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STATUTORY INSTRUMENTS

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**2023 No. 954**

The Trade Remedies (Increase in Imports  
Causing Serious Injury to UK Producers)  
(EU Exit) (Amendment) Regulations 2023

Part 2

Amendment of the Safeguards Regulations

Chapter 4

Amendment of Part 6 (reviews)

**Insertion of regulation 33A (early review)**

7. After regulation 33, insert—

**“Early review**

**33A.**—(1) The Secretary of State may, within 60 days of the application, variation, extension or suspension of a definitive safeguarding remedy under Part 4 of Schedule 5 to the Act or Part 6, Part 7 or Part 7A of these Regulations, request that the TRA undertakes a review of the application, variation, extension or suspension of that remedy (as the case may be) by reference to any matters specified in the request, with a view to varying or revoking it (an “early review”).

(2) Paragraph (1) does not apply in relation to a definitive safeguarding remedy which is maintained, varied or revoked as a result of an early review under this regulation.

(3) The Secretary of State may request an early review where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its investigation or review that is relevant to the definitive safeguarding remedy;
- (b) the TRA made an error in relation to its recommendation; or
- (c) exceptional circumstances make the request appropriate.

(4) Before making a request under paragraph (1), the Secretary of State must consult the TRA.

(5) Where the Secretary of State makes a request under paragraph (1), the TRA must—

- (a) comply with the request;
- (b) in reviewing the definitive safeguarding remedy, have regard to any particular considerations which the Secretary of State may specify in the request.

(6) Where the TRA initiates an early review, the TRA must—

- (a) publish a notice (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 accordingly.
- (7) Following the conclusion of an early 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; or
  - (c) revoked.”.

#### **Amendment of regulation 34 (mid-term review)**

**8.** In regulation 34—

(a) in paragraph (2)—

(i) for the opening words substitute—

“Where the TRA decides to initiate a mid-term review under paragraph (1), the TRA must notify the Secretary of State that it intends to initiate a mid-term review and, after the relevant interval, must take the following steps in the order in which they are set out—”;

(ii) before paragraph (a), insert—

“(aa) initiate the review;”;

(b) after paragraph (2) insert—

“(2A) In paragraph (2), the “relevant interval” is the period of two working days beginning with the first working day after the day on which the TRA notifies the Secretary of State of its intention to initiate the review.”;

(c) after paragraph (4), insert—

“(5) Where the TRA proposes to make a determination under paragraph (4)(a) the TRA must notify the Secretary of State of its proposed determination.

(6) Where the Secretary of State has been notified in accordance with paragraph (5), the Secretary of State may, within the relevant period (and subject to paragraph (7)), request that the TRA reassess its proposed determination by reference to any matter specified in the request.

(7) The Secretary of State may only make a request under paragraph (6) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its review that is relevant to the proposed determination;
  - (b) the TRA has made an error in relation to its proposed determination; or
  - (c) exceptional circumstances make the request appropriate.
- (8) The TRA must comply with a request under paragraph (6).
- (9) The TRA may not make its proposed determination until—
- (a) the relevant period has ended; or
  - (b) if the Secretary of State informs the TRA within the relevant period that the Secretary of State will not make a request under paragraph (6), the time when the TRA receives that information.

(10) For the purposes of paragraphs (6) and (9), the “relevant period” is the period of 21 days beginning with the day on which the TRA notifies the Secretary of State that it proposes to make the determination in question.”.

**Amendment of regulation 35 (extension review)**

9. In regulation 35—

(a) after paragraph (2), insert—

“(2A) Where an application is made under paragraph (2)(a), the TRA must notify the Secretary of State of that application before the end of the second working day after the day on which it receives the application.”;

(b) omit paragraph (3);

(c) in paragraph (5)—

(i) for the opening words, substitute—

“Where the TRA decides to initiate an extension review, the TRA must notify the Secretary of State that it intends to initiate an extension review and, after the relevant interval, must take the following steps in the order in which they are set out”;

(ii) before paragraph (a), insert—

“(aa) initiate the review.”;

(d) after paragraph (5), insert—

“(5A) In paragraph (5), the “relevant interval” is the period of two working days beginning with the first working day after the day on which the TRA notifies the Secretary of State of its intention to initiate the review.”;

(e) after paragraph (7), insert—

“(7A) Where the TRA proposes to make a determination under paragraph (7)(a) the TRA must notify the Secretary of State of its proposed determination.

(7B) Where the Secretary of State has been notified in accordance with paragraph (7A), the Secretary of State may, within the relevant period (and subject to paragraph (7C)), request that the TRA reassess its proposed determination by reference to any matter specified in the request.

