

EXPLANATORY STATEMENT

Tariff Concessions Revocation Instrument 23/2009

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 and revoked 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 sections 269C and 269P of the Act, a TCO will be made if the application for the TCO meets the core criteria, that is, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business.

Section 269SB of the Act provides, in part, that a person claiming to be a producer in Australia of substitutable goods in relation to the goods covered by a TCO may request the CEO to revoke the TCO.

Under subsections 269SC(1) and (3) of the Act, the CEO must make an order revoking the TCO if the CEO 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 TCO; 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 CEO would not have made the TCO.

Boronia Technologies Pty Ltd requested that the CEO revoke TCO 0700606 which covers water cooled chillers.

Instrument

Tariff Concessions Revocation Instrument No 23/2009 was made on 6 February 2009. It revokes TCO 0700606 as the CEO is satisfied that Boronia Technologies Pty Ltd is a producer in Australia of substitutable goods and that the CEO would not have made the TCO.

Consultation

Subsection 269SC(1A) of the Act provides that as soon as practicable after receiving a request for revocation of a TCO, the CEO must publish in a Gazette a notice which includes a statement that a request has been lodged and the full particulars of the TCO to which the request relates.

Commencement

Subsection 269SC(6) provides that an order revoking a TCO comes into force on the day on which the request to revoke the TCO was lodged. Subsection 239SD(8) provides, in part, that subsection 269SC(6) has effect despite section 12 of the *Legislative Instruments Act 2003*. Section 12 prohibits the making of certain retrospective legislative instruments.

Tariff Concessions Revocation Instrument No.23/2009, TCO 0700606, was revoked on 6 February 2009 with the Revocation date of effect as from 9 December 2008.