

2023 No. 955

CUSTOMS

TRADE

**The Trade Remedies (Dumping and Subsidisation) (Amendment)
(No. 2) Regulations 2023**

Made - - - - 30th August 2023
Laid before the House of Commons 4th September 2023
Coming into force - - 25th September 2023

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 13 and 32(7) and (8) of, and paragraph 21(4)(e) of Schedule 4 to, the Taxation (Cross-border Trade) Act 2018^(a) and paragraph 16 of Schedule 19 to the Finance (No. 2) Act 2023^(b).

In accordance with section 32(12) of the Taxation (Cross-border Trade) Act 2018, the Secretary of State has consulted the Trade Remedies Authority^(c).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Trade Remedies (Dumping and Subsidisation) (Amendment) (No. 2) Regulations 2023.

(2) These Regulations come into force on 25th September 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendment of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019/450

2. The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019^(d) are amended in accordance with regulations 3 to 7.

Amendment of regulation 96D (Transition of EU exemption after replacement of EU trade duty)

3. In regulation 96D—

^(a) 2018 c. 22. Section 13 paragraph and 21(4)(e) of Schedule 4 were inserted by section 316 of, and Schedules 19 to, the Finance (No. 2) Act 2023 (c. 30).

^(b) 2023 c. 30.

^(c) The Trade Remedies Authority was established by the Trade Act 2021 (c. 10).

^(d) S.I. 2019/450; relevant amending instruments are S.I. 2019/1076, 2021/942, 2022/414.

- (a) in sub-paragraph (2)(a), for “day after the day on which it was made”, substitute “replacement of EU trade duty(a)”;
- (b) after paragraph (2), insert—

“(2A) (a) This paragraph applies where—

- (i) the Secretary of State has granted a person an exemption under paragraph (1); and
- (ii) the public notice granting the exemption provides for it to take effect the day after the day on which it is made (or a later date).

(2B) (a) The Secretary of State may by public notice—

- (i) vary the notice referred to in paragraph 2A (ii) to provide for the exemption to take effect on an earlier date (but such a date may not be before replacement of EU trade duty); and
- (ii) provide that the person whose goods are exempted from the application of the UK trade remedies measure is entitled to a repayment of the amount paid towards the sums that were applicable in relation to their goods on and after the date the exemption takes effect.”.

Amendment of regulation 96G (TRA recommendation on exemption to a UK trade remedies measure)

4.—(1) In regulation 96G(5)—

- (a) the words from “reinstate” become sub-paragraph (a);
- (b) for “after the day the day that the public notice is made”, substitute “on which the application of the UK trade remedies measure to the relevant review applicant’s goods was suspended; and”;
- (c) at the end of sub-paragraph (a) insert—

“(b) provide that the review applicant is liable to pay the amount that they would have been liable to pay if the review had not taken place”.

(2) After paragraph (5) insert—

“(5A) Paragraph 5 applies to applications made under regulation 96E(2)(a) after the entry into force of the Trade Remedies (Dumping and Subsidisation) (No. 2) Regulations 2023.”.

Amendment of regulation 96H (Acceptance of rejection by the Secretary of State of the TRA’s recommendation to grant an exemption to a UK trade remedies measure)

5. In regulation 96H—

- (a) in paragraph (4)—
 - (i) the words from “apply” become sub-paragraph (a);

(a) The term “replacement of EU duty” is defined in regulation 94 Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019. By virtue of paragraph 1 of Schedule 7 of the Taxation (Cross-border Trade) Act 2018, regulation 4 of the Finance Act 2016, Section 126 (Appointed Day), the Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 8, Transition and Saving Provisions) and the Taxation (Post-transition Period) Act 2020 (Appointed Day No. 1) (EU Exit) Regulations 2020 (S.I. 2020/1642 (c. 49)), and section 39 European Union (Withdrawal Agreement) Act 2020 (c. 1), it is the 31 December 2020 at 11.00 p.m. (IP completion day).

(ii) for “after the day that the public notice is made”, substitute “on which the application of the UK trade remedies measure to the review applicant’s goods was suspended; and”;

(iii) after sub-paragraph (a) insert—

“(b) provide that the review applicant is liable to pay the amount that they would have been liable to pay if the review had not taken place”;

(b) after paragraph (5), insert—

“(6) This paragraph applies when—

(a) the application of a UK trade remedies measure was not suspended in accordance with regulation 96F(3); and

(b) the review applicant submitted their application under 96E(2)(a) after the entry into force of the Trade Remedies (Dumping and Subsidisation) (No. 2) Regulations 2023.

