

EXPLANATORY STATEMENT

Issued by the Delegate of the Minister for Home Affairs

Customs Act 1901

Notice of Intention to Propose Customs Tariff Alteration (No. 2) 2024

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 from such time as 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.

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.

On 19 April 2024, the Treasurer and Minister for Trade and Tourism jointly announced, as part of further assistance to Ukraine, that Australia will extend duty-free access for goods imported from Ukraine for a further 24 months, to support its recovery and trade opportunities.

For that announcement, the *Notice of Intention to Propose Customs Tariff Alterations (No. 2) 2024* (Notice) advises of the intention to amend paragraph 18B(1)(b) of the Customs Tariff Act.

The 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.

This extension will underline Australia's continuing commitment to supporting Ukraine's continued participation in international trade and the efforts of Ukraine to uphold its territorial integrity. The proposed measure would be consistent with similar initiatives from the United States, European Union and United Kingdom.

Purpose and effect

The alteration contained in the particulars of the Notice has effect such that the temporary decrease in duties for goods from Ukraine covered by section 18B are in respect of produce or manufacture of Ukraine that are imported into Australia during the period beginning on 4 July 2022 and ending at the end of 3 July 2026. The alteration results in the increase of the duration from 24 months to 48 months. The alteration does not otherwise change the scope of section 18B of the Customs Tariff Act.

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

However, this 'Free' rate of duty would continue to 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 continue to maintain the excise-equivalent customs duty payable for goods such as alcohol, fuel and tobacco.

The rules for determining whether goods are the produce or manufacture of Ukraine would continue to 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.

Consultation

The Department of Foreign Affairs and Trade, as the lead agency on this matter, lead the consultations with the Department of the Treasury regarding the implications for customs duty collections over the period. No public consultation was undertaken.

Details

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

The alterations outlined in the Notice take effect from 4 July 2024.

Other

Subsection 273EA(3) of the Customs Act has effect that section 42 (disallowance) of the *Legislation Act 2003 (Legislation Act)* does not apply to notices in the form of a legislative instrument made under subsection (1) of that section.

Notices made under subsection 273EA(1) of the Customs Act are in accordance with that provision followed by a Customs Tariff or Customs Tariff alteration proposed in the House of Representatives. Customs Tariffs and Customs Tariff alterations proposed in this manner are not legislative instruments, but are motions moved in the House of Representatives. As such, none of the provisions of the Legislation Act relating to instruments (including any of those related to disallowance) apply to the proposal of a Customs Tariff or Customs Tariff alteration. Customs Tariffs and Customs Tariff alterations are instead subject to the orders, procedures and oversight of the House of Representatives.

Following the proposal of a Customs Tariff or Customs Tariff alteration in the House of Representatives, legislation must then be enacted by the Parliament to incorporate the proposed tariff changes into law and enable concessional treatment or the collection of customs duties on an ongoing basis. Further oversight of the proposal therefore takes place by both Houses of the Parliament when a Bill to make these proposed amendments is introduced into the Parliament.

The potential for successful disallowance of customs tariff changes implemented through notice given under subsection 273EA(1) would affect business' certainty in relation to the cost of importing goods. For example, an importer who relies on a tariff concession implemented through a tariff proposal notice and, accordingly, pays a reduced amount of customs duty could potentially face the prospect of being required to pay the relevant additional amount of duty if the notice were to be disallowed. They may have sold the goods at a lower price and would no longer have the opportunity to recoup the cost of the additional duty from the customer. Thus disallowance would place the direct burden of the additional duty on the importing business.

The Notice is made under subsection 273EA(1) of the Customs Act and as such is not an instrument to which disallowance applies. Because of this, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the Notice of Intention to Propose Customs Tariff Alteration (No. 2) 2024

Schedule 1—Alteration to the Customs Tariff Act 1995 operating start on 4 July 2024

Schedule 1 to the *Notice of Intention to Propose Customs Tariff Alterations (No. 2) 2024* (Notice) outlines the alterations to the *Customs Tariff Act 1995* (Customs Tariff Act). The alterations operate starting on 4 July 2024.

Customs Tariff Act 1995

Item 1 Paragraph 18B(1)(b)

Section 18B of the Customs Tariff Act concerns the temporary decrease in duties for imported goods from Ukraine. Currently, to be eligible for the decreased rates of duty, goods must be the produce or manufacture of Ukraine and imported into Australia during the period of 24 months beginning on 4 July 2022 and ending at the end of 3 July 2024.

The alteration in item 1 has effect such that the temporary decrease in duties for goods from Ukraine covered by section 18B are in respect of produce or manufacture of Ukraine that are imported into Australia during the period beginning on 4 July 2022 and ending at the end of 3 July 2026. The alteration results in the increase of the duration of 24 months to 48 months. The alteration does not otherwise change the scope of section 18B of the Customs Tariff Act.

Schedule 2—Repeals

Schedule 2 to the Notice repeals the *Notice of Intention to Propose Customs Tariff Alterations (No. 2) 2022*, the *Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2022*, the *Notice of Intention to Propose Customs Tariff Alterations (No. 5) 2022*, the *Notice of Intention to Propose Customs Tariff Alterations (No. 6) 2022*, the *Notice of Intention to Propose Customs Tariff Alterations (No. 7) 2022*, the *Notice of Intention to Propose Customs Tariff Alteration (No. 1) 2023*, the *Notice of Intention to Propose Customs Tariff Alteration (No. 2) 2023*, the *Notice of Intention to Propose Customs Tariff Alteration (No. 3) 2023*, and the *Notice of Intention to Propose Customs Tariff Alteration (No. 4) 2023*.

These Notices are repealed because the Customs Tariff alterations proposed by them have been incorporated into the Customs Tariff Act, and consequently the Notices are no longer required. The repeal of these Notices has effect at the same time as the alteration made by this Notice commences operation.