

s22(1)(a)(ii)

From: s47F @mildunk.com.au>
Sent: Tuesday, 6 December 2016 1:46 PM
To: TARCON
Subject: FW: TCO objection - TC1647286 [SEC=UNCLASSIFIED]
Attachments: PBD 989A.pdf; 10lt Bulk Water invoices (1).pdf; Working Sheet.xlsx; Revocation request B441 - Visy TC1647286.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Revocation

s22(1)
(a)(ii)

Please disregard my previous email as I sent through the wrong attachments.

Please find attached in support of seeking revocation of TC 1647286:

B441 – completed revocation request
Sales invoices for substitutable goods produced in Australia
Sample IDM of product produced
Local content workings spreadsheet.

Should you require anything further please let me know.

Best regards

Milne Dunkley Customs & Forwarding

s47F

From: s47F @mildunk.com.au]
Sent: Tuesday, 6 December 2016 12:10 PM
To: 'TARCON' <tarcon@border.gov.au>
Subject: RE: TCO objection - TC1647286 [SEC=UNCLASSIFIED]

Hi s22(1)
(a)(ii)

Please find attached in support of seeking revocation of TC 1647286:

B441 – completed revocation request
Sales invoices for substitutable goods produced in Australia
Sample IDM of product produced
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s47F

From: TARCON [<mailto:tarcon@border.gov.au>]
Sent: Tuesday, 6 December 2016 8:53 AM
To: s47F <s47F@mildunk.com.au>
Subject: RE: TCO objection - TC1647286 [SEC=UNCLASSIFIED]
Importance: High

UNCLASSIFIED

Hello s47F

This TCO has already been made so you have to do a Request for Revocation form
Also we need some costing sheets for Question 6B to make this complete

Regards

s22(1)(a)(ii)

Tariff Concessions Administration Border Management Group
Australian Border Force
3rd Floor Allara House
5 Constitution Ave Canberra City ACT 2601
Ph s22(1)(a)(ii)
Email: s22(1)(a)(ii)@border.gov.au

UNCLASSIFIED

From: s47F <s47F@mildunk.com.au>
Sent: Tuesday, 6 December 2016 8:32 AM
To: TARCON <tarcon@border.gov.au>
Subject: TCO objection - TC1647286

Dear Sir / Madam,

Re: objection to the granting of TC1647286

Our client Visy Plastics wish to object to the granting of TC 1647286 (Gazette 16/46 of 30 Nov 2016).

Please find attached documentation provided by Visy in support of their claim to be local manufacturers of substitutable goods.

Should you require anything further in support of this claim please do not hesitate to contact me.

Best regards

Milne Dunkley Customs & Forwarding

s47F



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Australian Government
Department of Immigration
and Border Protection

Request for Revocation of a Tariff
Concession Order (TCO) or Commercial
Tariff Concession Order (CTCO)

This form must be completed by a local manufacturer who wishes to request the revocation of TCO or CTCO. All other material is regarded as "commercial-in-confidence" and treated accordingly. The form should be read carefully before being completed.

If you require advice concerning this form, please email tarcon@border.gov.au
or telephone (02) 6198 7289

Details of the TCO or CTCO to which revocation request refers

Gazetted description of goods

TC Reference Number

TC 1647286

PREFORMS, BOTTLE, polyethylene terephthalate copolymer, having
ALL of the following:

- (a) inner neck diameter NOT less than 45.85 mm and NOT greater than 46.15 mm;
- (b) neck outer diameter NOT less than 55.00 mm and NOT greater than 55.40 mm;
- (c) neck thread diameter NOT less than 55.05 mm and NOT greater than 55.45 mm

Op. 31.08.16

Dec. date 28.11.16

- TC 1647286

Local Manufacturer Details

Name

VISY PLASTICS

Business Address

31 STRADBROKE ST, HEATHWOOD, QLD 4110

Postal Address (If the same as business address write "as above")

5 CORONATION AVE, KINGS PARK, NSW 2148

Australian Business Number (ABN)

