

EXPLANATORY MEMORANDUM TO
THE TRADE REMEDIES (DUMPING AND SUBSIDISATION) (AMENDMENT) (EU EXIT) REGULATIONS 2021

2021 No. 942

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 United Kingdom’s trade remedies system. This instrument amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 to allow the Secretary of State for International Trade to make a public notice to transition exemptions to trade remedies measures granted by the EU after 31st December 2020 but applied retrospectively to a date before 31st December 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is subject to negative resolution procedure and is not likely to be scheduled for debate.
- 3.2 This instrument does not observe the 21-day rule because it comes into force on 6th September 2021. This is due to an administrative delay in processing this instrument text and this Explanatory Memorandum.

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 additional rate of import duty and are, therefore, a matter of reserved competence. This instrument concerns the exemption of an additional rate of import duty, so it is 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 Current domestic legislation provided that the Secretary of State could make public notices to transition an EU exemption to a trade remedy measure only before the end of the transition period on 31st December 2020.

7. Policy background

What is being done and why?

- 7.1 At the point of the United Kingdom's exit from the EU, the United Kingdom transitioned relevant existing EU trade remedies measures to its new trade remedies system. Some of those measures, such as the anti-dumping measure on bicycle parts from China, included exemptions for specific companies to additional duties that the EU introduced following a circumvention review. A circumvention review investigates whether there is any activity undergoing to avoid duties and if trade remedies measures should be extended to mitigate that. The United Kingdom transitioned over the EU definitive exemptions that were granted before 31st December 2020. Before granting definitive exemptions, the EU usually granted provisional exemptions to producers. The United Kingdom did not transition over any exemptions that were provisional on 31st December 2020.
- 7.2 The purpose of these regulations is to allow for any exemptions to the anti-dumping duty on bicycle parts that a British producer applied for before 31st December 2020 – but granted by the EU after 31st December 2020 and applied retrospectively to before that date – to be transitioned to the United Kingdom's trade remedies system via public notices from the Secretary of State.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Current domestic legislation provided that the Secretary of State could make public notices to transition an EU exemption to a trade remedy measure only before the end of the transition period on 31st December 2020.

Why is it being changed?

- 7.4 Under existing regulations, the Secretary of State cannot make notices to transition EU exemptions following the end of the transition period, on 31st December 2020. Therefore, the Secretary of State cannot transition any EU exemptions which were requested before 31st December 2020, but which were granted after that date and retrospectively applied.

What will it now do?

- 7.5 These regulations will allow for the transition of EU exemptions to the anti-dumping duty on bicycle parts that were requested before 31st December 2020, but which were granted after that date and retrospectively applied. The measures will be transitioned via public notice from the Secretary of State.
- 7.6 Any transitioned EU exemption will be prospective and apply only from the day after the day the public notice is published.

8. European Union Withdrawal and Future Relationship

- 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 EU as it is in connection with and otherwise in consequence of the transition of EU measures into the United Kingdom's trade remedies system.

9. Consolidation

9.1 The Department for International Trade does not intend to consolidate the trade remedies legislation.

10. Consultation outcome

10.1 The Department for International Trade did not consult with members of the public about this instrument as this instrument is limited in scope and will not have any significant impact.

10.2 The Secretary of State for International Trade has consulted the Trade Remedies Authority as required under sections 51(10) and 56(13) of the TCBTA.

11. Guidance

11.1 Not applicable.

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 public sector.

12.3 As outlined in the 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, so there is no requirement to complete an Impact Assessment.

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 to take no action since the legislation does not add any specific regulatory burdens for small businesses.

14. Monitoring & review

14.1 These regulations do not include a statutory review clause as they are made under 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.

15. Contact

15.1 Hayley Gowen at the Department for International Trade (telephone: +44 (0) 7917 211960 or email: Hayley.Gowen@trade.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Claire Vince, Director for Trade Remedies Policy at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Ranil Jayawardena, Parliamentary Under Secretary of State at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.