

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (ORIGIN OF CHARGEABLE GOODS: TRADE PREFERENCE**  
**SCHEME) (EU EXIT) REGULATIONS 2020**

**2020 No. 1436**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 ("TCTA") to ensure that the United Kingdom ("UK") has a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union ("EU"). This legislation will be necessary to ensure the UK's Customs, VAT and Excise regimes function as intended.
- 2.2 The purpose of the Customs (Origin Of Chargeable Goods: Trade Preference Scheme) (EU Exit) Regulations 2020 ("this instrument") is to set out rules for determining the country of origin of goods that enter the UK from certain eligible developing countries under a trade preference scheme. Such a scheme removes or reduces import duties on goods from eligible developing countries. This instrument underpins the Trade Preference Scheme (EU Exit) Regulations 2020 (S.I. 2020/1438) by establishing rules to determine if goods entering the UK originate from a beneficiary country. Without this instrument, there would be no legislative provision for determining whether goods are eligible for the reduced import duty rates set out in those regulations.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 The Treasury regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force ("the 21-day rule"). This instrument needs to enter into force at the end of the Implementation Period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial 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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

6.1 Section 17 of the TCTA which makes provision for determining the place of origin of chargeable goods for the purposes of Part 1 of the TCTA, confers powers on HM Treasury to make regulations to establish the rules of origin for a trade preference scheme.

6.2 The trade preference scheme is known as the “Generalised Scheme of Preferences” or “GSP”, as established by the Trade Preference Scheme (EU Exit) Regulations 2020 under section 10 of the TCTA.

6.3 This instrument and the Trade Preference Scheme (EU Exit) Regulations 2020 are interdependent and together provide for circumstances in which specified developing countries may receive a reduction on the standard import duty rates specified in the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430).

6.4 This instrument broadly replicates the effect of provisions in EU customs legislation establishing rules of origin for the EU Generalised Scheme of Preferences (“EU GSP”). This replication is to deliver continuity to UK businesses and developing countries.

6.5 This instrument replaces relevant Articles in the Union Customs Code and related EU legislation which will not apply to the UK after the Implementation Period. By virtue of paragraph 1(1) of Schedule 7 to the TCTA (replacement of EU customs duties), the provisions establishing the rules of origin for the EU GSP will, despite section 3 of the European Union (Withdrawal) Act 2018 (c. 16) (incorporation of direct EU legislation), no longer form part of the law of the United Kingdom on and after 11 p.m. on 31st December 2020. Those provisions are to be found primarily in the following EU regulations:

- Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 269, 10.10.2013, p.1) (“UCC”);
- Commission Delegated Regulation (EU) 2015/2446 supplementing the UCC as regards detailed rules concerning certain provisions of the UCC (OJ L 343, 29.12.2015, p.1) (“the EU Delegated Act”);

- Commission Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of the UCC (OJ L 343, 29.12.2015, p.558).

6.6 This instrument is part of a package of instruments that establish the customs tariff of the United Kingdom and those variations from the rate of import duty in a standard case that will apply to imported goods following the end of the implementation period.

## 7. Policy background

### *What is being done and why?*

- 7.1 The TCTA, regulations made under the TCTA, and any public notices made under that legislation, are designed broadly to reproduce the effect of EU legislation (as it applies in respect of Customs matters to the import of goods from third countries into the EU) for the import of goods into the UK from the EU and third countries.
- 7.2 This instrument provides the basis for charging reduced tariffs on imports from developing countries under UK GSP.
- 7.3 During the Implementation Period the UK offers preferential access to developing countries under the EU GSP. The EU GSP provides duty-free, quota-free access to the UK for “least developed countries” and tariff reductions for “other eligible developing countries” both as defined in Parts 1 to 3 of Schedule 3 to the TCTA. In 2019, the UK imported £25bn of goods from countries which are part of the EU’s GSP, accounting for 5% of all imports into the UK.
- 7.4 The Trade Preference Scheme (EU Exit) Regulations 2020 establish a UK scheme for developing countries that provides a level of preferential access equivalent to the EU’s GSP.
- 7.5 The UK GSP cannot work effectively without rules of origin contained in this instrument. Rules of origin are the requirements that need to be fulfilled by a developing country to confirm that goods have originated from that country. They set out the basis for determining where goods come from, i.e. not where they have been shipped from but where they are deemed to have been produced or manufactured.
- 7.6 Rules of origin allow the UK to ensure that the preferential access is granted only to developing countries which are intended to benefit.
- 7.7 This instrument broadly replicates the existing rules used by the EU. Specific changes to the administration arrangements and cumulation are explained below. These changes are required because replicating the existing EU rules would not work within the UK’s legal framework. In addition, small changes have been made for clarification, for example, regarding who can split a consignment of goods under the rule of non-manipulation.
- 7.8 For goods to qualify for the UK GSP three origin conditions must be fulfilled:
- the goods must be regarded as originating from a qualifying country or territory;
  - during transportation from the qualifying country or territory to the UK, the goods must not be changed; and
  - a valid proof of origin document must be submitted.

