

2019 No. 429 (C. 12)

EXITING THE EUROPEAN UNION

CUSTOMS

**The Taxation (Cross-border Trade) Act 2018 (Appointed Days
No. 4 and Transitional Provisions) (Modification) (EU Exit)
Regulations 2019**

Made - - - - at 11.30 a.m. on 4th March 2019

The Secretary of State, in exercise of the powers conferred by sections 56(4), (5) and (7) and 57(2) and (4) of the Taxation (Cross-border Trade) Act 2018(a), makes the following Regulations.

Citation and Interpretation

1.—(1) These Regulations may be cited as the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 4 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019.

(2) In these Regulations, “the Act” means the Taxation (Cross-border Trade) Act 2018.

Appointed Days

2. The day appointed for the coming into force of section 13 of, and Schedules 4 and 5 to, the Act (excluding paragraphs 22 and 30 in Schedule 4 and paragraphs 22 and 29 in Schedule 5), is at 11.59 a.m. on 4th March 2019.

3. The day appointed for the coming into force of paragraph 1 of Schedule 7 to the Act, so far as it relates to EU trade duties, is immediately after the coming into force of section 3 of the European Union (Withdrawal) Act 2018(b).

Transitional Provisions

4. The provisions of the Act that are commenced by virtue of regulation 2 have effect subject to the modifications in the Schedule until the Trade Remedies Authority (“the TRA”) is established.

5. Following the establishment of the TRA, any provisional decision or determination made by the Secretary of State under Part 3 or 4 of Schedule 4 to the Act or under Part 3 or 4 of Schedule 5 to the Act, as modified by the Schedule to these Regulations, has effect as though it were a recommendation made by the TRA under the corresponding unmodified provision.

6. Following the establishment of the TRA, anything done (or having effect as if done) by the Secretary of State in pursuance of a transitional function has effect as if done by the TRA, so far as that is required for continuing its effect.

(a) 2018 c.22. Section 56(5) is cited for the meaning given to “the appropriate Minister”.

(b) 2018 c.16.

7. Following the establishment of the TRA, anything done (or having effect as if done) in relation to the Secretary of State in connection with a transitional function has effect as if done in relation to the TRA, so far as that is required for continuing its effect.

8. If, on the establishment of the TRA, anything is in the process of being done by or in relation to the Secretary of State in connection with a transitional function, it may, following the establishment of the TRA, be continued by or in relation to the TRA.

9. A “transitional function” is a function which—

- (a) is conferred on the Secretary of State by the Schedule to these Regulations;
- (b) corresponds to a function that will, following the establishment of the TRA, be exercisable by the TRA under Schedule 4 or 5 to the Act; and
- (c) following the establishment of the TRA, will not be exercisable by the Secretary of State.

Signed by authority of the Secretary of State for International Trade

at 11.30 a.m. on 4th March 2019

Graham Stuart
Parliamentary Under Secretary of State for Investment
Department for International Trade

SCHEDULE

Transitional Provisions

Regulation 4

PART 1

General Modifications

1. Unless otherwise specified in this Schedule, the provisions coming into force by virtue of regulation 2 have effect as if for “TRA”, in each place where this occurs, there were substituted “Secretary of State”.

PART 2

Modifications to Section 13 of the Act

2. Section 13 of the Act has effect as if—

- (a) in sub-section (1), for “the Trade Remedies Authority (“the TRA”)", there were substituted “the Secretary of State”; and
- (b) in sub-sections (2), (3) and (4)—
 - (i) for “accepts a recommendation by the TRA”, in each place where this occurs, there were substituted “decides to give effect to a preliminary decision”; and
 - (ii) for “the recommendation”, in each place where it occurs, there were substituted “the preliminary decision”.

PART 3

Further Modifications to Schedule 4 to the Act

Modifications to Part 2 (dumping and subsidisation investigations)

3. Paragraph 9 (initiation of a dumping or a subsidisation investigation) of Schedule 4 to the Act has effect as if, for that paragraph, there were substituted—

“9.(1) The Secretary of State may initiate a dumping or a subsidisation investigation in relation to goods only if—

- (a) the Secretary of State—
 - (i) is requested to initiate an investigation in an application made by or on behalf of a UK industry in the goods (“the applicant UK industry”), or
 - (ii) in exceptional circumstances, decides that an investigation should be initiated in the absence of such an application,
 - (b) the Secretary of State is satisfied that the application contains sufficient evidence (or, if sub-paragraph (1)(a)(i) does not apply, that there is otherwise sufficient evidence), that—
 - (i) the goods have been or are being dumped in the United Kingdom and the dumping has caused or is causing injury to a UK industry in those goods, or
 - (ii) as the case may be, the goods have been or are being imported into the United Kingdom and are subsidised, and the importation of the subsidised goods has caused or is causing injury to a UK industry in those goods,
 - (c) the Secretary of State is satisfied that it appears from that evidence that—
 - (i) the volume of dumped goods (whether actual or potential), and the injury, is more than negligible, and the margin of dumping in relation to those goods is more than minimal, or
 - (ii) as the case may be, the volume of subsidised goods (whether actual or potential), and the injury, is more than negligible, and the amount of the subsidy in relation to those goods is more than minimal, and
 - (d) the market share requirement is met or the Secretary of State waives the requirement.
- (2) The market share requirement is met if—
- (a) in the case of an application under sub-paragraph (1)(a)(i), the Secretary of State is satisfied that the applicant UK industry has a share of the market for like 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 a decision under sub-paragraph (1)(a)(ii), the Secretary of State is satisfied that a UK industry in the goods has a share of the market for like goods for consumption in the United Kingdom (whether produced there or elsewhere) which is sufficient to justify initiating the investigation.
- (3) Regulations may make provision about—
- (a) what constitutes or does not constitute an application made by or on behalf of a UK industry for the purposes of sub-paragraph (1)(a)(i);
 - (b) when an application is made for the purposes of sub-paragraph (1)(a)(i);
 - (c) the information to be contained in such an application;
 - (d) the time limit for determining such an application;
 - (e) the Secretary of State’s assessment of any information obtained or held by the Secretary of State for the purposes of a decision under sub-paragraph (1)(a)(ii);

- (f) what constitutes or does not constitute “negligible” and “minimal” for the purposes of sub-paragraph (1)(c)(i) or (ii);
- (g) how it is to be determined for those purposes whether those thresholds have been exceeded;
- (h) what constitutes or does not constitute “the market for like goods for consumption in the United Kingdom” and a UK industry’s “share” of that market for the purposes of sub-paragraphs (1)(d) and (2);
- (i) how any of those matters are to be determined for the purposes of sub-paragraphs (1)(d) and (2).

