

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 433

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury, the Department for Business and Trade, and the Department for Environment, Food and Rural Affairs and is laid before House of Commons by Command of His Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to subordinate legislation previously made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”), which provided for the United Kingdom’s Customs, Value Added Tax (“VAT”) and Excise regimes to be in place after the end of the Transition Period following the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).
- 2.2 This instrument updates a number of tariff reference documents. These are documents which detail the classifications and duty rates of goods that are included in the UK’s tariff schedule. Specifically, the reference documents updated in this instrument have been given legal effect by the following Regulations:
 - The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) (“the Preferential Trade Arrangements Regulations”);
 - The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) (the “Establishment Regulations”);
 - The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (S.I. 2020/1435) (the “Suspensions Regulations”);
 - The Customs (Origin of Chargeable Goods) (EU Exit) Regulations 2020 (S.I. 2020/1433) (“the Origin of Chargeable Goods Regulations”);
 - The Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432) (“the Quota Regulations”).
- 2.3 This instrument contains both policy and technical updates. Namely, the instrument:
 - Amends the Preferential Trade Arrangements Regulations to make necessary updates to the preferential tariff reference documents associated with several of the UK’s Preferential Trade Arrangements (“PTA”),
 - Amends the preferential tariff reference document for the UK’s PTA with Ukraine to continue the full liberalisation of import duties for Ukraine originating goods as defined in the Preferential Trade Arrangements Regulations,
 - Implements quota changes resulting from negotiations with Argentina, Brazil and New Zealand, as part of the wider ongoing process to certify our independent goods schedule at the World Trade Organization (“WTO”), as well

as from action under Article XIII of the General Agreement on Tariffs and Trade (“GATT”),

- Makes a number of amendments to the Suspensions Regulations to facilitate the business suspensions process, and
- Implements technical changes and corrections within the preferential tariff reference documents, the “Tariff Quotas” reference document, the “Suspension of Import Duty Rates Document,” the “Tariff of the United Kingdom” reference document, and the “Rules of Origin: Special Rules for Determining Non-Preferential Origin” document to ensure the UK’s integrated tariff is up to date.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These Regulations amend the definition of the “Suspensions of Import Duty Rates” Document, from version 1.7 dated 5th December 2022 to version 1.9 dated 12th April 2023. The version number of this reference document is amended non-sequentially because, since this definition was last amended by the Customs (Tariff and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/1301), a public notice published on 19th January 2023 under section 32A(2) of the TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.8 dated 18th January 2023.
- 3.2 Similarly, these Regulations amend the definition of “The Tariff of the United Kingdom” from version 1.12, dated 5th December 2022 to version 1.15, dated 12th April 2023. The version number of this reference document is also amended non-sequentially because, since this definition was last amended by the Customs (Tariff and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/1301), public notices published on 19th January 2023 and 9th February 2023 under section 32A(2) of the TCTA, have modified the relevant statutory reference to refer to two new versions of that document, version 1.13 dated 18th January 2023 and version 1.14 dated 8th February 2023.
- 3.3 Similarly, these Regulations amend the reference to the “The Canada Preferential Tariff” from version 1.3 dated 28th December 2021 to version 1.5 dated 12th April 2023. The version number of this reference document is also amended non-sequentially because, since this reference was last amended by the Customs (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/1489), a public notice published on 31st March 2023 under section 32A(2) of the TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.4 dated 31st March 2023.
- 3.4 However, because these updates were made by way of public notice and took effect as a non-textual modification, as opposed to a textual amendment, the underlying statutory words which are being amended here refer to the previous versions of those documents.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The TCTA confers powers on HM Treasury to make provision in regulations for the purposes of establishing duties applicable to imports entering the UK and on the Secretary of State for making regulations providing for a licensing or allocation system for goods subject to a quota. In exercising these functions under Part 1 of the TCTA, HM Treasury and the Secretary of State have had regard to relevant international arrangements to which the government is a party.

