

SCHEDULES

SCHEDULE 5

Section 13

INCREASE IN IMPORTS CAUSING SERIOUS INJURY TO UK PRODUCERS

PART 1

KEY DEFINITIONS

Meaning of importation in “increased quantities”

- 1 (1) For the purposes of this Schedule, goods are imported into the United Kingdom in “increased quantities” if—
- (a) the volume of imports of the goods increases, whether in absolute terms or relative to the total production in the United Kingdom of like goods and directly competitive goods, and
 - (b) that increase is significant.
- (2) Regulations may make provision for the purposes of sub-paragraph (1)—
- (a) about how it is to be determined whether or not there has been an increase in the volume of imports;
 - (b) about how the amount of the increase is to be determined;
 - (c) about what constitutes or does not constitute a “significant” increase, including provision for an increase not to constitute a “significant” increase if it was foreseeable.
- (3) “The total production in the United Kingdom of like goods and directly competitive goods” has the same meaning as in paragraph 3.
- (4) See paragraphs 4 and 5 for the meaning of “like goods” and “directly competitive goods”.

Meaning of “serious injury”

- 2 (1) For the purposes of this Schedule, “serious injury” to UK producers of particular goods (see paragraph 3) means—
- (a) a significant overall impairment to their position, or
 - (b) the threat of such impairment.
- (2) Regulations may make provision about what constitutes or does not constitute significant overall impairment to the position of UK producers, or the threat of such impairment, for the purposes of this Schedule.
- (3) Regulations may make provision about how it is to be determined for the purposes of this Schedule whether the importation of goods into the United Kingdom in increased quantities has caused or is causing serious injury to UK producers of those goods.

- (4) Such regulations may, among other things, make provision about the use of sampling or cumulative assessments.

Meaning of “UK producers”

- 3 (1) For the purposes of this Schedule, “UK producers” of particular goods means—
- (a) all the producers in the United Kingdom of like goods and all the producers in the United Kingdom of directly competitive goods, or
 - (b) those of them whose collective output of like goods and directly competitive goods constitutes a major proportion of the total production in the United Kingdom of those goods.
- (2) Regulations may make provision for the purposes of sub-paragraph (1)—
- (a) about what constitutes or does not constitute—
 - (i) a producer in the United Kingdom of like goods or directly competitive goods;
 - (ii) such a producer’s output of like goods or directly competitive goods;
 - (iii) the total production in the United Kingdom of like goods and directly competitive goods;
 - (iv) a major proportion of that total production;
 - (b) about how any of those matters are to be determined.
- (3) See paragraphs 4 and 5 for the meaning of “like goods” and “directly competitive goods”.

Meaning of “like goods”

- 4 (1) For the purposes of this Schedule, “like goods”, in relation to goods, means—
- (a) goods which are like those goods in all respects, and
 - (b) goods which, although not alike in all respects, have characteristics closely resembling those of the goods in question.
- (2) Regulations may make provision about—
- (a) what constitutes or does not constitute “like goods” for the purposes of this Schedule;
 - (b) how “like goods” is to be determined for those purposes.

Meaning of “directly competitive goods”

- 5 Regulations may make provision about—
- (a) what constitutes or does not constitute “directly competitive goods” for the purposes of this Schedule;
 - (b) how “directly competitive goods” is to be determined for those purposes.

PART 2

SAFEGUARDING INVESTIGATIONS

Safeguarding investigation

- 6 (1) The TRA may investigate—
- (a) whether goods have been or are being imported into the United Kingdom in increased quantities, and
 - (b) whether the importation of the goods in increased quantities has caused or is causing serious injury to UK producers of those goods.
- (2) References in this Schedule to a “safeguarding investigation” are to an investigation under sub-paragraph (1).

Initiation of a safeguarding investigation

- 7 (1) The TRA may initiate a safeguarding investigation in relation to goods only if—
- (a) it is requested to initiate an investigation in an application made—
 - (i) by or on behalf of UK producers of the goods (“the applicant UK producers”), or
 - (ii) by the Secretary of State,
 - (b) it is satisfied that the application contains sufficient evidence that—
 - (i) the goods have been or are being imported into the United Kingdom in increased quantities, and
 - (ii) the importation of the goods in increased quantities has caused or is causing serious injury to UK producers of those goods,
 - (c) the market share requirement is met or the TRA waives the requirement in relation to the application, and
 - (d) the application is accompanied by a preliminary adjustment plan or the TRA waives the requirement for the application to be accompanied by such a plan.
- (2) The market share requirement is met if—
- (a) in the case of an application under sub-paragraph (1)(a)(i), the TRA is satisfied that the applicant UK producers have a share of the market for like goods and directly competitive goods for consumption in the United Kingdom (whether produced there or elsewhere) which is sufficient to justify initiating the investigation;
 - (b) in the case of an application under sub-paragraph (1)(a)(ii), the TRA is satisfied that UK producers of the goods have a share of the market for like goods and directly competitive goods for consumption in the United Kingdom (whether produced there or elsewhere) which is sufficient to justify initiating the investigation.
- (3) A preliminary adjustment plan is—
- (a) in the case of an application under sub-paragraph (1)(a)(i), a plan setting out how the applicant UK producers think they might be able to adjust to the importation of the goods in increased quantities;
 - (b) in the case of an application under sub-paragraph (1)(a)(ii), a plan setting out how UK producers of the goods might be able to adjust to the importation of the goods in increased quantities.

