

2023 No. 954

CUSTOMS

TRADE

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

<i>Made - - - -</i>	<i>30th August 2023</i>
<i>Laid before the House of Commons</i>	<i>4th September 2023</i>
<i>Coming into force - -</i>	<i>25th September 2023</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 13(5) and 32(7) and (8) of, and paragraphs 8(1), 16(10B), 21, 22, 24 and 30 of Schedule 5 to, the Taxation (Cross-border Trade) Act 2018(a).

In accordance with section 32(12) of the Taxation (Cross-border Trade) Act 2018, the Secretary of State has consulted the Trade Remedies Authority(b).

PART 1

Introductory

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) (Amendment) Regulations 2023.

(2) These Regulations come into force on 25th September 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations “the Safeguards Regulations” means the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(c).

Application

2.—(1) These Regulations apply in relation to—

(a) 2018 c.22. Section 13 of, and Schedule 5 to the Taxation (Cross-border Trade) Act 2018 were amended by section 316 of, and Schedule 19 to, the Finance (No. 2) Act 2023 (c.30).

(b) The Trade Remedies Authority was established by the Trade Act 2021 (c. 10).

(c) S.I. 2019/449, amended by S.I. 2019/1076, 1319, 2020/99, 730, 2021/783, 2022/414.

- (a) safeguarding investigations^(a) under Part 2 of Schedule 5 to the Taxation (Cross-border Trade) Act 2018 initiated by the TRA after the commencement of these Regulations,
 - (b) reviews under Part 6 and investigations under Part 7A of the Safeguards Regulations—
 - (i) initiated by the TRA after the commencement of these Regulations;
 - (ii) initiated by the TRA but not completed before the commencement of these Regulations,
 - (c) a recommendation made by the TRA under Part 7 of the Safeguards Regulations—
 - (i) after the commencement of these Regulations;
 - (ii) before the commencement of these Regulations, where the Secretary of State has not made a decision in relation to that recommendation before the commencement of these Regulations, and
 - (d) a suspension application made under regulation 40(1) of the Safeguards Regulations after the commencement of these Regulations.
- (2) For the purposes of paragraph (1), “initiated by the TRA” means—
- (a) in the case of a safeguarding investigation, that the TRA has published a notice of its decision to initiate the investigation;
 - (b) in the case of a review under Part 6 of the Safeguards Regulations, that the TRA has published a notice of initiation of a review under that Part;
 - (c) in the case of an investigation under Part 7A of the Safeguards Regulations, that the TRA has published a notice of its initiation of an international dispute investigation under regulation 42C of those Regulations.

PART 2

Amendment of the Safeguards Regulations

Chapter 1

General

Amendment of the Safeguards Regulations

3. The Safeguards Regulations are amended in accordance with this Part.

Chapter 2

Amendment of Part 1 (introductory)

Amendment of regulation 2 (interpretation)

4. In regulation 2, at the appropriate place, insert—

““early review” has the meaning given by regulation 33A;”.

(a) See paragraph 6 of Schedule 5 to the Taxation (Cross-border Trade) Act 2018 for the meaning of “safeguarding investigation”.

Chapter 3

Amendment of Part 5 (initiation and conduct of an investigation)

Amendment of regulation 24 (registration of interest and the issuing of questionnaires)

5. Omit regulation 24(6).

Insertion of regulation 28A

6. After regulation 28, insert—

“Alternative options for final affirmative determination

28A. The TRA must consider giving two or more options as part of its recommendation to the Secretary of State under paragraph 16(3) of Schedule 5 to the Act in the following circumstances—

- (a) where the TRA considers that applying a definitive safeguarding amount or making relevant goods subject to a tariff rate quota in accordance with its proposed recommendation would not meet the economic interest test;
- (b) where the TRA otherwise considers that it is appropriate.”.

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.

(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).”.

Chapter 5

Amendment of Part 7 (suspension)

Amendment of regulation 39 (suspension of a definitive safeguarding remedy)

16. In regulation 39—

(a) in paragraph (9), for “accept or reject it” substitute—

“—

- (a) accept or reject the recommendation; or
- (b) 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”;

(b) after paragraph (10), insert—

“(10A) Paragraph (10B) applies if the recommendation is rejected.

(10B) If the Secretary of State considers that it is in the public interest to do so, the Secretary of State may decide to vary the recommended period of suspension, subject to regulation 41(1).