(4) In the case of an application under sub-paragraph (1)(a)(i), if any of the requirements of sub-paragraph (1)(b) to (d) in respect of a dumping or a subsidisation investigation (as the case may be) are not met, the Secretary of State must reject the application and notify the applicant accordingly.

(5) If the requirements of sub-paragraph (1)(a) to (d) in respect of a dumping investigation are met, the Secretary of State must—

- (a) in the case of an application under sub-paragraph (1)(a)(i), accept the application,
- (b) notify the governments of the relevant foreign countries or territories,
- (c) initiate the investigation,
- (d) publish notice of the decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
- (e) notify interested parties (see paragraph 32(3)) accordingly.

(6) If the requirements of sub-paragraph (1)(a) to (d) in respect of a subsidisation investigation are met, the Secretary of State must—

- (a) in the case of an application under sub-paragraph (1)(a)(i), accept the application,
- (b) after the governments of the relevant foreign countries or territories have been invited to participate in consultations, initiate the investigation,
- (c) publish notice of the decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
- (d) notify interested parties accordingly.

(7) “Relevant foreign country or territory” means—

- (a) in the case of a potential dumping investigation, the exporting foreign country or territory (within the meaning of paragraph 1(2)) of the alleged dumped goods;
- (b) in the case of a potential subsidisation investigation, a foreign country or territory within whose territory is located a foreign authority which is alleged to have granted one or more of the subsidies in question.

(8) Notices under sub-paragraphs (5)(d) and (e) and (6)(c) and (d) must specify the date of the initiation of the investigation.

(9) Nothing in this paragraph prevents the Secretary of State initiating both a dumping investigation and a subsidisation investigation in relation to the same goods if the requirements of sub-paragraph (1)(a) to (d) are met in the case of each investigation.”.

4. Paragraph 11 (provisional affirmative determinations and final affirmative or negative determinations) of Schedule 4 to the Act has effect as if—

- (a) in sub-paragraphs (3), (4) and (6)(b), for “it”, in each place where it occurs, there were substituted “the Secretary of State”;
- (b) in sub-paragraph (8)(a), for “its”, there were substituted “the”; and
- (c) in sub-paragraph (8)(b), “the Secretary of State and” were omitted.

5. Paragraph 12 (termination of a dumping or a subsidisation investigation) of Schedule 4 to the Act has effect as if, for that paragraph, there were substituted—

“12. A dumping or a subsidisation investigation in relation to goods terminates (if it has not already terminated by virtue of provision made under paragraph 10(1))—

- (a) in a case where the Secretary of State makes a final negative determination in relation to the goods, when notice of that determination is published under paragraph 11(8)(a),
- (b) in a case where the Secretary of State makes a final affirmative determination in relation to the goods and determines that there is no preliminary decision which the Secretary of State could make under paragraph 17(3) or (4) in relation to them, when notice of that determination is published under paragraph 17(10)(b),
- (c) in a case where the Secretary of State makes a final affirmative determination in relation to the goods, and makes a preliminary decision under paragraph 17(3) or (4) in relation to them, but decides not to give effect to the preliminary decision, when notice of that decision is published under paragraph 20(3)(a), or
- (d) in a case where the Secretary of State makes a final affirmative determination in relation to the goods, and makes a preliminary decision under paragraph 17(3) or (4) in relation to them, which the Secretary of State decides to give effect to, at the end of the day of publication of the public notice under section 13 giving effect to the preliminary decision.”.

Modifications to Part 3 (provisional remedy: requiring a guarantee)

6. Part 3 of Schedule 4 (provisional remedy: requiring a guarantee) to the Act has effect as if, for that Part, there were substituted—

“PART 3

PROVISIONAL REMEDY: REQUIRING A GUARANTEE

Secretary of State’s power to make a preliminary decision to require a guarantee

13.(1) This paragraph applies where the Secretary of State makes a provisional affirmative determination in relation to goods which are the subject of a dumping or a subsidisation investigation.

(2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.

(3) The Secretary of State may make a preliminary decision—

- (a) in the case of a dumping investigation that, in respect of all the relevant goods, all importers of those goods should be required to give a guarantee in respect of any additional amount of import duty which would have been applicable, or potentially applicable, to the goods under section 13 if an anti-dumping amount had been applied to the goods based on the provisional affirmative determination (“an estimated anti-dumping amount”), or
- (b) in the case of a subsidisation investigation that, in respect of all the relevant goods, all importers of those goods should be required to give a guarantee in respect of any additional amount of import duty which would have been applicable, or potentially applicable, to the goods under section 13 if a countervailing amount had been applied to the goods based on the provisional affirmative determination (“an estimated countervailing amount”).

(4) The Secretary of State may make a preliminary decision under sub-paragraph (3) only if the Secretary of State is satisfied that requiring a guarantee in accordance with the preliminary decision—

- (a) is necessary to prevent injury being caused during the investigation to a UK industry in the relevant goods, and

(b) meets the economic interest test (see paragraph 25).

(5) The Secretary of State may make different preliminary decisions under sub-paragraph (3) for different relevant goods or descriptions of relevant goods, including by reference to—

- (a) specified overseas exporters or descriptions of overseas exporter;
- (b) specified foreign countries or territories or descriptions of foreign countries or territories.

(6) But the Secretary of State may only make one preliminary decision under paragraph (a) or, as the case may be, paragraph (b) of sub-paragraph (3) in relation to any particular relevant good.

