

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 209

Issued by the Authority of the Minister for Home Affairs

Customs Act 1901

Customs Amendment Regulation 2013 (No. 2)

Section 270 of the *Customs Act 1901* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act.

Part XVA of the Act provides for the making of Tariff Concession Orders (TCOs) in certain circumstances; goods that are covered by a TCO may then be imported into Australia free from customs duty. The Tariff Concession System (TCS) is designed to help industry become more internationally competitive and allows duty-free entry of certain goods where there is no local industry that produces these goods. However, subsection 269SJ(1) of the Act provides, in part, that the Chief Executive Officer (CEO) of Customs must not make a TCO in respect of goods declared by the regulations to be goods to which a TCO should not extend.

The purpose of the Regulation is to define the term ‘all-terrain vehicles’ and to allow a TCO to be made in respect of utility terrain vehicles.

The Regulation also repeals redundant regulations that are associated with the Accredited Client Program.

Regulation 185 of the *Customs Regulations 1926* (the Principal Regulations) provides, in part, that for the purposes of subsection 269SJ(1), a TCO cannot be made for a good classified to a tariff heading or subheading in column 2 of Schedule 2 to the Principal Regulations unless the good is listed in column 3 of Schedule 2. If goods are listed in column 3, a TCO can be made in respect of those goods. Column 2 of Schedule 2 to the Principal Regulations lists categories of goods, by tariff heading or subheading, as goods for which a TCO cannot be made. Column 3 lists exceptions to those categories of goods and for those goods a TCO may be made. The reason for the exception is that, in general, there is no known local manufacturer of that good.

All-terrain vehicles are presently listed in column 3 of item 38 of Schedule 2 and a TCO can be made in respect of them. All-terrain vehicles are commonly known as ATVs or quad bikes. They are designed for off-road use, have four wheels, a seat designed to be straddled by the operator and handlebars for steering control. The Regulation retains their exemption (meaning that they may be subject of a TCO) and would also include a detailed definition of an all-terrain vehicle, which presently does not exist in Schedule 2, in order to more readily identify vehicles that would qualify as all-terrain vehicles.

The Regulation also amends Schedule 2 to the Principal Regulations to include utility terrain vehicles in column 3 of item 39 of Schedule 2. Utility terrain vehicles are commonly known as UTVs, they are designed for off-road use and for the transport of goods. They have side-by-side seating, four or more wheels, a steering wheel and a cylinder capacity not exceeding 1500cc. These vehicles are classified to heading 8704 of Schedule 3 to the *Customs Tariff Act 1995* and heading 8704 is set out in column 2 of item 39 of Schedule 2. This means that a TCO cannot presently be made in respect of these vehicles.

The inclusion of these vehicles in column 3 of item 39 would mean that a TCO could be made in respect of them. The TCS allows any person to apply at any time for a TCO to import goods at a concessional rate. Each application is considered by the delegate of the CEO on the basis of the criteria set out in Part XVA of the *Customs Act 1901*.

The Accredited Client Program (the ACP) was co-designed with industry partners and Government stakeholders to deliver benefits for industry as a trade facilitation measure for highly compliant, low risk traders. Subsequent technology improvements and changes in the policy, procedural and cost environment meant that the ACP has never been implemented. The provisions in the Act that supported the ACP were repealed by Part 7 of the *Customs Amendment (Miscellaneous Measures) Act 2013*, with effect from 31 March 2013.

Several regulations in the Principal Regulations support the ACP. As these regulations are now redundant, the Regulation repeals these regulations and remove redundant references to ACP-related provisions in other regulations.

As the Regulation is of a minor or machinery nature, no consultation was undertaken in relation to the Regulation.

The amending Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

Customs Amendment Regulation 2013 (No. 2)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of this Regulation is to amend the *Customs Regulations 1926* to define the term ‘all-terrain vehicles’ and to allow a tariff concession order (TCO) to be made in respect of utility terrain vehicles. Part XVA of the Act provides for the making of TCOs in certain circumstances. Goods that are covered by a TCO may then be imported into Australia free from customs duty.

The regulation would also repeal redundant regulations that are associated with the accredited client program. The legislative provisions concerning the accredited client program in the *Customs Act 1901* were repealed by Part 7 of the *Customs Amendment (Miscellaneous Measures) Act 2013*, with effect from 31 March 2013.

Human Rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Minister for Home Affairs