EXPLANATORY MEMORANDUM TO

THE CUSTOMS (TARIFF AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 1301

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of International Trade and HM Treasury and is laid before the House of Commons by Command of His 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 subordinate legislation previously made under the Taxation (Cross-border Trade) Act 2018 ("TCTA"), which provided for the United Kingdom's Customs, Value Added Tax ("VAT") and Excise regimes to be in place after the end of the Transition Period following the withdrawal of the United Kingdom ("UK") from the European Union ("EU").

2.2 This instrument updates the reference documents which had been given legal effect by the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249) (the "Special Procedures Regulations"), the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) (the "Establishment Regulations"), the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431) (the "Reliefs Regulations"), the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (S.I. 2020/1435) (the "Suspensions Regulations") and the Customs (Additional Duty) (Russia and Belarus) Regulations 2022 (S.I. 2022/376) (the "Additional Duties Regulations").

2.3 This instrument contains both policy and technical updates. On policy, this instrument:

- brings into effect the suspension of import duties on 102 product lines that have been applied for by UK businesses in 2021 and accepted by the Government.
- extends 100 of the Covid-19 tariff suspensions introduced to support the healthcare response to the COVID-19 pandemic.
- brings into effect additional duties of 6% for urea (subject to use provision) and titanium tubes and pipes from Russia and Belarus, to seek to ensure that Russia and Belarus cannot take advantage of the relevant suspensions.
- brings into effect an exceptional duty suspension of import duties on sunflower seed oil.
- brings into effect additional duties of 35% for Russia and Belarus on sunflower seed oil, to ensure that Russia and Belarus cannot take advantage of the relevant suspension.

2.4 This instrument also makes a series of minor updates to ensure the tariff schedule is working as intended, including correcting errors identified in previous versions of the relevant reference documents:

- introduces three rates at zero percentage points in the "Tariff of the United Kingdom" reference document for optical fibre connectors.
- removes the corresponding rates for optical fibre connectors from the "Authorised Use: Eligible Goods and Authorised Uses" and "Authorised Use: Eligible Goods and Rates" reference documents.
- lowers two tariff rates on some goods related to pesticides from 6% to 4% to align them with the UK's WTO bound tariff schedule.
- makes some technical amendments to update the commodity code structure and descriptions in the UK Tariff, which ensures the UK's international trade policy can be delivered and avoid any unnecessary complications for businesses.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 After consultation with the Statutory Instrument Registrar, the Treasury is issuing these Regulations free of charge to anyone who purchased S.I. 2018/1249, 2020/1430, 2020/1432, 2020/1431, 2021/63, 2021/380, 2021/520, 2021/661, 2021/870, 2021/1191, 2021/1489, 2022/615 and 2022/981. These Instruments gave effect to the "Tariff of the United Kingdom" and the "Authorised Use: Eligible Goods and Rates" reference documents, which these Regulations now update to correct errors identified in the previous versions of both reference documents.

3.2 These Regulations amend the reference to the reference document entitled "Suspensions of Import Duty Rates Document" to version 1.7, dated 5th December 2022. However, the version numbers of this reference document are amended non-sequentially, i.e. version 1.5 becomes version 1.7. This is because, since this definition was last amended by the Customs (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations (S.I. 2021/1489), a public notice published on 28th April 2022 under section 32A(2) of the TCTA, has modified the relevant statutory reference to refer to a new version of that document, version 1.6 dated 27th April 2022.

3.3 However, because this update was made by way of public notice and took effect as a non-textual modification, as opposed to a textual amendment, the underlying statutory words which are being amended here refer to the previous version of that document, version 1.5, dated 28th December 2021.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The TCTA confers powers on HM Treasury to make provision in regulations for the purposes of establishing duties applicable to imports entering the UK. In exercising its functions to make legislation under the powers in Part 1 of the TCTA, the Treasury has had regard to relevant international arrangements to which the government is a party.

The Establishment Regulations

6.2 Legislation was made under the TCTA which ensured that the UK has functioning Customs, VAT and Excise regimes. That legislation set out the associated rules of, and exceptions to, the UK's applied MFN tariffs (also known as the "UK Global Tariff") that have applied since 1 January 2021. In considering the rate of import duty that ought to apply to goods in a standard case as defined under section 8(8) of the TCTA, HM Treasury has had regard to the matters set out in section 8(5) of the TCTA and the recommendation about the rate made to them by the Secretary of State under section 8(6).

The Suspensions Regulations

6.3 In considering what provision to include in regulations made under section 12(1) of the TCTA, the Treasury has had regard to recommendations made to them by the Secretary of State in accordance with section 12(5) of the TCTA.

