EXPLANATORY MEMORANDUM TO

THE CUSTOMS (IMPORT DUTY VARIATION) (EU EXIT) REGULATIONS 2020

2020 No. 1437

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 Statutory Instrument is 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 will apply to imported goods following the end of the Implementation Period.

2.2 The purpose of The Customs (Import Duty Variation) (EU Exit) Regulations 2020 ("these regulations") is to continue the additional duties imposed by the European Union ("EU") ("rebalancing duties") in response to the United States of America ("US") imposition of increased tariffs on certain steel and aluminium products and certain derivatives of steel and aluminium ("safeguards"). The EU's rebalancing duties impose additional tariffs on certain products originating from the US and are in accordance with the World Trade Organization ("WTO") Agreement on Safeguards. These regulations will continue the application of the rebalancing duties after the end of the Implementation Period.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Department for International Trade 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 This instrument is not subject to a certification decision by the Speaker for English Votes purposes.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom ("UK").

4.2 The territorial application of this instrument is to 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 These regulations are made under section 51 of the Taxation (Cross-border Trade) Act 2018 ("the Act") and provide for the continued application of rebalancing duties after the end of the Implementation Period (31 December 2020) through an additional ad valorem duty on the standard rate of import duty on certain products imported into the United Kingdom from the US.

6.2 These regulations will continue the application of EU rebalancing duties after the end of the Implementation Period by replicating the additional duties already in place by way of European Commission Implementing Regulations 2018/724, 2018/886 and 2020/502, specifically Annex I of 2018/886 and the first stage of European Commission Implementing Regulation 2020/502.

6.3 Without these regulations the rebalancing duties would no longer be applied in relation to imports from the US into the United Kingdom after the end of the Implementation Period.

6.4 This instrument is part of a package that forms part of the UK's customs legislation and sets out associated rules and exceptions to the tariff that will apply after the end of the Implementation Period.

7. Policy background

What is being done and why?

7.1 This instrument, together with the Act, regulations made under the Act, and any public notices made under that legislation, is designed to broadly reproduce the effect of EU legislation (as it applies in respect of customs matters to the import of goods from third countries into the EU) for the import of goods into the United Kingdom from the EU and third countries. These regulations replicate rebalancing duties, so that they will continue to apply to certain UK imports from the US after the end of the Implementation Period.

7.2 On 8 March 2018 the US announced its intention to impose an additional 25% tariff on certain steel imports and an additional 10% tariff on certain aluminium imports citing the need to protect its national security. Initially the US granted the EU a temporary exemption in order to negotiate a permanent exemption from the tariffs, however on 31 May 2018, when the temporary exemption was due to expire, the US announced it would not extend the exemption and the additional tariffs came into force on 1 June 2018. The European Commission estimated that the US safeguards affect at least $7.2bn (£5.6bn)[1] worth of US imports from the EU and UK, based on

[1] Converted from USD to GBP using the annual average spot exchange rate for 2017 from the Bank of England.

2017 trade flows. The US tariffs affect around $0.5bn (£0.4bn)[2] worth of US imports from the UK, based on 2017 trade flows.

7.3 On 18 May 2018, the EU notified the WTO of the proposed rebalancing duties and the WTO Council for Trade in Goods did not disapprove. The EU made two implementing regulations; the first (2018/724) gives the European Commission authority to notify the WTO of additional duties the EU proposes to apply and the second (2018/886) applies those additional duties on a certain date. The Department for International Trade submitted explanatory memoranda to Parliament accompanying each implementing regulation.

7.4 The WTO Agreement on Safeguards allows any exporting WTO member affected by a safeguard measure to suspend the application of substantially equivalent concessions to the trade of the WTO member applying the safeguard measure, provided that no satisfactory solution is reached in consultations and the WTO Council for Trade in Goods does not disapprove. The right of suspension shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and the measures conforms to the WTO Agreement on Safeguards. The EU rebalancing duties are set at an equivalent level to the US safeguards on the EU. The EU determined equivalence between its rebalancing measures and the US safeguards in terms of the theoretical additional duties that would be collected on targeted trade, based on 2017 trade values. The EU also determined the proportion of US safeguards that were taken as a result of an absolute increase in imports and those that were not. The UK Government supports a unified response to the US' actions that is measured and proportionate and works within the boundaries of the rules-based international trading system. The UK will, in relation to the United Kingdom, continue to apply the rebalancing duties which may deter similar actions and encourage the US to revoke the safeguard measures.

