

**EXPLANATORY MEMORANDUM TO**  
**THE TRADE PREFERENCE SCHEME (EU EXIT) REGULATIONS 2020**  
**2020 No. 1438**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for International Trade (DIT) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This Memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”) to ensure that the United Kingdom (“UK”) has a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union (“EU”). This legislation will be necessary to ensure the UK’s Customs, VAT and Excise regimes function as intended.
- 2.2 The purpose of The Trade Preference Scheme (EU EXIT) Regulations 2020 (“these Regulations”) is to establish in domestic legislation a trade preference scheme called the Generalised Scheme of Preferences or “GSP”. This scheme will reduce or remove import duties on goods from eligible developing countries to which a preference framework is applied under the scheme. This instrument will broadly correspond to EU Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (“EU GSP”). The aim of the GSP is to support economic development and poverty reduction in developing countries whilst providing better trading opportunities and lower cost goods to UK businesses and consumers.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 The Department for International Trade regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21-day rule”). This instrument needs to enter into force at the end of the Implementation Period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**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 Hands 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 regulations are compatible with the Convention rights”.

**6. Legislative Context**

- 6.1 Section 10 of the TCTA confers powers on the Secretary of State 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.  
6.2 Under the GSP, 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 (S.I. 2020/1430), subject to various requirements of the scheme (“the GSP rate”). 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: Trade Preference Scheme) (EU Exit) Regulations 2020 (S.I. 2020 No. 1436). This provides an essential linkage between the two sets of regulations.  
6.3 This Statutory Instrument is part of a package of instruments that establish the customs tariff of the United Kingdom and those variations from the rate of import duty in a standard case that will apply to imported goods following the end of the implementation period.

**7. Policy background**

*What is being done and why?*

- 7.1 This instrument is one of a package of regulations made under the TCTA, to replace EU customs legislation. This instrument will replicate the effects of the EU GSP by setting up an independent UK trade preference scheme.  
7.2 This offers better trading access to raise incomes and reduce poverty in developing countries, helping countries to be less dependent on aid. In 2019, the UK imported £25bn of goods from countries which are part of EU GSP, accounting for 5% of all imports of goods into the UK.  
7.3 Trade preferences are also important for UK businesses and consumers, supporting UK supply chains and providing cheaper prices to consumers. Textiles and apparel were the most important sector, and the UK imported £8bn worth of goods in 2019

from countries which benefit from EU GSP. This accounted for 30% of all textile and apparel imports into the UK.

- 7.4 The UK GSP, like the EU GSP, has three frameworks providing different levels of market access as set out in Part 3.
- 7.5 LDC Framework (“LDCF”): This provides “duty-free, quota-free” market access to least developed countries, as classified by the UN (“LDCs”), on all goods except for arms and ammunition. This fulfils the international commitment in the Sustainable Development Goals to provide such market access to least developed countries.
- 7.6 General Framework (“GF”): This *reduces* import duties on those product lines set out in the “GSP Specified Goods Table”, contained in Schedule 5 for goods originating from other countries unless, in broad terms, they have been classified by the World Bank as upper middle income or high income countries.<sup>1</sup>
- 7.7 Enhanced Framework (“EF”): This *removes* import duties on those product lines set out in the GSP Specified Goods Table, including textiles and apparel. This is conditional on a country meeting an economic vulnerability test<sup>2</sup> and the effective implementation of 27 international conventions on human rights, labour rights, environment and good governance as set out in Schedule 2 of the Regulations. Existing beneficiaries of the EU GSP+ will become beneficiaries of the EF when the UK GSP takes effect. Other eligible developing countries can apply to the EF under the GSP as set out in Part 7. The UK intends to monitor compliance with the criteria of the EF and will provide more detailed procedures in a notice. Where any EF criteria are no longer being met, the country’s trade preferences under this framework may be withdrawn and a country may return to the GF.
- 7.8 Part 5 determines the GSP goods under the three Frameworks and Part 6 sets out the rules for determining the GSP rate on those goods. The GSP Specified Goods Table in Schedule 5 lists the goods covered by the GF and EF Framework and the applicable codes for determining the GSP rate.
- 7.9 Schedule 1 of the instrument lists the countries that will benefit from the GF or EF, and Schedule 3 of the TCTA lists the countries that will benefit from the LDCF. Changes to Schedule 3 of the TCTA will be made through a statutory instrument when international economic classifications of countries change or when a country has been withdrawn from one of the Frameworks. We expect such “updating SIs” to be made annually due to regular economic re-classification.
- 7.10 Section 10 of the TCTA enables the Secretary of State to make provisions concerning suspension, variation and withdrawal of trade preferences. The general circumstances to suspend trade preferences from any countries are listed in Part 9. These replicate the list of reasons included in the EU GSP and include issues such as serious and systematic violations of human rights and labour rights (contained in conventions listed in Part 1 of Schedule 2). The Secretary of State may issue a notice to suspend or vary a country’s trade preferences in these circumstances.
- 7.11 Part 11 sets out the procedure the Secretary of State has to follow prior to suspending or varying on such a ground. The Secretary of State must publish a warning notice

