets", "kits" and "assemblies", all components in the set, kit or assembly should be listed.

Division 8: Policy Guide-Lines

Section 1: Approved Forms

8.1.1 The legislation for the TCS provides that:

- an application for a TCO (s269F of the *Customs Act 1901*);
- a submission objecting to the making of a TCO (s269K (1) (c) and s269K (2) of the *Customs Act 1901*); and
- a request for the revocation of a TCO or CTCO (s269SB (1) and s269SB (2) of the *Customs Act 1901*);

must be in an approved form, contain such information as is required by the form, and be signed in the manner indicated in the form. Any application, request for revocation or objection submission which is not in the relevant approved form will not be considered by the delegate.

Section 2: Commencement and Cessation of Production

8.2.1 S269SA (1) and s269SA (2) of the *Customs Act 1901* provide for the operative or termination date of a TCO to be fixed in circumstances where an Australian producer commences or ceases production respectively during the period when an application is under consideration.

8.2.2 These sections of the Act allow the granting of concessional entry for a period during which there was no local manufacture where production starts up or ceases after the application is lodged but before it is determined. Having regard to the time limits for decision making it is anticipated that this provision will only be used rarely.

8.2.3 There will be situations where a local manufacturer has permanently ceased production but still has stock on hand. In these circumstances, cessation of production will be considered to have occurred at a point where stocks will have run down to zero at the normal sales rate based on the company's past sales history.

Section 3: Deadlines

8.3.1 Vide s269M and s269SF of the *Customs Act 1901* Customs may invite submissions or seek other information, documents or material. Customs may, by notice in writing, request the supply of such information in writing within a period specified in the notice. When specifying a time, Customs will allow a period that is commensurate with the type of submission, information etc that is being requested. However, sufficient time will always be allowed to properly consider the information and make a decision within the overall application processing time limits.

Section 4: Changes to the Tariff Classification of TCOs

- 8.4.1 Situations may arise where, due to a change in the tariff classification of the goods, it becomes necessary to rekey the TCO or gazetted application to a different tariff classification. These cases will only occur:
- where the Customs Tariff has been amended; or
 - Customs changes the classification of the goods; or
 - as a result of a decision by a court of law or by the AAT.
- 8.4.2 Neither s269N (1) nor s269SD (1) of the *Customs Act 1901* permit Customs to anticipate a classification change or to ignore the classification prior to the change.
- 8.4.3 The procedure for the rekeying of the TCO will be:
- in the case of a TCO -- revoking the TCO and making a new TCO with an operative date from the date of the revocation;
 - in the case of a Gazetted application -- reprocessing the application. (See Div3.12.1.)

Section 5: Making a TCO Where there are No Objections

- 8.5.1 A valid TCO application is lodged only where an applicant has formed a belief on the basis of all reasonable enquiries and information reasonably available that no substitutable goods are produced in Australia.
- 8.5.2 Customs may use trade directories and similar information sources to identify possible local manufacturers of those goods, and will notify, in writing, all identified local manufacturers of details of the Gazettal of TCO applications which may affect their interests.
- 8.5.3 However, local manufacturers should not rely only on receiving advice from Customs about Gazettal of TCO applications and should monitor Gazettes personally for knowledge about TCO applications.
- 8.5.4 If the 50 days after Gazettal deadline for local manufacturer submissions has expired, without Customs receiving any submissions, Customs may assess the application against the core criteria on the basis of the applicant's submission alone.

Section 6: Reasons for Decision

- 8.6.1 A statement of reasons for all decisions is documented on file. When an application or request for revocation is refused a summary of the reasons is included in the Gazette notification of the decision. A more detailed statement of reasons is provided to the applicant.

Division 9: Disclosure of Information

Section 1: Customs Administration Act 1985

- 9.1.1 Section 16 of the *Customs Administration Act 1985* governs the disclosure of protected information by Customs employees and contractors.
- 9.1.2 Protected information includes all information that directly or indirectly comes to the knowledge of, or into the possession of, a Customs Officer while the Officer is performing his or her duties (whether the information is related to those duties or not).
- 9.1.3 Thus an officer may not disclose information, unless the officer:
- (a) Is authorised by section 16 to do so; or
 - (b) Does so in the course of performing his or her duty; or
 - (c) Is authorised or required by law to do so; or
 - (d) Considers that there is an immediate threat to a person's life or health and it is necessary to disclose the information to avert that threat.
- 9.1.4 The maximum penalty for unauthorised disclosure of information is two years imprisonment (section 16(2)).
- 9.1.5 In practical terms, information acquired during the processing of Tariff Concessions applications, requests for revocation or submissions objecting to the making of orders is limited to:
- (a) the gazettal of information relating to applications or requests for revocation;
 - (b) the gazettal of local producer details in notifications of refusal of an application;
 - (c) advising applicants of details of local manufacturers who object to the making of a TCO and the details of the substitutable goods the subject of the objection.
- 9.1.6 All other information is regarded as "Commercial in Confidence" and is not disclosed to other parties.
- 9.1.7 The exception to this rule is in the case of an external review of a decision by Customs. In this case, all information on file is available to the external review authority under similar prohibitions governing disclosure.

Division 10: Links

Section 1: Industrial Supplies Office

- 10.1.1 As an alternative to making enquiries themselves, applicants may discharge their obligation under s269FA of the *Customs Act 1901* to establish that there are reasonable grounds for asserting that there are no local producers of substitutable goods by making enquiries through the Industrial Supplies Office in their State or Territory. Contact details are at:

<http://www.iso.net.au>

Please note that the Industrial Supplies Office charges for this service.

Section 2: Legislation

- 10.2.1 Both Commonwealth and State/Territory legislation, including Customs Acts and Regulations, can be found at:

<http://scaleplus.law.gov.au>

Section 3: Tariff

- 10.3.1 In addition to the above, a "working" version of the Customs Tariff can be found at:

<http://apectariff.org>

This document is only updated twice per year.

Section 4: Tariff Concessions Forms

- 10.4.1 Customs forms, including forms B443 (Application for a Tariff Concession Order), B444 (Submission Objecting to the Making of a Tariff Concession Order) and B441 (Request for Revocation of a Tariff Concession Order) can be found at:

<http://customs.gov.au/cusforms/index.htm>