

EXPLANATORY MEMORANDUM TO
THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS)
(AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 823

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. Declaration

2.1 The Exchequer Secretary to the Treasury (James Murray) confirms that this Explanatory Memorandum meets the required standard.

2.2 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Bruno Roberts-Dear at HM Treasury, bruno.robertsdear@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

3.2 Andreas Lendle at the Department for Business and Trade, andreas.lendle@businessandtrade.gov.uk, can be contacted with any queries regarding the preferential tariff reference document provisions in this instrument.

3.3 Caroline Nicholls at the Department for Business and Trade, caroline.nicholls@businessandtrade.gov.uk, can be contacted with any queries regarding the origin reference document provisions in this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 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”).

4.2 This instrument updates a number of reference documents relating to preferential tariffs and rules of origin that apply under preferential trade arrangements (“PTAs”) between the UK and other countries. These reference documents detail the duty rates of goods that are included in the UK’s Integrated Tariff Schedule. Specifically, the reference documents updated in this instrument have been given legal effect by the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457, as amended) (“the PTA Regulations”).

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the UK.
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the UK.

5. Policy Context

What is being done and why?

- 5.1 This instrument contains policy updates to tariff legislation.
- 5.2 This instrument contains amendments to the below reference documents:
- ‘The Moldova Preferential Tariff’ reference document, to reflect a five-year extension of the UK’s unilateral liberalisation of tariffs (reducing all tariffs to zero) on Moldovan originating goods, in order to provide economic support to Moldova. This support aims to address the disproportionate effects of the war in Ukraine on Moldova, as a direct neighbour. The initiative also acts as a symbol of the UK’s support to an important strategic ally in the region.
 - ‘The Eastern and Southern Africa States Preferential Tariff’ reference document and ‘The Eastern and Southern Africa States Origin Reference Document’, to recognise the deposit by Madagascar of its instrument of ratification of the Economic Partnership Agreement between the UK and the Eastern and Southern Africa (ESA) States (“UK-ESA EPA”) on 8 March 2024. Imports from Madagascar will be able to benefit from duty-free access under this agreement from 1 August 2024. This is expected to have limited impact because Madagascar already enjoys duty-free access for trade with the UK under the UK’s Developing Countries Trading Scheme (“DCTS”). The duty-free access will be subject to UK-ESA EPA rules of origin, which determine the nationality of goods and goods eligible for preferential tariffs.

What was the previous policy, how is this different?

- 5.3 This instrument is a continuation of the previous policy as set out in paragraph 5.2. The liberalisation of tariffs on Moldovan originating goods is an existing policy that has been extended for a further five years. The application of duty-free access to imports from Madagascar reflects the recent ratification by Madagascar of the UK-ESA EPA, which was already in force for the UK.

6. Legislative and Legal Context

How has the law changed?

- 6.1 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. HM Treasury can only exercise these powers on the recommendation of the Secretary of State for Business and Trade further to section 9(3) of the TCTA.
- 6.2 Pursuant to the UK’s respective agreements and arrangements 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 Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430, as amended). The

preferential tariff rate is only available to goods that enter the UK after meeting all relevant terms set out in the PTAs in question, including meeting specific rules of origin requirements.

- 6.3 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.
- 6.4 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 for the Department of Business and Trade in accordance with section 11(7) of the TCTA.
- 6.5 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 for the Department of Business and Trade further to section 17(8) of the TCTA.
- 6.6 This instrument utilises these powers under the TCTA in order to amend the PTA Regulations. This amendment ensures that the UK continues to correctly implement PTAs with Moldova and the ESA States, to reflect recent developments in those arrangements.
- 6.7 The Strategic Partnership, Trade and Cooperation Agreement between the UK and Moldova (“the Partnership Agreement”) was provisionally applied on 1 January 2021. The Partnership Agreement removed all tariffs on trade in goods between the UK and Moldova except for a number of TRQs on certain products. In response to a request from Moldova, the UK agreed to temporarily remove all remaining TRQs on Moldovan originating goods imported into the UK via an amending agreement to the Partnership Agreement signed on 25 May 2023 (“Amending Agreement No. 1”). This liberalisation came into effect for a period of 12 months on the coming into force of The Customs (Tariff and Miscellaneous Amendments) Regulations 2023 (S.I. 2023/774).
- 6.8 An Amending Protocol between the UK and Moldova to extend Amending Agreement No.1 (“the Amending Protocol”), was signed by the UK and Moldova on 23 May 2024. The UK will temporarily maintain the current trade liberalisation measures it accords Moldova via an exchange of non-binding letters with Moldova (dated 20 June and 26 June 2024 for the UK and Moldova respectively), until the Amending Protocol enters into force.
- 6.9 This instrument extends the period of application of that liberalisation for a further five years, to 31 July 2029, in line with the exchange of non-binding letters and, when it comes into force, the Amending Protocol.
- 6.10 The UK-ESA EPA entered into force between the UK and three ESA States on 1 January 2021. Following the deposit by Madagascar of its instrument of ratification of the UK-ESA EPA on 8 March 2024, the agreement will enter into force between the UK and Madagascar on 1 August 2024. This instrument reflects the application of the UK-ESA EPA to Madagascar, in accordance with the terms of the agreement.