(7C) The Secretary of State may only make a request under paragraph (7B) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its review that is relevant to the proposed determination;
- (b) the TRA has made an error in relation to its proposed determination; or
- (c) exceptional circumstances make the request appropriate.

(7D) The TRA must comply with a request under paragraph (7B).

(7E) The TRA may not make its proposed determination until—

- (a) the relevant period has ended; or
- (b) if the Secretary of State informs the TRA within the relevant period that the Secretary of State will not make a request under paragraph (7B), the time when the TRA receives that information.

(7F) For the purposes of paragraphs (7B) and (7E), the “relevant period” is the period of 21 days beginning with the day on which the TRA notifies the Secretary of State that it proposes to make the determination in question.”.

**Amendment of regulation 35A (discontinuation review)**

**10.** In regulation 35A—

(a) in paragraph (3)—

(i) for the opening words, substitute—

“Where the TRA decides to initiate a discontinuation review, the TRA must notify the Secretary of State that it intends to initiate a discontinuation review and, after the relevant interval, must take the following steps in the order in which they are set out”;

(ii) before paragraph (a), insert—

“(aa) initiate the review.”;

(b) after paragraph (3), insert—

“(3A) In paragraph (3), the “relevant interval” is the period of two working days beginning with the first working day after the day on which the TRA notifies the Secretary of State of its intention to initiate the review.”;

(c) after paragraph (5), insert—

“(6) Where the TRA proposes to make a determination under paragraph (5)(a) the TRA must notify the Secretary of State of its proposed determination.

(7) Where the Secretary of State has been notified in accordance with paragraph (6), the Secretary of State may, within the relevant period (and subject to paragraph (8)), request that the TRA reassess its proposed determination by reference to any matter specified in the request.

(8) The Secretary of State may only make a request under paragraph (7) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its review that is relevant to the proposed determination;
- (b) the TRA has made an error in relation to its proposed determination; or
- (c) exceptional circumstances make the request appropriate.

(9) The TRA must comply with a request under paragraph (7).

(10) The TRA may not make its proposed determination until—

- (a) the relevant period has ended; or
- (b) if the Secretary of State informs the TRA within the relevant period that the Secretary of State will not make a request under paragraph (7), the time when the TRA receives that information.

(11) For the purposes of paragraphs (7) and (10), the “relevant period” is the period of 21 days beginning with the day on which the TRA notifies the Secretary of State that it proposes to make the determination in question.”.

**Amendment of regulation 35B (tariff rate quota review)**

**11.** In regulation 35B—

- (a) after paragraph (2), insert—

“(2A) Where an application is made under paragraph (2)(a), the TRA must notify the Secretary of State of that application before the end of the second working day after the day on which it receives the application.”;

- (b) in paragraph (5)—

- (i) for the opening words, substitute—

“Where the TRA decides to initiate a TRQ review, the TRA must notify the Secretary of State that it intends to initiate a TRQ review and, after the relevant interval, must take the following steps in the order in which they are set out”;

- (ii) before paragraph (a), insert—

“(aa) initiate the review.”;

- (c) after paragraph (5), insert—

“(5A) In paragraph (5), the “relevant interval” is the period of two working days beginning with the first working day after the day on which the TRA notifies the Secretary of State of its intention to initiate the review.”;

- (d) after paragraph (7), insert—

“(7A) Where the TRA proposes to make a determination under paragraph (7)(a) the TRA must notify the Secretary of State of its proposed determination.

(7B) Where the Secretary of State has been notified in accordance with paragraph (7A), the Secretary of State may, within the relevant period (and subject to paragraph (7C)), request that the TRA reassess its proposed determination by reference to any matter specified in the request.

(7C) The Secretary of State may only make a request under paragraph (7B) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its review that is relevant to the proposed determination;
- (b) the TRA has made an error in relation to its proposed determination; or
- (c) exceptional circumstances make the request appropriate.

(7D) The TRA must comply with a request under paragraph (7B).

(7E) The TRA may not make its proposed determination until—

- (a) the relevant period has ended; or
- (b) if the Secretary of State informs the TRA within the relevant period that the Secretary of State will not make a request under paragraph (7B), the time when the TRA receives that information.

(7F) For the purposes of paragraphs (7B) and (7E), the “relevant period” is the period of 21 days beginning with the day on which the TRA notifies the Secretary of State that it proposes to make the determination in question.”.

