

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Schedule 20. (See end of Document for details)

SCHEDULES

SCHEDULE 20

Section 316

BILATERAL SAFEGUARDING REMEDIES

PART 1

AMENDMENTS TO TCTA 2018

PROSPECTIVE

- 1 (1) Section 13 of TCTA 2018 is amended as follows.
- (2) In subsection (1)—
- (a) omit the “and” at the end of paragraph (a);
 - (b) at the end insert “, and
 - (c) Schedule 5A (increase in imports as a result of free trade agreement causing serious injury to UK producers).”
- (3) In subsection (2), for “Schedule 4 or 5” substitute “Schedule 4, 5 or 5A”.
- (4) In subsection (3), after “Schedule 5” insert “or 5A”
- (5) In subsection (4), in the words before paragraph (a), for “Schedule 4 or 5” substitute “Schedule 4, 5 or 5A”.

Commencement Information

- II** Sch. 20 para. 1 not in force at Royal Assent, see [Sch. 20 para. 3\(2\)](#)

- 2 After Schedule 5 of that Act insert—

“SCHEDULE 5A

Section 13

INCREASE IN IMPORTS AS A RESULT OF FREE TRADE
AGREEMENT CAUSING SERIOUS INJURY TO UK PRODUCERS

Application of this Schedule

- 1 (1) Schedule 5 (increase in imports causing serious injury to UK producers) applies in relation to a relevant increase in imports subject to the following paragraphs of this Schedule.
- (2) For the purposes of [sub-paragraph \(1\)](#) a “relevant increase in imports” occurs where—

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- (a) goods have been or are being, or may have been or may be being, imported into the United Kingdom in increased quantities,
 - (b) the importation of the goods in increased quantities was or is, or may have been or may be being, caused by the reduction or elimination of import duty as a result of a free trade agreement, and
 - (c) the importation of the goods in increased quantities has caused or is causing, or may have caused or may be causing, serious injury to UK producers of those goods.
- (3) In [sub-paragraph \(2\)\(c\)](#) “serious injury” and “UK producers” have the meaning that they have for the purposes of Schedule 5 (see paragraphs 2 and 3 of that Schedule).

TRA and Secretary of State required to have regard to relevant free trade agreement

- 2 In applying the provisions of Schedule 5 in accordance with this Schedule the TRA and the Secretary of State must have regard to the relevant free trade agreement.

Meaning of importation in “increased quantities”

- 3 Paragraph 1 of Schedule 5 (meaning of importation in “increased quantities”) is to be read as if, in paragraph (c) of sub-paragraph (2), the words from “including provision” to the end were omitted.

Bilateral safeguarding investigation

- 4 Paragraph 6 of Schedule 5 (safeguarding investigation) is to be read as if, in sub-paragraph (1)—
- (a) the “and” at the end of paragraph (a) were omitted;
 - (b) after that paragraph there were inserted—
 - “(aa) whether the importation of the goods in increased quantities was or is being caused by the reduction or elimination of import duty as a result of a free trade agreement, and”

Initiation of a bilateral safeguarding investigation

- 5 (1) Paragraph 7 of Schedule 5 (initiation of a safeguarding investigation) is to be read subject to the following modifications.
- (2) Sub-paragraph (1) is to be read as if—
- (a) in the words before paragraph (a), for “The TRA may initiate” there were substituted “The Secretary of State may request that the TRA initiates”;
 - (b) paragraph (a) were omitted;
 - (c) in paragraph (b)—
 - (i) in the words before sub-paragraph (i), for “it is satisfied that the application contains” there were substituted “the Secretary of State is satisfied that there is”;

