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STATUTORY INSTRUMENTS

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**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.

## CHAPTER 2

### Initiation of an investigation

#### **Application**

**21.**—(1) An application made by applicant UK producers must contain as much of the information listed in paragraph 1 of the Schedule as is reasonably available to them.

(2) An application referred to in paragraph (1) may contain such additional information as the applicant UK producers consider relevant.

(3) Where applicant UK producers, by notice in writing to the TRA, withdraw their application prior to the publication of the notice referred to in paragraph 7(6)(b) of Schedule 5 to the Act, the application is considered not to have been made.

#### **Market share requirement**

**22.** For the purpose of paragraph 7 of Schedule 5 to the Act, the market share requirement is met where the TRA is satisfied that UK producers' "share" of the market is—

- (a) at least 1 per cent.; or
- (b) such other higher share as the TRA considers appropriate taking into account the goods and the particular market for those goods.

#### **Assessment of an application**

**23.**—(1) The TRA must examine the accuracy and adequacy of the information contained in, or supplied with, an application to determine whether it is sufficient to justify the initiation of an investigation under paragraph 7 of Schedule 5 to the Act.

(2) For the purpose of paragraph 7(1)(a)(i) of Schedule 5 to the Act, an application is made by or on behalf of UK producers where the TRA determines that the application is supported by UK producers whose collective output constitutes at least 25 per cent. of the total production in the United Kingdom of the like goods and directly competitive goods, and is not opposed by other UK producers of the like goods and directly competitive goods whose collective output is greater than or equal to that percentage.

(3) The TRA may reject an application which it considers does not satisfy the requirements in regulation 21(1), but it must not do so where the requirement in question has been expressly waived by it.

(4) The TRA may reject an application if it is not made via the TRA's case management system.

## CHAPTER 3

### Conduct of an investigation

#### **Registration of interest and the issuing of questionnaires**

**24.**—(1) Where the TRA has made a determination to initiate an investigation, it must set a period during which interested parties and any other person may make themselves known to the TRA (a "registration period").

(2) The TRA may issue a questionnaire (see regulation 25) to—

- (a) interested parties who have made themselves known to the TRA during the registration period;

(b) UK producers, importers and overseas exporters (or associations thereof) which the applicant UK producers have identified in their application; and

(c) contributors who have made themselves known to the TRA during the registration period.

(3) Where the TRA uses a limited examination in accordance with regulation 26 (limited examination), it may limit the issuing of questionnaires to those interested parties included in that examination.

(4) Where an interested party or a contributor makes themselves known to the TRA after the end of the registration period, the TRA may issue a questionnaire to that person if it is satisfied that doing so would not significantly impede the progress of the investigation.

(5) Where an interested party makes themselves known to the TRA after the end of the registration period, the TRA may include that party in a limited examination in accordance with regulation 26 (limited examination).

(6) The TRA must not issue a questionnaire after the statement of intended final determination is published (see regulation 29).

#### **Form of questionnaires and deficiency notice**

25.—(1) Subject to paragraph (2), the questionnaire referred to in regulation 24 (registration of interest and the issuing of questionnaires) may take such form and contain such questions and other material as the TRA considers appropriate for the purpose of the investigation.

(2) A questionnaire must set out the date by which it must be returned to the TRA.

(3) Where, following a review of the returned questionnaire, the TRA determines that it is incomplete or that the information supplied to it is inadequate, it may issue a notice to the relevant interested party or contributor requesting clarification or supplementary information (a “deficiency notice”).

(4) The deficiency notice must set out a time limit by which any missing, clarificatory or supplementary information is to be supplied.

#### **Limited examination**

26.—(1) The TRA may, where it considers it appropriate for the purpose of making any determination or conducting any analysis under the Act or these Regulations, limit its examination to a sample of—

(a) categories of goods;

(b) UK producers;

(c) transactions for the purchase of the like goods and directly competitive goods in the United Kingdom; or

(d) anything else the TRA considers it appropriate to examine in order to make its determination.

(2) Where the TRA limits its examination in accordance with this regulation, it may use any reasonable method to determine the sample it considers appropriate.

#### **Authentication visit and authentication visit report**

27.—(1) The TRA may make such arrangements in connection with an authentication visit as it considers appropriate.

(2) Where the TRA conducts an authentication visit, it must—

- (a) provide a written report on the authentication visit (an “authentication report”) to the person subject to that visit;
  - (b) require the person subject to an authentication visit to supply it with a version of the authentication report with summarisation of the information that it requests the TRA to treat as confidential (a “non-confidential authentication report”); and
  - (c) set a time limit by which the non-confidential authentication report is to be supplied.
- (3) In the application of regulation 16 (confidential information) to this regulation, a reference in that regulation to—
- (a) the supply of information is to be taken to include information obtained by the TRA from the person subject to an authentication visit; and
  - (b) a non-confidential summary is to be taken to include a non-confidential authentication report.