(10C) Where the Secretary of State makes a decision under paragraph (10B), the Secretary of State must lay a statement before the House of Commons setting out the reasons for making the decision.”;

(c) in paragraph (11), after “rejects a suspension recommendation”, insert “and does not make a decision under paragraph (10B)”;

(d) after paragraph (12), insert—

“(13) The Secretary of State may only make a request under paragraph (9)(b) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its consideration of whether the circumstances in paragraph (4) exist that is relevant to that consideration;
- (b) the TRA made an error in relation to its recommendation; or
- (c) exceptional circumstances make the request appropriate.

(14) Before making a request under paragraph (9)(b), the Secretary of State must consult the TRA.

(15) Where the Secretary of State makes a request under paragraph (9)(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.”.

Amendment of regulation 40 (application for suspension)

17. In regulation 40, after paragraph (2), insert—

“(2A) Where an application is made under paragraph (1) 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.”.

Amendment of regulation 41 (period of suspension)

18. In regulation 41—

(a) in paragraph (7), for “accept or reject it” substitute—

“—

- (a) accept or reject the recommendation; or
- (b) 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”;

(b) after paragraph (8), insert—

“(8A) Paragraph (8B) applies if the recommendation is rejected.

(8B) If the Secretary of State considers that it is in the public interest to do so, the Secretary of State may decide to vary the recommended extended period of suspension, subject to paragraph (8C).

(8C) Where the Secretary of State decides to vary the extended period of suspension—

- (a) the overall duration of the extended period of suspension must not exceed 21 months; and
- (b) the extended period of suspension 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.

(8D) Where the Secretary of State makes a decision under paragraph (8B) the Secretary of State must lay a statement before the House of Commons setting out the reasons for making the decision.”;

(c) in paragraph (9), after “rejects a recommendation”, insert “and does not make a decision under paragraph (8B)”;

(d) after paragraph (9), insert—

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

- (a) there is information that the TRA did not take into account in its recommendation 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.

(11) Before making a request under paragraph (7)(b), the Secretary of State must consult the TRA.

(12) Where the Secretary of State makes a request under paragraph (7)(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 42ZA

19. After regulation 42, insert—

“Power to request assistance etc from TRA

42ZA.—(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 39(10B) or regulation 41(8B).

(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.

(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).”.

Chapter 6

Amendment of Part 7A (investigation in light of an international dispute decision)

Amendment of regulation 42B (suspension of a definitive safeguarding remedy)

20. Omit regulation 42B(3)(a)(ii).

Amendment of regulation 42F (determination to maintain)

21. In regulation 42F, after paragraph (1), insert—

“(1A) Where the TRA proposes to make a determination under paragraph (1) the TRA must notify the Secretary of State of its proposed determination.

(1B) Where the Secretary of State has been notified in accordance with paragraph (1A), the Secretary of State may, within the relevant period (and subject to paragraph (1C)), request that the TRA reassess its proposed determination by reference to any matter specified in the request.

(1C) The Secretary of State may only make a request under paragraph (1B) where the Secretary of State considers that—

- (a) there is information that the TRA did not take into account in its investigation 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.

(1D) The TRA must comply with a request under paragraph (1B).

(1E) 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 (1B), the time when the TRA receives that information.

(1F) For the purposes of paragraphs (1B) and (1E), 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 42G (determination to vary)

22. In regulation 42G—

- (a) for paragraph (1) substitute—

“(1) If the TRA determines the application to goods of a definitive safeguarding remedy should be varied, the TRA must make a recommendation to the Secretary of State to that effect.”;

- (b) omit paragraph (2);

- (c) after paragraph (2), insert—

“(2A) Where, in relation to a recommendation under paragraph (1), the TRA considers that there are two or more options which it could recommend, 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) where the TRA considers that varying a definitive safeguarding remedy in accordance with its proposed recommendation would not meet the economic interest test (see paragraph 23 of Schedule 5 to the Act);

- (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 (2A), 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 the TRA makes a recommendation under paragraph (1), it must advise the Secretary of State whether and why it considers that varying the application of a 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.”;

- (d) omit paragraphs (3) and (4).