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- (ii) the “and” at the end of sub-paragraph (i) were omitted;
- (iii) after that sub-paragraph there were inserted—
 - “(ia) the importation of the goods in increased quantities was or is being caused by the reduction or elimination of import duty as a result of the relevant free trade agreement, and”;
- (d) in paragraph (c)—
 - (i) for “the TRA” there were substituted “the Secretary of State”;
 - (ii) for “application” there were substituted “request”;
- (e) in paragraph (d)—
 - (i) for “application”, in both places it appears, there were substituted “request”;
 - (ii) for “the TRA” there were substituted “the Secretary of State”.
- (3) Sub-paragraph (2) is to be read as if—
 - (a) paragraph (a) were omitted;
 - (b) in paragraph (b), for the words from “in the case” to “the TRA” there were substituted “the Secretary of State”.
- (4) Sub-paragraph (3) is to be read as if—
 - (a) paragraph (a) were omitted;
 - (b) in paragraph (b), the words “in the case” to “sub-paragraph (1)(a)(ii)” were omitted.
- (5) The remaining provisions of paragraph 7 are to be read as if—
 - (a) in sub-paragraph (4), paragraphs (a) to (d) were omitted;
 - (b) sub-paragraphs (4A) and (5) were omitted;
 - (c) in sub-paragraph (6)—
 - (i) for the words before paragraph (a) there were substituted “Where the Secretary of State makes a request under sub-paragraph (1) the TRA must—”;
 - (ii) in paragraph (a) the words “accept the application and” were omitted;
 - (iii) in paragraph (b), for “of its decision to initiate” substitute “that it has initiated”;
 - (d) sub-paragraph (6A) were omitted;
 - (e) sub-paragraph (8) were omitted.

Provisional affirmative determinations and final affirmative or negative determinations

- 6 Paragraph 9 of Schedule 5 (provisional affirmative determinations and final affirmative or negative determinations) is to be read as if—
 - (a) in sub-paragraph (1)—
 - (i) the “and” at the end of paragraph (a) were omitted;
 - (ii) after that paragraph there were inserted—

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- “(aa) the importation of the goods in increased quantities was or is being caused by the reduction or elimination of import duty as a result of the relevant free trade agreement, and”;
- (b) sub-paragraph (3) were omitted;
- (c) for sub-paragraph (7) there were substituted—
 - “(7) Where the TRA makes a final negative determination or final negative determinations under sub-paragraph (4)—
 - (a) the TRA must notify the Secretary of State of the determination or determinations;
 - (b) the Secretary of State must notify interested parties (see paragraph 31(3)) that the Secretary of State will not apply a bilateral safeguarding remedy to the goods;
 - (c) the Secretary of State may produce and publish a report or update in relation to the investigation;
 - (d) the Secretary of State may request that the TRA produces a report or update in relation to the investigation.
 - (8) Where the Secretary of State makes a request under [sub-paragraph \(7\)\(d\)](#)—
 - (a) the TRA must produce a report or update (as the case may be) in accordance with the request, and
 - (b) the Secretary of State may publish the report or update (as the case may be).”.

Termination of a bilateral safeguarding investigation

- 7 Paragraph 10 of Schedule 5 (termination of a safeguarding investigation) is to be read as if—
- (a) in paragraph (a), for “notice of that determination is published” there were substituted “the TRA notifies the Secretary of State of that determination”;
 - (b) in paragraph (b), for the words from “notice of that determination” to the end there were substituted “the TRA notifies the Secretary of State of its final affirmative determination in relation to the goods under paragraph 16(11)(a)”;
 - (c) in paragraph (c), for the words “the notice of rejection” there were substituted “notice of a decision of the Secretary of State not to apply a bilateral safeguarding remedy”.

TRA’s duty to recommend provisional measures

- 8 (1) Paragraph 11 of Schedule 5 (TRA’s duty to recommend a provisional safeguarding amount or provisional tariff rate quota) is to be read as if—
- (a) in sub-paragraph (3), after paragraph (a) there were inserted—
 - “(aa) that any reduction in the rate of import duty applicable to all the relevant goods or

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to specified relevant goods as a result of the relevant free trade agreement should be suspended for a specified period (referred to in this Schedule as a “provisional suspension of tariff rate reduction”);”

(b) for sub-paragraph (9) there were substituted—

“(9) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3)—

- (a) the TRA must notify the Secretary of State of its provisional affirmative determination in relation to the goods, and
- (b) the Secretary of State must notify interested parties (see paragraph 31(3)) that the Secretary of State will not apply a provisional bilateral safeguarding amount, a provisional suspension of tariff rate reduction or a provisional tariff rate quota to the goods.”