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<sup>1</sup> See paragraph 7.17 for further details.

<sup>2</sup> Economic vulnerability is assessed, amongst other things, against the volume of imports into the British Islands (meaning the United Kingdom, Guernsey, Jersey and the Isle of Man), which form a single customs territory.

initiating a period during which representations will be considered from interested parties, which could include the beneficiary country and Members of Parliament, if they wish. Following this, the Secretary of State must publish an assessment notice explaining any further actions which the Secretary of State may take, which could include issuing a notice to suspend or vary trade preferences for a period of up to twelve months. The possibility of suspending or varying preferences by notice is available, since otherwise the Regulations would lack a remedy for prohibited conduct. At the end of such a period, if the relevant circumstances still exist, the Secretary of State may lay Regulations using the powers in the TCTA to suspend, vary, or withdraw preferences. The intention is that suspension or withdrawal of trade preferences should rarely be used and only after all other channels have been explored.

- 7.12 Where the UK implements a new UK preferential trade arrangement with a country under section 9 of the TCTA, importers will be able to choose between that arrangement or the terms of the trade preference scheme for a period of up to two years (or indefinitely, if the country qualifies under the LDC framework). After this period, it is intended that relevant arrangement under the trade preference scheme will be withdrawn from that country, by a statutory instrument amending the lists in Schedule 1 of this instrument. In the case of least developed countries, the choice will be available indefinitely.
- 7.13 Countries which have been implementing an EU preferential trade arrangement for more than two years have already benefitted from a similar two-year transition period under the EU GSP and, therefore, have been withdrawn from the EU GSP. As set out in Part 4 of these Regulations, where, in the case of a country falling within this class, the UK implements a preferential trade arrangement which replicates the effects of an EU preferential trade arrangement, it is our intention to issue a notice to suspend the application of the GSP, to take effect after an appropriate period. The intention would then be to subsequently withdraw such countries from the UK trade preference scheme by a future statutory instrument.
- 7.14 Part 8 allows the Secretary of State to provide detail of customs cooperation conditions in a customs cooperation notice. It is necessary that developing countries cooperate in customs procedures, for rules of origin relating to GSP goods to work. Serious and systematic breach of one or more of the customs cooperation conditions is one of the circumstances in which the Secretary of State may suspend a country from the GSP or suspend or vary GSP rates, under Part 9.
- 7.15 Part 10 and Schedule 3 provide for goods graduation, which is the mechanism for suspending GSP rates from goods originating from specified countries, which are already highly competitive without trade preferences. The countries and the goods subject to graduation will be specified in a notice. The first such notice will replicate the EU's current list of graduated goods. It is intended that the Secretary of State will assess which goods to graduate using trade flow data for the British Islands<sup>3</sup> every three years thereafter.
- 7.16 Part 10 and Schedule 4 allow for safeguards to be applied to imports from countries benefitting from the GSP where this is threatening to harm domestic producers. Trade preference safeguard measures will increase import duty rates up to no higher than the

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<sup>3</sup> The Crown Dependencies and Isle of Man will apply the same tariffs as under the UK GSP, under their customs union with the United Kingdom.

standard rate of import duty. The Secretary of State may make an assessment to apply trade preference safeguard measures where considered necessary.

