

EXPLANATORY STATEMENT

Issued by the Delegate of the Minister for Home Affairs

Customs Act 1901

Notice of Intention to Propose Customs Tariff Alterations (No. 7) 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, 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 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. 7) 2022* (the Notice) advises of the intention to extend the application of an existing tariff measure to impose increased rates of duty on goods from Russia and Belarus. The Notice also amends *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2022* (the Previous Notice) which proposed temporary additional rates of duty on these goods. This amendment ensures that the proposal to exclude goods covered by concessional rates of duty also applies from 25 April 2022, when the Previous Notice commenced.

The tariff measure, implemented on 25 April 2022, denies Russia and Belarus access to 'Most Favoured Nation' (MFN) status through the application of an additional tariff of 35 per cent on goods that are the produce or manufacture of Russia or Belarus. Under the Previous Notice, the measure is applicable to goods that were shipped to Australia on or after 25 April 2022, for a period of six months, and will expire on 24 October 2022.

The Notice proposes to extend the application of the tariff measure for 12 months so that it will be applicable to goods imported into Australia during the period beginning at the start of 25 October 2022 and ending at the end of 24 October 2023. This extension will underline

Australia's continuing commitment to imposing costs on Russia for its unilateral, illegal and immoral aggression against the people of Ukraine.

This Notice outlines the proposed extension 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.

The extension will additionally provide certainty to the Australian trading community. An extension of 12 months will provide a longer planning horizon for Australian traders to adjust their supply chains.

The measure, when initially implemented in April 2022, was put in place to the exclusion of all tariff concessions in Schedule 4 to the Customs Tariff Act. Upon review of the implementation of this measure by the Department of Home Affairs, some concessions have been identified that should remain available to importers. The Notice proposes to re-enable access to certain concessions in Schedule 4 for goods that are the produce or manufacture of Russia or Belarus.

This Notice also amends the Previous Notice to ensure those same goods are also treated as not subject to the additional duty regime from the commencement of the Previous Notice. This has the effect of placing importers of the affected goods in the same position they would have been had the Previous Notice never applied to those specific goods.

The proposed measure is a response to Russia's continuing 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 MFN tariff treatment for imports from Russia and Belarus is a step already taken by Canada, the United Kingdom, New Zealand and the United States.

The Department of Home Affairs consulted on the Notice 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.

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 Schedule 1 and Schedule 2 to the Notice operate starting on 25 April 2022 and 25 October 2022, respectively.

ATTACHMENT A

Details of the Notice of Intention to Propose Customs Tariff Alterations (No. 7) 2022

The Schedules to the *Notice of Intention to Propose Customs Tariff Alterations (No. 7) 2022* (the Notice) outline the proposed alterations to the *Customs Tariff Act 1995* (the Customs Tariff Act) and *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2022* (Previous Tariff Notice).

The proposed alterations in Schedule 1 to the Notice operate starting on 25 April 2022. The proposed alterations in Schedule 2 to the Notice operate starting on 25 October 2022.

Schedule 1 - Amendments to Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2022 operating starting on 25 April 2022

Customs Tariff Act 1995

Item [1] – After subsection 18A(2) in the Schedule

Proposed subsection 18A(2A) has the effect of excluding goods from the additional rate of duty if those goods are covered by certain concessional items in Schedule 4 to the Customs Tariff Act. Proposed subsection 18A(2A) overrides the additional rate of duty calculation in subsections 18A(1) and enables access to the following tariff concessions in Schedule 4 for goods that are the produce or manufacture of Russia or Belarus:

- (a) item 15—goods that are personal effects (exemption from the measure for equity reasons);
- (b) items 16, 17, 18, 19 and 20—certain goods that are returned to Australia after export (including items dealing with the overseas repair of goods, to prevent application of the tariff to the same good multiple times); and
- (c) goods covered by items 9, 10, 14, or 25, which are tariff concessions relating to Australia's obligations as party to an international agreement.

Proposed subsection 18A(2B) provides that, for the purposes of subsection (2A), as it applies to item 20 of Schedule 4, the applicable rate of duty percentage is:

- (a) if the general rate set out in the third column of the tariff classification under which the goods are classified is 'Free'—35%; or
- (b) if the general rate set out in the third column of the tariff classification under which the goods are classified is a percentage of the value of the goods—that percentage, plus 35%.

This amendment applies retrospectively to the Previous Tariff Notice from 25 April 2022, being the time the proposed tariff alteration commenced. This amendment to the Previous Tariff Notice ensures that goods that were subject to the specified tariff concessions are treated as if the additional duty never applied. To remove any ambiguity, subsections 18A(2A) and (2B) mirror subsections 18AA(3) and 18AA(4) of Schedule 2 to the Notice. This has the effect of ensuring these tariff concessions continue to apply to the same goods in the same manner for as long as the additional duty is applied.

