



APPLICATION FOR A TARIFF CONCESSION ORDER (TCO)

IMPORTANT: Please read the information below carefully before completing this form.

Are you aware that substitutable goods are produced in Australia in the ordinary course of business?

- (a) If you are aware, based on information and your inquiries that substitutable goods are being produced in Australia in the ordinary course of business then you should not lodge an application for a TCO.

Do you need to apply for a new TCO?

- (b) Before lodging this application for a TCO, the applicant should determine whether a suitable TCO already exists. Information on existing TCOs is contained in the Schedule of Concessional Instruments (SCI), which is available on the Internet at www.customs.gov.au.

Have you verified that there are no substitutable goods produced in Australia (refer to questions 5, 6 and 7 of the form)?

- (c) Section 269FA of the *Customs Act 1901* states "It is the responsibility of an applicant for a TCO to establish, to the satisfaction of the Chief Executive Officer (CEO), that, on the basis of:

- (i) all information that the applicant has, or can reasonably be expected to have; and
- (ii) all inquiries that the applicant has made, or can reasonably be expected to make;

there are reasonable grounds for asserting that the application meets the core criteria". The application is taken to meet the core criteria if, on the day of lodgement of the application, **no substitutable goods** were produced in Australia in the ordinary course of business.

Completing the application

- (d) Section 269F of the *Customs Act 1901* requires that a TCO application be in writing, be in an "approved form", contain such information as the form requires, and be signed in the manner indicated in the form. **This is the approved form for the purposes of that section.**
- (e) Section 269F(3) states that a TCO application must contain:
- (a) a full description of the goods to which the application relates; and
 - (b) a statement of the tariff classification that, in the opinion of the applicant, applies to the goods; and
 - (c) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf – the identity of the importer for whom the applicant is acting; and
 - (d) particulars of all inquiries made by the applicant (including inquiries made of prescribed organisations) to assist in establishing that there were reasonable grounds for believing that on the day on which the application was lodged, there were no producers in Australia of substitutable goods.
- (f) **Question 1 to 8 must be answered.** Failure to supply the information required by this form will result in rejection of the application (and in the loss of operative date).
- (g) Customs may require an applicant to substantiate, with documentary evidence, any information provided in the application form. Customs may also undertake its own inquiries as allowed under section 269M.
- (h) Receipt of your application will be acknowledged. Any resultant TCO will operate from the date of receipt.
- (i) Where an application is accepted as being a valid application, the identity of the applicant and of the importer for whom the applicant is acting will be published in the *Commonwealth of Australia Tariff Concessions Gazette* (the *Gazette*).
- (j) Further Information on the Tariff Concession System is available in Part XVA of the *Customs Act 1901*; in relevant Australian Customs Notices (ACNs), Practice Statements and related Instructions and Guidelines on the Internet at www.customs.gov.au; by e-mailing tarcon@customs.gov.au; or by phoning the Customs Information Centre 1300 363 263.
- (k) Attached to this form are extracts from relevant legislation. Also please refer to Australian Customs Notice 2010/03 containing advice as to what Customs and Border Protection considers to be 'reasonable inquiries', advice on conducting searches on national and international search engines and a suggested format letter that you might choose to use when contacting potential local manufacturers to determine if it produces substitutable goods.

APPLICATION FOR A TARIFF CONCESSION ORDER (TCO)

APPLICANT DETAILS

<i>Applicant's Name</i>		<i>Australian Business Number (A.B.N.)</i>
<i>Postal Address</i>		
<i>Applicant's Reference</i>		<i>Company Contact</i>
<i>Telephone Number</i>	<i>Mobile Telephone Number</i>	<i>Position Held</i>
<i>Facsimile Number</i>		<i>E-mail Address</i>

If the applicant (as named above) does not intend to use the TCO to import into Australia the goods the subject of the application, you must provide, in the section below, the identity of the importer for whom you are acting (refer to paragraph 296F(3)(c) of the *Customs Act 1901*).

IMPORTER DETAILS

<i>Importer's Name (if same as applicant, write "as above")</i>		<i>Australian Business Number (A.B.N.)</i>
<i>Postal Address</i>		
<i>Importer's Reference</i>		<i>Company Contact</i>
<i>Telephone Number</i>	<i>Mobile Telephone Number</i>	<i>Position Held</i>
<i>Facsimile Number</i>		<i>E-mail Address</i>

AGENT/BROKER DETAILS *(If applicable)*

<i>Agent's Name</i>		<i>Australian Business Number (A.B.N.)</i>
<i>Postal Address</i>		
<i>Agent's Reference</i>		<i>Agency Contact</i>
<i>Telephone Number</i>	<i>Mobile Telephone Number</i>	<i>Position Held</i>
<i>Facsimile Number</i>		<i>E-mail Address</i>

Is this application intended to support an application for a concession under the Enhanced Project By-law Scheme?

