

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (TARIFF AND MISCELLANEOUS AMENDMENTS) (NO. 2)
REGULATIONS 2023

2023 No. 1192

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury, the Department for Business and Trade, the Department for Environment, Food and Rural Affairs and HM Revenue and Customs and is laid before the 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 (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249);
 - The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) (the “Establishment Regulations”);
 - The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431);
 - The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (S.I. 2020/1435) (the “Suspensions Regulations”);
 - The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) (“the Preferential Trade Arrangements Regulations”).
- 2.3 This instrument contains both policy and technical updates. Namely, the instrument:
- Makes a limited number of updates to the “Authorised Use: Eligible Goods and Authorised Uses” reference document (given legal effect by S.I. 2018/1249) and “Authorised Use: Eligible Goods and Rates” reference document (given legal effect by S.I. 2020/1431) to reflect recent changes in the UK’s tariff schedule,
 - Amends the “Tariff of the United Kingdom” reference document to reflect a reduction in the UKGT rate from 4.7% to 4.0% for 14 different commodity codes relating to bicycle parts,
 - Amends the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432) (“the Quota Regulations”) to implement quota administration

changes resulting from negotiations with Brazil under Article XXVIII of the General Agreement on Tariffs and Trade (“GATT”), as part of the wider ongoing process to certify our independent goods schedule at the World Trade Organisation (“WTO”),

- Amends the “Korea Origin Reference Document” to extend provisions on cumulation of materials originating in the EU, processing carried out in the EU, and direct transport carried out through the EU, in line with a recent treaty amendment agreed between the UK and the Republic of Korea (“South Korea”),
- Amends the “Turkey Preferential Tariff” and the “Turkey Origin Reference Document” to correctly reflect the origin quotas for aluminium products,
- Amends the “Andean¹ Countries Preferential Tariff”, the “Canada Preferential Tariff” and the “Japan Preferential Tariff” to include aggregation updates to commodity codes,
- Implements technical changes and corrections within the “Tariff of the United Kingdom” reference document, the “Suspension of Import Duty Rates Document”, and within the preferential tariff reference documents for Andean Countries, Canada, Central America², Chile, Eastern and Southern African States³ (“ESA States”), Egypt, the Faroe Islands, Japan, Mexico, Serbia, Turkey, and Ukraine 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 The treaty amending the UK-South Korea Trade Agreement was laid before Parliament on 16 October for scrutiny as per the Constitutional Reform and Governance (CRaG) Act. The Government is committed to bringing the treaty into force on 1 January, as agreed with the government of South Korea, and to provide Parliament with 21 days to scrutinise this SI. As such, this SI is being laid before parliamentary scrutiny under the CRaG Act has formally completed. This is to ensure UK businesses can continue to benefit from the current rules of origin when importing from and exporting to South Korea.
- 3.2 These Regulations amend the definition of “The Tariff of the United Kingdom” from version 1.15, dated 12th April 2023 to version 1.17, dated 7th November 2023. The version number of this reference document is amended non-sequentially because, since this definition was last amended by the Customs (Preferential Trade Arrangements and Miscellaneous Amendments) Regulations 2023 (S.I. 2023/433), a public notice published 20th July 2023 under section 32A(2) of the TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.16 dated 19th July 2023.
- 3.3 These Regulations amend the definition of the “Suspensions of Import Duty Rates” Document, from version 1.9 dated 12th April 2022 to version 1.11 dated 7th November 2023. The version number of this reference document is also amended non-sequentially because, since this definition was last amended by the Customs (Preferential Trade Arrangements and Miscellaneous Amendments) Regulations 2023 (S.I. 2023/433), a public notice published on 20th July 2023 under section 32A(2) of

¹ Colombia, Ecuador and Peru.

² Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

³ Mauritius, the Seychelles and Zimbabwe.

the TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.10 dated 19th January 2023.

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 to make 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.