7.5 Prior to European Commission Implementing Regulation 2018/724 coming into force, the European Commission selected the products on which additional tariffs may be imposed. In particular, it considered their potential to provide relief to the industries affected by the safeguard measures, and to minimise the negative economic impact on the EU, including with regard to the supply of intermediate products. The list of products and additional duties set out in Schedule 1 of these regulations are identical to the EU's rebalancing duties in Annex I of European Commission Implementing Regulation 2018/886.

7.6 On 8 February 2020, the US introduced additional tariffs of 10% and 25% respectively on certain derivatives of aluminium and steel. These measures came into force on 8 February 2020 and are of an unlimited duration. The measures are issued in Annex I and II of Presidential Proclamation 9980. The recent US tariffs on certain derivatives of steel and aluminium are effectively an extension of the earlier steel and aluminium tariffs implemented in 2018. The European Commission estimated that these measures affect at least $44.65m (£34.98m)[3] worth of EU and UK exports to the

[2] Estimated using USITC data on US imports for consumption. Converted from USD into GBP using the annual average spot exchange rate for 2017 from the Bank of England.
[3] Converted from USD to GBP using the annual average spot exchange rate for 2019 from the Bank of England.

US, based on 2019 trade values. The US tariffs affect around $2.4m (£1.9m)[4] worth of US imports from the UK, based on 2019 trade values.

7.7 The EU notified the World Trade Organization (WTO) of its intention to impose rebalancing duties on selected US products from 8 May 2020 in response to the US increased tariffs. The European Commission conducted consultations between 6 and 13 March 2020 for stakeholders impacted by the US measures to express their views on proposed customs duties. Additionally, the 30 day period for consultations between the EU and US to find a satisfactory solution to this area of trade in accordance with Article 8 of the WTO Safeguards Agreement expired on 5 April 2020.

7.8 In line with the WTO process, on 7 April 2020, the EU notified the WTO of the proposed rebalancing duties to the WTO Council for Trade in Goods. The European Commission Implementing Regulation (EU) 2020/502 imposed those additional duties on selected US products from 8 May 2020. The EU determined equivalence between its additional rebalancing measures and the US extension to its safeguard measures in terms of the theoretical additional duties that would be collected on targeted trade, based on 2019 trade values.

7.9 Schedule 2 of these regulations replicate, in relation to imports into the United Kingdom, the rebalancing measures that are currently being applied by the EU and which reflect the equivalent of the US's safeguard measures that have not been taken as a result of an absolute increase in imports. This means that the rebalancing measures will continue to be applied after the end of 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. This is because the legislation is concerned with ensuring that the UK's customs regime operates as required after the end of the Implementation Period.

9. Consolidation

9.1 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument broadly corresponds to, and replicates insofar as is possible, existing EU legislation.

10.2 The European Commission ran a public consultation on the initial rebalancing measures in March 2018 on the possible EU commercial policy measures in response to the US safeguards, seeking views on the proposed list of rebalancing duties. The consultation was completed on 26 March 2018.

10.3 Following the US's decision to increase the scope of the original tariffs to include certain steel and aluminium derivative products, the European Commission ran an additional public consultation on the most recent rebalancing measures from 6 to the

[4] Estimated using USITC data on US imports for consumption from the UK. Converted from USD into GBP using the annual average spot exchange rate for 2019 from the Bank of England.

13 March 2020 for stakeholders impacted by the US measures to express their views on proposed customs duties.

10.4 These regulations replicate the list of products in Annex I of European Commission Implementing Regulation 2018/886 and the first stage of European Commission Implementing Regulation 2020/502 to which the rebalancing duties apply.

10.5 The UK government has also engaged with UK business associations and companies which may be affected by the proposed list of products to which the rebalancing duties are applied. The devolved administrations were kept informed as the list of products was developed and had the opportunity to feed in their views on the list.

11. Guidance

11.1 Guidance is not required.

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 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 This legislation applies to activities that are undertaken by small businesses.

13.2 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 Tara Biles at the Department for International Trade, phone: 07825 906 307 and email: tara.biles@trade.gov.uk can be contacted with any queries regarding this instrument.

15.2 Emily Shirtcliff, Deputy Director for Trade Disputes 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 HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Rt Hon Greg Hands MP, the Minister of State for Trade Policy at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.