EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (ESTABLISHMENT) (EU EXIT) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 661

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and 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 instrument amends subordinate legislation 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 "Tariff of the United Kingdom" reference document which has been given legal effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) ("the Establishment Regulations"). The purpose of this instrument is to insert a limited number of "commodity codes" and the rates of import duty which were erroneously omitted from previous versions of the reference document to ensure that legislation is delivering the intended policy.

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. 2021/63, S.I. 2021/380 or S.I. 2021/520. Each of those instruments gave effect to a tariff reference document. These Regulations give effect to a revised tariff document to correct errors in the previous tariff reference documents. The Treasury has recently been made aware of inadvertent omissions in the existing tariff reference document, substituted by S.I. 2021/520. The document omitted three commodity codes and the associated tariff rates for the specific goods concerned, and in one instance, omitted the tariff rate beside an existing commodity code. The consequence of these omissions is that no tariff was legally set for the importation of this very limited set of goods. 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 prior to the coming into force of these Regulations.

3.3 The regulations are to be commenced on a day appointed by instrument made under section 52(2). The Treasury considers is appropriate to do so in light of the withdrawal of the UK from the EU, the expiry of the Implementation Period, and the subsequent need for an independent UK tariff policy. Section 52(3)(b) TCTA requires that this instrument must be approved by a resolution of the House of Commons within 60 days of coming into force in order to continue to have effect.

3.4 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.

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)

3.5 Taxation (including the setting of tariffs applicable to imports) is a reserved matter. The TCTA therefore extends to and applies throughout the whole of the United Kingdom, and the territorial application of this instrument is not limited either by the TCTA or by the instrument.

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

6.3 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 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 Most-Favoured Nation tariffs (also known as the "UK Global Tariff") that have applied since the end of the Implementation Period. This instrument amends part of that package of legislation, the Establishment Regulations, to give legal effect to an updated tariff reference document.

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.

7.2 As part of this package, the Establishment Regulations 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 - with each good assigned a "commodity code" - and the standard rate of import duty that applies to each commodity code.

7.3 This instrument updates "The Tariff of the United Kingdom" to version 1.4, dated 28th May 2021, in order to correct a limited number of errors identified in the original reference document which were not provided a sufficient legal basis for the intended policy. These updates are as follows:

- Addition of commodity code 2934 99 90 65 with a 6.00% duty rate for the chemical Benzo[b]thiophen-10-methoxycycloheptanone (a chemical compound used for manufacturing)
- Addition of commodity code 2934 99 90 70 with a 6.00% duty rate for the chemical 1,3,4-thiadiazolidine-2,5-dithione (a chemical compound used for manufacturing)
- Addition of commodity code 4016 93 00 30 with a 2.00% duty rate for a sub-set of vulcanised rubber gaskets
- Insertion of a 14.00% duty rate beside existing commodity code 0811 90 95 to apply to certain types of tropical fruit, such as frozen pineapple pieces.

7.4 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.

7.5 Finally, this instrument makes a further correction to the reference document, whereby a typographical error in the duty rate for existing commodity code 3402 13 (certain types of non-ionic organic surface-active agents) is changed from "4.00$" to "4.00%".

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. Consultation is not required because the changes being made to the tariff rates are to correct a technical oversight that did not deliver the original policy intent underlying the UK Global Tariff. This instrument ensures the UK Global Tariff will be working as originally intended. When determining these rates, full consideration was given to the principles set out in section 8 of 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 The Establishment Regulations which these Regulations amend are one of a group of instruments covered by an overarching Tax Information and Impact Note ("TIIN"). The TIIN primarily focuses on the Establishment Regulations and is available at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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 or the rates that have applied in practice.

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 James Repper at HM Revenue & Customs, email: james.repper@hmrc.gov.uk and Jessica Bolton at the Department for International Trade, email:

Jessica.Bolton@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tammy Reynolds, Deputy Director for Trade Policy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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