Amendment of regulation 42I (acceptance or rejection of a recommendation)

23. In regulation 42I—

- (a) for the heading substitute “**Powers of the Secretary of State in relation to TRA’s recommendation**”;

- (b) in paragraph (1), for the words from “accept or reject” to the end substitute—

“—

- (a) accept or reject the recommendation made under regulation 42G(1) or 42H(2); or

- (b) 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 42G(2A), the Secretary of State must decide which of those options to adopt.”;

(d) for paragraph (2), substitute—

“(2) The Secretary of State may reject a recommendation under regulation 42G(1) only if the Secretary of State is satisfied it is not in the public interest to accept it.”;

(e) for paragraph (3), substitute—

“(3) The Secretary of State may reject a recommendation under regulation 42H(2) only if the Secretary of State is satisfied it is not in the public interest to accept it.”;

(f) after paragraph 3, insert—

“(3A) In considering the public interest under paragraph (2), the Secretary of State must have regard to the TRA’s advice on whether the variation of the application of a definitive safeguarding remedy in accordance with the recommendation, or in accordance with each option, as the case may be, would meet the economic interest test.

(3B) Paragraph (3C) applies if— .

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

(3C) 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 varied other than in accordance with the recommendation, or revoked.”;

(g) in paragraph (4)—

- (i) after “rejects a recommendation”, insert “and does not make a decision under paragraph (3C)”;
- (ii) at the end of sub-paragraph (a), insert “containing the information set out in paragraph 18 of the Schedule”;

(h) after paragraph (4), insert—

“(5) 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 investigation 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.

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

(7) 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 42J

24. After regulation 42I, insert—

“Power to request assistance etc from TRA

42J.—(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 42I(3C).

(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.

(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).”.

Chapter 7

Amendment of the Schedule

Amendment of the Schedule

25.—(1) The Schedule is amended as follows.

(2) In paragraph 4—

(a) in the opening words—

(i) after “paragraph”, insert “14(2E)(a),”;

(ii) before “15(3)(a)”, insert “15(2E)(a),”;

(b) for sub-paragraph (f) substitute—

“(f) where the Secretary of State rejects the TRA’s recommendation—

(i) and makes a decision under paragraph 14(2C) or 15(2C) of Schedule 5 to the Act—

(aa) that such notice is a public notice made under section 13 of the Act; and

(bb) the reasons for the Secretary of State’s rejection and for applying a provisional safeguarding remedy other than in accordance with the recommendation;

(ii) and does not make a decision under paragraph 14(2C) or 15(2C) of Schedule 5 to the Act, the reasons for the Secretary of State’s rejection.”.

(3) In paragraph 6—

(a) in the opening words—

(i) after “paragraph”, insert “19(2E)(a),”;

(ii) before “20(3)(a)”, insert “20(2E)(a),”;

(b) for sub-paragraph (f) substitute—

“(f) where a provisional safeguarding remedy is in force and the Secretary of State rejects the TRA’s recommendation—

(i) and makes a decision under paragraph 19(2C) or 20(2C) of Schedule 5 to the Act—

(aa) that such notice is a public notice made under section 13 of the Act; and

(bb) the reasons for the Secretary of State’s rejection and for applying a definitive safeguarding remedy other than in accordance with the recommendation;

- (ii) and does not make a decision under paragraph 19(2C) or 20(2C) of Schedule 5 to the Act—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection;”;
- (c) for sub-paragraph (g) substitute—
 - “(g) where a provisional safeguarding remedy is not in force and the Secretary of State rejects the TRA’s recommendation—
 - (i) and makes a decision under paragraph 19(2C) or 20(2C) of Schedule 5 to the Act—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection and for applying a definitive safeguarding remedy other than in accordance with the recommendation;
 - (ii) and does not make a decision under paragraph 19(2C) or 20(2C) of Schedule 5 to the Act, the reasons for the Secretary of State’s rejection.”.
- (4) In paragraph 9, in the opening words, after “regulation”, insert “33A(6)(a) (in which case only subparagraphs (a) to (f) and (i) to (l) apply),”.
- (5) In paragraph 10, for sub-paragraph (f) substitute—
 - “(f) where the Secretary of State rejects the TRA’s recommendation—
 - (i) and makes a decision under regulation 38(2C)—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection, and for varying the application of a definitive safeguarding remedy other than in accordance with the recommendation or revoking it;
 - (ii) and does not make a decision under regulation 38(2C), the reasons for the Secretary of State’s rejection.”.
- (6) In paragraph 13, for sub-paragraph (e) substitute—
 - “(e) where the Secretary of State rejects the TRA’s recommendation—
 - (i) and makes a decision under regulation 39(10B)—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection and for suspending the definitive safeguarding remedy other than in accordance with the recommendation;
 - (ii) and does not make a decision under regulation 39(10B), the reasons for the Secretary of State’s rejection.”.
- (7) In paragraph 14—
 - (a) in the opening words, after “referred to in”, insert “paragraph 24(6)(a) of Schedule 5 to the Act or”;
 - (b) for sub-paragraph (f) substitute—

