

EXPLANATORY MEMORANDUM TO
THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS) (EU
EXIT) REGULATIONS 2020

2020 No. 1457

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument forms part of a package of secondary legislation to be made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”) to ensure that the United Kingdom (“UK”) has an independent customs regime in place at the end of the implementation period following the withdrawal of the UK from the European Union (“EU”). This legislation will be necessary to ensure the UK’s Customs, VAT and Excise regimes function as intended.
- 2.2 The purpose of the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 is to give effect to the preferential import duty rates, including related Rules of Origin requirements (“RoO”), in trade arrangements that the UK has entered into with partner countries. Trade arrangements include Free Trade Agreements (FTAs) and other preferential trade agreements. Therefore, these regulations ensure that the UK’s obligations under trade arrangements are given effect, so that goods imported as part of a trade arrangement can access the agreed preferential import duty terms if they qualify to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21-day rule”). This instrument needs to enter into force at the end of the implementation period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 9 of Taxation (Cross-border Trade) Act 2018 gives HM Treasury powers to implement trade arrangements that Her Majesty's Government in the United Kingdom agrees with the government of a trading partner country.
6.2 In such arrangements, the UK has agreed to apply a lower import duty rate (a "preferential tariff") than would otherwise be offered under the Most-Favoured-Nation (MFN) rate. The MFN rate (known as the UK Global Tariff) is the system that is established by regulations made under section 8 of the TCTA. This lower rate of import duty (the "preferential tariff") is offered only to goods that enter the United Kingdom after meeting all relevant terms set out in the trade agreement in question, include meeting specific RoO requirements.
6.3 These Regulations therefore implement the import duty obligations, including any relevant RoO requirements, in the trade arrangements which the UK has entered into with trading partner countries, as listed in paragraph 7.16. Without this instrument, Her Majesty's Government in the United Kingdom would not be able to give effect to these obligations, leading to a breach of the terms of these international trade arrangements.

7. Policy background

What is being done and why?

- 7.1 At the end of the implementation period, the EU customs regime will no longer apply at the United Kingdom's border. The TCTA gives primary powers for the United Kingdom to create its own customs regime, including a system of import duty rates (tariffs), allowing import duty to be applied to chargeable goods (as defined under the Act) entering the UK.
7.2 Import duty is the amount of customs duty that an importer needs to pay when bringing goods into the UK. The UK's tariff schedule (the UK Global Tariff) sets out these import duty rates, with product-specific commodity codes determining the rate applied to each good. This is essential information for businesses, enabling them to keep up to date with changes to the commodity codes, and to classify goods correctly when importing them to the UK.

- 7.3 Through its membership of the EU (including subsequent implementation period arrangements), the UK has participated in preferential trade arrangements – such as Free Trade Agreements (“FTAs”) - which the EU has entered into with non-EU countries. Those arrangements include preferential import duty rates and related RoO requirements, which set out the rules to determine if a particular good qualifies as originating from the partner country, therefore becoming eligible for the preferential rate. At the end of the implementation period, the UK will no longer be a party to these arrangements; to replace these, the UK has agreed successor “continuity” trade arrangements with many of these non-EU countries.
- 7.4 This instrument is the legislative mechanism, under section 9 of the TCTA, through which the UK will implement the preferential import duty rates and related RoO rules that it has agreed under new international trade arrangements. These arrangements include both FTAs and continuity trade arrangements, as detailed above. Agreed preferential import duty rates will apply at the end of the implementation period and will continue to be updated as further trade arrangements are agreed.
- 7.5 Regulation 1(3) sets out that these Regulations apply to all goods that are imported from a country or territory outside the UK where an importer or importer’s representative has made a claim for a preferential rate of import duty to be applied to goods under the terms of a particular Agreement listed in the table in Schedule 1 to the Regulations. Regulation 1(4), and the Table in Schedule 1, sets out the arrangements between the UK and partner countries to which the provisions of these Regulations apply. The arrangements to which these Regulations apply are also listed in paragraph 7.16 below.
- 7.6 Regulations 3 and 4 provide that, where goods declared to Her Majesty’s Revenue and Customs (HMRC) on importation into the UK meet the preferential duty or preferential quota conditions, they are subject to the import duty rate as set out in the relevant Preferential Duty Tariff or Preferential Quota Table. This import duty rate is without prejudice to a more favourable duty rate that is contained in regulations made under sections 8, 11, 12 or 19 of the TCTA, or to a different import duty rate that applies to goods under the terms of a different arrangement. Specific provision is also made in respect of preferential quota goods, which are subject to the grant of a licence under Part 3 of the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432) in relation to which certain provisions of these Regulations have also been disapplied.
- 7.7 With respect to goods entering the UK through Northern Ireland, regulations 3 and 4 also provide that references in those provisions to the customs declarations that an importer or an importer’s representative are required to make under section 3(1) of the Act and to the acceptance by HMRC of any such declarations under section 4(1) of the Act are to be read as including a reference to a declaration to HMRC under equivalent provisions of direct EU legislation which have effect in Northern Ireland.
- 7.8 Regulation 5 provides that, if the commodity code in the Preferential Duty Tariff Table or the Preferential Quota Table have a description in the Goods Classification Table in the Tariff of the United Kingdom which refers to their use, then those goods are subject to authorised use and must meet the relevant conditions to be able to qualify for the preferential duty rate or the quota duty rate.
- 7.9 Regulation 6 specifies that goods qualify as originating, for the purposes of a specific Agreement, if they meet the conditions set out in the relevant origin reference

