EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (EU EXIT) (AMENDMENT NO. 2) REGULATIONS 2021

2021 No. 527

1. Introduction

1.1 This explanatory memorandum has been prepared jointly by the Department for International Trade and the Department for Environment, Food and Rural Affairs 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 three statutory instruments, namely the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457), the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432) as amended, and the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 (S.I. 2020/1434). These statutory instruments were laid before the House of Commons on 16th December 2020 as part of a package of secondary legislation made under the Taxation (Cross-border Trade) Act 2018 ("TCTA") which ensured that the United Kingdom ("UK") had a properly functioning customs regime in place at the end of the Implementation Period.

2.2 The purpose of this instrument is to give effect to the preferential import duty rates, including the related Rules of Origin ("RoO") requirements, from the UK's Free Trade Agreements ("FTAs") and other preferential trade agreements concluded with other countries or territories, in this case, the FTA reached with Serbia. Therefore, the amendments being made by this instrument will ensure that the UK's obligations under its trade arrangement with Serbia are given effect to, so that goods imported can access the agreed preferential import duty terms if they qualify to do so.

2.3 This instrument also amends the Customs (Tariff Quotas) (EU Exit) Regulations 2020 to ensure that two preferential tariff quotas established under the FTA with Serbia can continue to be administered using a licence system. The amendments also make a small change to the administration of the Tunisian olive oil quota.

2.4 This instrument also includes an amendment to the Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/382) to revoke the amendments contained in regulations 1(3) and 3(3) of that instrument before those amendments come into force on 30th April 2021. The purpose of those amendments was to replace the current Bridging Mechanism with a reference to an Economic Partnership Agreement with Cameroon. However, they are no longer necessary having regard to the amendments to be made by regulation 4 of this instrument in respect of Cameroon.

2.5 Finally, this instrument also makes amendments to the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 (S.I. 2020/1434) to correct two drafting errors one of which was identified by the Select Committee on Statutory Instruments.

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, at least 21 days before the instrument comes into force ("the 21-day rule"). This instrument needs to enter into force on 30th April 2021 to ensure duty free quota free access for Cameroon can continue. Cameroon notified the UK on 9th April that they have been unable to complete their Parliamentary approval for the UK-Cameroon Economic Partnership Agreement (EPA) to the previously agreed timetable, which is due to replace the current bridging mechanism (a Memorandum of Understanding) due to expire on 30th April.

3.2 The current position in domestic legislation – as provided for by S.I. 2021/382 – is for the MoU to expire on 30th April at 00:00 GMT and be replaced with the EPA entering into force at the same time. Recent engagement between the Foreign Commonwealth and Development Office and the Cameroon Foreign Ministry has resulted in an exchange of diplomatic notes (notes verbales) to provisionally apply the EPA from 30th April. Unfortunately, the note provided for the MoU – currently in force – to expire on 30th April at 23:00 GMT, rather than 00:00 GMT, with the EPA entering into effect immediately after. Given the precise timings provided for by S.I. 2021/382 and the note verbale are misaligned, this instrument breaches the 21-day rule by extending the MoU to realign what is provided for in domestic legislation and the note verbale to ensure a consistent legal position at all times.

3.3 Additionally, the instrument will also correct two drafting errors contained in S.I. 2020/1434, with one of those corrections being in response to a point made by the Committee. As a consequence, this instrument will be issued free of charge to all known recipients of S.I. 2020/1434.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 9 of the TCTA gives HM Treasury powers to implement trade arrangements that Her Majesty's Government in the UK agrees with the government of a trading partner country.

6.2 Pursuant to such arrangements, the UK has agreed to apply a lower import duty rate (a "preferential tariff") than would otherwise be offered under the Most-Favoured-Nation ("MFN") rate. This latter rate (also known as the "UK Global Tariff" or standard rate of import duty) is the rate established by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430) as amended. The preferential tariff rate is only offered to goods that enter the UK after meeting all relevant terms set out in the trade agreement in question, including meeting specific RoO requirements.

6.3 These Regulations therefore implement the import duty obligations, including any relevant RoO requirements, in the trade arrangements which the UK has entered into with trading partner countries, as listed in paragraph 7.5. Without this instrument, the Government would not be able to give effect to these obligations, leading to a breach of the terms of this international trade arrangement.

