
STATUTORY INSTRUMENTS

2019 No. 910

The Trade Remedies (Reconsideration
and Appeals) (EU Exit) Regulations 2019

PART 2

General provisions and reconsideration by the TRA

CHAPTER 1

General provisions

Deemed Service

3. Any document submitted to the TRA is deemed to have been submitted to the TRA on the earlier of—

- (a) the first working day after the day on which the document is received by the TRA; or
- (b) the day on which the TRA issues an acknowledgement of receipt.

Public file

4. The TRA must, in respect of every reconsideration, 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 reconsideration.

Confidential information

5.—(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 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 to the TRA—
 - (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 non-confidential summary of that information.
- (5) The Secretary of State must treat as confidential the information supplied by the TRA under regulation 6(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 4 (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 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

- 6.—(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

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

(2) The TRA must have regard to information referred to in regulation 13(7)(a) to (c), 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 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 5 (confidential information), unless it is satisfied from appropriate sources that such information is correct.

(4) The TRA may make a determination on the basis of information obtained from secondary sources, including information supplied by a person other than the applicant for reconsideration, 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.

Non-cooperation

8.—(1) Where the TRA determines that a person has failed to cooperate with it during the course of its reconsideration or has otherwise significantly impeded the progress of its reconsideration (a “non-cooperative person”), it may disregard the information supplied by that person.

(2) For the purpose of paragraph (1), the TRA must not determine that a person is a non-cooperative person where it—

- (a) determines that that person has acted to the best of their ability to cooperate with the TRA during the course of its reconsideration; or
- (b) has accepted that compliance with any request for information to be supplied in a particular form would be unreasonably burdensome to that person.

CHAPTER 2

Reconsideration by the TRA

Applicant for reconsideration

9.—(1) An “original decision” for the purposes of these Regulations means a determination or recommendation made by the TRA which is made under—

- (a) Schedule 4 and listed in Part 1 of Schedule 1 to these Regulations;
- (b) Schedule 5 and listed in Part 2 of Schedule 1 to these Regulations;
- (c) the Dumping and Subsidisation Regulations and listed in Part 3 of Schedule 1 to these Regulations;
- (d) the Safeguards Regulations and listed in Part 4 of Schedule 1 to these Regulations.

(2) A person who has made an application leading to a determination referred to in paragraph 1 or 6 of Schedule 1 to these Regulations may apply to the TRA for reconsideration of that original decision.

(3) An interested party who has made an application leading to a determination referred to in paragraph 11, 22, or 33 of Schedule 1 to these Regulations may apply to the TRA for reconsideration of that original decision.

(4) An overseas exporter or a relevant foreign government, who has offered an undertaking referred to in paragraph 23(2) of Schedule 4, may apply to the TRA for reconsideration of an original decision referred to in paragraph 21 of Schedule 1 to these Regulations.

(5) An importer who has made an application for a repayment investigation (see regulation 89 of the Dumping and Subsidisation Regulations) may apply to the TRA for reconsideration of an original decision referred to in paragraph 28 of Schedule 1 to these Regulations.

(6) An interested party may apply to the TRA for reconsideration of any original decision not referred to in paragraphs (2) to (5).

Application for reconsideration

10.—(1) Subject to the following paragraphs of this regulation and to regulation 11 (the TRA's acceptance or rejection of an application for reconsideration), where an application under regulation 9 (applicant for reconsideration) is made for the reconsideration of an original decision, the TRA must accept that application.

(2) Where an application is made for the reconsideration of an original decision that was published in a notice, the TRA must reject the application unless it receives the application within one month beginning on the day after the notice is published, or (if later), within one month beginning on the day after the notice comes into effect.

(3) Where an application is made for the reconsideration of an original decision that was not published in a notice, the TRA must reject the application unless it receives the application within one month beginning on the day after the TRA notifies the applicant of that decision.

(4) Paragraphs (2) and (3) are subject to regulation 11 (the TRA's acceptance or rejection of an application for reconsideration).

(5) An application for reconsideration must include—

- (a) the applicant's grounds for the application;
- (b) details of the applicant's eligibility to apply for reconsideration under regulation 9 (applicant for reconsideration); and
- (c) the outcome sought.