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- (4) Regulations may make provision about—
- (a) what constitutes or does not constitute an application made by or on behalf of UK producers for the purposes of sub-paragraph (1)(a)(i);
 - (b) when an application is made for the purposes of sub-paragraph (1)(a);
 - (c) the information to be contained in such an application;
 - (d) the time limit for determining such an application;
 - (e) the form and content of a preliminary adjustment plan;
 - (f) what constitutes or does not constitute “the market for like goods and directly competitive goods for consumption in the United Kingdom” and UK producers’ “share” of that market for the purposes of sub-paragraphs (1)(c) and (2);
 - (g) how any of those matters are to be determined for the purposes of sub-paragraphs (1)(c) and (2).
- (5) If any of the requirements of sub-paragraph (1)(a) to (d) in respect of a safeguarding investigation are not met, the TRA must reject the application and notify the applicant accordingly (unless it is the requirement in sub-paragraph (1)(a) that is not met because the application has been withdrawn).
- (6) If the requirements of sub-paragraph (1)(a) to (d) in respect of a safeguarding investigation are met, the TRA must—
- (a) accept the application and initiate the investigation,
 - (b) publish notice of its decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
 - (c) notify the Secretary of State and interested parties (see paragraph 31(3)) accordingly.
- (7) Notices under sub-paragraph (6)(b) and (c) must specify the date of the initiation of the investigation.

Conduct of a safeguarding investigation

- 8 (1) Regulations may make provision about the conduct of a safeguarding investigation.
- (2) Paragraph 10(2) of Schedule 4 applies to regulations under sub-paragraph (1) in relation to a safeguarding investigation as it applies to regulations under paragraph 10(1) of that Schedule in relation to a dumping or a subsidisation investigation.

Provisional affirmative determinations and final affirmative or negative determinations

- 9 (1) In the case of a safeguarding investigation, an “affirmative determination” in relation to goods means a determination that—
- (a) the goods have been or are being imported into the United Kingdom in increased quantities, and
 - (b) the importation of the goods in increased quantities has caused or is causing serious injury to UK producers of those goods.
- (2) At any stage during a safeguarding investigation, the TRA may make an affirmative determination, based on the evidence then before it, in relation to goods which are the subject of the investigation (referred to in this Schedule as “a provisional affirmative determination”).

- (3) But the TRA may only make such a determination if it is satisfied that interested parties (see paragraph 31(3)) have been given an adequate opportunity to provide information to it regarding the investigation.
- (4) The TRA must make a final determination in relation to each of the goods which are the subject of a safeguarding investigation.
- (5) A final determination under sub-paragraph (4) in relation to goods is—
 - (a) an affirmative determination (referred to in this Schedule as a “final affirmative determination”), or
 - (b) if the TRA determines that it cannot make an affirmative determination in relation to the goods, a negative determination (referred to in this Schedule as a “final negative determination”).
- (6) The TRA may make different final determinations in relation to different goods which are the subject of the investigation.
- (7) The TRA must—
 - (a) publish notice of its final negative determination or final negative determinations under sub-paragraph (4), and
 - (b) notify the Secretary of State and interested parties accordingly.

Termination of a safeguarding investigation

- 10 A safeguarding investigation in relation to goods terminates (if it has not already terminated by virtue of provision made under paragraph 8(1))—
- (a) in a case where the TRA makes a final negative determination in relation to the goods, when notice of that determination is published under paragraph 9(7)(a),
 - (b) in a case where the TRA makes a final affirmative determination in relation to the goods and determines that there is not a recommendation which it could make under paragraph 16(3) in relation to them, when notice of that determination is published under paragraph 16(11)(b),
 - (c) in a case where the TRA makes a final affirmative determination in relation to the goods and makes a recommendation under paragraph 16(3) in relation to them which the Secretary of State rejects, when the notice of rejection is published under paragraph 19(3)(a) or 20(3)(a), or
 - (d) in a case where the TRA makes a final affirmative determination in relation to the goods and makes a recommendation under paragraph 16(3) in relation to them which the Secretary of State accepts, at the end of the day of publication of the public notice under section 13 giving effect to the recommendation.

PART 3

PROVISIONAL REMEDIES: PROVISIONAL SAFEGUARDING AMOUNT & PROVISIONAL TARIFF RATE QUOTAS

TRA's duty to recommend a provisional safeguarding amount or provisional tariff rate quota

