

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (MISCELLANEOUS AMENDMENTS) REGULATIONS

2023 No. 1339

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and the Department for Business and Trade 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 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:
 - Amends the “Suspension of Import Duty Rates Document” to extend the tariff suspensions on over 2000 goods that were introduced at the end of the Transition Period, and during the Covid-19 pandemic, until 31 December 2028,
 - Amends the “Mexico Origin Reference Document” to extend provisions on cumulation of materials originating in the EU and, working or processing carried out in the EU, in line with the Joint Committee Decision agreed between the UK and Mexico,
 - Amends the “Canada Preferential Tariff” and the “Canada Origin Reference Document” to calculate 2024 origin quota volumes for Canadian exports to UK,
 - Amends the preferential tariff reference documents for SACUM¹, Singapore and Viet Nam to implement aggregation updates to commodity codes, and
 - Implements technical changes and corrections within the preferential tariff reference documents for Australia, Israel, Lebanon, New Zealand, Switzerland and Liechtenstein and Tunisia to ensure that the UK’s integrated tariff is up to date.

¹ Southern African Customs Union Member States and Mozambique (Botswana, Eswatini, Lesotho, Mozambique, Namibia, and South Africa).

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 “Canada Origin Reference Document”, from version 1.1, dated 28 December 2021 to version 1.3, dated 5 December 2023. The version number of this reference document is 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 31 March 2023 under section 32A(2) of TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.2 dated 31 March 2023.

4. Extent and Territorial Application

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

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. The TCTA requires these powers to be exercised on recommendations made by the Secretary of State. 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.

Tariff Suspensions

- 6.2 Section 12 of the TCTA gives HM Treasury the power to make regulations that, for a specified period, make provision for the rate of import duty applicable to specified goods to be lower than the applicable rate in the customs tariff in its standard form.
- 6.3 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

- 6.4 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 TCTA.
- 6.5 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.

- 6.6 Section 11(2)(a) of the TCTA gives HM Treasury powers to implement import duty rates applicable to goods that are subject to a quota where a PTA with a trading partner country makes provision for goods to be subject to a quota. A quota 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.
- 6.7 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?

Tariff Suspensions

- 7.1 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 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 extend suspensions on over 2000 goods that came into force after the end of the Transition Period, and some products relative to the Covid-19 pandemic until 31 December 2028.
- 7.2 There are also technical updates to move tariff suspensions from expired “commodity codes” (which are used to classify goods) to new commodity codes, following updates to the structure of these codes. The new codes will allow the same coverage of suspended goods as outlined previous versions of the reference document.

Preferential Trade Arrangements and Rules of Origin

- 7.3 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 partners².
- 7.4 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 PTAs with Australia, Canada, Israel, Lebanon, New Zealand, Singapore, SACUM, Switzerland and Liechtenstein, Tunisia, and Viet Nam, 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.

² 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).

- 7.5 This instrument also updates references to the Origin Reference Documents that implement the relevant rules of origin requirements that the UK has agreed in its PTAs with Canada and Mexico.
- 7.6 The reference to the Mexico 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 Mexico. Provisions on cumulation of materials originating in the EU and working or processing carried out in the EU have been extended until the entry into force of a new bilateral free trade agreement between the UK and Mexico and will allow UK and Mexican businesses to continue to utilise these EU cumulation provisions under the existing PTA, while the UK continues to negotiate an upgraded PTA with Mexico.
- 7.7 The Canada Origin Reference Document and Canada Preferential Tariff Reference Document are updated to reflect reduced origin quota volumes for Canadian exports to the UK for 2024. The origin quotas allow specific amounts of certain products to obtain originating status, and therefore preferential tariff rates under the UK-Canada PTA, using alternative rules of origin. Canadian exports to the UK covered by the origin quotas include agricultural products, fish and seafood, textiles and apparel, and vehicles. The annual origin quotas included in the UK-Canada PTA will cease to apply three years after entry into force of that Agreement (1 April 2024). Subsequently, the annual quota volumes for 2024 are being calculated on a pro-rata basis corresponding to the period between 1 January 2024 and 31 March 2024. This adjustment to the quota volumes is in line with and provided for by the Protocol on rules of origin and origin procedures in the UK-Canada PTA.

8. EU 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 UK from the EU 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 James Snowden at the Department for Business and Trade, james.snowden@businessandtrade.gov.uk can be contacted with any queries regarding the Suspensions and Tariff of the United Kingdom provisions in this instrument.
- 15.3 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.
- 15.4 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.
- 15.5 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.6 Nigel Huddleston MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.