YES NO

1. DESCRIPTION OF GOODS

- (a) The description of the goods in the application may be used as the description of the goods in the TCO (if made).
- (b) The application must provide a full description of the goods, including the physical features of the various components of the goods. It must not describe the goods in terms of what they do.
- (c) In accordance with section 269SJ of the *Customs Act 1901*, the CEO must **not** make a TCO in respect of goods:
- (i) described in terms other than in generic terms; or
 - (ii) described in terms of their intended end use; or
 - (iii) declared by the regulations to be goods to which a TCO should not be extended.
- Goods will be taken to be described in terms other than in generic terms if, for example, their description, either directly or by implication, indicates that they are goods of a particular brand or model, or that a particular part number applies to the goods.
- (d) Guidance on the drafting of the description of goods is contained in relevant Practice Statements and/or Instructions and Guidelines on the Internet at www.customs.gov.au . Failure to comply with Customs requirements may result in rejection of the application.

Describe the goods as you would propose the wording to appear if the Tariff Concession Order is granted.

2. ILLUSTRATIVE MATERIAL

Attach technical and illustrative descriptive material (IDM) as well as any extracts from the relevant industry standard (if referred to in the description of the goods) and/or a sample to enable full and accurate identification of the goods the subject of the application. This application will be rejected if insufficient or inadequate IDM is provided.

Please note that simply supplying a reference to a website is not acceptable.

3. TARIFF CLASSIFICATION

(a) Identify the tariff classification (to 8 figure subheading level)

(b) Identify the General Duty rate _____ %

(c) If a Tariff Advice for the goods has been sought or obtained, please provide the TA No.
or attach a copy.

4. USES OF THE IMPORTED GOODS

Describe ALL uses (including design uses) to which the goods can be put.

5. INFORMATION THAT THE APPLICANT AND IMPORTER HAS REGARDING AUSTRALIAN MANUFACTURERS OF SUBSTITUTABLE GOODS OR POTENTIALLY SUBSTITUTABLE GOODS

The following questions require the applicant and the importer (if a different party to the applicant) to provide details of all information that they have with regard to the presence of Australian manufacturers of substitutable goods or potentially substitutable goods.

5A - APPLICANT. In considering the goods which are the subject of this TCO application, is the applicant aware of any Australian manufacturers or producers of substitutable goods, or of potentially substitutable goods?

YES NO If YES, please provide the names of these Australian manufacturers or producers.

5B. – IMPORTER - In considering the goods which are the subject of this TCO application, is the importer (as listed on page 2) aware of any Australian manufacturers or producers of substitutable goods or potentially substitutable goods?

YES NO If YES, please provide the names of these Australian manufacturers or producers.

5C. Please provide details of other information that the applicant and/or importer may have to assist in locating any local manufacturers.

i) Is the applicant and/or importer a member of a relevant industry association and, if so, what is the name of the association?

YES NO

If yes, what is the name of association/s

ii) Has the applicant and/or importer attended, in the past year, any trade fairs or industry events where Australian manufacturers and producers of goods that may be substitutable have been exhibitors?

YES NO

If yes, what is/are the name/s of relevant Australian manufacturers of potentially substitutable goods that may have exhibited?

iii) In the past two years, has the applicant and/or importer participated in government and/or trade procurement processes (for example, tenders for made-to-order capital equipment) which might indicate the existence of Australian manufacturers or producers of goods that are substitutable, or potentially substitutable, for the goods that are the subject of this TCO application?

YES NO

If Yes, describe each procurement process, and type of goods, including made-to-order capital goods, that were the subject of each procurement process and any Australian manufacturers or producers known to have participated in each procurement process?

6. INQUIRIES THAT THE APPLICANT AND/OR IMPORTER HAS MADE REGARDING LOCAL MANUFACTURERS OF SUBSTITUTABLE GOODS, OR OF POTENTIALLY SUBSTITUTABLE GOODS?