### **Amendment of regulation 36 (the conduct of reviews)**

12. In regulation 36(4), after “apply to”, insert “an early review.”.

### **Amendment of regulation 37 (TRA’s recommendation to the Secretary of State)**

13. In regulation 37—

- (a) in paragraph (1), for “Unless paragraph (2) applies, the” substitute “The”;
- (b) omit paragraph (2);
- (c) after paragraph (2), insert—

“(2A) Where, in relation to an early review under regulation 33A, a mid-term review under regulation 34 or an extension review under regulation 35, the TRA considers that there are two or more options which it could recommend under paragraph (1), it may give the Secretary of State each of those options as part of its recommendation.

(2B) The TRA must consider whether it could give the Secretary of State two or more options as part of its recommendation under paragraph (1)—

- (a) in the case of an extension review, where the TRA considers that the extension of the application of the definitive safeguarding remedy in accordance with its proposed recommendation would not meet the economic interest test;
- (b) where the TRA otherwise considers that it is appropriate.

(2C) Where, after considering whether it could give the Secretary of State two or more options as part of its recommendation in accordance with paragraph (1), the TRA considers that there is only one option which it could reasonably recommend under paragraph (1), it must give the Secretary of State its reasons for reaching that conclusion.

(2D) Where the TRA gives the Secretary of State options, it must—

- (a) give the Secretary of State its reasons for including each option; and
- (b) inform the Secretary of State which option it prefers and why.

(2E) Where, in the case of an extension review, the TRA makes a recommendation to extend the application of a definitive safeguarding remedy, it must advise the Secretary of State whether and why it considers that the extension of the application of that definitive safeguarding remedy in accordance with its recommendation, or in accordance with each option given under paragraph (2A), as the case may be, would meet the economic interest test.”.

#### **Amendment of regulation 38 (acceptance or rejection of the TRA’s recommendation by the Secretary of State)**

14. In regulation 38—

- (a) for the heading substitute “**Powers of the Secretary of State in relation to the TRA’s recommendation**”;
- (b) in paragraph (1), for “accept or reject the recommendation” substitute—

“—

- (a) accept or reject the recommendation; or
- (b) except in the case of a recommendation made in relation to an early review under regulation 33A, request that the TRA reassess its recommendation, by reference to any matters specified in the request, with a view to amending or replacing the recommendation.”;

(c) after paragraph (1), insert—

“(1A) Where the Secretary of State accepts a recommendation which contains options given in reliance on paragraph 37(2A), the Secretary of State must decide which of those options to adopt.”;

(d) in paragraph (2), for the words from “that—” to the end, substitute “that it is not in the public interest to accept it”;

(e) after paragraph (2), insert—

“(2A) In considering the public interest under paragraph (2), where regulation 37(2E) applies the Secretary of State must have regard to the TRA’s advice on whether extending the application of a definitive safeguarding remedy in accordance with a recommendation, or in accordance with each option, as the case may be, would meet the economic interest test.

(2B) Paragraph (2C) applies if—

- (a) the TRA makes a recommendation to vary or replace the application of a definitive safeguarding remedy; and
- (b) the Secretary of State rejects the recommendation.

(2C) If the Secretary of State considers that it is in the public interest to do so, the Secretary of State may decide that the application of the definitive safeguarding remedy should be—

- (a) varied or replaced other than in accordance with the recommendation, subject to paragraph (2D) where applicable; or
- (b) revoked.

(2D) Where the Secretary of State decides to vary a recommendation made by the TRA following a determination by the TRA under regulation 35B(7)(b), the restrictions in regulation 35B(8) apply to the Secretary of State’s decision under paragraph (2C)(a).”;

(f) in paragraph (3), after “rejects the recommendation”, insert “and does not make a decision under paragraph (2C)”;

(g) after paragraph (3), insert—

“(4) The Secretary of State may only make a request under paragraph (1)(b) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its review that is relevant to the recommendation;
- (b) the TRA made an error in relation to its recommendation; or
- (c) exceptional circumstances make the request appropriate.

(5) Before making a request under paragraph (1)(b), the Secretary of State must consult the TRA.

(6) Where the Secretary of State makes a request under paragraph (1)(b), the TRA must—

- (a) comply with the request; and
- (b) in reassessing its recommendation, have regard to any particular considerations which the Secretary of State may specify in the request.”.

### **Insertion of regulation 38A**

15. After regulation 38, insert—

#### **“Power to request assistance etc from TRA**

**38A.**—(1) The Secretary of State may request that the TRA give advice, information or other support to the Secretary of State for the purpose of allowing the Secretary of State to decide whether to make a decision under regulation 38(2C).

(2) The Secretary of State may include in a request under paragraph (1) a requirement that the TRA investigate and provide a report on any matter specified in the request.

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(3) Before making a request under paragraph (1), the Secretary of State must consult the TRA.

(4) The TRA must comply with a request under paragraph (1).”