(7) And the Secretary of State may make different preliminary decisions under paragraph (a) or (b) of sub-paragraph (3) for different relevant goods or descriptions of relevant goods only if the preliminary decisions which the Secretary of State makes under that paragraph when taken together cover all the relevant goods.

(8) If the Secretary of State determines that there are one or more preliminary decisions which the Secretary of State could make under paragraph (a) or, as the case may be paragraph (b), of sub-paragraph (3), the Secretary of State must make that preliminary decision or those preliminary decisions (subject to sub-paragraphs (6) and (7)).

(9) If the Secretary of State determines that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3), the Secretary of State must—

- (a) publish notice of the provisional affirmative determination in relation to the goods,
- (b) publish notice of the determination that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3), and
- (c) notify interested parties (see paragraph 32(3)) accordingly.

Preliminary decisions to require a guarantee

14.(1) A preliminary decision under paragraph 13(3) to require the giving of a guarantee in respect of goods must specify those goods and include—

- (a) the Secretary of State's preliminary decision regarding—
 - (i) the form of the guarantee,
 - (ii) the estimated anti-dumping amount or the estimated countervailing amount for the purpose of calculating the amount of the guarantee,
 - (iii) the amount of the guarantee,
 - (iv) the period during which the requirement to give a guarantee should apply, and
- (b) such other content as regulations may require.

(2) The form of guarantee referred to in sub-paragraph (1)(a)(i) may be cash, a bond or a bank guarantee.

(3) The preliminary decision referred to in sub-paragraph (1)(a)(ii) must be such that the estimated anti-dumping amount or an estimated countervailing does not exceed—

- (a) the margin of dumping or, as the case may be, the amount of the subsidy, in relation to the goods as determined by the Secretary of State as part of the provisional affirmative determination, or
- (b) the amount which the Secretary of State is satisfied would be adequate to remove the injury to a UK industry in the goods if that amount is less than the margin of dumping or, as the case may be, the amount of the subsidy referred to in paragraph (a).

(4) Regulations may make provision for the purposes of sub-paragraph (3)(b) about how the amount which the Secretary of State is satisfied would be adequate to remove the injury described in that provision is to be determined.

- (5) The period referred to in sub-paragraph (1)(a)(iv)—
- (a) must not exceed 6 months in the case of a dumping investigation (but see paragraph 16 regarding extensions), or 4 months in the case of a subsidisation investigation, and
 - (b) if the Secretary of State decides to give effect to the preliminary decision, must begin—
 - (i) on the day after the date of publication of the notice under paragraph 15(4)(b), or
 - (ii) if later, on the day which is the day after the end of the period of 60 days beginning with the date of the initiation of the investigation.

Secretary of State's decision whether to give effect to a preliminary decision to require a guarantee

15.(1) If the Secretary of State makes a preliminary decision under paragraph 13(3), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 provisional affirmative determination in relation to the goods, of the preliminary decision and of the decision not to give effect to it,
- (b) notify interested parties (see paragraph 32(3)) accordingly, and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

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

- (a) publish notice of the provisional affirmative determination in relation to the goods and of the preliminary decision,
- (b) publish a notice that all importers of the goods specified in the preliminary decision are required to give a guarantee in accordance with the preliminary decision and regulations under paragraph 6 of Schedule 6, and
- (c) notify interested parties accordingly.

(5) The notice under sub-paragraph (4)(b) must—

- (a) specify, in accordance with the preliminary decision, the matters referred to in paragraph 14(1)(a)(i) to (iv), and
- (b) include such other content as regulations may require.

(6) For the purposes of this Schedule, “the period of a provisional remedy” in respect of goods means the period during which the requirement to give a guarantee in respect of the goods applies.

(7) The period of a provisional remedy in respect of goods ceases (if it has not already expired) when the dumping investigation or, as the case may be, the subsidisation investigation in relation to the goods terminates.

Extension of the period of a provisional remedy in a dumping investigation

16.(1) Regulations may make provision for, or in connection with, the extension by the Secretary of State, in accordance with a preliminary decision made by the Secretary of State, of the period of a provisional remedy which has been applied in respect of goods in the case of a dumping investigation.

(2) Any such extension must not result in the period of the provisional remedy being a period of more than 9 months beginning with the date when the requirement to give a guarantee in respect of goods first applied.

(3) The regulations must require that if the period of a provisional remedy is extended, the Secretary of State—

- (a) publishes a revised notice under paragraph 15(4)(b) containing the revised period of the provisional remedy, and
- (b) notifies interested parties (see paragraph 32(3)) accordingly.”.

Modifications to Part 4 (definitive remedies: anti-dumping amount or countervailing amount)

7. Paragraph 17 (TRA’s duty to recommend an anti-dumping amount or countervailing amount) of Schedule 4 to the Act has effect as if—

- (a) for the heading of that paragraph, there were substituted—

“Secretary of State’s power to make a preliminary decision regarding the application of an anti-dumping amount or a countervailing amount”; and

- (b) for that paragraph, there were substituted—

“17.(1) This paragraph applies where the Secretary of State makes a final affirmative determination in relation to goods which are the subject of a dumping or a subsidisation investigation.

(2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.

(3) In the case of a dumping investigation, the Secretary of State may make a preliminary decision —

- (a) that an additional amount of import duty (referred to in this Schedule as an “anti-dumping amount”) should be applicable for a specified period to all the relevant goods except, in the case of goods in respect of which an undertaking is accepted under provision made by or under Part 5, during any period when the undertaking applies, and
- (b) regarding the anti-dumping amount that should be applicable to the relevant goods.

(4) In the case of a subsidisation investigation, the Secretary of State may make a preliminary decision —

- (a) that an additional amount of import duty (referred to in this Schedule as a “countervailing amount”) should be applicable for a specified period to all the relevant goods except, in the case of goods in respect of which an undertaking is accepted under provision made by or under Part 5, during any period when the undertaking applies, and
- (b) regarding the countervailing amount that should be applicable to the relevant goods.

