

EXPLANATORY STATEMENT

Issued by the Delegate of the Minister for Home Affairs

Customs Act 1901

Notice of Intention to Propose Customs Tariff Alterations (No. 5) 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 of at least seven days, the Minister may, under section 273EA of the *Customs Act 1901* (the Customs Act), publish a notice that within seven 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 in the notice. Subsection 273EA(1) further provides that a notice that does not raise duty may apply retrospectively up to six months before the time of publication.

This mechanism is used for initially effecting alterations to the Customs Tariff Act, particularly when such alterations are required to have effect before a Customs Tariff Amendment Bill can be passed. Following the introduction of a Customs Tariff Proposal in the House of Representatives, the alterations contained in the Proposal would be incorporated into the Customs Tariff Act by passage of a Customs Tariff Amendment Bill.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 5) 2022* (the Notice) advises of the intention to propose a temporary decrease in rates of duty for goods imported into Australia that are the produce or manufacture of Ukraine. The reduction in the rate of customs duty is proposed to apply for a period of 12 months and will commence retrospectively from 4 July 2022.

Most goods that are the produce or manufacture of Ukraine would be covered by a 'Free' rate of duty.

However, this 'Free' rate of duty would not apply to goods classified under a tariff classification in Chapter 22, 24, 27, 29, 34 or 38 of Schedule 3 to the Customs Tariff Act for which a 'DC' tariff rate is listed. The rate of duty for these goods would instead be calculated as the lower rate of either the 'DC' rate in Schedule 3, or any concessional rate applying in Schedule 4. These exceptions maintain the excise-equivalent customs duty payable for goods such as alcohol, fuel and tobacco.

The rules for determining whether goods are a produce or manufacture of Ukraine would be the same rules applicable to Developing Countries accessing 'DC' rates in the Australian System of Trade Preferences. Having clear and transparent rules of origin minimises the risk

of transshipment of goods through Ukraine that would otherwise not be entitled to the ‘Free’ rate of duty.

The proposed measure is a response to Russia’s illegal invasion of Ukraine, supported by Belarus. 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. This measure contributes to Ukraine’s continued participation in international trade and supports efforts by Ukraine to uphold its territorial integrity.

The proposed measure would be consistent with similar initiatives from the United States, European Union and United Kingdom.

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

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 take effect starting on 4 July 2022.

ATTACHMENT A

Details of the Notice of Intention to Propose Customs Tariff Alterations (No. 5) 2022

The Schedule to the *Notice of Intention to Propose Customs Tariff Alterations (No. 5) 2022* (the Notice) outlines the proposed alterations to the *Customs Tariff Act 1995* (the Customs Tariff Act). The proposed alterations operate starting on 4 July 2022.

Schedule 1 – Alteration to the Customs Tariff Act 1995

Customs Tariff Act 1995

Item [1] – Subsection 16(1)

This proposed amendment inserts a reference to new section 18B. Subsection 16(1) ordinarily provides for duty being calculated by reference to the general rate set out in the third column of the tariff classification under which the goods are classified. The effect of this amendment is establishing that the method for calculating the decreased rate of duty for goods that are the produce or manufacture of Ukraine is done by reference to proposed section 18B.

Item [2] – Before section 19

This proposed amendment would insert new section 18B, which outlines the circumstances in which the decreased rates of duty apply. To be eligible for the decreased rates of duty, goods must be the produce or manufacture of Ukraine and be imported into Australia during the period of 12 months beginning on 4 July 2022 and ending on 3 July 2023.

Produce or manufacture of Ukraine

The question whether goods are the produce or manufacture of Ukraine is determined in accordance with section 13 of the Customs Tariff Act as modified by subsection 18B(4). This means that the rules of origin in Division 1A of Part VIII of the *Customs Act 1901* apply as if Ukraine were a Developing Country.

General rate of duty

Proposed subsection 18B(1) provides the method for calculating the new decreased rate of duty for goods that are (a) the produce or manufacture of Ukraine; and (b) that are imported into Australia during the period of 12 months beginning on 4 July 2022 and ending on 3 July 2023.

