EXPLANATORY MEMORANDUM TO

THE CUSTOMS (TARIFF AND MISCELLANEOUS AMENDMENTS) (NO. 3) REGULATIONS 2024

2024 No. 1005

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 James Murray MP, the Exchequer Secretary to the Treasury 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.

2.3 Douglas Alexander MP, Minister of State for Trade Policy and Economic Security, confirms that this Explanatory Memorandum meets the required standard.

2.4 Benedict Collins, Deputy Director for Tariffs, Imports, Professions and Strategy (TIPS) at the Department for Business and Trade, 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 Ria Carter at the Department for Business and Trade, ria.carter@businessandtrade.gov.uk, can be contacted with any queries regarding the UK Global Tariff ("UKGT") and tariff suspensions.

3.3 Caroline Nicholls at the Department for Business and Trade, caroline.nicholls@businessandtrade.gov.uk can be contacted with any queries regarding Rules of Origin.

3.4 Andreas Lendle at the Department for Business and Trade, andreas.lendle@businessandtrade.gov.uk, can be contacted with any queries regarding the preferential tariff 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 (lower import duty rates) and rules of origin that apply under preferential trade arrangements ("PTAs") between the UK and other countries. This instrument also includes changes to reference documents relating to tariff suspensions and the UK's customs tariff, which detail the classifications and duty rates of goods that are included in the UK's tariff schedule.

4.3 The reference documents updated in this instrument have been given legal effect by the following Regulations:

(a) The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) (the "Establishment Regulations").

(b) The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) ("the Preferential Trade Arrangements Regulations").

(c) The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (S.I. 2020/1435) (the "Suspensions Regulations").

(d) The Customs Tariff (Preferential Trade Arrangements) (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) (Amendment) Regulations 2024 (S.I. 2024/424) (the "CPTPP Regulations").

Where does the legislation extend to, and apply?

4.4 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.

4.5 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 and technical updates to tariff legislation.

5.2 This instrument amends regulation 9 of the Preferential Trade Arrangements Regulations. Regulation 9 concerns quota volumes and includes rules on how to calculate the applicable quota in the first quota period (known as the 'adjusted quota period') following the entry into force of a new PTA. This instrument amends regulation 9 so that the Preferential Tariff reference document for a given PTA can specify an alternative methodology for pro-rating the volume of a quota in the adjusted quota period. This amendment is necessary to ensure compliance with obligations concerning the pro-rating of quotas under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") which requires pro-rating calculated with reference to whole months rather than days.

5.3 This instrument contains amendments to the below reference documents:

(a) The 'Tariff of the United Kingdom' reference document, to reflect technical and descriptive commodity code updates and address previous errors. This includes reducing the Most Favoured Nation ("MFN") tariff of Dibromomethane (2903 69 11 00), a chemical used as a solvent and a motor fuel, from 4% to 0%. This reduction is to address a technical error caused by a misinterpretation of an updated classification of hydrocarbons issued by the World Customs Organization in 2022 and will put the tariff in line with the

original policy intention. The technical amendments update the commodity code structures and descriptions in the UKGT to ensure the UK's international trade policy can be delivered and avoid unnecessary complications for businesses.

(b) 'The Chile Preferential Tariff', 'The CPTPP Preferential Tariff', 'The Egypt Preferential Tariff', 'The Morocco Preferential Tariff', 'The Singapore Preferential Tariff', 'The Tunisia Preferential Tariff', 'The Turkey Preferential Tariff', and 'The Viet Nam Preferential Tariff' reference documents. This is to reflect minor updates including to quota volumes in line with PTA obligations, commodity code changes, formatting changes and error corrections.

(c) 'The CPTPP Origin Reference Document' to reflect technical and formatting error corrections, including the previous omission of the Short Supply List of Products included in Appendix 1 of Annex 4-A of CPTPP. The fabrics and yarns in the Short Supply List may be challenging to source from within CPTPP countries, and, therefore, textile and apparel goods made from these materials will find it more difficult to meet the product-specific rules of origin in Annex 4-A of CPTPP in order to claim tariff preference. Therefore, fabrics and yarns in the Short Supply List that were imported from a non-CPTPP country can be treated as originating when used to make a textile or apparel good in a CPTPP country, provided the fabric or yarn meets the more flexible product-specific rules in the List.