13 095 313723

Reference

Company Contact

Facsimile Number

Phone Number

Mobile Number

E-mail Address

s47F

@ VISY.COM.AU

Agent/Broker details (if applicable)

Agent's Name

MILNE DUNKLEY CUSTOMS

Business Address

W/L 1/493 ST KILDA RD, MELBOURNE 3004

Postal Address (If the same as business address write "as above")

P.O. Box 1442 ST KILDA RD, MELBOURNE 3004

Australian Business Number (ABN)

97 006 789 680

Agent's Reference

VISY TCO 1647286

Agency Contact

Facsimile Number

Phone Number

Mobile Number

E-mail Address

s47F

@ MILDUNK.COM.AU

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Freedom of Information Act 1982

DETAILS OF THE SUBSTITUTABLE GOODS PRODUCED IN AUSTRALIA

1. Describe your locally produced substitutable goods

"Substitutable goods" are defined in the Customs Act 1901 as "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". NOTE: substitutable goods do not have to be identical to the goods the subject of the TCO application or meet the terms of the wording of the TCO application.

VISY MANUFACTURERS PET INJECTION MOULDED
PREFORMS OF NECK SIZE 28mm to 38mm.
WE HAVE MACHINERY CAPABLE OF MANUFACTURING
WIDE NECK PREFORMS. WE WOULD NEED TO
INVEST IN AN INJECTION TOOL.
VISY ALSO MANUFACTURERS 10L and 15L
HDPE CONTAINERS FOR BULK WATER.

2. State the use(s) to which the substitutable goods are put or are capable of being put

THE CONTAINERS CAN BE USED FOR
PACKAGING OF WATER OR OTHER
LIQUIDS.

3. Attachments

Attach technical, illustrative descriptive material and/or a sample and/or photographs to enable a full and accurate identification and understanding of the substitutable goods. NOTE: A reference to a website only is not sufficient and may result in your objection being rejected without further consideration.

DRAWING ATTACHED

4. Local Manufacturers

Are you aware of any other local manufacturers producing substitutable goods?

☒ YES

☐ NO

5. If YES to question 4

If yes to question 4, please provide details of any goods produced in Australia which are substitutable for the goods covered/described by the TCO, and the names and addresses of the manufacturers of those goods.

NEVERFAIL PHONE 1330 07

6. Production of goods in Australia

Goods other than unmanufactured raw products will be taken to have been produced in Australia if

- (a) the goods are wholly or partially 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.

Goods are to be taken to have been partially manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

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.

A Are the goods wholly or partially manufactured in Australia?

☒ YES

☐ NO

B Does the total value of Australian Labour, Australian Materials and factory overhead expenses incurred in Australia represent at least 25% of the factory or works costs?

☒ YES

☐ NO

Specify each of the following costs per unit for the substitutable goods:

- Australian labour
- Australian materials
- Australian factory overhead expenses
- Imported content

TOTAL

Specify the date or period to which the costs relate.

JULY 2016

Specify the unit to which the above costs relate (e.g. m², litre, kg, tonne, each etc)

Each

Attach a copy of the working papers that were used to prepare the above costing information. Those working papers should be supported by (at least two) extracts from the accounting/costing records of the business, such as Bills of Materials or Invoices for local and imported materials.

C Is at least one substantial process in the manufacture of the goods carried out in Australia?

☒ YES

☐ NO

If yes, please specify the major processes involved:

Extrusion Blow Moulding

PET INJECTION Moulding.

7. Production of goods in the ordinary course of business

Answer 7.1 or 7.2 if you consider your substitutable goods are made to order capital equipment (see below).

7.1 SUBSTITUTABLE GOODS OTHER THAN MADE-TO-ORDER CAPITAL EQUIPMENT

Substitutable goods (other than made-to-order capital equipment – see below) 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 such goods.

A Have the goods been produced in Australia in the last 2 years?

☒ YES

☐ NO

B Have the goods been produced and are they held in stock in Australia?

