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.

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.