(5) The Secretary of State may make a preliminary decision under sub-paragraph (3) or (4) only if the Secretary of State is satisfied that the application of an anti-dumping amount or a countervailing amount in accordance with the preliminary decision meets the economic interest test (see paragraph 25).

(6) The Secretary of State may make different preliminary decisions under sub-paragraph (3) or (4) for different relevant goods or descriptions of relevant goods, including by reference to—

- (a) specified overseas exporters or descriptions of overseas exporters;
- (b) specified foreign countries or territories or descriptions of foreign countries or territories.

(7) But the Secretary of State may only make one preliminary decision under sub-paragraph (3) or, as the case may be, sub-paragraph (4) in relation to any particular relevant good.

(8) And the Secretary of State may make different preliminary decisions under sub-paragraph (3) or (4) for different relevant goods or descriptions of relevant goods only if the preliminary decisions which the Secretary of State makes under that sub-paragraph when taken together cover all the relevant goods.

(9) If the Secretary of State determines that there are one or more preliminary decisions which the Secretary of State could make under sub-paragraph (3) or, as the case may be, sub-paragraph (4), then the Secretary of State must make that preliminary decision or those preliminary decisions (subject to sub-paragraphs (7) and (8)).

(10) If the Secretary of State determines that there is no preliminary decision that the Secretary of State could make under sub-paragraph (3) or (4) (as the case may be), the Secretary of State must—

- (a) publish notice of the final affirmative determination in relation to the goods,
- (b) publish notice of the determination that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3) or (4), and
- (c) notify interested parties (see paragraph 32(3)) accordingly.”.

8. Paragraph 18 (TRA’s recommendations about an anti-dumping amount or a countervailing amount) of Schedule 4 to the Act has effect as if—

(1) for the heading of that paragraph, there were substituted—

“Secretary of State’s preliminary decisions regarding the application of an anti-dumping amount or a countervailing amount”; and

(2) for that paragraph, there were substituted—

“18.(1) This paragraph applies to a preliminary decision made by the Secretary of State under paragraph 17(3) or (4) in relation to goods.

(2) The specified period referred to in paragraph 17(3)(a) or (4)(a)—

- (a) must be a period of 5 years unless the Secretary of State considers that a lesser period is sufficient to counteract—
 - (i) the dumping of the goods which has caused or is causing injury to a UK industry in the goods, or
 - (ii) the importation of the subsidised goods which has caused or is causing injury to a UK industry in the goods, and
- (b) if the Secretary of State decides to give effect to the preliminary decision, must begin on the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision (see paragraph 20(4)(c)) unless the Secretary of State is authorised by regulations made under paragraph 19 to determine a date before then.

(3) In the case of a determination of such a prior date made by virtue of paragraph 19, the reference in sub-paragraph (2)(a) to a period of 5 years is to be read as a reference to a period of 5 years plus the relevant period (within the meaning of paragraph 19).

(4) See also paragraph 21 regarding the possibility, following a review, of extensions or variations to the period for which an anti-dumping amount or countervailing amount applies to goods.

(5) The preliminary decision referred to in paragraph 17(3)(b) or (4)(b) regarding the anti-dumping amount or a countervailing amount that should be applicable to goods, may be made 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.

(6) But that preliminary decision must be such that an anti-dumping amount or a countervailing amount applicable to goods does not exceed—

- (a) the margin of dumping or, as the case may be, the amount of the subsidy, in relation to the goods, or
- (b) the amount which the Secretary of State is satisfied would be adequate to remove the injury to a UK industry in the goods if that amount is less than the margin of dumping or, as the case may be, the amount of the subsidy referred to in paragraph (a).

(7) Regulations may make provision for the purposes of sub-paragraph (6)(b) about how the amount which the Secretary of State is satisfied would be adequate to remove the injury described in that provision is to be determined.

(8) A preliminary decision made under paragraph 17(3) or (4) must include such other content as regulations may require.”.

9. Paragraph 19 of Schedule 4 to the Act has effect as if, for that paragraph, there were substituted—

“**19.**(1) Regulations may make provision authorising the Secretary of State, in specified circumstances, to make a determination, as part of a preliminary decision under paragraph 17(3) or (4), that the specified period for which an anti-dumping amount or a countervailing amount should apply to goods begins on a date (“the relevant date”) before the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision.

(2) Such a preliminary decision may only be made in relation to goods in respect of which a requirement to give a guarantee under paragraph 15 is applied (“the provisional remedy”).

(3) “The relevant date” must be—

- (a) in a case where a notice under paragraph 29(1) (registration) has been published in respect of the goods—
 - (i) a date during the period of 90 days before the beginning of the period of the provisional remedy provided it is not a date before the date of publication of that notice, or
 - (ii) a date during the period of the provisional remedy, or
- (b) in any other case, a date during the period of the provisional remedy.

(4) Regulations may provide that, in the case of a preliminary decision made by virtue of sub-paragraph (1), the preliminary decision as to the anti-dumping amount or a countervailing amount must be such that an anti-dumping amount or a countervailing amount applicable for all or part of the relevant period must not exceed a particular amount.

(5) “The relevant period” is the period—

- (a) beginning with the relevant date, and
- (b) ending with the date of publication of the public notice under section 13 giving effect to the preliminary decision.”.

10. Paragraph 20 (Secretary of State’s power to accept or reject a recommendation) of Schedule 4 to the Act has effect as if—

(a) for the heading of that paragraph, there were substituted—

“*Secretary of State’s decision whether to give effect to a preliminary decision regarding the application of an anti-dumping amount or a countervailing amount*”; and

(b) for that paragraph, there were substituted—

“**20.**(1) If the Secretary of State makes a preliminary decision under paragraph 17(3) or (4), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 final affirmative determination in relation to the goods, of the preliminary decision, and of the decision not to give effect to it,
- (b) notify interested parties (see paragraph 32(3)) accordingly, and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

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

- (a) must publish notice of the final affirmative determination in relation to the goods, of the preliminary decision, and of the decision to give effect to 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 preliminary decision.

(5) See paragraphs 21 and 22 for variation or revocation of the application of an anti-dumping amount or a countervailing amount.”.

