

EXPLANATORY MEMORANDUM TO
THE TRADE PREFERENCE SCHEME (DEVELOPING COUNTRIES TRADING
SCHEME) REGULATIONS 2023

2023 No. 561

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 The purpose of The Trade Preference Scheme (Developing Countries Trading Scheme) Regulations 2023 (“these Regulations”) is to establish a unilateral trade preference scheme called the Developing Countries Trading Scheme (DCTS). This scheme will reduce or remove import duties on goods from eligible developing countries to which a preference framework is applied under the scheme.

2.2 The DCTS will provide simpler and more generous trade arrangements for goods imported to the UK from developing countries in line with the government’s International Development Strategy.

2.3 The scheme aims to support economic development and poverty reduction in developing countries whilst providing better trading opportunities and lower cost goods to UK businesses and consumers.

2.4 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA).

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 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 Minister Huddleston has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Trade Preference Scheme (Developing Countries Trading Scheme) Regulations 2023 are compatible with the Convention rights”.

6. Legislative Context

6.1 Section 10 of the TCTA confers powers on the Secretary of State (SoS) to make regulations to create a trade preference scheme for developing countries. Such a scheme can only apply to the “eligible developing countries” listed in Schedule 3 of

the TCTA. These Regulations are made to give effect to the powers conferred in the TCTA.

- 6.2 Under the DCTS, an importer may claim a lower rate of import duty than the applicable rate in a standard case under the [Customs Tariff \(Establishment\) \(EU Exit\) Regulations 2020](#), subject to various requirements of the scheme.
- 6.3 A key requirement is that the goods must be regarded as originating from a developing country to which the appropriate framework applies. Rules determining this are set out in the Customs (Origin of Chargeable Goods: Developing Countries Trading Scheme) Regulations 2023 (S.I. 2023/557)
- 6.4 These Regulations revoke and replace the Trade Preference Scheme (EU Exit) Regulations 2020 (S.I. 2020/1438).

7. Policy background

What is being done and why?

- 7.1 The government is introducing the DCTS to improve access to the UK market for goods imported from eligible developing countries.
- 7.2 The principles guiding the design of the DCTS include making the new scheme simpler for partner countries and businesses to understand and use. This has led to provisions in the DCTS which reduce tariffs, liberalise rules of origin requirements and simplify the conditions attached to the scheme.
- 7.3 Based on recent trade data, the DCTS offers tariff reductions of over £750 million per year for imports from 65 beneficiary countries.
- 7.4 Part 2 of these Regulations establishes the scheme. It sets out the three frameworks: Comprehensive Preferences, Enhanced Preferences and Standard Preferences.
- 7.5 The DCTS Specified Goods Table in the reference document lists the goods covered by the scheme and the applicable codes for determining the DCTS rate.

DCTS Comprehensive Preferences

- 7.6 DCTS Comprehensive Preferences apply to Least Developed Countries (LDCs) only. DCTS Comprehensive Preferences provides duty-free, quota-free trade to LDCs on everything but arms and ammunition.

DCTS Enhanced Preferences

- 7.7 DCTS Enhanced Preferences apply to Low Income Countries (LIC) and Lower Middle Income Countries (LMIC) that are economically vulnerable. The definition for 'economically vulnerable' can be found in Regulation 9(2).
- 7.8 The following countries have been assessed as being economically vulnerable and will be eligible for enhanced preferences when these Regulations come into force: Algeria, Bolivia, Cape Verde, Congo, Cook Islands, Kyrgyzstan, Micronesia, Mongolia, Nigeria, Niue, Pakistan, Philippines, Sri Lanka, Syria, Tajikistan and Uzbekistan.
- 7.9 Enhanced Preferences countries will receive access to duty-free, quota-free trade on 85% of eligible goods.

- 7.10 The government is removing tariffs to simplify the scheme. Seasonal tariffs are being removed on cucumbers, globe artichokes, wilkings and strawberries.

DCTS Standard Preferences

- 7.11 DCTS Standard Preferences apply to LICs and LMICs that are not deemed to be economically vulnerable. This currently applies to India and Indonesia.
- 7.12 DCTS Standard Preferences simplifies seasonal tariffs on cucumbers, globe artichokes, wilkings and strawberries to 8.5%, 6.5%, 12.5% and 6.5% respectively for the entire year. Nuisance tariffs (those below 2%) are also being removed.

Customs and Further Conditions

- 7.13 Under Regulation 16, the SoS may provide conditions on customs cooperation and proof of origin in a customs cooperation notice. These conditions may include providing HMRC with verification on the origin of DCTS goods, cooperation with the customs authorities of other countries for cumulation and taking steps to combat customs fraud effectively.
- 7.14 The customs cooperation notice will be published electronically. The SoS can also act against a DCTS country for serious and systematic failures to comply with the conditions specified in a customs cooperation notice.
- 7.15 Under Regulation 17, the SoS may suspend a country from the DCTS or suspend or vary DCTS rates for matters relating to international conventions. Specifically, SoS may take action where a qualifying DCTS country has engaged or is engaging in serious and systematic violations of the human rights and labour rights, contained in conventions specified at rows 1 to 17 of the list in Schedule 2, or has engaged or is engaging in acts or omissions that seriously and systematically undermine the object and purpose contained in conventions specified in rows 18 to 28 of the list in Schedule 2.
- 7.16 The warning and assessment procedure set out in Part 7 must be followed in relation to any suspension or variation under Regulation 16 or 17.

