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STATUTORY INSTRUMENTS

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**2020 No. 99**

**The Trade Remedies (Amendment) (EU Exit) Regulations 2020**

**PART 1**

**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. This Part amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(1).

**Amendment of regulation 2 (interpretation)**

3. In regulation 2—

(a) after the definition of “directly competitive goods”, insert—

““discontinuation review” has the meaning given by regulation 35A (discontinuation review);”;

(b) after the definition of “statement of reasons”, insert—

““a TRQ review” has the meaning given by regulation 35B (tariff rate quota review);”.

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

4. In regulation 34(4)(b), omit “in respect of its level, form or pace of liberalisation”.

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

5. In regulation 35(8)—

(a) in sub-paragraph (a), for “maintained or increased” substitute “varied”;

(b) in sub-paragraph (b), omit “the form of”.

**Insertion of regulations 35A (discontinuation review) and 35B (tariff rate quota review)**

6. After regulation 35, insert—

### **“Discontinuation review**

**35A.**—(1) The TRA may conduct a review to consider whether a definitive safeguarding remedy should be revoked (a “discontinuation review”) where it is satisfied that there is sufficient information indicating that—

- (a) there may have been a lasting change of circumstances since the application of the relevant definitive safeguarding remedy; and
- (b) as a result, UK producers may no longer be suffering serious injury, or may cease to suffer such injury if the relevant definitive safeguarding remedy is revoked.

(2) The TRA may initiate a discontinuation review on its own initiative.

(3) Where the TRA initiates a discontinuation review, the TRA must—

- (a) publish a notice of its decision to initiate that review (a “notice of initiation of a review”) containing the information set out in paragraph 9 of the Schedule; and
- (b) notify the Secretary of State and interested parties.

(4) In conducting a discontinuation review, the TRA—

- (a) must determine whether—
  - (i) there has been a lasting change of circumstances since the application of the relevant definitive safeguarding remedy; and
  - (ii) UK producers have ceased to suffer serious injury or would not suffer such injury if the relevant definitive safeguarding remedy is revoked; and
- (b) may take into account any factors that it considers relevant.

(5) Following a discontinuation review, the TRA may determine that the application to goods of a definitive safeguarding remedy subject to review should be—

- (a) maintained in accordance with the relevant public notice made under section 13 of the Act; or
- (b) revoked.

### **Tariff rate quota review**

**35B.**—(1) The TRA may conduct a review to consider whether a tariff rate quota to which goods are subject should be varied (a “TRQ review”) where it is satisfied that there is sufficient information indicating that there may have been a change of circumstances (see paragraph (9)) since the application of that tariff rate quota to those goods.

(2) The TRA may initiate a TRQ review—

- (a) following the receipt of an application made by or on behalf of an interested party (a “TRQ review application”); or
- (b) on its own initiative.

(3) The TRA may reject a TRQ review application if it is made before the end of the period of six months beginning with the conclusion of—

- (a) an investigation conducted under Part 5;
- (b) a mid-term review;
- (c) an extension review; or
- (d) the transition review (under Part 9) in respect of the same tariff rate quota.

(4) The TRA may reject a TRQ review application if it is not made via the TRA’s case management system.

- (5) Where the TRA initiates a TRQ review, the TRA must—
  - (a) publish a notice of its decision to initiate a TRQ review (a “notice of initiation of a review”) containing the information set out in paragraph 9 of the Schedule; and
  - (b) notify the Secretary of State and interested parties.
- (6) In conducting a TRQ review, the TRA—
  - (a) need not make any assessments or determinations under Parts 2 to 4;
  - (b) must determine whether there has been a change in circumstances (see paragraph (9)) since the application of the relevant tariff rate quota; and
  - (c) may consider—
    - (i) whether the amount or allocation of the tariff rate quota is appropriate for domestic market conditions;
    - (ii) the desirability of maintaining, as far as possible, traditional trade flows;
    - (iii) any other factors that it considers relevant.
- (7) Following a TRQ review, the TRA may determine that the tariff rate quota to which goods are subject should be—
  - (a) maintained in accordance with the relevant public notice made under section 13 of the Act;
  - (b) varied; or
  - (c) where there is sufficient evidence that UK producers have ceased production of those goods, revoked.
- (8) The TRA must not vary a tariff rate quota by—
  - (a) reducing the rate of import duty that apply to goods subject to that quota; or
  - (b) varying the period for which goods are subject to that quota.
- (9) For the purposes of paragraphs (1) and (6)(b), a change of circumstances may, among other things, be—
  - (a) the fact that the tariff rate quota, or any part of the quota, has been exhausted;
  - (b) a change in demand for the relevant goods;
  - (c) the effect of an anti-dumping amount or a countervailing amount being applied to the relevant goods or like goods and directly competitive goods in the United Kingdom;
  - (d) trade diversion in relation to the imposition of anti-dumping, countervailing, safeguard or other trade measures by a foreign country or territory;
  - (e) the impact of the tariff rate quota on traditional trade flows;
  - (f) the fact that imports from a developing country member of the WTO which have been excluded from the application of the tariff rate quota can no longer be excluded under regulation 43 (developing country exception);
  - (g) the fact that imports from a developing country member of the WTO which have not been excluded from the application of the tariff rate quota should be excluded under regulation 43.”.

