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EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the elimination of customs duties on certain products

Submitted by the Department for International Trade on 23rd September 2020

SUBJECT MATTER

1. This Explanatory Memorandum concerns a co-ordinated Joint Statement made on 21st August 2020 by the European Union (EU) and the United States (US) on eliminating customs duties on certain products traded between the EU and US. This marks a mini-tariff deal - the first negotiated tariff reduction between the two in more than twenty years. Via this deal both sides committed to proceed with a trade-facilitating package of measures to remove or reduce customs duties on a small number of tariff lines.

2. As part of these measures, the EU Commission is proposing to eliminate Most Favoured Nation (MFN)[1] customs tariffs on four lobster products, which the EU does not consider as sensitive products since the EU is a net importer. In 2019, the EU imported 42 million euro (£38 million) of these lobster products from the US. This compares to an overall lobster market worth 290 million euro (£262 million).

3. Meanwhile, the US will provide duty relief for a comparable economic value on products such as prepared meals, certain crystal glassware, surface preparations, propellant powders, cigarette lighters and lighter parts. The US has agreed to halve tariff rates on these specified products.

4. The total imports and exports impacted by trade in the specified products is collectively worth approximately 168 million euros (£151 million). This is

composed of 42 million euros of EU27 imports from the US, and 126 million euros of US imports from the EU.

5. The tariffs will be eliminated retrospectively from 1st August 2020. The changes are proposed to be in place for a period of five years, subject to the approval of the European Parliament and the Council. The EU will also take steps to make the tariff changes permanent.

6. The announcement is made in the context of the EU seeking to improve trade relations with the US, de-escalate trade tensions (in relation, for instance, to steel tariffs) and support the settlement of ongoing trade disputes (such as the Airbus-Boeing WTO dispute).

SCRUTINY HISTORY

7. There is no previous directly related scrutiny history since this is a new agreement on tariffs agreed between the EU and US.

8. Although not directly related to this proposal, DIT has however continued to publish and inform both EU parliamentary Scrutiny Committees in the form of Explanatory Memoranda (EMs) about Commission Implementing Regulations and Decisions concerning the EU-US steel tariffs dispute and other US-related EU measures, including the annual measures to reflect the US Continued Dumping and Subsidy Offset Act of 2000 (also known as “the Byrd Amendment”).

9. DIT has also previously issued a combined EM (5459/19 and 5461/19 and accompanying annexes) published on 4th February 2019 on recommendations for Council Decisions on authorising the opening of negotiations of an agreement with the United States on elimination of tariffs for industrial goods and on opening negotiations on conformity assessment. This joint EM was cleared by the House of Lords’ European Union Committee (EUC) by correspondence on 12th March 2019 (Session 2017-2019). The European Scrutiny Committee in the House of Commons cleared the file on 17th July

2019 (Session 2017-2019). It should be noted that the proposals on opening negotiations on eliminating tariffs on industrial goods and conformity assessment are not directly related to the recently announced EU-US mini-tariff deal which is the subject of this EM.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for International Trade has primary responsibility for trade policy matters including multilateral trade policy which includes tariff and import policy. The Foreign Secretary and the Secretary of State for Business, Energy and Industrial Strategy and have an interest from foreign policy and business perspectives, respectively. The Secretary of State for Food and Rural Affairs has an interest from an agricultural trade perspective. The Minister for the Cabinet Office has an interest from an EU exit perspective.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The United Kingdom's trade policy is a reserved matter under the United Kingdom's devolution settlements. However, on this occasion they have been consulted due to domestic production interests.

LEGAL AND PROCEDURAL ISSUES

Legal Basis

12. The legal basis for the proposed Regulation is Article 207 of the Treaty on the Functioning of the EU (TFEU).

European Parliament Procedure

13. Ordinary legislative procedure.

Voting Procedure

14. Qualified majority voting.

Timetable for adoption and implementation (or expected next steps for non-legislative documents)

15. The Regulation shall enter into force on the day following that of its publication in the Official Journal of the EU. The Regulation shall apply as of 1st August 2020 and shall end its application on 31st July 2025. The Regulation is directly applicable and binding on all Member States (once approved by both the European Parliament and Council).

16. It is also noted in the recitals to the proposed Regulation that, considering the urgency of the measures, which seek to avoid trade disruptions, the EU has also decided to apply an exception to the eight-week period referred to in Article 4 of Protocol 1 on the role of national parliaments in the EU.

Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?

17. As a result of the operation of the Union Customs Code (UCC),[2] this Regulation will continue to apply to goods entering Northern Ireland (other than from the Union) that are considered to be "at risk" of entering the EU.[3] The Regulation will otherwise cease to apply to and in the United Kingdom after the Transition Period ends and the UKGT enters into force.

Do JHA opt-in, Schengen opt-out issues arise?

18. No. The Justice and Home Affairs opt-in and Schengen opt-out does not arise.

POLICY IMPLICATIONS (including implications for the application of EU law during the Transition Period and under the Northern Ireland Protocol, and possible relevance to the future relationship negotiations)

19. On 23rd June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the EU.

20. On 31st January 2020, the United Kingdom left the EU. We entered the Transition Period until the end of 2020 while we negotiate additional arrangements as to our future relationship with the EU.

21. Given that the Regulation applies retrospectively from 1st August 2020, until the end of the Transition Period, in line with the Withdrawal Agreement, the United Kingdom will continue to apply the EU's Common External Tariff (CET), eliminating MFN tariffs on the four lobster products.

22. The Government published its own United Kingdom Global Tariff (UKGT) on 19th May 2020 which is designed and tailored to the United Kingdom economy and will replace the EU's CET from 1st January 2021, except in relation to "at risk" goods entering Northern Ireland as detailed above. Under the UKGT, tariffs of between 6-16% (current CET levels) will be maintained on the relevant lobster products. The UKGT will apply from 1st January 2021.

23. The US and Canada are the main exporters of lobster to the EU. Canada currently has zero-duty access into the United Kingdom via the EU-Canada Comprehensive Economic and Trade Agreement (CETA), which the UK aims to roll over after the Transition Period. The US, however, pays the CET rates and so this deal will improve their market access into the EU (and the United Kingdom during the Transition Period).

24. National interests are not at stake regarding this Regulation.

25. The United Kingdom Government intends to achieve an FTA with the EU by December 2020. The Political Declaration sets as an aim a zero tariff and zero

quota FTA. In this scenario, the UK would have duty-free access to the EU for the relevant lobster products, and so we would not expect this tariff elimination to affect trade with the United Kingdom.

CONSULTATION

26. There are no plans to consult on these tariff eliminations given are directly agreed EU-US measures. The UKGT was created in consultation with a range of individuals, charities, businesses, business representative and public organisations.

FINANCIAL IMPLICATIONS

27. The EU anticipates that there will be a limited negative impact on the EU budget as a result of tariff liberalisation on the specified tariff lines named in the Regulation. This is anticipated, based on Eurostat statistics, to represent some 5.3 million euro (equivalent to £ 4.7 million) in duties collected on imports from the US (average 2017-19 period). During the remainder of the Transition Period, there will also be a negative impact on the United Kingdom budget as a result of tariff liberalisation of the lobster products. On an annual basis this would amount to an estimated £2.43 million in duties collected from MFN imports of the lobster products. There may also be a negative impact on the United Kingdom budget after the Transition Period for “at risk” goods entering Northern Ireland from outside of the EU.

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