

EXPLANATORY STATEMENT

Issued by the Delegate of the Minister for Home Affairs

Customs Act 1901

Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

The *Customs Tariff Act 1995* (the Customs Tariff Act) gives effect to Australia's import trade classification system. It is used to assign rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties.

Subsection 273EA(1) of the Customs Act provides that where Parliament is not sitting for a period exceeding 7 days, the Minister may, under section 273EA of the *Customs Act 1901* (the Customs Act), publish a notice that, within 7 sitting days of the House of Representatives after the date of publication of the notice, the Minister will propose in Parliament a Customs Tariff alteration in accordance with particulars in the notice and operating as from such time as is specified in the notice.

This mechanism is used for initially effecting alterations to the Customs Tariff Act, particularly when such alterations are required to have effect in a short timeframe that cannot be achieved through a Customs Tariff Amendment Bill. Following the introduction of a Customs Tariff Proposal in the House of Representatives, the alterations contained in the Proposal will be incorporated into the Customs Tariff Act by a Customs Tariff Amendment Bill.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022* (the Notice) advises of the intention to propose a temporary additional rate of duty on the importation of goods from Russia or Belarus.

This Notice outlines the proposed establishment of an 'additional duty' regime applied to Russia and Belarus. An additional rate of duty will apply in addition to the general rate as set out in Schedule 3 to the Customs Tariff Act and other existing duties such as for excise equivalent goods. Where additional duty applies, it would apply to the exclusion of all concessional rates available under section 18 of, and Schedule 4 to, the *Customs Tariff Act 1995*. The additional duty regime will not apply where the goods are covered by preferential duty arrangements for goods from other countries, including under free trade agreements.

The proposed measure is a response to Russia's illegal invasion of Ukraine, supported by Belarus, and is necessary for the protection of Australia's essential security interests. Russia's actions, supported by Belarus, are a gross violation of international law, including the Charter of the United Nations. They violate Ukraine's sovereignty and territorial integrity and undermine the rules-based international order. Australia is committed to upholding these principles, which are essential to international, regional and domestic stability and security. The proposed measure complements other recent sanctions targeting both countries.

Revocation of Most-Favoured-Nation (MFN) tariff treatment for imports from Russia and Belarus is a step already taken by Canada and the United Kingdom.

The additional duty measure provides a mechanism through which entitlement to the MFN tariff treatment can be withdrawn. Australia does not have a framework which provides for the simple revocation of MFN tariff treatment and the default application of higher customs duty.

MFN tariff treatment is given effect through the general rate of customs duty in the Customs Tariff Act, with no provision currently made for higher rates of customs duty for particular countries. The Notice outlines the proposal for additional duty of 35 per cent to be added to the general rate of customs duty that applies under Schedule 3 to the Customs Tariff Act. This additional duty is consistent with the increased rates applied by Canada and the United Kingdom. This additional duty also retains excise equivalent and similar customs duties expressed in dollar amounts, for goods imported from Russia or Belarus.

The Department of Home Affairs consulted on the measure with the Department of Foreign Affairs and Trade, the Department of Treasury, the Department of the Prime Minister and Cabinet and the Attorney-General's Department.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments and has advised that the amendments are likely to have no more than minor regulatory impacts on business, individuals and organisations, and a Regulation Impact Statement will not be required. The OBPR reference number is OBPR22- 02026.

This Notice is a Legislative Instrument under the *Legislation Act 2003*.

Details of the Notice are set out in Attachment A.

Details of the Statement of Compatibility with Human Rights are set out in Attachment B.

The proposed tariff alterations outlined in the Notice operate starting on 25 April 2022.

ATTACHMENT A

Details of the Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022

The Schedule to the *Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022* (the Notice) outlines the proposed alterations to the *Customs Tariff Act 1995* (the Customs Tariff Act). The proposed alterations operate starting on 25 April 2022.

Schedule 1 – Alteration to the Customs Tariff Act 1995 operating starting on 25 April 2022

Customs Tariff Act 1995

Item [1] – Subsection 16(1)

This proposed amendment would have the effect of excluding goods subject to additional duty from being covered by the provisions for the calculation of duty under section 16 of the Customs Tariff Act.

Item [2] – Subsection 18(1)

This proposed amendment would have the effect of excluding goods subject to additional duty from receiving any concessional rates of duty under Schedule 4 to the Customs Tariff Act.

Item [3] – After Section 18

This item proposes new section 18A, which outlines the temporary increase in the amount of duty for goods that are the produce or manufacture of Russia or Belarus and sets out when the additional duty applies to these goods. This increase would last for six months starting on 25 April 2022 and ending at the end of 24 October 2022. This additional rate of duty operates alongside other existing calculations on the general rates of duty. For example, the indexation of CPI indexed rates by section 19 of the Customs Tariff Act continues to apply in calculating the duty on goods that are the produce or manufacture of Russia or Belarus.

Calculation of Additional Duty

Proposed subsection 18A(1) outlines the method for calculating the 35 per cent ad valorem rate that is applied in addition to the general rate of customs duty, excise-equivalent and similar customs duties expressed in dollar amounts in Schedule 3 to the *Customs Tariff Act 1995*, for additional duty goods.