Proposed paragraph 18B(1)(c) would provide for the calculation of the decreased rate of duty for goods that are classified under a tariff classification in Chapter 22, 24, 27, 29, 34 or 38 of Schedule 3 to the Customs Tariff Act for which a ‘DC’ tariff rate is listed. This paragraph would provide for the rate of duty for these goods being calculated by reference to the rate of duty that applies to goods of the Developing Countries specified in Part 3 of Schedule 1 to the regulations. This is the rate that is identified by the letters ‘DC’ in the third column of the tariff classification for those goods. This provision maintain the excise-equivalent customs duty payable for goods such as alcohol, fuel and tobacco.

Where goods are not classified in the above Chapters, or where the goods are classified in those Chapters but there is no ‘DC’ rate listed, subsection 18B(1)(d) provides that the applicable rate of duty for those goods is ‘Free’.

Concessional rate of duty

Proposed subsection 18B(2) provides that where goods are covered by paragraph 18B(1)(c), but there is a lower concessional rate of duty for the goods under Schedule 4 to the Customs Tariff Act, then the concessional rate of duty will be applied instead of the duty calculated under paragraph 18B(1)(c).

The effect of this subsection would be that excise-equivalent goods classified under Chapter 22, 24, 27, 29, 34 or 38 of Schedule 3 to the Customs Tariff Act will be eligible for concessional rates of duty where these rates are lower than the ‘DC’ rate in Schedule 3 to the Customs Tariff Act.

Interpretative provisions

New subsection 18B(3) would outline that new section 18B has effect despite sections 16 and 18 of the Customs Tariff Act. This means that section 18B would override the general rules for calculating amounts of duty in those sections. However, this would only be the case where the goods are the produce or manufacture of Ukraine and are imported in the 12-month period.

New subsection 18B(4) would provide that for the purposes of section 13 of the Customs Tariff Act, duty in respect of goods that are the produce or manufacture of Ukraine, is calculated as if Ukraine were a Developing Country. This means that, for the purposes of determining whether section 18B applies to goods, the provisions of Division 1A of Part VIII of the Customs Act that determine whether goods are the produce or manufacture of a particular Developing Country will apply as if Ukraine was a Developing Country. This includes other concepts that refer back to Developing Countries, including Preference Country in the Customs Tariff Act and qualifying area in Division 1A of Part VIII of the Customs Act.

However, subsection 18B(4) would not modify how Division 1A of Part VIII of the Customs Act operates for determining whether goods are the produce or manufacture of other countries (e.g. as referred to in section 16 of the Customs Tariff Act).

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. 5) 2022

The *Notice of Intention to Propose Customs Tariff Alterations (No. 5) 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

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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 of at least 7 days, the Minister may, under section 273EA of 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 from such time as is specified in the notice. Subsection 273EA(1) further provides that a notice that does not raise duty may apply retrospectively up to six months before the time of publication.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 5) 2022* (the Notice) advises of the intention to propose a temporary decrease in rates of duty for goods imported into Australia that are the produce or manufacture of Ukraine. The reduction in the rate of customs duty is proposed to apply for a period of 12 months and will commence retrospectively from 4 July 2022.

The Notice provides a 'Free' rate of duty for most goods that are the produce or manufacture of Ukraine.

However, this 'Free' rate of duty would not apply to goods classified under a tariff classification in Chapter 22, 24, 27, 29, 34 or 38 of Schedule 3 to the Customs Tariff Act for which a Developing Country (DC) tariff rate is listed. The rate of duty for these goods would instead be calculated as the lower rate of either the 'DC' rate in Schedule 3, or any concessional rate applying in Schedule 4. These exceptions maintain the excise-equivalent customs duty payable for goods such as alcohol, fuel and tobacco.

The measure proposed in this Notice is a response to Russia's illegal invasion of Ukraine, supported by Belarus. This measure contributes to Ukraine's continued participation in international trade and supports efforts by Ukraine to uphold its territorial integrity. The

proposed measure would be consistent with similar initiatives from the United States, European Union and United Kingdom.

Human rights implications

This Notice does not engage any of the applicable rights or freedoms.

Conclusion

This Notice is compatible with human rights as it does not raise any human rights issues.

Clare O’Neil, Minister for Home Affairs