- 11 (1) This paragraph applies where the TRA makes a provisional affirmative determination in relation to goods which are the subject of a safeguarding investigation.
- (2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.
- (3) The TRA may recommend to the Secretary of State—
- (a) that an additional amount of import duty (referred to in this Schedule as a “provisional safeguarding amount”) should be applicable for a specified period to all the relevant goods or to specified relevant goods;
 - (b) that all the relevant goods, or specified relevant goods, should be subject to a quota for a specified period during which a lower rate of import duty should be applicable to imports of goods within the amount of the quota than is applicable to imports of goods outside the amount of the quota (referred to in this Schedule as a “provisional tariff rate quota”).
- (4) Where the TRA makes a recommendation under sub-paragraph (3)(a) in relation to relevant goods it must, as part of the recommendation, recommend to the Secretary of State how a provisional safeguarding amount applicable to those goods should be determined.
- (5) The TRA may make a recommendation under sub-paragraph (3) only if it is satisfied that applying a provisional safeguarding amount to relevant goods, or making relevant goods subject to a provisional tariff rate quota, in accordance with its recommendation—
- (a) is necessary to prevent serious injury which it would be difficult to repair from being caused during the investigation to UK producers of the goods, and
 - (b) meets the economic interest test (see paragraph 23).
- (6) The TRA may only make a recommendation under one or other of paragraphs (a) and (b) of sub-paragraph (3) in relation to any particular relevant good.
- (7) The TRA may make a recommendation under paragraph (a) or (b) of sub-paragraph (3) in relation to specified relevant goods (rather than all the relevant goods) only if the recommendations which it makes under that sub-paragraph, when taken together, cover all the relevant goods.
- (8) If the TRA determines that there are one or more recommendations which it could make under sub-paragraph (3) in relation to all the relevant goods, or that there are one or more recommendations which it could make under sub-paragraph (3) in relation to specified relevant goods, it must make that recommendation or one of those recommendations (subject to sub-paragraphs (6) and (7)).
- (9) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3), it must—
- (a) publish notice of its provisional affirmative determination in relation to the goods,

- (b) publish notice of its determination that there is no recommendation which it could make under sub-paragraph (3), and
- (c) notify the Secretary of State and interested parties (see paragraph 31(3)) accordingly.

TRA's recommendations about a provisional safeguarding amount

- 12 (1) This paragraph applies to a recommendation by the TRA under paragraph 11(3)(a) in relation to goods.
- (2) The specified period referred to in paragraph 11(3)(a)—
- (a) must not exceed 200 days, and
 - (b) if the recommendation is accepted by the Secretary of State, must begin on the day after the date of publication of the public notice under section 13 giving effect to the recommendation.
- (3) A recommendation under paragraph 11(3)(a) as to how a provisional safeguarding amount applicable to goods should be determined (see paragraph 11(4)) may be by reference to either or both of the following—
- (a) the value of the goods, and
 - (b) the weight or volume of the goods or any other measure of their quantity or size.
- (4) But that recommendation must be such that a provisional safeguarding amount applicable to goods does not exceed the amount which the TRA is satisfied is necessary to prevent serious injury which it would be difficult to repair from being caused during the investigation to UK producers of the goods.
- (5) Regulations may make provision for the purposes of sub-paragraph (4) about how the amount which the TRA is satisfied is necessary to prevent the serious injury described in that provision is to be determined.
- (6) A recommendation under paragraph 11(3)(a) must include such other content as regulations may require.

TRA's recommendations regarding provisional tariff rate quotas

- 13 (1) This paragraph applies to a recommendation by the TRA under paragraph 11(3)(b) in relation to goods.
- (2) The specified period referred to in paragraph 11(3)(b)—
- (a) must not exceed 200 days, and
 - (b) if the recommendation is accepted by the Secretary of State, must begin on the day after the date of publication of the public notice under section 13 giving effect to the recommendation.
- (3) The recommendation must (in addition to the specified period) include—
- (a) the TRA's recommendation regarding—
 - (i) the amount of the quota,
 - (ii) how the quota should be allocated, and
 - (iii) the rates of import duty that should be applied to goods subject to the quota, and
 - (b) such other content as regulations may require.

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- (4) The TRA must consult the Secretary of State before making a recommendation regarding the allocation of the quota.
- (5) The things recommended by the TRA by virtue of sub-paragraph (3)(a) must be such as the TRA is satisfied are necessary to prevent serious injury which it would be difficult to repair from being caused during the investigation to UK producers of the goods.
- (6) Regulations may make provision for the purposes of sub-paragraph (5) about how the things which the TRA is satisfied are necessary to prevent the serious injury described in that provision are to be determined.

Secretary of State's power to apply a provisional safeguarding amount

- 14 (1) If the TRA makes a recommendation under paragraph 11(3)(a), the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that—
- (a) the application of a provisional safeguarding amount to goods in accordance with the recommendation does not meet the economic interest test (see paragraph 23), or
 - (b) it is not otherwise in the public interest to accept the recommendation.
- (3) If the recommendation is rejected, the Secretary of State must—
- (a) publish notice of the TRA's provisional affirmative determination in relation to the goods, of the recommendation and of the rejection of it,
 - (b) notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (4) If the recommendation is accepted, the Secretary of State—
- (a) must publish notice of the TRA's provisional affirmative determination in relation to the goods, of the recommendation and of the acceptance of it,
 - (b) must notify interested parties accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (5) The period for which a provisional safeguarding amount applies to goods ceases (if it has not already expired) when the safeguarding investigation in relation to the goods terminates.

Secretary of State's power to subject goods to a provisional tariff rate quota

- 15 (1) If the TRA makes a recommendation under paragraph 11(3)(b), the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that—
- (a) making goods subject to a provisional tariff rate quota in accordance with the recommendation does not meet the economic interest test (see paragraph 23), or
 - (b) it is not otherwise in the public interest to accept the recommendation.

