

2022 No. 113

CUSTOMS

TRADE

**The Trade Remedies (Review and Reconsideration of
Transitioned Trade Remedies) Regulations 2022**

<i>Made</i>	- - - -	<i>7th February 2022</i>
<i>Laid before the House of Commons</i>		<i>9th February 2022</i>
<i>Coming into force</i>	- -	<i>2nd March 2022</i>

The Secretary of State makes the following Regulations pursuant to section 1(1) and (2) of the Provisional Collection of Taxes Act 1968^(a) and a resolution passed by the House of Commons on 2nd November 2021^(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022 and come into force on 2nd March 2022.

(2) These Regulations extend to the United Kingdom.

Interpretation

2. In these Regulations—

“Call-in Notice” has the meaning given by regulation 4(2);

“public file” means—

- (a) in respect of a review of the application of an anti-dumping amount or a countervailing amount to goods, the file referred to in regulation 44 of the Dumping and Subsidisation Regulations^(c);
- (b) in respect of a reconsideration of a transitioned trade remedy, the file referred to in regulation 4 of the Reconsideration and Appeals Regulations^(d);

^(a) 1968 c. 2.

^(b) Budget resolution number 36, recorded in the House of Commons Votes and Proceedings for 2nd November 2021 (“Budget resolution number 36”). The resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968 (“the 1968 Act”). Section 1(3) to (5) of the 1968 Act sets out the circumstances in which the resolution will cease to have statutory effect. By virtue of section 1(5), the resolution will cease to have effect once provisions corresponding to those are enacted in the next Finance Act. The resolution will in any case cease to have effect after 3rd June 2022 by virtue of section 1(3). Relevant amendments to section 1 were made by section 88(1) to (7) of the Finance Act 2011 (c. 11). Further relevant amendments were made to section 1(3) to (5) by section 60 of the Finance Act 1968 (c. 44), section 205(5) of the Finance Act 1993 (c. 34) and section 112(1) of the Finance Act 2007 (c. 11).

^(c) The definition of “the Dumping and Subsidisation Regulations” can be found in Budget resolution number 36.

^(d) The definition of “the Reconsideration and Appeals Regulations” can be found in Budget resolution number 36.

“Report of Findings” has the meaning given by regulation 7(1)(c);

“the TRA” means the Trade Remedies Authority^(a).

Secretary of State to decide in relation to a review or reconsideration of a transitioned trade remedy

3. Regulations 4 to 18 apply where—

- (a) a review or reconsideration of a transitioned trade remedy has been initiated by the TRA but has not been concluded, and
- (b) the Secretary of State notifies the TRA in writing that, in relation to the matters under review or reconsideration, the Secretary of State is to decide whether to—
 - (i) vary, maintain or revoke a tariff rate quota, anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates, or
 - (ii) replace a tariff rate quota that is applicable to the goods to which the review or reconsideration relates with an additional amount of import duty.

Notice

4.—(1) Where the Secretary of State notifies the TRA as mentioned in regulation 3(b), the Secretary of State must lay a statement before the House of Commons which must include—

- (a) a description of the goods to which the review or reconsideration relates,
- (b) where the review or reconsideration relates to an anti-dumping amount or a countervailing amount applicable to goods, the name of the exporting country or territory (as mentioned in the TRA’s notice of initiation of the review under regulation 98(1) of the Dumping and Subsidisation Regulations),
- (c) the reasons why the Secretary of State is to decide on the matters under review or reconsideration,
- (d) the date on which the Secretary of State notified the TRA as mentioned in regulation 3(b), and
- (e) the TRA reference number of the review or reconsideration.

(2) The Secretary of State must also publish a notice (referred to in these Regulations as “a Call-in Notice”) which must include—

- (a) where the Call-in Notice relates to a review of an anti-dumping amount or a countervailing amount applicable to goods—
 - (i) the date on which the TRA published the notice of initiation of the review under regulation 98(1) of the Dumping and Subsidisation Regulations, and
 - (ii) details of the review process to be carried out by the Secretary of State, if this differs from the process as set out in the TRA’s notice of initiation of the review under regulation 98(1) of the Dumping and Subsidisation Regulations;
- (b) where the Call-in Notice relates to a reconsideration of a transitioned trade remedy, the date on which the TRA published the notice of initiation of the reconsideration under regulation 12(1) of the Reconsideration and Appeals Regulations.

