

## EXPLANATORY MEMORANDUM TO

### THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (EU EXIT) (AMENDMENT) (NO. 4) REGULATIONS 2021

2021 No. 1192

#### 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 makes amendments to three statutory instruments, namely the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457), the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 (S.I. 2020/1434) and the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432). These statutory instruments were laid before the House of Commons on 16<sup>th</sup> December 2020 as part of a package of secondary legislation made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”) which ensured that the United Kingdom (“UK”) had an independent customs regime in place at the end of the Implementation Period.
- 2.2 The purpose of the amendments made to the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 by this instrument is to implement the new tariff schedule and rules of origin (“RoO”) agreed with Norway as part of the Free Trade Agreement signed on 8<sup>th</sup> July 2021.
- 2.3 This instrument also updates five reference documents concerning the preferential import duty rates associated with the UK’s Free Trade Arrangements (“FTAs”) and other preferential trade agreements concluded with other countries or territories. The amendments being made by this instrument will ensure that the UK’s obligations under its trade arrangements with other countries or territories continue to have effect, so that goods imported as part of any such trade arrangement can access intended preferential import duty terms, if they qualify to do so.
- 2.4 The instrument also amends the Customs (Tariff Quotas) (EU Exit) Regulations 2020 to include changes to tariff quota volumes resulting from negotiations with Australia under Article XXVIII of the General Agreement on Tariffs and Trade. The amendments also make adjustments to the administration of Tariff Rate Quotas managed by the licence system to allow for the suspension of trading history requirements in abnormal circumstances, and to allocate unused volume under the Chinese garlic quota to ensure maximum utilisation.
- 2.5 The instrument also makes a small typographical amendment to the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 which was raised but not reported by the Joint Committee on Statutory Instruments in a letter dated 20th July 2021.

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

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

- 3.1 This instrument corrects a small error in the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 which was raised but not reported by the Joint Committee on Statutory Instruments in a letter dated 20th July 2021.

### **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 the 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 Pursuant to 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. This latter rate (also known as the "UK Global Tariff" or standard rate of import duty) is the rate established by The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) as amended. The preferential tariff rate is only offered to goods that enter the UK after meeting all relevant terms set out in the trade arrangement in question, including meeting specific RoO requirements.
- 6.3 These Regulations therefore continue to implement the import duty obligations, including any relevant RoO requirements, in the trade arrangements which the UK has entered into with trading partner countries by ensuring that the information contained in the reference documents associated with particular trade arrangements remain up to date. Without this instrument, Her Majesty's Government would not be able to give full 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. 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 rate of import duty. A TRQ allows the UK to manage the volume of the goods that are imported into the country.
- 6.5 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.
- 6.6 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.

- 6.7 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.
- 6.8 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 The TCTA gives primary powers for the UK to create its own customs regime, including a system of import duty rates, allowing import duty to be applied to chargeable goods entering the UK.
- 7.2 Import duties (or tariffs) are the taxes that an importer needs to pay when bringing goods into the UK. The UK Global Tariff sets out these non-preferential import duty rates, with product-specific commodity codes determining the rate applied to each good. This provides the legal basis for conveying information that traders need to ensure the correct classification of goods being imported into the UK and is subject to variation over time.
- 7.3 The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 set out the legislative mechanism through which the UK implements the preferential tariffs and related RoO requirements that it has agreed with trading partners. This instrument has been in force since the end of the Implementation Period, and it will continue to be updated as further preferential trade arrangements are agreed and, in some cases, to account for some minor error corrections and to provide some simplifications of tariff tables where possible.
- 7.4 These regulations also update the reference documents in Schedule 1 to the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, related to the arrangements with Iceland and Norway. The UK has signed a new Free Trade Agreement with Iceland, Norway and Liechtenstein which will be provisionally applied as between the United Kingdom and Norway from 1st December 2021. The existing arrangement (which only applied to Iceland and Norway, not Liechtenstein) will cease to apply to Norway but continue to apply to Iceland. New Norway reference documents will reflect a newly agreed tariff schedule and RoO requirements for Norway and the reference documents related to the existing arrangement have been amended to reflect the fact that the existing arrangement will no longer apply to Norway. The following reference documents have been introduced:
- The Iceland Origin Reference Document, version 1.0, dated 25 October 2021
  - The Iceland Preferential Tariff Reference Document, version 1.0, dated 25 October 2021
  - The Norway Origin Reference Document, version 1.0, dated 25 October 2021
  - The Norway Preferential Tariff Reference Document, version 1.0, dated 25 October 2021
- 7.5 Amendments are also made to update the rates of import duty set out in the reference documents associated with some of the preferential trade arrangements listed in the table in Schedule 1 of the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, to account for minor error corrections such as correcting the

signature date for one agreement, and to provide some simplifications of tariff tables where possible. These are:

- The Canada Preferential Tariff, version 1.2, dated 25 October 2021
- The Jordan Preferential Tariff, version 1.1, dated 25 October 2021
- The Pacific States Origin Reference Document, version 2.1, dated 25 October 2021
- The Switzerland Preferential Tariff, version 2.1, dated 25 October 2021
- The Viet Nam Preferential Tariff, version 1.1, dated 25 October 2021

- 7.6 The Customs (Tariff Quotas) (EU Exit) Regulations 2020 set out the legislative mechanism through which TRQs apply. The Regulations are amended to implement changes to TRQ volumes that resulted from negotiations with Australia under Article XXVIII of the General Agreement on Tariffs and Trade (GATT). In December 2018, the UK entered into negotiations and consultations with the appropriate WTO Members pursuant to Article XXVIII of the GATT with respect to its obligations concerning TRQs as set out in the UK's draft Goods Schedule XIX.
- 7.7 Negotiations with Australia have resulted in agreement on some limited changes to the TRQ volumes set out in the UK's draft Goods Schedule XIX, which need to be reflected in legislation – via an updated version of the relevant reference document - before they can be implemented. These changes will be reflected in the updated reference document:
- 7.8 Tariff Quotas, version 2.2, dated 25 October 2021.
- 7.9 Disruption to trading patterns can result in lower imports in certain products. As a result, UK importers may struggle to meet the Proof of Trade requirement that is required to access certain TRQs. This instrument gives the Secretary of State flexibility to suspend this requirement through public notice in abnormal or unforeseen circumstances. This would align with a similar provision on a Reference Quantity requirement.
- 7.10 Additional quantity will remain unallocated in the final quarterly sub-period of the Chinese garlic TRQ. The usual application process will not leave importers enough time to source and ship the product before the end of the quota year. This instrument allows for this remaining volume to be shared equally among all applicants during the final sub-period. Minor amendments are also made to clarify requirements relating to proof of trade and reference quantity requirements.
- 7.11 All reference documents amended by this instrument will be available here: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This instrument does not consolidate any previous legislation.

## **10. Consultation outcome**

10.1 No consultation on this instrument has taken place. This instrument updates the preferential tariffs and Rules of Origin requirements 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).

## **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 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is minimal impact expected for UK businesses as result of this instrument

## **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 custom 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 Ruari Bride at the Department for Environment, Food and Rural Affairs, phone: 020 8026 7486 and email: [ruari.bride@defra.gov.uk](mailto:ruari.bride@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 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.