STATUTORY INSTRUMENTS

2020 No. 99

EXITING THE EUROPEAN UNION

CUSTOMS

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

Made - - - -	*30th January 2020*
Laid before the House of Commons	*3rd February 2020*
Coming into force - -	*1st March 2020*

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 51(1)(b), 56(1), (6), and (7) of, and paragraphs 10(1), 21(1), 22(1), 30, and 31(1) of Schedule 4 to, and paragraphs 21(1), 22(1), 24(1), 25(2), 29, and 30(1) of Schedule 5 to, the Taxation (Cross-border Trade) Act 2018(**a**).

(**a**) 2018 c. 22. Section 51(4)(a) defines "the appropriate Minister" to include the Secretary of State for the purpose of making regulations under section 51(1)(b). Section 56(5)(a) defines "the appropriate Minister" to include the Secretary of State for the purpose of making regulations under section 56(1) relating to anything dealt with by any provision in section 13 and Schedules 4 and 5. Paragraph 32(1) of Schedule 4 and paragraph 31(1) Schedule 5 defines "regulations" as regulations made by the Secretary of State for the purposes of the respective Schedule.

Citation and commencement

1. These Regulations may be cited as the Trade Remedies (Amendment) (EU Exit) Regulations 2020 and come into force on 1st March 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(**a**).

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**) S.I. 2019/449, as amended by S.I. 2019/1076 and S.I. 2019/1319.

(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(**a**).

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

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).

(**a**) The term "international dispute decision" is defined in paragraph 22(6) of Schedule 5 to the Act.

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(**a**), the TRA must recommend to the Secretary of State that the application to goods of the definitive safeguarding remedy should be varied(**b**).

(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.

(**a**) The economic interest test is set out in paragraph 23 of Schedule 5 to the Act.
(**b**) 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.

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(**a**).

(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—

(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.".

(**a**) 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.

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.".

PART 2

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

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

17. This Part amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019(**a**).

Amendment of regulation 64 (termination)

18. In regulation 64—

(a) in paragraph (1), omit sub-paragraph (a);

(**a**) S.I. 2019/450, as amended by S.I. 2019/1076 and S.I. 2019/1346.

(b) after paragraph (1), insert—

"(1A) The TRA must terminate an investigation in relation to some or all of the goods where, at any stage during the investigation, it determines that the margin of dumping or the amount of subsidy in respect of those goods is minimal.".

Amendment of regulation 68 (the conduct of a review)

19. In regulation 68, for paragraphs (3) and (4) substitute—

"(3) The TRA must make a determination that an anti-dumping amount or a countervailing amount should be revoked in respect of goods from a particular overseas exporter where, at any stage during a review, it determines that the margin of dumping or the amount of subsidy is minimal.

(4) Where regulation 36(5) applies in respect of goods from a particular overseas exporter ("E"), but an anti-dumping amount or a countervailing amount remains in place for at least one other overseas exporter in respect of such goods, E—

(a) may be subject to a review or subsequent review carried out in respect of the exporting country or territory; and

(b) following the review or subsequent review, may have an anti-dumping amount or a countervailing amount applied or re-applied to those goods.

(4A) Paragraph 4 does not apply where the Secretary of State has accepted a recommendation made by the TRA (see regulation 76) which is in accordance with a determination referred to in paragraph (3).".

Insertion of Part 9A (investigation in light of an international dispute decision)

20. After Part 9, insert—

"PART 9A

Investigation in light of an international dispute decision

General

Investigation in light of an international dispute decision

88A.—(1) The Secretary of State may direct the TRA to investigate whether the application to goods of an anti-dumping amount or a countervailing amount should be maintained, varied, or revoked in light of an international dispute decision(**a**).

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

Suspension of an anti-dumping amount or a countervailing amount

88B.—(1) The Secretary of State may by public notice suspend the application to goods of an anti-dumping amount or a countervailing amount 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 88F(2); or

(b) the Secretary of State publishes notice under—

(**a**) The term "international dispute decision" is defined in paragraph 22(6) of Schedule 4 to the Act.

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

(ii) regulation 88G(4); or

(iii) regulation 88I(4)(a).

Investigation

Initiation

88C.—(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 1 of Schedule 5A.

Conduct

88D. Parts 2 to 6 apply to an international dispute investigation to the extent the TRA considers relevant.

Determination

88E.—(1) The TRA must determine whether the application to goods of the anti-dumping amount or the countervailing amount 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, including by reference to—

(a) an overseas exporter or a description of overseas exporter;

(b) a foreign country or territory or a description of foreign country or territory.

Determination

Determination to maintain

88F.—(1) This regulation applies if the TRA determines the application to goods of an anti-dumping amount or a countervailing amount should be maintained.

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

(3) The notice must contain the information set out in paragraph 2 of Schedule 5A.

