

**EXPLANATORY MEMORANDUM TO**  
**THE TRADE REMEDIES (DUMPING AND SUBSIDISATION) (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 222**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before the House of Commons by Command of His Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 for Regulation 91 to allow the Trade Remedies Authority (TRA) to recommend that an anti-dumping duty applies from a date during the period of the provisional remedy, or a date during the period 90 days before the period of the provisional remedy. This will keep it in accordance with schedule 4, paragraph 19 of the Taxation (Cross-border Trade) Act 2018 (TCBTA).
- 2.2 Additionally, this instrument will amend Regulation 92 to allow the TRA to recommend that a countervailing amount applies from a date during the period of the provisional remedy, or a date during the period 90 days before the period of the provisional remedy. This will keep it in accordance with schedule 4, paragraph 19 of the TCBTA.

**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 will observe the 21-day rule because it comes into force on 22 March 2023.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application 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.

**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 provides that the TRA can recommend putting a provisional measure in place during an investigation and that the Secretary of State for Business and Trade can make regulations in this area. This instrument extends the circumstances where the TRA is authorised to recommend that the relevant date for anti-dumping or countervailing duties begins.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Under the Anti-Dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (SCMA), Member States are able to apply provisional measures while investigating anti-dumping or countervailing allegations. The ADA and SCMA allow for the duty in the final recommendation to apply from the date that provisional measures entered into force and, in certain circumstances, 90 days before. Under the ADA and SCMA, the duty collected can only be collected up to the level of the provisional duty (if the final duty is higher than the provisional) or up to the final duty (if the final duty is lower).
- 7.2 The purpose of these regulations is to allow the TRA to recommend backdating the definitive duty to the date during the period in which the provisional measures applied.

### *Explanations*

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

- 7.3 Current domestic legislation provides that the Secretary of State can make public notices for provisional measures and for definitive measures, giving effect to recommendations by the TRA and may make regulations to allow the TRA to recommend backdating definitive measures.

#### Why is it being changed?

- 7.4 The regulations are being changed to ensure that any TRA recommendation to the Secretary of State for Business and Trade backdating definitive measures to cover the period of the provisional measures, as is allowed under the ADA and SCMA, and is in accordance with Schedule 4, Paragraph 19 of the TCBTA, may be implemented. This will allow HMRC to collect on any guarantees put in place as part of the provisional measures.

#### What will it now do?

- 7.5 These regulations will allow for HMRC to collect on backdated provisional measures.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The Department for Business and Trade does not intend to consolidate the trade remedies legislation.

## **10. Consultation outcome**

- 10.1 The Department for Business and 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 Business and Trade has consulted the Trade Remedies Authority as required under section 32(12) of the TCBTA.

## **11. Guidance**

- 11.1 Not applicable.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the Impact Assessment accompanying the TCBTA applies also to this instrument. 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.

## **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 The approach to monitoring of this legislation is to closely monitor any representations that are received. Any issues that are raised will be fully investigated with a view to finding an acceptable solution.
- 14.2 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 Mairi MacIver at the Department for Business and Trade (telephone: +44 (0) 7443 217011 or email: [mairi.maciver@trade.gov.uk](mailto:mairi.maciver@trade.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Re Hobley Deputy Director at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nigel Huddleston, Minister of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.