

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (AUSTRALIA) (AMENDMENT) REGULATIONS 2023

2023 No. 195

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) (“the Preferential Trade Arrangements Regulations”) and the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432) (“the Tariff Quotas Regulations”). The Preferential Trade Arrangements Regulations and the Tariff Quotas Regulations were laid before the House of Commons on 16 December 2020 as part of a package of secondary legislation made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”) which ensured that the United Kingdom (“UK”) had an independent customs regime in place following the UK’s exit from the European Union.
- 2.2 The purpose of this instrument is to give effect to preferential import duty rates and Tariff Rate Quotas (“TRQs”), including the related Rules of Origin (“RoO”) requirements for determining qualifying goods imported from Australia. The preferential tariffs, TRQs and related RoO requirements brought into effect by this instrument are necessary to ensure that the UK fulfils the obligations it has entered into under the terms of the Free Trade Agreement (“FTA”) between the United Kingdom of Great Britain and Northern Ireland and Australia, signed on 16 December 2021 (“the UK-Australia Agreement”).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 9 of the TCTA gives HM Treasury powers to implement preferential tariff arrangements that His Majesty's Government in the UK agrees with the government of a trading partner country.
- 6.2 Pursuant to the UK-Australia Agreement, the UK has agreed to apply a lower import duty rate to qualifying goods imported from Australia than would otherwise be offered to the same goods under the UK's Most-Favoured-Nation ("MFN") rates. This latter rate (also known as the "UK Global Tariff" or standard rate of import duty) is the rate established by The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) as amended. The preferential tariff rate is only available to goods that enter the UK after meeting all relevant terms set out in the UK-Australia Agreement, including meeting specific RoO requirements.
- 6.3 Section 11 of the TCTA gives HM Treasury the powers to establish Tariff Rate Quotas ("TRQs") to manage imports into the UK. A TRQ allows a fixed volume of goods to be imported at zero duty or at a lower rate of duty than would be applied under the standard rate of import duty. Pursuant to the UK-Australia Agreement, the UK has agreed to ten separate TRQs for categories of originating Australian goods. Section 11 also gives powers to the Secretary of State to provide that a TRQ will be subject to a licensing or allocation system.
- 6.4 Section 17 of the TCTA gives powers to HM Treasury to implement preferential rules of origin. Pursuant to the UK-Australia Agreement, the UK has agreed to rules to determine when goods imported from Australia qualify as originating and are entitled to the preferential tariff rate.
- 6.5 This instrument therefore implements the preferential import duty rates, the management of quotas where applicable, and the relevant RoO requirements, to which the UK has agreed in the UK-Australia Agreement. Without this instrument, His Majesty's Government would not be able to give full effect to these international obligations.

7. Policy background

What is being done and why?

- 7.1 The TCTA gives primary powers for the UK to create its own customs regime, including a system of import duty rates, allowing import duty to be applied to chargeable goods entering the UK.
- 7.2 Import duties (or tariffs) are the taxes that an importer needs to pay when bringing goods into the UK. The UK Global Tariff sets out these non-preferential import duty rates, with product-specific commodity codes determining the rate to be applied to each good. This provides the legal basis for conveying information that traders need to ensure the correct classification of goods being imported into the UK and is subject to variation over time.
- 7.3 The Preferential Trade Arrangements Regulations set out the legislative mechanism through which the UK implements the preferential tariffs and related RoO requirements that it has agreed with trading partners, for example through the negotiation and conclusion of an FTA. The Preferential Trade Arrangements Regulations have been in force since 31 December 2020, and will continue to be updated as further preferential tariff arrangements are agreed or to account for minor

error corrections and to provide for the simplification of tariff tables where possible in existing preferential tariff arrangements.

- 7.4 As part of the amendments to the Preferential Trade Arrangements Regulations, the table in Schedule 1 is amended to account for the UK-Australia Agreement. This instrument will create a new preferential tariff for originating goods imported from Australia, as opposed to amending an existing preferential tariff arrangement. This will subsequently create a new schedule of preferential tariffs for originating goods imported into the UK from Australia, as defined by the accompanying RoO. The preferential tariff rates to be applied to originating goods were agreed as part of the UK's FTA with Australia, signed on 16 December 2021.
- 7.5 A new Origin Reference Document (detailing the agreed RoO) and new Preferential Tariff Reference Document (detailing the preferential duty import rates which will be applied by the UK to Australia) will be published separately alongside this instrument.
- 7.6 The UK-Australia Agreement and related Reference Documents, as described in Schedule 1 of the Preferential Trade Arrangements Regulations, are available at:
- <https://www.gov.uk/government/collections/uk-australia-free-trade-agreement> (for the UK-Australia Agreement); and
 - <https://www.gov.uk/government/publications/reference-documents-for-the-customs-tariff-preferential-trade-arrangements-eu-exit-regulations-2020> (for Reference Documents).
- 7.7 These new preferential tariffs, TRQ and RoO requirements, as detailed in Reference Documents, will apply from the date of entry into force of the UK-Australia Agreement.
- 7.8 The Tariff Quotas Regulations set out the legislative mechanism through which TRQs apply. The Tariff Quotas Regulations are amended by this instrument to provide for seven of the ten TRQs (beef, milled rice, broken rice, sugar, butter, cheese/curd and wheat) to be administered using a licence on demand system, subject to the presentation of an Australian export certificate. Details of these seven TRQs will be inserted into Part B of the licensing table which can be found in Schedule 2 of the Tariff Quotas Regulations. The remaining three TRQs applied under this instrument will be allocated using a first come first served system, subject to the presentation of an Australian export certificate.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. Withdrawal from the EU required the UK to replace the EU's customs regime with a UK-specific customs regime and therefore the Preferential Trade Arrangements Regulations were originally made in connection with EU withdrawal. However, the amendments made by this instrument are not directly connected to EU withdrawal.