6.4 Section 11 of the TCTA gives HM Treasury powers to establish Tariff Rate Quotas ("TRQs") to manage domestic imports into the UK. A TRQ allows a fixed volume of goods to be imported into the UK at zero duty or at a lower rate of duty than would be applied under the standard rate of import duty, allowing the UK to manage the volume of the goods that are imported into the country.

6.5 Section 11(1) of the TCTA states that regulations may make provision for determining the amount of import duty applicable to any goods that are subject to a quota.

6.6 Section 11(2)(a) states that goods are subject to a quota if arrangements between the UK and a third country provide for goods to be subject to a quota.

6.7 Section 11(3) of the TCTA enables the Government to create a licensing regime for TRQs, where operators who satisfy the relevant conditions for the quotas concerned are allocated a share of quota.

6.8 Without this instrument there would be no provisions for managing those quotas established by trade agreements to be administered using a licence system.

7. Policy background

What is being done and why?

7.1 The TCTA gives primary powers for the UK to create its own customs regime, including a system of import duty rates, allowing import duty to be applied to chargeable goods entering the UK.

7.2 Import duties (or tariffs) are the taxes that an importer needs to pay when bringing goods into the UK. The UK Global Tariff sets out these non-preferential import duty rates, with product-specific commodity codes determining the rate applied to each good. This provides the legal basis for conveying information that traders need to ensure the correct classification of goods being imported into the UK.

7.3 The Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 set out the legislative mechanism through which the UK implements the preferential tariffs and related RoO requirements that it has agreed with trading partners. This instrument has been in force since the end of the Implementation Period and it will continue to be updated as further preferential trade arrangements are agreed.

7.4 The purpose of the amendments to the Customs (Tariff Quotas) (EU Exit) Regulations 2020 are to ensure that preferential tariff quotas established under trade agreements can continue to be administered using a licence system.

7.5 The following agreement is added to the table of agreements in Schedule 1 to the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, as amended by S.I. 2020/1657, S.I. 2021/241 and S.I. 2021/382:

- Partnership Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Serbia, signed on 16th April 2021. These changes will enter into effect on 20th May 2021.

7.6 An Origin Reference Document (detailing the agreed Rules of Origin) and Preferential Tariff Reference Document (detailing the preferential duty import rates which will be applied by the UK) will be published separately for this agreement. These documents are available at https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021.

7.7 Further amendments to the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 are made by this instrument to update the text of the reference documents associated with Cameroon and listed in the table in Schedule 1 to that instrument as amended. Specifically, these are:

- The Cameroon Preferential Tariff Reference Document is updated to amend any reference to the Economic Partnership Agreement and replace it with an extended Memorandum of Understanding.
- The Cameroon Origin Reference Document is updated to amend any reference to the Economic Partnership Agreement and replace it with an extended Memorandum of Understanding.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. The relevant enabling powers are found in the TCTA. This instrument relates to the UK's withdrawal in so far as withdrawal required the UK to replace the EU's customs regime with a UK-specific customs regime.

9. Consolidation

9.1 This instrument does not consolidate any previous legislation.

10. Consultation outcome

10.1 No consultation on this instrument has taken place. This instrument introduces the preferential tariffs and Rules of Origin requirements that have, in some cases, undergone parliamentary scrutiny as part of the CRaG process (powers given to Parliament under the Constitutional Reform and Governance Act 2010). Those agreements which have not yet undergone CRaG scrutiny, and are being entered into effect by way of Provisional Application or a Bridging Mechanism, will be laid in Parliament under CRaG as quickly as possible. This instrument ensures that these aspects of the arrangements are operable on the border.

11. Guidance

11.1 Guidance on the customs tariff is currently available from HMRC. This guidance will continue to be published and available in its current format.

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 minimal to no impact is expected for UK businesses as result of this instrument.

13. Regulating small business

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

13.2 Since the legislation maintains the existing position as far as possible, it minimises additional burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the wider context of the customs tariff legislation.

14.2 A statutory review clause is not included in these Regulations because the 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 Andreas Lendle at the Department for International Trade, phone: 020 7215 1691 and email: andreas.lendle@trade.gov.uk can be contacted with any queries regarding the Preferential arrangements within this instrument.

15.2 Darren Stretton at the Department for Environment, Food and Rural Affairs, phone: 020 8026 2979 and email: darren.stretton@defra.gov.uk can be contacted with any queries regarding the tariff rate quotas within this instrument.

15.3 Tammy Reynolds, Deputy Director of Trade Policy at HM 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.