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

- 7. In regulation 36—
  - (a) in paragraph (4), for “this Part”, substitute “a mid-term review, an extension review or a discontinuation review”;

(b) after paragraph (4), insert—

“(4A) Part 5 applies to a TRQ review to the extent that the TRA considers relevant.”;

(c) after paragraph (5), insert—

“(6) Regulation 43 (developing country exception) applies to a review conducted under this Part, other than a discontinuation review, and, in the application of that regulation to such a review, the references in that regulation—

(a) to the “application of a provisional safeguarding remedy or definitive safeguarding remedy” should be read as the “maintenance, expiry or variation of a safeguarding remedy following a review”; and

(b) to “goods concerned” should be read as “goods subject to review”.”.

#### **Insertion of regulation 36A (meaning of “varied”)**

8. After regulation 36, insert—

##### **“Meaning of “varied”**

**36A.**—(1) Where, other than following a TRQ review, the TRA determines that a definitive safeguarding remedy is to be varied under this Part, such variation may, among other things, comprise or include—

(a) the replacement of the application of a definitive safeguarding amount with a tariff rate quota;

(b) the replacement of a tariff rate quota with the application of a definitive safeguarding amount;

(c) the variation of the level or pace of liberalisation.”.

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

9. In regulation 39(1), omit “some or all of”.

#### **Insertion of Part 7A (investigation in light of an international dispute decision)**

10. After Part 7, insert—

## **“PART 7A**

### **Investigation in light of an international dispute decision**

#### *General*

#### **Investigation in light of an international dispute decision**

**42A.**—(1) The Secretary of State may direct the TRA to investigate whether the application to goods of a definitive safeguarding remedy should be maintained, varied, or revoked in light of an international dispute decision<sup>(2)</sup>.

(2) In this Part, “international dispute investigation” means an investigation required by the Secretary of State under paragraph (1).

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(2) The term “international dispute decision” is defined in paragraph 22(6) of Schedule 5 to the Act.

### **Suspension of a definitive safeguarding remedy**

**42B.**—(1) The Secretary of State may by public notice suspend the application to goods of a definitive safeguarding remedy for the period it is subject to an international dispute investigation.

(2) The suspension begins the day after the day on which the public notice is published.

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

(a) the TRA publishes notice under regulation 42F(2); or

(b) the Secretary of State publishes notice under—

(i) paragraph 22(4)(a) of Schedule 5 to the Act;

(ii) regulation 42G(3); or

(iii) regulation 42I(4)(a).

### *Investigation*

#### **Initiation**

**42C.**—(1) The TRA must publish notice of its initiation of the international dispute investigation.

(2) The notice must contain the information set out in paragraph 16 of the Schedule.

#### **Conduct**

**42D.** Parts 2 to 5 apply to the international dispute investigation to the extent the TRA considers relevant.

#### **Determination**

**42E.**—(1) The TRA must determine whether the application to goods of the definitive safeguarding remedy should be maintained, varied, or revoked in light of the international dispute decision.

(2) The TRA may make different determinations for different goods or descriptions of goods.

### *Determination*

#### **Determination to maintain**

**42F.**—(1) This regulation applies if the TRA determines the application to goods of a definitive safeguarding remedy should be maintained.

(2) The TRA must publish notice of the determination.

(3) The notice must contain the information set out in paragraph 17 of the Schedule.

#### **Determination to vary**

**42G.**—(1) This regulation applies if the TRA determines the application to goods of a definitive safeguarding remedy should be varied.

(2) If the TRA is satisfied the application to goods of a definitive safeguarding remedy in accordance with the determination meets the economic interest test<sup>(3)</sup>, the TRA must recommend to the Secretary of State that the application to goods of the definitive safeguarding remedy should be varied<sup>(4)</sup>.

(3) If the TRA is not satisfied the application to goods of the definitive safeguarding remedy in accordance with the determination meets the economic interest test, the TRA must publish notice of the determination.

(4) A notice under paragraph (3) must contain the information set out in paragraph 17 of the Schedule.

### **Determination to revoke**

**42H.**—(1) This regulation applies if the TRA determines the application to goods of a definitive safeguarding remedy should be revoked.

(2) The TRA must recommend to the Secretary of State that the application to goods of the definitive safeguarding remedy is revoked.

### *Recommendation*

### **Acceptance or rejection of a recommendation**

**42I.**—(1) The Secretary of State must accept or reject a recommendation made under regulation 42G(2) or 42H(2).

(2) The Secretary of State must accept a recommendation made under regulation 42G(2) unless the Secretary of State is satisfied—

- (a) it is not in the public interest to accept the recommendation; or
- (b) the TRA determination that the application to goods of a definitive safeguarding remedy in accordance with the determination to vary meets the economic interest test is not a determination the TRA could reasonably have made.

(3) The Secretary of State must accept a recommendation made under regulation 42H(2) unless the Secretary of State is satisfied it is not in the public interest to accept the recommendation<sup>(5)</sup>.

