

## EXPLANATORY MEMORANDUM TO

### THE TRADE REMEDIES (INCREASE IN IMPORTS CAUSING SERIOUS INJURY TO UK PRODUCERS) (EU EXIT) (AMENDMENT) REGULATIONS 2023

2023 No. 954

#### 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 makes amendments to the UK's trade remedies system in relation to safeguard investigations and reviews.
- 2.2 The instrument prescribes the circumstances in which the Trade Remedies Authority must consider giving options to the Secretary of State as part of its recommendation in a safeguard investigation or review.
- 2.3 The instrument also provides for the Secretary of State to ask the Trade Remedies Authority to reassess a recommendation on a review in certain circumstances, and allows the Secretary of State to act other than in accordance with the recommendation if the Secretary of State considers that it is in the public interest to do so.
- 2.4 The instrument amends provisions on the "economic interest test" so that the Secretary of State has flexibility to apply a measure where the Trade Remedies Authority has advised that the economic interest test has not been met.

#### 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 a negative resolution procedure.
- 3.2 Regulation 2 sets out the application of this instrument. In particular, this instrument will apply to safeguard investigations and reviews that are initiated after the instrument comes into force on 25 September. This instrument will also apply to any review initiated by the TRA but not completed before the instrument comes into force, save for any provision in the instrument that applies before the review was initiated by the TRA.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland. Trade remedies measures under the Taxation (Cross-border Trade) Act 2018 (TCBTA) would usually take the form of additional rate of import duty and are therefore a matter of reserved competence.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The framework for the UK's trade remedies system is set out primarily within Schedules 4 and 5 TCBTA together with associated secondary legislation. The Government's intentions for amending the current framework are found in a written Ministerial statement made by the Secretary of State for Business and Trade on 9 March 2023. This instrument is the first of a series of statutory instruments making changes to the trade remedies system further to that written Ministerial statement.
- 6.2 Schedule 19 of the Finance (No.2) Act 2023 made amendments to Schedules 4 and 5 TCBTA to give Ministers greater power to look at wider public interest considerations and flexibility to make decisions on trade remedies. On 25 August 2023 the Finance (No. 2) Act 2023, Schedule 19 (Trade Remedies) (Appointed Day and Savings) Regulations 2023 commenced the provisions of Schedule 19 which did not commence upon Royal Assent.
- 6.3 The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449) sets out how safeguard investigations and reviews are conducted. Those regulations are amended by this instrument.

## **7. Policy background**

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

- 7.1 The Government is making changes to the UK's trade remedies framework to ensure it has the tools needed to defend businesses from unfair international competition and unforeseen surges in imports. This is the first tranche of changes and relates to safeguard investigations and reviews. A further tranche of changes will be made via secondary legislation in relation to anti-dumping and countervailing investigations. The changes in this instrument maintain the Trade Remedy Authority's expert independent analytical and investigative role, while also giving Ministers greater power to look at wider public interest considerations and flexibility to make decisions that balance the interests of UK producers, importers and consumers. The Trade Remedies Authority investigates allegations of dumping, subsidy and unforeseen surges in imports and provides objective, independent and evidence-based advice to Ministers on whether or not to apply a trade remedy measure. Plans to change the UK's trade remedies framework were originally announced by the Government in June 2021.

### *Explanations*

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

- 7.2 Together with Schedule 5 TCBTA, the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 sets out how safeguard investigations and reviews are conducted. This includes how the Trade Remedies Authority makes its determinations following trade remedy investigations and reviews, the content of its recommendations to the Secretary of State, and the powers of the Secretary of State in light of the recommendation made.

Why is it being changed?

- 7.3 The trade remedies framework is being changed to ensure the UK has the necessary tools and flexibility to defend its interests from unfair trading practices and surges in imports. These proposals strike a balance between benefitting from the TRA's independent analytical function and giving Ministers greater power to look at wider public interest considerations and flexibility to make decisions that balance the interests of UK producers, importers and consumers.

What will it now do?

- 7.4 This instrument amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 to allow for a greater flow of information between the Trade Remedies Authority (TRA) and the Government and provide greater flexibility for the Government when taking evidence-based decisions on trade remedy safeguard 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 This instrument does not consolidate previous instruments and there are currently no plans to consolidate the instruments that amend the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019.

**10. Consultation outcome**

- 10.1 HM Government has held a series of meetings with our domestic trade remedies stakeholders to understand the impact of the changes to the UK's trade remedies framework.
- 10.2 The Secretary of State has consulted the Trade Remedies Authority as required under section 32(12) of the TCBTA.

**11. Guidance**

- 11.1 Statutory guidance to the Trade Remedies Authority under paragraph 34 of Schedule 4 to the Trade Act 2021 will be published on 4 September 2023.

**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 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.

**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 that the legislation does not add any specific regulatory burdens or small businesses that do not already exist.

**14. Monitoring & review**

- 14.1 The basis for the final decision on what action to take to assist small businesses is that the legislation does not add any specific regulatory burdens or small businesses that do not already exist.

**15. Contact**

- 15.1 David Smalley at the Department for Business and Trade Telephone: +44(0)7551 679 343 or email: [david.smalley@businessandtrade.gov.uk](mailto:david.smalley@businessandtrade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Re Hobley, Deputy Director for Trade Remedies, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Hollinrake, Parliamentary Under Secretary of State, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.