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STATUTORY INSTRUMENTS

2019 No. 449

**EXITING THE EUROPEAN UNION
CUSTOMS**

**The Trade Remedies (Increase in Imports Causing Serious
Injury to UK Producers) (EU Exit) Regulations 2019**

<i>Made</i>	- - - -	<i>at 5.04 p.m. on 4th March 2019</i>
<i>Laid before the House of Commons</i>	- - - -	<i>5th March 2019</i>
<i>Coming into force</i>	- -	<i>6th March 2019</i>

The Secretary of State for International Trade, in exercise of the powers conferred by sections 13, 32(7) and (8), 51 and 56 of, and Schedule 5 to, the Taxation (Cross-border Trade) Act 2018⁽¹⁾, makes the following Regulations.

PART 1

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019.

(2) These Regulations come into force on 6th March 2019.

(3) These Regulations have effect subject to the modifications in Part 10 until the TRA is established.

(4) Following the establishment of the TRA, any preliminary decision or determination made by the Secretary of State under Parts 6, 7 and 9 of these Regulations as modified by Part 10, has effect as though it were a recommendation made by the TRA under the corresponding unmodified provision.

(1) 2018 c.22.

(5) Following the establishment of the TRA, anything done (or having effect as if done) by the Secretary of State in pursuance of a transitional function has effect as if done by the TRA, so far as that is required for continuing its effect.

(6) Following the establishment of the TRA, anything done (or having effect as if done) in relation to the Secretary of State in connection with a transitional function has effect as if done in relation to the TRA, so far as that is required for continuing its effect.

(7) If, on the establishment of the TRA, anything is in the process of being done by or in relation to the Secretary of State in connection with a transitional function, it may, following the establishment of the TRA, be continued by or in relation to the TRA.

(8) A “transitional function” is a function which—

- (a) is conferred on the Secretary of State by Part 10 of these Regulations;
- (b) corresponds to a function that will, following the establishment of the TRA, be exercisable by the TRA under Parts 2 to 9 of these Regulations; and
- (c) following the establishment of the TRA, will not be exercisable by the Secretary of State.

Interpretation

2. In these Regulations—

“the Act” means the Taxation (Cross-border) Trade Act 2018;

“applicant UK producers” has the meaning given by paragraph 7(1)(a)(i) of Schedule 5 to the Act;

“application” means an application referred to in paragraph 7(1)(a) of Schedule 5 to the Act;

“authentication visit” means a visit conducted by the TRA to any premises in the United Kingdom the principal purpose of which is to obtain information, verify information supplied to it or to facilitate the progress of an investigation;

“contributor” means a person other than an interested party who has made themselves known to the TRA for the purpose of participating in an investigation or a review;

“definitive safeguarding remedy” means a definitive safeguarding amount or tariff rate quota referred to in Part 4 of Schedule 5 to the Act;

“directly competitive goods” means goods produced in the United Kingdom which are directly competitive with the goods identified, goods concerned or goods subject to review as appropriate;

“extension review” has the meaning given by regulation 35 (extension review);

“goods concerned” means the goods described in the notice of initiation of an investigation (see paragraph 2 of the Schedule);

“goods identified” means the goods in relation to which the applicant UK producers is requesting the TRA to conduct an investigation;

“goods subject to review” means the goods described in the notice of initiation of a review;

“importer” of goods means a person liable to pay import duty in respect of the goods;

“increased quantities” has the meaning given by paragraph 1 of Schedule 5 to the Act;

“interested party” means—

- (a) a government of the relevant foreign country or territory;
- (b) an overseas exporter or importer of the goods concerned or the goods subject to review;
- (c) a trade or business association of producers, overseas exporters or importers of the goods concerned or the goods subject to review;

- (d) a producer of the like goods or directly competitive goods in the United Kingdom; or
 - (e) a trade or business association of UK producers of the like goods or directly competitive goods;
- “investigation” means a safeguarding investigation;
- “mid-term review” has the meaning given by regulation 34 (mid-term review);
- “non-confidential summary” has the meaning given by regulation 16(6)(a);
- “overseas exporter” means a person outside of the United Kingdom that exports goods to the United Kingdom;
- “pace of liberalisation” means the process by which a definitive safeguarding remedy or tariff rate quota becomes progressively smaller in accordance with paragraphs 17(4)(b) or 18(5)(b) of Schedule 5 to the Act;
- “period of investigation” has the meaning given by regulation 4 (increased quantities);
- “provisional safeguarding remedy” means a provisional safeguarding amount or provisional tariff rate quota referred to in Part 3 of Schedule 5 to the Act;
- “review applicant” means a person who applies to the TRA for the initiation of a review;
- “review application” means an application for a review made in accordance with Part 6;
- “statement of reasons” has the meaning given by regulation 16(6)(b);
- “UK producers” has the meaning given by paragraph 3(1) of Schedule 5 to the Act;
- “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(2).

PART 2

Increased quantities

Purpose of Part 2

3. The TRA is to determine, for the purpose of an investigation, whether the goods concerned have been or are being imported into the United Kingdom in increased quantities in accordance with this Part.

Increased quantities

4.—(1) The TRA must assess whether the goods concerned have been or are being imported into the United Kingdom in increased quantities by reference to a period of time for which it determines that there is sufficient data available in order for it to make that assessment (the “period of investigation”).

(2) In order to determine whether the goods concerned are imported into the United Kingdom in increased volumes for the purpose of paragraph 1(1)(a) of Schedule 5 to the Act, the TRA must consider whether there has been—

- (a) an absolute increase in the volume of the goods concerned imported into the United Kingdom; or

- (b) a relative increase in the volume of the goods concerned imported into the United Kingdom compared with the total domestic production in the United Kingdom of the like goods and directly competitive goods.
- (3) When making a determination under paragraph (2), the TRA may take into account any information it considers relevant.
- (4) Unless regulation 44 (other exception) applies, when making a determination under paragraph (2), the TRA must consider imports of the goods concerned from all foreign countries and territories.

Significant increase in the importation of the goods concerned

5.—(1) Where the TRA determines under regulation 4 (increased quantities) that there has been an increase in the volume of the goods concerned imported into the United Kingdom, the TRA must determine whether that increase is significant for the purpose of paragraph 1(1)(b) of Schedule 5 to the Act.

- (2) For the purpose of paragraph (1), the TRA must consider—
 - (a) the rate and volume of imports of the goods concerned into the United Kingdom;
 - (b) regulation 6 (foreseeability); and
 - (c) any other factors it considers relevant.

Foreseeability

6.—(1) Pursuant to paragraph 1(2)(c) of Schedule 5 to the Act, the importation of the goods concerned in increased quantities into the United Kingdom was not foreseeable where the TRA considers that the increase is a result of unforeseen developments.

- (2) In determining whether developments were unforeseen, the TRA may consider—
 - (a) changes in patterns of demand for the goods concerned, like goods and directly competitive goods;
 - (b) global overcapacity or increases in production capacity of the goods concerned;
 - (c) economic or political crises; and
 - (d) any other factors it considers relevant.
- (3) Where the TRA determines that an increase in the importation of the goods concerned was foreseeable, that increase is not significant for the purpose of regulation 5 (significant increase in the importation of the goods concerned).

PART 3

Serious injury and causation

Serious injury

7. Where the TRA has determined in accordance with paragraph 2 of Schedule 5 to the Act and Part 2 of these Regulations that the goods concerned have been or are being imported into the United Kingdom in increased quantities, it must consider whether those goods have caused or are causing serious injury to UK producers in accordance with this Part.

Determination of serious injury

8.—(1) The TRA is to determine whether UK producers of the like goods and directly competitive goods have suffered or are suffering serious injury for the purpose of paragraph 6 of Schedule 5 to the Act in accordance with this regulation.

(2) A threat of significant overall impairment to the position of UK producers only arises where the TRA considers that threat to be clearly imminent.

(3) In order to determine whether UK producers have suffered or are suffering serious injury (see paragraph 2 of Schedule 5 to the Act), the TRA must assess all relevant economic factors having a bearing on UK producers including—

- (a) the rate and volume of increase of the importation of the goods concerned into the United Kingdom, in absolute or relative terms;
- (b) the export capacity of the goods concerned in foreign countries or territories and the likelihood that the capacity will be exported to the United Kingdom;
- (c) the share of the domestic market in the United Kingdom taken by the importation of the goods concerned in increased quantities;
- (d) changes in the UK producers' level of—
 - (i) sales;
 - (ii) productivity;
 - (iii) production;
 - (iv) capacity utilisation;
 - (v) profits and losses; and
 - (vi) employment.

Causation and non-attribution

9.—(1) This regulation applies where the TRA is determining, for the purpose of regulation 8 (determination of serious injury), whether or not serious injury has been or is being caused to UK producers by the importation of the goods concerned in increased quantities into the United Kingdom.

(2) For the purpose of paragraph (1), the TRA may consider—

- (a) price effects of the importation of the goods concerned in increased quantities on the like goods and directly competitive goods in the United Kingdom, including the depression or suppression of price increases which would otherwise have occurred;
- (b) volume effects of the importation of the goods concerned in increased quantities on the like goods and directly competitive goods in the United Kingdom; and
- (c) any other known factors that it considers relevant.

(3) The TRA must consider whether any known factors other than the importation of the goods concerned in increased quantities into the United Kingdom has caused or is causing serious injury to UK producers.

(4) The TRA must not attribute to the goods concerned injury caused by known factors other than the importation of the goods concerned into the United Kingdom.

PART 4

Determination of an adequate amount to prevent or remove serious injury and remedies

Determination and assessment of an adequate amount to prevent or remove serious injury

10.—(1) For the purpose of paragraphs 12(4), 13(5), 17(4)(a) and 18(5)(a) of Schedule 5 to the Act, the TRA must determine a provisional safeguarding remedy or definitive safeguarding remedy (a “relevant remedy”) in accordance with this Part.

(2) The TRA must determine the relevant remedy which it is satisfied is necessary to prevent or remove serious injury to UK producers of the like goods and directly competitive goods based on an assessment of the minimum increase in average import prices of the goods concerned that would prevent or remove serious injury.

(3) In making that assessment, where relevant, the TRA must have regard to—

- (a) the weighted average price of the goods concerned imported into the United Kingdom; and
- (b) an assessment of the prices in the United Kingdom that UK producers of the like goods and directly competitive goods could have expected to achieve under normal conditions of competition in the absence of the importation of the goods concerned in increased quantities into the United Kingdom.

(4) Where the TRA determines that it is appropriate to recommend the imposition of a provisional tariff rate quota or tariff rate quota, in determining the level at which such tariff rate quota should be set, it must consider the desirability of maintaining, as far as possible, traditional trade flows.

(5) Paragraph (6) applies where—

- (a) a provisional safeguarding remedy is in force;
- (b) the TRA has been made aware of contracts concluded on normal terms and conditions before the entry into force of that provisional safeguarding remedy; and
- (c) the TRA determines that it is appropriate to recommend the imposition of a tariff rate quota.

(6) Where this paragraph applies, in determining the level at which the tariff rate quota should be set, the TRA must consider the volume of the goods concerned to be exported under the contracts referred to in paragraph (5)(b).