- (3) If the recommendation is rejected, the Secretary of State must—
 - (a) publish notice of the TRA’s provisional affirmative determination in relation to the goods, of the recommendation and of the rejection of it,
 - (b) notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (4) If the recommendation is accepted, the Secretary of State—
 - (a) must publish notice of the TRA’s provisional affirmative determination in relation to the goods, of the recommendation and of the acceptance of it,
 - (b) must notify interested parties accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (5) The period for which goods are subject to a provisional tariff rate quota ceases (if it has not already expired) when the safeguarding investigation in relation to the goods terminates.

PART 4

DEFINITIVE REMEDIES: DEFINITIVE SAFEGUARDING AMOUNT & TARIFF RATE QUOTAS

TRA’s duty to recommend a definitive safeguarding amount or tariff rate quota

- 16 (1) This paragraph applies where the TRA makes a final affirmative determination in relation to goods which are the subject of a safeguarding investigation.
- (2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.
- (3) The TRA may recommend to the Secretary of State—
 - (a) that an additional amount of import duty (referred to in this Schedule as a “definitive safeguarding amount”) should be applicable for a specified period to all the relevant goods or to specified relevant goods;
 - (b) that all the relevant goods, or specified relevant goods, should be subject to a quota for a specified period during which a lower rate of import duty should be applicable to imports of goods within the amount of the quota than is applicable to imports of goods outside the amount of the quota (referred to in this Schedule as a “tariff rate quota”).
- (4) Where the TRA makes a recommendation under sub-paragraph (3)(a) in relation to relevant goods it must, as part of the recommendation, recommend to the Secretary of State how a definitive safeguarding amount applicable to those goods should be determined.
- (5) The TRA may make a recommendation under sub-paragraph (3) only if it is satisfied that—
 - (a) applying a definitive safeguarding amount to relevant goods, or making relevant goods subject to a tariff rate quota, in accordance with its recommendation meets the economic interest test (see paragraph 23), and

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- (b) there is in place an adjustment plan setting out how UK producers of the relevant goods intend to adjust to the importation of the goods in increased quantities.
- (6) But sub-paragraph (5) is to be read as if paragraph (b) were omitted if the TRA waived the requirement for the application to initiate a safeguarding investigation in relation to the relevant goods to be accompanied by a preliminary adjustment plan.
- (7) Regulations may make provision about the form and content of an adjustment plan.
- (8) The TRA may only make a recommendation under one or other of paragraphs (a) and (b) of sub-paragraph (3) in relation to any particular relevant good.
- (9) The TRA may make a recommendation under paragraph (a) or (b) of sub-paragraph (3) in relation to specified relevant goods (rather than all the relevant goods) only if the recommendations which it makes under that sub-paragraph, when taken together, cover all the relevant goods.
- (10) If the TRA determines that there are one or more recommendations which it could make under sub-paragraph (3) in relation to all the relevant goods, or that there are one or more recommendations which it could make under sub-paragraph (3) in relation to specified relevant goods, it must make that recommendation or one of those recommendations (subject to sub-paragraphs (8) and (9)).
- (11) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3) it must—
 - (a) publish notice of its final affirmative determination in relation to the goods,
 - (b) publish notice of its determination that there is no recommendation which it could make under sub-paragraph (3), and
 - (c) notify the Secretary of State and interested parties (see paragraph 31(3)) accordingly.

TRA's recommendations about a definitive safeguarding amount

- 17 (1) This paragraph applies to a recommendation by the TRA under paragraph 16(3)(a) in relation to goods.
- (2) The specified period referred to in paragraph 16(3)(a)—
- (a) must be such period as the TRA is satisfied is necessary—
 - (i) to remove the serious injury, or to prevent further serious injury, caused by the importation of the goods in increased quantities to UK producers of the goods, and
 - (ii) to facilitate the adjustment of those UK producers to the importation of the goods in increased quantities,
 - (b) must not exceed 4 years (but see paragraph 21 regarding the possibility of extensions or other variations to that period following a review), and
 - (c) if the recommendation is accepted by the Secretary of State, must begin on the day after the date of publication of the public notice under section 13 giving effect to the recommendation.
- (3) A recommendation under paragraph 16(3)(a) as to how a definitive safeguarding amount applicable to goods should be determined (see paragraph 16(4)) may be by reference to either or both of the following—
- (a) the value of the goods, and

- (b) the weight or volume of the goods or any other measure of their quantity or size.
- (4) But that recommendation must be such that—
 - (a) a definitive safeguarding amount applicable to goods does not exceed the amount which the TRA is satisfied is necessary—
 - (i) to remove serious injury to UK producers of the goods, and
 - (ii) to facilitate the adjustment of those UK producers to the importation of the goods in increased quantities, and
 - (b) where the specified period referred to in paragraph 16(3)(a) exceeds 1 year, a definitive safeguarding amount applicable to goods becomes progressively smaller as the period progresses.
- (5) Regulations may make provision for the purposes of sub-paragraph (4)(a) about how the amount which the TRA is satisfied is necessary for the purposes mentioned is to be determined.
- (6) A recommendation under paragraph 16(3)(a) must include such other content as regulations may require.
- (7) If a provisional safeguarding remedy has been applied to some or all of the goods as part of the same safeguarding investigation, sub-paragraph (8) applies for the purposes of sub-paragraphs (2)(b) and (4)(b).
- (8) The length of the specified period referred to in paragraph 16(3)(a), so far as relating to goods to which a provisional safeguarding remedy has been applied, is to be treated as extended by the length of the specified period for which the TRA recommended that a provisional safeguarding remedy should be applied to them.
- (9) Where the application of sub-paragraph (8) results in the length of the specified period referred to in paragraph 16(3)(a), so far as relating to goods to which a provisional safeguarding remedy has been applied, exceeding 1 year, sub-paragraph (4)(b) is to be read as if references to goods were references to the goods to which the provisional safeguarding remedy has been applied.
- (10) In this paragraph, references to the application of a provisional safeguarding remedy are to—
 - (a) applying a provisional safeguarding amount to goods, or
 - (b) making goods subject to a provisional tariff rate quota.