(3) The Call-in Notice may be published by the Secretary of State in such a manner as the Secretary of State considers appropriate.

^(a) The Trade Remedies Authority was established under the Trade Act 2021 (c. 10).

TRA to maintain the public file

5.—(1) The TRA must maintain the public file in respect of the matters under review or reconsideration in accordance with the provisions of this regulation.

(2) The TRA must include in the public file only—

- (a) evidence that the TRA considers material to the matters under review or reconsideration;
- (b) where the Secretary of State so directs, evidence that the Secretary of State considers material to the matters under review or reconsideration.

(3) When maintaining the public file, the TRA must have regard to any guidance issued by the Secretary of State as to evidence material to the review or reconsideration.

Secretary of State's general power for purpose of regulation 3

6.—(1) The Secretary of State may do anything that the Secretary of State considers appropriate for the purposes of making a decision as mentioned in regulation 3(b).

(2) In particular, the Secretary of State may—

- (a) consider information supplied to the Secretary of State by any person;
- (b) request that any person supply information to the Secretary of State;
- (c) set time limits for responses to requests made by the Secretary of State and vary such time limits;
- (d) specify the format or structure of responses to those requests;
- (e) accept or reject information that is supplied outside any applicable time limit, as appropriate.

TRA's functions

7.—(1) For the purpose of assisting the Secretary of State in making a decision as mentioned in in regulation 3(b), the TRA must—

- (a) investigate and analyse the impact of the transitioned trade remedy under review or reconsideration;
- (b) gather and assess evidence in connection with the impact of the transitioned trade remedy;
- (c) provide a report to the Secretary of State (in these Regulations referred to as a “Report of Findings”) before a date specified by the Secretary of State which must include—
 - (i) a summary of the investigation and the analysis conducted by the TRA in relation to the impact of the transitioned trade remedy under review or reconsideration,
 - (ii) the TRA's assessment of the evidence gathered,
 - (iii) whether the TRA considers the economic interest test is met in relation to the transitioned trade remedy under review or reconsideration, and
 - (iv) advice to the Secretary of State in connection with the matters under review or reconsideration, including in relation to the economic interest test, and the reasons for that advice.

(2) The Secretary of State may direct the TRA to provide such other assistance as the Secretary of State considers necessary for the purpose of making a decision as mentioned in regulation 3(b).

(3) For the purpose of the TRA providing assistance to the Secretary of State pursuant to this regulation, where the Secretary of State is to decide—

- (a) in relation to a review of the application of an anti-dumping amount or a countervailing amount to goods, regulations 99A, 99B and 99C of the Dumping and Subsidisation Regulations have effect;

- (b) in relation to a reconsideration of a transitioned trade remedy, regulations 3, 5, 7, 8 and 13 of the Reconsideration and Appeals Regulations have effect subject to the modifications specified in regulation 18.
- (4) For the purposes of this regulation “economic interest test” has the meaning given by—
 - (a) paragraph 25 of Schedule 4 to the TCTA 2018(a), in relation to the application of an anti-dumping amount or a countervailing amount;
 - (b) paragraph 23 of Schedule 5 to the TCTA 2018 in relation to the application of a tariff rate quota.

Information sharing

8.—(1) Where the Secretary of State notifies the TRA as mentioned in regulation 3(b), the TRA must, upon request, provide the Secretary of State with any information (including confidential information) it holds in connection with the matters under review or reconsideration.

(2) The TRA must, upon request, provide the Secretary of State with information it holds in relation to a review or reconsideration of a transitioned trade remedy that it has initiated but in respect of which the Secretary of State has not notified the TRA as mentioned in regulation 3(b) (but this does not include confidential information).

