

## EXPLANATORY MEMORANDUM TO

### THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1657

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared jointly by the Department for International Trade and the Department for Environment, Food and Rural Affairs 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 is an amendment to two of the statutory instruments in the package of secondary legislation made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”) that were laid on Wednesday 16<sup>th</sup> December 2020 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”). The two instruments being amended by this instrument are The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) and The Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432). The amendments being introduced by this instrument are 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 and Tariff Quotas) (Amendment) (EU Exit) Regulations 2020 is to give effect to the preferential import duty rates, including related Rules of Origin requirements (“RoO”), in recently concluded trade arrangements that the UK has entered into with partner countries that were not in a position to be included in Schedule 1 to S.I. 2020/1457, including the deal made with the European Union. Trade arrangements include Free Trade Agreements (“FTAs”) and other preferential trade agreements. Therefore, the amendments being made by this instrument will ensure that the UK’s obligations under all of its 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.
- 2.3 These Regulations will also ensure that certain preferential tariff quotas established under the concluded trade agreements can continue to be administered using a licence system. There is also a requirement for certain World Trade Organization (WTO) quotas to be managed jointly with preferential tariff quotas. This requires an update to the Tariff Quota Reference Document dated 15 December and published on 16 December alongside The Customs (Tariff Quotas) (EU Exit) Regulations 2020. The Regulations also clarify certain elements of the transitional arrangements put in place for some licence tariff quotas and updates references to the Australian issuing body for export certificates. Finally, they will prevent EU origin goods from accessing WTO erga omnes (open to all) quotas.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 The Departments regret 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 instrument breaches the 21-day rule as several of the international trade arrangements it implements were either not agreed or not signed – or processes were otherwise not complete – in time for inclusion in the original instrument.

#### *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 UK.
- 4.2 The territorial application of this instrument is the whole of the UK.

### **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 TCTA gives HM Treasury powers to implement trade arrangements that Her Majesty’s Government in the UK 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 UK 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 would not be able to give effect to these obligations, leading to a breach of the terms of these international trade arrangements.

- 6.4 Section 11 of the TCTA gives HM Treasury powers to establish Tariff Rate Quotas (TRQs) to manage domestic imports into the UK and meet the UK's legal obligations at the WTO.
- 6.5 A TRQ allows a fixed volume of goods to be imported into the UK at zero duty or at a lower rate of duty than would be applied under the standard tariff rate of import duty. A TRQ allows the UK to manage the volume of the goods that are imported into the country.
- 6.6 Section 11(1) of the TCTA states that regulations may make provision for determining the amount of import duty applicable to any goods that are subject to a quota.
- 6.7 Section 11(2)(a) states that goods are subject to a quota if arrangements between the UK and a third country provide for goods to be subject to a quota. This allows TRQs to be established to fulfil the UK's obligations to other members of the WTO.
- 6.8 Section 11(3) of the TCTA enables the Government to create a licensing regime for TRQs, where operators who satisfy the relevant conditions for the quotas concerned are allocated a share of quota.
- 6.9 Without this instrument there would be no provisions for managing those quotas established by trade agreements to be administered using a licence system.

## **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 UK's border. The TCTA gives primary powers for the UK 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 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 The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, which is being amended by 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 The purpose of the amendments to The Customs (Tariff Quotas) (EU Exit) Regulations 2020, is to ensure that certain preferential tariff quotas established under the concluded trade agreements can continue to be administered using a licence system. There is also a requirement to adjust certain WTO quotas listed in the Tariff Quotas Reference Document, dated 15 December, where these will be managed jointly with preferential tariff quotas. The Regulations will also clarify certain elements of the transitional arrangements put in place for some licence tariff quotas and updates references to the Australian issuing body for export certificates. Finally, they will prevent EU origin goods from accessing WTO erga omnes (open to all) quotas.
- 7.6 The following agreements are brought into force by this instrument, in addition to the agreements within The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 laid on the 16 December 2020:
- The **Andean Trade Agreement with The Republic of Colombia, The Republic of Ecuador and The Republic of Peru**, signed on 15<sup>th</sup> May 2019.
    - Diplomatic Note on Trade: **Peru**, signed on 11<sup>th</sup> October 2019.
    - Diplomatic Note on Trade: **Colombia**, signed on 18<sup>th</sup> October 2019.
  - Memorandum of Understanding with the **Republic of Cameroon** concerning the Arrangement applying the effects of the Interim Agreement establishing an Economic Partnership Agreement, signed on 28<sup>th</sup> December 2020.
  - Agreement on Trade Continuity with **Canada**, signed on 9<sup>th</sup> December 2020.
    - Memorandum of Understanding with **Canada** concerning temporary arrangements to continue certain benefits of the Canada-European Union Comprehensive Economic and Trade Agreement ("CETA") pending the entry into force or provisional application of the Canada-United Kingdom Trade Continuity Agreement, signed on 22<sup>nd</sup> December 2020
  - Economic Partnership Agreement with **The CARIFORUM States**, signed on 22<sup>nd</sup> March 2019.
    - Memorandum of Understanding with **Saint Christopher and Nevis** concerning the Arrangements for Applying the Effects of the Economic Partnership Agreement with the **CARIFORUM States**, signed on 11<sup>th</sup> December 2020.
    - Memorandum of Understanding with **The Republic of Trinidad and Tobago** concerning the Arrangements for Applying the Effects of the Economic Partnership Agreement with the **CARIFORUM States**, signed on 9<sup>th</sup> December 2020 for Trinidad and Tobago and 10<sup>th</sup> December 2020 for the UK.
  - Agreement establishing an Association with the **Arab Republic of Egypt**, signed on 5<sup>th</sup> December 2020.
  - Trade and Co-operation Agreement with the European Union and European Atomic Energy Community, signed on 30<sup>th</sup> December 2020.

