EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS) (AMENDMENT) REGULATIONS 2024

2024 No. 303

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 makes amendments to the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) ("the Preferential Trade Arrangements Regulations").

2.3 This instrument amends the preferential tariff reference document for the UK's preferential trade arrangement ("PTA") with Ukraine to continue the full liberalisation of import duties for Ukraine originating goods as defined in the PTA Regulations:

"In response to the full-scale invasion of Ukraine by Russia, the UK has committed a varied package of support to Ukraine, including the full liberalisation of import duties. The temporary liberalisation was due to expire on 31 March 2024, and is now extended by this instrument."

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Agreement No. 3 in the form of an Exchange of Letters amending the 'Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine' ("Agreement No. 3") was signed by the UK and Ukraine on 8 February 2024. This agreement extends the liberalisation of tariffs under the UK-Ukraine PTA for a further five years (with the exception of eggs and poultry, for which tariff liberalisation will apply for two years) beyond 31 March 2024.

3.2 Ukraine have indicated that they are unlikely to be able to ratify Agreement No. 3 before the current tariff liberalisation measures expire on 31 March 2024. The UK and Ukraine have therefore entered into a non-binding exchange of letters under which the UK will temporarily unilaterally extend the current tariff liberalisation measures it accords Ukraine under the PTA until Agreement No. 3 is ratified. This instrument

therefore implements the tariff liberalisation measures under the exchange of letters and, subsequently, Agreement No. 3 once it enters into force.

3.3 Agreement No. 3 was laid before Parliament on 19 February for scrutiny as per the Constitutional Reform and Governance Act 2010 ("CRaG"). The government is committed to bringing the treaty into force on 1 April 2024 in order to ensure no gaps in tariff liberalisation. To provide Parliament with 21 days to scrutinise this instrument before it comes into force, it is being laid before Parliament before Parliamentary scrutiny of the treaty under CRaG has completed.

3.4 The non-binding exchange of letters prior to ratification of Agreement No. 3 is not subject to CRaG. However, it provides HM Treasury with the vires under section 9 of the TCTA to make and lay this legislation.

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 and on the Secretary of State for the Department of Business and Trade making regulations providing for a licensing or allocation system for goods subject to a quota. In exercising these functions under Part 1 of the TCTA, HM Treasury and the Secretary of State for the Department for Business and Trade have had regard to relevant international arrangements to which the government is a party.

The Preferential Trade Arrangements Regulations

6.2 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. The power is exercised on the recommendation made to HM Treasury by the Secretary of State for the Department for Business and Trade further to section 9(3) of the Act.

6.3 Pursuant to the UK's PTA with Ukraine, 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). The preferential tariff rate is only available to goods that enter the UK after meeting all relevant terms set out in the PTA in question, including meeting specific Rules of Origin (RoO) requirements.

6.4 Section 11 of the TCTA gives HM Treasury the power to make regulations which establish Tariff Rate Quotas ("TRQs") for particular products. 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 for the Department for Business and Trade to determine the licensing or allocation system that goods subject to a TRQ will be subject to.

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

6.6 In May 2022, in response to a request from Ukraine, the UK fully liberalised all tariffs on Ukraine originating goods imported to the UK. This liberalisation came into effect for a period of 12 months on the coming into force of the Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (Ukraine) (Amendment) Regulations 2022 (S.I. 2022/525) ("the Ukraine Regulations").

6.7 The Customs Tariff (Preferential Trade Arrangements and Miscellaneous Amendments) Regulations 2023 (S.I. 2023/433) continued this liberalisation pursuant to the UK-Ukraine PTA, extending tariff liberalisation until 31st March 2024.

6.8 In accordance with Part 2 of the Ukraine Regulations, tariff liberalisation applies to all Ukraine originating goods imported to Northern Ireland.

7. Policy background

What is being done and why?

7.1 The PTA Regulations set out the legislative mechanism through which the UK implements the preferential tariff and related RoO requirements that it has agreed with trading partners.

7.2 This instrument implements a further period of temporary tariff liberalisation under the UK-Ukraine PTA, following the government's commitment to extend its economic support for Ukraine. The amendment to the UK-Ukraine PTA is undergoing scrutiny by Parliament as required by the CRaG Act.

7.3 As part of the amendment to the UK-Ukraine PTA, the UK has committed to extend tariff liberalisation for Ukraine originating goods for a further five years, with the exception of poultry and eggs for which the liberalisation will apply for two years. This instrument will come into force on 1 April 2024 and extend tariff liberalisation on poultry and eggs until 31 March 2026 and on all other goods until 31 March 2029.

8. European Union 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 a 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 makes amendments to maintain the current position, by extending the duration of

tariff liberalisation already in force for Ukraine. 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/finding-commodity-codes-for-imports-or-exports.

12. Impact

12.1 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 (www.gov.uk).

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

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

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

15.4 Andreas Lendle at the Department for Business and Trade, andreas.lendle@businessandtrade.gov.uk can be contacted with any queries regarding the PTA Regulations provisions in this instrument.