PART 5

Initiation and conduct of an investigation

CHAPTER 1

General provisions and the use of information

Purpose of Part 5

11. Pursuant to paragraphs 7, 8 and 30 of Schedule 5 to the Act, the initiation and conduct of investigations are subject to this Part.

General provisions

12.—(1) Subject to any contrary provision made in this Part, the TRA may do anything it considers appropriate in connection with the exercise of any of its functions in accordance with these Regulations.

(2) In particular, the TRA may—

- (a) consider information supplied to it by any person;
- (b) request that any person supply information to it;
- (c) set time limits for responses to its requests and vary such time limits;
- (d) specify the format or structure of responses to its requests;
- (e) accept information supplied to it outside any applicable time limit.

Revision of scope of an investigation

13.—(1) This regulation applies after the TRA has published a notice of its determination to initiate an investigation in accordance with paragraph 7(6)(b) of Schedule 5 to the Act.

(2) Subject to paragraph (3), the TRA must not revise the scope of an investigation.

(3) The TRA may revise the scope of an investigation so as to amend—

- (a) the description of the goods concerned; or
- (b) the period of investigation,

where it has provided interested parties and contributors with reasons for the proposed revision and has given them an opportunity to comment.

(4) In determining whether to revise the scope of an investigation under paragraph (3), the TRA must consider—

- (a) the likelihood of it having determined to initiate an investigation with the scope as set out in its proposed revision had the information available to it after the initiation of an investigation been set out in the application;
- (b) whether the proposed revision may cause any prejudice to the interests of any interested party or contributor; and
- (c) whether the proposed revision will prevent the TRA from proceeding with the investigation expeditiously.

(5) Where the TRA has made a determination under this regulation to revise the scope of the investigation, it must publish an amended notice of initiation.

Deemed service

14. Any document submitted to the TRA is deemed to have been submitted on the earlier of—

- (a) the first working day after the day on which it is received by the TRA; or
- (b) the day on which the TRA issues an acknowledgement of receipt.

Public file

15. The TRA must, in respect of every investigation, establish and maintain a file which is open to the public (a “public file”) containing information, other than confidential information, which the TRA considers material to the investigation.

Confidential information

- 16.—(1) Paragraph (3) applies where a person—
- (a) supplies information to the TRA in connection with the exercise by the TRA of any of its functions under the Act or these Regulations;
 - (b) either—
 - (i) requests the TRA to treat that information as confidential on the grounds that that information is by its nature confidential; or
 - (ii) supplies that information to the TRA on a confidential basis;
 - (c) demonstrates to the TRA good cause as to why the TRA must treat such information as confidential; and
 - (d) submits—
 - (i) a non-confidential summary (see paragraph (6)(a)) of that information; or
 - (ii) in exceptional circumstances, a statement of reasons (see paragraph (6)(b)).
- (2) For the purpose of paragraph (1)(b)(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 had acquired it.
- (3) Where this paragraph applies, the TRA must treat such information as confidential.
- (4) The TRA may treat information as confidential where it is supplied to it otherwise than in accordance with paragraph (1), and, where it does so, it must—
- (a) inform the person supplying the information that it intends to treat that information as confidential; and
 - (b) request that that person submits a sufficiently detailed non-confidential summary of that information.
- (5) The Secretary of State must treat as confidential the information supplied by the TRA under regulation 17(2) which the TRA identifies as information that it is treating as confidential under this regulation.
- (6) In this regulation—
- (a) a “non-confidential summary” in relation to information means a sufficiently detailed summary for the public file referred to in regulation 15 (public file) which would enable a person other than 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 exercise of any function by the TRA under the Act or these Regulations;
 - (b) a “statement of reasons” means a statement setting out the reasons of a person supplying information to the TRA as to why the TRA should treat that information as confidential and why summarisation of that information in accordance with this regulation is not possible.

Permitted disclosure

- 17.—(1) The TRA or the Secretary of State may disclose information which the TRA or the Secretary of State treats as confidential 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 by the TRA or the Secretary of State of any functions under the Act or these Regulations;
- (c) made for the purpose of an international dispute relating to the exercise by the TRA or the Secretary of State of any functions under the Act or these Regulations; or
- (d) required or permitted by any other enactment or rule of law.

(2) The TRA may disclose to the Secretary of State information that it is treating as confidential for the purpose of the Secretary of State exercising functions under the Act or these Regulations.

(3) Where the TRA or the Secretary of State has a discretion to make a disclosure under paragraph (1)(b), (c) or (d), the TRA or the Secretary of State must consider whether such disclosure is likely to allow, or result in, such information being made available to a competitor of—

- (a) the person supplying that information; or
- (b) the person to which the information relates.

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

The use of information and facts available to the TRA from secondary sources

18.—(1) This regulation applies in respect of the exercise by the TRA of functions under the Act or these Regulations.

(2) The TRA must have regard to information supplied to it by an applicant UK producer, an interested party, a contributor or any other person from whom it has requested information, provided that the information—

- (a) is verifiable;
- (b) has been appropriately submitted such that the TRA may use the information without undue difficulty;
- (c) has been supplied to it within any applicable time limit; and
- (d) where relevant, has been supplied to it in a form that it has requested.

(3) The TRA must not have regard to oral statements referred to in regulation 28(4) unless—

- (a) those statements are reproduced in writing; and
- (b) it has made the written reproductions available to interested parties and contributors.

(4) The TRA may disregard information which it treats as confidential (which it would otherwise have had regard to) where the person supplying that information has not supplied a non-confidential summary or a statement of reasons in accordance with regulation 16 (confidential information), unless it is satisfied from appropriate sources that such information is correct.

(5) The TRA may make a determination on the basis of information obtained from secondary sources, including information supplied in an application, provided that it—

- (a) does so with special circumspection; and
- (b) where practicable, verifies such information from independent sources, including but not limited to published price lists, official import statistics or customs returns and data pertaining to the relevant markets.

Acceptance or rejection of information

19.—(1) Where a person has supplied information to the TRA outside any applicable time limit, the TRA may accept such information where it considers that—

- (a) doing so would not significantly impede the progress of an investigation; or
- (b) it is appropriate to accept that information, having regard to the potential significance of the information on any determination it may make and any explanation provided by that person as to why it should accept that information.

(2) Where the TRA rejects information for any reason, it must publish its reasons for rejection in the statement of intended final determination (see regulation 29) or, where such information is rejected after the statement of intended final determination has been published, in the final affirmative or final negative determination.

Non-cooperation

20.—(1) Where the TRA determines that an interested party has failed to cooperate with an investigation or has otherwise significantly impeded the progress of an investigation (a “non-cooperative party”), it may disregard the information supplied by that party.

(2) For the purpose of paragraph (1), the TRA must not determine that an interested party is a non-cooperative party where it—

- (a) determines that that interested party has acted to the best of their ability to cooperate with an investigation; or
- (b) has accepted that compliance with any request for information to be supplied in a particular form would be unreasonably burdensome to that party.

CHAPTER 2

Initiation of an investigation

Application

21.—(1) An application made by applicant UK producers must contain as much of the information listed in paragraph 1 of the Schedule as is reasonably available to them.

(2) An application referred to in paragraph (1) may contain such additional information as the applicant UK producers consider relevant.

(3) Where applicant UK producers, by notice in writing to the TRA, withdraw their application prior to the publication of the notice referred to in paragraph 7(6)(b) of Schedule 5 to the Act, the application is considered not to have been made.

Market share requirement

22. For the purpose of paragraph 7 of Schedule 5 to the Act, the market share requirement is met where the TRA is satisfied that UK producers’ “share” of the market is—

- (a) at least 1 per cent.; or
- (b) such other higher share as the TRA considers appropriate taking into account the goods and the particular market for those goods.

Assessment of an application

23.—(1) The TRA must examine the accuracy and adequacy of the information contained in, or supplied with, an application to determine whether it is sufficient to justify the initiation of an investigation under paragraph 7 of Schedule 5 to the Act.

(2) For the purpose of paragraph 7(1)(a)(i) of Schedule 5 to the Act, an application is made by or on behalf of UK producers where the TRA determines that the application is supported by UK producers whose collective output constitutes at least 25 per cent. of the total production in the United Kingdom of the like goods and directly competitive goods, and is not opposed by other UK producers of the like goods and directly competitive goods whose collective output is greater than or equal to that percentage.

(3) The TRA may reject an application which it considers does not satisfy the requirements in regulation 21(1), but it must not do so where the requirement in question has been expressly waived by it.

(4) The TRA may reject an application if it is not made via the TRA's case management system.

CHAPTER 3

Conduct of an investigation

Registration of interest and the issuing of questionnaires

24.—(1) Where the TRA has made a determination to initiate an investigation, it must set a period during which interested parties and any other person may make themselves known to the TRA (a “registration period”).

(2) The TRA may issue a questionnaire (see regulation 25) to—

- (a) interested parties who have made themselves known to the TRA during the registration period;
- (b) UK producers, importers and overseas exporters (or associations thereof) which the applicant UK producers have identified in their application; and
- (c) contributors who have made themselves known to the TRA during the registration period.

(3) Where the TRA uses a limited examination in accordance with regulation 26 (limited examination), it may limit the issuing of questionnaires to those interested parties included in that examination.

(4) Where an interested party or a contributor makes themselves known to the TRA after the end of the registration period, the TRA may issue a questionnaire to that person if it is satisfied that doing so would not significantly impede the progress of the investigation.

(5) Where an interested party makes themselves known to the TRA after the end of the registration period, the TRA may include that party in a limited examination in accordance with regulation 26 (limited examination).

(6) The TRA must not issue a questionnaire after the statement of intended final determination is published (see regulation 29).

Form of questionnaires and deficiency notice

25.—(1) Subject to paragraph (2), the questionnaire referred to in regulation 24 (registration of interest and the issuing of questionnaires) may take such form and contain such questions and other material as the TRA considers appropriate for the purpose of the investigation.

(2) A questionnaire must set out the date by which it must be returned to the TRA.

(3) Where, following a review of the returned questionnaire, the TRA determines that it is incomplete or that the information supplied to it is inadequate, it may issue a notice to the relevant interested party or contributor requesting clarification or supplementary information (a “deficiency notice”).

(4) The deficiency notice must set out a time limit by which any missing, clarificatory or supplementary information is to be supplied.

Limited examination

26.—(1) The TRA may, where it considers it appropriate for the purpose of making any determination or conducting any analysis under the Act or these Regulations, limit its examination to a sample of—

- (a) categories of goods;
- (b) UK producers;
- (c) transactions for the purchase of the like goods and directly competitive goods in the United Kingdom; or
- (d) anything else the TRA considers it appropriate to examine in order to make its determination.

(2) Where the TRA limits its examination in accordance with this regulation, it may use any reasonable method to determine the sample it considers appropriate.

Authentication visit and authentication visit report

27.—(1) The TRA may make such arrangements in connection with an authentication visit as it considers appropriate.

(2) Where the TRA conducts an authentication visit, it must—

- (a) provide a written report on the authentication visit (an “authentication report”) to the person subject to that visit;
- (b) require the person subject to an authentication visit to supply it with a version of the authentication report with summarisation of the information that it requests the TRA to treat as confidential (a “non-confidential authentication report”); and
- (c) set a time limit by which the non-confidential authentication report is to be supplied.