Determination to vary

88G.—(1) This regulation applies if the TRA determines the application to goods of an anti-dumping amount or a countervailing amount should be varied.

(2) If the TRA is satisfied the application to goods of an anti-dumping amount or a countervailing amount in accordance with the determination meets the economic interest test(**a**), the TRA must recommend to the Secretary of State that the application to goods of the anti-dumping amount or the countervailing amount should be varied.

(3) The TRA may recommend—

(a) varying the goods or the description of goods to which the anti-dumping amount or the countervailing amount applies;

(b) varying the period for which the anti-dumping amount or the countervailing amount applies;

(c) varying how the anti-dumping amount or the countervailing amount is determined;

(d) any other variation.

(**a**) The economic interest test is set out in paragraph 25 of Schedule 4 to the Act.

(4) If the TRA is not satisfied that the application to goods of an anti-dumping amount or a countervailing amount in accordance with the determination meets the economic interest test, the TRA must publish notice of the determination.

(5) A notice under paragraph (4) must contain the information set out in paragraph 2 of Schedule 5A.

Determination to revoke

88H.—(1) This regulation applies if the TRA has determined that the application to goods of an anti-dumping amount or a countervailing amount should be revoked.

(2) The TRA must recommend to the Secretary of State that the application to goods of the anti-dumping amount or the countervailing amount should be revoked.

Recommendation

Acceptance or rejection of a recommendation

88I.—(1) The Secretary of State must accept or reject a recommendation made by the TRA under regulation 88G(2) or 88H(2).

(2) The Secretary of State must accept a recommendation made under regulation 88G(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 of the anti-dumping amount or the countervailing amount to goods 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 88H(2) unless the Secretary of State is satisfied it is not in the public interest to accept the recommendation(**a**).

(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 94 (interpretation for Part 12)

21. In regulation 94(1)—

(a) in the definition of "appropriate date", in paragraph (b)(i), before "day of publication" insert "day after the";

(b) in the definition of "EU countervailing duty", for "by EU instrument" substitute "by an EU instrument".

Amendment of regulation 94A (treatment of trade remedies transitioned under this Part)

22. In regulation 94A—

(a) in paragraph (2)—

(i) for "102C(2)(a)" substitute "101C(2)(a)";

(**a**) Paragraph 22(4) of Schedule 4 to the Act applies if the Secretary of State accepts a recommendation that the application to goods of an anti-dumping amount or a countervailing amount should be varied or revoked in light of an 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.

(ii) for "an anti-dumping or countervailing amount" substitute "an anti-dumping amount or a countervailing amount";

(b) in paragraph (3), for "102C(2)(a)" substitute "101C(2)(a)".

Amendment of regulation 94B (new exporter review of trade remedies measure transitioned under this Part)

23. In regulation 94B(1), for "102C(2)(a)" substitute "101C(2)(a)".

Amendment of regulation 94C (scope review of trade remedies measure transitioned under this Part

24. In regulation 94C(1), for "102C(2)(a)" substitute "101C(2)(a)".

Amendment of regulation 96A (transition of EU trade remedies measure)

25. In regulation 96A(4)(a), for "accepted a recommendation of revocation under regulation 101(1)" substitute "accepted under regulation 101(1) a recommendation of revocation".

Amendment of regulation 96C (transition of expired EU trade remedies measure)

26. In regulation 96C(1), for "accepted a recommendation of variation under regulation 101(1)" substitute "accepted under regulation 101(1) a recommendation of variation".

Amendment of regulation 97C (continuation of expired UK trade remedies measure)

27. In regulation 97C(2), for "102C(2)(a)" substitute "101C(2)(a)".

Amendment of regulation 101A (rejection of recommendation)

28. In regulation 101A(1), for "a recommendation made under regulation 101(1)" substitute "under regulation 101(1) a recommendation".

Amendment of regulation 101B (acceptance of recommendation before replacement of EU trade duty)

29. In regulation 101B—

(a) in paragraph (1), for "a recommendation made under regulation 101(1)" substitute "under regulation 101(1) a recommendation";

(b) in paragraph (2), in sub-paragraphs (a)(i) and (b)(i), for "101A(2)(a)" substitute "101A(2)(a)(i) to (iii)".

Amendment of regulation 101C (acceptance of recommendation after replacement of EU trade duty)

30. In regulation 101C—

(a) in paragraph (1), for "a recommendation made under regulation 101(1)" substitute "under regulation 101(1) a recommendation";

(b) in paragraph (3)(a), for "101A(2)(a)" substitute "101A(2)(a)(i) to (iii)".

Amendment of regulation 102 (general modifications)

31. In regulation 102(d), after sub-paragraph (xi), insert—

"(xia) regulation 88C(1)".