Schedule 2 – Alteration to the *Customs Tariff Act 1995* operating starting on 25 October 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 has the effect of excluding some 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 18AA, which outlines the further 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 12 months starting at the beginning of 25 October 2022 and ending at the end of 24 October 2023. This additional rate of duty operates alongside other existing calculations on the general rates of duty. For example, the indexation of consumer price index 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.

General rate of duty

Proposed subsection 18AA(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, for additional duty goods.

Paragraph 18AA(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 18AA(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.

Subsection 18AA(2) provides that the additional duty calculation under subsection 18AA(1) 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.

Concession rate of duty

Proposed subsection 18AA(3) has the effect of excluding goods from the additional rate of duty if those goods are covered by certain concessional items in Schedule 4 to the Customs Tariff Act. Proposed subsection 18AA(3) overrides the additional rate of duty calculation in subsections 18AA(1) and enables access to the following tariff concessions in Schedule 4 for goods that are the produce or manufacture of Russia or Belarus:

- (a) goods covered by item 15—goods that are personal effects (exemption from the measure for equity reasons);
- (b) goods covered by any of items 16, 17, 18, 19 and 20—certain goods that are returned to Australia after export (including items dealing with the overseas repair of goods, to prevent application of the tariff to the same good multiple times); and
- (c) goods covered by items 9, 10, 14, or 25, which are tariff concessions relating to Australia's obligations as party to an international agreement.

Subsection 18AA(4) provides that, for the purposes of subsection (3), as it applies to item 20 of Schedule 4, the applicable rate of duty percentage is:

- (c) if the general rate set out in the third column of the tariff classification under which the goods are classified is 'Free'—35%; or
- (d) if the general rate set out in the third column of the tariff classification under which the goods are classified is a percentage of the value of the goods—that percentage, plus 35%.

Subsections 18AA(3) and 18AA(4) has the effect of ensuring the above specified tariff concessions continue to apply as long as the additional duty is applied.

Additional duty goods

Proposed subsection 18AA(5) provides that goods are considered additional duty goods if they are:

- (a) the produce or manufacture of Russia or Belarus; and
- (b) are imported into Australia within the 12 month timeframe; and
- (c) had not left for direct shipment to Australia before 25 April 2022; and
- (d) are not already the subject of a free trade agreement or other preferential duty arrangement under subsection 16(1) of the Customs Tariff Act.

Paragraph 18AA(5)(b) outlines that the additional duty will apply to goods that are imported into Australia during the period beginning at the start of 25 October 2022 and ending at the end of 24 October 2023. The effect of this paragraph is that the additional duty will apply for twelve months.

Paragraph 18AA(5)(c) provides that, where goods have left for direct shipment to Australia from a place of manufacture or a warehouse, goods that left that place of manufacture or warehouse before 25 April 2022 will *not* be additional duty goods. This means that, in cases where goods are sent by direct shipment, they will only be subject to additional duty where they are sent on or after 25 April 2022. This ensures that goods already in transit to Australia before 25 April 2022 are not subject to the higher duty rate.

Paragraph 18AA(5)(d) 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

Subsections 18AA(6) – (8) outline when goods are considered to be the produce or manufacture of Russia or Belarus.

Subsection 18AA(6) 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 18AA(6)(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 18AA(7) 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 18AA(8) 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. 7) 2022

The *Notice of Intention to Propose Customs Tariff Alterations (No. 7) 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 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.

Schedule 1 of the *Notice of Intention to Propose Customs Tariff Alterations (No. 7) 2022* (the Notice) advises of the intention to re-enable concessional items 9, 10, 14, 15, 16, 17, 18, 19, 20 or 25 of Schedule 4 to the Customs Tariff Act, retrospectively from 25 April 2022, to the importation of such goods from the Russian Federation (Russia) or the Republic of Belarus (Belarus).

Schedule 2 of the Notice advises of the intention to propose an extension to the temporary additional rate of duty on the importation of goods from Russia or Belarus, beginning 25 October 2022 and ending at the end of 24 October 2023.

The Notice outlines the proposed extension 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, except for items 9, 10, 14, 15, 16, 17, 18, 19, 20 or 25 consistent with Schedule 1 of the Notice. 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 cases where goods are sent by direct shipment from the place of manufacture or a warehouse, the additional duty will only apply if the goods are sent on or after 25 April 2022.

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 extended as a matter of foreign policy, in response to Russia's acts of aggression towards Ukraine, supported by Belarus, and to the extent that these rights may be engaged, it is reasonable, necessary and proportionate for the protection of Australia's essential security interests and 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.

Clare O'Neil, Minister for Home Affairs