(3) In the application of regulation 16 (confidential information) to this regulation, a reference in that regulation to—

- (a) the supply of information is to be taken to include information obtained by the TRA from the person subject to an authentication visit; and
- (b) a non-confidential summary is to be taken to include a non-confidential authentication report.

Hearing

28.—(1) The TRA may conduct a hearing at any time during an investigation either—

- (a) at the request of any interested party; or
- (b) on its own initiative.

(2) The TRA must notify interested parties and contributors of any processes and procedures to be adopted at a hearing in advance of it taking place.

(3) When deciding whether and how to conduct a hearing, the TRA must have regard to—

- (a) the need to preserve the confidentiality of information it is treating as confidential in accordance with regulation 16(3) or (4); and
- (b) whether holding a hearing and whether such processes and procedures it proposes to adopt at a hearing would be convenient to interested parties and contributors.

(4) The TRA must allow interested parties and contributors to present their views by written and oral statements (see regulation 18(3)).

(5) Where the TRA decides to conduct a hearing, it—

- (a) must give sufficient notice of the hearing to interested parties and contributors;
 - (b) must allow interested parties and contributors to attend; and
 - (c) may request that an interested party or a contributor intending to attend to supply the TRA with the information they wish to rely on at the hearing.
- (6) Where the TRA makes a request referred to in paragraph (5)(c), it must set a time limit by which such a request must be complied with.
- (7) An interested party or a contributor is not under an obligation to attend a hearing.
- (8) The TRA must not determine that an interested party who fails to attend a hearing is a non-cooperative party (see regulation 20) or that such failure to attend is otherwise prejudicial to its interests.

Disclosure

29.—(1) Before making a final affirmative or final negative determination for the purpose of paragraph 9(5) of Schedule 5 to the Act, the TRA must—

- (a) publish a statement (a “statement of intended final determination”) which sets out—
 - (i) the final determination that it intends to make (“intended final determination”);
 - (ii) a summary of the facts considered by the TRA during its investigation;
 - (iii) those facts referred to in sub-paragraph (ii) that formed the basis of the intended final determination; and
- (b) inform interested parties who have supplied information that has been considered by the TRA—
 - (i) how it has used the information supplied by that party in making the intended final determination; and
 - (ii) of the details of the TRA’s assessment forming the basis of the intended final determination.

(2) The TRA must specify in the statement of intended final determination a period during which it will consider comments on that statement from interested parties, contributors or any other person who has supplied information to it.

CHAPTER 4

Termination of an investigation

Termination

30.—(1) The TRA may, where it considers it appropriate, terminate an investigation on the request of the applicant UK producers.

- (2) Where the TRA rejects a request referred to in paragraph (1), it must—
 - (a) publish a notice of its determination setting out the reasons for its determination; and
 - (b) notify interested parties and contributors.
- (3) Where the TRA terminates an investigation under this regulation, it must—
 - (a) publish a notice containing the information referred to in paragraph 8 of the Schedule; and
 - (b) notify interested parties and contributors.

CHAPTER 5

Content of notices, preliminary adjustment plans and adjustment plans

Content of notices

31.—(1) A notice published by the TRA in accordance with Schedule 5 to the Act and these Regulations must contain the information listed in the Schedule to these Regulations applicable to the type of notice in question.

(2) A notice published by the Secretary of State in accordance with Schedule 5 to the Act and these Regulations must contain the information listed in the Schedule to these Regulations applicable to the type of notice in question.

(3) A notice referred to in paragraph (1) may contain any other information as the TRA considers appropriate.

(4) A notice referred to in paragraph (2) may contain any other information as the Secretary of State considers appropriate.

Form and content of a preliminary adjustment plan or an adjustment plan

32.—(1) A preliminary adjustment plan referred to in paragraph 7(3) of Schedule 5 to the Act or an adjustment plan referred to in paragraph 16(5)(b) of Schedule 5 to the Act may be in such form as the TRA is willing to accept.

(2) A preliminary adjustment plan or an adjustment plan may contain information relating to—

- (a) how UK producers intend to adjust to the importation of the goods identified or the goods concerned in increased quantities as appropriate;
- (b) potential innovation, research and development initiatives to improve the competitiveness of UK producers; and
- (c) changes which UK producers intend to make to improve efficiency, including workforce effectiveness and investing in new or different machinery.

(3) The TRA must determine whether the content of an adjustment plan contains sufficient information to enable it to make a recommendation under paragraph 16(3) of Schedule 5 to the Act.

(4) In making an assessment under paragraph (3), the TRA may seek additional information from UK producers and take into consideration any factors it considers relevant.

PART 6

Reviews

Purpose of Part 6

33. Reviews by the TRA of the continuing application, including variation, revocation and extension, of a definitive safeguarding remedy to goods pursuant to paragraph 21 of Schedule 5 to the Act are subject to the provisions of this Part.

Mid-term review

34.—(1) Where a definitive safeguarding remedy is intended to apply for more than three years, the TRA must initiate a review (a “mid-term review”) not later than half way through the intended duration of that remedy, to consider whether—

- (a) its continuing application is necessary to—
 - (i) remove the serious injury, or to prevent further serious injury, caused by the importation of the goods subject to review in increased quantities, to UK producers; or
 - (ii) facilitate the adjustment by those UK producers to the importation of the goods subject to review in increased quantities; and
- (b) an alternative definitive safeguarding amount or tariff rate quota would better meet the aim of—
 - (i) removing or preventing serious injury to UK producers; or
 - (ii) facilitating the adjustment by those UK producers to the importation of the goods subject to review in increased quantities.
- (2) Where the TRA initiates a mid-term review, the TRA must—
 - (a) publish a notice of its determination to initiate a mid-term review (a “notice of initiation of a review”) containing the information referred to in paragraph 9 of the Schedule; and
 - (b) notify the Secretary of State and interested parties.
- (3) In conducting a mid-term review, the TRA may consider, among other things—
 - (a) whether the circumstances under which the definitive safeguarding remedy was applied have changed significantly;
 - (b) whether it is likely that serious injury will recur if the definitive safeguarding remedy is revoked;
 - (c) whether serious injury has been removed or reduced, in whole or in part, due to the application of the definitive safeguarding remedy;
 - (d) information on progress in implementing the adjustment plan to help decide if the pace of liberalisation is appropriate.
- (4) Following the conclusion of a mid-term review, the TRA may determine that the application of a definitive safeguarding remedy should be—
 - (a) maintained in accordance with the relevant public notice made under section 13 of the Act;
 - (b) varied in respect of its level, form or pace of liberalisation; or
 - (c) revoked.

Extension review

35.—(1) The TRA may conduct a review (an “extension review”) to consider whether the expiry of a definitive safeguarding remedy would likely result in a continuation or recurrence of serious injury to UK producers of the relevant goods.

- (2) The TRA may initiate an extension review—
 - (a) following the receipt of an application made by or on behalf of UK producers; or
 - (b) on its own initiative.
- (3) The TRA must notify interested parties of the expiry of a definitive safeguarding remedy in sufficient time to allow interested parties to make an application for an extension review.
- (4) An application for an extension review must not be made more than 12 months before the scheduled expiry of a definitive safeguarding remedy.
- (5) Where the TRA initiates an extension review, the TRA must—
 - (a) publish a notice of its determination to initiate an extension review (a “notice of initiation of a review”) containing the information referred to in paragraph 9 of the Schedule; and

- (b) notify the Secretary of State and interested parties.
- (6) In conducting an extension review, the TRA must consider—
 - (a) whether the importation of the goods subject to review in increased quantities is likely to recur;
 - (b) whether serious injury has been removed, or reduced, in whole or in part due to the application of the definitive safeguarding remedy;
 - (c) whether it is likely that serious injury will recur if the application of the definitive safeguarding remedy is not extended;
 - (d) whether the circumstances of UK producers, or domestic or overseas market conditions, are such that the serious injury caused by the importation of the goods subject to review in increased quantities is likely to recur;
 - (e) any adjustments made by UK producers; and
 - (f) any other factors it considers relevant.
- (7) Following an extension review, the TRA may determine that—
 - (a) the application of a definitive safeguarding remedy to the goods subject to review should expire in accordance with the public notice made under section 13 of the Act; or
 - (b) the application of such remedy be extended for a period which is necessary to—
 - (i) prevent or remove serious injury; and
 - (ii) facilitate adjustment by UK producers.
- (8) Where the TRA makes a determination under paragraph (7)(b), the TRA—
 - (a) must determine that the pace of liberalisation of the definitive safeguarding remedy should be maintained or increased; and
 - (b) may determine that the form of the definitive safeguarding remedy should be varied.
- (9) The period for which a definitive safeguarding remedy applies to goods as a consequence of this regulation must not exceed eight years and such period includes the specified period referred to in paragraph 16(3)(a) or (b) of Schedule 5 to the Act.
- (10) The TRA may reject an extension review application if it is not made via the TRA’s case management system.
- (11) Where the TRA rejects an extension review application, it must notify the review applicant.

The conduct of reviews

- 36.**—(1) Where the TRA considers it appropriate, the TRA may expand or limit the matters to be considered in a review.
- (2) The TRA must provide interested parties with an opportunity to comment prior to acting in accordance with paragraph (1).
- (3) The TRA may, where it considers it appropriate, terminate an extension review on the request of the review applicant.
- (4) Parts 2 to 5 apply to this Part to the extent that the TRA considers relevant.
- (5) If the TRA applies any part of Parts 2 to 5 to a review, any references in those Parts to “goods concerned” should be read as “goods subject to review”.

TRA's recommendation to the Secretary of State

37.—(1) Unless paragraph (2) applies, the TRA must make a recommendation to the Secretary of State, where it determines that the application of a definitive safeguarding remedy should be varied, revoked or replaced.

(2) Where the TRA determines that the application of a definitive safeguarding remedy be extended in accordance with regulation 35 (extension review), it may make a recommendation in accordance with paragraph (1) only if it is satisfied that the application of a definitive safeguarding remedy meets the economic interest test (see paragraph 23 of Schedule 5 to the Act).

(3) Before making a recommendation that the application of a definitive safeguarding remedy be varied which comprises or includes varying (or providing for) the allocation of a tariff rate quota, the TRA must consult the Secretary of State regarding the proposed allocation.

(4) The TRA's recommendation must include—

- (a) a description of the goods to which the recommendation relates;
- (b) the reasons for its recommendation;
- (c) where relevant, the recommended period for which the definitive safeguarding remedy should be applicable, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation;
- (d) information which the TRA considers is likely to be relevant to the Secretary of State's decision as to whether it would not be in the public interest to accept the TRA's recommendation (see regulation 38);
- (e) any other information which the TRA considers relevant.

(5) Where the TRA terminates a review but does not make a recommendation in accordance with paragraph (1), the TRA must—

- (a) publish a notice containing the information referred to in paragraph 12 of the Schedule; and
- (b) notify the Secretary of State and interested parties.

Acceptance or rejection of the TRA's recommendation by the Secretary of State

38.—(1) Where the TRA makes a recommendation in accordance with regulation 37(1), the Secretary of State must accept or reject the recommendation.

