

## **EXPLANATORY STATEMENT**

Issued by the Delegate of the Minister for Home Affairs

*Customs Act 1901*

*Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023*

### **Legislative Authority**

The *Customs Act 1901* (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* (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.

### **Background**

Subsection 273EA(1) of the Customs Act has the effect that, when Parliament is not sitting for a period of at least seven days, the Minister may under section 273EA of the Customs Act make a legislative instrument giving notice that within seven sitting days of the House of Representatives after the date of registration of the instrument, the Minister will propose in Parliament a Customs Tariff alteration in accordance with particulars in the instrument and operating as from such time as in the instrument. Subsection 273EA(1) further provides that a legislative instrument that does not raise duty may apply retrospectively up to six months before the time of registration of the instrument.

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 would be incorporated into the Customs Tariff Act by a Customs Tariff Amendment Bill.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023* (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 tariff measure, first 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. The measure is applicable to goods that were shipped to Australia on or after 25 April 2022, for the period ending at the end of 24 October 2023.

The Notice proposes to further extend the application of the tariff measure for 24 months so that it will be applicable to goods imported into Australia during the period beginning at the start of 25 October 2023 and ending at the end of 24 October 2025. 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.

The extension will provide certainty to the Australian trading community. An extension of 24 months will provide a longer planning horizon for Australian traders to adjust their supply chains.

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 aligned with measures implemented by Canada, the United Kingdom, New Zealand and the United States.

### **Purpose and effect**

The alteration contained in the particulars of the Notice has effect such that the temporary increase in the amount of duty for goods that are the produce or manufacture of Russia or Belarus will last for 24 months starting at the beginning of 25 October 2023 and ending at the end of 24 October 2025. This additional rate of duty operates alongside other existing calculations on the general rates of duty. For example, the indexation of duty 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.

The alteration results in the increase of the duration from 18 months to 42 months. The alteration does not otherwise change the scope of section 18A of the Customs Tariff Act.

The rules for determining whether goods are the produce or manufacture of Russia or Belarus would continue to be the same rules set out in subsection 18A(5).

### **Consultation**

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.

### **Details**

Details of the Notice are set out in [Attachment A](#).

The alterations outlined in the Notice take effect from 25 October 2023.

### **Other**

A Statement of Compatibility with Human Rights has been prepared for this notice and is at [Attachment B](#). The Statement assesses the alteration to be compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Details of the Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023**

**Schedule 1—Alteration to the Customs Tariff Act 1995 operate starting on 25 October 2023**

Schedule 1 to the *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023* (Notice) outlines the alterations to the *Customs Tariff Act 1995* (Customs Tariff Act). The alterations operate starting on 25 October 2023.

***Customs Tariff Act 1995***

**Item 1 Paragraph 18A(5)(b)**

Section 18A of the Customs Tariff Act concerns the temporary additional duty for imported goods from Russia or Belarus. Currently, goods that are the produce or manufacture of Russia or Belarus and are imported into Australia during the period beginning on 25 April 2022 and ending at the end of 24 October 2023, have the additional duty applied. The additional duty is equal to 35 per cent of the value of the goods and is applied in addition to the general rate of duty that would ordinarily apply.

The alteration in item 1 has effect such that the temporary additional duty for goods that are the produce or manufacture of Russia or Belarus, covered by section 18A, applies in respect of goods that are imported into Australia during the period beginning on 25 April 2022 and ending at the end of 24 October 2025. The alteration results in the increase of the duration from 18 months to 42 months. The alteration does not otherwise change the scope of section 18A of the Customs Tariff Act.

**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. 4) 2023***

The *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023* 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* (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* (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 has the effect that, when Parliament is not sitting for a period of at least 7 days, the Minister may under section 273EA of the Customs Act make a legislative instrument giving notice that within 7 sitting days of the House of Representatives after the date of registration of the instrument, the Minister will propose in Parliament a Customs Tariff alteration in accordance with particulars in the instrument and operating from such time as is specified in the instrument. Subsection 273EA(1) further provides that a legislative instrument that does not raise duty may apply retrospectively up to six months before the time of registration of the instrument.

Schedule 1 of the *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023* (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 2023 and ending at the end of 24 October 2025.

The alteration in item 1 has the effect such that the temporary additional duty for goods that are the produce or manufacture of Russia or Belarus, covered by section 18A of the Customs Tariff Act, applies in respect of goods that are imported into Australia during the period beginning on 25 April 2022 and ending at the end of 24 October 2025. The alteration results in the increase of the duration from 18 months to 42 months. The alteration does not otherwise change the scope of section 18A of the Customs Tariff Act.

The alteration to the Customs Tariff Act has effect on 25 October 2023.

In Australia, Most-Favoured Nation (MFN) tariff treatment is given effect through the general rates of duty in the Customs Tariff Act, with no higher rates of tariffs for particular countries. The tariff measure, first implemented on 25 April 2022, denies Russia and Belarus access to 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.

The measure is a response to Russia's continuing illegal invasion of Ukraine, supported by Belarus. The proposed measure will be consistent with similar initiatives from Canada, the United Kingdom, New Zealand and the United States.

### **Human rights implications**

The proposed alteration 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**