EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (PREFERENTIAL TRADE ARRANGEMENTS AND TARIFF QUOTAS) (UKRAINE) (AMENDMENT) REGULATIONS 2022

2022 No. 525

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade ("DIT"), the Department for Environment, Food and Rural Affairs ("DEFRA") and Her Majesty's Treasury ("HMT") 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 the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457, as amended) ("the Preferential Trade Arrangements Regulations"), the Customs (Tariff Quotas) (EU Exit) Regulations 2020 (S.I. 2020/1432, as amended) ("the Tariff Quota Regulations") in order to provide for tariff-free imports into the United Kingdom ("UK") of Ukrainian-origin goods. These changes will apply in relation to Ukrainian-origin goods moving into Northern Ireland, as well as into Great Britain. The amendments affect secondary legislation that was laid before the House of Commons on 16th December 2020 as part of a package of legislation made under the Taxation (Cross-border Trade) Act 2018 ("TCTA"). This package ensured that the UK had an independent customs regime in place at the end of the Implementation Period, following the UK's departure from the EU.

2.2 The purpose of the amendment to the Preferential Trade Arrangements Regulations is to achieve full liberalisation of import duties under the UK-Ukraine Political, Free Trade and Strategic Partnership Agreement ("the UK-Ukraine Agreement") for a 12-month period. This forms part of a wider package of support for Ukraine in the context of its invasion by Russia and follows a direct request from the Government of Ukraine.

2.3 The purpose of the amendment made to the Tariff Quota Regulations is to allow UK importers who currently hold a licence for Ukrainian originating quota products to surrender their import quota licences and for the financial securities held against them to be released in full. Importers will have one month to surrender these licences.

2.4 The purpose of the remaining provisions is to ensure that traders and businesses importing any Ukrainian origin good to Northern Ireland will benefit from liberalised tariffs.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Government regrets that this instrument breaches the convention that statutory instruments subject to the negative procedure should normally be laid before

Parliament, and copies thereof provided to the Committee, at least 21 days before the instrument comes into force. However, the Government is committed to responding to Ukraine's request for this economic support swiftly in its hour of need and considers that the situation warrants the expedition of the process.

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 HMT powers to implement Preferential Trade Arrangements ("PTAs") that Her Majesty's Government in the UK agrees with the government of a trading partner country.

6.2 Pursuant to such PTAs, the UK agrees to apply a lower import duty rate (a "preferential tariff") than would otherwise be applied pursuant to the Most-Favoured-Nation ("MFN") obligation. This latter rate (also known as the "UK Global Tariff" or standard rate of import duty) is the rate set 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 PTA in question, including meeting specific Rules of Origin (''RoO'').

6.3 Section 11 of the TCTA gives HMT 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 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. Section 11 also gives powers to Secretary of State to determine the licensing or allocation system that goods subject to a quota will be subject to, including the lodging of financial securities.

6.4 Sections 30B and 40B of the TCTA give HMT powers to make regulations providing that, in relation to goods of a specified description, various matters relating to the charging of duty in respect of goods entering Northern Ireland are to be determined in accordance with provision made by or under the TCTA, instead of in accordance with EU customs legislation.

7. Policy background

What is being done and why?

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

7.2 Import duties (or tariffs) are the taxes that an importer must 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.

7.3 The Preferential Trade Arrangements Regulations set out the legislative provisions through which the UK implements the preferential tariffs and related RoO

requirements that it has agreed with trading partners. The Preferential Trade Arrangements Regulations have been in force since the end of the Implementation Period, and have been periodically amended to reflect new and updated PTAs the UK has entered into.

7.4 Following a request from the Government in Ukraine, an agreement in principle was reached on 21st April 2022 to fully liberalise tariffs under the UK-Ukraine Agreement for a 12-month period. This followed the commitment made by the Prime Minister in Kyiv that the UK would step up economic support to Ukraine.

7.5 Following agreement in principle, the UK and Ukraine signed an Exchange of Notes on 4th May 2022 ("the Exchange of Notes") which amended the UK-Ukraine Agreement to provide for the temporary liberalisation of all customs duties for 12 months. This instrument implements the UK's tariff commitments under the amended UK-Ukraine Agreement by giving effect to a new preferential tariff reference document in respect of Ukraine. That document is the "Ukraine Preferential Tariff, version 1.3, dated 6th May 2022".

7.6 This instrument amends the Tariff Quota Regulations which set out the legislative provisions through which TRQs are granted. The regulations are being amended to allow UK importers to surrender any extant quota licences issued to them under preferential arrangements with Ukraine, and for the financial securities there under to be released in full. Importers will have one month during which they can surrender their licences in return for their security.

7.7 This instrument also makes provision to ensure that the fully liberalised customs duties apply to all Ukrainian-originating goods imported into Northern Ireland via direct arrival or being moved from Great Britain to Northern Ireland, as well as to Ukrainian-origin goods entering Great Britain itself.

7.8 There will be the opportunity for the UK and Ukraine to review the preferences within the specified 12-month period to decide whether to extend them further.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any previous legislation.

10. Consultation outcome

10.1 No consultation has taken place in relation to the contents of this instrument.

11. Guidance

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

12. Impact

12.1 The impact on business, charities or voluntary bodies is broadly outlined in paragraphs 12.2-12.7.

12.2 This instrument eliminates existing tariffs on imports of all goods originating in Ukraine. It also provides for extant import quota licences to be surrendered with financial securities held against them to be returned in full to UK operators.

12.3 A cross-government exercise led by HMT and DIT has been undertaken to assess relevant considerations, such as possible impacts on UK industry.

12.4 According to Her Majesty's Revenue and Customs (''HMRC'') data, between 2018 and 2020 the average value of UK annual goods imports from Ukraine not fully liberalised amounted to around £8m (1.4% of UK total goods imports from Ukraine). Major product groups included wheat, honey, processed tomatoes, poultry and cereal grains.

12.5 The exact impacts on HMRC revenue, consumers and businesses will depend on a range of factors including the volume of Ukrainian exports (in light of the ongoing conflict with Russia), other recipients of Ukrainian imports choosing to reduce tariffs on Ukrainian goods, and existing demand for goods within the UK market.

12.6 The Government has negotiated with Ukraine to limit negative impacts of the removal of tariffs to UK industry by including a broad safeguard mechanism in the Exchange of Notes which will allow the United Kingdom to protect domestic industry in the unlikely event they are impacted by a surge of Ukrainian imports. New legislation will be made if that safeguard needs to be exercised.

12.7 There is no, or no significant, impact on the public sector.

12.8 A full impact assessment has not been prepared for this instrument. A broad outline of the impacts is set out in proportionate analysis in paragraphs 12.2-12.7.

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 the impact on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that import tariffs cannot be varied with the size of the importing business.

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 The Government will keep this instrument under review to ensure that it meets the policy objectives set out in section 7 of this Explanatory Memorandum, and to ensure burdens on businesses are carefully monitored. As stated in paragraph 7.8, there will be the opportunity for the UK and Ukraine to review the preferences within the specified 12-month period to decide whether to extend them further.

14.3 The instrument does not include a statutory review clause as the content relates to a tax or duty and therefore meets the requirements of the exceptions set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 The Tariff Implementation and Policy team at DIT can be contacted at tariff.implementation@trade.gov.uk 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 Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.