(2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that—

- (a) where relevant, the application of a definitive safeguarding remedy to the goods subject to review in accordance with the recommendation does not meet the economic interest test (see paragraph 23 of Schedule 5 to the Act); or
- (b) it is not otherwise in the public interest to accept the recommendation.

(3) Where the Secretary of State rejects the recommendation, the Secretary of State must—

- (a) publish a notice containing the information referred to in paragraph 10 or 11 of the Schedule;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

PART 7

Suspension

Suspension of a definitive safeguarding remedy

39.—(1) The TRA may make a recommendation to the Secretary of State (a “suspension recommendation”) that the application of a definitive safeguarding remedy be suspended for a specified period (the “period of suspension”) in relation to some or all of the goods specified in the public notice made by the Secretary of State under section 13 of the Act.

(2) The TRA may make a suspension recommendation where—

- (a) paragraph (3) applies;
- (b) it is satisfied that a suspension is appropriate; and
- (c) UK producers have been given the opportunity to comment on the suspension proposed in the application for suspension (see regulation 40).

(3) This paragraph applies where the TRA, whether or not as a consequence of considering an application in accordance with regulation 40 (application for suspension), considers that the circumstances in paragraph (4) exist.

(4) Those circumstances are that—

- (a) market conditions have changed temporarily; and
- (b) as a consequence of the change in market conditions, the serious injury caused to UK producers is unlikely to recur if the application of a definitive safeguarding remedy were to be suspended.

(5) In considering whether to make a suspension recommendation, the TRA may take such steps as it considers appropriate.

(6) Where the TRA rejects an application for suspension, the TRA must notify the applicant.

(7) Where the TRA considers that it is not appropriate to make a suspension recommendation, it must—

- (a) publish a notice of the reasons for its determination; and
- (b) notify the Secretary of State and interested parties.

(8) Where the TRA considers that it is appropriate to make a suspension recommendation, the recommendation must include—

- (a) the reasons for the TRA’s determination;
- (b) the recommended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation; and
- (c) any other information the TRA considers relevant.

(9) If the TRA makes a suspension recommendation, the Secretary of State must decide whether to accept or reject it.

(10) The Secretary of State may only reject a suspension recommendation where the Secretary of State considers that it is not in the public interest to accept it.

(11) Where the Secretary of State rejects a suspension recommendation, the Secretary of State must—

- (a) publish a notice containing the information referred to in paragraph 13 of the Schedule;
- (b) notify interested parties; and

(c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

(12) Where the application of a definitive safeguarding remedy is suspended under this Part, the period of suspension counts towards the specified period of the definitive safeguarding remedy as stated in the relevant public notice.

Application for suspension

40.—(1) An application for suspension of a definitive safeguarding remedy (a “suspension application”) in accordance with regulation 39 (suspension of a definitive safeguarding remedy) may be made by or on behalf of an interested party.

(2) A suspension application to the TRA must include as far as possible information regarding—

- (a) the change in the market conditions;
- (b) the temporary nature of that change; and
- (c) the effect of the change on UK producers.

(3) Where a suspension application is withdrawn by the applicant, the TRA may still consider whether it is appropriate to make a suspension recommendation (see regulation 39).

Period of suspension

41.—(1) The period of suspension referred to in regulation 39(1) must not exceed nine months commencing on the day after the publication of the public notice under section 13 of the Act giving effect to the suspension.

(2) Following an application by an interested party, or where the TRA otherwise considers that it is appropriate, the TRA may recommend to the Secretary of State that the period of nine months referred to in paragraph (1) be extended to a maximum of 21 months (“extended period of suspension”).

(3) Where the TRA makes a recommendation in accordance with paragraph (2), but the duration of the extended period of suspension recommended is less than 21 months, the TRA may make a further recommendation to the Secretary of State to increase the duration of the extended period of suspension where it considers it is appropriate to do so, provided that the overall duration of the extended period of suspension does not exceed 21 months.

(4) Where the TRA rejects an application for an extension of the period of suspension, the TRA must notify the applicant.

(5) Where the TRA considers that it is not appropriate to make a recommendation to extend the period of suspension, it must—

- (a) publish a notice of its determination and the reasons for it; and
- (b) notify the Secretary of State and interested parties.

(6) Where the TRA considers that it is appropriate to make a recommendation to extend the period of suspension, the recommendation must include—

- (a) the reasons for its recommendation;
- (b) the recommended extended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation; and
- (c) any other information the TRA considers relevant.

(7) If the TRA makes a recommendation in accordance with this regulation, the Secretary of State must decide whether to accept or reject it.

(8) The Secretary of State may only reject a recommendation where the Secretary of State considers that it is not in the public interest to accept the recommendation.

(9) Where the Secretary of State rejects a recommendation, the Secretary of State must—

- (a) publish a notice containing the information referred to in paragraph 14 of the Schedule;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

Reinstatement of a definitive safeguarding remedy

42.—(1) The TRA may make a recommendation to the Secretary of State to reinstate a definitive safeguarding remedy where it determines that the circumstances in regulation 39(4) no longer exist.

(2) Where the TRA makes a recommendation in accordance with this regulation, the recommendation must include—

- (a) the reasons for the TRA’s determination; and
- (b) any other information the TRA considers relevant.

(3) If the TRA makes a recommendation under paragraph (1), the Secretary of State must decide whether to accept or reject it.

(4) Where the Secretary of State accepts the recommendation, the Secretary of State must—

- (a) publish a public notice under section 13 of the Act containing the information referred to in paragraph 15 of the Schedule; and
- (b) notify interested parties.

(5) The Secretary of State may only reject a recommendation where the Secretary of State considers that it is not in the public interest to accept the recommendation.

(6) Where the Secretary of State rejects a recommendation, the Secretary of State must—

- (a) publish a notice containing the information referred to in paragraph 15 of the Schedule;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

PART 8

Supplementary

Developing country exception

43.—(1) Subject to paragraph (2), the TRA must not recommend the application of a provisional safeguarding remedy or definitive safeguarding remedy to goods concerned which are imports from a developing country member of the WTO accounting for 3 per cent. or less of the total imports of those goods into the United Kingdom (a “low volume exporter”).

(2) Paragraph (1) does not apply in respect of any developing country member of the WTO if the imports from all low volume exporters collectively account for more than 9 per cent. of the total imports of the goods concerned into the United Kingdom.

Other exception

44.—(1) Where the TRA determines that the conditions in paragraph (2) are satisfied, the TRA must except goods originating from a foreign country or territory—

- (a) from the scope of a recommendation by the TRA to apply a provisional safeguarding remedy or definitive safeguarding remedy; and
- (b) from—
 - (i) its assessment on whether the goods concerned have been or are being imported into the United Kingdom in increased quantities under Part 2 of these Regulations; and
 - (ii) its determination on whether the importation of the goods concerned in increased quantities into the United Kingdom has caused or is causing serious injury to UK producers under Part 3 of these Regulations.

(2) 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 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)(3).

(3) 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.

PART 9

Transitional Provisions

Interpretation for Part 9

45. In this Part—

“additional rate of import duty” means the rate of import duty applicable to goods outside of the amount of a quota;

“EU Regulation” means Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products(4);

“specified” means specified by the Secretary of State in the determination referred to in regulation 46(2).

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

(4) OJ No L 31, 1.2.19, p 27.

The Secretary of State's determination

46.—(1) The Secretary of State may, before replacement day, make a relevant determination.

(2) A relevant determination is a determination that where, pursuant to the EU Regulation, tariff rate quotas are expected to apply to specified categories of steel products immediately before replacement day (referred to in this Part as “EU tariff rate quotas”), tariff rate quotas in respect of each of which the additional rate of import duty is the same as the corresponding EU rate, apply to the same categories of steel products upon and from replacement day until the appropriate date.

(3) In setting the amount of a tariff rate quota, the Secretary of State must recalculate the volume of the EU tariff rate quota applicable to the same goods to reflect the circumstances of the United Kingdom.

(4) The Secretary of State's determination must provide that the amount of each quota increases as the period for which the tariff rate quota applies progresses.

(5) The Secretary of State's determination may provide that a part or the whole of a tariff rate quota be allocated between certain countries and on terms as to a country being permitted to utilise any part not so allocated when its proportion has been exhausted.

(6) Except where the conditions in regulation 44(2) are satisfied or where paragraph (7) applies, a relevant determination must not except goods originating from a particular foreign country or territory from the application of a tariff rate quota.

(7) This paragraph applies where the relevant goods are goods originating from a developing country member of the WTO that is a low volume exporter provided the imports, during such period as the TRA determines is appropriate, from all such members who are low volume exporters collectively account for no more than 9 per cent. of the total imports of such goods into the United Kingdom.

(8) In this regulation—

“appropriate date” means the date upon which, pursuant to the EU Regulation, the definitive safeguard measures imposed by that regulation are due to expire;

“corresponding EU rate” means the additional rate of import duty in respect of an EU tariff rate quota;

“low volume exporter” has the meaning given by regulation 43(1);

“replacement day” means the day on which Part 1 of Schedule 7 to the Act comes into force in so far as it relates to any EU safeguard duty;

“safeguarding amount” means an additional amount of import duty.

Notification etc of determination

47.—(1) The Secretary of State must publish a notice of the determination referred to in regulation 46(2).

(2) The Secretary of State must make provision by public notice to give effect to the determination.

(3) The notice under paragraph (2) must—

(a) specify, in accordance with regulation 46 (the Secretary of State's determination)—

(i) which categories of steel products are subject to a tariff rate quota;

(ii) the period for which each tariff rate quota will be applicable;

(iii) the amount of the tariff rate quota applicable to each such category;

(iv) the amount of the tariff rate quota applicable to each such category during each part of that period;

- (v) where applicable, the countries between which a part or the whole of a tariff rate quota is allocated and the amount of each such country's allocation;
 - (vi) the rates of import duty to be applied to each category of steel products subject to a tariff rate quota;
 - (b) provide details of the exclusion of any goods from the application of a tariff rate quota;
 - (c) refer to the EU Regulation.
- (4) Paragraph (5) applies where the Secretary of State has made the determination referred to in regulation 46(1) and, before replacement day—
- (a) the Secretary of State has reconsidered the matter and determined that the tariff rate quotas referred to in regulation 46(2) should no longer apply upon and from that day;
 - (b) any of the EU tariff rate quotas are varied or cease to apply to goods; or
 - (c) the Secretary of State otherwise withdraws such a determination.
- (5) Where this paragraph applies, the Secretary of State must, where applicable—
- (a) publish a notice withdrawing the notice of the determination already published under paragraph (1);
 - (b) publish a notice revoking the public notice already given under paragraph (2).

Treatment of tariff rate quotas under this Part etc

48.—(1) Tariff rate quotas applicable to goods under this Part shall be treated as if they were tariff rate quotas applicable to goods following the Secretary of State's acceptance of a recommendation made by the TRA under paragraph 16(3) of Schedule 5 to the Act and, subject to the provision made by this Part and to the extent that the context permits, section 13 of the Act, that Schedule and the other Parts of these Regulations apply in relation to the former tariff rate quotas as they do in relation to tariff rate quotas applicable to goods following that acceptance.