TRA's recommendations regarding tariff rate quotas

- 18 (1) This paragraph applies to a recommendation by the TRA under paragraph 16(3)(b) in relation to goods.
- (2) The specified period referred to in paragraph 16(3)(b)—
- (a) must be such period as the TRA is satisfied is necessary—
 - (i) to remove the serious injury, or to prevent further serious injury, caused by the importation of the goods in increased quantities to UK producers of the goods, and
 - (ii) to facilitate the adjustment of those UK producers to the importation of the goods in increased quantities,
 - (b) must not exceed 4 years (but see paragraph 21 regarding the possibility of extensions or other variations to that period following a review), and

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- (c) if the recommendation is accepted by the Secretary of State, must begin on the day after the date of publication of the public notice under section 13 giving effect to the recommendation.
- (3) The recommendation must (in addition to the specified period) include—
 - (a) the TRA's recommendation regarding—
 - (i) the amount of the quota,
 - (ii) how the quota should be allocated, and
 - (iii) the rates of import duty that should be applied to goods subject to the quota, and
 - (b) such other content as regulations may require.
- (4) The TRA must consult the Secretary of State before making a recommendation regarding the allocation of the quota.
- (5) The things recommended by the TRA by virtue of sub-paragraph (3)(a)—
 - (a) must be such as the TRA is satisfied are necessary—
 - (i) to remove serious injury to UK producers of the goods, and
 - (ii) to facilitate the adjustment of those UK producers to the importation of the goods in increased quantities, and
 - (b) where the specified period referred to in paragraph 16(3)(b) exceeds 1 year, must be such that the amount of import duty applicable to goods subject to the quota becomes progressively smaller as the period progresses (whether by increases in the amount of the quota, decreases in the rates of import duty, or both).
- (6) Regulations may make provision for the purposes of sub-paragraph (5)(a) about how the things which the TRA is satisfied are necessary for the purposes mentioned are to be determined.
- (7) If a provisional safeguarding remedy has been applied to some or all of the goods as part of the same safeguarding investigation, sub-paragraph (8) applies for the purposes of sub-paragraphs (2)(b) and (5)(b).
- (8) The length of the specified period referred to in paragraph 16(3)(b), so far as relating to goods to which a provisional safeguarding remedy has been applied, is to be treated as extended by the length of the specified period for which the TRA recommended that a provisional safeguarding remedy should be applied to them.
- (9) Where the application of sub-paragraph (8) results in the length of the specified period referred to in paragraph 16(3)(b), so far as relating to goods to which a provisional safeguarding remedy has been applied, exceeding 1 year, sub-paragraph (5)(b) is to be read as if references to goods were references to the goods to which the provisional safeguarding remedy has been applied.
- (10) In this paragraph, references to the application of a provisional safeguarding remedy are to—
 - (a) applying a provisional safeguarding amount to goods, or
 - (b) making goods subject to a provisional tariff rate quota.

Secretary of State's power to apply a definitive safeguarding amount

- 19 (1) If the TRA makes a recommendation under paragraph 16(3)(a) that a definitive safeguarding amount should be applicable to goods, the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that—
- (a) the application of a definitive safeguarding amount to goods in accordance with the recommendation does not meet the economic interest test (see paragraph 23), or
 - (b) it is not otherwise in the public interest to accept the recommendation.
- (3) If the recommendation is rejected, the Secretary of State must—
- (a) publish notice of the TRA's final affirmative determination in relation to the goods, of the recommendation and of the rejection of it,
 - (b) notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (4) If the recommendation is accepted, the Secretary of State—
- (a) must publish notice of the TRA's final affirmative determination in relation to the goods, of the recommendation and of the acceptance of it,
 - (b) must notify interested parties accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (5) See paragraphs 21 and 22 for variation or revocation of the application of a definitive safeguarding amount.

Secretary of State's power to subject goods to a tariff rate quota

- 20 (1) If the TRA makes a recommendation under paragraph 16(3)(b) that goods should be subject to a tariff rate quota, the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that—
- (a) making goods subject to a tariff rate quota in accordance with the recommendation does not meet the economic interest test (see paragraph 23), or
 - (b) it is not otherwise in the public interest to accept the recommendation.
- (3) If the recommendation is rejected, the Secretary of State must—
- (a) publish notice of the TRA's final affirmative determination in relation to the goods, of the recommendation and of the rejection of it,
 - (b) notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (4) If the recommendation is accepted, the Secretary of State—
- (a) must publish notice of the TRA's final affirmative determination in relation to the goods, of the recommendation and of the acceptance of it,

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- (b) must notify interested parties accordingly, and
- (c) is required under section 13 to make provision by public notice to give effect to the recommendation.

