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STATUTORY INSTRUMENTS

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**2019 No. 449**

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

**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<sup>(1)</sup>;

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

**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

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

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.