
STATUTORY INSTRUMENTS

2024 No. 519

The Trade Remedies (Increase in Imports as
a Result of a Free Trade Agreement Causing
Serious Injury to UK Producers) Regulations 2024

Part 5

Initiation and conduct of a bilateral safeguarding investigation

Chapter 1

General provisions and the use of information

Purpose of Part 5

12. Pursuant to paragraphs 7, 8 and 30 of Schedule 5 to the Act⁽¹⁾, the initiation and conduct of bilateral safeguarding investigations are to be carried out in accordance with this Part.

General provisions

13.—(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 a bilateral safeguarding investigation

14.—(1) This regulation applies after the TRA has published a notice of the initiation of a bilateral safeguarding investigation (the “notice of initiation”) 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 a bilateral safeguarding investigation.

(3) The TRA may, if the Secretary of State agrees, revise the scope of a bilateral safeguarding investigation so as to amend—

- (a) the description of the goods concerned, or

(1) Paragraph 7 of Schedule 5 was amended by paragraph 9 of Schedule 19 to the Finance (No. 2) Act 2023, and modified by paragraph 5 of Schedule 5A to the Act.

- (b) the period of investigation,

where it has provided the Secretary of State, 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 a bilateral safeguarding investigation under paragraph (3), the TRA must consider—

- (a) whether the proposed revision may cause any prejudice to the interests of any interested party or contributor,
- (b) whether the proposed revision will prevent the TRA from proceeding with the bilateral safeguarding investigation expeditiously, and
- (c) any other matter the TRA considers relevant.

(5) Where the TRA has made a determination under this regulation to revise the scope of the bilateral safeguarding investigation, it must advise the Secretary of State of that determination.

(6) The Secretary of State must advise the TRA whether or not the Secretary of State accepts the determination referred to in paragraph (5) (“the TRA determination”).

(7) If the Secretary of State accepts the TRA determination, the TRA must publish an amended notice of initiation.

(8) If the Secretary of State does not accept the TRA determination, the TRA must not revise the scope of the bilateral safeguarding investigation.

Deemed service

15. 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.

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 of that information (see paragraph (6)(a)), 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 information supplied to it 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 48](#) (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 whom 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 the Secretary of State, 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 27\(4\)](#) 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, 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 a bilateral safeguarding 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.

Non-cooperation

20.—(1) Where the TRA determines that an interested party has failed to cooperate with a bilateral safeguarding investigation or has otherwise significantly impeded the progress of a bilateral safeguarding 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 the TRA—

- (a) determines that that interested party has acted to the best of their ability to cooperate with a bilateral safeguarding 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 a bilateral safeguarding investigation

Market share requirement

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

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

Form and content of a preliminary adjustment plan

22.—(1) A preliminary adjustment plan referred to in paragraph 7(3) of Schedule 5 to the Act may be in such form as the Secretary of State is willing to accept.

- (2) A preliminary 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.

Chapter 3

Conduct of a bilateral safeguarding investigation

Registration of interest and the issuing of questionnaires

23.—(1) Where the Secretary of State has requested the TRA to initiate a bilateral safeguarding investigation, the TRA 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 24](#)) 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 Secretary of State has identified in their request to the TRA to initiate a bilateral safeguarding investigation, 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 25](#) (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 bilateral safeguarding 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 25](#).

Form of questionnaires and deficiency notice

24.—(1) Subject to [paragraph \(2\)](#), the questionnaire referred to in [regulation 23](#) (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 bilateral safeguarding 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

25.—(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 report

26.—(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 the TRA 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

27.—(1) The TRA may conduct a hearing at any time during a bilateral safeguarding 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 supplies 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.

Alternative options for final affirmative determination

- 28.** The TRA must consider giving two or more options as part of its recommendation to the Secretary of State under paragraph 16(3) of Schedule 5 to the Act in the following circumstances—
- (a) where the TRA considers that applying a definitive bilateral safeguarding amount, a definitive suspension of tariff rate reduction or making relevant goods subject to a tariff rate quota in accordance with its proposed recommendation would not meet the economic interest test;⁽²⁾
 - (b) where the TRA otherwise considers that it is appropriate.

Chapter 4

Termination of a bilateral safeguarding investigation

Termination

- 29.—**(1) The TRA must terminate a bilateral safeguarding investigation on the request of the Secretary of State.
- (2) Where the TRA terminates a bilateral safeguarding investigation under this regulation, it must—
- (a) publish a notice containing the information referred to in [paragraph 7](#) of [Schedule 1](#), and
 - (b) notify interested parties and contributors.
- (3) The Secretary of State may—

(2) “Economic interest test” is set out in paragraph 23 of Schedule 5 to the Act.

- (a) produce and publish a report or update in relation to the bilateral safeguarding investigation concerned, or
 - (b) request that the TRA produces such a report or update.
- (4) Where the Secretary of State makes a request under paragraph (3)(b)—
- (a) the TRA must produce a report or update, as the case may be, in accordance with the request, and
 - (b) the Secretary of State may publish the report or update.

Chapter 5

Content of notices and notifications

Content of notices and notifications

30.—(1) A notice published by the TRA in accordance with Schedule 5 to the Act and these Regulations must contain the information listed in Part 1 of Schedule 1 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 Part 1 of Schedule 1 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.

(5) Where the Secretary of State is required by Schedule 5 or these Regulations to notify interested parties, that notification must be accompanied by the TRA determination or recommendation listed in Part 2 of Schedule 1 for the notification in question.