(3) The Secretary of State may provide information (including confidential information) to the TRA where the Secretary of State considers that the information is necessary for the purpose of the TRA carrying out its functions pursuant to regulation 7.

Permitted disclosure

9.—(1) The Secretary of State or the TRA may disclose confidential information (other than as provided for by regulation 8(1) or (3)) where such disclosure is—

- (a) made with the consent of the person supplying the information,
- (b) made for the purpose of court or tribunal proceedings in the United Kingdom relating to the exercise of the Secretary of State’s or the TRA’s functions under these Regulations,
- (c) made for the purpose of an international dispute relating to the exercise by the Secretary of State or the TRA of functions under these Regulations, or
- (d) required or permitted by any other enactment or rule of law.

(2) Before making a disclosure under paragraph (1)(b), (c) or (d), the Secretary of State or the TRA, as the case may be, must consider whether such disclosure is likely to allow, or result in, such information being made available to a competitor of the person—

- (a) supplying the information, or
- (b) to which the information relates.

(3) In paragraph (1)(d), reference to an enactment includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament.

Confidential information

10.—(1) For the purposes of regulations 8 and 9, confidential information is information which is supplied by a person to—

- (a) the Secretary of State in connection with the exercise of the Secretary of State’s functions under these Regulations;
- (b) the TRA in connection with the exercise by the TRA of its functions under the Dumping and Subsidisation Regulations, the Safeguards Regulations, the Reconsideration and Appeals Regulations or these Regulations,

(a) “The TCTA 2018” is defined in the Finance (No. 2) Bill as published by the House of Commons on 4th November 2021.

which the Secretary of State or the TRA, as the case may be, must treat as confidential under paragraph (2).

(2) The Secretary of State or the TRA, as the case may be, must treat as confidential, information that is supplied by a person where the person supplying that information—

- (a) either—
 - (i) requests the Secretary of State or the TRA, as the case may be, to treat that information as confidential on the grounds that by its nature the information is confidential, or
 - (ii) supplies that information on a confidential basis,
- (b) demonstrates to the Secretary of State or the TRA, as the case may be, good cause as to why the Secretary of State or the TRA must treat that information as confidential, and
- (c) submits—
 - (i) a non-confidential summary of that information (see paragraph (4)(a)), or
 - (ii) in exceptional circumstances, a statement of reasons (see paragraph(4)(b)).

(3) For the purpose of paragraph (2)(a)(i), information that is by its nature confidential includes information which, if disclosed, would—

- (a) be of significant competitive advantage to a competitor of the person supplying the information, or
- (b) have a significant adverse effect on—
 - (i) the person supplying the information, or
 - (ii) any person from whom the person supplying the information acquired it.

(4) In this regulation—

- (a) a “non-confidential summary” in relation to information means a sufficiently detailed summary for the public file which would enable a person other than the Secretary of State or the TRA to have a reasonable understanding of—
 - (i) the substance of the information to which it relates, and
 - (ii) its potential relevance to the review or reconsideration of the transitioned trade remedy, as the case may be;
- (b) a “statement of reasons” means a statement setting out the reasons why the Secretary of State or the TRA, as the case may be, should treat that information as confidential and why a non-confidential summary cannot be provided.

Report of Findings

11.—(1) The Secretary of State must take the TRA’s Report of Findings into account when making a decision mentioned in regulation 3(b) but the Secretary of State is not bound by any conclusion reached or advice provided by the TRA in that report.

(2) The Secretary of State may consider any other evidence that the Secretary of State considers material to the matters under review or reconsideration before deciding on those matters.

(3) Where, pursuant to paragraph (2), the Secretary of State considers any other material evidence, the Secretary of State must, before making a decision mentioned in regulation 3(b), give interested parties and contributors an opportunity to comment on that evidence.

(4) For the purposes of this regulation, “interested party” and “contributor” have the meanings given by—

- (a) regulation 2 of the Safeguards Regulations where the reconsideration of the transitioned trade remedy relates to the application of a tariff rate quota to goods;
- (b) regulation 2 of the Dumping and Subsidisation Regulations where the review or reconsideration of the transitioned trade remedy relates to the application of an anti-dumping amount or a countervailing amount to goods.