(5) See paragraphs 21 and 22 for variation or revocation of a tariff rate quota.

Reviews

- 21 (1) Regulations may make provision for, or in connection with, reviews by the TRA of the continuing application of a definitive safeguarding amount or the continuation of a tariff rate quota.
- (2) References in this paragraph to “a review” are to a review by virtue of provision made under sub-paragraph (1).
- (3) Regulations under sub-paragraph (1) may, among other things, provide for a review to consider—
- (a) whether the continuing application of a definitive safeguarding amount, or the continuation of a tariff rate quota, is necessary—
 - (i) to remove the serious injury, or to prevent further serious injury, caused by the importation of the goods in increased quantities to UK producers of the goods, or
 - (ii) to facilitate the adjustment of those UK producers to the importation of the goods in increased quantities;
 - (b) whether serious injury to UK producers of the goods would be likely to continue or recur if the application of a definitive safeguarding amount were to expire or be varied or revoked or if a tariff rate quota were to expire or be varied or revoked;
 - (c) whether replacing the application of a definitive safeguarding amount with a tariff rate quota, or replacing a tariff rate quota with the application of a definitive safeguarding amount, would better meet the aim of—
 - (i) removing serious injury to UK producers of the goods, or
 - (ii) facilitating the adjustment of those UK producers to the importation of the goods in increased quantities;
 - (d) whether an adjustment plan as referred to in paragraph 16(5)(b) is being complied with.
- (4) Regulations under sub-paragraph (1) may, among other things, make—
- (a) provision for the TRA to investigate certain matters;
 - (b) provision for the period for which a definitive safeguarding amount applies to goods by public notice under section 13, or for which goods are subject to a tariff rate quota by public notice under that section, to be treated as continuing (where it would otherwise cease to do so) while a review is ongoing;
 - (c) other provision about the conduct of a review.
- (5) Paragraph 10(2) of Schedule 4 applies to regulations made by virtue of sub-paragraph (4)(c) in relation to a review as it applies to regulations under paragraph 10(1) of that Schedule in relation to a dumping or a subsidisation investigation.
- (6) Regulations may make provision for or in connection with—

- (a) the TRA recommending to the Secretary of State that—
 - (i) the application of a definitive safeguarding amount to goods should be varied, revoked or replaced with a tariff rate quota, or
 - (ii) a tariff rate quota to which goods are subject should be varied, revoked or replaced with the application of a definitive safeguarding amount, and
 - (b) the Secretary of State accepting or rejecting such a recommendation.
- (7) Where, by virtue of provision made under sub-paragraph (6), the Secretary of State accepts a recommendation that the application of a definitive safeguarding amount to goods, or a tariff rate quota to which goods are subject, should be varied or revoked, the Secretary of State—
 - (a) must publish notice of the recommendation and of the acceptance of it,
 - (b) must notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (8) The variation of the application of a definitive safeguarding amount to goods which the TRA may recommend to the Secretary of State by virtue of regulations under sub-paragraph (6) may take the form of one or both of the following—
 - (a) varying the period for which a definitive safeguarding amount is applicable (including extending it beyond the period referred to in paragraph 17(2)(b));
 - (b) varying how a definitive safeguarding amount should be determined such that a lower amount of import duty is applicable.
- (9) The variation of a tariff rate quota which the TRA may recommend to the Secretary of State by virtue of regulations under sub-paragraph (6) may take the form of one or more of the following—
 - (a) increasing the amount of the quota;
 - (b) varying the allocation of the quota;
 - (c) reducing the rates of import duty that apply to goods subject to the quota;
 - (d) reducing the part of the period for which the amount of the quota is lower or for which import duty at a higher rate applies (so that the amount of the quota is increased, or import duty applies at a lower rate, more quickly);
 - (e) varying the period for which goods are subject to the quota (including extending it beyond the period referred to in paragraph 18(2)(b)).
- (10) Where, by virtue of provision made under sub-paragraph (6), the Secretary of State accepts a recommendation that, for the first time, a definitive safeguarding amount should be applicable to goods or goods should be subject to a tariff rate quota, the Secretary of State—
 - (a) must publish notice of the recommendation and of the acceptance of it,
 - (b) must notify interested parties accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.

Variation or revocation following an international dispute decision

- 22 (1) Regulations may make provision for or in connection with—
- (a) the TRA recommending to the Secretary of State that the application of a definitive safeguarding amount to goods, or a tariff rate quota to which goods

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- are subject, should be varied or revoked in light of an international dispute decision, and
- (b) the Secretary of State accepting or rejecting such a recommendation.
- (2) The regulations may, among other things—
- (a) provide for the TRA to investigate certain matters for the purposes of determining whether to make a recommendation to the Secretary of State and what to recommend;
 - (b) make provision about the conduct of such an investigation;
 - (c) provide for the suspension, by public notice given by the Secretary of State, of the application of a definitive safeguarding amount or the making of goods subject to a tariff rate quota.
- (3) Paragraph 10(2) of Schedule 4 applies to regulations made by virtue of subparagraph (2)(b) in relation to such an investigation as it applies to regulations under paragraph 10(1) of that Schedule in relation to a dumping or a subsidisation investigation.
- (4) Where, by virtue of provision made under the regulations, the Secretary of State accepts a recommendation that the application of a definitive safeguarding amount to goods, or a tariff rate quota to which goods are subject, should be varied or revoked, the Secretary of State—
- (a) must publish notice of the recommendation and of the acceptance of it,
 - (b) must notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (5) Paragraph 21(8) and (9) apply for the purposes of regulations under this paragraph as they apply for the purposes of regulations under paragraph 21(6).
- (6) An “international dispute decision” means—
- (a) a report of a panel or Appellate Body that is adopted by the Dispute Settlement Body of the WTO, or
 - (b) if not within paragraph (a), a decision under the dispute settlement procedures of an arrangement relating to trade to which Her Majesty’s government in the United Kingdom is a party with the government of a foreign country or territory.