11. Paragraph 21 (reviews of continuing application of an anti-dumping amount or a countervailing amount) of Schedule 4 to the Act has effect as if, for sub-paragraphs (6) to (10) of that paragraph, there were substituted—

“(6) Regulations may make provision for or in connection with the Secretary of State—

- (a) making a preliminary decision that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked, and
- (b) deciding whether to give effect to such a preliminary decision.

(7) Where, by virtue of provision made under sub-paragraph (6), the Secretary of State decides to give effect to a preliminary decision that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked, the Secretary of State—

- (a) must publish notice of the preliminary decision and of the decision to give effect to it,
- (b) must notify interested parties (see paragraph 32(3)) accordingly, and
- (c) is required under section 13 to make provision by public notice to give effect to the preliminary decision.

(8) Where the Secretary of State makes a preliminary decision to vary the application of an anti-dumping amount or a countervailing amount to goods, by virtue of regulations under sub-paragraph (6), such a decision may among other things include—

- (a) varying the goods or descriptions of goods to which an anti-dumping amount or a countervailing amount is applicable (including so that it is applicable to goods or descriptions of goods to which it has not previously been applicable);
- (b) varying the period for which an anti-dumping amount or a countervailing amount is applicable (including extending it beyond the period referred to in paragraph 18(2)(a));
- (c) varying an anti-dumping amount or a countervailing amount.

(9) Regulations under sub-paragraph (6) may provide that the Secretary of State may decide that the application of an anti-dumping amount or a countervailing amount as varied should be applicable to goods from a date (“the relevant date”) before the date of publication of the public notice under section 13 giving effect to the preliminary decision.

(10) Such a decision may only be made if—

- (a) a notice under paragraph 29(1) (registration) has been published in respect of the goods, and
- (b) the relevant date is not a date before the date of publication of that notice.”.

Modifications to Part 5 (undertakings)

12. Paragraph 23 (acceptance of undertakings) of Schedule 4 to the Act has effect as if—

- (a) for sub-paragraph (1), there were substituted—
 - “(1) Where the Secretary of State makes a preliminary decision under paragraph 17(3) or (4) that an anti-dumping amount or a countervailing amount should be applicable to goods, the Secretary of State may also—
 - (a) request an undertaking in respect of the goods, and
 - (b) accept an undertaking in respect of the goods (whether as a result of a request made under paragraph (a) or otherwise).”; and
- (b) for sub-paragraphs (4) to (6), there were substituted—
 - “(4) Regulations may make provision about—
 - (a) requests for undertakings under sub-paragraph (1), and
 - (b) the acceptance of undertakings (whether as a result of a request made under sub-paragraph (1)(a) or otherwise).
 - (5) The regulations must secure that the Secretary of State may request an undertaking in respect of goods only—
 - (a) at a time after the Secretary of State has made a provisional affirmative determination in relation to the goods, and
 - (b) if such other requirements as the regulations may specify are met.
 - (6) The regulations must secure that the Secretary of State may accept an undertaking in respect of goods only if satisfied that—
 - (a) the undertaking is sufficient to eliminate the injurious effect of—
 - (i) the dumping of the goods to a UK industry in those goods, or
 - (ii) the importation of the subsidised goods to a UK industry in those goods,
 - (b) acceptance of the undertaking meets the economic interest test (see paragraph 25), and
 - (c) it is appropriate to accept the undertaking.”.

13. Paragraph 24 (reviews of undertakings etc) of Schedule 4 to the Act has effect as if sub-paragraph (4) were omitted.

Modifications to Part 6 (supplementary)

14. Paragraph 25 (the economic interest test) of Schedule 4 to the Act has effect as if—

- (a) in sub-paragraphs (1), (3) and (4), “the TRA or”, in each place this occurs, were omitted; and
- (b) in sub-paragraphs (3) and (4)(b), “, as the case may be,” were omitted.

15. Paragraph 26 (suspension of anti-dumping or anti-subsidy remedies) of Schedule 4 to the Act has effect as if—

- (a) in sub-paragraph (1)—
 - (i) for “recommending to the Secretary of State”, there were substituted “making a preliminary decision”;
 - (ii) for “accepting or rejecting such a recommendation”, there were substituted “deciding whether to give effect to such a preliminary decision”;

- (b) in sub-paragraph (2), for “recommendation to the Secretary of State”, there were substituted “preliminary decision”; and
- (c) in sub-paragraph (6)—
 - (i) for “accepts a recommendation”, there were substituted “decides to give effect to a preliminary decision”;
 - (ii) in paragraph (a), for “recommendation and of the acceptance of it”, there were substituted “preliminary decision and of the decision to give effect to it”; and
 - (iii) in paragraph (c), for “recommendation”, at the end, there were substituted “preliminary decision”.

16. Paragraph 32 (interpretation) of Schedule 4 to the Act has effect as if, in sub-paragraph (1), in the definition of “the period of a provisional remedy”, for “paragraph 15(7)”, there were substituted “paragraph 15(6)”.

PART 4

Further Modifications to Schedule 5 to the Act

Modifications to Part 2 (safeguarding investigations)

17. Paragraph 7 (initiation of a safeguarding investigation) of Schedule 5 to the Act has effect as if, for that paragraph, there were substituted—

“7.(1) The Secretary of State may initiate a safeguarding investigation in relation to goods only if—

- (a) the Secretary of State—
 - (i) is requested to initiate an investigation in an application made by or on behalf UK producers of the goods (“the applicant UK producers”), or
 - (ii) decides that an investigation should be initiated in the absence of such an application,
- (b) the Secretary of State is satisfied that the application contains sufficient evidence (or, if sub-paragraph (1)(a)(i) does not apply, that there is otherwise 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 Secretary of State waives the requirement, and
- (d) (i) in the case of an application under sub-paragraph (1)(a)(i), the application is accompanied by a preliminary adjustment plan or the Secretary of State waives the requirement for the application to be accompanied by such a plan, or
 - (ii) in the case of a decision under sub-paragraph (1)(a)(ii), a preliminary adjustment plan has been prepared by, or on behalf of, the Secretary of State or the Secretary of State waives the requirement for such a plan to be prepared.