The following questions require you to provide details of all inquiries that the applicant and/or importer have made to assist the CEO in establishing that there are reasonable grounds for believing that, on the day on which the application was lodged, there were no producers or manufacturers in Australia of substitutable goods, or potentially substitutable goods.

6A. PRESCRIBED ORGANISATIONS Prescribed organisations, such as the Industry Capability Network, are listed in Regulation 179A of the *Customs Regulations 1926*

Have you asked a prescribed organisation to obtain advice about whether there are manufacturers or producers in Australia of substitutable goods, or of potentially substitutable goods?

YES Please attach a copy of the terms of the request and all advice received. If you have obtained a report from a prescribed organisation, you are not required to answer 6B

NO If you have not obtained a report from a prescribed organisation, you are required to answer 6B

6B. SEARCHES OF THREE DIFFERENT DATABASES CONTAINED IN TRADE DIRECTORIES, PUBLIC SEARCH ENGINES OR WEBSITES LISTING AUSTRALIAN PRODUCTS

If you have not obtained a report from a prescribed organisation, you must make inquiries in at least three databases to locate the possible existence of Australian manufacturers or producers of goods that may be substitutable for the goods the subject of the TCO application. Examples of these databases may include trade directories such as Kompass, search engines such as Google, and websites listing Australian products such as www.australianmade.com.au Please refer to ACN 2010/03 for guidance as to what Customs and Border Protection considers to be a reasonable search.

1 – Name of database

Search terms used in database

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Please attach printouts of the search results. For search engines such as Google, please supply only the first three pages.

2 – Name of database

Search terms used in database

.....

Please attach printouts of the search results. For search engines such as Google, please supply only the first three pages.

3 – Name of database

Search terms used in database

.....

Please attach printouts of the search results. For search engines such as Google, please supply only the first three pages.

6C. INDUSTRY ASSOCIATIONS

Has the applicant and/or importer made inquiries of industry associations in Australia representing suppliers, manufacturers of the goods that may be substitutable to those the subject of the TCO?

YES Please attach a copy of the terms of the request and any response received.

NO Please explain why you have not made enquiries

7. NOTIFICATION OF POTENTIAL AUSTRALIAN MANUFACTURERS

If any of the answers to questions 5 or 6 identified any potential local manufacturers of substitutable goods, please provide details of the inquiries that you undertook to notify those local manufacturers of your application and to seek advice as to whether they believe they manufacture any substitutable goods. Please refer to Australian Customs Notice 2010/03 for a suggested format of a letter to a potential local manufacturer of substitutable goods.

Please provide a copy of your request to each business. Please provide the business names, details of the contact that you made and all responses received at the time of lodging this application.

1 Name and address of business

Please provide a copy of your request to each business. Is the copy attached? ? YES NO

Please provide a copy of the response provided, if any. Is their response attached? YES NO

2 Name and address of business

Please provide a copy of your request to each business. Is the copy attached? ? YES NO

Please provide a copy of the response provided, if any. Is their response attached? YES NO

3 Name and address of business

Please provide a copy of your request to each business. Is the copy attached? ? YES NO

Please provide a copy of the response provided, if any. Is their response attached? YES NO

4 Name and address of business

Please provide a copy of your request to each business. Is the copy attached? ? YES NO

Please provide a copy of the response provided, if any. Is their response attached? YES NO

8. JUSTIFICATION FOR APPLICATION

Where potential Australian producers or manufacturers have been identified in questions 5, 6 or 7, please provide details as to why you believe that they do not produce substitutable goods in Australia in the ordinary course of business. Please refer to the attached definitions for the legislative definitions of 'core criteria', 'substitutable goods', 'goods produced in Australia' and 'the ordinary course of business'.

APPLICANT'S DECLARATION

I,	Position Held
Company (if applicable)	
declare that:	
<ol style="list-style-type: none">1. I have the authority to act on behalf of the company/applicant;2. To the best of my knowledge and belief the information contained in this form including any attachments is correct;3. I have ensured that questions 1 to 8 are completed and supporting documents are provided; and4. I agree, in submitting this form by electronic means (including facsimile) that, for the purposes of Sub-section 14(3) of the <i>Electronic Transactions Act 1999</i>, this application will be taken to have been lodged when it is first received by an officer of Customs, or if by e-mail to tarcon@customs.gov.au, when it is first accessed by an officer of Customs and Border Protection, as specified in Sub-Section 269F(4) of the <i>Customs Act 1901</i>.5. I have read the relevant Australian Customs Notice headed Applicant's Obligations in Making a TCO application and the definitions attached to this form and understand my obligations under Section 269FA with regard to the making and processing of Tariff Concession Order applications6. I acknowledge that I understand that under Section 269M(6) of the <i>Customs Act 1901</i> that at any time during the period of 150 days from the gazettal day, the CEO may, for the purpose of dealing with a TCO application, and despite section 16 of the <i>Customs Administration Act 1985</i>, give a copy of all, or of a part, of the application to a prescribed organisation with a view to obtaining the advice of the organisation in relation to the question whether there are any producers in Australia of substitutable goods.	
Signature of Applicant/Agent/Broker	Date