PART 5

SUPPLEMENTARY

The economic interest test

- 23 (1) This paragraph applies if the TRA or the Secretary of State is considering, for the purposes of this Schedule, whether the TRA or the Secretary of State is satisfied that the application of a safeguarding remedy meets or does not meet the economic interest test.
- (2) The economic interest test is met in relation to the application of a safeguarding remedy if the application of the remedy is in the economic interest of the United Kingdom.

- (3) When considering whether or not the application of a safeguarding remedy is in the economic interest of the United Kingdom, the TRA or the Secretary of State must—
- (a) take account of the following so far as relevant—
 - (i) the serious injury caused by the importation of the goods in increased quantities to UK producers of those goods and the benefits to those UK producers in removing that injury,
 - (ii) the economic significance of affected industries and consumers in the United Kingdom,
 - (iii) the likely impact on affected industries and consumers in the United Kingdom,
 - (iv) the likely impact on particular geographic areas, or particular groups, in the United Kingdom, and
 - (v) the likely consequences for the competitive environment, and for the structure of markets for goods, in the United Kingdom, and
 - (b) take account of such other matters as the TRA or, as the case may be, the Secretary of State considers relevant.
- (4) In this paragraph—
- (a) references to the application of a safeguarding remedy are to—
 - (i) applying a provisional safeguarding amount or a definitive safeguarding amount to goods, or
 - (ii) making goods subject to a provisional tariff rate quota or a tariff rate quota;
 - (b) “affected industries and consumers” means industries and consumers that would be affected if the safeguarding remedy were, or were not, to be applied;
 - (c) “industries” includes—
 - (i) the UK producers referred to in sub-paragraph (3)(a)(i) and other producers of goods,
 - (ii) suppliers of goods or services, and
 - (iii) importers, distributors and retailers of goods;
 - (d) “consumers” includes users of goods or services.

Suspension of safeguarding remedies

- 24 (1) Regulations may make provision for or in connection with—
- (a) the TRA recommending to the Secretary of State that the application of a safeguarding remedy should be suspended, and
 - (b) the Secretary of State accepting or rejecting such a recommendation.
- (2) The regulations must secure that the TRA may make such a recommendation to the Secretary of State only if the TRA is satisfied that market conditions have temporarily changed such that the serious injury caused to UK producers of the goods would be unlikely to recur as a result of the suspension.
- (3) Regulations may make provision for the purposes of sub-paragraph (2) about what constitutes or does not constitute “market conditions” or a temporary change in such conditions.
- (4) Regulations under sub-paragraph (1) may, among other things, make—

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- (a) provision for the TRA to investigate certain matters;
 - (b) provision about the conduct of such an investigation;
 - (c) provision about the period for which a suspension may have effect;
 - (d) provision about whether that period counts towards the period for which the suspended remedy applies.
- (5) Paragraph 10(2) of Schedule 4 applies to regulations made by virtue of sub-paragraph (4)(b) in relation to an investigation as it applies to regulations under paragraph 10(1) of that Schedule in relation to a dumping or a subsidisation investigation.
- (6) Where, by virtue of provision made under sub-paragraph (1), the Secretary of State accepts a recommendation that the application of a safeguarding remedy should be suspended, the Secretary of State—
- (a) must publish notice of the recommendation and of the acceptance of it,
 - (b) must notify interested parties (see paragraph 31(3)) accordingly, and
 - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (7) References in this paragraph to the application of a safeguarding remedy have the same meaning as in paragraph 23.

Exceptions

- 25 (1) For the purpose of giving effect to arrangements between Her Majesty's government in the United Kingdom and the government of a foreign country or territory, regulations may make provision excepting goods originating from a specified foreign country or territory from the application of this Schedule, or from specified provision made by or under it.
- (2) Regulations may make provision requiring goods originating from a specified foreign country or territory or description of foreign country or territory to be excepted from the goods in relation to which the TRA may make a recommendation under provision made by or under this Schedule.

Restrictions on successive safeguarding remedies

- 26 (1) This paragraph applies if—
- (a) the TRA makes a recommendation under paragraph 16(3) that a definitive safeguarding amount should be applicable to goods or that goods should be subject to a tariff rate quota, and
 - (b) a definitive safeguarding amount has previously been applied to those goods, or they have previously been subject to a tariff rate quota, as a result of an earlier recommendation made by the TRA under that paragraph.
- (2) In this paragraph, references to the “previous safeguarding remedy”, in relation to goods, are to—
- (a) the most recent application of a definitive safeguarding amount to the goods, or
 - (b) the tariff rate quota to which the goods were most recently subject.
- (3) The Secretary of State may not accept the recommendation if the period for which a definitive safeguarding amount would be applicable to the goods, or for which the

goods would be subject to a tariff rate quota, would (by virtue of paragraph 17(2)(c) or 18(2)(c)) begin before the end of the restricted period.