The Preferential Trade Arrangements Regulations

- 6.2 Section 9 of the TCTA gives HM Treasury powers to implement PTAs that His Majesty's government in the UK agrees with the government of a trading partner country. The power is exercised on the recommendation made to HM Treasury by the Secretary of State further to section 9(3) of the Act.
- 6.3 Pursuant to the UK's respective agreements with those countries and territories covered by this instrument, the UK has agreed to apply a lower import duty rate (a "preferential tariff") than would otherwise be offered under the Most-Favoured-Nation ("MFN") rate. This latter rate (also known as the "UK Global Tariff" or standard rate of import duty) is the rate established by the Establishment Regulations. The preferential tariff rate is only available to goods that enter the UK after meeting all relevant terms set out in the PTA in question, including meeting specific Rules of Origin requirements.
- 6.4 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.
- 6.5 In May 2022, in response to a request from Ukraine, the United Kingdom fully liberalised all tariffs on Ukraine-origin goods imported to the UK. This liberalisation came into effect for a period of 12 months on the coming into force of the Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (Ukraine) (Amendment) Regulations 2022 (S.I. 2022/525) ("the Ukraine Regulations"). This instrument will continue this liberalisation pursuant to the UK-Ukraine Trade and Partnership Agreement, extending this tariff liberalisation until 31st March 2024.
- 6.6 Tariff liberalisation on Ukraine-origin goods applies in Northern Ireland in accordance with Part 2 of the Ukraine Regulations.

The Quota Regulations

- 6.7 Section 11 of the TCTA gives HM Treasury the power to make regulations which establish Tariff Rate Quotas ("TRQs") for particular products. 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. Section 11 also gives powers to the Secretary of State to determine the licensing or allocation system that goods subject to a quota will be subject to.

- 6.8 In considering what provision to include in regulations made under section 11 of the TCTA, HM Treasury has had regard to recommendations made to them by the Secretary of State in accordance with section 11(7) of the TCTA.

The Origin of Chargeable Goods Regulations

- 6.9 Section 17 of the TCTA gives HM Treasury powers to make provisions for the purposes of determining the place of origin of chargeable goods. The power is exercised on the recommendation made to HM Treasury by the Secretary of State further to section 17(8) of the Act.

The Establishment Regulations

- 6.10 Section 8 of the TCTA gives HM Treasury the power to make regulations that establish and maintain in force the customs tariff. In considering the rate of import duty that ought to apply to goods in a standard case as defined under section 8(8) of the TCTA, HM Treasury has had regard to the matters set out in section 8(5) of the TCTA and the recommendation about the rate made to them by the Secretary of State under section 8(6).

The Suspensions Regulations

- 6.11 Section 12 of the TCTA gives HM Treasury the power to make regulations that, for a specified period, the rate of import duty applicable to specified goods is to be lower than the applicable rate in the customs tariff in its standard form.
- 6.12 In considering what provision to include in regulations made under section 12(1) of the TCTA, HM Treasury has had regard to recommendations made to them by the Secretary of State in accordance with section 12(5) of the TCTA.

7. Policy background

What is being done and why?

Preferential Trade Arrangements

- 7.1 The Preferential Trade Arrangements Regulations set out the legislative mechanism through which the UK implements the preferential tariffs and related Rules of Origin requirements that it has agreed with trading partners¹.
- 7.2 The amendments made to the Preferential Trade Arrangements Regulations by this instrument are to update references to the preferential tariff reference document associated with 21 UK PTAs² to bring the commodity codes up to date where necessary, and to amend minor errors. The instrument also corrects a cross-referencing error in regulation 4(5)(c)(i) of the Preferential Trade Arrangements Regulations.

¹ The PTAs and reference documents as described in the table in Schedule 1 of the Preferential Trade Arrangements Regulations are available at: Reference Documents for The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 - GOV.UK (www.gov.uk)

² The PTAs being updated are: Albania, the Andean Countries (Colombia, Ecuador, and Peru), Canada, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama), Chile, Egypt, the Faroe Islands, Iceland and Norway, Japan, Kosovo, Liechtenstein, Lebanon, Mexico, Morocco, New Zealand, SACUM (Botswana, Eswatini, Lesotho, Mozambique, Namibia and South Africa), Singapore, Switzerland, Tunisia, Turkey, and Viet Nam.