(d) 'The Canada Origin Reference Document' to reflect formatting updates to the Product-Specific Rule for passenger vehicles (8703).

(e) The 'Tariff Suspension Document' from version 2.4 to version 2.5 to introduce a series of technical and descriptive commodity code changes. These amendments will help to ensure the UK's international trade policy can be delivered and avoids unnecessary complications for businesses. Additionally, this instrument will rectify the misclassification of DL-Malic acid (2918 19 98 90), a chemical food additive applied for in the 2023 business suspensions window. The description of a different chemical was erroneously listed for this product in version 2.4 of the 'Tariff Suspension Document', dated 17 March 2024.

What was the previous policy, how is this different?

5.4 Sections 5.1, 5.2, and 5.3 above set out the previous policy and the changes being made.

6. Legislative and Legal Context

How has the law changed?

UK Global Tariff

6.1 Section 8 of the TCTA gives HM Treasury the power to make regulations that establish and maintain in force the customs tariff. Legislation was made under this section of the TCTA which ensured that the UK has functioning Customs, VAT and Excise regimes. That legislation sets out the associated rules of, and exceptions to, the UK's applied MFN tariffs, which have applied since 1 January 2021.

6.2 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).

Preferential Tariffs and rules of origin

6.3 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 further to section 9(3) of the TCTA. That recommendation has been given by the Secretary of State for Business and Trade.

6.4 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 preferential tariff to those tariffs otherwise offered under the MFN rate. 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.

6.5 Section 11 of the TCTA gives HM Treasury powers to establish tariff rate quotas ("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.

6.6 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 Business and Trade in accordance with section 11(7) of the TCTA.

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 for Business and Trade further to section 17(8) of the TCTA.

6.8 This instrument utilises these powers under the TCTA in order to amend the Preferential Trade Arrangements Regulations. This amendment ensures that the UK continues to correctly implement PTAs, to reflect recent developments in those arrangements.

Tariff Suspensions

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

Why was this approach taken to change the law?

6.10 The TCTA gives primary powers for the UK to create its own customs regime, including a system of import duty rates, allowing import duty to be applied to chargeable goods entering the UK.

6.11 Import duties (or tariffs) are the taxes that an importer needs to pay when bringing goods into the UK. The UKGT sets out these non-preferential import duty rates, with

product-specific commodity codes determining the rate to be applied to each good. This provides the legal basis for conveying information that traders need to ensure the correct classification of goods being imported into the UK and is subject to variation over time.

6.12 Where there are technical or descriptive changes to commodity codes relevant to the UKGT and Tariff Suspensions, the corresponding reference document must be updated to ensure the UK's Tariff Schedule is up to date and operating as intended.

6.13 The Preferential Trade Arrangements 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 Preferential Trade Arrangements Regulations sets out the agreements to which those Regulations apply, and the related reference documents that contain the corresponding preferential duty rates and rules of origin. To give effect to a new version of the relevant reference document, the reference in Schedule 1 of the Preferential Trade Arrangements Regulations is amended. This instrument effects that amendment to Schedule 1 in respect of PTAs with, Canada, Chile, CPTPP, Egypt, Morocco, Singapore, Tunisia, Turkey and Viet Nam. The CPTPP Regulations, which previously amended Schedule 1 of the Preferential Trade Arrangements Regulations to give effect to the CPTPP reference documents, are not yet in force. Therefore, this instrument amends the CPTPP Regulations, rather than the Preferential Trade Arrangements Regulations, in respect of the reference documents for CPTPP.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation in relation to this instrument has been undertaken.

8. Applicable Guidance

8.1 Since the end of the Transition Period, the UKGT 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 the implementation of a preferential trade agreement. 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: 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 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 This instrument amends the CPTPP Regulations immediately prior to those Regulations coming into force, to update the references to the CPTPP reference documents which will be given effect by those Regulations.

11.2 This instrument replaces version 1.6 of the Viet Nam Preferential Tariff reference document with version 1.8. The version number of this reference document is amended non-sequentially because, since this reference was last amended by the Customs Tariff (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/1339), a public notice published on 2 February 2024 under section 32A TCTA, has modified the relevant statutory reference to version 1.7, dated 31st January 2024 of that document.

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 UK from the EU because withdrawal required the UK to replace the EU's customs regime with a UK-specific customs regime.