

This Statutory Instrument has been made partly as a consequence of defects in S.I. 2020/99 (which was made on 30th January 2020) and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2020 No. 730

EXITING THE EUROPEAN UNION

CUSTOMS

TRADE

**The Trade Remedies (Amendment) (EU Exit) (No. 2)
Regulations 2020**

<i>Made</i>	- - - -	<i>13th July 2020</i>
<i>Laid before the House of Commons</i>		<i>14th July 2020</i>
<i>Coming into force</i>	- -	<i>5th August 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 13(1), 32(7), and (8), 51(1), and 56(1) and (4) of, paragraphs 22(1) and 31(1) of Schedule 4 to, and paragraphs 21(1) and (6), 22(1), and 25(1) of Schedule 5 to, the Taxation (Cross-border Trade) Act 2018^(a).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Trade Remedies (Amendment) (EU Exit) (No. 2) Regulations 2020 and come into force on 5th August 2020.

(a) 2018 c. 22; sections 51(4) and 56(5) define “the appropriate Minister” as including the Secretary of State in any case where the provision relates to anything dealt with by section 13 and Schedules 4 and 5.

PART 2

Amendment of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019

Amendment of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019

2. The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(a) are amended in accordance with this Part.

Substitution of regulation 35B(8) (TRA determination to vary tariff rate quota)

3. In regulation 35B(b), for paragraph (8), substitute—

“(8) The TRA must not vary a tariff rate quota by—

- (a) reducing the rate of import duty that applies to goods subject to that quota; or
- (b) varying the period for which goods are subject to that quota.”.

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

4. In regulation 42B(c), for paragraph (3), substitute—

“(3) The suspension ends the day after the day on which—

- (a) the TRA publishes notice under—
 - (i) regulation 42F(2); or
 - (ii) regulation 42G(3); or
- (b) the Secretary of State publishes notice under—
 - (i) paragraph 22(4)(a) of Schedule 5 to the Act; or
 - (ii) regulation 42I(4)(a).”.

Amendment of regulation 44 (safeguarding: other exception)

5. In regulation 44, in paragraph (1), for “must”, substitute “may”.

Amendment of regulation 45 (interpretation for Part 9)

6. In regulation 45,—

(a) for the definition of “EU Regulation”(d), substitute—

““EU Regulation” means Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products(e);”; and

(a) S.I. 2019/449, amended by S.I. 2019/1076, S.I. 2019/1319, and S.I. 2020/99.

(b) Regulation 35B was inserted by regulation 6 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

(c) Regulation 42B was inserted by regulation 10 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

(d) The definition of “EU Regulation” was amended by regulation 3(1) of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1319).

(e) OJ No. L 31, 1.2.2019, p. 27; relevant amending instruments are Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ No. L 248, 27.9.2019, p. 28), Commission Implementing Regulation (EU) 2020/35 of 15 January 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ No. L 12, 16.1.2020, p. 13), and Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ No. L 206, 30.6.2020, p. 27).

- (b) in the definition of “replacement day”(a), for “on”, substitute “and time at”.

Amendment of regulation 47 (notification etc of determination)

7. In regulation 47,—

- (a) in paragraph (2), after “must” insert “, subject to regulation 52(3A),”; and
- (b) in paragraph (3),—
 - (i) in subparagraph (a), omit “in accordance with regulation 46 (the Secretary of State’s determination)”;
 - (ii) in subparagraph (c), for “EU Regulation.”, substitute “EU Regulation; and”; and
 - (iii) after subparagraph (c), insert—
 - “(d) be made no later than the end of the day before replacement day.”.

Amendment of regulation 49 (review of tariff rate quotas under this Part)

8.—(1) In the heading to regulation 49, for “tariff rate quotas under this Part”, substitute “specified tariff rate quotas”.

