

EXPLANATORY MEMORANDUM TO

THE TRADE REMEDIES (INCREASE IN IMPORTS CAUSING SERIOUS INJURY TO UK PRODUCERS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1319

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 memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is made under the Taxation (Cross-border Trade) Act 2018 (“TCBTA”), which sets out the framework for the UK’s trade remedies system once the UK operates its own trade policy. It amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (“Safeguards Regulations”) to provide for EU steel safeguards in the form of tariff rate quotas (“TRQs”), as amended by the EU’s most recent implementing regulation, to be transitioned when the UK ceases to apply the Common External Tariff. The amendments will also provide the Trade Remedies Investigations Authority (TRA) with flexibility as to what terms, if any, it considers appropriate when making a determination on a UK tariff rate quota following the transition review.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Safeguards Regulations provide the legal basis for the Secretary of State to issue public notices to impose safeguards measures, thus transitioning the EU steel safeguards into the UK system. Those Regulations also provide that such public notices are to be issued before “replacement day”, that is, the day on which EU trade duties cease to apply in the United Kingdom. Therefore, this instrument enters into force on 30 October 2019 so that if a public notice is issued on that day, it can take effect on 31 October 2019.

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 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 extent of this instrument is the United Kingdom. Trade remedies measures under the TCBTA would usually take the form of an additional rate of import duty and are therefore a matter of reserved competence.
- 4.2 The territorial application of this instrument is 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 The European Commission conducted a review into their application of the definitive safeguard measure imposed on 1 February 2019 on 26 different product categories of steel. The recommendations resulting from the review led to the introduction of Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products. These regulations came into force on 1 October 2019 and made several changes to the definitive safeguard measures imposed.
- 6.2 As a member state of the EU, the UK currently applies trade remedy measures set by the EU. Once the UK ceases to apply the Common External Tariff, it will be responsible for operating its own independent trade policy. The UK Government committed to transitioning existing EU measures that matter to the UK, which includes the EU steel safeguards. The Safeguards Regulations refer to Implementing Regulation (EU) 2019/159, as such, this instrument is required to update those Regulations to allow for the changes implemented on 1 October 2019 at the EU level to be replicated when the measures are transitioned into the UK system.

7. Policy background

What is being done and why?

- 7.1 The WTO provides for a rules-based system which supports free and fair trade globally. The relevant WTO Agreements set out the basis on when and how Members may act to protect domestic industry from injury caused by dumped or subsidised goods, or unforeseen surges in imports, by imposing measures (usually an additional amount of import duty) on imports of specific products. Trade remedies currently fall within the EU's exclusive competence, and investigations, decisions and monitoring of trade remedy measures are performed by the European Commission on behalf of all EU member states.
- 7.2 The Government has made four substantive instruments under TCBTA to implement the relevant WTO Agreements. These are: the Safeguards Regulations, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 and the Trade Remedies (Amendment) (EU Exit) Regulations 2019.
- 7.3 In order to provide continuity for business, the UK Government has committed to transitioning the EU steel safeguards when the UK operates its independent trade policy. The EU steel safeguards are to be transitioned as they are immediately before the UK ceases to apply the Common External Tariff, subject to adjustments to the level of the TRQs so that they are appropriate for the UK market.
- 7.4 Regulation 3 of these Regulations amends Part 9 (Transitional Provisions) of the Safeguards Regulations to allow for the implementation of the changes set out in Regulation (EU) 2019/1590, for example, by stipulating that that access to the tariff rate quota for a particular category of steel products is to be restricted based on end-

use, and to limit each country's access to only a specified proportion of the global/residual quota. Regulation 3 also allows the Trade Remedies Authority ("TRA") to consider whether it is appropriate to stipulate the terms on which a part or the whole of a tariff rate quota is to be accessed, and to make determinations following the transition review with such stipulation.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union as it sets out further details of the trade remedies system the UK will operate once it is responsible for operating its independent trade policy.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The Government held a series of meetings during Spring 2018 with bodies representing interested parties, i.e. UK producers, downstream users and consumers, to understand their specific concerns and provide an opportunity for them to feed in their thoughts to the detailed design of the system. Those bodies were: the Manufacturers Trade Remedies Alliance (MTRA), including UK Steel and the British Ceramics Confederation; Renewable Energy Association; International Steel Trade Association; Society of Motor Manufacturers and Traders; British Retail Consortium; Which?; and Retail Economics. The changes provided by this SI do not contradict the agreed policy as set out in preceding legislation.

11. Guidance

11.1 This SI makes amendments to existing secondary legislation. In so far as the changes impact on any published guidance, that guidance will be updated accordingly.

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 As outlined in previous Impact Assessment accompanying the TCBTA, the powers in the TCBTA on trade remedies relate to the imposition of duties, which fall under the exemption for tax measures set out in the Small Business, Enterprise and Employment Act 2015. As such, they do not count as regulatory provisions and are out of scope of the Business Impact Target. The same applies to this instrument therefore there is no requirement to complete an IA.

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.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation does not add any specific regulatory burdens for small businesses that

do not already exist under the equivalent EU regulations. They ensure a UK specific version of the most recent form of the EU steel safeguard can be transitioned upon the UK ceasing to apply the Common External Tariff.

14. Monitoring and review

- 14.1 These Regulations do not include a statutory review clause as they are made under the Secretary of State's power to make regulations relating to tax legislation and are therefore exempt from the requirements under Section 28(3) of the Small Business, Enterprise and Employment Act 2015.
- 14.2 However, this will be the first time that the UK has operated its own trade remedies system in over 40 years. The system has been designed in compliance with our obligations as a WTO Member, as well as to meet Government objectives for a system that protects UK industry in a balanced and proportionate way, while at the same time giving the TRA sufficient flexibility to build and develop expertise in this area.
- 14.3 The Government will monitor the system to ensure that it operates as intended. If it concludes there are changes it could make which would improve the system, then the Government may consider this and review this instrument accordingly.

15. Contact

- 15.1 Adam Gray at the Department for International Trade Telephone: 020 7215 1670 or email: Adam.Gray@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gaynor Jeffery, Deputy Director for Trade Remedies and Import Controls, at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Conor Burns MP, Minister of State at the Department for International Trade, can confirm that this Explanatory Memorandum meets the required standard.