7.3 The instrument also extends the domestic legislation implementing the UK's temporary tariff liberalisation under the UK-Ukraine Trade and Partnership Agreement until March 2024, following the government's commitment to step up its economic support for Ukraine. The amendment to the UK-Ukraine Trade and Partnership Agreement has been scrutinised by Parliament as required by the Constitutional Reform and Governance Act 2010 (CRaG).

WTO Quota Changes

7.4 The Quota Regulations set out the legislative mechanism through which TRQs are established and administered.

7.5 In December 2018, the UK entered into negotiations and consultations with certain WTO Members pursuant to Article XXVIII of the GATT with respect to its obligations concerning TRQs as set out in the UK's Goods Schedule XIX.

7.6 Negotiations with Argentina, Brazil and New Zealand have resulted in agreement on some limited changes to the TRQ volumes set out in the UK's Goods Schedule XIX, which need to be reflected in legislation, through an updated version of the "Tariff Quotas" reference document), before they can be implemented.

7.7 The amendments made to the Tariff Quotas Regulations by this instrument are to update the reference to the "Tariff Quotas" reference document to:

- adjust the volume of one sheepmeat quota available to Argentina³.
- adjust the volume for eight poultry quotas and one sugar quota for Brazil⁴.
- adjust the volume of one High Quality Beef quota and one sheepmeat quota for New Zealand⁵. The administration arrangements for a cheddar quota for New Zealand (05.4514) are also updated to change the commodity codes eligible for this quota.
- adjust the in-quota rate for grape juice (05.0067), cheese (05.4521 & 05.4522) and poultry (05.4251) to align with the UK's WTO bound tariff schedule.

7.8 As a result of UK action under Article XIII of the GATT, which enables WTO Members to sub-allocate their tariff rate quotas to supplying Members based on their historic trade in the products concerned. The quota table and the Quota Regulations are also amended. The changes will:

- adjust the volume of a poultry quota (05.4067) now available to WTO members other than Argentina, Brazil and the European Union, and
- introduce two new poultry quotas available to Argentina (05.4077) and Brazil (05.4078), both being administered using a licence.

Tariff Suspensions

7.9 The Suspensions Regulations brought into effect the UK's tariff suspensions regime. Tariff suspensions enable the government, on a temporary basis, to fully or partially lower tariffs applicable to goods imported under the UK Global Tariff, usually by

³ The specific quota change for Argentina is: 05.2011 from 5,994 tonnes to 3,910 tonnes.

⁴ The specific quota changes for Brazil are: 05.4410 from 2,219 tonnes to 719 tonnes, 05.4420 from 702 tonnes to 225 tonnes, 05.4211 from 40,877 tonnes to 46,310 tonnes, 05.4217 from 2,350 tonnes to 533 tonnes, 05.4251 from 4,831 tonnes to 2000 tonnes, 05.4214 from 26,812 tonnes to 42,024 tonnes, 05.4252 from 3,026 tonnes to 3,562 tonnes, 05.4253 from 132 tonnes to 0 tonnes, and 05.4318 from 29,670 tonnes to 46,571 tonnes.

⁵ The specific quota changes for New Zealand are: 05.4454 from 454 tonnes to 198 tonnes, and 05.2013 from 114,205 tonnes to 102,620 tonnes.

suspending the tariffs on goods used in domestic production. These regulations give effect to the “Suspensions of Import Duty Rates Document,” which sets out the goods on which the duty is to be suspended, the rate of tariff suspension, and the duration of the suspension.