(2) In consequence of the modification made by [sub-paragraph \(1\)\(a\)](#)—

- (a) references in Schedule 5 to paragraphs (a) and (b) of sub-paragraph (3) of paragraph 11 of that Schedule are to be read as references to paragraphs (a), (aa) and (b) of that sub-paragraph;
- (b) references in Schedule 5 to paragraph (a) of that sub-paragraph are to be read as references to paragraph (a) or (aa) of that sub-paragraph (and accordingly references to paragraph (a) or (b) of that sub-paragraph are to be read as references to paragraph (a), (aa) or (b) of that sub-paragraph).

TRA’s recommendations about provisional measures

9 Paragraph 12 of Schedule 5 (TRA’s recommendations about a provisional safeguarding amount) is to be read as if, in sub-paragraph (2), for paragraph (a) there were substituted—

“(a) is to be such period as the TRA may determine, having regard to the relevant free trade agreement, and”

10 Paragraph 13 of Schedule 5 (TRA’s recommendations regarding provisional tariff rate quotas) is to be read as if, in sub-paragraph (2), for paragraph (a) there were substituted—

“(a) is to be such period as the TRA may determine, having regard to the relevant free trade agreement, and”

TRA’s duty to recommend a definitive measure

11 (1) Paragraph 16 of Schedule 5 (TRA’s duty to recommend a definitive safeguarding amount or tariff rate quota) is to be read as if—

(a) in sub-paragraph (3), after paragraph (a) there were inserted—

“(aa) that any reduction in the rate of import duty applicable to all the relevant goods or to specified relevant goods as a result of the relevant free trade agreement should be suspended for a specified period (referred to

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- in this Schedule as a “definitive suspension of tariff rate reduction”);”
- (b) sub-paragraphs (5), (6) and (7) were omitted;
 - (c) for sub-paragraph (11) there were substituted—
 - “(11) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3)—
 - (a) the TRA must notify the Secretary of State of its final affirmative determination in relation to the goods,
 - (b) the Secretary of State must notify interested parties (see paragraph 31(3)) that the Secretary of State will not apply a definitive safeguarding amount, a definitive suspension of tariff rate reduction or a tariff rate quota to the goods.”
- (2) In consequence of the modification made by [sub-paragraph \(1\)\(a\)](#)—
- (a) references in Schedule 5 to paragraphs (a) and (b) of sub-paragraph (3) of paragraph 16 of that Schedule are to be read as references to paragraphs (a), (aa) and (b) of that sub-paragraph;
 - (b) references in Schedule 5 to paragraph (a) of that sub-paragraph are to be read as references to paragraph (a) or (aa) of that sub-paragraph (and accordingly references to paragraph (a) or (b) of that sub-paragraph are to be read as references to paragraph (a), (aa) or (b) of that sub-paragraph).
- (3) In consequence of the modification made by [sub-paragraph \(1\)\(b\)](#), paragraph 21 of Schedule 5 (reviews) is to be read as if, in sub-paragraph (3), paragraph (d) were omitted.

TRA’s recommendations about definitive measures

- 12 Paragraph 17 of Schedule 5 (TRA’s recommendations about a definitive safeguarding amount) is to be read as if—
- (a) in sub-paragraph (2), in paragraph (b), for “must not exceed 4 years” there were substituted “is to be such period as the TRA may determine, having regard to the relevant free trade agreement”.
 - (b) in sub-paragraph (4), paragraph (b) (and the “, and” at the end of paragraph (a)) were omitted;
 - (c) after sub-paragraph (5) there were inserted—
 - “(5A) In making a recommendation under paragraph 16(3)(a) or (aa), the TRA must have regard to any provision of the relevant free trade agreement under or by virtue of which the definitive bilateral safeguarding amount or the definitive suspension of tariff rate reduction (as the case may be) applicable to goods is to become progressively smaller as the specified period referred to in paragraph 16(3)(a) or (aa) (as the case may be) progresses.”;
 - (d) sub-paragraphs (7) to (10) were omitted.
- 13 Paragraph 18 of Schedule 5 (TRA’s recommendations regarding tariff rate quotas) is to be read as if—