Secretary of State's decision: application of tariff rate quotas

12.—(1) After considering the Report of Findings and any other material evidence, the Secretary of State must, having regard to the public interest, make a decision that a tariff rate quota that is applicable to the goods to which the reconsideration relates should be—

- (a) maintained,
- (b) replaced by an additional amount of import duty,
- (c) varied, or
- (d) revoked.

(2) Where the Secretary of State decides that the tariff rate quota that is applicable to the goods should be varied, the variation may, among other things, comprise or include—

- (a) increasing the amount of the tariff rate quota;
- (b) varying (or providing for) the allocation of the tariff rate quota;
- (c) reducing the additional rate of import duty;
- (d) reducing or extending the period for which the tariff rate quota applies to goods;
- (e) varying the pace of liberalisation;
- (f) varying (or providing for) the terms on which a part or the whole of the tariff rate quota is allocated or may be utilised.

(3) Where the Secretary of State decides that the tariff rate quota that is applicable to the goods should be varied, and that the variation is to comprise or include extending the period for which the tariff rate quota applies to the goods, the total period for which the tariff rate quota applies to those goods must not exceed that specified in paragraph (4).

(4) The period specified for the purposes of paragraph (3) is 8 years, beginning with the date on which the tariff rate quota that is applicable to those goods is treated as beginning under regulation 48(3) of the Safeguards Regulations.

(5) The Secretary of State must decide in respect of all the goods to which the reconsideration relates.

(6) In this regulation, “pace of liberalisation” means the process by which the amount of the import duty applicable to the goods subject to the tariff rate quota becomes progressively smaller as the period during which the tariff rate quota is applicable progresses (whether by increases in the amount of the quota, decreases in the rates of import duty, or both).

Exceptions to Secretary of State's decision on the application of tariff rate quotas

13.—(1) Subject to paragraph (2), the Secretary of State must not make a decision referred to in regulation 12(1)(b) or (c) in relation to goods which are imports from a country which is a low volume exporter.

(2) Paragraph (1) does not apply in relation to goods from a country which is a low volume exporter if the imports of the goods from all low volume exporters collectively account for more than 9 per cent. of the total imports of those goods into the United Kingdom.

(3) For the purposes of paragraphs (1) and (2), a country is “a low volume exporter” if—

- (a) it is a developing country member of the World Trade Organization (“WTO”), and
- (b) goods which are imported into the United Kingdom from that country account for 3 per cent. or less of the total imports of those goods into the United Kingdom.

(4) The Secretary of State may except goods imported into the United Kingdom from a foreign country or territory from a decision referred to in regulation 12(1)(a) to (c) where the conditions specified in paragraph (5) are satisfied.

(5) The conditions in this paragraph are satisfied where—

- (a) immediately before exit day, that foreign country or territory and the European Union were signatories to a free trade agreement,

- (b) that foreign country or territory and the United Kingdom are signatories to a free trade agreement, and
 - (c) the free trade agreement referred to in sub-paragraph (b) provides for the excepting of goods from the application of a safeguard measure within the meaning of Article XIX of GATT and the Agreement on Safeguards (being part of Annex 1A to the WTO Agreement)(a).
- (6) In this regulation—
- (a) a “free trade agreement” means an agreement that is or was notifiable under paragraph 7(a) of Article XXIV of GATT;
 - (b) “GATT” means the General Agreement on Tariffs and Trade, part of Annex 1A to the WTO Agreement (as modified from time to time);
 - (c) a “signatory to a free trade agreement” includes a reference to—
 - (i) exchanging instruments, where the exchange constitutes the agreement;
 - (ii) acceding to the agreement;
 - (d) “WTO Agreement” means the agreement establishing the WTO signed at Marrakesh on 15 April 1994.