Authorised Use changes

- 6.2 Section 3(3) and (4) of the TCTA provides that goods may be declared for the free circulation procedure or one of the “special procedures” listed in subsection (4) which include the “authorised use procedure”. Section 19 of the TCTA confers powers on HM Treasury to make provision in regulations for full or partial relief from a liability to import duty. Paragraph 13 of Schedule 2 to the TCTA gives HMRC Commissioners powers to specify such authorised uses in regulations.

The Tariff of the United Kingdom

- 6.3 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).

WTO Quota Changes

- 6.4 Section 11 of the TCTA confers powers on HM Treasury to make regulations which establish Tariff Rate Quotas (“TRQs”) for specific goods. 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 confers powers on the Secretary of State to determine the licensing or allocation system that goods subject to a quota will be subject to.

Tariff Suspensions

- 6.5 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.

- 6.6 In considering what provision to include in regulations made under section 12(1) of the TCTA, the Treasury has had regard to recommendations made to them by the Secretary of State in accordance with section 12(5) of the TCTA.

Preferential Trading Arrangements and Rules of Origin

- 6.7 Section 9 of the TCTA gives HM Treasury powers to implement preferential trade arrangements (“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.
- 6.8 Pursuant to the UK’s respective agreements with those countries and territories covered by this instrument, the UK agrees to apply a lower import duty rate (a “preferential tariff”) than would otherwise be applied pursuant to the Most-Favoured-Nation (“MFN”) obligation. This latter rate (also known as the “UK Global Tariff” or standard rate of import duty) is the rate set by the Establishment Regulations. The preferential tariff rate is only offered 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.
- 6.9 Section 11(2)(a) of the TCTA gives HM Treasury powers to establish TRQs where a PTA with a trading partner country makes provision for goods to be subject to a quota. 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 provide that a preferential TRQ is subject to a licensing or allocation system.
- 6.10 Section 17 of the TCTA gives HM Treasury powers to make provision for the purposes of determining the place of origin of chargeable goods, including in relation to goods subject to a preferential tariff rate. The power is exercised on the recommendation made to HM Treasury by the Secretary of State further to section 17(8) of the Act.

7. Policy background

What is being done and why?

Authorised Use

- 7.1 An update is made to the “Authorised Use: Eligible Goods and Authorised Uses” reference document and the “Authorised Use: Eligible Goods and Rates” reference document. The changes reflect recent changes in the UK Tariff and a process to ensure the correct classification of goods is delivered following any commodity code updates, as well as correcting any minor errors identified in the document during a comprehensive review of the document. The changes will update the list of goods which qualify for lower tariffs when imported for specific purposes. The goods range from certain Electric Motors to Phenols.

The Tariff of the United Kingdom

- 7.2 The “Tariff of the United Kingdom” 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. Tariffs are amended from 4.7% to 4% for

14 commodity codes on bicycle parts in the UK Tariff, to bring them into line with the previous policy intention.

WTO Quota changes

- 7.3 The Quota Regulations set out the legislative mechanism through which TRQs are established and administered. In December 2018, the UK entered into negotiations and consultations with the appropriate 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. Negotiations with Brazil under Article XXVIII have resulted in the introduction of a certificate of origin requirement for six TRQs, including five for poultry (quota numbers 05.4211, 05.4217, 05.4251, 05.4214, 05.4252) and one for sugar (05.4318). This will require importers to acquire a certificate of origin from the Brazilian authorities and present this to UK customs authorities to be eligible to utilise these quotas. These conditions have been inserted into the Quota Regulations at Part B of Schedule 1.

Tariff Suspensions

- 7.4 The Customs Tariff (Suspension of Import Duty Rate) (EU Exit) Regulations 2020 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 suspending goods used in domestic production. These regulations give effect to the "Suspensions of Import Duty Rates Document," which sets out the goods that are to be suspended, the rate of tariff suspension, and the duration of the suspension. This instrument updates the "Suspensions of Import Duty Rates Document" to correct four instances where suspension expiry dates were either erroneously drafted or erroneously omitted.

