
STATUTORY INSTRUMENTS

2019 No. 449

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

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.

Commencement Information

II Reg. 33 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

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;

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- (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 ^{F1} ...; or
 - (c) revoked.

Textual Amendments

- F1** Words in reg. 34(4)(b) omitted (1.3.2020) by virtue of [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, 4

Commencement Information

- I2** Reg. 34 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

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;

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- (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 [^{F2}varied]; and
 - (b) may determine that ^{F3}... 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.

Textual Amendments

- F2** Word in reg. 35(8)(a) substituted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **5(a)**
- F3** Words in reg. 35(8)(b) omitted (1.3.2020) by virtue of [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **5(b)**

Commencement Information

- I3** Reg. 35 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

[^{F4}Discontinuation review

- 35A.**—(1) The TRA may conduct a review to consider whether a definitive safeguarding remedy should be revoked (a “discontinuation review”) where it is satisfied that there is sufficient information indicating that—
- (a) there may have been a lasting change of circumstances since the application of the relevant definitive safeguarding remedy; and
 - (b) as a result, UK producers may no longer be suffering serious injury, or may cease to suffer such injury if the relevant definitive safeguarding remedy is revoked.
- (2) The TRA may initiate a discontinuation review on its own initiative.
- (3) Where the TRA initiates a discontinuation review, the TRA must—
- (a) publish a notice of its decision to initiate that review (a “notice of initiation of a review”) containing the information set out in paragraph 9 of the Schedule; and
 - (b) notify the Secretary of State and interested parties.
- (4) In conducting a discontinuation review, the TRA—
- (a) must determine whether—

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- (i) there has been a lasting change of circumstances since the application of the relevant definitive safeguarding remedy; and
- (ii) UK producers have ceased to suffer serious injury or would not suffer such injury if the relevant definitive safeguarding remedy is revoked; and
- (b) may take into account any factors that it considers relevant.
- (5) Following a discontinuation review, the TRA may determine that the application to goods of a definitive safeguarding remedy subject to review should be—
 - (a) maintained in accordance with the relevant public notice made under section 13 of the Act; or
 - (b) revoked.

Textual Amendments

F4 Regs. 35A, 35B inserted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, 6

Tariff rate quota review

35B.—(1) The TRA may conduct a review to consider whether a tariff rate quota to which goods are subject should be varied (a “TRQ review”) where it is satisfied that there is sufficient information indicating that there may have been a change of circumstances (see paragraph (9)) since the application of that tariff rate quota to those goods.

- (2) The TRA may initiate a TRQ review—
 - (a) following the receipt of an application made by or on behalf of an interested party (a “TRQ review application”); or
 - (b) on its own initiative.
- (3) The TRA may reject a TRQ review application if it is made before the end of the period of six months beginning with the conclusion of—
 - (a) an investigation conducted under Part 5;
 - (b) a mid-term review;
 - (c) an extension review; or
 - (d) the transition review (under Part 9) in respect of the same tariff rate quota.
- (4) The TRA may reject a TRQ review application if it is not made via the TRA’s case management system.
- (5) Where the TRA initiates a TRQ review, the TRA must—
 - (a) publish a notice of its decision to initiate a TRQ review (a “notice of initiation of a review”) containing the information set out in paragraph 9 of the Schedule; and
 - (b) notify the Secretary of State and interested parties.
- (6) In conducting a TRQ review, the TRA—
 - (a) need not make any assessments or determinations under Parts 2 to 4;
 - (b) must determine whether there has been a change in circumstances (see paragraph (9)) since the application of the relevant tariff rate quota; and
 - (c) may consider—

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- (i) whether the amount or allocation of the tariff rate quota is appropriate for domestic market conditions;
 - (ii) the desirability of maintaining, as far as possible, traditional trade flows;
 - (iii) any other factors that it considers relevant.
- (7) Following a TRQ review, the TRA may determine that the tariff rate quota to which goods are subject should be—
- (a) maintained in accordance with the relevant public notice made under section 13 of the Act;
 - (b) varied; or
 - (c) where there is sufficient evidence that UK producers have ceased production of those goods, revoked.
- [^{F5}(8) The TRA must not vary a tariff rate quota by—
- (a) reducing the rate of import duty that applies to goods subject to that quota; or
 - (b) varying the period for which goods are subject to that quota.]
- (9) For the purposes of paragraphs (1) and (6)(b), a change of circumstances may, among other things, be—
- (a) the fact that the tariff rate quota, or any part of the quota, has been exhausted;
 - (b) a change in demand for the relevant goods;
 - (c) the effect of an anti-dumping amount or a countervailing amount being applied to the relevant goods or like goods and directly competitive goods in the United Kingdom;
 - (d) trade diversion in relation to the imposition of anti-dumping, countervailing, safeguard or other trade measures by a foreign country or territory;
 - (e) the impact of the tariff rate quota on traditional trade flows;
 - (f) the fact that imports from a developing country member of the WTO which have been excluded from the application of the tariff rate quota can no longer be excluded under regulation 43 (developing country exception);
 - (g) the fact that imports from a developing country member of the WTO which have not been excluded from the application of the tariff rate quota should be excluded under regulation 43.]

Textual Amendments

- F4** Regs. 35A, 35B inserted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, 6
- F5** Reg. 35B(8) substituted (5.8.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2020 \(S.I. 2020/730\)](#), regs. 1, 3

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.

Status: Point in time view as at 05/08/2020.

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(4) Parts 2 to 5 apply to [^{F6}a mid-term review, an extension review or a discontinuation review] to the extent that the TRA considers relevant.

[^{F7}(4A) Part 5 applies to a TRQ review 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”.

[^{F8}(6) Regulation 43 (developing country exception) applies to a review conducted under this Part, other than a discontinuation review, and, in the application of that regulation to such a review, the references in that regulation—

- (a) to the “application of a provisional safeguarding remedy or definitive safeguarding remedy” should be read as the “maintenance, expiry or variation of a safeguarding remedy following a review”; and
- (b) to “goods concerned” should be read as “goods subject to review”.]

Textual Amendments

- F6** Words in reg. 36(4) substituted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **7(a)**
- F7** Reg. 36(4A) inserted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **7(b)**
- F8** Reg. 36(6) inserted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **7(c)**

Commencement Information

- I4** Reg. 36 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

[^{F9}Meaning of “varied”

36A.—(1) Where, other than following a TRQ review, the TRA determines that a definitive safeguarding remedy is to be varied under this Part, such variation may, among other things, comprise or include—

- (a) the replacement of the application of a definitive safeguarding amount with a tariff rate quota;
- (b) the replacement of a tariff rate quota with the application of a definitive safeguarding amount;
- (c) the variation of the level or pace of liberalisation.]

Textual Amendments

- F9** Reg. 36A inserted (1.3.2020) by [The Trade Remedies \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/99\)](#), regs. 1, **8**

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

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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.

Commencement Information

15 Reg. 37 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

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.

Commencement Information

16 Reg. 38 in force at 6.3.2019 with effect in accordance with reg. 1(3)-(8), see [reg. 1\(2\)](#)

Status:

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