Import Duty Variation

6.4 The TCTA also confers regulation-making powers on the Secretary of State. Section 15 of the TCTA provides that the Secretary of State may make regulations varying the amount of import duty applicable to certain goods, or a description of goods, where a dispute or other issue has arisen between His Majesty's Government and the Government of another country or territory. In the case of the UK's response to Russia's invasion of Ukraine, His Majesty's Government considers it appropriate to vary the amount of import duty in the case of goods, or a description of goods, originating from Russia or Belarus, having had regard to the matters set out in section 28 of the TCTA and other relevant matters. This instrument gives effect to updated reference documents.

Special Procedure Regulations

6.5 Section 3(3) and (4) of the TCTA provides that goods may be declared for the free circulation procedure or one of the "special procedures" listed in subsection (4) which include the "authorised use procedure". Paragraph 13 of Schedule 2 to the TCTA gives HMRC Commissioners powers to specify such authorised uses in regulations.

The Reliefs Regulations

6.6 Section 19(1) of the TCTA gives powers to HM Treasury to make provisions by regulations that relieve imported goods of some, or all, of their import duty in cases where levying the normal duty is not considered appropriate.

7. Policy background

What is being done and why?

7.1 A package of tariff legislation was made under the TCTA and laid before Parliament on 16th December 2020 – and updated on 31st December 2020 - which ensured that the UK had a properly functioning customs regime.

7.2 As part of this package, the Customs Tariff (Establishment) (EU Exit) Regulations 2020 brought into effect the customs tariff of the UK by giving effect to "The Tariff of the United Kingdom" reference document. This document sets out the standard rate of import duty (the "UK Global Tariff") and the general rules of classification that must be applied when determining the correct commodity code to apply to goods.

7.3 The package of legislation also introduced exceptions to the standard rate of import duty – such as a tariff relief or tariff suspension – which were largely given effect by reference documents referred to in that legislation.

7.4 These reference documents have been amended since their introduction, and this instrument introduces further amendments to the reference documents.

Suspensions

7.5 As part of this package, the Customs Tariff (Suspension of Import Duty Rate) (EU Exit) Regulations 2020 brought into effect the UK's tariff suspensions regime. Tariff suspensions enable the Government, on a temporary basis, to fully or partially lower tariffs applicable to goods imported under the UK Global Tariff, usually by suspending goods used in domestic production. These regulations give effect to the "Suspensions of Import Duty Rates Document", which sets out the goods that are to be suspended, the rate of tariff suspension, and the duration of the suspension.

7.6 This instrument updates the "Suspensions of Import Duty Rates Document" to version 1.7, dated 5th December 2022, in order to introduce a series of policy updates:

- Following the conclusion of the UK's first tariff suspension application process, this instrument brings into effect 102 full (zero rated) tariff suspensions, 19 being introduced where the suspension only applies to imports with a specific purpose. Between June and July 2021, the Secretary of State for the Department for International Trade (DIT) invited applications from UK and Crown Dependencies (Guernsey, the Isle of Man and Jersey) stakeholders for tariff suspensions. The objective of the process was to help UK and Crown Dependency businesses remain competitive in the global marketplace, by suspending import duties on certain goods, normally those used in domestic production.
- In the context of any health pressures that might arise during the winter, this instrument extends 100 of the 103 tariff suspensions that were implemented to support the UK response to COVID-19, namely some goods related to healthcare and vaccine production. The suspensions being extended include all goods which have seen imports during the in-force period. The extension is in place until 31st December 2023.
- Following a recommendation by the Secretary of State for International Trade, the instrument introduces an exceptional duty suspension on sunflower seed oil,

to ensure Ukrainian exporters can continue to access the UK market tariff free, as intended.

- This instrument also makes technical updates to move tariff suspensions from expired "commodity codes" (which are used to classify goods) to new commodity codes, following updates to the structure of these codes. The new codes will allow the same coverage of suspended goods as outlined in previous versions of the relevant reference document.

Additional tariffs on imports from Russia and Belarus

7.7 The Customs (Additional Duty) (Russia and Belarus) Regulations 2022 came into force following the illegal invasion of a sovereign country namely Ukraine, the UK is taking such measures to isolate Russia and Belarus from the global economy. These measures are part of a broader response which includes diplomatic pressure and financial sanctions against Russia and Belarus in respect of actions undermining the territorial integrity, sovereignty, and independence of Ukraine.