document for that Agreement (e.g. that they meet the RoO requirements). Regulation 7 provides that, within the limits of the quota, goods classified as origin quota goods in the Preferential Quota Table are subject on importation to good-specific rules of origin.

- 7.10 Regulations 7 to 12 relate to the administration of the preferential quotas. Regulation 8 specifies the period or periods which a preferential or origin quotas apply and makes provision for those periods to be adjusted if an Agreement takes effect in the middle of a quota period, in which case the opening date of the quota is the date the Agreement takes effect. For subsequent quota periods the opening date will revert to the date set out in the Preferential Quota Table. Regulation 9 provides that the quota volumes in any given quota period are set out in column 5 of the Preferential Quota Table. Provision is also made for quota volumes to be adjusted on a pro-rata basis where, under regulation 8, an adjustment is made to the quota period. This means that, where relevant to a particular Agreement and quota, the quota volumes will be re-sized to reflect the quotas that will be applied for a shorter period of time for the first year of the Agreement.
- 7.11 Regulation 10 provides the rules for the deduction i.e. usage of preferential or origin quotas and linked quotas. Deductions are made in the order in which HMRC accepts the Customs declaration accompanied by a request to benefit from a preferential or origin quota except as otherwise provided. When the quantity deducted is equal to the total quantity for a particular quota then that quota is exhausted. Quotas which are exhausted cannot be further utilised during that quota period. If the requested quota volume on a particular day exceeds the remaining quota volume then any remaining volume will be apportioned, on a pro-rata basis, between all requests to benefit from the quota. Regulation 11 provides the rules for HMRC to allocate preferential or origin quotas which have been deducted under regulation 10. Regulation 12 sets out the conditions which give preferential quotas critical status and the requirements which critical quota goods must meet. This regulation is in place to ensure that the full duty will be collected on any quota volumes which exceed the volumes set out in accordance with regulation 9. Regulations 10, 11 and 12 do not apply to any quotas which are administered through an import licensing system but they do cover any quotas which are administered on a first-come-first served basis.
- 7.12 Regulation 13 ensures that commodity codes deleted from the Goods Classification Table made under the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) are to be retained in the Preferential Quota Table for the purposes of applying quotas. Regulation 14 provides the conditions and documentary requirements for providing proof of the origin of originating goods. Regulation 15 provides that the period of validity of the proof of origin is as set out in the relevant origin reference document to an arrangement. Regulation 16 permits backdated claims to be made by an importer for the repayment by HMRC of the difference between the standard rate of import duty and the preferential rate of import duty under certain conditions and subject to a three-year time limit for such claims.
- 7.13 Regulation 17 provides that HMRC may request proof that originating goods were transported in accordance with the requirements of the origin reference document to an arrangement and have not undergone any production outside of the territories of the parties to the arrangement. Regulation 18 disapplies the requirement for a proof of origin in cases where this is not required under the origin reference document to a particular arrangement, or in cases where the value of the consignment falls below a

de minimis threshold amount as published by the Secretary of State in a notice. Regulation 19 makes provision for HMRC to be able to request the production of specified information or documents to verify the originating status of any goods presented to HMRC where this is necessary under the origin reference document to an Agreement.