NOTE: Section 234 of the *Customs Act 1901* provides that it is an offence to make a statement to an officer that is false or misleading in a material particular.

Before lodging your form please ensure that you have attached the following:

- Attached IDM/Samples?
- Attached Local Manufacturer search results?
- Application signed & dated?
- Questions 1-8 answered?
- All enquiries requested undertaken?

When this form has been completed please lodge it with customs by:

- posting it by **prepaid post** to:
Director
Tariff Concession Section
Trade Services Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601
Or
- **delivering** it to the ACT Regional Officer located at:
Customs House, Canberra
or
- sending it by **facsimile** to: (02) 6275 6376
or
- **e-mailing** it to: tarcon@customs.gov.au

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269(H) Screening the Application

Is the CEO satisfied that the application complies with Section 269F?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Is the CEO satisfied that the applicant has discharged all responsibilities referred to in section 269FA?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Is the CEO aware of any producer in Australia of substitutable goods?.	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Are the goods on the Excluded Goods Schedule (Regulation 185)?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does a TCO already exist for these goods?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Information for applicants - some useful definitions from the Customs Act 1901

269B Interpretation

substitutable goods, in respect of goods the subject of a TCO application or of a TCO, 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 or of the TCO can be put.

- (3) In determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use to which goods the subject of a TCO, or of an application for a TCO, can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market.

269C Interpretation—core criteria

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.

269D Interpretation—goods produced in Australia

- (1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if:
- (a) the goods are wholly or partly manufactured in Australia; and
 - (b) not less than $\frac{1}{4}$ of the factory or works costs of the goods is represented by the sum of:
 - (i) the value of Australian labour; and
 - (ii) the value of Australian materials; and
 - (iii) the factory overhead expenses incurred in Australia in respect of the goods.
- (2) For the purposes of this Part, goods are to be taken to have been partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.
- (3) Without limiting the meaning of the expression **substantial process in the manufacture of the goods**, any of the following operations or any combination of those operations does not constitute such a process:
- (a) operations to preserve goods during transportation or storage;
 - (b) operations to improve the packing or labelling or marketable quality of goods;
 - (c) operations to prepare goods for shipment;
 - (d) simple assembly operations;
 - (e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.
- (4) For the purposes of this section, the CEO may, by instrument in writing published in the *Gazette*:
- (a) direct that the factory or works cost of goods is to be determined in a specified manner; and
 - (b) direct that the value of Australian labour, the value of Australian materials or the factory overhead expenses incurred in Australia in respect of goods is to be determined in a specified manner;
- and those directions have effect accordingly.
- (5) The provisions of sections 48 (other than paragraphs (1)(a) and (b) and subsection (2)), 48A, 48B, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to directions given under subsection (4) as if:
- (a) references in those provisions to regulations were references to directions; and
 - (b) references in those provisions to the repeal of a regulation were references to the revocation of a direction.

269E Interpretation—the ordinary course of business

- (1) For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:

- (a) they have been produced in Australia in the 2 years before the application was lodged; or
- (b) they have been produced, and are held in stock, in Australia; or
- (c) 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) For the purposes of this Part, goods that:

- (a) are substitutable goods in relation to goods the subject of a TCO application; and
- (b) are made-to-order capital equipment;

are taken to be produced in Australia in the ordinary course of business if:

- (c) a producer in Australia:
 - (i) has made goods requiring the same labour skills, technology and design expertise as the substitutable goods in the 2 years before the application was lodged; and
 - (ii) could produce the substitutable goods with existing facilities; and
- (d) the producer is prepared to accept an order to supply the substitutable goods.

(3) In this section:

made-to-order capital equipment means a particular item of capital equipment:

- (a) that is made in Australia on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and
- (b) that is not produced in quantities indicative of a production run.