EXPLANATORY MEMORANDUM TO

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

2021 No. 871

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade 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 the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020 (S.I. 2020/1457). This statutory instrument was 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 implement revised the Rules of Origin ("RoO") Protocol with Switzerland signed on 16th July 2021, allowing UK and Swiss businesses to continue to use supply chains across the EU and more widely.

2.3 This instrument also updates five reference documents concerning the preferential import duty rates associated with 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 with other countries or territories continue to have effect, so that goods imported as part of any such trade arrangement can access intended preferential import duty terms, if they qualify to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The SCSI wrote to HM Treasury on 12th May 2021, in relation to S.I. 2021/382 which amended S.I. 2020/1457, expressing concern as to how readers would know where to find the reference documents associated with that instrument. For subsequent amendments to S.I. 2020/1457, the department committed to publishing the latest versions of the reference documents on an appropriate webpage, rather than update older versions of these documents on existing pages, as had previously been the case. This approach was taken for S.I. 2021/693 and will be the case for this instrument. The department is continuing to explore means of improving readers' ability to locate these documents, in compliance with relevant accessibility regulations and taking into consideration relevant technological limitations. As highlighted in the department's letter of response to the Committee, the UK Global Online Tariff is a further resource for readers to check the preferential import duty rates that may apply to a particular good. This tool is available from: https://www.trade-tariff.service.gov.uk/sections.

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 Not applicable.

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 continue to 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.

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 the 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 (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 new preferential trade arrangements are agreed or, as in this case, to account for updates to the existing arrangements reached with other countries or territories and some minor technical corrections where applicable.

7.4 This instrument implements a revised Rules of Origin Protocol between the UK and The Swiss Federation. The updated RoO Protocol will support UK and Swiss businesses in continuing to use their supply chains across the EU and wider Regional Convention on Pan-Euro-Mediterranean zone.

7.5 This instrument also updates 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 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 Andean Countries Preferential Tariff, version 1.2, dated 19th July 2021.
- The Mexico Preferential Tariff, version 1.1, dated 19th July 2021.
- The South African Customs Union and Mozambique Preferential Tariff, version 1.2, dated 19th July 2021.
- The Singapore Preferential Tariff, version 1.1, dated 19th July 2021.
- The Ukraine Preferential Tariff, version 1.1, dated 19th July 2021.

7.6 All reference documents amended by this instrument will be available here: https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transitionlegislation-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 RoO 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 Tammy Reynolds, Deputy Director of 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.