Secretary of State’s decision: application of anti-dumping amounts and countervailing amounts

14.—(1) After considering the Report of Findings and any other material evidence, the Secretary of State must, having regard to the public interest, make a decision that the anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates should be—

- (a) maintained,
- (b) varied, or
- (c) revoked.

(2) The Secretary of State must have regard to the current and prospective impact of an anti-dumping amount or a countervailing amount when making a decision regarding the future application of that amount.

(3) Where the Secretary of State decides that the anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates should be varied, the variation may, amongst other things, comprise or include—

- (a) subject to paragraph (4), reducing the anti-dumping amount or countervailing amount;
- (b) subject to paragraph (4), increasing the anti-dumping amount or countervailing amount;
- (c) reducing the period for which the anti-dumping amount or countervailing amount applies;
- (d) subject to paragraph (6), extending the period for which the anti-dumping amount or countervailing amount applies.

(4) Where the Secretary of State decides that the anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates should be varied, that variation must not comprise or include reducing or increasing such amount to an amount which—

- (a) in the case of an anti-dumping amount, exceeds the margin of dumping in relation to those goods;
- (b) in the case of a countervailing amount, exceeds the amount of the subsidy applicable to those goods;
- (c) is more than the Secretary of State is satisfied would be adequate to prevent or remove injury to a UK industry in those goods caused by the dumped or subsidised goods.

(a) Available from: https://www.wto.org/english/docs_e/legal_e/legal_e.htm

(5) Where the Secretary of State decides that the anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates should be varied and it has not been possible for the Secretary of State to recalculate the anti-dumping amount or countervailing amount, that variation may include maintaining that amount.

(6) Where the Secretary of State decides that the anti-dumping amount or countervailing amount that is applicable to the goods to which the review or reconsideration relates should be varied, that variation must not comprise or include extending the period for which the amount applies by a period of more than 5 years, that period beginning with—

- (a) the day after the day on which the public notice referred to in regulation 15(1)(b) is published, or
- (b) where the anti-dumping amount or countervailing amount continues to apply under regulation 97C(2) of the Dumping and Subsidisation Regulations, the day on which the application of that anti-dumping amount or countervailing amount would have otherwise expired.

(7) The Secretary of State must decide in respect of all the goods to which the review or reconsideration relates.

(8) In this regulation—

- (a) “the amount of the subsidy” in relation to goods, has the same meaning as in Schedule 4 to the TCTA 2018 (see paragraph 4 of that Schedule);
- (b) “injury” to a UK industry in particular goods has the same meaning as in Schedule 4 to the TCTA 2018 (see paragraph 5 of that Schedule);
- (c) “margin of dumping” in relation to goods has the same meaning as in Schedule 4 to the TCTA 2018 (see paragraph 2 of that Schedule);
- (d) “UK industry” in particular goods has the same meaning as in Schedule 4 to the TCTA 2018 (see paragraph 6 of that Schedule).

Public Notice of Secretary of State’s Decision

15.—(1) When the Secretary of State makes a decision under regulation 12 or 14, the Secretary of State must—

- (a) lay a statement before the House of Commons setting out the reasons for the decision, and
- (b) except where paragraph (2) applies, make provision by a notice, published in such a manner as the Secretary of State considers appropriate, giving effect to that decision.

(2) This paragraph applies if the conditions set out in an existing public notice made under Part 9 of the Safeguards Regulations (in relation to the application of a tariff rate quota to goods) or under Part 12 of the Dumping and Subsidisation Regulations (in relation to the application of an anti-dumping amount or countervailing amount to goods) remain unchanged.

(3) The Secretary must also direct the TRA to include the Report of Findings in the public file and when so directed, the TRA must include the Report of Findings in that file.

Content of the public notice

16.—(1) A public notice made under regulation 15(1)(b) must include the following—

- (a) a description of the goods to which the decision relates;
- (b) a summary of the investigation conducted in relation to the matters under review or reconsideration;
- (c) a summary of the Secretary of State’s decision and the reasons for that decision.