(2) For the purpose of the application, in accordance with paragraph (1), of the other Parts of these Regulations in relation to tariff rate quotas applicable to goods under this Part, a reference in any of those Parts to a public notice under section 13 of the Act shall, in the case of such tariff rate quotas, be taken to include a public notice referred to in this Part.

(3) The date upon which a tariff rate quota applicable to goods under this Part began, shall be treated, for the purpose of any provision of Schedule 5 to the Act or these Regulations, as the date upon which the EU tariff rate quota in respect of the same category of steel products was imposed.

(4) The date upon which an EU tariff rate quota was imposed is, in the case of a definitive measure preceded by a provisional one, the date of the imposition of the provisional measure.

Review of tariff rate quotas under this Part

49.—(1) The TRA must—

- (a) conduct a review (referred to in this Part as the “transition review”) of the application of the tariff rate quotas applicable to goods under this Part; and
 - (b) initiate that review at the request of, and within any time period stipulated by, the Secretary of State.
- (2) Upon initiating the transition review, the TRA must—
- (a) publish a notice of its initiation of the review; and
 - (b) notify the Secretary of State accordingly.
- (3) The notice referred to in paragraph (2)(a) must contain—

- (a) details of the content of the public notice referred to in regulation 47(2);
 - (b) the information referred to in paragraph 9 of the Schedule.
- (4) The transition review is a review to consider whether goods belonging to each specified category of steel products were, during the same investigation period considered by the European Commission in connection with the EU tariff rate quotas, imported into the United Kingdom in increased quantities and, where the TRA finds that goods belonging to such a category were so imported, whether—
- (a) the importation of those goods in increased quantities would be likely to recur if they were no longer subject to a tariff rate quota;
 - (b) there would be serious injury to UK producers of the like goods and directly competitive goods if goods belonging to that category were no longer subject to a tariff rate quota;
 - (c) the continuation of a tariff rate quota is necessary to facilitate the adjustment of the UK producers of the like goods and directly competitive goods to the importation of goods belonging to that category; and
 - (d) whether an alternative tariff rate quota or the application of a safeguarding amount to goods belonging to that category would better meet the aim of preventing the recurrence of serious injury to the UK producers of the like goods and directly competitive goods.
- (5) The transition review may include the consideration of whether it is appropriate to—
- (a) increase the amount of a tariff rate quota and, if so, to what level;
 - (b) vary (or provide for) the allocation of a tariff rate quota and, if so, how;
 - (c) reduce the additional amount of import duty and, if so, to what level;
 - (d) reduce the period for which goods are subject to the quota and, if so, to what period;
 - (e) increase the pace of liberalisation and, if so, how.
- (6) Parts 2 to 5 apply to the transition review to the extent that the TRA considers relevant.
- (7) Where other Parts of these Regulations are applied to the transition review, references in those Parts to “goods concerned” and similar expressions shall be construed as references to the goods to which the application of a tariff rate quota is being reviewed.
- (8) The TRA may initiate the transition review before replacement day.
- (9) If the TRA initiates the transition review before replacement day, it may terminate the review.
- (10) Where the TRA terminates the transition review, it must—
- (a) conduct the transition review at a later date;
 - (b) initiate that review at the request of, and within any time period stipulated by, the Secretary of State;
 - (c) publish a notice containing the information referred to in paragraph 12 of the Schedule.

Determinations of the TRA

50.—(1) The TRA must, in accordance with this regulation, make determinations covering all of the goods subject to review.

(2) Where, under regulation 49(4), the TRA considers that goods belonging to a specified category of steel products were not being imported into the United Kingdom in increased quantities, a determination of the TRA referred to in paragraph (1) must be a determination that the application of a tariff rate quota to those goods under this Part be revoked.

(3) A determination referred to in paragraph (2) must be made as soon as practicable.

(4) Where, under regulation 49(4), the TRA considers that goods belonging to a specified category of steel products were being imported into the United Kingdom in increased quantities, a determination of the TRA referred to in paragraph (1) is a determination, made upon the conclusion of the transition review, that the application of a tariff rate quota to goods should—

- (a) continue unvaried;
- (b) be varied;
- (c) be replaced by a safeguarding amount; or
- (d) be revoked.

(5) The TRA must not make a determination that the application of a tariff rate quota to goods should continue unvaried unless it is satisfied that the application of the tariff rate quota to those goods in accordance with that determination would meet the economic interest test (see paragraph 23 of Schedule 5 to the Act) and, where it is not so satisfied, it must instead make a determination that the application of that tariff rate quota to those goods should be revoked.

(6) Where the TRA makes a determination that the application of a tariff rate quota to goods should be varied, the variation may, among other things, comprise or include—

- (a) increasing the amount of a tariff rate quota;
- (b) varying (or providing for) the allocation of a tariff rate quota;
- (c) reducing the additional rate of import duty;
- (d) reducing the period for which a tariff rate quota applies to goods;
- (e) increasing the pace of liberalisation.

(7) Where, upon the conclusion of the transition review, the TRA makes a determination that the application of a tariff rate quota to goods be varied, that variation must not comprise or include extending the period for which the tariff rate quota will be applicable.

TRA's recommendations to the Secretary of State

51.—(1) Except where paragraph (2) applies, the TRA must, following the making of a determination referred to in regulation 50 (determinations of the TRA), make a recommendation to the Secretary of State in respect of the goods to which the determination relates.

(2) This paragraph applies in respect of a determination that the application of a tariff rate quota to goods should continue unvaried.

(3) A recommendation referred to in paragraph (1) is a recommendation that the application of a tariff rate quota to goods should be—

- (a) varied;
- (b) replaced with a safeguarding amount; or
- (c) revoked.

(4) The TRA must not make a recommendation that the application of a tariff rate quota to goods should be varied or replaced with a safeguarding amount, unless it is satisfied that such a recommendation would meet the economic interest test and, where it is not so satisfied, it must instead make a recommendation that the application of that tariff rate quota to those goods should be revoked.

(5) Before making a recommendation that the application of a tariff rate quota to goods be varied which comprises or includes varying (or providing for) the allocation of the tariff rate quota, the TRA must consult the Secretary of State regarding the proposed allocation.

(6) Where the TRA recommends that the application of a tariff rate quota to goods be varied, that variation must ensure that the pace of liberalisation is maintained or increased.

(7) Any recommendation made by the TRA that the application of a tariff rate quota to goods be varied or replaced with a safeguarding amount must be such as the TRA is satisfied facilitates the adjustment of UK producers of the like goods and directly competitive goods to the importation of the goods in increased quantities.

(8) The TRA's recommendation must include—

- (a) a description of the goods to which the recommendation relates;
- (b) the reasons for its recommendation;
- (c) where relevant, the period for which the tariff rate quota (or a safeguarding amount) should now be applicable;
- (d) information which the TRA considers is likely to be relevant to the Secretary of State's decision as to whether it would not be in the public interest to accept the TRA's recommendation (see regulation 52);
- (e) any other information which the TRA considers relevant.

Acceptance or rejection of the TRA's recommendation by the Secretary of State

52.—(1) Where the TRA makes a recommendation in accordance with regulation 51 (TRA's recommendations to the Secretary of State), the Secretary of State must accept or reject that recommendation.

(2) The Secretary of State may reject the TRA's recommendation only if the Secretary of State is satisfied that—

- (a) where relevant, the application of a tariff rate quota (or a safeguarding amount) to the goods subject to review in accordance with the recommendation does not meet the economic interest test; or
- (b) it is not otherwise in the public interest to accept the recommendation.

(3) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must—

- (a) publish a notice of the rejection which contains the following information—
 - (i) a description of the goods to which the notice relates;
 - (ii) a summary of the review;
 - (iii) the TRA's recommendation;
 - (iv) the reasons for the TRA's recommendation;
 - (v) the reasons for the Secretary of State's rejection;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

(4) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State must—

- (a) make provision by public notice to give effect to the recommendation;
- (b) notify interested parties.

(5) The notice referred to in paragraph (4)(a) must contain the following information—

- (a) the information referred to in sub-paragraphs (i) to (iv) of paragraph (3)(a);
- (b) where relevant, the revised amount of the tariff rate quota;
- (c) where relevant, the allocation or revised allocation of the tariff rate quota;
- (d) where relevant, the revised additional rate of import duty;

- (e) where relevant, the revised period for which such goods will be subject to a tariff rate quota;
 - (f) details of the exclusion of any goods from the application of the tariff rate quota;
 - (g) where relevant, details of the safeguarding amount recommended in place of a tariff rate quota and the period for which such amount will apply.
- (6) A period referred to in paragraph (5)(e) or (g) must begin on the day after the publication of the public notice.

PART 10

Transitional provisions relating to the TRA

CHAPTER 1

General modifications

- 53.** Unless otherwise specified in this Part, these Regulations have effect as if—
- (a) for “TRA”, in each place where this occurs (excluding regulation 1), there were substituted “the Secretary of State”;
 - (b) for “TRA’s”, in each place where this occurs, there were substituted, “Secretary of State’s”;
 - (c) for “it”, where this is a reference to the TRA, in each place where it occurs, there were substituted “the Secretary of State”; and
 - (d) for “its”, in the following provisions, there were substituted “the”—
 - (i) regulation 13(4)(a);
 - (ii) regulation 19(2);
 - (iii) regulation 26;
 - (iv) regulation 29(1)(a)(ii);
 - (v) regulation 30(2)(a);
 - (vi) regulation 34(2)(a);
 - (vii) regulation 35(5)(a);
 - (viii) paragraph 7(c) of the Schedule.

CHAPTER 2

Further modifications

Further modifications to Part 1

- 54.** Regulation 2 (interpretation) has effect as if—
- (a) in the definition of “application”, for “paragraph 7(1)(a) of Schedule 5 to the Act”, there were substituted “paragraph 7(1)(a)(i) of Schedule 5 to the Act”; and
 - (b) in the definition of “pace of liberalisation”, for “paragraphs 17(4)(b) or 18(5)(b)”, there were substituted “paragraphs 17(4)(b) or 18(4)(b)”.

Further modifications to Part 4

- 55.** Regulation 10 (determination and assessment of an adequate amount to prevent or remove serious injury and remedies) has effect as if—

- (a) in paragraph (1), for “paragraphs 12(4), 13(5), 17(4)(a) and 18(5)(a) of Schedule 5 to the Act”, there were substituted “paragraphs 12(4), 13(4), 17(4)(a) and 18(4)(a) of Schedule 5 to the Act”; and
- (b) in paragraphs (4) and (5)(c), for “recommend the imposition of”, there were substituted “make a preliminary decision to impose”.

Further modifications to Part 5

56. Regulation 12 (general provisions relating to the initiation and conduct of an investigation) has effect as if, in paragraphs (1) and (2)(c) and (d), for “its”, there were substituted “the Secretary of State’s”.

57. Regulation 13 (revision of scope of an investigation) has effect as if—

- (a) in paragraph (1)—
 - (i) for “its determination”, there were substituted “the Secretary of State’s decision”; and
 - (ii) for “paragraph 7(6)(b) of Schedule 5 to the Act”, there were substituted “paragraph 7(6)(c) of Schedule 5 to the Act”;
- (b) at the end of paragraph (4)(a), there were inserted “(or been otherwise available to the Secretary of State, where no application was made)”.