- 7.14 Regulation 20 makes specific provision in respect of re-imported goods under the Trade Agreement between the United Kingdom and Switzerland that is specified in Schedule 1. The provision ensures that goods of a particular commodity code which are of United Kingdom origin and which are re-imported into Great Britain under the terms of that Agreement will be able to access the same preferential rates which apply to goods originating in Switzerland under that Agreement.
- 7.15 Regulation 21 and Schedule 2 make modifications to provisions of the TCTA and of these Regulations which are necessary having regard to the Customs Union between the UK and the Crown Dependencies.
- 7.16 The preferential trade arrangements to which these Regulations apply are:
- Association Agreement with Central America, signed on 18th July 2019.
 - Association Agreement with the Republic of Chile, signed on 30th January 2019.
 - Stepping Stone Economic Partnership Agreement with Cote d'Ivoire, signed on 15th October 2020.
 - Economic Partnership Agreement with Eastern and Southern Africa States signed on 31st January 2019.
 - Free Trade Agreement with Kingdom of Denmark in respect of the Faroe Islands, signed on 31st January 2019.
 - Strategic Partnership and Cooperation with Georgia, signed on 21st October 2019.
 - Trade and Partnership Agreement with Israel, signed on 18th February 2019.
 - Comprehensive Economic Partnership with Japan, signed on 23rd October 2020.
 - Partnership, Trade and Cooperation Agreement with the Republic of Kosovo, signed on 3rd December 2019.
 - Additional Agreement with Liechtenstein, signed on 11th February 2019.
 - Association Agreement with the Kingdom of Morocco, signed on 26th October 2019.
 - Interim Economic Partnership Agreement with the Pacific States, signed by the Republic of Fiji and the Independent State of Papua New Guinea on 14th March 2019.
 - Interim Political, Trade and Partnership Agreement with Palestine Authority of the West Bank and the Gaza Strip, signed on 18th February 2019.
 - Free Trade Agreement with the Republic of Korea (with Exchange of Notes), signed on 22nd August 2019.
 - Trade Agreement with the Swiss Confederation, signed on 11th February 2019.

- Association Agreement with the Republic of Tunisia, signed on 4th October 2019.

7.17 An origin reference document (detailing the agreed Rules of Origin) and preferential tariff document (detailing the preferential duty import rates which will be applied by the UK) will be published separately for each agreement. These documents are described in the table in Schedule 1 of this instrument and are available at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. This is because the government has introduced new primary powers under the TCTA to establish a customs regime, the provisions of which will supersede the relevant provisions in EU legislation. Accordingly, The TCTA disapplies the power found in section 3 of the European Union (Withdrawal) Act 2018, which would have otherwise retained the relevant EU legislation on customs regimes.

8.2 This Statutory Instrument is part of a package of instruments that establish the UK's customs regime, including any preferential import duty rates that will apply to imported goods once the implementation period ends.

9. Consolidation

9.1 This instrument does not consolidate or amend any other legislation, as this is the first time the primary powers in section 9 of the TCTA have been used.

10. Consultation outcome

10.1 No consultation on this instrument has taken place. This instrument introduces the preferential tariffs and Rules of Origin arrangements that have, as far as possible, undergone parliamentary scrutiny as part of the CRaG process (powers given to Parliament under the Constitutional Reform and Governance Act 2010). This instrument ensures that these aspects of the arrangements are operable on the border.

10.2 The policy that this regulation implements underwent no formal consultation.

11. Guidance

11.1 Guidance on the customs tariff is currently available from HMRC. This guidance will continue to be published and available in its current format.

12. Impact

12.1 The impact on business, charities, or voluntary bodies is set out in the Tax Information and Impact Note that supplements this instrument.

12.2 The impact on the public sector is set out in the Tax Information and Impact Note that supplements this instrument.

12.3 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Since the legislation maintains the existing position as far as possible, it minimises additional burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the wider context of the customs tariff legislation.
- 14.2 A statutory review clause is not included in these Regulations because the instrument relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Andreas Lendle at the Department for International Trade, phone: 020 7215 1691 and email: andreas.lendle@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tammy Reynolds, Deputy Director of Trade Policy at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.