9. Consolidation

- 9.1 This instrument does not consolidate any previous legislation.

10. Consultation outcome

- 10.1 No consultation on this instrument has taken place.

- 10.2 This instrument provides for preferential tariffs and RoO requirements for imports of originating goods from Australia. These preferential tariffs and RoO requirements were agreed as part of the UK's FTA with Australia, which has subsequently undergone parliamentary scrutiny in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.
- 10.3 The UK's negotiating strategy for the UK-Australia FTA was based on the results of one of the largest public consultations in UK history, and His Majesty's Government consulted businesses and interest groups across the UK. In July 2019, the Department for International Trade published a summary of over 146,000 responses on potential new FTAs which included Australia.
- 10.4 The Department for International Trade subsequently published the UK's approach to negotiating an FTA with Australia in June 2020, parts of which responded to the consultation alongside initial economic scoping assessments for the potential agreement.
- 10.5 Information on this consultation is available electronically at:
<https://www.gov.uk/government/consultations/trade-with-australia>

11. Guidance

- 11.1 Guidance on the customs tariff is currently available from HMRC. This guidance will continue to be published and made available in its current format. This guidance is available electronically at: <https://www.gov.uk/guidance/finding-commodity-codes-for-imports-or-exports>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the changes implemented by this instrument will form part of the UK's Integrated Tariff Schedule, the impacts of which were considered as part of the UK's introduction of an independent tariff policy following the UK's exit from the EU. The impacts of this were considered in January 2021, and further detail can be found on the Government's website:
<https://www.gov.uk/government/publications/the-uks-integrated-tariff-schedule/the-uks-integrated-tariff-schedule>
- 12.4 This instrument will create an additional preferential tariff schedule for originating goods imported from Australia, offering alternative tariff rates than otherwise currently applicable under the UK's Global Tariff. In 2021, total UK goods imports from Australia were £2.6bn.
- 12.5 An assessment of the potential impacts of tariff liberalisation was undertaken as part of the full impact assessment for the UK-Australia Agreement. This impact assessment was published and deposited in the House Libraries on the date of signature prior to Parliamentary scrutiny of the treaty, and it has been independently scrutinised. This impact assessment is available electronically at:
<https://www.gov.uk/government/publications/uk-australia-fta-impact-assessment>

12.6 Section 4.6 of this impact assessment details the estimated impacts of the UK-Australia Agreement by sector, which includes the potential impact of tariff changes. The tariff commitments considered in the impact assessment, and which are enacted by this instrument, are unchanged since the UK-Australia Agreement was signed on 16 December 2021.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses. Small businesses importing goods from Australia currently must pay any applicable duties on those goods. The UK-Australia Agreement will allow small businesses in the UK importing goods from Australia to benefit from a reduction or removal of a tariff that would otherwise be applicable prior to the UK-Australia Agreement coming into force, in line with the tariff treatments agreed as part of the negotiations. This instrument therefore does not present any additional regulatory burden for small businesses but does offer potential relief from duties otherwise previously payable by giving effect to preferential tariffs in the UK-Australia Agreement.

13.3 The UK-Australia Agreement includes a chapter for Small and Medium-Sized Enterprises (“SMEs”) (Chapter 19), intended to support small businesses in taking full advantage of the FTA. This includes commitments to have dedicated websites to help exporters, online tariff databases and other trade-related information that can be easily searched online.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the wider context of the customs tariff legislation.

14.2 The instrument does not include a statutory review clause because the instrument relates to a tax or duty and, in line with the Small Business, Enterprise and Employment Act 2015 meets the requirements for exemption.

15. Contact

15.1 Miles Waistle at the Department for Business and Trade (email: miles.waistle@trade.gov.uk) can be contacted with any queries regarding this instrument.

15.2 Darren Stretton at the Department for Environment, Food and Rural Affairs (email: darren.stretton@defra.gov.uk) can be contacted with any queries regarding the Tariff Quotas Regulations provisions in this instrument.

15.3 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.4 Andrew Griffith MP, Economic Secretary to the Treasury and City Minister, can confirm that this Explanatory Memorandum meets the required standard.