

EXPLANATORY MEMORANDUM TO
THE TRADE REMEDIES (AMENDMENT) (EU EXIT) REGULATIONS 2020
2020 No. 99

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 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 after the withdrawal of the UK from the European Union (“EU”). It amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (“Safeguards Regulations”) and the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 to provide for the Trade Remedies Authority (“TRA”) (or, until the TRA is legally established, the Department for International Trade (“DIT”)), on the request of the Secretary of State, to conduct an investigation further to an international dispute decision relating to anti-dumping, countervailing or safeguard measures. The Safeguards Regulations also provide for the TRA to conduct two further types of reviews that may be required whilst a safeguard measure is in place.
- 2.2 In addition, this instrument amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 to account for the new appealable decisions derived from the new review and investigation types, and makes minor amendments to existing legislation on trade remedies.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

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 territorial 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

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

6. Legislative Context

- 6.1 World Trade Organization (“WTO”) Agreements enable WTO Members to apply trade remedy measures where domestic industry is suffering from injury caused by imports that are being dumped (i.e., exported at prices below the selling price in the exporter’s domestic market or below the normal commercially viable selling price); imports that are being subsidised; or an unforeseen surge in imports.
- 6.2 As a member state of the EU, the UK currently applies trade remedy measures set by the EU. Once the UK leaves the Common External Tariff (“CET”), it will be responsible for operating its own independent trade policy and will need to be able to take action in respect of such imports to be able to continue to protect domestic industry.

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 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 Part 1 of this instrument amends the Safeguards Regulations (S.I. 2019/449) to provide for the TRA to conduct discontinuation reviews and tariff rate quota reviews and makes minor and technical amendments to that instrument.
- 7.4 In particular, Regulation 6 gives the TRA the power to conduct a review into whether a definitive safeguarding remedy should be discontinued. The TRA may initiate a review where it is satisfied that there is sufficient information indicating that there may have been a lasting change of circumstances since the imposition of the remedy, and that UK producers are no longer suffering or would not suffer serious injury should the relevant measure be revoked. The regulation provides that the TRA may determine the measure should be either maintained or revoked.
- 7.5 Regulation 6 also gives the TRA the power to conduct a review into whether a tariff rate quota (“TRQ”) should be varied. The TRA may initiate that review on application by or on behalf of an interested party, or on its own initiative, as long as it is satisfied that there is sufficient information indicating that there may have been a change of circumstances since the application of the TRQ. The regulation provides that the TRA

may determine the TRQ should be maintained, varied or revoked. If the TRA determines the measure should be varied, it may not reduce the applicable rate of import duty, or vary the period the goods are subject to the tariff rate quota. Regulation 6 further sets out what might constitute a change of circumstances for the purpose of a TRQ review.

- 7.6 Regulation 10 inserts new regulations in the Safeguards Regulations giving the Secretary of State the powers to request the TRA to conduct a review in light of an international dispute decision to determine whether a safeguard measure should be maintained, varied or revoked, and make a recommendation to the Secretary of State. The regulation provides that the Secretary of State must accept the recommendation unless satisfied that it is not in the public interest to do so.
- 7.7 Part 2 of this instrument inserts new regulations into the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450). Regulation 20 gives the Secretary of State the powers to request the TRA to conduct a review in light of an international dispute decision to determine whether the anti-dumping or countervailing duty should be maintained, varied, or revoked and make a recommendation to the Secretary of State. The regulation provides that the Secretary of State must accept the recommendation unless satisfied that it is not in the public interest to do so. Part 2 also makes minor and technical amendments to that instrument.
- 7.8 Part 3 of this instrument amends The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910) to provide for the new appealable decisions arising from the above amendments. It does not change the policy of those Regulations.

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 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

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 The impact of the trade remedy system on business, charities or voluntary bodies was assessed in an Impact Assessment accompanying the TCBTA when the Bill was introduced in the House of Commons. This instrument provides the specific detail on how the UK system will operate and does not place any additional burdens on business, charities or voluntary bodies.
- 12.2 An Impact Assessment has not been prepared for this instrument because the expected impact of the UK trade remedies system has already been assessed in the Impact Assessment accompanying the TCBTA. This covered the expected impact of the key policy decisions taken.
- 12.3 There is no, or no significant, impact on the public sector. The impact on the public sector was also assessed in the Impact Assessment accompanying the TCBTA which consisted of the cost of setting up and running the TRA. This instrument does not affect the previous assessment.
- 12.4 In addition, as outlined in the previous Impact Assessment, 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 These regulations do not add any specific regulatory burdens for small businesses. They set out a mechanism for trade remedies decisions to be reconsidered and/or appealed.

14. Monitoring & 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.