☒ YES

☐ NO

C If the goods are intermittently produced in Australia, have they been so produced in the last 5 years?

☒ YES

☐ NO

D Are you prepared to accept an order for the goods?

☒ YES

☐ NO

Attach a copy of 2 invoices showing the sale of substitutable goods to customers in the 2 years prior to the date of the TCO application. Alternatively, if the goods are produced on an intermittent basis, then the copies may be from 5 years prior to that date. If production has ceased, but stock is still on hand in Australia, attach a copy of stock records to that effect.

7.2 SUBSTITUTABLE GOODS BEING MADE-TO-ORDER CAPITAL EQUIPMENT

"Made-to-order capital equipment" means a particular item of capital equipment 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 that is not produced in quantities indicative of a production run. Capital equipment means goods which, if imported, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 only of Schedule 3 to the Customs Tariff Act 1995 would apply.

Goods that are made-to-order capital equipment are taken to be produced in Australia in the ordinary course of business if:

- (a) 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; and
 - (ii) could produce the goods with existing facilities; and
- (b) the producer in Australia is prepared to accept an order to supply the substitutable goods.

N/A

A Have goods requiring the same labour skills, technology and design expertise as the goods the subject of the application been made in Australia in the last 2 years?

☐ YES

☐ NO

If yes, describe the goods made during this period:

B Can the goods be produced with existing facilities?

☐ YES

☐ NO

C Are you prepared to accept an order for the goods?

☐ YES

☐ NO

For substitutable goods that are made-to-order capital equipment, please provide an invoice, order or tender documents for goods requiring the same labour skills, technology and design expertise as the substitutable goods in the 2 years before the application was lodged and that you could produce with existing facilities.

8. Commencement of Production of Substitutable Goods

What was the first date on which you were prepared to accept an order?

DEC 2016

Are the goods still in production?

☒ YES

☐ NO

If the answer is no, when did production cease?

If production has ceased and goods are held in stock, please estimate the date by which the stock is expected to be sold, based on past sales information and attrition rate of the local goods.

9. Provide any additional information in support of your objection.

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Freedom of Information Act 1982

Notes

- Section 269K and 269M of the *Customs Act 1901* require that a submission opposing the making of a TCO 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 purpose of those sections.
- A submission will be date stamped on the day it is first received in Canberra by staff of the Department of Immigration and Border Protection. The submission is taken to have been lodged on that day.
- For the submission to be taken into account, it must be lodged with the Department:
 - no later than 60 days after the gazettal day for an application for a TCO;
 - no later than 14 days after the gazettal day for an amended application for a TCO; or,
 - where the Comptroller-General of Customs has invited a submission, within the period specified in the invitation.
- All questions relevant to your submission must be answered.
- Where the form provides insufficient space to answer a question, an answer may be provided in an attachment. The attachment should clearly identify the question to which it relates.
- If you wish to provide any additional information in support of your request, that information may be provided in an attachment.
- The Department may require a local manufacturer to substantiate, with documentary evidence and/or a site visit to your premises, information provided in relation to the objection.
- Further information on the Tariff Concession System is available in Part XVA of the *Customs Act 1901*, in relevant Australian Customs Notices, Practice Statements on the Internet at www.border.gov.au, by e-mailing tarcon@border.gov.au or telephoning (02) 6198 7289.

Applicant's Declaration

I, S47F	Position Held S47F
Company (if applicable) VISY PLASTICS	
declare that:	
<ol style="list-style-type: none"> I have the authority to act on behalf of the the company/applicant; To the best of my knowledge and belief the information contained in this form including any attachments is correct; I have ensured that all required questions are completed and supporting documents are provided; and I agree, in submitting this form by electronic means (including facsimile) that, for the purposes of Sub-section 14(1) 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 email to tarcon@border.gov.au, when it is first accessed by an officer of Customs, as specified in Sub-section 269F(4) of the <i>Customs Act 1901</i>. 	
Signature of Applicant/Agent/Broker S47F	Date 05/12/16

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.

