EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 1436

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 two origin reference documents. These are documents which set out the conditions for goods to qualify as 'originating' from a country for the purpose of claiming preferential tariff treatment. 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) ("the Preferential Trade Arrangements Regulations").

2.3 Specifically, this instrument:

- Amends the "European Union Origin Reference Document" to extend the current rules of origin for electric accumulators (also referred to as battery cells or packs) and electrified vehicles, in line with the recent Partnership Council decision agreed between the UK and the EU under the UK-EU Trade and Cooperation Agreement ("TCA").
- Amends the "Turkey Origin Reference Document" to extend the current rules of origin for electric accumulators and electrified vehicles, in line with a recent Joint Committee decision agreed between the UK and the Republic of Turkey under the UK-Turkey Free Trade Agreement.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 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 agreement to extend the current rules of origin for electric accumulators and electrified vehicles was not reached with the EU and Turkey until 21 December. Without this agreement, the rules of origin would have become more restrictive from 1 January 2024. The government is committed to implementing

this extension to the current rules of origin for electric accumulators and electrified vehicles with the EU and Turkey as soon as possible and in time to ensure the current rules continue to apply from 1 January 2024, avoiding a disruptive gap for importers. This is also in accordance with the UK's international obligations as agreed with both the EU and Turkey.

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 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. 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.

6.2 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.

6.3 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 Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430). 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.

6.4 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?

7.1 The Preferential Trade Arrangements Regulations are the legislative mechanism through which the UK implements the preferential tariffs and related rules of origin requirements that it has agreed with trading partners[1].

7.2 This instrument implements the relevant rules of origin requirements the UK has agreed in PTAs with the EU and Turkey. Without this instrument, His Majesty's Government would not be able to give full effect to these international obligations. The amendments made to the Preferential Trade Arrangements Regulations by this instrument will update references to the Origin Reference Documents associated with the UK's PTAs with the EU and Turkey.

7.3 The references to the EU Origin Reference Document and Turkey Origin Reference Document are updated to implement changes to the rules of origin for electric accumulators and electrified vehicles under the UK-EU and UK-Turkey PTAs. In both PTAs, the rules for electric accumulators and electrified vehicles were scheduled to change from 1 January 2024. The UK and EU have agreed to extend the current product specific rules of origin for electric accumulators and electrified vehicles until 31 December 2026. This change is designed to avoid the risk of tariffs being paid on electric vehicles traded between the UK and EU and to give manufacturers more time to onshore production to meet the further scheduled change on 1 January 2027. The UK and Turkey have also agreed to extend the current product specific rules of origin for electric accumulators and electrified vehicles until 31 December 2026. These amendments to the UK-EU PTA and the UK-Turkey PTA will allow UK, EU, and Turkish businesses to continue to utilise the existing product specific rules of origin under the relevant PTA.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. This instrument implements an amendment to the TCA, as agreed by the Partnership Council under that Agreement, into UK domestic law.

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 has been undertaken in relation to this instrument.

11. Guidance

11.1 Since 1 January 2021, 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

[1] 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).

of a preferential trading arrangement. Further guidance is available at https://www.gov.uk/guidance/finding-commodity-codes-for-imports-or-exports.

12. Impact

12.1 This legislation should ensure the maintenance of tariff free trade of electric vehicles between the UK, the EU and Turkey.

12.2 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).

12.3 There is no, or no significant, impact on charities or voluntary bodies.

12.4 There is no, or no significant, impact on the public sector.

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 Dylan Cunningham at HM Treasury, dylan.cunningham@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Daniel Mullooly at HM Treasury, daniel.mullooly@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

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

15.4 Nigel Huddleston MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.5 Georgina Lake, Deputy Director for Tariffs and Rules of Origin, at the Department for Business and Trade, Georgina.Lake@businessandtrade.gov.uk, can confirm that this Explanatory Memorandum meets the required standard.