(2) The market share requirement is met if—

- (a) in the case of an application under sub-paragraph (1)(a)(i), the Secretary of State 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 a decision under sub-paragraph (1)(a)(ii), the Secretary of State 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 a decision 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.

(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)(i);
- (c) the information to be contained in such an application;
- (d) the time limit for determining such an application;
- (e) the Secretary of State's assessment of any information obtained or held by the Secretary of State for the purposes of a decision under sub-paragraph (1)(a)(ii);
- (f) the form and content of a preliminary adjustment plan;
- (g) 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);
- (h) how any of those matters are to be determined for the purposes of sub-paragraphs (1)(c) and (2).

(5) In the case of an application under sub-paragraph (1)(a)(i), if any of the requirements of sub-paragraph (1)(b) to (d) in respect of a safeguarding investigation are not met, the Secretary of State must reject the application and notify the applicant accordingly.

(6) If the requirements of sub-paragraph (1)(a) to (d) in respect of a safeguarding investigation are met, the Secretary of State must—

- (a) in the case of an application under sub-paragraph (1)(a)(i), accept the application,
- (b) initiate the investigation,
- (c) publish notice of the decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
- (d) notify interested parties (see paragraph 31(3)) accordingly.

(7) Notices under sub-paragraph (6)(c) and (d) must specify the date of the initiation of the investigation."

18. Paragraph 9 (provisional affirmative determinations and final affirmative or negative determinations) of Schedule 5 to the Act has effect as if—

- (a) in sub-paragraphs (2), (3) and (5)(b), for "it", in each place where it occurs, there were substituted "the Secretary of State";
- (b) in sub-paragraph (7)(a), for "its" there were substituted "the"; and
- (c) in sub-paragraph (7)(b), "the Secretary of State and" were omitted.

19. Paragraph 10 (termination of a safeguarding investigation) of Schedule 5 to the Act has effect as if, for that paragraph, there were substituted—

“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 Secretary of State 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 Secretary of State makes a final affirmative determination in relation to the goods and determines that there is no preliminary decision which the Secretary of State 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 Secretary of State makes a final affirmative determination in relation to the goods, and makes a preliminary decision under paragraph 16(3) in relation to them, but decides not to give effect to that preliminary decision, when notice of that decision is published under paragraph 19(3)(a) or 20(3)(a), or
- (d) in a case where the Secretary of State makes a final affirmative determination in relation to the goods, and makes a preliminary decision under paragraph 16(3) in relation to them, which the Secretary of State decides to give effect to, at the end of the day of publication of the public notice under section 13 giving effect to the preliminary decision.”.

Modifications to Part 3 (provisional remedies: provisional safeguarding amount & provisional tariff rate quotas)

20. Part 3 of Schedule 5 (provisional remedies: provisional safeguarding amount & provisional tariff rate quotas) to the Act has effect as if, for that Part, there were substituted—

“PART 3

PROVISIONAL REMEDIES: PROVISIONAL SAFEGUARDING AMOUNT
& PROVISIONAL TARIFF RATE QUOTAS

Secretary of State’s power to make a preliminary decision regarding the application of a provisional safeguarding amount or a provisional tariff rate quota

11.(1) This paragraph applies where the Secretary of State 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 Secretary of State may make a preliminary decision —

- (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 quota”).

(4) Where the Secretary of State makes a preliminary decision under sub-paragraph (3)(a) in relation to relevant goods the Secretary of State must, as part of that decision, make a preliminary decision regarding the provisional safeguarding amount that should be applicable to those goods.

(5) The Secretary of State may make a preliminary decision under sub-paragraph (3) only if the Secretary of State 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 the preliminary decision —

- (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 Secretary of State may only make a preliminary decision under one or other of paragraphs (a) and (b) of sub-paragraph (3) in relation to any particular relevant good.

(7) The Secretary of State may make a preliminary decision under paragraph (a) or (b) of sub-paragraph (3) in relation to specified relevant goods (rather than all the relevant goods) only if the preliminary decisions the Secretary of State makes under that sub-paragraph, when taken together, cover all the relevant goods.

(8) If the Secretary of State determines that there are one or more preliminary decisions which the Secretary of State could make under sub-paragraph (3) in relation to all the relevant goods, or that there are one or more preliminary decisions which the Secretary of State could make under sub-paragraph (3) in relation to specified relevant goods, the Secretary of State must make that preliminary decision or one of those preliminary decisions (subject to sub-paragraphs (6) and (7)).

(9) If the Secretary of State determines that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3), the Secretary of State must—

- (a) publish notice of the provisional affirmative determination in relation to the goods,
- (b) publish notice of the determination that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3), and
- (c) notify interested parties (see paragraph 31(3)) accordingly.

Secretary of State's preliminary decisions about a provisional safeguarding amount

12.(1) This paragraph applies to a preliminary decision made by the Secretary of State 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 Secretary of State decides to give effect to the preliminary decision, must begin on the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision.

(3) A preliminary decision under paragraph 11(3)(a) regarding a provisional safeguarding amount that should be applicable to goods (see paragraph 11(4)) may be made 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 preliminary decision must be such that a provisional safeguarding amount applicable to goods does not exceed the amount which the Secretary of State 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 Secretary of State is satisfied is necessary to prevent the serious injury described in that provision is to be determined.

(6) A preliminary decision under paragraph 11(3)(a), must include such other content as regulations may require.

Secretary of State's preliminary decisions regarding provisional tariff rate quotas

13.(1) This paragraph applies to a preliminary decision made by the Secretary of State 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 Secretary of State decides to give effect to the preliminary decision, must begin on the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision.

(3) The preliminary decision must (in addition to the specified period) include—

- (a) the amount of the quota,
- (b) how the quota should be allocated,
- (c) the rates of import duty that should be applied to goods subject to the quota, and
- (d) such other content as regulations may require.

(4) The things decided by the Secretary of State by virtue of sub-paragraph (3)(a) to (c) must be such as the Secretary of State 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.