(4) If the Secretary of State rejects a recommendation, the Secretary of State must—

- (a) publish notice of the recommendation and of the rejection of it;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.”.

### **Amendment of regulation 53 (general modifications)**

**11.** In regulation 53—

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(3) The economic interest test is set out in paragraph 23 of Schedule 5 to the Act.  
(4) Paragraph 22(5) of Schedule 5 to the Act applies paragraphs 21(8) and (9) of Schedule 5 to the Act, which set out the form a recommendation of variation may take.  
(5) Paragraph 22(4) of Schedule 5 to the Act applies if the Secretary of State accepts a recommendation that the application to goods of the definitive safeguarding remedy should be varied or revoked in light of the international dispute decision. The Secretary of State must publish notice of the recommendation and of the acceptance of it, notify interested parties, and make provision by public notice to give effect to the recommendation.

- (a) in paragraph (c), after ““the Secretary of State””, insert “or “Secretary of State” (whichever is appropriate)”;
- (b) in paragraph (d), for sub-paragraph (viii), substitute—
  - “(viii) regulation 35A(3)(a);
  - (ix) regulation 35B(5)(a);
  - (x) regulation 42C(1);
  - (xi) paragraph 7(c) of the Schedule.”.

**Insertion of regulations 67A (further modifications to regulation 35A) and 67B (further modifications to regulation 35B)**

12. After regulation 67, insert—

“**67A.** Regulation 35A (discontinuation review) has effect as if—

- (a) in paragraph (2), for “its”, there were substituted “the Secretary of State’s”; and
- (b) in paragraph (3)(b), “the Secretary of State and” were omitted.

**67B.** Regulation 35B (tariff rate quota review) has effect as if—

- (a) in paragraph (2)(b), for “its”, there were substituted “the Secretary of State’s”; and
- (b) in paragraph (5)(b), “the Secretary of State and” were omitted.”.

**Amendment of regulation 70 (further modifications to Part 7)**

13. In regulation 70, in the substituted regulation 39(1), omit “some or all of the”.

**Insertion of regulation 70A (further modifications to Part 7A)**

14. After regulation 70, insert—

**“Further modifications to Part 7A**

**70A.** Part 7A (investigation in light of an international dispute decision) has effect as if—

- (a) for “recommendation”, in each place where this occurs, there were substituted “preliminary decision”;
- (b) in regulation 42A—
  - (i) in paragraph (1), the words “direct the TRA to” were omitted;
  - (ii) in paragraph (2), for “required” there were substituted “initiated”;
- (c) in regulation 42B(3)(b)(iii), after “regulation” there were inserted “42I(3)(a) or”;
- (d) in regulations 42G(2) and 42H(2), for “recommend to the Secretary of State” there were substituted “make a preliminary decision”;
- (e) for the section heading after regulation 42H and for regulation 42I there were substituted—

*“Decision*

**Decision to give effect to a preliminary decision**

**42I.**—(1) The Secretary of State must decide whether or not to give effect to a preliminary decision made under regulation 42G(2) or 42H(2).

(2) The Secretary of State must decide to give effect to the preliminary decision unless the Secretary of State is satisfied it is not in the public interest to give effect to the preliminary decision.

(3) If the Secretary of State decides to give effect to the preliminary decision, the Secretary of State must—

- (a) publish notice of the preliminary decision and of the decision to give effect to it;
- (b) notify interested parties;
- (c) make provision by public notice under section 13 of the Act to give effect to the preliminary decision.

(4) If the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

- (a) publish notice of the preliminary decision and of the decision not to give effect to it;
- (b) notify interested parties;
- (c) lay a statement before the House of Commons setting out the reasons for which the Secretary of State is satisfied it is not in the public interest to give effect to the preliminary decision.”.”.

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

**15.** After regulation 86, insert—

“**86A.** Paragraph 17 of the Schedule (notice of determination on an international dispute investigation) has effect as if, in sub-paragraph (g), for “recommendation” there were substituted “preliminary decision”.”.

**Amendment of the Schedule**

**16.** In the Schedule—

- (a) in paragraph 9, after “35(5)(a)”, insert “35A(3)(a), 35B(5)(a)”;
- (b) after paragraph 15, insert—

**“Notice of initiation of international dispute investigation**

**16.** The information referred to in regulation 42C(2) is—

- (a) the date of initiation of the investigation;
- (b) a description of the goods concerned;
- (c) a description of the definitive safeguarding remedy to which the investigation relates;
- (d) a summary of the international dispute decision;



- (e) a summary of the investigation process; and
- (f) any other information the TRA considers relevant.

**Notice of determination of international dispute investigation**

- 17.** The information referred to in regulation 42F(3) and 42G(4) is—
- (a) a description of the goods concerned;
  - (b) a description of the definitive safeguarding remedy to which the notice relates;
  - (c) a summary of the investigation;
  - (d) a summary of the international dispute decision;
  - (e) the determination made in light of the international dispute decision;
  - (f) the reason for the determination;
  - (g) the date of the determination; and
  - (h) any other information the TRA considers relevant.”.