EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (ESTABLISHMENT AND SUSPENSION OF IMPORT DUTY) (EU EXIT) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 1191

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury 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 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 Implementation Period following the withdrawal of the United Kingdom (UK) from the European Union (EU).

2.2 Specifically, this instrument updates the reference documents which had been given legal effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) as amended, and the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (S.I. 2020/1435) as amended.

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

- extends for a period of 2.5 years approximately 2,200 tariff suspensions already in-force since 1 January 2021;
- extends 89 suspensions introduced to support the response to COVID-19 for an additional year;
- introduces 14 new tariff suspensions on COVID-19 vaccine inputs, as identified by the World Trade Organisation (WTO); and
- liberalises the UK's Most-Favoured-Nation (MFN) tariff on marine ornamental fish from 6% to 0% following business feedback through the Tariff Implementation Monitoring exercise.

2.4 This instrument also makes a series of technical updates including error corrections and updates to the tariff nomenclature. The most significant of which are the insertion of six rates of import duty in the "Tariff of the United Kingdom" reference document (given legal effect by S.I. 2020/1430, as amended), which were erroneously omitted from previous versions of the document to ensure that legislation is delivering the intended policy. Further, and more minor, corrections are detailed in section 7 below.

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 S.I. 2020/1430, S.I. 2020/1435, S.I. 2021/63, S.I. 2021/380, S.I. 2021/520, S.I. 2021/661

and S.I. 2021/870. These Instruments gave effect to the "Tariff of the United Kingdom" and the "Suspensions of Import Duty Rates" reference documents, which these Regulations now update to correct errors identified in the previous versions of both reference documents. The Treasury has complied with the requirement to consult with the S.I. Registrar on this matter.

3.2 In relation to the specific goods in respect of which the tariff is changed as a consequence of this amendment, until the errors were identified, HMRC and importers of the relevant goods have been under the impression that the import duty was being lawfully applied in line with the intended policy position. HMRC are making arrangements to refund affected traders who have consequently overpaid.

3.3 It is anticipated that there will be a short time period before this instrument comes into force. This is justified by the need to make an urgent technical correction so that there is an appropriate legal basis to collect tariffs on the goods concerned. The lack of notice will not cause disruption or unexpected financial burden to traders because this legislation confirms the shared, but mistaken, belief referred to above that the goods were subject to import duty on their importation.

3.4 This instrument also corrects a small error in the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 in regulation 5(2) which incorrectly referenced "column 3" for the date of expiry for tariff suspensions in the associated reference document, rather than "column 5".

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 Lucy Fazer QC 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) (No. 2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made in exercise of the powers conferred by the TCTA.

6.2 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 Act and any recommendation about the rate made to them by the Secretary of State under section 8(6).

6.3 Section 12(1) of the TCTA 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.

6.4 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the TCTA 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 UK as a result of section 3 of the European Union (Withdrawal) Act 2018 - ceased to have effect. This instrument amends legislation made under the TCTA which ensured that the UK's

Customs, VAT and Excise regimes were in place at the end of the Implementation Period. This package of 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 the end of the Implementation Period. This instrument amends parts of that package of legislation, to give legal effect to updated tariff reference documents.

7. Policy background

What is being done and why?

7.1 As outlined in the preceding paragraph, a package of tariff legislation was laid under the TCTA on 16th December 2020 which ensured that the UK had a properly functioning customs regime in place after the end of the Implementation Period and following the withdrawal of the UK from the EU. 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 contained within that legislation.

7.2 As part of this package, the Customs Tariff (Suspension of Import Duty Rates) (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, normally by suspending import duties on 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 the tariff suspension, and the duration of that suspension.

7.3 This instrument updates the "Suspensions of Import Duty Rates Document" to version 1.4, dated 25th October 2021, in order to introduce a series of policy updates:

- extending for a period of 2.5 years approximately 2,200 tariff suspensions already in-force since 1st January 2021, to ensure business continuity given the adjustments businesses have faced this year, and preventing the payment of additional duties if these suspensions were no longer in force;
- extending 89 suspensions introduced to support the response to COVID-19 until 31st December 2022, given the exceptional circumstances presented by the pandemic; and
- introducing 14 new tariff suspensions on COVID-19 vaccine inputs, as identified by the WTO for the reasons set out above, until 31st December 2022.