Checklist

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



IDM/Samples



Costings and supporting documents



Invoices/orders/tender documents

WHEN THIS FORM HAS BEEN COMPLETED LODGE IT WITH THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION BY:

- Posting it by prepaid post to:
 - Industry Assistance, Trade Branch
 - Department of Immigration and Border Protection
 - 5 Chan Street
 - BELCONNEN ACT 2617
- or
- delivering it to the ACT Regional Office located at Customs House, Canberra
- or
- sending it by facsimile to (02) 6198 7203
- or
- emailing it to tarcon@border.gov.au

SMITH Alison

From: TARCON
Sent: Wednesday, 7 December 2016 9:57 AM
To: s47F
Subject: RE: TCO objection - TC1647286 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hello s47F

We have received your Request for Revocation on behalf of Visy Plastics
The receipt date is the 6th of December 2016

You will get an acknowledgement at a later date

Regards

s22(1)(a)(ii)

Tariff Concessions Administration Border Management Group
Australian Border Force
3rd Floor Allara House
5 Constitution Ave Canberra City ACT 2601
Ph s22(1)(a)(ii)
Email: s22(1)(a)(ii)@border.gov.au

UNCLASSIFIED

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Sent: Tuesday, 6 December 2016 1:46 PM
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Best regards

Milne Dunkley Customs & Forwarding

s47F

From: s47F [redacted] <[@mildunk.com.au](mailto:s47F@mildunk.com.au)>
Sent: Tuesday, 6 December 2016 12:10 PM
To: 'TARCON' <tarcon@border.gov.au>
Subject: RE: TCO objection - TC1647286 [SEC=UNCLASSIFIED]

Hi s22(1)
(a)(ii) [redacted]

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Sent: Tuesday, 6 December 2016 8:53 AM
To: s47F [redacted] <[@mildunk.com.au](mailto:s47F@mildunk.com.au)>
Subject: RE: TCO objection - TC1647286 [SEC=UNCLASSIFIED]
Importance: High

UNCLASSIFIED

Hello s47F [redacted]

This TCO has already been made so you have to do a Request for Revocation form
Also we need some costing sheets for Question 6B to make this complete

Regards
s22(1)(a)(ii) [redacted]

Released by DIBP under the
Freedom of Information Act 1982

Tariff Concessions Administration Border Management Group
Australian Border Force
3rd Floor Allara House
5 Constitution Ave Canberra City ACT 2601
Ph s22(1)(a)(ii)
Email: s22(1)(a)(ii)@border.gov.au

UNCLASSIFIED

From: s47F [redacted]@mildunk.com.au]
Sent: Tuesday, 6 December 2016 8:32 AM
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Subject: TCO objection - TC1647286

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Re: objection to the granting of TC1647286

Our client Visy Plastics wish to object to the granting of TC 1647286 (Gazette 16/46 of 30 Nov 2016).

Please find attached documentation provided by Visy in support of their claim to be local manufacturers of substitutable goods.

Should you require anything further in support of this claim please do not hesitate to contact me.

Best regards

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Nu-Pure Health Services Range

see folio
64



NU-PURE
HEALTH SERVICES
600ml PET



NU-PURE
HEALTH SERVICES
600ml PET SIPPER



NU-PURE
HEALTH SERVICES
12 x 600ml PET



NU-PURE
HEALTH SERVICES
12 x 600ml PET SIPPER

Nu-Pure Bulk Range



NU-PURE
10 LITRE
HDPE

Nu-Pure Lightly Sparkling Range

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Freedom of Information Act 1982



Australian Government
Department of Immigration
and Border Protection

REASONS FOR DECISION

in relation to

REQUEST FOR REVOCATION OF TARIFF CONCESSION ORDER

TC 1647286

Decision-maker: s22(1)(a)(ii)

Local manufacturer requesting revocation: Visy Plastics (Visy).