7.8 When designing this policy, the Government looked at relevant considerations, including balancing the impacts on the UK economy against wider objectives. This instrument is preceded by three earlier instruments which imposed additional duties on three packages of goods that entered into force on 25th March, 1st June, and 20th July respectively. To lessen the impact on UK traders who have already shipped goods originating in Russia and Belarus, but which have yet to reach the UK customs border, the 2022 Regulations contain a transitional provision. The effect of this is that the additional duty will not apply to specified goods originating from Russia and Belarus which were exported from those territories prior to the regulations coming into force. For example, goods that have already completed customs formalities and are already en route to the UK, meaning the exemption applies if the goods included in this package left Russian and Belarussian territories before 1st January 2023.

7.9 This instrument gives effect to two new reference documents, the "Belarusian Additional Duties Document", version 1.3, dated 5th December 2022, and the "Russian Additional Duties Document", version 1.3, dated 5th December 2022, these documents bring into force the following policy changes:

- Additional 6% duties on urea and titanium for imports from Russia and Belarus, as otherwise these products from these countries would now be subject to suspensions lowering the tariff to 0%. This will seek to ensure that Russia and Belarus cannot benefit from tariff free access, while ensuring UK companies do not face supply chain shocks and have an economic incentive to diversify away from Russian imports.
- Additional duties of 35% are being placed on sunflower oil from Russia and Belarus. As an exceptional duty suspension is being placed on sunflower seed oil, additional duties will seek to ensure that Russia and Belarus cannot benefit from the suspensions.

Tariff of the United Kingdom

7.10 The Customs Tariff (Establishment) (EU Exit) Regulations 2020 brought into effect the customs tariff of the UK by giving effect to "The Tariff of the United Kingdom" reference document. This document sets out both the rules for how goods are to be classified and the standard rate of import duty that applies to each commodity code.

7.11 This instrument updates the "Tariff of the United Kingdom" to version 1.12 dated 5th December 2022, in order to introduce the following updates and corrections:

- To set the duty rate for three commodity codes, where tariff rates had erroneously not been included in the previous versions of this instrument, relating to optical fibre connectors at 0.00%.
- To lower two tariffs on some goods related to pesticides from 6% to 4% to align them with the UK's WTO bound tariff schedule.
- Regular end of year updates to the commodity codes. These codes are the method through which tariff rates are delivered and are subject to ongoing updates to avoid any unnecessary complications for businesses. These changes are being made to ensure the UK's international trade policy can be delivered and to avoid any unnecessary complications for businesses.

The Reliefs Regulations and the Special Procedures Regulations

7.12 This instrument removes the rates for optical fibre connectors from the "Authorised Use: Eligible Goods and Authorised Uses" and "Authorised Use: Eligible Goods and Rates" reference documents. These rates are no longer required as the MFN tariff rate is set at zero, as per paragraph 7.11.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 and does not directly relate to the withdrawal of the United Kingdom from the European Union, but does amend legislation that was itself related because withdrawal required the UK to replace the EU's customs regime with a UK-specific customs regime.

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 Tariff suspensions are being introduced following the Government inviting applications for duty suspensions in 2021. Stakeholders made applications during a two-month application window. Stakeholders also had one month to submit objections to the applications received.

10.2 Save for the above, no consultation has taken place for this instrument. This instrument includes a series of amendments to maintain the current position, such as extending tariff suspensions already in force, or correcting errors identified in legislation to correctly align with what is occurring operationally, and as policy intended. These changes are consistent with the principles underlying the UK Global Tariff which were previously consulted on.

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 Tariffs on goods imported into the UK - GOV.UK (www.gov.uk).

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 A full Impact Assessment has not been prepared for this instrument, as it largely maintains the position of existing legislation which were covered by an overarching

12.4 Tax Information and Impact Note: https://www.gov.uk/government/publications/the-uks-integrated-tariff-schedule.

13. Regulating small business

13.1 The legislation applies activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that import tariffs cannot be varied with the size of importing businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in line with the Government's general approach to tariff legislation, which is kept under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and ensures burdens on business are carefully monitored.

14.2 The instrument does not include a statutory review clause as the content relates to a tax or duty and therefore meets the requirements of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Martina Klicnarova at the Department for International Trade email: martina.klicnarova@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Benedict Collins, Deputy Director for Tariffs, Imports, Professions and Strategy (TIPS), at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nigel Huddleston MP, Parliamentary Under Secretary of State, at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.4 Daniel Mullooly at HM Treasury email: daniel.mullooly@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.5 Catherine Stewart, Deputy Director for Trade Policy at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.6 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.