(2) In regulation 49,—

- (a) in paragraph (1)(a), for “tariff rate quotas applicable to goods under this Part”, substitute “specified tariff rate quotas”;
- (b) in paragraph (3),—
 - (i) for subparagraph (a), substitute—
 - “(a) the information referred to in subparagraphs (a) to (c) of regulation 47(3);”; and
 - (ii) in subparagraph (b), after “referred to in”, insert “subparagraphs (d) to (n) of”;
- (c) in paragraph (5)(d), after “reduce”, insert “or extend”;
- (d) after paragraph (5), insert—
 - “(5A) For the purpose of considering whether it is appropriate to reduce or extend the period for which goods are subject to the quota (see paragraph (5)(d)), the TRA may consider the importation into the United Kingdom of goods belonging to each specified category of steel products since the investigation period considered by the European Commission .”;
- (e) in paragraph (8), after “replacement day”, insert “, in which case the review continues on and after replacement day only in relation to the tariff rate quotas made applicable to goods in provision by public notice made under regulation 47(2)”;
- (f) for paragraphs (9) and (10), substitute—
 - “(9) The TRA may terminate the transition review only if regulation 47(5) applies (see regulation 47(4)).
 - (10) If the TRA terminates the transition review, the TRA must publish a notice containing the information referred to in paragraph 12 of the Schedule.”.

Amendment of regulation 50 (determinations of the TRA)

9. In regulation 50,—

- (a) in paragraph (2),—
 - (i) after “quantities”, insert “or were not being produced by UK producers(b)”; and

(a) The definition of “replacement day” was inserted by regulation 3(1) of the Trade Remedies (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1076).

(b) The term “UK producers” is defined in regulation 2 of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449).

- (ii) omit “under this Part”;
- (b) in paragraph (6)(d), after “reducing”, insert “or extending”; and
- (c) for paragraph (7), substitute—
 - “(7) A determination of the TRA referred to in paragraph (6) may include a determination to extend the period for which a tariff rate quota applies to goods only if the TRA considers that—
 - (a) the tariff rate quota continues to be necessary to prevent serious injury to UK producers; and
 - (b) there is evidence of UK producers adjusting to the importation of the goods.”.

Amendment of regulation 52 (acceptance or rejection of the TRA’s recommendation by the Secretary of State)

10. In regulation 52,—

- (a) after paragraph (3), insert—
 - “(3A) Where the Secretary of State accepts the TRA’s recommendation before having made provision by public notice under regulation 47(2) in relation to the relevant tariff rate quota,—
 - (a) regulation 47(2) applies in relation to the relevant tariff rate quota as if the obligation to make provision by public notice to give effect to the determination were an obligation to make provision by public notice to give effect to the recommendation;
 - (b) the Secretary of State must notify interested parties.”; and
- (b) in paragraph (4), after “TRA’s recommendation”, insert “after having made provision by public notice under regulation 47(2) in relation to the relevant tariff rate quota”.

Amendment of regulation 70A (modifications to Part 7A)

11. In regulation 70A(a), in paragraph (c), for “42B(3)(b)(iii)”, substitute “42B(3)(b)(ii)”.

Substitution of regulation 74 (modifications to regulation 49)

12. For regulation 74, substitute—

“**74.** Regulation 49 (review of specified tariff rate quotas) has effect as if for paragraphs (1) to (3) of that regulation there were substituted—

“(1) The Secretary of State must conduct a review (referred to in this Part as the “transition review”) of the specified tariff rate quotas.

(2) The Secretary of State may initiate the transition review within any time period the Secretary of State considers appropriate.

(3) Upon initiating the transition review, the Secretary of State must publish a notice of initiation of the review in which must contain the information referred to in—

- (a) subparagraphs (a) to (c) of regulation 47(3); and
- (b) subparagraphs (d) to (n) of paragraph 9 of the Schedule.”.

Amendment of regulation 76 (modifications to regulations 51 and 52)

13. In regulation 76, in the text which has effect as if substituted for regulations 51 and 52,—

(a) Regulation 70A was inserted by regulation 14 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

- (a) after paragraph (3) of that text, insert—
 - “(3A) Where the Secretary of State decides to give effect to the preliminary decision before having made provision by public notice under regulation 47(2) in relation to the relevant tariff rate quota,—
 - (a) regulation 47(2) applies in relation to the relevant tariff rate quota as if the obligation to make provision by public notice to give effect to the determination were an obligation to make provision by public notice to give effect to the preliminary decision; and
 - (b) the Secretary of State must notify interested parties.”; and
- (b) in paragraph (4), after “preliminary decision”, insert “ after having made provision by public notice under regulation 47(2) in relation to the relevant tariff rate quota”.

Omission of regulation 86A (further modifications to paragraph 17 of the Schedule)

- 14. Omit regulation 86A(a).