Goods Graduation

- 7.17 Under Regulation 18, the SoS may publish a goods graduation notice, suspending preferences on specific goods from a Standard Preferences country. More detail on goods graduation be found in Schedule 3.
- 7.18 Goods graduation applies to Standard Preferences countries and ensures that goods which are genuinely competitive are graduated out of the scheme. Goods graduation analysis considers whether the average value of Standard Preferences imports from one Standard Preferences country as a percentage of the total value of British Islands imports of the same goods exceeds the thresholds listed in the Table in Schedule 3.
- 7.19 The goods graduation assessment is carried out during the period 1st January to 29th September; except in the case of the first goods graduation notice, a notice must be published on or before 30th September to be in force for the following year.

Trade Product Safeguards and Additional Import Duties

- 7.20 Regulation 19 and Schedule 4 allow for safeguards to be applied to imports from countries benefitting from the DCTS where this is causing or threatening to cause serious difficulties for domestic producers.

- 7.21 Regulation 20 sets out cases where DCTS rates are suspended if additional import duty is applied to goods. This can be in the cases of a) dumping of goods, foreign subsidies and increase in imports, b) increases in imports or changes in prices of agricultural goods, c) international disputes, d) relevant regulations under sections 51 or 56 of the TCTA.

Warning and Assessment

- 7.22 Part 7 sets out the warning and assessment procedure which must be used in the following four cases: (1) suspension of a country from the DCTS, (2) suspension of DCTS rates on specified DCTS goods, (3) variation of DCTS rates on specified DCTS goods and (4) the application of a trade preference safeguard measure where it is non-urgent.
- 7.23 SoS must publish a warning at the outset of the procedure. For cases 1-3 from paragraph 7.22, representations would be considered from a qualifying DCTS country and interested parties. This could include NGOs and civil society groups. For case 4 (trade preference safeguard measure), representations would be considered from a qualifying DCTS country, and a person affected defined as a person involved in the production, distribution or sale of similar goods.
- 7.24 Subsequently, the SoS must carry out an assessment of the circumstances giving rise to the warning. The outcome of this assessment must be published on <https://www.gov.uk>.
- 7.25 For cases 1-3 from paragraph 7.22, depending on the outcome of the assessment, suspension or variation notices may be issued. For case 4 from paragraph 7.22, a trade preference safeguard notice may be issued. More detail on this can be found in Schedule 4.
- 7.26 Urgent trade preference safeguards can be applied and do not need to follow the warning and assessment process outlined. These are in cases where publication of the outcome of an assessment under the warning and assessment procedure may cause damage to UK producers that is difficult to repair or affect employment in the UK.
- 7.27 The duration of these urgent safeguards cannot exceed 12 months though the SoS can extend them through the warning and assessment procedure.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 No consolidation is being done.

10. Consultation outcome

- 10.1 The government conducted an 8-week public consultation from 12:15am on 19 July to 11:45pm on 12 September 2021. As a result of this consultation the government received 300 responses. Respondents to the public consultation were self-categorised into the following 7 groups: individuals; NGOs; public sector (including devolved administration / local government organisation); businesses; business associations; other - international government; other - please specify.

- 10.2 On tariffs, the general sentiment was in favour of reducing tariffs where possible, which is in line with the UK's broader policy goals of trade liberalisation. Some concerns were voiced about new tariff reductions eroding the current preferential margins that benefit LDCs and, in some instances, countries in the UK GSP's Enhanced Framework.
- 10.3 On goods graduation, protection of preference margins for less competitive goods from other developing countries was cited as a reason for amending the current approach and was supported by a majority of respondents.
- 10.4 On conditions, fewer than half of respondents opted to offer their view on the conditions which apply to all countries and provide for circumstances where access to enhanced preferences can be varied or suspended. Of those who responded, most thought the impact of these conditions was negative for exports and businesses. Regarding the conditions which enable eligible countries to benefit from the more generous preferences, a clear majority of those who opted to respond were in favour of simpler requirements.
- 10.5 The full consultation report can be found here:
<https://www.gov.uk/government/consultations/designing-the-uk-trade-preferences-scheme-for-developing-nations>

11. Guidance

- 11.1 A customs cooperation notice and goods graduation notice will be published on the date these Regulations come into force.
- 11.2 Further external guidance will be published on: [Trading with developing nations - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is to make it easier and cheaper to import goods from qualifying DCTS countries relative to the current UK GSP. Increasing access to Enhanced Preferences means £23 million a year of additional trade benefits from zero tariffs immediately and up to £2.6 billion of trade a year by 2030 as a further 6 LDCs are expected to graduate from LDC status. Extending duty-free access to additional products, removing all tariffs of 2% or below and removing the seasonal element of some tariffs will also support easier and cheaper trade.
- 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 as the policy is covered by an overarching Tax Information and Impact Note for the UK's independent tariff policy: [The UK's Integrated Tariff Schedule - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However, this legislation liberalises further than the existing position as far as possible and imposes 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 The approach to monitoring of this legislation is that it will be monitored in the context of the wider customs tariff legislation. 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.
- 14.2 The government will continue to monitor to see if a qualifying DCTS country has engaged or is engaging in serious and systematic violations of the human rights and labour rights, contained in conventions specified at rows 1 to 17 of the list in Schedule 2, or has engaged or is engaging in acts or omissions that seriously and systematically undermine the object and purpose contained in conventions specified in rows 18 to 28 of the list in Schedule 2.
- 14.3 The government will also monitor issues related to the customs cooperation notice, trade preference safeguard measures, goods graduation, graduation in economic status and/or the development of bilateral trading relationships.

15. Contact

- 15.1 Simon Calvert, team leader of the DCTS team (email: simon.calvert@fcdo.gov.uk, or phone: 07469 121 661), can be contacted with any queries regarding the instrument.
- 15.2 Paul Whittingham, Deputy Director for Trade for Development at the Foreign, Commonwealth, and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Trade Policy Nigel Huddleston MP at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.