A. DETAILS OF THE TARIFF CONCESSION ORDER

TCO Description:

PREFORMS, BOTTLE, polyethylene terephthalate copolymer, having
ALL of the following:

- (a) inner neck diameter NOT less than 45.85 mm and NOT greater than 46.15 mm;
- (b) neck outer diameter NOT less than 55.00 mm and NOT greater than 55.40 mm;
- (c) neck thread diameter NOT less than 55.05 mm and NOT greater than 55.45 mm

Tariff Classification for the goods:

3923.30.00

Stated use of the goods:

In the manufacturer (sic) of plastic bottles that have either a push on or screw on neck enclosure.

B. INFORMATION RECEIVED

Request for revocations received from:

Visy, received 6 December 2016.

Other information received

N/A

Local manufacturer's claims made regarding the production of substitutable goods in Australia:

Visy submitted that it:

*... manufacturers (sic) PET injection moulded preforms of neck size 28 mm to 38 mm.
We have machinery capable of manufacturing wide neck preforms.*

...

The containers can be used for packaging of water or other liquids.

Information given to the Comptroller-General of Customs by the local manufacturer to substantiate its claims:

In completing the 'Request for Revocation of a Tariff Concession Order (TCO) or Commercial Tariff Concession Order (CTCO)' (Form B441), Visy submitted:

- the goods are wholly or partly manufactured in Australia;
- not less than 25% of the factory or works costs consist of Australian labour, Australian materials and Australian factory overhead expenses;
- at least one substantial process in the manufacture of the goods is carried out in Australia;
- it has produced the goods in the last two years; and
- it is prepared to accept an order for the goods.

Visy provided documentation with its revocation requests to support these claims.

C. LEGISLATION:

In relation to the *Customs Act 1901*¹:

¹ All references to legislation are references to the *Customs Act 1901* unless otherwise specified.

Section 269SC provides that in considering a request for revocation of a TCO, the Comptroller-General must decide whether or not he or she is satisfied:

- that on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and
- that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, the Comptroller-General would not have made the TCO.

Section 269P(3) requires the Comptroller-General to make a decision whether or not he or she is satisfied that an application meets the core criteria.

Section 269C states that, "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."

Section 269B(1) defines substitutable goods, in respect of goods the subject of a TCO application as "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 are put or can be put."

Section 269B(3) specifies that, in determining whether goods produced in Australia are put, or capable of being put, to a use corresponding to a use to which goods the subject of a TCO application can be put, it is irrelevant whether or not the local product competes with the goods the subject of the application in any market.

Sections 269D(1) and (2) specify the conditions which goods must meet to be taken to be produced in Australia. In essence, these require that:

- the goods are *wholly or partly manufactured in Australia*, and
- *not less than one quarter 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.
- Goods are taken to be partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

Section 269E(1) specifies that substitutable goods 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.

Section 269E(2) specifies that substitutable goods which are made to order capital equipment* are produced in Australia in the ordinary course of business if a producer in Australia:

- (i) has made goods requiring the same labour and 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
- (iii) the producer is prepared to accept an order to supply the substitutable goods.

*Capital equipment means goods, which if imported into Australia, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1995* would apply (s. 269B).

Section 269SC(1) provides that the Comptroller-General must decide no later than 60 days after a request for revocation is lodged whether or not he or she is satisfied:

- that on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and
- that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, whether the Comptroller-General would not have made the TCO.

Section 269SC(4) provides that if the Comptroller-General is satisfied of the matters referred to in subsection 269SC(1), but is also satisfied that if:

- (a) the TCO were not in force on the day of lodgement of the (revocation) request; and
- (b) that day were the day of lodgement of an application for another TCO (the narrower TCO) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

The Comptroller-General would have made such a narrower TCO, he or she must:

- (c) revoke the TCO; and
- (d) make, in its place, such a narrower TCO.

Section 269SF allows the Comptroller-General to seek, in writing and within a specified period, information or request documents relevant to the consideration of a revocation request.

D. CONSIDERATIONS:

The Comptroller-General must consider whether, at the time of lodgement of the revocation request, whether there was in Australia a producer of goods in the ordinary course of business that are substitutable goods in relation to the goods the subject of the TCO.