Amendment of the Schedule

- 15.—(1) In paragraph 9 of the Schedule, in the words before subparagraph (a), after “49(3)(b)”, insert “(in which case only subparagraphs (d) to (n) apply)”;
- (2) In paragraph 12, in the words before subparagraph (a), for “49(10)(c)”, substitute “49(10)”.

PART 3

Amendment of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019

Amendment of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019

- 16. The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019(b) are amended in accordance with this Part.

Amendment of regulation 88B (suspension of anti-dumping amount or a countervailing amount)

- 17. In regulation 88B(c), for paragraph (3), substitute—
 - “(3) The suspension ends the day after the day on which—
 - (a) the TRA publishes notice under—
 - (i) regulation 88F(2); or
 - (ii) regulation 88G(4); or
 - (b) the Secretary of State publishes notice under—
 - (i) paragraph 22(4)(a) of Schedule 4 to the Act; or
 - (ii) regulation 88I(4)(a).”.

(a) Regulation 86A was inserted by regulation 15 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

(b) S.I. 2019/450, amended by S.I. 2019/1076, S.I. 2019/1346, and S.I. 2020/99.

(c) Regulation 88B was inserted by regulation 20 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

Substitution of regulations 95 and 95A (investigation before replacement of EU trade duty)

18. For regulations 95 and 95A(a), substitute—

“Initiating an investigation before replacement of EU trade duty

95.—(1) This regulation applies if the TRA is requested to initiate an investigation in an application made by or on behalf of an applicant UK industry before replacement of EU trade duty(b).

(2) The TRA may initiate an investigation only to the extent the application relates to goods which are the subject of—

- (a) an anti-dumping investigation initiated by the European Commission in accordance with article 5 of the EU anti-dumping regulation; or
- (b) a countervailing duty investigation initiated by the European Commission in accordance with article 10 of the EU countervailing regulation(c).”.

Amendment of regulation 130A (modifications to Part 9A)

19. In regulation 130A(d), in paragraph (c), for “88B(3)(b)(iii)”, substitute “88B(3)(b)(ii)”.

Omission of regulation 141A (modification to Schedule 5A)

20. Omit regulation 141A(e).

PART 4

Amendment of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019

Amendment of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019

21. The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019(f) are amended in accordance with this Part.

Amendment of regulation 30 (modifications to Schedule 1 of these Regulations)

22. In regulation 30, for paragraph (i), substitute—

“(i) for paragraph 39, there were substituted—

“**39.** A preliminary decision made under regulation 50(1) in relation to the transition review.”;”.

(a) Regulations 95 was substituted, and 95A was inserted, by regulation 10 of the Trade Remedies (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1076).

(b) The terms “applicant UK industry”, “application”, and “investigation” are defined in regulation 2 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450); the term “replacement of EU trade duty” is defined in regulation 94(1) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450, amended by S.I. 2019/1076)

(c) The European Commission publishes a notice of initiation of proceedings in the Official Journal of the European Union to announce the initiation of an investigation; the terms “EU anti-dumping regulation” and “EU countervailing regulation” are defined in regulation 94(1) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450, amended by S.I. 2019/1076).

(d) Regulation 130A was inserted by regulation 33 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

(e) Regulation 141A was inserted by regulation 34 of the Trade Remedies (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/99).

(f) S.I. 2019/910, amended by S.I. 2020/99.

Amendment of Schedule 1 (TRA recommendation subject to reconsideration)

23. In paragraph 40 of Schedule 1, for “following”, substitute “in relation to”.

Amendment of Schedule 2 (Secretary of State determination subject to appeal)

24. In paragraph 12 of Schedule 2, for “following”, substitute “in relation to”.

Signed by authority of the Secretary of State for International Trade

13th July 2020

Ranil Jayawardena
Parliamentary Under Secretary of State
Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 5th August 2020, amend the statutory instruments implementing the United Kingdom trade remedies system.