- 7.10 The instrument amends the Suspensions Regulations in order to allow sufficient time to administer the application process:
- it amends the time period requirement in regulation 7(3)(a)(ii) for the Secretary of State to publish a notice providing information about requests received for goods to be specified goods and inviting objections to those requests.
 - it amends regulation 9(a) to change one of the circumstances based upon which the period begins for the Secretary of State to make a recommendation to HM Treasury about requests for goods to be specified goods.
 - it removes the £10,000 duty savings threshold, by omitting regulation 8 (2)(b), as well as the reference to that paragraph in regulation 8(3)(a).
- 7.11 This instrument also updates the “Suspensions of Import Duty Rates Document” to amend certain suspensions due to errors contained in previous versions of the document. The majority are related to errors that occurred while transposing regular end of year updates to the commodity codes. It also updates a further commodity code in line with end of year changes. The other change updates the description of a commodity, to better match the product that was applied for by the relevant UK business during the 2021 duty suspensions application window.

Origin of Chargeable Goods

- 7.12 The ‘Rules of Origin: Special Rules for Determining Non-Preferential Origin’ reference document is updated to implement the changes to the commodity code structure established by the World Customs Organisation, which are used to define the UK’s Rules of Origin.

Tariff of the UK

- 7.13 The “Tariff of the United Kingdom” reference document is updated to lower eighteen tariffs on some goods related to dairy, juice and coffee substitutes in line with the UK’s WTO bound tariff schedule and to include one commodity code, which had been erroneously removed from the annex specifying the standard rates of import duty, relating to lithium electric accumulators. The reference document makes some technical amendments to update the commodity code structure and descriptions in the UK Tariff, to ensure the UK’s international trade policy can be delivered and avoid any unnecessary complications for businesses.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 and does not directly relate to the withdrawal of the United Kingdom from the European Union but does amend legislation that was itself related because withdrawal required the UK to replace the EU’s customs regime with a UK-specific customs regime.

9. Consolidation

- 9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances.

10. Consultation outcome

- 10.1 No consultation in relation to this instrument has been undertaken. This instrument includes a series of amendments to maintain the current position, such as extending tariff liberalisation already in force for Ukraine, updating goods classifications, or correcting errors identified in legislation to correctly align with what is occurring operationally, and as policy intended. These changes are consistent with the principles underlying the UK Global Tariff which were previously consulted on.

11. Guidance

- 11.1 Since the end of the Transition Period, the UK Global Tariff has applied to all goods imported into the UK unless an exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free access granted unilaterally, or as part of a preferential trading arrangement. Further guidance is available at UK Trade Tariff: duty suspensions and autonomous tariff quotas - GOV.UK (www.gov.uk).

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 A full Impact Assessment has not been prepared for this instrument because as it largely maintains the position of existing legislation which were covered by an overarching Tax Information and Impact Note: The UK's Integrated Tariff Schedule - GOV.UK (www.gov.uk)

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 regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that import tariffs cannot be varied with the size of importing businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is in line with the government's general approach to tariff legislation, which is kept under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum and ensures burdens on business are carefully monitored.
- 14.2 The instrument does not include a statutory review clause as the content relates to a tax or duty and therefore meets the requirements of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Lizzie Durham at HM Treasury, lizzie.durham@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

- 15.3 Victoria Atkins MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Miles Waistle at the Department for Business and Trade, miles.waistle@trade.gov.uk can be contacted with any queries regarding the Preferential Trade Arrangements Regulations provisions in this instrument.
- 15.5 Darren Stretton at the Department for Environment, Food and Rural Affairs, Darren.stretton@defra.gov.uk, can be contacted with any queries regarding the Tariff Quotas provisions in this instrument.
- 15.6 Adam Stevens at the Department for Business and Trade, adam.stevens@trade.gov.uk can be contacted with any queries regarding the Suspensions and Tariff of the UK provisions in this instrument.
- 15.7 Caroline Nicholls at the Department for Business and Trade, caroline.nicholls@trade.gov.uk can be contacted with any queries regarding the Origin of Chargeable Goods Regulation provisions in this instrument.
- 15.8 Oliver Phillips, Deputy Director for Trade in Goods at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.9 Benedict Collins, Deputy Director for Tariffs, Imports, Professions and Strategy (TIPS), at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.10 Kevin Hollinrake MP, Parliamentary Under Secretary of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.11 Nigel Huddleston MP, Minister of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.