(5) Regulations may make provision for the purposes of sub-paragraph (4) about how the things which the Secretary of State 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 Secretary of State makes a preliminary decision under paragraph 11(3)(a), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 provisional affirmative determination in relation to the goods, of the preliminary decision and of the decision not to give effect to 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 deciding not to give effect to the preliminary decision.

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

- (a) must publish notice of the Secretary of State's provisional affirmative determination in relation to the goods, of the preliminary decision and of the decision to give effect to 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 preliminary decision.

(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 Secretary of State makes a preliminary decision under paragraph 11(3)(b), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 provisional affirmative determination in relation to the goods, of the preliminary decision and of the decision not to give effect to 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 deciding not give effect to the preliminary decision.

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

- (a) must publish notice of the provisional affirmative determination in relation to the goods, of the preliminary decision and of the decision to give effect to 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 preliminary decision.

(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.”.

Modifications to Part 4 (definitive remedies: definitive safeguarding amount & tariff rate quotas)

21. Paragraph 16 (TRA’s duty to recommend a definitive safeguarding amount or tariff rate quota) of Schedule 5 to the Act has effect as if—

- (a) for the heading of that paragraph, there were substituted—

“Secretary of State’s power to make a preliminary decision regarding the application of a definitive safeguarding amount or tariff rate quota”; and

- (b) for that paragraph, there were substituted—

“16.(1) This paragraph applies where the Secretary of State 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 Secretary of State may make a preliminary decision —

- (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 Secretary of State makes a preliminary decision under sub-paragraph (3)(a) in relation to relevant goods the Secretary of State must, as part of the decision, make a preliminary decision regarding the definitive safeguarding amount that should be applicable to those goods.

(5) The Secretary of State may make a preliminary decision under sub-paragraph (3) only if the Secretary of State 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 the preliminary decision meets the economic interest test (see paragraph 23), and
 - (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—
- (a) in the case of an application under paragraph 7(1)(a)(i), the Secretary of State 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, or
 - (b) in the case of a decision under paragraph 7(1)(a)(ii), the Secretary of State has waived the requirement for a preliminary adjustment plan to be prepared.
- (7) Regulations may make provision about the form and content of an adjustment plan.
- (8) The Secretary of State may only make a preliminary decision under one or other of paragraphs (a) and (b) of sub-paragraph (3) in relation to any particular relevant good.
- (9) The Secretary of State may make a preliminary decision under paragraph (a) or (b) of sub-paragraph (3) in relation to specified relevant goods (rather than all the relevant goods) only if the preliminary decisions which the Secretary of State makes under that sub-paragraph, when taken together, cover all the relevant goods.
- (10) If the Secretary of State determines that there are one or more preliminary decisions which the Secretary of State could make under sub-paragraph (3) in relation to all the relevant goods, or that there are one or more preliminary decisions which the Secretary of State could make in relation to specified relevant goods, the Secretary of State must make that preliminary decision or one of those preliminary decisions (subject to sub-paragraphs (8) and (9)).
- (11) If the Secretary of State determines that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3) the Secretary of State must—
- (a) publish notice of the final affirmative determination in relation to the goods,
 - (b) publish notice of the determination that there is no preliminary decision which the Secretary of State could make under sub-paragraph (3), and
 - (c) notify interested parties (see paragraph 31(3)) accordingly.”.

22. Paragraph 17 (TRA’s recommendations about a definitive safeguarding amount) of Schedule 5 to the Act has effect as if—

- (a) for the heading of that paragraph, there were substituted—

“Secretary of State’s preliminary decisions regarding the application of a definitive safeguarding amount”; and

- (b) for that paragraph, there were substituted—

“17.(1) This paragraph applies to a preliminary decision made by the Secretary of State 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 Secretary of State 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 variations to that period following a review), and

- (c) if the Secretary of State decides to give effect to the preliminary decision, must begin on the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision.
- (3) A preliminary decision under paragraph 16(3)(a) regarding the definitive safeguarding amount that should be applicable to goods (see paragraph 16(4)) may be made 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 preliminary decision must be such that—
 - (a) a definitive safeguarding amount applicable to goods does not exceed the amount which the Secretary of State 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 Secretary of State is satisfied is necessary for the purposes mentioned is to be determined.
- (6) A preliminary decision made 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 Secretary of State decides 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.”.

23. Paragraph 18 (TRA’s recommendations regarding tariff rate quotas) of Schedule 5 to the Act has effect as if—

- (a) for the heading of that paragraph, there were substituted—

“*Secretary of State’s preliminary decisions regarding tariff rate quotas*”; and

- (b) for that paragraph, there were substituted—

“**18.**(1) This paragraph applies to a preliminary decision made by the Secretary of State 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 Secretary of State 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 variations to that period following a review), and
 - (c) if the Secretary of State decides to give effect to the preliminary decision, must begin on the day after the date of publication of the public notice under section 13 giving effect to the preliminary decision.
- (3) The preliminary decision must (in addition to the specified period) include—
- (a) the amount of the quota,
 - (b) how the quota should be allocated,
 - (c) the rates of import duty that should be applied to goods subject to the quota, and
 - (d) such other content as regulations may require.
- (4) The things decided by the Secretary of State by virtue of sub-paragraph (3)(a) to (c)—
- (a) must be such as the Secretary of State 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).
- (5) Regulations may make provision for the purposes of sub-paragraph (4)(a) about how the things which the Secretary of State is satisfied are necessary for the purposes mentioned are to be determined.
- (6) If a provisional safeguarding remedy has been applied to some or all of the goods as part of the same safeguarding investigation, sub-paragraph (7) applies for the purposes of sub-paragraphs (2)(b) and (4)(b).
- (7) 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 Secretary of State decides that a provisional safeguarding remedy should be applied to them.
- (8) Where the application of sub-paragraph (7) 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 (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.
- (9) 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.”.

24. Paragraph 19 (Secretary of State’s power to apply a definitive safeguarding amount) of Schedule 5 to the Act has effect as if, for that paragraph, there were substituted—

“**19.**(1) If the Secretary of State makes a preliminary decision under paragraph 16(3)(a) that a definitive safeguarding amount should be applicable to goods, the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 final affirmative determination in relation to the goods, of the preliminary decision and of the decision not to give effect to 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 deciding not give effect to the preliminary decision.

