
STATUTORY INSTRUMENTS

2019 No. 449

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

PART 5

Initiation and conduct of an investigation

CHAPTER 1

General provisions and the use of information

Purpose of Part 5

11. Pursuant to paragraphs 7, 8 and 30 of Schedule 5 to the Act, the initiation and conduct of investigations are subject to this Part.

General provisions

12.—(1) Subject to any contrary provision made in this Part, the TRA may do anything it considers appropriate in connection with the exercise of any of its functions in accordance with these Regulations.

(2) In particular, the TRA may—

- (a) consider information supplied to it by any person;
- (b) request that any person supply information to it;
- (c) set time limits for responses to its requests and vary such time limits;
- (d) specify the format or structure of responses to its requests;
- (e) accept information supplied to it outside any applicable time limit.

Revision of scope of an investigation

13.—(1) This regulation applies after the TRA has published a notice of its determination to initiate an investigation in accordance with paragraph 7(6)(b) of Schedule 5 to the Act.

(2) Subject to paragraph (3), the TRA must not revise the scope of an investigation.

(3) The TRA may revise the scope of an investigation so as to amend—

- (a) the description of the goods concerned; or
- (b) the period of investigation,

where it has provided interested parties and contributors with reasons for the proposed revision and has given them an opportunity to comment.

(4) In determining whether to revise the scope of an investigation under paragraph (3), the TRA must consider—

- (a) the likelihood of it having determined to initiate an investigation with the scope as set out in its proposed revision had the information available to it after the initiation of an investigation been set out in the application;
 - (b) whether the proposed revision may cause any prejudice to the interests of any interested party or contributor; and
 - (c) whether the proposed revision will prevent the TRA from proceeding with the investigation expeditiously.
- (5) Where the TRA has made a determination under this regulation to revise the scope of the investigation, it must publish an amended notice of initiation.

Deemed service

14. Any document submitted to the TRA is deemed to have been submitted on the earlier of—
- (a) the first working day after the day on which it is received by the TRA; or
 - (b) the day on which the TRA issues an acknowledgement of receipt.

Public file

15. The TRA must, in respect of every investigation, establish and maintain a file which is open to the public (a “public file”) containing information, other than confidential information, which the TRA considers material to the investigation.

Confidential information

- 16.—(1) Paragraph (3) applies where a person—
- (a) supplies information to the TRA in connection with the exercise by the TRA of any of its functions under the Act or these Regulations;
 - (b) either—
 - (i) requests the TRA to treat that information as confidential on the grounds that that information is by its nature confidential; or
 - (ii) supplies that information to the TRA on a confidential basis;
 - (c) demonstrates to the TRA good cause as to why the TRA must treat such information as confidential; and
 - (d) submits—
 - (i) a non-confidential summary (see paragraph (6)(a)) of that information; or
 - (ii) in exceptional circumstances, a statement of reasons (see paragraph (6)(b)).
- (2) For the purpose of paragraph (1)(b)(i), information that is by its nature confidential includes information which, if disclosed, would—
- (a) be of significant competitive advantage to a competitor of the person supplying the information; or
 - (b) have a significant adverse effect on—
 - (i) the person supplying the information; or
 - (ii) any person from whom the person supplying the information had acquired it.
- (3) Where this paragraph applies, the TRA must treat such information as confidential.
- (4) The TRA may treat information as confidential where it is supplied to it otherwise than in accordance with paragraph (1), and, where it does so, it must—

- (a) inform the person supplying the information that it intends to treat that information as confidential; and
- (b) request that that person submits a sufficiently detailed non-confidential summary of that information.

(5) The Secretary of State must treat as confidential the information supplied by the TRA under regulation 17(2) which the TRA identifies as information that it is treating as confidential under this regulation.

(6) In this regulation—

- (a) a “non-confidential summary” in relation to information means a sufficiently detailed summary for the public file referred to in regulation 15 (public file) which would enable a person other than the TRA to have a reasonable understanding of—
 - (i) the substance of the information to which it relates; and
 - (ii) its potential relevance to the exercise of any function by the TRA under the Act or these Regulations;
- (b) a “statement of reasons” means a statement setting out the reasons of a person supplying information to the TRA as to why the TRA should treat that information as confidential and why summarisation of that information in accordance with this regulation is not possible.

Permitted disclosure

17.—(1) The TRA or the Secretary of State may disclose information which the TRA or the Secretary of State treats as confidential where such disclosure is—

- (a) made with the consent of the person supplying the information;
- (b) made for the purpose of court or tribunal proceedings in the United Kingdom relating to the exercise by the TRA or the Secretary of State of any functions under the Act or these Regulations;
- (c) made for the purpose of an international dispute relating to the exercise by the TRA or the Secretary of State of any functions under the Act or these Regulations; or
- (d) required or permitted by any other enactment or rule of law.

(2) The TRA may disclose to the Secretary of State information that it is treating as confidential for the purpose of the Secretary of State exercising functions under the Act or these Regulations.

(3) Where the TRA or the Secretary of State has a discretion to make a disclosure under paragraph (1)(b), (c) or (d), the TRA or the Secretary of State must consider whether such disclosure is likely to allow, or result in, such information being made available to a competitor of—

- (a) the person supplying that information; or
- (b) the person to which the information relates.

(4) In paragraph (1)(d), reference to an enactment includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

The use of information and facts available to the TRA from secondary sources

18.—(1) This regulation applies in respect of the exercise by the TRA of functions under the Act or these Regulations.

(2) The TRA must have regard to information supplied to it by an applicant UK producer, an interested party, a contributor or any other person from whom it has requested information, provided that the information—

- (a) is verifiable;

- (b) has been appropriately submitted such that the TRA may use the information without undue difficulty;
 - (c) has been supplied to it within any applicable time limit; and
 - (d) where relevant, has been supplied to it in a form that it has requested.
- (3) The TRA must not have regard to oral statements referred to in regulation 28(4) unless—
- (a) those statements are reproduced in writing; and
 - (b) it has made the written reproductions available to interested parties and contributors.
- (4) The TRA may disregard information which it treats as confidential (which it would otherwise have had regard to) where the person supplying that information has not supplied a non-confidential summary or a statement of reasons in accordance with regulation 16 (confidential information), unless it is satisfied from appropriate sources that such information is correct.
- (5) The TRA may make a determination on the basis of information obtained from secondary sources, including information supplied in an application, provided that it—
- (a) does so with special circumspection; and
 - (b) where practicable, verifies such information from independent sources, including but not limited to published price lists, official import statistics or customs returns and data pertaining to the relevant markets.

Acceptance or rejection of information

- 19.—(1) Where a person has supplied information to the TRA outside any applicable time limit, the TRA may accept such information where it considers that—
- (a) doing so would not significantly impede the progress of an investigation; or
 - (b) it is appropriate to accept that information, having regard to the potential significance of the information on any determination it may make and any explanation provided by that person as to why it should accept that information.
- (2) Where the TRA rejects information for any reason, it must publish its reasons for rejection in the statement of intended final determination (see regulation 29) or, where such information is rejected after the statement of intended final determination has been published, in the final affirmative or final negative determination.

Non-cooperation

- 20.—(1) Where the TRA determines that an interested party has failed to cooperate with an investigation or has otherwise significantly impeded the progress of an investigation (a “non-cooperative party”), it may disregard the information supplied by that party.
- (2) For the purpose of paragraph (1), the TRA must not determine that an interested party is a non-cooperative party where it—
- (a) determines that that interested party has acted to the best of their ability to cooperate with an investigation; or
 - (b) has accepted that compliance with any request for information to be supplied in a particular form would be unreasonably burdensome to that party.