(2) Where the decision is to vary an anti-dumping amount or a countervailing amount the notice must also specify—

- (a) the revised anti-dumping amount or countervailing amount applicable to the goods;

- (b) the period for which the anti-dumping amount or countervailing amount is to apply.
- (3) Where the decision is to vary a tariff rate quota or to replace a tariff rate quota with an additional amount of import duty, the notice must also specify, where relevant—
 - (a) the revised amount of the tariff rate quota applicable to the goods;
 - (b) the allocation or revised allocation of the tariff rate quota to those goods;
 - (c) the additional amount of import duty applicable to the goods;
 - (d) the revised period for which the goods will be subject to a tariff rate quota;
 - (e) details of the exclusion of any goods from the application of the tariff rate quota;
 - (f) the additional amount of import duty that will replace a tariff rate quota and the period for which such an amount will apply;
 - (g) the revised terms on which a part or the whole of a tariff rate quota is allocated or may be utilised.
- (4) Except where regulation 14(6) applies, the period referred to in paragraph (2)(b) begins on the day after the day on which the public notice referred to in regulation 15(1)(b) is published.
- (5) The period referred to in paragraph (3)(d) and (f) begins on the day after the day on which the public notice referred to in regulation 15(1)(b) is published.

Effect of the notice under regulation 15

17. For the purposes of the TCTA 2018, the Dumping and Subsidisation Regulations and the Safeguards Regulations—

- (a) a notice made under regulation 15(1)(b) is to be treated as if it were a public notice made under section 13(3) of the TCTA 2018 (and accordingly any reference to a public notice made under section 13(3) is to be treated as including a reference to a public notice made under regulation 15(1)(b));
- (b) a tariff rate quota or an additional amount of import duty that applies to goods by virtue of a notice made under regulation 15(1)(b) is to be treated as a tariff rate quota or an additional amount of import duty that applies to goods following the Secretary of State's acceptance of a recommendation under paragraph 16(3) of Schedule 5 to the TCTA 2018;
- (c) an anti-dumping amount or countervailing amount that applies to goods by virtue of a notice made under regulation 15(1)(b) is to be treated as an anti-dumping amount or countervailing amount that applies to goods following the Secretary of State's acceptance of a recommendation under paragraph 17(3) or (4) of Schedule 4 to the TCTA 2018.

Modifications to the Reconsideration and Appeals Regulations

18.—(1) For the purposes of regulation 7, the Reconsideration and Appeals Regulations are to be read in accordance with the modifications in paragraphs (2) to (5).

(2) Regulation 5 is to be read as if in paragraphs (1)(a) and (6)(a)(ii), for “these Regulations” there were substituted “the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”.

(3) Regulation 7 is to be read as if—

- (a) in paragraph (1), for “these Regulations” there were substituted “the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”;
- (b) in paragraph (3), after “regulation 5 (confidential information)” there were inserted “or regulation 10 of the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”;
- (c) in paragraph (4), for “make a determination on the basis of”, there were substituted “consider”.

(4) Regulation 8 is to be read as if—

- (a) for paragraph (1) there were substituted—

“(1) Where the TRA determines that a person has failed to cooperate with it or has otherwise significantly impeded its progress in connection with the TRA carrying out its functions under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022, the TRA may disregard the information supplied by that person.”;

(b) in paragraph (2)(a), for “its reconsideration” there were substituted “it carrying out its functions under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”.

(5) Regulation 13 is to be read as if—

(a) paragraphs (1), (5), (6) and (9) were omitted;

(b) in paragraphs (2) and (7), for “reconsidering an original decision” there were substituted “carrying out its functions under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”;

(c) in paragraph (8), for “as part of its reconsideration of an original decision” there were substituted “if the TRA considers it relevant for the purpose of carrying out its functions under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”.

Amendment of the Dumping and Subsidisation Regulations

19.—(1) The Dumping and Subsidisation Regulations are amended in accordance with this regulation.