Insertion of regulation 113A (modifications to regulation 68)

32. After regulation 113, insert—

"**113A.** Regulation 68(4A) has effect as if, for "accepted a recommendation", there were substituted "decided to give effect to a preliminary decision.".

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

33. After regulation 130, insert—

"**Modifications to Part 9A**

130A. Part 9A (investigation in light of an international dispute decision) has effect as if—

(a) for "recommendation", in each place it occurs, there were substituted "preliminary decision";

(b) in regulation 88A—

(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 88B(3)(b)(iii), after "regulation" there were inserted "88I(3)(a) or";

(e) in regulations 88G(2) and 88H(2), for "recommend to the Secretary of State", there were substituted "make a preliminary decision";

(e) for the section heading after regulation 88I and for regulation 88I, there were substituted—

"*Decision*

Decision to give effect to a preliminary decision

88I.—(1) The Secretary of State must decide whether or not to give effect to a preliminary decision made under regulation 88G(2) or 88H(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 not 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 141A (modifications to Schedule 5A)

34. After regulation 141, insert—

"**Modifications to Schedule 5A**

141A. Schedule 5A (content of international dispute investigation notices) has effect as if, in paragraph 2—

(a) in the heading, there were omitted "with no recommendation";

(b) sub-paragraph (h) were omitted."

Insertion of Schedule 5A (content of international dispute investigation notices)

35. After Schedule 5, insert—

"SCHEDULE 5A Regulations 88C(2), 88F(3), and 88G(5)

Content of international dispute investigation notices

Notice of initiation

1. The information referred to in regulation 88C(2) is—

(a) the date of initiation of the investigation;

(b) the name of the exporting country or territory;

(c) a description of the goods concerned;

(d) a description of the anti-dumping amount or the countervailing amount to which the investigation relates;

(e) a summary of the international dispute decision;

(f) a summary of the investigation process; and

(g) any other information the TRA considers relevant.

Notice of determination

2. The information referred to in regulation 88F(3) and 88G(5) is—

(a) the name of the exporting country or territory;

(b) a description of the goods concerned;

(c) a description of the anti-dumping amount or the countervailing amount to which the notice relates;

(d) a summary of the investigation;

(e) a summary of the international dispute decision;

(f) the determination made in light of the international dispute decision;

(g) the reason for the determination;

(h) the date of the determination; and

(i) any other information the TRA considers relevant."

PART 3

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

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

36. This Part amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019(**a**).

Amendment of regulation 14 (outcome of reconsideration)

37. In regulation 14—

(a) after paragraph (12), insert—

"(12A) Where, before replacement day, the Secretary of State accepts or rejects a recommendation made by the TRA following its reconsideration of an original decision referred to in paragraph 29 of Schedule 1 to these Regulations, the public notice referred to in paragraph (8)(b), (10)(b) or (12) takes effect on replacement day.";

(b) after paragraph (13), insert—

"(14) In this regulation, "replacement day" means the day on which paragraph 1 of Schedule 7 to the Act comes into force in so far as relating to EU trade duties.".

Amendment of regulation 16 (appeals to the Upper Tribunal in relation to a decision made by the TRA)

38. In regulation 16(3), for "or 33"substitute "33 or 33C".

Amendment of regulation 26 (modifications to regulation 14)

39. In regulation 26—

(a) in paragraph (j), for "paragraphs 13 to 17, 19, 31 or 32", substitute "paragraphs 13 to 17, 19, 31, 32, 33A or 33B";

(b) after paragraph (j), insert—

"(ja)in paragraph (12A)—

(i) for "accepts or rejects", there were substituted "decides to give effect, or not to give effect, to";

(ii) for "its", there were substituted "the";".

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

40. In regulation 30, omit paragraph (g).

Amendment of Schedule 1 (original decisions of the TRA)

41. In Schedule 1—

(a) after paragraph 27, insert—

"**27A.** A determination in notice published under regulation 88F(2) or 88H(4) following an international dispute investigation.

(**a**) S.I. 2019/910.

27B. A recommendation made under regulation 88G(2) or 88H(2) following an international dispute investigation.";

(b) in paragraph 28, at the end, insert "or a determination made under regulation 89(9) that HMRC should not make a repayment";

(c) after paragraph 33, insert—

"**33A.** A determination made under regulation 35A(5)(a) following a discontinuation review.

33B. A determination made under regulation 35B(7)(a) following a TRQ review.

33C. A determination made under regulation 35B to reject a TRQ review application.";

(d) after paragraph 38, insert—

"**38A.** A determination in notice published under regulation 42F(2) or 42G(3) in an international dispute investigation.

38B. A recommendation made under regulation 42G(2) or 42H(2) in an international dispute investigation.".