- 7.17 The Government intends to offer the LDCF to all least developed countries as classified by the UN; and to offer the GF or EF to other eligible developing countries, unless they have been classified by the World Bank as upper middle income or high income countries for a continuous period. Once countries are re-classified by the UN or World Bank, the Government intends to grant a transition period of at least 3 years to support continuity and sustainable development. This is reflected in changes to the countries in Schedule 3 to the TCTA, made by Part 12 of the Regulations.
- 7.18 Part 12 amends the names used to refer to two of the eligible developing countries (now Eswatini and Myanmar) listed in Schedule 3 of the TCTA. It also makes the first update to the list of eligible countries in the TCTA to reflect changes to their international classifications since the TCTA entered into force. Part 12 removes Equatorial Guinea from Part 2 of Schedule 3 of the TCTA as it has ceased to be classified by the UN as a least developed country for at least three years. Equatorial Guinea is now classified by the World Bank as an upper middle income country and is, therefore, not eligible for the GSP. Part 12 also removes Guyana, Nauru, Samoa and Tonga from Part 3 of Schedule 3 of the TCTA. These countries have been classified by the World Bank as upper-middle income countries for at least 3 consecutive years. They are, therefore, no longer eligible for GSP. Part 12 also inserts Algeria into Part 3 of Schedule 3 of the TCTA. This is because it was recently classified as a lower-middle income country by the World Bank.
- 7.19 Schedule 5 contains the GSP Specified Goods Table referred to in Part 5. Given this table is lengthy, it is positioned as the final Schedule so as to make it easier to read the text of the Regulations and Schedules together.
- 7.20 If this instrument is not brought into force, eligible developing countries would be required to pay the import duties due in a standard case under the Customs Tariff (Establishment) (EU Exit) Regulations 2020. This could make imports from developing countries less competitive and therefore disrupt their trade.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU. This is because it is intended to replicate the effects of the EU GSP, which will cease to have effect as incorporated direct EU legislation on commencement of paragraph 1 of Schedule 7 to the TCTA. This instrument will implement an independent UK trade preference scheme.

## **9. Consolidation**

- 9.1 This is new legislation and therefore no consolidation is required.

## **10. Consultation outcome**

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument broadly corresponds to and replicates insofar as is possible, existing EU legislation.
- 10.2 The Government set out the policy of replicating trade preferences in the Trade White Paper published in October 2017, providing an opportunity to hear views. The

Government then published a response in January 2018. Stakeholder contributions were highly supportive of our approach to maintaining current access for the world's poorest countries to UK markets and our aim to maintain preferential access for other developing countries. Respondents also suggested areas of improvement including extending preferences to a wider set of countries, simplifying rules, and extending the range of products that can benefit from zero or reduced tariffs. These Regulations focus on providing continuity of the trade arrangements established by EU GSP, but we will consider these suggestions in any future trade preference scheme.

## **11. Guidance**

- 11.1 The Department for International Trade will publish notices on the same day or before these Regulations come into force, specifying any information it considers necessary at that stage. It is anticipated that these first notices may be supplemented or amended subsequently.
- 11.2 Notices will be published on <https://www.gov.uk>. The specific location of the first set of notices on the appointed day will be <https://www.gov.uk/guidance/trading-with-developing-nations-from-1-january-2021>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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 because the effect of the Statutory Instrument is to maintain, as far as possible, the position prevailing currently.
- 12.4 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses that import from developing countries using trade preferences.
- 13.2 However, this legislation maintains the existing position as far as possible, imposing 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 This legislation will be monitored in the context of the wider customs tariff legislation.
- 14.2 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.
- 14.3 A statutory review clause is not included in these Regulations as the content relates to a tax or duty and therefore meets the requirements of the exception set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Peter Reid at the Department for International Trade and Foreign, Commonwealth, and Development Office, phone: 07469 121 513 or email: peter.reid@fcdo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Graham Zebedee, Director at the Department for International Trade, and Tammy Reynolds, Deputy Director for Trade Policy at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Trade Policy Greg Hands MP at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.