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### **The Need for Full Description with TCOs**

The recent Federal Court decision in the case of *Becker Vale Pty Ltd v CEO of Customs* 29 May 2015 covered the issues of tariff classification and the potential application of a TCO to the subject goods (Gross & Becroft were not involved in the running of this case).

The goods in question were found to be a combination of three machines, all of which worked together for the purpose of transforming higher voltage of electricity to lower voltage. Customs sought to have the goods classified under 8504.34.00 whereas the importer sought to have them classified under 8537.20.90.

The Federal Court upheld the AAT decision. The Court supported Customs argument that pursuant to Interpretation Rule 1 reference had to be made to notes 3 to 5 in Section XVI. Once that was done there was no need to have further reference to the Interpretive Rules. It was found that the transformer gave the goods its essential character and hence the classification went to 8504.

The TCO that the importer wished to utilise was classified to 8537.20.90. Despite the fact that that classification was no longer in play, the Federal Court nevertheless made observations as to why that TCO in any case would not cover the goods in question. The TCO read as follows:

*“8537.20.90 ELECTRICAL PROTECTION AND DISTRIBUTION SYSTEMS, comprising ALL of the following:*

- (a) switchgear;*
- (b) busbars;*
- (c) air circuit breaker panels;*
- (d) withdrawable unit panels;*
- (e) withdrawable units;*
- (f) DC switchgear panels;*

- (g) power supply systems;
- (h) step up transformers;
- (i) DC/DC converter;
- (j) battery;
- (k) battery charger;
- (l) power control centres”

The Court accepted Customs argument that the major component of the goods i.e. the transformer both in terms of physical composition and functionality was not listed. Customs submitted that the word “comprising” as used in the TCO, was an exhaustive term. The Court supported that interpretation. The Court went on to say at paragraph 62:

*“This reasoning supports a construction of “comprising” that exhaustively states the essential components making up the concessional goods as an electrical protection and distribution system. Otherwise, the description would not be “a full description”.*

*63. The TCO does not, therefore, describe an electrical protection and distribution system that functions to transform higher voltage to a lower voltage. The contrary conclusion would be a curious outcome in the sense that it would provide a tariff concession for goods whose function is not secured by any of the components that are specifically listed in the TCO.”*

This case therefore confirms the general understanding that when preparing a TCO it is essential that the description covers all of the principal components of the goods.

If you have any queries, please do not hesitate to contact the writer.

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