58. Regulation 16 (confidential information) has effect as if—

- (a) in paragraph (1)(a), for “its”, there were substituted “the Secretary of State’s”; and
- (b) paragraph (5) were omitted.

59. Regulation 17 (permitted disclosure) has effect as if—

- (a) in paragraphs (1) and (3), “the TRA or”, in each place where this occurs, were omitted; and
- (b) paragraph (2) were omitted.

60. Regulation 21 (application) has effect as if, for “paragraph (7)(6)(b) of Schedule 5 to the Act”, there were substituted “paragraph (7)(6)(c) of Schedule 5 to the Act”.

61. Regulation 23 (assessment of an application) has effect as if—

- (a) for the heading of that regulation, there were substituted—

“Assessment of information to determine whether to initiate an investigation”; and

- (b) for paragraph (1), there were substituted—

“(1) The Secretary of State must examine the accuracy and adequacy of the information—

- (a) contained in, or supplied with, an application; or
- (b) obtained or held by the Secretary of State, for the purposes of the initiation of an investigation, where there is no application,

to determine whether it is sufficient to justify the initiation of an investigation under paragraph 7 of Schedule 5 to the Act.”.

62. Regulation 24 (registration of interest and the issuing of questionnaires) has effect as if, for paragraph (2)(b), there were substituted—

- “(b) UK producers, importers and overseas exporters (or associations thereof) which—
 - (i) the applicant UK producers have identified in their application; or

(ii) where no application has been made, the Secretary of State has identified as being relevant to the investigation;”.

63. Regulation 28 (hearing) has effect as if, in paragraph (1)(b), for “its”, there were substituted “the Secretary of State’s”.

64. Regulation 31 (content of notices) has effect as if paragraphs (1) and (3) were omitted.

65. Regulation 32 (form and content of a preliminary adjustment plan or an adjustment plan) has effect as if in paragraph (3), for “recommendation”, there were substituted “preliminary decision”.

Further modifications to Part 6

66. Regulation 34 (mid-term review) has effect as if—

- (a) in paragraph (2)(b), “the Secretary of State and” were omitted; and
- (b) in paragraph (4), for “determine”, there were substituted “make a preliminary decision”.

67. Regulation 35 (extension review) has effect as if—

- (a) in paragraph (2)(b), for “its”, there were substituted “the Secretary of State’s”;
- (b) in paragraph (5)(b), “the Secretary of State and” were omitted; and
- (c) in paragraph (7), for “determine”, there were substituted “make a preliminary decision”;
- (d) after paragraph (7), there were inserted—

“(7A) The Secretary of State may make a preliminary decision in accordance with paragraph (7)(b) only if the Secretary of State is satisfied that the application of a definitive safeguarding remedy meets the economic interest test (see paragraph 23 of Schedule 5 to the Act).”; and

- (e) in paragraph (8), for “determination”, there were substituted “preliminary decision”.

68. Regulation 37 (TRA’s recommendation to the Secretary of State) has effect as if—

- (a) for the heading of that regulation, there were substituted—

“*Secretary of State’s preliminary decision following the conclusion of a review*”; and

- (b) for that regulation there were substituted—

“37.—(1) Where the Secretary of State makes a preliminary decision that the application of a definitive safeguarding remedy should be varied, revoked, or replaced, that decision must include—

- (a) a description of the goods to which the decision relates;
- (b) the reasons for the decision;
- (c) where relevant, the period for which the definitive safeguarding remedy should be applicable, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the decision;
- (d) any other information which the Secretary of State considers relevant.

(2) Where the Secretary of State makes a preliminary decision other than a preliminary decision referred to in paragraph (1), and decides to give effect to it, the Secretary of State must—

- (a) terminate the review;
- (b) publish a notice containing the information referred to in paragraph 12 of the Schedule; and

(c) notify interested parties.”.

69. Regulation 38 (acceptance or rejection of the TRA’s recommendation by the Secretary of State) has effect as if—

(a) for the heading of that regulation, there were substituted—

“Secretary of State’s decision whether to give effect to a preliminary decision following the conclusion of a review”; and

(b) for that regulation there were substituted—

“38.—(1) Where the Secretary of State makes a preliminary decision that the application of a definitive safeguarding remedy should be varied, revoked, or replaced, the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(3) Where the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

(a) publish a notice containing the information referred to in paragraph 10 or 11 of the Schedule;

(b) notify interested parties; and

(c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.”.

Further modifications to Part 7

70. Part 7 (suspension) has effect as if, for that Part, there were substituted—

“PART 7

Suspension

Suspension of a definitive safeguarding remedy

39.—(1) The Secretary of State may make a preliminary decision (a “preliminary suspension decision”) that the application of a definitive safeguarding remedy be suspended for a specified period (the “period of suspension”) in relation to some or all of the goods specified in the public notice made by the Secretary of State under section 13 of the Act.

(2) The Secretary of State may make a preliminary suspension decision where—

(a) paragraph (3) applies;

(b) the Secretary of State is satisfied that a suspension is appropriate; and

(c) UK producers have been given the opportunity to comment on the suspension proposed in the application for suspension (see regulation 40).

(3) This paragraph applies where the Secretary of State, whether or not as a consequence of considering an application in accordance with regulation 40 (application for suspension), considers that the circumstances in paragraph (4) exist.

(4) Those circumstances are that—

(a) market conditions have changed temporarily; and

- (b) as a consequence of the change in market conditions, the serious injury caused to UK producers is unlikely to recur if the application of a definitive safeguarding remedy were to be suspended.
- (5) In considering whether to make a preliminary suspension decision, the Secretary of State may take such steps as the Secretary of State considers appropriate.
- (6) Where the Secretary of State rejects an application for suspension, the Secretary of State must notify the applicant.
- (7) Where the Secretary of State decides that it is not appropriate to make a preliminary suspension decision, the Secretary of State must—
 - (a) publish a notice of the reasons for this decision; and
 - (b) notify interested parties.
- (8) Where the Secretary of State decides that it is appropriate to make a preliminary suspension decision, the preliminary suspension decision must include—
 - (a) the reasons for the decision;
 - (b) the period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the preliminary suspension decision; and
 - (c) any other information the Secretary of State considers relevant.
- (9) If the Secretary of State makes a preliminary suspension decision, the Secretary of State must decide whether to give effect to the decision.
- (10) The Secretary of State may only decide not to give effect to a preliminary suspension decision where the Secretary of State considers that it is not in the public interest to give effect to it.
- (11) Where the Secretary of State decides not to give effect to a preliminary suspension decision, the Secretary of State must—
 - (a) publish a notice containing the information referred to in paragraph 13 of the Schedule;
 - (b) notify interested parties; and
 - (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary suspension decision.
- (12) Where the application of a definitive safeguarding remedy is suspended under this Part, the period of suspension counts towards the specified period of the definitive safeguarding remedy as stated in the relevant public notice.

Application for suspension

- 40.**—(1) An application for suspension of a definitive safeguarding remedy (a “suspension application”) in accordance with regulation 39 (suspension of a definitive safeguarding remedy) may be made by or on behalf of an interested party.
- (2) A suspension application must include as far as possible information regarding—
 - (a) the change in the market conditions;
 - (b) the temporary nature of that change; and
 - (c) the effect of the change on UK producers.
 - (3) Where a suspension application is withdrawn by the applicant, the Secretary of State may still consider whether it is appropriate to make a preliminary suspension decision (see regulation 39).

Period of suspension

41.—(1) The period of suspension referred to in regulation 39(1) must not exceed nine months commencing on the day after the publication of the notice under section 13 of the Act giving effect to the suspension.

(2) Following an application by an interested party, or where the Secretary of State otherwise considers that it is appropriate, the Secretary of State may make a preliminary decision that the period of nine months referred to in paragraph (1) be extended to a maximum of 21 months (“extended period of suspension”).

(3) Where the Secretary of State makes a preliminary decision in accordance with paragraph (2), but the duration of the extended period of suspension is less than 21 months, the Secretary of State may make a further preliminary decision to increase the duration of the extended period of suspension where the Secretary of State considers it is appropriate to do so, provided that the overall duration of the extended period of suspension does not exceed 21 months.

(4) Where the Secretary of State rejects an application for an extension of the period of suspension, the Secretary of State must notify the applicant.

(5) Where the Secretary of State decides that it is not appropriate to make a preliminary decision to extend the period of suspension, the Secretary of State must—

- (a) publish a notice of the decision and the reasons for it; and
- (b) notify interested parties.

(6) Where the Secretary of State decides that it is appropriate to make a preliminary decision to extend the period of suspension, the preliminary decision must include—

- (a) the reasons for the preliminary decision;
- (b) the extended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the preliminary decision; and
- (c) any other information the Secretary of State considers relevant.

(7) If the Secretary of State makes a preliminary decision in accordance with this regulation, the Secretary of State must decide whether to give effect to the preliminary decision.

(8) The Secretary of State may only decide not to give effect to a preliminary decision where the Secretary of State considers that it is not in the public interest to give effect to it.

(9) Where the Secretary of State decides not to give effect to a preliminary decision, the Secretary of State must—

- (a) publish a notice containing the information referred to in paragraph 14 of the Schedule;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

Reinstatement of a definitive safeguarding remedy

42.—(1) The Secretary of State may make a preliminary decision to reinstate a definitive safeguarding remedy where the Secretary of State decides that the circumstances in regulation 39(4) no longer exist.

(2) Where the Secretary of State makes a preliminary decision in accordance with this regulation, the preliminary decision must include—

- (a) the reasons for the Secretary of State’s decision that the circumstances in regulation 39(4) no longer exist; and
 - (b) any other information the Secretary of State considers relevant.
- (3) If the Secretary of State makes a preliminary decision under paragraph (1), the Secretary of State must decide whether to give effect to the preliminary decision.
- (4) Where the Secretary of State decides to give effect to the preliminary decision, the Secretary of State must—
- (a) publish a notice under section 13 of the Act containing the information referred to in paragraph 15 of the Schedule; and
 - (b) notify interested parties.
- (5) The Secretary of State may only decide not to give effect to a preliminary decision where the Secretary of State considers that it is not in the public interest to give effect to it.
- (6) Where the Secretary of State decides not to give effect to a preliminary decision, the Secretary of State must—
- (a) publish a notice containing the information set out in paragraph 15 of the Schedule;
 - (b) notify interested parties; and
 - (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.”.

Further modifications to Part 8

71. Regulation 43 (developing country exception) has effect as if, in paragraph (1), for “recommend the application of”, there were substituted “make a preliminary decision to apply”.

72. Regulation 44 (other exception) has effect as if—

- (a) in paragraph (1)(a), for “recommendation”, there were substituted “preliminary decision”;
- (b) in paragraph (1)(b) for “its”, in both places where it occurs, there were substituted “the Secretary of State’s”.

Further modifications to Part 9

73. Regulation 48 (treatment of tariff rate quotas under this Part etc) has effect as if, in paragraph (1)—

- (a) for “the Secretary of State’s acceptance of a recommendation made by the TRA”, there were substituted “a decision by the Secretary of State to give effect to a preliminary decision made”; and
- (b) for “acceptance”, there were substituted “decision”.

