

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (ESTABLISHMENT AND SUSPENSION OF IMPORT DUTY) (EU EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. 63

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 The Customs Tariff (Establishment and Suspension of Import Duty) (EU Exit) (Amendment) Regulations 2021 (“these Regulations”) make technical amendments to the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020. The amendments give legal effect to reference documents referred to in each set of Regulations. These updated reference documents have been amended in relation to tariffs applying to goods which are subject to trade remedies. The effect of these changes is that the trade remedies applicable to the goods concerned accurately reflect the injury margin associated with those remedies.
- 2.2 Both sets of Regulations being amended formed part of the package of legislation made under the Taxation (Cross-border Trade) Act 2018 (“the Act”) in December 2020 to ensure that the United Kingdom (“UK”) would have a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union (“EU”). These amendments, and the updated reference documents which they introduce, are necessary to ensure the UK’s Customs, VAT and Excise regimes function as intended.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These Regulations are being issued free of charge to anyone who purchased the Regulations which they amend as the amendments are attributable to errors in the reference documents which are given effect to by the amended Regulations.
- 3.2 In relation to the specific goods in respect of which the tariff is changed as a consequence of this amendment, overpayments have been made by the importers of those goods prior to the coming into force of these Regulations. HMRC are making arrangements for appropriate refunds.
- 3.3 This instrument will come into force on 22 January. The short time period between laying this SI and its entry into force is justified by the need to make an urgent technical correction so that the trade remedies applicable to the goods concerned accurately reflect the injury margin associated with those remedies. The consequences of delaying the legislation would be to increase the duration of time in which the

injury margin was incorrect, potentially causing further instances of overpayment by importers and increasing the amount of refunds the Government would be liable for.

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)

- 3.4 This instrument will cease to have effect at the end of the period of 28 days beginning with the day on which it is made unless, during that period, it is approved by a resolution of the House of Commons.

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 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Customs Tariff (Establishment and Suspension of Import Duty) (EU Exit) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations make minor technical amendments to the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020. The amendments give legal effect to reference documents referred to in each set of Regulations. These updated reference documents have been amended in relation to tariffs applying to goods which are subject to trade remedies. The effect of these changes is that the trade remedies applicable to the goods concerned accurately reflect the injury margin associated with those remedies. This amending instrument ensures that goods that are subject to trade remedies based on an injury-margin will continue to face the same tariff rate that was applied and ensure a continuation of the same level of protection as during the Implementation Period.

The Customs Tariff (Establishment) (EU Exit) Regulations 2020

- 6.2 The Customs Tariff (Establishment) (EU Exit) Regulations 2020 were made using the powers in section 8 of the Act, which requires HM Treasury to establish a customs tariff having regard to the recommendation of the Secretary of State.
6.3 In setting the rates of import duty in the tariff that apply to goods in a standard case, HM Treasury have had regard to the matters set out in section 8(5) and the recommendation made by the Secretary of State pursuant to section 8(6).
6.4 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the Act was commenced, whereby direct EU legislation imposing or otherwise applying in relation to any EU customs duty - which formed part of the law of the United Kingdom as a result of section 3 of the European Union (Withdrawal) Act 2018 - ceased to have effect.
6.5 The Customs Tariff (Establishment) (EU Exit) Regulations 2020 are part of a package of instruments that establish the customs tariff of the United Kingdom, and those

variations from the rate of import duty in a standard case, that apply to imported goods following the end of the Implementation Period.

The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020

- 6.6 At the end of the Implementation Period, Regulation (EU) 2020/874, which amends Regulation (EU) 1387/2013, enacting the EU's import duty suspensions regime, and Regulation (EU) 2020/875, which amends Regulation (EU) 1388/2013, enacting the autonomous tariff quota regime for the EU, ceased to apply to the UK. The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 implemented the UK's new, independent tariff suspensions regime applying in respect of all goods imported into the UK from outside of the UK at the end of the Implementation Period.
- 6.7 Section 12 of the Act gives powers to HM Treasury to make provision by regulations that, for a specified period, the rate of import duty applicable to specified goods is to be lower than the applicable rate in the customs tariff in its standard form. The system known as the Tariff of the United Kingdom is established by regulations made under section 8 of the Act.

7. Policy background

What is being done and why?

- 7.1 The Customs Tariff (Establishment) (EU Exit) Regulations 2020, brought into effect the customs tariff of the United Kingdom on 1 January 2021. The Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 brought into effect the UK tariff suspensions regime on 1 January 2021.
- 7.2 The "Tariff of the United Kingdom" reference document sets out the rates of duty and information for importers to enable them to classify goods correctly and to keep up to date with changes to product specific commodity codes. This reference document sets out the amount of import duty an importer needs to pay when bringing goods into the country, where those goods are not subject to a preferential or lower rate of duty by virtue of specific tariff measures.
- 7.3 The "Suspensions of Import Duty Rates" document sets out rates of import duty for specified goods that are lower than the applicable standard rate under the Tariff of the United Kingdom, as well as information for importers to enable them to classify goods correctly.
- 7.4 These Regulations correct the rates of duty in the reference document to ensure that goods that are subject to trade remedies based on an injury margin will continue to face the same tariff rate that was applied before 1 January 2021. This is to ensure a continuation of the same level of protection as during the Implementation Period.
- 7.5 These Regulations also make technical amendment to the UK tariff suspensions regime, removing twelve products listed in the Suspensions of Import Duty Rates document that are subject to injury-margin based trade remedies – which supersede duty suspensions – to ensure a continuation of the same level of protection as during the Implementation Period.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because it, and other legislation made under TCTA, will ensure that the UK's customs regime operates as required after the end of the Implementation Period.

9. Consolidation

- 9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances.

10. Consultation outcome

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument makes technical corrections to existing provisions.

11. Guidance

- 11.1 Since the end of the Implementation Period, the UK Global Tariff has applied to all goods imported into the UK unless an exemption applies (such as a relief or tariff suspension), or the goods have been imported from countries that have tariff-free or reduced tariff access granted unilaterally or as part of a preferential trading arrangement. Further guidance is available at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

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 the effect of the Statutory Instrument is to maintain, as far as possible, the position prevailing currently.
- 12.4 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focuses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and is available at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 This legislation applies to activities that are undertaken by small businesses.
- 13.2 However, this legislation maintains the existing position as far as possible, imposing no significant additional burdens on small businesses. Therefore, no specific action is proposed to minimise the impact on small businesses, and no review clause is required.

14. Monitoring & review

- 14.1 This legislation will be monitored in the context of wider customs tariff legislation.
- 14.2 The Government will keep this instrument under review to ensure that it meets the policy objectives set out in section 7 of this explanatory memorandum, and to ensure burdens on business are carefully monitored.

14.3 A statutory review clause is not included in these Regulations as the content relates to a tax or duty and therefore meets the requirements of the exception set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 James King, at the Department for International Trade, Telephone: +44 7572 126366 or email: James.King@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ayesha Ali and Ada Igboemeka, Deputy Directors for Multilateral Tariff Policy and Operations at the Department for International Trade, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tammy Reynolds, Deputy Director for Trade Policy at Her Majesty's Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.