Amendment of Schedule 2 (determinations of the Secretary of State that are subject to appeal)

42. In Schedule 2—

(a) after paragraph 6, insert—

"**6A.** The acceptance or rejection under regulation 88I of a recommendation made by the TRA in an international dispute investigation.";

(b) after paragraph 11, insert—

"**11A.** The acceptance or rejection under regulation 42I of a recommendation made by the TRA in an international dispute investigation.".

Signed by authority of the Secretary of State for International Trade

Conor Burns
Minister of State for Trade Policy
Department for International Trade

30th January 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Secretary of State to further amend the United Kingdom trade remedies system.

Part 1 of these Regulations amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (S.I. 2019/449, as amended by S.I. 2019/1076 and S.I. 2019/1319):

— regulations 3, 6, 7, and 8 amend the principal Regulations to provide for two new review types available following a change of circumstances—

- discontinuation review of a definitive safeguarding amount or a tariff rate quota;
- tariff rate quota review;

— regulations 4 and 5 makes minor amendments to regulations 34 and 35 of the principal Regulations respectively, which relate to the liberalisation of the application to goods of a definitive safeguarding amount or a tariff rate quota to which goods are subject;

— regulation 9 makes a minor amendment to regulation 39 of the principal Regulations, which relates to the TRA recommending to the Secretary of State the suspension of the application to goods of a definitive safeguarding amount or a tariff rate quota to which goods are subject.

— regulation 10 inserts Part 7A into the principal Regulations, which—

- provides for the Secretary of State to direct the Trade Remedies Authority ("TRA") to conduct an investigation into the application to goods of a definitive safeguarding amount, or a tariff rate quota to which goods are subject, in light of an adopted WTO report or a dispute settlement decision under a free trade agreement;
- provides for the Secretary of State to suspend the application to goods of a definitive safeguarding amount, or a tariff rate quota to which goods are subject, for the period the amount or quota is subject to the investigation;
- sets out the obligations of the TRA and the Secretary of State during the course of the investigation;

— regulations 11 to 15 amend, or insert into, the principal Regulations modifications to the inserted and amended provisions to make those provisions operable by the Secretary of State until such time the TRA is established;

— regulation 16 inserts paragraphs 16 and 17 into the Schedule of the principal Regulations, which set out the information required to be included in notices made under Part 7A.

Part 2 of these Regulations amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450, as amended by S.I. 2019/1076 and S.I. 2019/1346):

— regulation 18 amends regulation 64 of the principal Regulations to clarify that the TRA is to terminate an investigation in relation to some or all of the goods if it determines a minimal dumping margin or subsidy amount in respect of those goods at any stage during the investigation;

— regulation 19 amends regulation 68 of the principal Regulations to—

- require the TRA to determine that an anti-dumping amount or a countervailing amount should be revoked in respect of goods from a particular overseas exporter if it determines a minimal dumping margin or subsidy amount in respect of those goods at any stage during the investigation;
- clarify the circumstances in which goods from that particular overseas exporter may or may not be included in a review or subsequent review;

— regulation 20 inserts Part 9A into the principal Regulations, which—

- provides for the Secretary of State to direct the TRA to investigate the application to goods of an anti-dumping amount or a countervailing amount in light of an adopted WTO report or a dispute settlement decision under a free trade agreement;
- provides for the Secretary of State to suspend the application to goods of an anti-dumping amount or a countervailing amount for the period the amount is subject to the investigation;
- sets out the obligations of the TRA and the Secretary of State during the course of the investigation;

— regulations 21 to 30 make technical amendments to Part 12 of the principal Regulations, to remedy defective drafting in amendments made by the Trade Remedies (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1076);

— regulations 31 to 34 insert into the principal Regulations modifications to the inserted and amended provisions to make those provisions operable by the Secretary of State until such time the TRA is established.

— regulation 35 inserts new Schedule 5A into the principal Regulations, which sets out the information required to be included in notices made under Part 9A.

Part 3 of these Regulations amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910):

— regulation 37 makes a technical amendment to regulation 14 of the principal Regulations, to provide for the outcome of a reconsideration of a recommendation following a transition review before the replacement of EU customs duties.

— regulations 38 to 40, and 42 make consequential amendments to the principal Regulations, to provide for additional decisions made under regulations inserted by Parts 1 and 2 of these Regulations to be subject to reconsideration by the TRA and appeal to the Upper Tribunal;

— regulation 41 makes a technical amendment to regulation 30 of the principal Regulations to omit a redundant paragraph.

The notices to be published by the TRA referred to in regulations inserted by regulations 6, 10, and 20 will be published at https://www.trade-remedies.service.gov.uk/.

The notices to be published by the Secretary of State referred to in regulations inserted by regulations 10, 14, 20, and 33 will be published at https://www.gov.uk/business-and-industry/trade-and-investment.

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 on www.legislation.gov.uk.

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£6.90

UK202001311003 02/2020 19585

http://www.legislation.gov.uk/id/uksi/2020/99

ISBN 978-0-11-119275-7

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