7.4 There are also four minor technical corrections 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 previous versions of the reference document.

7.5 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.

7.6 This instrument updates the "Tariff of the United Kingdom" to version 1.6, dated 25th October 2021, in order to correct a limited number of errors identified in the original

reference document which did not provide a sufficient legal basis for the intended policy. These updates are as follows:

- Addition of commodity code 6307 90 95 with a 6.00% duty rate for protective face masks;
- Addition of commodity code 6307 90 98 with a 6.00% duty rate for protective face masks;
- Addition of commodity code 2915 60 90 00 with a 4.00% duty rate for pentanoic acids and its compounds;
- Addition of commodity code 2909 44 00 90 with a 4.00% duty rate for monoalkylethers of ethylene glycol or of diethylene glycol solvent;
- Addition of commodity code 8544 30 00 45 with a 2.00% duty rate for core connecting cables used in vehicles, aircraft or ships; and
- Addition of commodity code 8544 30 00 55 with a 2.00% duty rate for core connecting cables used in vehicles, aircraft or ships.

7.7 Previous versions of the reference document did not provide a legal basis for HMRC to collect tariffs on this limited set of goods. By making the above changes, this instrument now provides this legal basis, ensuring that both operational systems and legislation are delivering the original policy intent. As these changes effectively increase the rates in legislation, this instrument is being made via the made affirmative procedure, pursuant to section 32 of TCTA. In relation to any overpayments that have already been made by the importers of those goods prior to the coming into force of these Regulations, HMRC will be making arrangements for refunds.

7.8 This instrument also gives effect to a series of more minor technical corrections to the reference document:

- Removal of an "additional chapter note" which referred to the EU's "Meursing" system in relation to agricultural product which was removed from the UK Global Tariff and is therefore no longer relevant to traders;
- Insertion of text to chapter heading notes relating to CJEU/ECJ case-law on goods classification which was removed in the creation of new tariff legislation, to provide greater clarity on classifications, and assist in upholding our obligations under the Protocol on Ireland/Northern Ireland;
- Removal of approximately 80 expired commodity codes no longer in use;
- Addition of 0% tariff rates to several commodity codes where either the code or the tariff rate attached to that code was omitted, providing additional legal clarity that the goods in question have been correctly subject to a 0% tariff rate; and
- Correction of minor typos identified in relation to approximately 10 commodity codes.

7.9 Finally, this instrument also makes a policy update to the same reference document in order to liberalise the UK Global Tariff rate on marine ornamental fish from 6% to 0% following business feedback through the Government's Tariff Implementation Monitoring exercise which has invited stakeholder feedback on the implementation of the UK Global Tariff.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union 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 No consultation in relation to this instrument has been undertaken. This instrument makes a series of limited 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. Where new tariff rate suspensions are being introduced to further support the flow of COVID-critical products, these were suggested by stakeholders during targeted engagement on the UK's use of trade policy to achieve this aim.

10.2 The change relating to marine ornamental fish addresses a specific issue that was raised by domestic stakeholders as part of the Tariff Implementation Monitoring Exercise. When determining this change, full consideration was given to the principles set out in the TCTA.

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 exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free 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 as it largely maintains the position of existing legislation, which were covered by an overarching Tax Information and Impact Note published earlier this year: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#uk-transition

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses as the changes do not result in a change of tariff policy, but a slight adjustment to the structure that delivers the same tariff rates that are currently in place.

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 are 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 A statutory review clause is not included in these regulations because this 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 Gavin Moore at HM Treasury, email: gavin.moore@hmtreasury.gov.uk and Jamie Balbes at the Department for International Trade, email: jamie.balbes2@trade.gov.uk can be contacted with any queries regarding the Establishment instrument.

15.2 Martina Klicnarova, at the Department for International Trade, email: Martina.Klicnarova@trade.gov.uk can be contacted with any queries regarding the Suspension instrument.

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 Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.