- 7.9 This instrument details what constitutes “originating from a country or territory” for the purposes of section 17 of the TCTA. It determines what needs to be done or how much value needs to be added to a good in a developing country for it to be regarded as having “originated” from a developing country. These conditions are called “substantial processing” in the country or territory concerned. This instrument also establishes where goods are to be regarded as having originated from one country or territory because they were “wholly obtained” there. These are mostly agricultural and commodity goods.
- 7.10 This instrument broadly replicates the existing rules for substantial processing in the EU Delegated Act. This ensures consistency for developing countries and UK firms, reducing the risk of impact to firms from a change in trading arrangements.
- 7.11 This instrument also provides rules for cumulation which allows developing countries to use other countries’ goods in their exports to the UK. Bilateral cumulation, in this case, is the system whereby goods originating from the UK are processed and used in the manufacture of goods in a developing country and the final product can still be considered as originating from the developing country.
- 7.12 This instrument will allow goods from the British Islands (the UK, the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man) and British overseas territories (except Gibraltar and the Sovereign Base Areas of Akrotiri and Dhekelia) to be used in the manufacture of goods in developing countries within bilateral cumulation.
- 7.13 The UK will allow a developing country to cumulate with the EU. This will allow developing countries to continue to use goods originating from the EU in the manufacture of goods from a developing country so that, when exported to the UK, the final product can still be considered as originating from the developing country. This will support existing supply chains in developing countries.
- 7.14 Based on replicating developing countries’ existing access, this instrument also allows developing countries to continue to use goods originating from Norway and Switzerland in their exports to the UK.
- 7.15 This instrument also recognises regional groups within the GSP scheme which allows goods originating from one member of the group to be further processed in another member of the same group or in a member of another group. The UK has replicated the regional groups defined in the EU’s GSP rules. This is known as regional cumulation. This instrument also allows cumulation between countries in different regional groups. The advantage of regional cumulation is to promote regional development and the growth of supply chains with developing countries.
- 7.16 It will also replicate the ability of developing countries to apply to use goods from a country with which the UK has a trade arrangement. This is known as extended cumulation.
- 7.17 This instrument sets out the process and requirements for applying different types of cumulation and gives the Secretary of State the power to publish a notice granting specific types of cumulation.
- 7.18 This instrument allows a developing country to apply for a time-limited derogation from the rules of origin when factors temporarily affect their ability to comply. This is consistent with existing provisions in the EU GSP rules of origin. Derogations allow beneficiary countries to apply different rules of origin for some products on a temporary basis. For example, the EU has previously given derogations to Cambodian

bicycles and processed tuna from Cape Verde to allow more foreign content to be included in their exports.

- 7.19 This instrument states that proof of origin documents and evidence will be specified in a public notice. The UK will be changing the mechanism for proof of origin, because the EU GSP uses a proprietary EU database, the registered exporters system (“REX”). The UK GSP will use paper-based self-certification in the form of an origin declaration or an un-stamped “Form A”. Importers are already familiar with Form A and some countries still use this for the EU GSP. This type of self-certification will maintain a low administrative burden on GSP beneficiaries and has a proven track record, for example in countries like Canada. If in future there is an alternative mechanism available, the change will be made through a further notice. However, there will be an easement period of 12 months during which the UK will accept proofs of origin in the form of a REX statement on origin for firms registered on REX.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU. This is because this instrument is intended to replicate the effects of the EU GSP, which will cease to have effect as incorporated direct EU legislation on commencement of paragraph 1 of Schedule 7 to the TCTA (see paragraph 6.5).
- 8.2 This instrument underpins the UK’s trade preference scheme which comes into force at the end of the Implementation Period.

## **9. Consolidation**

- 9.1 This is new legislation and therefore no consolidation is required.

## **10. Consultation outcome**

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument broadly corresponds to, and replicates insofar as is possible, existing EU customs regulations establishing EU GSP rules of origin.
- 10.2 The Government set out the policy of replicating trade preferences in the Trade White Paper published in October 2017, providing an opportunity to hear views. The Government then published a response in January 2018<sup>1</sup>. Stakeholder contributions were highly supportive of our approach to maintaining current access for the world’s poorest countries to UK markets and our aim to maintain preferential access for other developing countries. Respondents also suggested areas of improvement which included simplifying the rules of origin. This instrument focuses on replicating the effects of EU’s GSP rules of origin and administration arrangements to maintain current access for developing countries as the UK leaves the EU. Suggestions to simplify the rules of origin will be considered in any future trade preference scheme.

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<sup>1</sup> <https://www.gov.uk/government/publications/trade-white-paper-preparing-for-our-future-uk-trade-policy-government-response>

## **11. Guidance**

- 11.1 The Department for International Trade will publish guidance and a Customs Cooperation Notice setting out further procedural details on compliance with the GSP rules of origin and customs cooperation requirements.
- 11.2 Notices will be published on <https://www.gov.uk>. The specific location of the first set of notices will be <https://www.gov.uk/guidance/trading-with-developing-nations-from-1-january-2021>.

## **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 effect of the Statutory Instrument is to maintain, as far as possible, the position prevailing currently.
- 12.4 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses that import from developing countries using trade preferences.
- 13.2 However, this legislation maintains the existing position as far as possible, imposing no significant additional burdens on small businesses. Therefore, no specific action is proposed to minimise the impact on small businesses, and no review clause is required.

## **14. Monitoring & review**

- 14.1 This legislation will be monitored in the context of wider customs tariff legislation.
- 14.2 The Government will keep this instrument under review to ensure that it meets the policy objectives set out in section 7 of this explanatory memorandum, and to ensure burdens on business are carefully monitored.
- 14.3 A statutory review clause is not included in this instrument as the content relates to a tax or duty and therefore meets the requirements of the exception set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Peter Reid at the Department for International Trade/Foreign Commonwealth and Development Office (email: [peter.reid@fcdof.gov.uk](mailto:peter.reid@fcdof.gov.uk), phone: 07469 121 513) can be contacted with any queries regarding this instrument.
- 15.2 Graham Zebedee, Director at the Department for International Trade (email [Graham.Zebedee@trade.gov.uk](mailto:Graham.Zebedee@trade.gov.uk)) and Tammy Reynolds, Deputy Director for Trade Policy at Her Majesty's Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.