(2) In regulation 97C—

(a) for paragraph (1) substitute—

“(1) This regulation applies if a UK trade remedies measure would otherwise expire during—

(a) a transition review being conducted under regulation 97(2)(b);

(b) the period during which the Secretary of State is to decide in relation to a transition review under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022.”;

(b) in paragraph (2) for “101A(2) or 101C(2)(a)” substitute “regulation 101A(2) or 101C(2)(a) or in accordance with regulation 15(1)(b) of the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022”.

(3) In regulation 101—

(a) in paragraph (1), at the beginning, insert “Subject to paragraph (3),”;

(b) after paragraph (2), insert—

“(3) Paragraph (1) does not apply where, as mentioned in regulation 3(b) of the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022, the Secretary of State notifies the TRA in writing that, in respect of the goods to which the recommendation relates, the Secretary of State will decide whether to vary, maintain or revoke an anti-dumping amount or countervailing amount applicable to those goods.”.

Amendment of the Reconsideration and Appeals Regulations

20.—(1) The Reconsideration and Appeals Regulations are amended in accordance with this regulation.

(2) After regulation 17 insert—

“Appeals to the Upper Tribunal in relation to a decision by the Secretary of State under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022

17A. An interested party may appeal to the Upper Tribunal for a review of a decision made by the Secretary of State under regulation 12 or 14 of the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022.”.

(3) In regulation 18, in paragraph (1), for “or 17 (appeals to the Upper Tribunal in relation to a determination made by the Secretary of State)” substitute “, 17 (appeals to the Upper Tribunal in relation to a determination made by the Secretary of State) or 17A (appeals to the Upper Tribunal in relation to a decision made by the Secretary of State under the Trade Remedies (Review and Reconsideration of Transitioned Trade Remedies) Regulations 2022)”.

Signed by authority of the Secretary of State

Penny Mordaunt
Minister of State

7th February 2022

Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with a decision made by the Secretary of State that the Secretary of State, in place of the Trade Remedies Authority (“the TRA”), will decide in relation to a review or a reconsideration of a transitioned trade remedy.

The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449) (“the Safeguards Regulations”) and the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450) (“the Dumping and Subsidisation Regulations”) provide for the transitioning of EU trade remedies into new United Kingdom trade remedies (“transitioned trade remedies”). Under Part 9 of the Safeguards Regulations and Part 12 of the Dumping and Subsidisation Regulations, the TRA must carry out a review of these transitioned trade remedies with a view to their adjustment to meet the circumstances of the United Kingdom market. Part 9 of the Safeguards Regulations and Part 12 of the Dumping and Subsidisation Regulations also provide that the TRA is to make a recommendation to the Secretary of State as to the variation, revocation or replacement of these duties or tariff rate quotas. The Secretary may accept or reject such a recommendation.

These Regulations are made in exercise of the power contained in Budget resolution number 36, passed by the House of Commons on 2nd November 2021 following the Budget held on 27th October 2021. The resolution has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968 (c. 2) (“the 1968 Act”) and contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the 1968 Act. The resolution provides that, where the TRA has initiated a review or a reconsideration of a review of a transitioned trade remedy, the Secretary of State may notify the TRA that the Secretary of State will make the decision in relation to the matters under review or reconsideration. Where the Secretary of State exercises this power, the TRA no longer has the power to exercise any functions in relation to the matter. The resolution also provides that the Secretary of State may make regulations for the purposes of making decisions on the matters under review or reconsideration and the regulations may provide that the TRA is to carry out certain functions for the purpose of assisting the Secretary of State in making the decision.

The provisions of Budget resolution number 36 correspond to provisions contained in clause 73 of the Finance (No. 2) Bill as published by the House of Commons on 4th November 2021. Assuming that the clause is not rejected during the passage of the Bill through Parliament, those provisions will come into force when the Bill receives Royal Assent, and these Regulations made under the resolution will continue to have statutory effect by virtue of those provisions of the Act arising from the Bill. The resolution will in any case cease to have effect after 4th June 2022, by virtue of section 1(3) of the 1968 Act.

