EXPLANATORY MEMORANDUM TO

THE TRADE REMEDIES (DUMPING AND SUBSIDISATION) (AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 955

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 The Taxation (Cross-border Trade) Act 2018 ("TCBTA") sets out the framework for the UK's trade remedies system following the UK's exit from the EU. This instrument makes minor changes to the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019. This instrument makes technical amendments to that instrument to allow exemptions to anti-dumping and countervailing measures to be backdated.

2.2 The instrument also provides for the reimbursement of duties paid by businesses in certain circumstances and makes businesses liable for duties if collection of those duties is suspended during an exemption review but an exemption is not ultimately granted.

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 the negative resolution procedure.

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 the United Kingdom. Trade remedies measures under the TCBTA 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 Taxation (Cross-border Trade) Act 2018 ("TCBTA") sets out the framework for the UK's trade remedies system following the UK's exit from the EU. The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 and the Trade Remedies (Reconsideration and Appeals) (EU Exit)

Regulations 2019 ("the Trade Remedies Regulations") set out the UK's independent framework for trade remedies. These pieces of legislation set out how the Trade Remedies Authority (TRA) should carry out their investigations.

6.2 The changes being made amend this legislation to support the smooth running of our trade remedies system.

7. Policy background

What is being done and why?

7.1 The SI amends the Trade Remedies Regulations to support the TRA and the Secretary of State in carrying out their functions. This instrument makes a number of technical changes relating to the collection and payment of duties.

7.2 Under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 businesses may apply for an exemption review to be conducted by the TRA if they believe that they should be exempted from a particular trade remedies measure. If the TRA concludes that an exemption is warranted, the Secretary of State may, by public notice, exempt that business from the measure. While the exemption review is ongoing, the Secretary of State may suspend the collection of duties from the applicant business. The instrument makes the applicant business liable for any duties for which collection was suspended if an exemption is not granted following conclusion of the review. The instrument also permits duties collected during an exemption review (if a suspension is not granted) to be reimbursed if an exemption is granted following completion of the review. In both of these cases, the instrument only applies to cases where an application for an exemption review is received after the instrument comes into force.

7.3 This instrument also allows for an exemption to be backdated to 11:00 p.m. on 31 December 2020, or a later date, where a provisional exemption, granted by the EU, was in place at that time and was subsequently made definitive, which was not previously possible.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to trade remedies measures transitioned over to the UK at the end of the transition period.

9. Consolidation

9.1 The Department for Business and Trade is keeping under review the desirability of consolidating instruments amended by these Regulations.

10. Consultation outcome

10.1 The Department for Business and Trade has consulted the TRA (as required under sections 51(10) and 56(13) of the TCBTA) and His Majesty's Revenue and Customs.

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 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. 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 to take no action since the legislation does not any specific regulatory burdens for small businesses. Instead, it allows them to apply for an exemption from certain UK trade remedies measures if they wish to do so.

14. Monitoring & review

14.1 The instrument does 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.

15. Contact

15.1 Adam Gray at the Department for Business and Trade Telephone: +44(0)7741 186667 or email: adam.gray@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Re Hobley, Deputy Director for Trade Remedies and Constitutional Affairs, at the Department of Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.