EXPLANATORY STATEMENT

Tariff Concession Instrument No. 0410525

Customs Act 1901

Background

Part XVA of the *Customs Act 1901* (the Act) sets out a scheme under which Tariff Concession Orders (TCOs) may be made by the Chief Executive Officer of Customs (the CEO). A lower rate of customs duty applies to goods that are the subject of a TCO.

Under section 269F of the Act, a person may apply to the CEO for a TCO in respect of goods. If the CEO is satisfied that the application is not in respect of goods specified in section 269SJ of the Act, which sets out those goods that cannot be subject to a TCO, the CEO must decide whether the application meets the core criteria.

Section 269C of the Act provides that a TCO application meets 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. Section 269B of the Act provides that 'goods produced in Australia' has the meaning given by section 269D, 'ordinary course of business' has the meaning given by section 269E and 'substitutable goods' in respect of goods the subject of a TCO application, means goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application can be put.

Subsection 269P(3) of the Act provides that if the CEO is satisfied that a TCO application meets the core criteria, the CEO must make a written order (a TCO) declaring that the goods the subject of the TCO application are goods to which a prescribed item of Schedule 4 to the *Customs Tariff Act 1995* (the Tariff) specified in the order applies.

Caroma Industries Ltd applied for a TCO in respect of Automatic guided vehicle, materials handling on 6 October 2004. Following an amendment to the description of the goods, the delegate of the CEO made TCO 0410525 covering "SHUTTLES, UNMANNED, MATERIALS HANDLING, plc".

Section 269SH of the Act allows a person affected by a decision in relation to a TCO application, who objects to the making of the decision, to apply to the CEO for its reconsideration.

Subsection 269SH(4) provides that where application is made for reconsideration of a decision made on a TCO application, the CEO, having regard to:

(a) the TCO application; and

(b) the submissions, information, documents and materials which the CEO was entitled to take into account in considering the TCO application; and

(c) any new matter produced to the CEO by the applicant for reconsideration;

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 any other decision that the CEO might have made.

Under subsections 269SH(8) and (9) of the Act, where the CEO, on reconsideration, decides to substitute another decision, the substituted decision is taken to have been made when the original decision was made and if the substituted decision involves making a TCO, the TCO comes into force on the day on which, if the original decision had involved making the TCO, that TCO would have come into force.

On 13 April 2005, Crown Equipment Pty Ltd requested that the CEO reconsider the decision to make TCO 0410525.

On 1 June 2005, a delegate of the CEO decided to substitute the original decision to make TCO 0410525. The substituted decision was to make a TCO covering a narrower class of goods being: SHUTTLES, MATERIALS HANDLING, unmanned and not pedestrian operated, remote or radio controlled, programmable logic control, lift height NOT exceeding 1.3m.

Instrument

TCO No 0410525 was remade on 1 June 2005. It declares that SHUTTLES, MATERIALS HANDLING, unmanned and not pedestrian operated, remote or radio controlled, programmable logic control, lift height NOT exceeding 1.3m are goods to which item 50 of Schedule 4 to the Tariff applies since the CEO was satisfied that no substitutable goods were produced in Australia. The general rate of duty on these goods is 5%. The rate of duty for the goods subject to the TCO is Free.

Consultation

At the time the original TCO was made, the CEO published a notice in the Gazette, under section 269K of the Act, which included an invitation to any person who considers that there are reasons why the TCO should not be made to lodge a submission with the CEO. One submission objecting to the TCO application was received from Crown Equipment Pty Ltd.

Under subsection 269SH(3A), the CEO must publish a *Gazette* notice (as soon as practicable after receiving a request) stating:

(a) that the request has been lodged; and

(b) the date that the request was lodged; and

(c) the full particulars of the TCO to which the request relates.

Such a notice was published in the *Gazette* on 8 June 2005. The TCO applicant, Caroma Industries Ltd, was also consulted.

Commencement

Subsection 269SH(8) provides, in part, if a substituted decision involves the making of a TCO, that TCO comes into force on the day on which, if the original decision had involved making the TCO, that TCO would have come into force. TCO No. 0410525 originally came into force on 6 October 2004 and hence new TCO No. 0410525 is taken to have come into force on 6 October 2004.

New TCO. 0410525 still covers the goods imported by Caroma Industries Ltd and hence they have not been disadvantaged by the making of the narrower TCO.