Part 2 amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449, as amended). In summary,—

- *regulation 3* substitutes regulation 35B(8) (which was inserted by regulation 6 of S.I. 2020/99 and relates to a determination of the Trade Remedies Authority to vary a tariff rate quota) in consequence of a concern raised with the Department for International Trade by the Select Committee on Statutory Instruments;
- *regulation 4* amends regulation 42B (which was inserted by regulation 10 of S.I. 2020/99 and relates to the suspension of a definitive safeguarding amount) to correct a misplaced cross-reference;
- *regulation 5* amends regulation 44 (which relates to the exception of goods) to confer discretion on the Trade Remedies Authority to except from the scope of its safeguarding assessment, determination, or recommendation the goods originating from any foreign country or territory which is a signatory to a qualifying free trade agreement (see paragraph (2) of that regulation for conditions);
- *regulations 6 to 10* amend Part 9 (which relates to transitional provisions) to—
 - substitute the definition of “EU Regulation” to incorporate amendments made by the European Commission to Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ No. L 31, 1.2.2019, p. 27);
 - ensure the tariff rate quotas made applicable to goods under Part 9 apply on and after replacement day (which is the day and time at which any European Union trade duty ceases to have effect in the United Kingdom) and that any public notice imposing those tariff rate quotas is made no later than the end of the day before replacement day;
 - narrow the discretion conferred on the Trade Remedies Authority to terminate a transition review;
 - provide for the Trade Remedies Authority to consider, to determine, and to recommend to the Secretary of State the reduction or extension of the period for which the tariff rate quotas are applicable to goods;
 - clarify that the Trade Remedies Authority may consider imports into the United Kingdom of relevant steel products since, and not only during, the investigation period considered by the European Commission in order to consider whether it is appropriate to reduce or extend the period for which those steel products are subject to a tariff rate quota;
 - require provision by public notice imposing the tariff rate quotas to give effect to any recommendation the Secretary of State accepts before that provision is made;
- *regulation 11* amends regulation 70A (which was inserted by regulation 14 of S.I. 2020/99 and relates to modifications to Part 7A) in consequence of the correction made to regulation 42B (see *regulation 417*); and
- *regulations 1211 and 13* amend Part 10 (which relates to modifications to Part 9) to allow the Secretary of State to exercise the functions of the Trade Remedies Authority set out in these Regulations until such time the Trade Remedies Authority is established; and
- *regulation 14* omits regulation 86A (which was inserted by regulation 15 of S.I. 2020/99 and relates to modifications to paragraph 17 of the Schedule) because it is ineffective.

Part 3 amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450, as amended). In summary,—

- *regulation 17* amends regulation 88B (which was inserted by regulation 20 of S.I. 2020/99 and relates to the suspension of a definitive safeguarding amount) to correct a misplaced cross-reference;
- *regulation 18* substitutes regulations 95 and 95A (which relate to investigations before replacement day) to allow the Trade Remedies Authority to initiate a dumping investigation or a subsidisation investigation which is requested by United Kingdom industry before replacement day but only to the extent the application relates to goods which are the subject of a corresponding investigation being conducted by European Commission at the time the application is made;
- *regulation 19* amends regulation 130A (which was inserted by regulation 33 of S.I. 2020/99 and relates to modifications to Part 9A) in consequence of the correction made to regulation 88B (see *regulation 17*); and
- *regulation 20* omits regulation 141A (which was inserted by regulation 34 of S.I. 2020/99 and relates to modifications to Schedule 5A) because it is ineffective.

Part 4 amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910, as amended). In summary,—

- *regulation 22* amends regulation 30 (which relates to modifications to Schedule 1) to clarify that a preliminary decision made at any time by the Secretary of State in relation to the transition review is subject to reconsideration (and not only a preliminary decision following the transition review);
- *regulation 23* amends Schedule 1 (which sets out the determinations or the recommendations of the Trade Remedies Authority subject to reconsideration) to clarify that a recommendation made at any time by the Trade Remedies Authority in relation to the transition review is subject to reconsideration (and not only a recommendation following the transition review); and
- *regulation 24* amends Schedule 2 (which sets out the determinations of the Secretary of State subject to appeal) to clarify that a determination made at any time by the Trade Remedies Authority in relation to the transition review is subject to appeal (and not only a determination following the transition review).

A notice referred to in these 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 these 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 prepared for this instrument as the expected impact of the trade remedies system has already been assessed in the impact assessment accompanying the Taxation (Cross-border Trade) Act 2018 (c. 22).

A copy of the Explanatory Memorandum is published alongside this instrument at <http://www.legislation.gov.uk/>.

© Crown copyright 2020

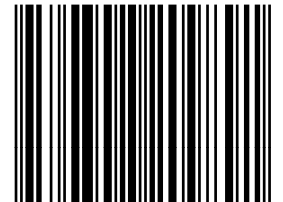
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202007131008 07/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/730>

ISBN 978-0-34-820989-1



9 780348 209891