The first issue is whether the locally manufactured goods are substitutable goods.

Section 269B defines substitutable goods as 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. Thus:

- claims that the locally produced goods are not substitutable because the TCO goods are superior in quality and/or function and/or cost are irrelevant;
- claims that the locally produced goods are not substitutable because they do not have the same specifications as the goods the subject of the TCO application are irrelevant;
- it is also irrelevant whether the goods produced in Australia compete with the goods the subject of the TCO application in any market.

The goods the subject of the TCO are:

PREFORMS, BOTTLE, polyethylene terephthalate copolymer, having ALL of the following:

- (a) inner neck diameter NOT less than 45.85 mm and NOT greater than 46.15 mm;
- (b) neck outer diameter NOT less than 55.00 mm and NOT greater than 55.40 mm;
- (c) neck thread diameter NOT less than 55.05 mm and NOT greater than 55.45 mm

Visy provided illustrative and descriptive material (IDM) in respect of the PET injection moulded preformed bottles that it manufactures.

From the evidence available to me, it is clear that the Visy product is not identical to the goods the subject of the TCO. The wording of the TCO describes PET bottles with narrow specifications in respect of the neck and thread diameters of the TCO goods.

Visy's IDM shows that the neck specifications of its bottles to be somewhat less than those of the TCO goods.

However, the test of substitutability is not whether the locally produced goods are identical to the TCO goods; rather the test is whether the locally produced goods have a corresponding use to the TCO goods.

A revocation request decision therefore depends on corresponding use, not specification (as well as the ordinary course of business and produced in Australia tests). Descriptions given in a TCO only serve to limit the goods that are eligible for importation under a TCO, not the locally produced substitutable goods that may give rise to a revocation request.

The IDM that accompanied the TCO application does not give any of the uses of the TCO goods. A photograph with the original application, however, shows a plastic bottle with what may be a thread at the open end. It is reasonable to assume that this bottle is put, or could be put, to a use of carrying or storing liquids such as water.

Material on file shows that the Visy products are also put to a use of storing and carrying liquids, including water. I consider that this is a corresponding use to the goods the subject of the TCO.

As Visy's goods have a corresponding use, I am satisfied that those goods are substitutable for the TCO goods for the purpose of s. 269B of the Act

The second issue is whether the goods are produced in Australia.

Visy advised that:

- Its goods are wholly or partly manufactured in Australia.
- Greater than 25% of the factory or works costs of the goods consist of Australian labour, Australian materials and Australian factory overhead expenses incurred in Australia.
- At least one substantial process in the manufacture of the goods is carried out in Australia.

Visy provided summary information from its accounting system to support the cost claims.

Visy provided a description of some of the processes involved in the manufacture of its goods that satisfies me that it undertakes a substantial process of manufacture by converting raw material to finished product.

Based on the information supplied by Visy I am satisfied that its goods meet the legislative test for "produced in Australia".

The third issue is whether the goods are produced in the ordinary course of business.

Visy advised that it produced substitutable goods in the two years prior to the lodgement of its revocation request. Visy also stated that it was prepared to accept an order for the goods. Invoices dated within the two-year period before the lodgement of the revocation requests supported these claims.

I am satisfied that Visy has produced substitutable goods in the ordinary course of business for the purpose of s.269E(1).

The fourth issue is whether the wording of the TCO should be narrowed.

Under s.269SC(4) of the Act, if the Comptroller-General of Customs is satisfied of the matters referred to in s.269SC(1) in relation to a request for revocation of a TCO but is also satisfied that if:

- (a) the TCO were not in force on the day of lodgement of the request; and
- (b) that day were the day of lodgement of an application for another TCO (the **narrower TCO**) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

the Comptroller-General of Customs would have made such a narrower TCO, he or she must:

- (a) revoke the TCO; and
- (b) make, in its place, such a narrower TCO.

Visy did not advise of any form of narrower wording that would exclude its goods. In the absence of such advice, I cannot envisage a suitable narrower form of wording from the information provided on file.