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- (a) in sub-paragraph (2), in paragraph (b), for “must not exceed 4 years” there were substituted “is to be such period as the TRA may determine, having regard to the relevant free trade agreement”.
- (b) in sub-paragraph (5), paragraph (b) (and the “, and” at the end of paragraph (a)) were omitted;
- (c) after sub-paragraph (6) there were inserted—

“(6A) In making a recommendation under paragraph 16(3)(b), the TRA must have regard to any provision of the relevant free trade agreement under or by virtue of which the amount of import duty applicable to goods subject to the quota is to become progressively smaller as the specified period referred to in that paragraph progresses.”
- (d) sub-paragraphs (7) to (10) were omitted.

Meaning of “international dispute decision”

- 14 Paragraph 22 of Schedule 5 (variation or revocation following an international dispute decision) is to be read as if, in sub-paragraph (6), for paragraph (a) there were substituted—
- “(a) a decision under the dispute settlement procedures of the relevant free trade agreement, or”

No suspension of bilateral safeguarding remedies

- 15 Paragraph 24 of Schedule 5 (suspension of safeguarding remedies) does not apply.

Exceptions

- 16 Sub-paragraph (2) of paragraph 25 of Schedule 5 (exceptions) does not apply.

No restriction on successive safeguarding remedies

- 17 (1) Paragraph 26 of Schedule 5 (restrictions on successive safeguarding remedies) is to be read as if—
- (a) in sub-paragraph (2), in the words before paragraph (a), for ““previous safeguarding remedy”” there were substituted ““previous bilateral safeguarding remedy””;
 - (b) for sub-paragraphs (3) to (5) there were substituted—

“(3) The Secretary of State may reject the recommendation if—

 - (a) the relevant free trade agreement contains provision restricting the circumstances in which a bilateral safeguarding remedy can be applied to goods to which a previous bilateral safeguarding remedy has been applied, and
 - (b) the Secretary of State considers that the acceptance of the recommendation would or might result in a breach of that provision.”

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No interaction with anti-dumping remedies and anti-subsidy remedies

- 18 Paragraph 27 (interaction with anti-dumping remedies and anti-subsidy remedies) does not apply.

Registration

- 19 Schedule 5 applies as if after paragraph 28 (investigations regarding repayments) there were inserted—

“Registration

- 28A (1) The Secretary of State may publish a notice of goods—
- (a) which are the subject of an investigation or other proceedings under provision made by or under this Schedule, and
 - (b) to which a provisional or definitive bilateral safeguarding amount or a provisional or definitive suspension of tariff rate reduction may be applied or the existing application of such an amount or reduction to which may be varied.
- (2) HMRC must register goods in respect of which such a notice is published.
- (3) Regulations may make provision for, or in connection with, the registration by HMRC of the goods—
- (a) to which a provisional or definitive bilateral safeguarding amount or a provisional or definitive suspension of tariff rate reduction may be applied, or
 - (b) the existing application of a provisional or definitive bilateral safeguarding amount or a provisional or definitive suspension of tariff rate reduction to which may be varied.”

Reports and updates by the TRA and Secretary of State

- 20 (1) This paragraph applies where, in accordance with Schedule 5 as applied by this Schedule—
- (a) the Secretary of State accepts or rejects a recommendation made by the TRA under any provision of that Schedule;
 - (b) the TRA determines that there is no recommendation which it could make.
- (2) The Secretary of State may—
- (a) produce and publish a report or update in relation to the bilateral safeguarding investigation concerned;
 - (b) request that the TRA produces such a report or update.
- (3) Where the Secretary of State makes a request under [sub-paragraph \(2\)\(b\)](#)—

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- (a) the TRA must produce a report or update (as the case may be) in accordance with the request, and
- (b) the Secretary of State may publish the report or update.

