EXPLANATORY MEMORANDUM TO

THE CUSTOMS (VARIATION OF IMPORT DUTY) (AMENDMENT) REGULATIONS 2022

2022 No. 528

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.

2. Purpose of the instrument

2.1 This instrument revokes Part 3 of The Customs (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/1489) (the "2021 Regulations").

2.2 Part 3 of the 2021 Regulations provides for additional tariffs to be imposed by the United Kingdom ("UK") in response to the United States of America's ("US") imposition of increased tariffs on certain UK steel and aluminium products, and certain derivatives of steel and aluminium (a "safeguard" measure). Following bilateral discussions between the UK and the US, this instrument removes the additional tariffs currently applied in the UK under the 2021 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

6. Legislative Context

6.1 This instrument is made under section 15(1) of the Taxation (Cross-border Trade) Act 2018 ("the Act"). It revokes Part 3 of the 2021 Regulations to remove the additional tariffs which the 2021 Regulations imposed on specified products originating in the US that are imported into the UK.

7. Policy background

What is being done and why?

7.1 Under the World Trade Organisation ("WTO") Agreement on Safeguards, a WTO Member may suspend or modify concessions or other obligations (apply a "safeguard" measure) if its domestic industry is seriously injured or threatened with serious injury caused by a surge in imports. The Agreement on Safeguards also sets

out that a WTO member that is affected by the safeguard measure can suspend substantially equivalent concessions (impose rebalancing measures).

7.2 On 1 June 2018, the US implemented a 25% additional tariff on certain steel imports and a 10% additional tariff on certain aluminium imports from the European Union ("EU"), citing the need to protect its national security. On 8 February 2020, the US extended its tariffs to certain derivatives of steel and aluminium, again citing the need to protect its national security.

7.3 The EU and certain other WTO Members considered that the US measures were a disguised safeguard measure. Accordingly, the EU implemented a first set of rebalancing measures on certain products originating in the US on 22 June 2018. The UK applied these rebalancing measures as it was a member of the EU at the time. The UK continued to apply these rebalancing measures throughout the Implementation Period.

7.4 The EU implemented a second set of rebalancing measures on 8 May 2020 in response to the US' extension of its tariffs. The UK applied these rebalancing measures throughout the Implementation Period when EU law continued to apply to the UK. The Customs (Import Duty Variation) (EU Exit) Regulations 2020 (S.I 2020/1437) transitioned the EU's rebalancing measures into UK law, with effect from the end of the Implementation Period.

7.5 On 1 January 2022, the 2021 Regulations came into force. This implemented changes to the commodity code structure established by the World Customs Organisation, ensuring that the UK's tariff schedule remained up to date. It revoked the Customs (Import Duty Variation) (EU Exit) Regulations 2020 and re-enacted the legal basis for the rebalancing measures.

7.6 On 22 March 2022 the UK announced it had secured a resolution with the US in respect of the US' safeguard measure. In response to the US replacing its safeguard measure with tariff-rate quotas, the UK resolved to suspend the UK's rebalancing measures. This instrument therefore revokes Part 3 of the 2021 Regulations, suspending the rebalancing measures applied by those Regulations for an indefinite period. However, under the terms of the resolution with the US, the UK will keep the suspension under review and may consider reapplying rebalancing measures through further legislation in the future.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation is planned.

10. Consultation outcome

10.1 The Department for International Trade ran a public consultation in the summer of 2021, to seek views on a potential recalibration of the UK's transitioned rebalancing measures to better reflect UK-US trade. The UK did not formally respond to the consultation whilst negotiations with the US were ongoing. As a resolution has been reached, a formal response will not be necessary.

10.2 However, as part of the consultation process, the UK government engaged with UK business associations and companies affected by the rebalancing measures which are being removed. UK businesses supported action to reach a resolution on the US safeguard measure; their views fed into the policy underlying this instrument, in particular the UK resolving to suspend the rebalancing measures in response to the US replacing its safeguard with tariff-rate quotas. The devolved administrations were notified of the UK-US discussions and the UK's intention to remove these rebalancing measures.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 The impact on business, charities or voluntary bodies is broadly outlined in paragraphs 12.2 to 12.4.

12.2 This instrument removes the additional tariffs that were imposed on imports of certain products from the US. The additional tariffs will not bind any goods imported on or after 1 June 2022; time of importation is calculated in accordance with section 5 of the Customs and Excise Management Act 1979 (c. 2).

12.3 The removal of these additional tariffs reduces the cost of importing the previously targeted products into the UK from the US, benefiting consumers and user industries. In 2021 up to around £56m of additional tariffs could have been paid on UK imports from the US as a result of the rebalancing measures.[1]

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

12.5 A full impact assessment has not been produced for this instrument as it relates to a tax provision, which is not a regulatory measure subject to the Better Regulation Framework (March 2020). A broad outline of the impacts is set out in proportionate analysis in paragraphs 12.2 to 12.4.

13. Regulating small business

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

13.2 This instrument removes existing burdens on small businesses. Therefore, no specific action is proposed to minimise the impact on small businesses.

14. Monitoring & review

14.1 The instrument revokes Part 3 of the 2021 Regulations in their entirety, and therefore there is no need for ongoing monitoring and review.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Rodolfo Barradas at the Department for International Trade can be contacted with any queries regarding this instrument by telephone 07552892733 or email: rodolfo.barradas@trade.gov.uk.

[1] Estimated by applying the rebalancing measure additional duty rates to the values of UK imports from the US of targeted products in 2021 using UK import data from HMRC OTS.

15.2 Nicholas Obe, Deputy Director for Trade Disputes, at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Penny Mordaunt MP, the Minister for Trade Policy at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.