74. Regulation 49 (review of tariff rate quotas under this Part) has effect as if—

- (a) for paragraphs (1) to (3) of that regulation, there were substituted—
 - “(1) The Secretary of State must conduct a review (referred to in this Part as the “transition review”) of the application of the tariff rate quotas applicable to goods under this Part.
 - (2) The Secretary of State may initiate the transition review within any time period that the Secretary of State considers appropriate.
 - (3) Upon initiating the transition review, the Secretary of State must publish a notice of initiation of the review, which must contain—

- (a) details of the content of the public notice referred to in regulation 47(2);
- (b) the information referred to in paragraph 9 of the Schedule.”;
- (b) paragraph (10)(b) were omitted; and
- (c) after paragraph (10), there were inserted—
 - “(11) The Secretary of State may initiate the review referred to in paragraph (10)(a) within any time period that the Secretary of State considers appropriate.”.

75. Regulation 50 (determinations of the TRA) has effect as if—

- (a) for “determination” or “determinations”, in each place where these occur, including the heading of that regulation, there were substituted “preliminary decision” or “preliminary decisions”, as the case may be;
- (b) in paragraph (5), after “unvaried” there were inserted “, be varied, or be replaced by a safeguarding amount”; and
- (c) after paragraph (7), there were inserted—
 - “(8) Where the Secretary of State makes a preliminary decision that the application of a tariff rate quota to goods be varied, that variation must ensure that the pace of liberalisation is maintained or increased.

(9) Any preliminary decision made by the Secretary of State that the application of a tariff rate quota to goods be varied or replaced with a safeguarding amount must be such as the Secretary of State is satisfied facilitates the adjustment of UK producers of the like goods and directly competitive goods to the importation of the goods in increased quantities.

(10) Where the Secretary of State makes a preliminary decision referred to in paragraph (2) or (4)(b) to (d), that decision must include—

- (a) a description of the goods to which the decision relates;
- (b) the reasons for the decision;
- (c) where relevant, the period for which the tariff rate quota (or a safeguarding amount) should now be applicable;
- (d) any other information the Secretary of State considers relevant.”.

76. Regulations 51 (TRA’s recommendations to the Secretary of State) and 52 (acceptance or rejection of the TRA’s recommendation by the Secretary of State) have effect as if, for those regulations (including the headings) there were substituted—

“Secretary of State’s decision whether to give effect to a preliminary decision following the conclusion of a transition review

51.—(1) The Secretary of State must, following the making of a preliminary decision referred to in regulation 50(2) or (4)(b) to (d) (preliminary decisions of the Secretary of State) decide whether to give effect to the preliminary decision.

(2) The Secretary of State may only decide not to give effect to the preliminary decision where the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(3) Where the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

- (a) publish a notice of the decision which contains the following information—
 - (i) a description of the goods to which the notice relates;
 - (ii) a summary of the review;

- (iii) the preliminary decision;
 - (iv) the reasons for the preliminary decision;
 - (v) the reasons for the Secretary of State’s decision not to give effect to the preliminary decision;
 - (b) notify interested parties; and
 - (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.
- (4) Where the Secretary of State decides to give effect to the preliminary decision, the Secretary of State must—
- (a) make provision by public notice to give effect to the preliminary decision; and
 - (b) notify interested parties.
- (5) The notice referred to in paragraph (4)(a) must contain the following information—
- (a) the information referred to in sub-paragraphs (i) to (iv) of paragraph (3)(a);
 - (b) where relevant, the revised amount of the tariff rate quota;
 - (c) where relevant, the allocation or revised allocation of the tariff rate quota;
 - (d) where relevant, the revised additional rate of import duty;
 - (e) where relevant, the revised period for which such goods will be subject to a tariff rate quota;
 - (f) details of the exclusion of any goods from the application of the tariff rate quota;
 - (g) where relevant, details of the safeguarding amount that is to be applied in place of a tariff rate quota and the period for which such amount will apply.
- (6) A period referred to in (5)(e) or (g) must begin on the day after the publication of the public notice.”.

Further modifications to the Schedule

77. Paragraph 2 (notice of initiation of an investigation) of the Schedule has effect as if, for “paragraph 7(6)(b) of Schedule 5 to the Act”, there were substituted “paragraph 7(6)(c) of Schedule 5 to the Act”.

78. Paragraph 3 (notice of a provisional affirmative determination with no recommendation regarding a provisional safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “recommendation”, there were substituted “preliminary decision”; and
- (b) in sub-paragraph (e), for “recommendation”, there were substituted “preliminary decision”.

79. Paragraph 4 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding a provisional safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (b) in sub-paragraph (d), for “recommendation”, there were substituted “preliminary decision”;
- (c) in sub-paragraph (e), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and

(d) in sub-paragraph (f)—

- (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
- (ii) for “rejection”, there were substituted “decision”.

80. Paragraph 5 (notice of a final affirmative determination with no recommendation regarding a definitive safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “recommendation”, there were substituted “preliminary decision”; and
- (b) in sub-paragraph (e), for “recommendation”, there were substituted “preliminary decision”.

81. Paragraph 6 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA on a definitive safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (b) in sub-paragraph (d), for “recommendation”, there were substituted “preliminary decision”;
- (c) in sub-paragraph (e), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (d) in sub-paragraphs (f) and (g)—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

82. Paragraphs 10 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA on the variation of a definitive safeguarding remedy) and 11 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA to revoke the application of a definitive safeguarding remedy) of the Schedule have effect as if—

- (a) in the headings before those paragraphs, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (b) in sub-paragraphs (c) and (d), in each case, for “recommendation”, there were substituted “preliminary decision”;
- (c) in sub-paragraph (e), in each case, for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (d) in sub-paragraph (f), in each case—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

83. Paragraph 12 (notice of termination of a review) of the Schedule has effect as if, for “regulation 37(5)(a)”, there were substituted “regulation 37(2)(b)”.

84. Paragraph 13 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding suspension of a definitive safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “accepting or rejecting the TRA’s recommendation”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;

- (b) in sub-paragraphs (b) and (c) for “recommendation”, in each place this occurs, there were substituted “preliminary decision”;
- (c) in sub-paragraph (d), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (d) in sub-paragraph (e)—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

85. Paragraph 14 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding extension of the period of suspension) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “accepting or rejecting recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (b) in sub-paragraphs (b) and (c), for “recommendation”, there were substituted “preliminary decision”;
- (c) in sub-paragraph (d), for “accept or reject the recommendation”, there were substituted “give effect, or not to give effect, to the preliminary decision”;
- (d) in sub-paragraph (e), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (e) in sub-paragraph (f)—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

86. Paragraph 15 (notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding reinstatement of a definitive safeguarding remedy) of the Schedule has effect as if—

- (a) in the heading before that paragraph, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (b) in sub-paragraph (b)—
 - (i) for “recommendation”, the first time it occurs, there were substituted “preliminary decision”;
 - (ii) for “recommendation”, the second time it occurs, there were substituted “decision”;
- (c) in sub-paragraph (c), for “accept or reject the recommendation”, there were substituted “give effect, or not to give effect, to the preliminary decision”;
- (d) in sub-paragraph (d)—
 - (i) for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
 - (ii) in paragraph (ii), for “recommendation”, there were substituted “preliminary decision”; and
- (e) in sub-paragraph (e)—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

Signed by the authority of the Secretary of State for International Trade

Graham Stuart
Parliamentary Under-Secretary of State for
Investment
Department for International Trade

At 5.04 p.m. on 4th March 2019

SCHEDULE

Regulations 21, 30, 34, 35, 37 to 39, 41, 42
and 49

Content of an application for the initiation of an investigation

1. For the purpose of regulation 21(1), the information to be contained in an application for the initiation of an investigation is—

- (a) the contact details of the applicant UK producers;
- (b) a description of the goods in relation to which the applicant UK producers are requesting an investigation, including their—
 - (i) technical characteristics;
 - (ii) current tariff classification;
- (c) a description of the like goods and directly competitive goods;
- (d) details of all known UK producers of the like goods and directly competitive goods (see paragraphs 4 and 5 of Schedule 5 to the Act), or associations of such UK producers;
- (e) the level of UK producers' support for or opposition to the application, including—
 - (i) the total volume and value of production in the United Kingdom of the like goods and directly competitive goods;
 - (ii) the applicant UK producer's volume and value of production in the United Kingdom of the like goods and directly competitive goods;
 - (iii) the volume and value of production in the United Kingdom of the like goods and directly competitive goods by each identified UK producer, or associations of such UK producers;
 - (iv) each identified UK producer's support or opposition to the application;
- (f) a description of the increased imports alleged to exist, including whether such increase is absolute, relative to domestic production or both;
- (g) information relevant to the existence of serious injury to the UK producers of the goods identified, for the three calendar years preceding the application, and any more recent partial-year data;
- (h) information on relevant unforeseen developments that led to the alleged increased imports of the goods identified;
- (i) a statement giving specific reasons for requesting a provisional safeguarding remedy or definitive safeguarding remedy;
- (j) information that the market share requirement is met;
- (k) if a provisional safeguarding remedy is requested—
 - (i) information regarding critical circumstances where delay in taking action would cause damage to UK producers which would be difficult to repair; and
 - (ii) a statement indicating the level of tariff increase requested as the remedy.

Notice of initiation of an investigation

2. The information to be contained in a notice referred to in paragraph 7(6)(b) of Schedule 5 to the Act is—

- (a) where applicable, the contact details of the applicant UK producers, unless the TRA is treating such information as confidential in accordance with regulation 16 (confidential information);

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- (b) the date of initiation of the investigation;
- (c) a description of the goods concerned;
- (d) a description of the like goods and directly competitive goods;
- (e) where applicable, a description of the UK producers on behalf of which the application is made;
- (f) a summary of the factors on which the allegations of increased imports and serious injury caused by the increased imports are based, including a summary of the unforeseen developments that led to the alleged increased imports of the goods;
- (g) the period of investigation;
- (h) a summary of the investigation process;
- (i) the address of the TRA to which comments by interested parties or persons with sufficient interest in the investigation are to be delivered, or the means by which such comments are to be delivered;
- (j) details of a registration period during which interested parties, or any other person, may make themselves known to the TRA;
- (k) a statement that interested parties may request the TRA to conduct a hearing.

