EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (EU EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. 382

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.

2. Purpose of the instrument

2.1 This instrument makes further 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 a properly functioning customs regime in place at the end of the Implementation Period.

2.2 A statutory instrument, which made amendments to both instruments referred to in paragraph 2.1, called The Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1657) was laid on 31st December 2020 to implement the customs aspects of further signed free trade arrangements entered into between Her Majesty's Government in the UK and the governments of other countries or territories, including the European Union. These arrangements entered into force at the end of the Implementation Period.

2.3 Further amendments to S.I. 2020/1457 were made by The Customs Tariff (Preferential Trade Arrangements) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/241). This instrument implemented the customs aspects of the free trade arrangement entered into between Her Majesty's Government in the UK and the government of the Republic of Ghana. This arrangement entered into force on 5th March 2021.

2.4 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 since the laying of the previous instrument. Therefore, the amendments being made by this instrument will ensure that the UK's obligations under all of its trade arrangements are given effect to, so that goods imported as part of a trade arrangement can access the agreed preferential import duty terms if they qualify to do so.

2.5 This instrument also makes amendments to The Customs (Tariff Quotas) (EU Exit) Regulations 2020, the purpose of which is to ensure that a preferential tariff quota established under the concluded FTA with Albania can continue to be administered using a licence system. The amendments also clarify the legal drafting on provisions requiring proof of trade when applying for some quota licences. Minor corrections have also been made to the Licensing Table in Schedule 2.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 MFN 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, Her Majesty's Government would not be able to give 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.

6.5 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. A TRQ allows the UK to manage the volume of the goods that are imported into the country.

6.6 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.

6.7 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.

6.8 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.

6.9 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 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 Through its membership of the EU, the UK had participated in preferential trade arrangements - such as FTAs - which the EU had entered into with non-EU countries. The UK is no longer a party to these arrangements following the end of the Implementation Period. To replace these, the UK has been agreeing successor "continuity" trade arrangements with many of these non-EU countries. These regulations make further provision to permanently implement agreed successor "continuity" trade arrangements, including with Albania, Cameroon, Jordan and Suriname.

7.4 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.

7.5 The following agreements are 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 and S.I. 2021/241:

- Partnership Trade and Cooperation Agreement with the **Republic of Albania** signed on 5th February 2021, these changes will enter into effect on 3rd May 2021.
- Interim Agreement establishing an Economic Partnership Agreement with the **Republic of Cameroon**, signed on 9th March 2021, these changes will enter into effect on 30th April 2021.
- Agreement Establishing an Association with the **Hashemite Kingdom of Jordan**, signed on 5th November 2019, these changes will enter into effect on 1st May 2021.
- Accession of the **Republic of Suriname** to the Economic Partnership Agreement with the **CARIFORUM states,** signed on 4th March 2021, these changes will enter into effect on 14th April 2021.

7.6 An origin reference document (detailing the agreed RoO) and preferential tariff reference document (detailing the preferential duty import rates which will be applied by the UK) will be published separately for each agreement. These documents are described in the table in Schedule 1 of this instrument and 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 also made by this instrument to update the text of the reference documents associated with some of the free trade arrangements listed in the table in Schedule 1 to that instrument. These are:

- The Cameroon Preferential Tariff reference document is updated to correctly refer to the new agreement which replaces the existing Memorandum of Understanding.
- The Central America Preferential Tariff reference document is updated to replicate the Origin Quotas displayed in the associated Origin Reference Document for ease of reference.
- The Japan Preferential Tariff reference document is updated to include a preferential rate associated with face masks.
- An update to the table in Schedule 1 to reflect the correct name of the Free Trade Agreement with the Republic of Turkey and to refer to updated versions of the Origin Reference Document and Preferential Tariff Reference Document associated with that agreement.

7.8 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.

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 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.