- Agreement on Trade in Goods with **Iceland** and **The Kingdom of Norway**, signed on 8<sup>th</sup> December 2020.
- Economic Partnership Agreement with the **Republic of Kenya**, signed on 8<sup>th</sup> December 2020.
  - Signing of the Memorandum of Understanding with **The Republic of Kenya** concerning the Arrangements for applying the Economic Partnership Agreement, signed on 8<sup>th</sup> December 2020.
- Agreement establishing an Association with **The Republic of Lebanon**, signed on 19<sup>th</sup> September 2019.
- Partnership, Trade and Cooperation Agreement with the **Republic of North Macedonia**, signed on 3<sup>rd</sup> December 2020.
- Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and the **United Mexican States**, signed on 15<sup>th</sup> December 2020.
  - Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and the **United Mexican States** - supplementary exchange of notes, signed on 29<sup>th</sup> December 2020
- Strategic Partnership, Trade and Cooperation Agreement with the **Republic of Moldova**, signed on 24<sup>th</sup> December 2020.
- Memorandum of Understanding with the **Independent State of Samoa** concerning the arrangements for applying the effects of the Interim Economic Partnership Agreement with the **Pacific States**, signed on 22<sup>nd</sup> December 2020.
- Memorandum of Understanding with **The Solomon Islands** concerning the arrangements for applying the effects of the Interim Economic Partnership with the **Pacific States**, signed on 21<sup>st</sup> December 2020 in Honiara, Solomon Islands and 22<sup>nd</sup> December 2020 in London, United Kingdom.
- Free Trade Agreement with the **Republic of Singapore**, signed on 10<sup>th</sup> December 2020.
- Economic Partnership Agreement with the **Southern African Customs Union Member States and Mozambique**, signed on 9<sup>th</sup> October 2019.
- Free Trade Agreement with the **Republic of Turkey**, signed on 29<sup>th</sup> December 2020.
- Political, Free Trade and Strategic Partnership Agreement with **Ukraine**, signed on 8<sup>th</sup> October 2020.
- Free Trade Agreement with the **Socialist Republic of Viet Nam**, signed on 29<sup>th</sup> December 2020.

7.7 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 amends The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 and The Customs (Tariff Quotas) (EU Exit) Regulations 2020 to give effect to further signed agreements.

## **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, in some cases, undergone parliamentary scrutiny as part of the CRaG process (powers given to Parliament under the Constitutional Reform and Governance Act 2010). Clause 36 of the European Union (Future Relationship) Bill provides for the non-application of section 20 of the CRaG Act in respect of the Trade and Co-operation Agreement between the UK and the EU. Those other agreements which have not yet undergone CRaG scrutiny, and are being entered into effect by way of Provisional Application or a Bridging Mechanism, will be laid in Parliament under CRaG as quickly as possible. 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](mailto:andreas.lendle@trade.gov.uk) can be contacted with any queries regarding the Preferential arrangements within this instrument.
- 15.2 Darren Stretton at the Department for Environment, Food and Rural Affairs, phone: 020 8026 2979 and email: [darren.stretton@defra.gov.uk](mailto:darren.stretton@defra.gov.uk) can be contacted with any queries regarding the tariff rate quotas within this instrument.
- 15.3 Tammy Reynolds, Deputy Director of Trade Policy at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Kemi Badenoch MP, the Exchequer Secretary to the Treasury and Parliamentary Under-Secretary of State, can confirm that this Explanatory Memorandum meets the required standard.