## **Hearing**

- 28.**—(1) The TRA may conduct a hearing at any time during an investigation either—
- (a) at the request of any interested party; or
  - (b) on its own initiative.
- (2) The TRA must notify interested parties and contributors of any processes and procedures to be adopted at a hearing in advance of it taking place.
- (3) When deciding whether and how to conduct a hearing, the TRA must have regard to—
- (a) the need to preserve the confidentiality of information it is treating as confidential in accordance with regulation 16(3) or (4); and
  - (b) whether holding a hearing and whether such processes and procedures it proposes to adopt at a hearing would be convenient to interested parties and contributors.
- (4) The TRA must allow interested parties and contributors to present their views by written and oral statements (see regulation 18(3)).
- (5) Where the TRA decides to conduct a hearing, it—
- (a) must give sufficient notice of the hearing to interested parties and contributors;
  - (b) must allow interested parties and contributors to attend; and
  - (c) may request that an interested party or a contributor intending to attend to supply the TRA with the information they wish to rely on at the hearing.
- (6) Where the TRA makes a request referred to in paragraph (5)(c), it must set a time limit by which such a request must be complied with.
- (7) An interested party or a contributor is not under an obligation to attend a hearing.
- (8) The TRA must not determine that an interested party who fails to attend a hearing is a non-cooperative party (see regulation 20) or that such failure to attend is otherwise prejudicial to its interests.

## **Disclosure**

- 29.**—(1) Before making a final affirmative or final negative determination for the purpose of paragraph 9(5) of Schedule 5 to the Act, the TRA must—
- (a) publish a statement (a “statement of intended final determination”) which sets out—
    - (i) the final determination that it intends to make (“intended final determination”);
    - (ii) a summary of the facts considered by the TRA during its investigation;

- (iii) those facts referred to in sub-paragraph (ii) that formed the basis of the intended final determination; and
  - (b) inform interested parties who have supplied information that has been considered by the TRA—
    - (i) how it has used the information supplied by that party in making the intended final determination; and
    - (ii) of the details of the TRA's assessment forming the basis of the intended final determination.
- (2) The TRA must specify in the statement of intended final determination a period during which it will consider comments on that statement from interested parties, contributors or any other person who has supplied information to it.

## CHAPTER 4

### Termination of an investigation

#### **Termination**

- 30.**—(1) The TRA may, where it considers it appropriate, terminate an investigation on the request of the applicant UK producers.
- (2) Where the TRA rejects a request referred to in paragraph (1), it must—
    - (a) publish a notice of its determination setting out the reasons for its determination; and
    - (b) notify interested parties and contributors.
  - (3) Where the TRA terminates an investigation under this regulation, it must—
    - (a) publish a notice containing the information referred to in paragraph 8 of the Schedule; and
    - (b) notify interested parties and contributors.

## CHAPTER 5

### Content of notices, preliminary adjustment plans and adjustment plans

#### **Content of notices**

- 31.**—(1) A notice published by the TRA in accordance with Schedule 5 to the Act and these Regulations must contain the information listed in the Schedule to these Regulations applicable to the type of notice in question.
- (2) A notice published by the Secretary of State in accordance with Schedule 5 to the Act and these Regulations must contain the information listed in the Schedule to these Regulations applicable to the type of notice in question.
- (3) A notice referred to in paragraph (1) may contain any other information as the TRA considers appropriate.
- (4) A notice referred to in paragraph (2) may contain any other information as the Secretary of State considers appropriate.

#### **Form and content of a preliminary adjustment plan or an adjustment plan**

- 32.**—(1) A preliminary adjustment plan referred to in paragraph 7(3) of Schedule 5 to the Act or an adjustment plan referred to in paragraph 16(5)(b) of Schedule 5 to the Act may be in such form as the TRA is willing to accept.
- (2) A preliminary adjustment plan or an adjustment plan may contain information relating to—



- (a) how UK producers intend to adjust to the importation of the goods identified or the goods concerned in increased quantities as appropriate;
  - (b) potential innovation, research and development initiatives to improve the competitiveness of UK producers; and
  - (c) changes which UK producers intend to make to improve efficiency, including workforce effectiveness and investing in new or different machinery.
- (3) The TRA must determine whether the content of an adjustment plan contains sufficient information to enable it to make a recommendation under paragraph 16(3) of Schedule 5 to the Act.
- (4) In making an assessment under paragraph (3), the TRA may seek additional information from UK producers and take into consideration any factors it considers relevant.