Regulation 3 of these Regulations provides that where the TRA has initiated a review or a reconsideration of a review of a transitioned trade remedy but the review or reconsideration has not been concluded, the Secretary of State may decide that the Secretary of State and not the TRA is to decide whether to vary, maintain or revoke the anti-dumping amount, countervailing amount or tariff rate quota that is applicable to the goods to which the review or reconsideration relates or to replace a tariff rate quota that is applicable to those goods with an additional amount of import duty.

Regulation 4 provides that the Secretary of State must lay a statement before the House of Commons and also publish a Call-in Notice when the Secretary of State notifies that TRA that the Secretary of State is to decide in relation to the matters under review or reconsideration and regulation 4 also provides for the content of that statement and notice.

Regulation 5 provides that the TRA is to maintain the public file in accordance with this regulation in respect of the matters under review or reconsideration.

Regulation 6 provides that the Secretary of State may do anything that the Secretary of State considers appropriate for the purpose of making a decision under these Regulations.

Regulation 7 specifies the TRA's functions for the purpose of assisting the Secretary of State to make a decision in relation to the matters under review or reconsideration and paragraph (3) applies certain provisions of the Dumping and Subsidisation Regulations and, subject to the modifications specified in regulation 18 of these Regulations, the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910) ("the Reconsideration and Appeals Regulations").

Regulation 8 provides for information sharing between the TRA and the Secretary of State for the purpose of the TRA's and Secretary of State's functions under these Regulations.

Regulation 9 provides for the disclosure of confidential information in certain circumstances and regulation 10 provides for what is meant by confidential information in regulations 8 and 9.

Regulation 11(1) provides that the Secretary of State must take the TRA's Report of Findings (see regulation 7(1)(c)) into account when making a decision in relation to the matters under review or reconsideration. Paragraph (2) provides that the Secretary of State may take further material evidence into consideration and paragraph (3) provides that interested parties and contributors must be given an opportunity to comment on that evidence.

Regulation 12 specifies the decisions that the Secretary of State must take where the reconsideration relates to the application of a tariff rate quota to goods.

Regulation 13(1) provides that the Secretary of State must not make a decision mentioned in regulation 12(1)(b) or (c) where the goods in question are imported from a low volume exporter of those goods (see paragraph (3) of regulation 13). This is subject to the exception in paragraph (2). Paragraph (4) provides that the Secretary of State may except goods imported to the United Kingdom from certain foreign countries or territories from a decision mentioned in regulation 12(1)(a) to (c) where the conditions in paragraph (5) are satisfied.

Regulation 14 specifies the decisions that the Secretary of State must take where the review or reconsideration relates to the application of an anti-dumping amount or a countervailing amount to goods.

Regulation 15(1) provides that the Secretary of State must make provision by public notice giving effect to a decision made under regulation 12 or 14 (except where paragraph (2) applies) and regulation 16 specifies the information that must be included in the public notice.

Regulation 17(a) provides that, for the purposes of the Taxation (Cross-border Trade) Act 2018 (c. 22) (the "TCTA 2018"), the Safeguards Regulations and the Dumping and Subsidisation Regulations, a public notice made under regulation 15(1)(b) is to be treated as if it were a public notice issued under section 13(3) of the TCTA 2018. Paragraph (b) provides that a tariff rate quota or an additional amount of import duty that is applicable by virtue of that notice is to be treated as

if it were a tariff rate quota or an additional amount of import duty applied by virtue of paragraph 16(3) of Schedule 5 to the TCTA 2018 and paragraph (c) provides that an anti-dumping amount or a countervailing amount that is applicable by virtue of that notice is to be treated as if it were an anti-dumping amount or a countervailing amount applied by virtue of paragraph 17(3) or (4) of Schedule 4 to the TCTA 2018.

Regulations 19 and 20 amend the Dumping and Subsidisation Regulations and the Reconsideration and Appeals Regulations respectively, as a consequence of these Regulations.

An impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen.

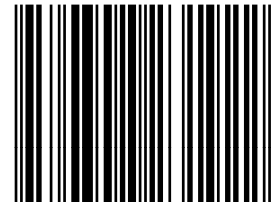
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