E. DECISION

In accordance with ss.269SC(1) of the *Customs Act 1901*, the requests for the revocation of TC 1647286 is granted as I am satisfied that:

- (a) on the day of lodgement of the request, the person requesting the revocation of the TCO produced in Australia, in the ordinary course of business, goods that are substitutable goods in relation to the goods the subject of the TCO; and
- (b) if the TCO was not in force on that day but that day were the day on which the application for that TCO was lodged, the Comptroller-General of Customs would not have made the TCO.

I therefore revoke TC 1647286 pursuant to section 269SC(3) of the Act.

s22(1)(a)(ii)

Delegate of the Comptroller-General of Customs
6 January 2017



Australian Government
Department of Immigration
and Border Protection

Quote: 1647286
Your Ref:

Department of Immigration &
Border Protection
PO Box 25
Belconnen ACT 2616
Ph: (02) s22(1)(a)(ii)
Fax: (02) 6198 7203
Email: tarcon@border.gov.au

06 January 20017

s47F
MILNE DUNKLEY CUSTOMS
PO BOX 7442 ST KILDA ROAD
MELBOURNE VIC 3004

Dear s47F

TARIFF CONCESSION SYSTEM
REVOCATION APPLICATION SUCCESSFUL

Your application requesting the revocation of Tariff Concession Order (TCO) Number 1647286 has been considered and the Comptroller-General of Customs is satisfied that the following terms of subsection 269SC(1) (a) and (b) have been met:

- a) that on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of the goods that are substitutable goods in relation to the goods the subject of the order; and
- b) that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, the Comptroller-General of Customs would not have made the TCO.

This decision will appear in Gazette Number TC17/02 of 11 January 2017.

In accordance with subsection 269SC(3) the TCO has been revoked.

Yours sincerely,
s22(1)(a)(ii)

Delegate of the Comptroller-General of Customs

Released by DIBP under the
Freedom of Information Act 1982

TARIFF CONCESSION REVOCATION ORDER

Under Section 269SC(1) & (3) of the Customs Act 1901, I s22(1)(a)(ii) a delegate of the Comptroller-General of Customs revoke Tariff Concession Order Number 1647286 made on 28.11.16, in respect of the goods described in the TABLE below. The Revocation has effect from 06.12.16.

THE TABLE

COLUMN 1		COLUMN 2
Description of Goods including the Customs Tariff Classification		Schedule 4 Item Number Last date of effect
3923.30.00	<p>PREFORMS, BOTTLE, polyethylene terephthalate copolymer, having ALL of the following:</p> <ul style="list-style-type: none"> (a) inner neck diameter NOT less than 45.85 mm and NOT greater than 46.15 mm; (b) neck outer diameter NOT less than 55.00 mm and NOT greater than 55.40 mm; (c) neck thread diameter NOT less than 55.05 mm and NOT greater than 55.45 mm 	<p>50 05.12.16</p>
Op. 31.08.16		- TC 1647286

This is page 1 of 1 Page of the above Table.

Dated 06 January 2017

s22(1)(a)(ii)

Delegate of the Comptroller-General of Customs

Released by DIBP under the Freedom of Information Act 1982



Australian Government
Department of Immigration
and Border Protection

Quote: 1647286
Your Ref:

Australian Border Force
Customs House
5 Constitution Avenue
Canberra City ACT 2601
Ph: (02) s22(1)(a)(ii)
Email: tarcon@border.gov.au

02 March 2017

s47F
MILNE DUNKLEY CUSTOMS
PO BOX 7442 ST KILDA ROAD
MELBOURNE VIC 3004

Dear s47F

TARIFF CONCESSION SYSTEM
REVOCATION APPLICATION ACKNOWLEDGEMENT

Your application to revoke Tariff Concession Order Number 1647286 has been received.
Details of your request will appear in Gazette Number TC16/48 of 14 December 2016.

Yours sincerely,

s22(1)(a)(ii)

Tariff Concessions Administration