EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (ESTABLISHMENT) (EU EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. 520

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury 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 amends legislation made under the Taxation (Cross-border Trade) Act 2018 ("TCTA"), which provided for the United Kingdom's Customs, Value Added Tax (VAT) and Excise regimes to be in place after the end of the Implementation Period following the withdrawal of the United Kingdom (UK) from the European Union (EU).

2.2 Specifically, this instrument updates the "Tariff of the United Kingdom" reference document which has been given legal effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430).

2.3 The purpose of this instrument is to make technical updates to this reference document. The first update is to the UK's Most-Favoured Nation tariff rates for molasses products under commodity codes 17031000 and 17039000 from £0.20/100kg to 0%, delivering the original policy intent. Whilst maintaining the same tariff rates on the relevant goods as under previous legislation and reference documents, the second update makes a minor change to the list of "commodity codes" by inserting an additional code in the "Goods Classification table" contained within the reference document.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Financial Secretary to the Treasury wrote to the Chair of the Committee on 23rd March 2021 in the context of S.I. 2021/380, setting out the need to make updates to commodity codes, and the possible implications for secondary legislation. This instrument makes a further – single - change to the commodity codes referenced in this letter.

3.2 These Regulations are being issued free of charge to anyone who purchased S.I. 2020/1430, S.I. 2021/63 or S.I. 2020/380. Each of those instruments gave effect to a tariff reference document. These Regulations give effect to a revised tariff document partly to correct an error in the previous tariff reference documents. The Treasury has complied with the requirement to consult with the S.I. Registrar on this matter.

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)

3.3 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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is being made in exercise of the powers conferred by the TCTA.

6.2 In considering the rate of import duty that ought to apply to goods in a standard case as defined under section 8(8) of the TCTA, HM Treasury has had regard to the matters set out in section 8(5) of the Act and the recommendation about the rate made to them by the Secretary of State under section 8(6).

6.3 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the Act was commenced, whereby direct EU legislation imposing or otherwise applying in relation to any EU customs duty - which formed part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018 - ceased to have effect. This instrument amends legislation made under the TCTA which ensured that the UK's Customs, VAT and Excise regimes were in place at the end of the Implementation Period. This package of legislation set out the associated rules of, and exceptions to, the UK's Most-Favoured Nation tariffs (also known as the "UK Global Tariff") that have applied since the end of the Implementation Period. This instrument amends part of that package of legislation, the Customs Tariff (Establishment) (EU Exit) Regulations 2020, to give legal effect to an updated tariff reference document.

7. Policy background

What is being done and why?

7.1 A package of tariff legislation was laid under the TCTA on 16th December 2020 – and updated on 31st December 2020 - which ensured that the UK had a properly functioning customs regime in place after the end of the Implementation Period and following the withdrawal of the UK from the EU.

7.2 As part of this package, the Customs Tariff (Establishment) (EU Exit) Regulations 2020 brought into effect the customs tariff of the UK by giving effect to "The Tariff of the United Kingdom" reference document. This document sets out the standard rate of import duty (the "UK Global Tariff") and the general rules of classification that must be applied when determining the correct commodity code to apply to goods. The package of legislation also introduced exceptions to the standard rate of import duty – such as a tariff relief or tariff suspension – which were largely given effect by reference documents contained within that legislation.

7.3 This instrument updates "The Tariff of the United Kingdom" to version 1.3, dated 27th April 2021, making two changes. Firstly, the UK Global Tariff rate for molasses products under commodity codes 17031000 and 17039000 are updated from £0.20/100kg to 0%. The EU applies a price-trigger suspension to molasses products, meaning no tariffs have been applied since 2007. Updating the UK Global Tariff rates for molasses will ensure that domestic industries can access molasses at the same tariff rates as were occurring in practice during the Implementation Period, while ensuring that the EU's complex tariff structures do not feature in the UK Global Tariff.

7.4 The second change introduced by this instrument reflects an update that has been made to the Goods Classification table since previous legislation was laid. The insertion of an additional commodity code does not affect the tariff rates applied to the relevant goods, as set out under previous legislation and reference documents. In other words, this update does not result in a change of tariff, but a slight adjustment to the structure that delivers those same rates. The commodity code structure through which tariff rates are delivered is subject to regular reviews. This is necessary to ensure the Government can meet its obligations under the Protocol on Ireland/Northern Ireland, and to avoid any unnecessary complications for businesses. In some cases, changes may be required to meet new commitments, such as agreements with FTA partners, or to deliver wider UK trade policy, or for other technical reasons. The second change introduced by this instrument is a result of a review.

8. European Union (Withdrawal) Act/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, and in so far as this instrument is necessary in order to ensure the Government can meet its obligations under the Protocol on Ireland/Northern Ireland.

9. Consolidation

9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances. Given the recurrent nature of this type of amending legislation, the Government considers it would be inappropriate to consolidate the legislation at this time.

10. Consultation outcome

10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because the changes being made to the tariff rates for sugar molasses are to correct a technical oversight that did not deliver the original policy intent underlying the UK Global Tariff. This instrument ensures the UK Global Tariff will be working as originally intended. The change relating to molasses addresses a specific issue that was raised by domestic stakeholders. When determining this change, full consideration was given to the principles set out in the Taxation (Cross-border Trade) Act 2018.

11. Guidance

11.1 Since the end of the Implementation Period, the UK Global Tariff has applied to all goods imported into the UK unless an exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free granted unilaterally, or as part of a preferential trading arrangement. Further guidance is available at https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021.

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 as it largely maintains the position of existing legislation, which were covered by an overarching Tax Information and Impact Note published earlier this year: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#uk-transition.

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 regulatory burdens on small businesses as the changes do not result in a change of tariff policy, but a slight adjustment to the structure that delivers the same tariff rates that are currently in place. In the case of sugar molasses, the changes introduced minimise regulatory burdens by maintaining the position for traders before the end of the Implementation Period.

14. Monitoring & review

14.1 This legislation will be monitored in the context of wider customs tariff legislation.

14.2 The Government will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and ensures burdens on business are carefully monitored.

14.3 A statutory review clause is not included in these regulations because this 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 Daniel Wright at the Department for International Trade (email: daniel.wright@trade.gov.uk) and Philippa Evans at HM Revenue and Customs (email: Philippa.evans@hmrc.gov.uk) can be contacted 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 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.