Preferential Trade Arrangements and Rules of Origin

- 7.5 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 partners⁴.
- 7.6 The amendments made to the Preferential Trade Arrangements Regulations by this instrument will update references to the Preferential Tariff reference documents associated with the UK's PTA with the Andean Countries, Canada, Central America, Chile, ESA States, Egypt, the Faroe Islands, Japan, Mexico, Serbia, Turkey, and Ukraine to account for minor error corrections, to bring the commodity codes up to date where necessary, and to adjust preferential rates and quotas where an agreement provides for further reductions of preferential tariffs.
- 7.7 The Eastern and Southern Africa States Preferential Tariff reference document is updated to remove the exclusion of Zimbabwe from the quota numbers 05.1618 and 05.1619 for preserved tuna and tuna loins, therefore allowing Zimbabwe access to these origin derogations for the stated quota limits. This amendment ensures that the reference document aligns with the UK's commitments to Zimbabwe under the UK-ESA Agreement.

⁴ The 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).

- 7.8 This instrument also implements the relevant rules of origin requirements the UK has agreed in PTAs with South Korea and Turkey. Without this instrument, His Majesty's Government would not be able to give full effect to these international obligations. Subsequently, the amendments made to the Preferential Trade Arrangements Regulations by this instrument will also update references to the Origin Reference Document associated with the UK's PTA with South Korea and Turkey.
- 7.9 The reference to the South Korea Origin Reference Document is updated to implement extensions to provisions in the Protocol on Rules of Origin, which were otherwise due to expire on 1 January 2024. The UK has agreed these extensions with South Korea. Provisions on cumulation of materials originating in the EU, working or processing carried out in the EU, and direct transport through the EU have been extended. The extension of these provisions is for two years, until 1 January 2026, and will allow UK and South Korean businesses to continue to utilise these EU cumulation and direct transport provisions under the existing PTA, while the UK continues to negotiate an upgraded PTA with South Korea.
- 7.10 The Turkey Origin Reference Document and Turkey Preferential Tariff reference document are updated to correct an error in the implementation of Decision No. 02/2021 of the UK-Turkey Joint Committee. Decision No. 02/2021 replaced the Protocol on Rules of Origin and Origin Procedures, and its Annexes, in the UK-Turkey PTA. The new Protocol provided an annual origin quota for imports of aluminium products into the UK from Turkey and into Turkey from the UK. The quota allows aluminium products to obtain originating status, and therefore preferential tariff rates under the UK-Turkey PTA, using alternative rules of origin. The limit on the volume of aluminium products utilising these alternative origin rules is 7,500 tonnes net weight.
- 7.11 The UK implemented Decision No. 02/2021 by updating the reference to the Turkey Origin Reference Document in S.I. 2021/382. However, the Turkey Origin Reference Document version 1.1 that was published with S.I. 2021/382 contained incorrect volumes for the aluminium origin quota. Further, the Turkey Preferential Tariff reference document did not make provision for the aluminium origin quotas. Therefore, to correctly implement the UK's obligations to Turkey, this instrument updates the references to the Turkey Origin Reference Document and the Turkey Preferential Tariff reference document, to correctly reflect the origin quotas for aluminium products.

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 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 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 <https://www.gov.uk/guidance/duty-suspensions-and-tariff-quotas>.

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 it largely maintains the position of existing legislation which was 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 ensure 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 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 Quota provisions in this instrument.

- 15.3 Adam Stevens at the Department for Business and Trade, adam.stevens@businessandtrade.gov.uk, can be contacted with any queries regarding the Suspensions and Tariff of the United Kingdom provisions in this instrument.
- 15.4 Andreas Lendle at the Department for Business and Trade, andreas.lendle@businessandtrade.gov.uk, can be contacted with any queries regarding the preferential tariff arrangements provisions in this instrument.
- 15.5 Caroline Nicholls at the Department for Business and Trade, caroline.nicholls@businessandtrade.gov.uk, can be contacted with any queries regarding the rules of origin provisions in this instrument.
- 15.6 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.7 Victoria Atkins MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.