Subsection 18A(2) provides that this additional duty calculation would override the general rate calculation in paragraph 16(1)(a) of the Customs Tariff Act, and any concessional rates in section 18 of, and Schedule 4 to, that Act.

Paragraph 18A(1)(a) provides that where the general rate set out in the third column of the tariff classification under which additional duty goods are classified is 'Free', the amount of duty in respect of those goods is an amount equal to 35 per cent of the value of the goods. For example, a duty rate of 35 per cent of the customs value of the goods would be payable for

ammonium nitrate classified to tariff subheading 3102.30.00, which has a general rate of customs duty of 'Free'.

Paragraph 18A(1)(b) provides that where the general rate set out in the third column of the tariff classification under which additional duty goods are classified is not 'Free', the amount of duty in respect of the goods would be calculated by adding an amount equal to 35 per cent of the value of the goods to the general rate.

Additional duty goods

Proposed subsection 18A(3) provides that goods are considered additional duty goods if they are the produce or manufacture of Russia or Belarus and are imported into Australia within a specified timeframe. Paragraph 18A(3)(b) outlines that the additional duty will apply to goods that are either imported into Australia during the period beginning on 25 April 2022 and ending at the end of 24 October 2022, or where the time for working out the rate of import duty on the goods occurred during that six-month period. The effect of this subsection is that the additional duty will apply for six months and goods cannot simply be warehoused during that timeframe to avoid the additional duty.

Paragraph 18A(3)(c) provides that the additional rate of duty will not apply to goods that are covered by preferential duty arrangements for goods for countries other than Russia or Belarus, including under free trade agreements. These goods will continue to be covered by paragraphs 16(1)(b) – (t) of the Customs Tariff Act.

When goods are the produce or manufacture of Russia or Belarus

Proposed subsections 18A(4) – (6) outline when goods are considered to be the produce or manufacture of Russia or Belarus.

Subsection 18A(4) provides that goods will only be considered as the produce or manufacture of Russia or Belarus if the goods are unmanufactured raw products of these countries or where the last process of manufacture occurred in these countries.

Paragraph 18A(4)(a) clarifies that 'unmanufactured raw products' has the same meaning as section 4 of the *Customs Act 1901*, which means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production. This could include but is not limited to goods such as animals and parts of animals, greasy wool, plants and parts of plants, minerals in their natural state, ores, and crude petroleum.

Subsection 18A(5) provides that the last process of manufacture does not include minimal operations or processes that take place in a country other than Russia or Belarus. Subsection 18A(6) provides a further non-exhaustive list of examples of what are considered to be minimal operations or processes.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022

The *Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022* (the Notice) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

The *Customs Tariff Act 1995* (the Customs Tariff Act) gives effect to Australia's import trade classification system. It is used to assign rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties.

Subsection 273EA(1) of the Customs Act provides that where Parliament is not sitting for a period exceeding 7 days, the Minister may under section 273EA of the *Customs Act 1901* (the Customs Act) publish a notice that within 7 sitting days of the House of Representatives after the date of publication of the notice, the Minister will propose in Parliament a Customs Tariff alteration in accordance with particulars in the notice and operating as from such time as is specified in the notice.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2022* (the Notice) advises of the intention to propose a temporary additional rate of duty on the importation of goods from the Russian Federation (Russia) or the Republic of Belarus (Belarus), beginning 25 April 2022 and ending at the end of 24 October 2022 (rate increase period).

The Notice outlines the proposed establishment of a temporary 'additional duty' regime applied to Russia and Belarus. An additional rate of duty will apply in addition to the general rate as set out in Schedule 3 to the Customs Tariff Act and other existing duties such as for excise equivalent goods. Where the additional duty applies, it would apply to the exclusion of all concessional rates available under section 18 of, and Schedule 4 to, the Customs Tariff Act. The additional duty regime will not apply where the goods are covered by preferential duty arrangements for goods from other countries, including under free trade agreements.

In Australia, Most-Favoured Nation (MFN) tariff treatment is given effect through the general rates of duty in the Customs Tariff Act, with no provision currently made for higher rates of tariffs for particular countries. The Notice provides a mechanism through which entitlement to the MFN tariff treatment can be withdrawn during the rate increase period. The Notice provides for an additional duty of 35 per cent to be added to the general rate of customs duty that applies under Schedule 3 to the Customs Tariff Act. This additional tariff

also applies to excise equivalent and similar customs duties expressed in dollar amounts, for goods imported from Russia or Belarus.

Human rights implications

The proposed amendments in the Notice may engage the right to an adequate standard of living, including adequate food, clothing and housing, and the right to the highest attainable standard of health, in Articles 11(1) and 12(1) of the *International Covenant on Economic, Social and Cultural Rights*, to the extent that the imposition of an additional duty impacts the importation of relevant goods that are produced or manufactured in Russia and Belarus to the Australian market. These measures are not expected to have a detrimental effect as they are temporary and any impacts can be absorbed by alternative markets.

The temporary additional duty is introduced as a matter of foreign policy, in response to Russia's acts of aggression towards Ukraine, and to the extent that these rights may be engaged, it is reasonable, necessary and proportionate in addressing the public, social and international concern with the escalating conflict in Ukraine.

Conclusion

The Notice is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Jason Wood, Assistant Minister for Customs, Community Safety and Multicultural Affairs, Parliamentary Secretary to the Minister for Home Affairs