- “(f) where the Secretary of State rejects the TRA’s recommendation—
 - (i) and makes a decision under regulation 41(8B)—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection and for extending a period of suspension other than in accordance with the recommendation;
 - (ii) and does not make a decision under regulation 41(8B), the reasons for the Secretary of State’s rejection.”.

(8) In paragraph 17—

- (a) in the heading, for “of” in the second place it occurs, substitute “to maintain the application of a definitive safeguarding remedy in an”;
- (b) in the opening words, omit “and 42G(4)”.

(9) After paragraph 17, insert—

“Notice of the Secretary of State accepting or rejecting a recommendation by the TRA relating to an international dispute investigation

18. The information to be contained in a notice referred to in paragraph 22(4)(a) of Schedule 5 to the Act or regulation 42I(4) is—

- (a) a description of the goods to which the notice relates;
- (b) a description of the definitive safeguarding remedy to which the notice relates;
- (c) a summary of the investigation;
- (d) a summary of the international dispute decision;
- (e) the TRA’s determination made in the light of the international dispute decision;
- (f) the reasons for the TRA’s recommendation to vary or revoke the definitive safeguarding remedy;
- (g) where the Secretary of State accepts the TRA’s recommendation to vary the definitive safeguarding remedy—
 - (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;
 - (iii) details of exceptions of goods from the application of the definitive safeguarding remedy, if any;
- (h) where the Secretary of State accepts the TRA’s recommendation to revoke the definitive safeguarding remedy—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the date that the notice takes effect, which must be the day after the date of publication of the notice;
- (i) where the Secretary of State rejects the TRA’s recommendation—
 - (i) and makes a decision under regulation 42I(3C)—
 - (aa) that such notice is a public notice made under section 13 of the Act; and
 - (bb) the reasons for the Secretary of State’s rejection, and for varying the application of a definitive safeguarding remedy other than in accordance with the recommendation or revoking it;

(ii) and does not make a decision under regulation 42I(3C), the reasons for the Secretary of State’s rejection.”.

Signed by the authority of the Secretary of State for Business and Trade

30th August 2023

Kevin Hollinrake
Parliamentary Under Secretary of State
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449, as amended) (“the Safeguards Regulations”). The Safeguards Regulations implement part of the United Kingdom trade remedies system.

In particular, the amendments—

- prescribe the circumstances in which the TRA must consider giving options to the Secretary of State as part of its recommendation in a safeguarding investigation;
- in relation to reviews under Part 6 of the Safeguards Regulations, provide for—
 - the TRA to give alternative options, in certain circumstances, in its recommendations to the Secretary of State;
 - the Secretary of State to ask the TRA to reassess its recommendation in certain circumstances;
 - the Secretary of State to act other than in accordance with the TRA recommendation;
 - the Secretary of State to seek advice, information and support from the TRA;
- make corresponding amendments to Part 7 (suspension) and Part 7A (investigation in light of an international dispute decision) of the Safeguards Regulations;
- amend the Schedule to the Safeguards Regulations so that notices required under Schedule 5 to the Taxation (Cross-border Trade) Act 2018 (c. 22) and the Safeguards Regulations reflect the amendments made by these Regulations.

A notice referred to in the Safeguards Regulations which is published by the Secretary of State will be available to view online at <https://www.gov.uk/business-and-industry/importing>.

A notice referred to in the Safeguards Regulations which is published by the Trade Remedies Authority will be available to view online at <https://www.trade-remedies.service.gov.uk/>.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

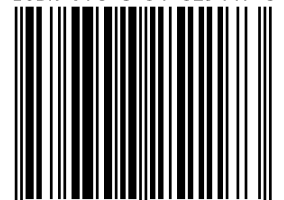
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