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

- (a) must publish notice of the final affirmative determination in relation to the goods, of the preliminary decision and of the decision to give effect to 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 preliminary decision.

(5) See paragraphs 21 and 22 for variation or revocation of the application of a definitive safeguarding amount.”.

25. Paragraph 20 (Secretary of State’s power to subject goods to a tariff rate quota) of Schedule 5 to the Act has effect as if, for that paragraph, there were substituted—

“**20.**(1) If the Secretary of State makes a preliminary decision under paragraph 16(3)(b) that goods should be subject to a tariff rate quota, the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(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 final affirmative determination in relation to the goods, of the preliminary decision and of the decision not to give effect to 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 deciding not give effect to the preliminary decision.

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

- (a) must publish notice of the final affirmative determination in relation to the goods, of the preliminary decision and of the decision to give effect to 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 preliminary decision.

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

26. Paragraph 21 (reviews) of Schedule 5 to the Act has effect as if, for sub-paragraphs (6) to (10) of that paragraph, there were substituted—

“(6) Regulations may make provision for or in connection with the Secretary of State—

- (a) making a preliminary decision 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) deciding whether to give effect to such a preliminary decision.

(7) Where, by virtue of provision made under sub-paragraph (6), the Secretary of State decides to give effect to a preliminary decision 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 preliminary decision and of the decision to give effect to 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 preliminary decision.

(8) Where the Secretary of State makes a preliminary decision to vary the application of a definitive safeguarding amount to goods, by virtue of regulations under sub-paragraph (6), this 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 a definitive safeguarding amount such that a lower amount of import duty is applicable.

(9) Where the Secretary of State makes a preliminary decision to vary a tariff rate quota, by virtue of regulations under sub-paragraph (6), this 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 decides to give effect to a preliminary decision 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 preliminary decision and of the decision to give effect to 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 preliminary decision.”.

Modifications to Part 5 (supplementary)

27. Paragraph 23 (the economic interest test) of Schedule 5 to the Act has effect as if—

- (a) in sub-paragraphs (1) and (3), “the TRA or”, in each place where this occurs, were omitted; and
- (b) in sub-paragraph (3)(b), “, as the case may be,” were omitted.

28. Paragraph 24 (suspension of safeguarding remedies) of Schedule 5 to the Act has effect as if—

- (a) in sub-paragraph (1)—
 - (i) for “recommending to the Secretary of State”, there were substituted “making a preliminary decision”;

- (ii) for “accepting or rejecting such a recommendation”, there were substituted “deciding whether to give effect to such a preliminary decision”;
- (b) in sub-paragraph (2), for “recommendation to the Secretary of State”, there were substituted “preliminary decision”; and
- (c) in sub-paragraph (6)—
 - (i) for “accepts a recommendation”, there were substituted “decides to give effect to a preliminary decision”;
 - (ii) in paragraph (a), for “recommendation and of the acceptance of it”, there were substituted “preliminary decision and of the decision to give effect to it”;
 - (iii) in paragraph (c), for “recommendation”, at the end, there were substituted “preliminary decision”.

29. Paragraph 25 (exceptions) of Schedule 5 to the Act has effect as if, in sub-paragraph (2), for “recommendation”, there were substituted “preliminary decision”.

30. Paragraph 26 (restrictions on successive safeguarding remedies) of Schedule 5 to the Act has effect as if—

- (a) in sub-paragraph (1), for “recommendation”, in both places where it occurs, there were substituted “preliminary decision”;
- (b) in sub-paragraph (3), for “accept the recommendation”, there were substituted “decide to give effect to the preliminary decision”; and
- (c) in sub-paragraph (5)—
 - (i) for “accepting the recommendation”, there were substituted “deciding to give effect to the preliminary decision”; and
 - (ii) for “the recommended period”, in each place this occurs, there were substituted “the identified period”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the fourth appointed day regulations made under the Taxation (Cross-border Trade) Act 2018 (c. 22) (“the Act”).

By virtue of regulation 2, the day appointed for the coming into force of section 13 (dumping of goods, foreign subsidies and increases in imports) of, and Schedules 4 (dumping and foreign subsidies causing injury to UK industry) and 5 (increased imports causing serious injury to UK producers) to, the Act (excluding paragraphs 22 and 30 of Schedule 4 and paragraphs 22 and 29 of Schedule 5) is at 11.01 a.m. on 4th March 2019.

By virtue of regulation 3, the day appointed for the coming into force of paragraph 1 of Schedule 7 (replacement of EU customs duties) to the Act, so far as it relates to EU trade duties, is immediately after the coming into force of section 3 of the European Union (Withdrawal) Act 2018 (c. 16).

By virtue of regulation 4, until the Trade Remedies Authority (“the TRA”) is established, section 13 of, and Schedules 4 and 5 to, the Act (insofar as those provisions are commenced by these Regulations) have effect with the modifications provided for in the Schedule to these Regulations. These modifications provide for the Secretary of State to perform certain functions, that would otherwise be performed by the TRA, with respect to the dumping of goods, foreign subsidies and increases in imports, during the period until the TRA is established.

Regulations 5 to 9 provide for transitional provision, to come into effect following the establishment of the TRA, in order to provide for the continuing effect of anything done by virtue of these Regulations prior to its establishment, as appropriate.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Taxation (Cross-border Trade) Act 2018 have been brought into force by appointed day regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 10	23 rd January 2019	S.I. 2019/69
Section 15	23 rd January 2019	S.I. 2019/69
Section 41(2)(b) (partially)	28 th January 2019	S.I. 2019/104
Section 43 (partially)	16 th December 2018	S.I. 2018/1362
Schedule 3	23 rd January 2019	S.I. 2019/69
Schedule 8, paragraph 1 (partially)	16 th December 2018	S.I. 2018/1362
Schedule 8, paragraph 14	16 th December 2018	S.I. 2018/1362