(7) Where paragraph (6) applies—

(a) the Secretary of State may, by public notice, provide that—

(i) the exemption takes effect from the date on which the review applicant applied for a UK trade remedies measure exemption review; and

(ii) the review applicant is entitled to repayment of the amount they paid towards the sums that were applicable in relation to their goods on and after the date on which they applied for a UK trade remedies measure exemption review.

(b) The public notice must contain the information set out in paragraph 3A of Schedule 3.

(8) (a) This paragraph applies where—

(i) the Secretary of State rejects a recommendation by the TRA under regulation 96H(1);

(ii) the review applicant submitted their application under regulation 96E (2)(a) after the entry into force of the Trade Remedies (Dumping and Subsidisation) (No. 2) Regulations 2023;

(iii) the review applicant appeals to the Upper Tribunal for a review of the Secretary of State’s determination in accordance with regulation 17(1) of the Trade Remedies (Reconsideration and Appeals) Regulations 2019(a);

(iv) the application of the UK trade remedies measure to the review applicant’s goods continues pending the outcome of the appeal;

(v) the Upper Tribunal sets aside the determination and refers the matter back to the Secretary of State with a direction to reconsider the determination; and

(vi) the Secretary of State reconsiders their determination and accepts the TRA’s recommendation.

(b) The Secretary of State may, by public notice, provide that—

(i) the exemption takes effect from the date on which the review applicant applied for a UK trade remedies measure exemption review; and

(ii) the review applicant is entitled to a repayment of the amount they paid towards the sums that were applicable in relation to their goods on and after

(a) S.I. 2019/910.

the date on which they applied for a UK trade remedies measure exemption review.

- (c) The public notice must contain the information set out in paragraph 3A of Schedule 3”.

Amendment of regulation 96I (Treatment of public notices made under regulations 96F to 96H)

6. In regulation 96I, for the words “or (5)” substitute “, (5), (7)(a) or (8)(b)”.

Amendment of paragraph 3A of Schedule 3

7. In paragraph 3A of Schedule 3, for “and (5)” substitute “, (5), (7)(a) and (8)(b)”.

Signed by the authority of the Secretary of State for Business and Trade

30th August 2023

Kevin Hollinrake
Parliamentary Under Secretary of State
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 12 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450 as amended) ("the Dumping and Subsidisation Regulations"). The Dumping and Subsidisation Regulations implement part of the United Kingdom trade remedies system.

Regulation 3 amends regulation 96D of the Dumping and Subsidisation Regulations. The amendments give the Secretary of State the retrospective power to provide that a transitioned EU exemption takes effect from 11pm on 31st December 2020 or a later date, and to provide that the person whose goods are exempted from the application of the UK trade remedies measure is entitled to a repayment.

Regulations 4 to 7 amend regulations 96G and 96H of the Dumping and Subsidisation Regulations in relation to UK trade remedies exemption reviews and make consequential amendments. At the end of a trade remedies measure exemption review, the Secretary of State has the power to reinstate a suspended trade remedies measure from the date that a person applied for a trade remedies exemption review. The review applicant will be liable to pay the amount of duty that they would have been liable to pay during the period of the suspension, had the suspension not been in place. Where the Secretary of State grants an exemption and the application of a measure was not suspended during the trade remedies exemption review and any appeal, the Secretary of State has the power to give effect to the exemption from the date that a person applied for a trade remedies exemption review. The review applicant will be entitled to a repayment of the amount paid in relation to the exempted goods. These amendments apply to applications made after these Regulations come into force.

Any public notice referred to in these Regulations will be available to view online at <https://www.gov.uk/government/collections/trade-remedies-notice> and in hard copy at the Department for Business and Trade, Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

A copy of the Explanatory Memorandum is published alongside this instrument at <http://www.legislation.gov.uk/>. Hard copies of the Explanatory Memorandum are available at the Stationery Office.

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£5.78

<http://www.legislation.gov.uk/id/uksi/2023/955>

ISBN 978-0-34-825118-0



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