- (4) The restricted period means—
- (a) such period, beginning with the day after the date on which the period of the previous safeguarding remedy ended, as is equal to the period of that previous safeguarding remedy, or
 - (b) if it would result in a period of a greater length than the period referred to in paragraph (a), the period of two years beginning with the day after the date on which the period of the previous safeguarding remedy ended.
- (5) Sub-paragraph (3) does not prevent the Secretary of State from accepting the recommendation if—
- (a) the specified period referred to in paragraph 16(3)(a) or, as the case may be, paragraph 16(3)(b) (“the recommended period”) does not exceed 180 days,
 - (b) the date on which the period of the previous safeguarding remedy began is at least 1 year before the date on which the recommended period would (by virtue of paragraph 17(2)(c) or 18(2)(c)) begin, and
 - (c) no more than 2 notices have been published under paragraph 19(4)(a) or 20(4)(a) in relation to the goods in the period of 5 years ending with the day before the date on which the recommended period would begin.

Interaction with anti-dumping remedies and anti-subsidy remedies

- 27 In determining for the purposes of any provision of this Schedule, or of regulations made under it, what is necessary to prevent or remove serious injury to UK producers of particular goods, the TRA must take account of—
- (a) any requirement to give a guarantee in respect of the goods which applies under paragraph 15 of Schedule 4,
 - (b) any application of an anti-dumping amount or a countervailing amount to the goods under section 13, and
 - (c) any undertaking which has been accepted in respect of the goods under provision made by or under Part 5 of Schedule 4.

Investigations regarding repayments

- 28 (1) Regulations may provide for the TRA to investigate specified matters for the purpose of determining whether—
- (a) a repayment of a provisional safeguarding amount or a definitive safeguarding amount,
 - (b) the repayment of an amount of import duty charged by virtue of provision made under section 13 in respect of goods which are subject to a provisional tariff rate quota or a tariff rate quota, or
 - (c) the repayment of interest paid in respect of any such amounts,
- should be made under regulations made under paragraph 10 of Schedule 6.
- (2) The regulations may make provision about the conduct of any such investigation.
- (3) Paragraph 10(2) of Schedule 4 applies to those regulations in relation to such an investigation as it applies to regulations under paragraph 10(1) of that Schedule in relation to a dumping or a subsidisation investigation.

Reconsideration, reviews and appeals

- 29 Regulations may make provision for or in connection with—
- (a) the reconsideration by the TRA of decisions made by the TRA under provision made by or under this Schedule, and
 - (b) the review or appeal of decisions made by the TRA or the Secretary of State under provision made by or under this Schedule.

Notices

- 30 (1) Where a notice is required to be published or given by a provision made by or under this Schedule, regulations may make provision about—
- (a) the form of the notice;
 - (b) its content;
 - (c) the manner of publication;
 - (d) the means by which it is given;
 - (e) the time or date on which it is published or given or is to be treated as published or given.
- (2) Such regulations may, among other things, provide—
- (a) for some of the content of the notice to be contained in a separate report to which the notice refers, and
 - (b) for that report to be published or for it to be given, or otherwise made available to, the persons to whom the notice is required to be given.
- (3) The provision made by regulations under this paragraph about the content of a notice is in addition to any such provision made by or under any other provision of this Schedule.
- (4) Sub-paragraph (1)(c) does not apply to a public notice under provision made under paragraph 22(2)(c) (see section 37(5)).

Interpretation

- 31 (1) In this Schedule—
- “definitive safeguarding amount” has the meaning given by paragraph 16(3)(a);
 - “directly competitive goods” has the meaning given by paragraph 5;
 - “final affirmative determination”, in relation to goods, has the meaning given by paragraph 9(5)(a);
 - “final negative determination”, in relation to goods, has the meaning given by paragraph 9(5)(b);
 - “foreign country or territory” means a country or territory outside the United Kingdom;
 - importation in “increased quantities” has the meaning given by paragraph 1;
 - “interested parties” has the meaning given by sub-paragraph (3);
 - “like goods”, in relation to goods, has the meaning given by paragraph 4;
 - “provisional affirmative determination”, in relation to goods, has the meaning given by paragraph 9(2);

“provisional safeguarding amount” has the meaning given by paragraph 11(3)(a);

“provisional tariff rate quota” has the meaning given by paragraph 11(3)(b);

“regulations” means regulations made by the Secretary of State;

“safeguarding investigation” has the meaning given by paragraph 6(2);

“serious injury” to UK producers of particular goods has the meaning given by paragraph 2;

“tariff rate quota” has the meaning given by paragraph 16(3)(b);

“UK producers”, of particular goods, has the meaning given by paragraph 3.

- (2) References in this Schedule to the economic interest test are to be construed in accordance with paragraph 23.
- (3) References in a provision of this Schedule to “interested parties” means the governments of such foreign countries or territories, or such other persons, as may be specified in regulations made under this sub-paragraph for the purposes of the provision in question.