EXPLANATORY MEMORANDUM TO

THE TRADE REMEDIES (REVIEW AND RECONSIDERATION OF TRANSITIONED TRADE REMEDIES) REGULATIONS 2022

2022 No. 113

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument allows the Secretary of State to take responsibility for the conduct of specific transition reviews and reconsiderations, which are currently carried out by the Trade Remedies Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument contains the first exercise of a new power to make regulations authorising the Secretary of State to "call-in" specific transition reviews or reconsiderations of transition reviews so that she can determine whether a trade remedy measure should be maintained, varied or revoked based on the evidence available to her. This power is contained in Clause 73 of the Finance Bill 2021 and has been given temporary statutory effect pursuant to budget resolution number 36 passed by the House of Commons and recorded in the House of Commons Votes and proceedings for 2 November 2021, that it is expedient that the provision should have statutory effect, under section 1(3) to (5) of the Provisional Collection of Taxes Act 1968.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument 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 Section 13 of the Taxation (Cross-border Trade) Act 2018 ("the TCBTA") provides that functions relating to import duty are conferred on the Trade Remedies Authority by Schedules 4 and 5. It further states that if the Secretary of State accepts a recommendation made by the Trade Remedies Authority, she must make a public notice giving effect to it.

6.2 This decision-making process is mirrored elsewhere in the UK's trade remedies system. In addition to the functions which it exercises under Schedules 4 and 5 of the TCBTA, the TRA is given functions by the Trade Remedies (Increase in Imports causing serious injury to UK Producers) (EU Exit) Regulations 2019 and the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (together "the 2019 Regulations"). Amongst other things, the 2019 Regulations provide for reviews to be conducted of trade remedy measures retained from the EU system ("transitioned trade remedies"). These reviews must be conducted by the TRA, which must then make a recommendation to the Secretary of State who can accept or reject the recommendation and, if necessary, give effect to it by public notice. Under the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the TRA may be asked to reconsider its recommendations on transitioned trade remedies and, if it reaches a different conclusion, must report to the Secretary of State, who, if she accepts its conclusion, is required to give effect to it by public notice.

6.3 These Regulations make provision where the Secretary of State has taken a decision that she will take decisions on a review or a reconsideration of a transitioned trade remedy instead of the TRA. The Budget resolution number 36, passed by the House of Commons on 2nd November 2021, which has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968 (c. 2) provides that the Secretary of State may "call-in" individual transition reviews or reconsiderations of transition reviews by notifying the TRA in writing. When she exercises this function, the TRA may no longer exercise its functions in relation to the review or reconsideration in question. Following her exercise of this "call-in", she may determine whether a trade remedy measure should be maintained, varied or revoked without a recommendation from the TRA. These Regulations provide that the TRA is required instead to carry out certain functions and provide her assistance at her direction.

7. Policy background

What is being done and why?

7.1 At the end of the transition period following the United Kingdom's exit from the European Union, the United Kingdom transitioned existing EU trade remedy measures that were necessary to defend UK industry. The existing secondary legislation made under the TCBTA, required the TRA to conduct a review of these transitioned measures to assess whether they meet particular criteria, including those provided for in the WTO Agreements. Currently, the TRA is responsible for collecting and analysing evidence when it carries out a transition review or a reconsideration of a transition review. It makes a recommendation to the Secretary of State on whether a particular measure should be revoked or varied, or in certain cases retained or replaced. The Secretary of State can only accept or reject a TRA recommendation. In the time since the current framework received Royal Assent (in 2018) it has become clear that in some instances greater ministerial involvement in decision-making is required.

7.2 The purpose of these Regulations is to allow for the Secretary of State to take responsibility for the investigation and to gain greater flexibility in the decision-making during the review of transitioned measures and reconsiderations. When the power is exercised, the Secretary of State will utilise the expertise of the TRA and is able to consider the evidence and analysis provided by them. The Secretary of State

will be able to decide whether a particular measure should be revoked or varied, or in certain cases retained or replaced. These Regulations only apply to transition reviews and reconsiderations of transition reviews, and do not apply to new investigations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it sets out further details of the trade remedies system the UK operates now that is responsible for operating its independent trade policy.

9. Consolidation

9.1 As this is instrument is the first made under the power referred to in paragraph 3, no consolidation is required.

10. Consultation outcome

10.1 No formal consultation on this instrument has taken place. The change provides for a different decision-making process but all involved stakeholders will retain their existing rights and the department therefore concluded that, due to time constraints, it was not necessary to consult stakeholders.

11. Guidance

11.1 Guidance is not required.

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 therefore there is no requirement to complete an IA.

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 on small businesses that does not already exist.

14. Monitoring & review

14.1 This legislation will not be monitored or reviewed.

14.2 The instrument does not include a statutory review clause as it is exempted from this requirement by section 28(3) of the Small Business, Enterprise and Employment Act

2015. The Secretary of State's power to make regulations is being exercised in connection with a tax or duty.

15. Contact

15.1 Adam Gray at the Department for International Trade Telephone: +44(0)2072151670 or email: adam.gray@trade.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Penny Mordaunt at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.