
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

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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.