Secretary of State required to publish notice of decision about whether to apply remedy

- 21
- (1) Any provision of Schedule 5 requiring the Secretary of State to publish notice of a determination of the TRA, of a recommendation under paragraph 11(3)(a), (aa) or (b) of that Schedule and of the acceptance or rejection of it is to be read instead as requiring the Secretary of State to publish notice of the Secretary of State's decision to apply, or not to apply, a provisional bilateral safeguarding amount, a provisional suspension of tariff rate reduction, or a provisional tariff rate quota.
 - (2) Any provision of Schedule 5 requiring the Secretary of State to publish notice of a determination of the TRA, of a recommendation under paragraph 16(3)(a), (aa) or (b) of that Schedule and of the acceptance or rejection of it is to be read instead as requiring the Secretary of State to publish notice of the Secretary of State's decision to apply, or not to apply, a definitive bilateral safeguarding amount, a definitive suspension of tariff rate reduction, or a tariff rate quota.

Secretary of State not required to lay statements before the House of Commons

- 22
- The provisions of Schedule 5 imposing a requirement on the Secretary of State to lay a statement before the House of Commons do not apply in relation to any matter concerning a bilateral safeguarding investigation (and accordingly the Secretary of State is not required to lay such a statement).

Interpretation

- 23
- (1) Paragraph 31 of Schedule 5 (interpretation) applies subject to [sub-paragraph \(2\)](#).
 - (2) In Schedule 5 as applied by this Schedule—
 - (a) references to a definitive safeguarding amount are to be read as references to a definitive bilateral safeguarding amount or a definitive suspension of tariff rate reduction (as the case may be);
 - (b) references to a provisional safeguarding amount are to be read as references to a provisional bilateral safeguarding amount or a provisional suspension of tariff rate reduction (as the case may be);
 - (c) references to a safeguarding investigation are to be read as references to a bilateral safeguarding investigation;
 - (d) references to a safeguarding remedy are to be read as references to a bilateral safeguarding remedy.
- 24
- For the purposes of this Schedule and of Schedule 5 as applied by this Schedule—

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“bilateral safeguarding investigation” means an investigation under paragraph 6 of Schedule 5 as that provision applies by virtue of this Schedule;

“bilateral safeguarding remedy” has the meaning given in paragraph 23(4)(a) of Schedule 5 as that provision applies by virtue of this Schedule;

“definitive bilateral safeguarding amount” means the additional amount of import duty mentioned in paragraph 16(3)(a) of Schedule 5 as that provision applies by virtue of this Schedule.

“definitive suspension of tariff rate reduction” has the meaning given in paragraph (aa) of paragraph 16(3) of Schedule 5 (see [paragraph 11\(1\)\(a\)](#));

“free trade agreement” has the meaning given in section 5(1) of the Trade Act 2021;

“provisional bilateral safeguarding amount” means the additional amount of import duty mentioned in paragraph (11)(3)(a) of Schedule 5 as that provision applies by virtue of this Schedule;

“provisional suspension of tariff rate reduction” has the meaning given in paragraph (aa) of paragraph 11(3) of Schedule 5 (see [paragraph 8\(1\)\(a\)](#));

“relevant free trade agreement”, in relation to a bilateral safeguarding investigation, means the free trade agreement mentioned in paragraph 6(aa) of Schedule 5 (see [paragraph 4\(b\)](#)).

Commencement Information

I2 Sch. 20 para. 2 in force at Royal Assent for specified purposes, see [Sch. 20 para. 3\(1\)](#)

PART 2

COMMENCEMENT

- 3
- (1) Any power to make regulations under or by virtue of this Schedule comes into force on the day on which this Act is passed.
 - (2) The remaining provisions of this Schedule come into force on such day as the Secretary of State may by regulations appoint.
 - (3) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Schedule.
 - (4) The power to make regulations under sub-paragraph (3) includes power to make different provision for different purposes.
 - (5) Regulations under this paragraph are to be made by statutory instrument.

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Commencement Information

I3 Sch. 20 para. 3 in force at Royal Assent for specified purposes, see [Sch. 20 para. 3\(1\)](#)

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