Why was this approach taken to change the law?

- 6.11 The PTA Regulations set out the legislative mechanism through which the UK implements the preferential tariff and related rules of origin requirements that it has

agreed with trading partners. Schedule 1 to the PTA Regulations sets out the agreements to which those Regulations apply, and the related reference documents that contain the preferential duty rates and rules of origin.

- 6.12 Where, as here, there is a change to the PTAs between the UK and another country, a new version of the relevant reference document(s) will be published. To give effect to that new version, the reference in Schedule 1 of the PTA Regulations is amended. This instrument effects that amendment to Schedule 1 in respect of the PTAs with the ESA States and Moldova.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No consultation in relation to this instrument has been undertaken. This instrument makes amendments to maintain the current position, such as extending tariff liberalisation previously in force for Moldova and recognising Madagascar's ratification of the UK-ESA EPA.

8. Applicable Guidance

- 8.1 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, goods 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/finding-commodity-codes-for-imports-or-exports>.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 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](https://www.gov.uk/government/publications/the-uks-integrated-tariff-schedule/the-uks-integrated-tariff-schedule) (<https://www.gov.uk/government/publications/the-uks-integrated-tariff-schedule/the-uks-integrated-tariff-schedule>).

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The liberalisation extension enabled under this instrument allows small businesses in the UK importing goods from Moldova to benefit from a removal of a tariff that would otherwise have been applicable. This instrument therefore does not present any additional burden for small businesses but does extend the offer of potential relief from duties that otherwise would have been payable.
- 9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is in line with the general approach to tariff legislation, which is kept under review to ensure that it meets the policy

objectives set out above in section 5 of this Explanatory Memorandum and ensure burdens on business are carefully monitored.

- 10.2 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 The Amending Protocol, which extends the tariff liberalisation for a further five years to 31 July 2029, was signed by the UK and Moldova on 23 May 2024.
- 11.2 Under the terms of the Amending Protocol, it enters into force following notification by the UK of completion of domestic procedures. The UK's domestic procedures include scrutiny of the Amending Protocol by Parliament in accordance with the Constitutional Reform and Governance Act 2010 ("the CRaG Act").
- 11.3 Due to the dissolution of Parliament from 30 May 2024, the scrutiny period required under the CRaG Act will not complete before the current tariff liberalisation measures expire on 31 July 2024. In order to prevent a gap in liberalisation, Moldova and the UK have therefore entered into a non-binding exchange of letters under which the UK will temporarily unilaterally maintain the current tariff liberalisation measures it accords Moldova under the PTA until the Amending Protocol enters into force.
- 11.4 This instrument therefore implements the tariff liberalisation measures under the exchange of letters and, subsequently, the Amending Protocol once it enters into force.
- 11.5 The non-binding exchange of letters prior to ratification of the Amending Protocol is not subject to the CRaG Act. However, it provides HM Treasury with the vires under section 9 of the TCTA to make and lay this legislation. The Amending Protocol will be laid before Parliament for scrutiny under the CRAG Act as soon as possible in the new Parliamentary session.
- 11.6 The government regrets that this instrument breaches the convention that statutory instruments subject to the negative procedure should normally be laid before Parliament, and copies thereof provided to the Committee, at least 21 days before the instrument comes into force. The government is committed to implementing the UK's international treaty obligations before the entry into force of the UK-ESA EPA between the UK and Madagascar on 1 August 2024. In order to ensure the UK upholds its international obligations to Madagascar under that agreement, this instrument comes into force on 1 August 2024. The government is also committed to implementing the temporary tariff liberalisation arrangement with Moldova before the current period of liberalisation will come to an end on 31 July 2024.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023. However, it does amend legislation that was itself related to the withdrawal of the United Kingdom from the European Union because withdrawal required the UK to replace the EU's customs regime with a UK-specific customs regime.