EXPLANATORY MEMORANDUM TO

THE CUSTOM TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (EU EXIT) (AMENDMENT) (NO. 3) REGULATIONS 2021

2021 No. 693

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 instrument contains matters of special interest for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes amendments to two statutory instruments, namely the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) and the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432). 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 an independent customs regime in place at the end of the Implementation Period.

2.2 The primary purpose of this instrument is to amend the Customs (Tariff Quotas) (EU Exit) Regulations 2020 to include changes to tariff quota volumes resulting from negotiations with the United States of America under Article XXVIII of the General Agreement on Tariffs and Trade.

2.3 This instrument also makes necessary updates to the preferential import duty rates, including the related Rules of Origin ("RoO") requirements, in the reference documents associated with a number of the UK's Free Trade Arrangements ("FTAs") and other preferential trade agreements concluded with other countries or territories. The amendments being made by this instrument will ensure that the UK's obligations under its trade arrangements to provide preferential import duty terms with other countries or territories continue to be given effect to.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 In a letter to HM Treasury dated 12th May 2021, concerning S.I. 2021/382 which made amendments to S.I. 2020/1457, the Committee asked how a reader would know where to find a reference document associated with a trade arrangement without looking at every instrument that amends S.I. 2020/1457. In its response to the Committee, the department committed that, on the next occasion that S.I. 2020/1457 is amended, the latest versions of the reference documents would be published on the appropriate webpage, and older versions of these reference documents would be removed from the existing pages, rather than being updated on those pages as has been the practice until now. The department will continue to explore means to further improve the usability of the relevant www.gov.uk webpage, in compliance

with relevant accessibility regulations and technical limitations, so that readers can more easily locate reference documents.

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 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 – provided for by the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457) - 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 latter Regulations implement the import duty obligations, including any relevant RoO requirements, in the trade arrangements which the UK has entered into with trading partner countries by ensuring that the information contained in the reference documents associated with particular trade arrangements remains up to date. Without this instrument, Her Majesty's Government would not be able to give full effect to these obligations, leading to a breach of the terms of these international trade arrangements.

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 and is subject to variation over time.

7.3 The Customs (Tariff Quotas) (EU Exit) Regulations 2020 set out the legislative mechanism through which TRQs apply. The purpose of the amendments to the Regulations are to implement the changes to TRQ volumes that resulted from negotiations with the United States of America under Article XXVIII of the General Agreement on Tariffs and Trade (GATT). In December 2018, the UK entered into negotiations and consultations with the appropriate WTO Members pursuant to Article XXVIII of the GATT with respect to its obligations concerning TRQs as set out in the UK's draft Goods Schedule XIX.

7.4 Negotiations with the US have resulted in agreement on some limited changes to the TRQ volumes set out in the UK's draft Goods Schedule XIX, which need to be reflected in legislation – via an updated version of the relevant reference document - before they can be implemented. These changes need to enter into force on 1st July as this date is the start of the quota year for the majority of the affected quotas. These changes will be reflected in the updated reference document "Tariff Quotas, version 2.1" dated 8th June 2021.

7.5 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 or as in this case, to account for some minor error corrections and to provide some simplifications of tariff tables where possible.

7.6 Amendments to these Regulations are also made by this instrument to update the rates of import duty and quota volumes, as set out in the reference documents associated with some of the free trade arrangements listed in the table in Schedule 1 to that instrument to account for minor technical corrections and to provide some simplifications of tariff tables where possible. None of these updates are as a result of policy change and are instead to ensure that the arrangements made with partner countries are operating as intended. These are:

- The Albania Preferential Tariff, version 1.1, dated 8th June 2021
- The Andean Countries Preferential Tariff, version 1.1, dated 8th June 2021
- The Canada Preferential Tariff, version 1.1, dated 8th June 2021
- The Central America Preferential Tariff, version 2.2, dated 8th June 2021
- The Chile Preferential Tariff, version 2.1, dated 8th June 2021
- The Egypt Preferential Tariff, version 1.1, dated 8th June 2021
- The Georgia Preferential Tariff, version 1.1, dated 8th June 2021
- The Israel Preferential Tariff, version 2.1, dated 8th June 2021
- The Japan Preferential Tariff, version 2.2, dated 8th June 2021
- The Republic of Korea Preferential Tariff, version 2.1, dated 8th June 2021
- The Kosovo Preferential Tariff, version 2.1, dated 8th June 2021
- The Lebanon Preferential Tariff, version 1.1, dated 8th June 2021
- The Moldova Preferential tariff, version 1.1, dated 8th June 2021
- The Morocco Preferential Tariff, version 2.1, dated 8th June 2021
- The North Macedonia Preferential Tariff, version 1.1, dated 8th June 2021
- The Palestinian Authority Preferential Tariff, version 1.1, dated 8th June 2021
- The South African Customs Union and Mozambique Preferential Tariff, version 1.1, dated 8th June 2021
- The Tunisia Preferential Tariff, version 2.1, dated 8th June 2021

7.7 All Reference Documents amended by this instrument will be available here: https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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 updates 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).

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 there is minimal to no impact 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 custom 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.