Notice of a provisional affirmative determination with no recommendation regarding a provisional safeguarding remedy

3. The information to be contained in a notice referred to in paragraph 11(9) of Schedule 5 to the Act is—

- (a) a description of the goods to which the notice relates;
- (b) a summary of the investigation to date and the expected future stages of the investigation;
- (c) the date of publication of the notice;
- (d) the reasons for the TRA's provisional affirmative determination, where such notice is published under paragraph 11(9)(a) of Schedule 5 to the Act;
- (e) the reasons why the TRA has determined that there is no recommendation that it could make under paragraph 11(3) of Schedule 5 to the Act, where such notice is published under paragraph 11(9)(b) of Schedule 5 to the Act.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding a provisional safeguarding remedy

4. The information to be contained in a notice referred to in paragraph 14(3)(a), (4)(a), 15(3)(a) or (4)(a) of Schedule 5 to the Act is—

- (a) a description of the goods to which the notice relates;
- (b) a summary of the investigation to date and the expected future stages of the investigation;
- (c) the reasons for the TRA's provisional affirmative determination;
- (d) the reasons for the TRA's recommendation regarding a provisional safeguarding remedy;
- (e) where the Secretary of State accepts the TRA's recommendation, that such notice is a public notice made under section 13 of the Act;
- (f) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of a final affirmative determination with no recommendation regarding a definitive safeguarding remedy

5. The information to be contained in a notice referred to in paragraph 16(11) of Schedule 5 to the Act is—

- (a) a description of the goods to which the notice relates;
- (b) a summary of the investigation;
- (c) the date the notice comes into effect;
- (d) the reasons for the final affirmative determination, where such notice is published under paragraph 16(11)(a) of Schedule 5 to the Act;
- (e) the reasons why the TRA has determined that there is no recommendation that it could make under paragraph 16(3) of Schedule 5 to the Act, where such notice is published under paragraph 16(11)(b) of Schedule 5 to the Act.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA on a definitive safeguarding remedy

6. The information to be contained in a notice referred to in paragraph 19(3)(a), (4)(a), 20(3)(a) or (4)(a) of Schedule 5 to the Act is—

- (a) a description of the goods to which the notice relates;
- (b) a summary of the investigation;
- (c) the reasons for the TRA's final affirmative determination;
- (d) the reasons for the TRA's recommendation on a definitive safeguarding amount or tariff rate quota;
- (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) a specified period for which the definitive safeguarding remedy is applicable (see paragraph 17(2) or 18(2) of Schedule 5 to the Act);
 - (iii) details of exceptions of goods from the application of the definitive safeguarding remedy, if any;
- (f) where a provisional safeguarding remedy is in force and the Secretary of State rejects the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the reasons for the Secretary of State's rejection;
- (g) where a provisional safeguarding remedy is not in force and the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of a final negative determination

7. The information to be contained in a notice referred to in paragraph 9(7)(a) of Schedule 5 to the Act is—

- (a) a summary of the investigation;
- (b) the date the notice comes into effect;
- (c) the TRA's reasons for its determination.

Notice of termination

8. The information to be contained in a notice referred to in regulation 30(3)(a) is—
- (a) a summary of the investigation to date;
 - (b) the date the notice comes into effect;
 - (c) the reasons for termination.

Notice of initiation of a review

9. The information to be contained in a notice referred to in regulation 34(2)(a), 35(5)(a) or 49(3)(b) is—
- (a) details of the content of the relevant public notice made under section 13 of the Act to which the review relates;
 - (b) where applicable, the contact details for or on behalf of the review applicant, unless the TRA is treating such information as confidential in accordance with regulation 16 (confidential information);
 - (c) the name of any person importing or exporting the goods subject to review;
 - (d) the type of review initiated;
 - (e) the date of initiation of the review;
 - (f) the description of the goods subject to review; and
 - (g) the period of investigation for the review;
 - (h) where applicable, a description of the UK producers on behalf of which the review application is made;
 - (i) a summary of the reasons for initiating a review;
 - (j) a summary of the issue involved in the review;
 - (k) a summary of the review process;
 - (l) the address of the TRA to which comments by interested parties and persons with sufficient interest in the review is to be delivered, or the means by which such comments are to be delivered;
 - (m) details of a registration period during which interested parties, or any other person, may make themselves known to the TRA; and
 - (n) a statement that interested parties may request that the TRA conduct a hearing.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA on the variation of a definitive safeguarding remedy

10. The information to be contained in a notice referred to in paragraph 21(7)(a) of Schedule 5 to the Act or regulation 38(3)(a) is—
- (a) a description of the goods to which the notice relates;
 - (b) a summary of the review;
 - (c) the TRA's recommendation;
 - (d) the reasons for the TRA's recommendation;
 - (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) a specified period during which the varied definitive safeguarding remedy is applicable;

- (iii) details of exceptions of goods from the application of the definitive safeguarding remedy, if any;
- (f) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA to revoke the application of a definitive safeguarding remedy

11. The information to be contained in a notice referred to in paragraph 21(7)(a) of Schedule 5 to the Act or regulation 38(3)(a) is—

- (a) a description of the goods to which the notice relates;
- (b) a summary of the review;
- (c) the TRA's recommendation;
- (d) the reasons for the TRA's recommendation;
- (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the date that the revocation takes effect, which must be the day after the date of publication of the notice;
- (f) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of termination of a review

12. The information to be contained in a notice referred to in regulation 37(5)(a) or 49(10)(c) is—

- (a) a summary of the review to date;
- (b) the date the notice comes into effect;
- (c) the reasons for termination.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding suspension of a definitive safeguarding remedy

13. The information to be contained in a notice referred to in paragraph 24(6)(a) of Schedule 5 to the Act or regulation 39(11)(a) is—

- (a) a description of the goods to which the notice relates;
- (b) the TRA's recommendation;
- (c) the reasons for the TRA's recommendation;
- (d) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the period of suspension;
- (e) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding extension of the period of suspension

14. The information to be contained in a notice referred to in regulation 41(9)(a) is—

Status: This is the original version (as it was originally made).

- (a) a description of the goods to which the notice relates;
- (b) the TRA’s recommendation;
- (c) the reasons for the TRA’s recommendation;
- (d) the Secretary of State’s decision to accept or reject the recommendation and the reasons for the decision;
- (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the extended period of suspension;
- (f) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding reinstatement of a definitive safeguarding remedy

15. The information to be contained in a notice referred to in regulation 42(4)(a) or (6)(a) is—

- (a) a description of the goods to which the notice relates;
- (b) the TRA’s recommendation and the reasons for the recommendation;
- (c) the Secretary of State’s decision to accept or reject the recommendation and the reasons for the decision;
- (d) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the date that the reinstatement takes effect, which must be the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation;
- (e) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under and for the purpose of sections 13, 32, 51 and 56 of, and Schedule 5 to, the Taxation (Cross-border Trade) Act 2018 (“the Act”)(5).

Schedule 5 to the Act establishes a regime under which the Trade Remedies Authority (“the TRA”), when established, will investigate prima facie instances of increases in imports causing serious injury to UK producers. The TRA itself will be established by the Trade Bill when it receives Royal Assent.

The process of investigation and the circumstances in which an additional amount of import duty or a tariff rate quota may be applied is provided for by agreements under the auspices of the World Trade Organization to which the United Kingdom is a party. Specifically, these agreements are the General Agreement on Tariffs and Trade 1994 (“GATT”) (Article XIX in particular) and the Agreement on

(5) 2018 c.22

Safeguards (the “SGA”) in Annex 1A to the Marrakesh Agreement establishing the World Trade Organization (concluded on 15 April 1994, entered into force 1 January 1995). These Regulations are intended to be consistent with the United Kingdom’s obligations under those agreements.

The purpose of these investigations by the TRA is to consider whether there is evidence that goods are being imported into the United Kingdom in increased quantities and are causing serious injury to UK industry such that it should recommend to the Secretary of State that an additional amount of import duty or a tariff rate quota be applied to the goods in question. The TRA’s duty to make recommendations for the imposition of provisional and/or definitive measures is set out in Parts 3 and 4 of Schedule 5 to the Act. Any additional amount of import duty or a tariff rate quota is given effect by the Secretary of State publishing a public notice under section 13 of the Act.

Part 1 (Introductory) sets out the introductory provisions of the Regulations and includes the definitions that apply throughout. It also provides that the Regulations will apply as modified by Part 10 until the TRA is established.

Part 2 (Increased quantities) of the Regulations provides for how the TRA will determine whether or not there are goods imported in increased quantities in accordance with paragraph 1 of Schedule 5 to the Act. It broadly reflects Article XIX of the GATT, Article 2 of the SGA and Articles 9 and 15 of Regulation (EU) 2015/478 of 11 March 2015 on common rules for imports⁽⁶⁾. The regulations in this Part set out: how the TRA will determine whether there are increased quantities of imports; whether that increase is significant, and whether the importation of goods in increased quantities was foreseeable.

Part 3 (Serious injury and causation) of the Regulations provides for how the TRA will determine whether the importation of those goods has caused serious injury to UK producers. The regulations in this Part broadly reflect Articles 2 and 4 of the SGA, and Article 9 and 15 of Regulation (EU) 2015/478.

Part 4 (Determination of an adequate amount to prevent or remove the serious injury and remedies) of the Regulations provides for how the TRA will determine the appropriate remedy to prevent the serious injury established under Part 3. The regulations provide for two possible remedies: an additional amount of import duty or a tariff rate quota. The regulations in this Part broadly reflect Articles 5 and 6 of the SGA, and Article 16 of Regulation (EU) 2015/478.

Part 5 (Initiation and conduct of an investigation) of the Regulations provides for the TRA to initiate and conduct investigations to consider whether to recommend to the Secretary of State the imposition of provisional and/or definitive safeguarding remedies. In particular, the regulations in this Part set out: the requirements on the content of an application for the initiation of an investigation; how the TRA will assess such an application; how the TRA will treat confidential information; the conduct of authentication visits and hearings, and the disclosure of information forming the basis of the TRA’s determinations. The regulations reflect Article 3 of the SGA and Chapter III of Regulation (EU) 2015/478.

Part 6 (Reviews) of the Regulations provides for the TRA to review existing safeguarding remedies so as to recommend the maintenance, variation (including extension of duration) or revocation of the relevant measure. It broadly reflects Article 7 of the SGA and Article 19 of Regulation (EU) 2015/478.

Part 7 (Suspension) of the Regulations provides for the TRA to consider and recommend temporary suspension of safeguarding measures to the Secretary of State. The regulations in this Part set out: the circumstances in which the TRA may recommend temporary suspension; the matters which it may consider in making its determination; how an interested party can apply for temporary suspension; the duration of the temporary suspension, and the circumstances in which the TRA may recommend the reinstatement of a measure.

(6) OJ No L 83 27.3.15, p.16.

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Part 8 (Supplementary) of the Regulations provides for exceptions to the general application of safeguarding measures.

Part 9 (Transitional provisions) of the Regulations makes provision for certain EU safeguarding remedies (tariff rate quotas) that are in existence when the United Kingdom leaves the EU to take effect (with appropriate adjustments) as new UK tariff rate quotas. Among other things, this Part obliges the TRA to carry out a review of these new remedies, with a view to their adjustment to meet the circumstances of the UK market (or, in appropriate cases, their revocation i.e. where it is determined that the tariff rate quotas are no longer needed). This Part provides that, upon the conclusion of this “transition review”, the TRA is to make a recommendation to the Secretary of State as to the variation, revocation or replacement of these tariff rate quotas.

Part 10 (Transitional provisions relating to the TRA) temporarily modifies these Regulations in that it provides for the Secretary of State to conduct investigations and reviews, and make decisions and determinations under Parts 2 to 9 of these Regulations (as modified in accordance with Part 10) until the TRA is established.

An impact assessment has not been prepared for this instrument as the expected impact of the trade remedies system has already been assessed in the impact assessment accompanying the Taxation (Cross-border Trade) Act 2018.

A copy of the Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk. Further information is available from the Department for International Trade, 3 Whitehall Place, London SW1A 2AW and on the gov.uk website (www.gov.uk).