

EXPLANATORY MEMORANDUM TO

THE TRADE REMEDIES (AMENDMENT) (EU EXIT) (NO. 2) REGULATIONS 2020

2020 No. 730

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 our sovereign trade remedies system once the United Kingdom begins operating her own trade policy at the end of the transition period (i.e. on and after 11pm on 31st December 2020).
- 2.2 This instrument amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (“Safeguards Regulations”) to enable the extension of the period a safeguard measure can apply to goods following a transition review into that measure. It also amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (“Dumping and Subsidies Regulations”) to allow the Trade Remedies Authority (“TRA”) (or, until the TRA is established, the Secretary of State for International Trade), to commence investigations during the transition period where the EU has initiated an investigation into the same goods.
- 2.3 In addition, this instrument amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (“Appeals Regulations”) to clarify that an appeal can be brought in relation to a tariff rate quota recommendation in respect of a particular category of goods whilst transition reviews into other goods are ongoing.
- 2.4 The instrument also makes corrections to the Safeguards Regulations and the Dumping and Subsidies Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument contains amendments (regulations 3, 4, 11, 14, 17, 19, and 20) made as a consequence of defects in the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99), which was reported for doubtful vires and for defective drafting in the committee’s Sixth Report of Session 2019-21 published on 20th March 2020. The Department for International Trade has applied the procedure for free issue in light of these amendments. All known recipients of S.I. 2020/99 will receive a copy of this instrument free of charge. The S.I. Registrar was consulted.

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 will 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 World Trade Organisation (“WTO”) Agreements provide that WTO Member States may 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 result of the Withdrawal Agreement between the United Kingdom and the European Union, we apply the trade remedy measures set by the EU during the transition period. Once we leave the EU’s Common External Tariff, we will be responsible for operating our own independent trade policy and will be able to take action ourselves in respect of such imports, to defend domestic industry as necessary.

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 General Agreement on Tariffs and Trade, the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards (together “the relevant WTO Agreements”) set out when and how WTO Member States 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.

- 7.2 During the transition period, trade remedies do remain within the European Union’s competence, and – by virtue of the Withdrawal Agreement – investigations, imposition and monitoring of trade remedy measures are performed by the European Commission on behalf of the United Kingdom and all EU Member States. After the end of the transition period, we will apply some of the EU’s measures (selected, as we see fit, following a Call for Evidence process primarily undertaken in 2018) across the United Kingdom, pending the outcome of reviews conducted by the TRA into these measures.

- 7.3 HM Government has made the following instruments under TCBTA to implement the relevant WTO Agreements. These are:

- the Safeguards Regulations;
 - the Dumping and Subsidies Regulations;
 - the Appeals Regulations.
- 7.4 Part 1 of this instrument gives the citation and commencement.
- 7.5 Part 2 of this instrument amends the Safeguards Regulations to enable the extension of the period a safeguard measure can apply to goods, following a transition review into that measure.
- 7.6 In addition, regulation 3 substitutes paragraph 8 of regulation 35B. The paragraph was reported for doubtful vires by the Select Committee on Statutory Instruments because S.I. 2020/99 failed to cite paragraph 21(6) of Schedule 5 to the TCBTA as a power exercised by the Secretary of State for making that instrument. Regulations 4, 11 and 14 correct the Safeguards Regulations where it contains additional errors as a consequence of S.I. 2020/99.
- 7.7 Regulation 5 amends regulation 44 of the Safeguard Regulations to give the TRA discretion as to whether or not to exempt goods from a safeguarding remedy if a qualifying free trade agreement exists between the United Kingdom and the country from which the goods are exported. This will prevent the TRA from being obliged to exempt goods from safeguarding measures in circumstances where it can demonstrate there is injury to the United Kingdom's domestic industry.
- 7.8 Regulation 6 replaces the existing reference to Regulation (EU) 2019/159 with a reference to the Regulation as amended by Commission Implementing Regulation (EU) 2020/894 of 29th June 2020. This is to make sure that transition reviews can be undertaken on the EU's current measures.
- 7.9 Regulations 7 to 10 make amendments to allow for the extension of the duration of a tariff rate quota following a transition review. Regulation 7 makes amendments to allow for a situation where the TRA has carried out a transition review before replacement day (the end of the transition period) and to provide that any taxation notice published by the Secretary of State reflects the TRA recommendation.
- 7.10 The principal amendment made by regulation 8 is to allow for the duration of a tariff rate quota to be extended following a transition review. In addition, it clarifies what must be contained in the TRA's notice of initiation of a review, that a transition review continues after replacement of EU trade duty, and limits the circumstances in which a review may be terminated.
- 7.11 Regulation 9 provides that the TRA may recommend an extension of the period for which a tariff rate quota applies only if the tariff rate quota continues to be necessary to prevent serious injury and there is evidence that British producers are adjusting to the importation of the goods. This reflects an obligation of the United Kingdom under the Agreement on Subsidies and Countervailing Measures.
- 7.12 Regulation 10 makes provision for a situation where the Secretary of State accepts a recommendation of the TRA in respect of a tariff rate quota before replacement date, allowing the Secretary of State to give effect to the TRA's recommendation, rather than her determination to continue to apply the EU tariff rate quotas.
- 7.13 Part 3 of this instrument amends the Dumping and Subsidies Regulations.
- 7.14 Regulation 18 enables the TRA to commence investigations during the transition period on receipt of a properly documented application from British industry, to investigate

goods where the EU has initiated an investigation into these same goods. No measures will be imposed as a result of these investigations during the transition period, in order to respect the United Kingdom's duty of sincere cooperation under the Withdrawal Agreement. By only allowing investigations into goods already under investigation by the EU, investigations against the EU are implicitly precluded, except in truly exceptional circumstances where the Secretary of State requests an investigation.

7.15 In addition, regulations 17, 19 and 20 of Part 3 correct the Dumping and Subsidies Regulation where it contains errors as a consequence of S.I. 2020/99.

7.16 Part 4 of this instrument amends the Appeals Regulations to provide that an appeal can be brought in relation to a TRQ recommendation, in respect of a particular category of goods, whilst transition reviews into other goods continue.

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 does relate to the withdrawal of the United Kingdom from the European Union, as it sets out further details of the trade remedies system that the United Kingdom will operate once she is responsible for operating her sovereign independent trade policy.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 HM Government held a series of meetings during Spring 2018 with representative bodies and other interested parties, i.e. producers in the United Kingdom, 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 included: 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 instrument do not contradict the agreed policy as set out in preceding legislation.

11. Guidance

11.1 This instrument 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 our sovereign 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 our sovereign 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, so there is no requirement to complete an impact assessment.

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 United Kingdom has operated her own trade remedies system in over 40 years. The system has been designed in compliance with our obligations as a WTO Member State, as well as to meet objectives of HM Government for a system that protects our domestic industry in a balanced and proportionate way and, at the same time, giving the TRA sufficient flexibility to build and develop expertise in this area.

14.3 HM Government will monitor the system to make sure that it operates as intended. If we conclude there are changes we could make to improve our new sovereign system, then HM 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 at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

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