

**EXPLANATORY MEMORANDUM TO**  
**THE TRADE REMEDIES (AMENDMENT) (EU EXIT) REGULATIONS 2019**  
**2019 No. 1076**

**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 The Taxation (Cross-border Trade) Act 2018 (“TCBTA”) 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”). This instrument makes minor amendments to the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (SI2019/449) and the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (SI2019/450). In addition, the instrument makes technical amendments to those regulations to provide for the TRA to undertake certain functions during an implementation period for EU exit and following conclusion of an implementation period.

**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 extent of this instrument is the United Kingdom. Trade remedies measures under the TCBTA would 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 World Trade Organization (“WTO”) Agreements<sup>1</sup> enable WTO Members to apply trade remedy measures where domestic industry is suffering from injury caused by imports that are being dumped (exported at prices below the selling price in the exporter’s domestic market or below the normal commercially viable selling price); where the imports have been subsidised; or where there is 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 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 against injury caused by dumped or subsidised goods, or unforeseen surges in imports, by imposing measures (usually an additional amount of import duty) to be placed on imports of specific products. Trade remedies currently fall within the European Union’s (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 Part 1 of this SI amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (SI2019/449). These changes are minor and serve to ensure that the provisions within that SI are correctly operable.
- 7.3 Part 2 of this SI amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (SI2019/450). Within this part, regulations 6-9 and 11-14 provide minor changes that serve to ensure that the provisions within that SI are correctly operable. Regulation 10 replaces Part 12 of that SI in order to deliver a number of changes necessary to allow the TRA to undertake certain functions concerning transition reviews. The old Part 12 was drafted on the basis of “no deal” and therefore cannot be relied on during an implementation period or whilst the UK remains a member state (which includes any article 50 extension period). This new Part 12 is drafted in such a way that transition reviews can be initiated in all EU Exit scenarios.
- 7.4 One of the changes made in the new Part 12 concerns the public taxation notices that were required to be issued under the previous drafting of Part 12 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 before a transition review could begin. These notices had the effect of actually imposing a new trade remedies measure. Whilst the UK remains a member state and during an implementation period, these notices cannot be published as the UK cannot publish

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<sup>1</sup> The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ([https://www.wto.org/english/docs\\_e/legal\\_e/19-adp\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm)), the Agreement on Subsidies and Countervailing Measures ([https://www.wto.org/english/docs\\_e/legal\\_e/24-scm\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/24-scm_01_e.htm)) and the Agreement on Safeguards ([https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg\\_e.htm](https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm)).

independent taxation notices until it ceases to apply the Common External Tariff. The TRA would therefore not be able to comply with this regulation and formally begin transition reviews if the need arose due to the final date of exit being unclear. Under the revised drafting, the Secretary of State will publish a series of determination notices for each measure set to be transitioned. It will then be the trade remedies measure in these notices that a TRA initiation notice must refer to.

- 7.5 Amendments in Parts 1 and 2 of these Regulations also prevent the TRA from initiating new trade remedies investigations prior to EU exit.
- 7.6 Amendments in Part 2 additionally amend the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 to provide for transitional provisions in relation to the TRA, so that pending the establishment of the TRA (after the Trade Bill receives Royal Assent), the functions that would otherwise be exercised by the TRA would be exercised by the Secretary of State.

## **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 the detail 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 impact on the agreed policy as set out in the preceding secondary legislation.

## **11. Guidance**

- 11.1 This SI makes minor and/or technical amendments to previously published secondary legislation. In so far as the changes impact on 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<sup>2</sup> accompanying the TCBTA when the Bill was introduced in the House of Commons. This instrument provides the specific detail on

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<sup>2</sup> <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0128/IA17-013.pdf>

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 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 George Hollingbery MP, Minister for Trade Policy at the Department for International Trade, can confirm that this Explanatory Memorandum meets the required standard.