The TRA's acceptance or rejection of an application for reconsideration

11.—(1) Where an applicant applies for reconsideration of an original decision outside of the period stipulated in regulation 10(2) or (3) (a "late application"), the TRA must reject the application unless—

- (a) the applicant provides reasons for the late application; and
- (b) the TRA is satisfied that it is appropriate to accept the application.

(2) In deciding whether it is appropriate to accept such an application, the TRA must have regard to—

- (a) the extent of the delay; and
- (b) the reasons for the delay.

- (3) Where the TRA rejects a late application, it must notify the applicant of its decision.
- (4) Where an application for reconsideration of an original decision does not comply with regulation 10(5) (a “non-conforming application”), the TRA may accept the application.
- (5) Where the TRA rejects a non-conforming application, it must notify the applicant of its decision.
- (6) Where the TRA determines that an applicant is not eligible to apply for reconsideration under regulation 9 (applicant for reconsideration), the TRA must—
 - (a) reject the application; and
 - (b) notify the applicant of its decision.
- (7) Where the TRA has accepted more than one application for reconsideration of the same original decision, the TRA may make a single reconsidered decision.
- (8) The TRA may reject an application if it is not made via the TRA’s case management system.

Initiation of reconsideration

- 12.**—(1) Where the TRA accepts an application for reconsideration of an original decision that was published in a notice, the TRA must publish a notice of initiation of the reconsideration setting out—
- (a) a description of the goods to which the reconsideration relates; and
 - (b) the original decision to be reconsidered.
- (2) Where the TRA accepts an application for reconsideration of an original decision that was not published in a notice, the TRA must notify the applicant of the initiation of the reconsideration.

Reconsideration by the TRA

- 13.**—(1) This regulation applies where the TRA has accepted an application for reconsideration.
- (2) The TRA may request information from any person when reconsidering an original decision and, where it does so, it may—
- (a) set a time limit for a response to such a request;
 - (b) vary such a time limit.
- (3) The TRA may disregard information supplied in response to such a request but which is outside the relevant time limit or not in conformity with the terms of that request.
- (4) In considering whether to disregard information, the TRA must have regard to—
- (a) the extent of the delay; and
 - (b) the reasons for the delay.
- (5) Where an application for reconsideration relates to a dispute on a point of law, the TRA may refer the matter to the Upper Tribunal for a decision before concluding the reconsideration in accordance with regulation 14(1).
- (6) Where the TRA refers a matter to the Upper Tribunal under paragraph (5) and—
- (a) the original decision was published in a notice, the TRA must publish a notice setting out the details of the matter referred to the Upper Tribunal; or
 - (b) the original decision was not published in a notice, the TRA must notify the applicant that it has referred the matter to the Upper Tribunal.
- (7) In reconsidering an original decision, the TRA may, amongst other things, take into account—
- (a) information contained in an application for reconsideration;

- (b) documents accompanying an application for reconsideration;
 - (c) information supplied to it further to a request made under paragraph (2);
 - (d) information obtained from secondary sources.
- (8) The TRA may conduct a hearing as part of its reconsideration of an original decision.
- (9) Except as otherwise provided by these Regulations, the TRA may reconsider an original decision in whatever way it considers appropriate in the circumstances.

Outcome of reconsideration

14.—(1) Following the TRA’s reconsideration of an original decision, the TRA must uphold or vary the original decision.

(2) For the purposes of these Regulations, a “reconsidered decision” means an original decision as upheld or varied by the TRA following its reconsideration of an original decision.

(3) Where the reconsideration is of an original decision that was not published in a notice, the TRA must notify the applicant of the outcome of the reconsideration.

(4) Where the reconsideration is of an original decision that was published in a notice, paragraphs (5) to (12) apply as relevant.

(5) Where the TRA upholds the original decision, it must—

- (a) publish a notice of the reconsidered decision; and
- (b) notify the Secretary of State.

(6) Where the TRA varies the original decision and the reconsidered decision is not a recommendation to the Secretary of State, the TRA must—

- (a) notify the Secretary of State; and
- (b) unless paragraph (7) applies, publish a notice of the reconsidered decision.

(7) This paragraph applies where the original decision was one which the Secretary of State gave effect to by public notice.

(8) Where the original decision was one referred to in paragraph (7), the Secretary of State must—

- (a) publish a notice of the reconsidered decision; and
- (b) by public notice make provision giving effect to that decision.

(9) Where the TRA varies the original decision and the reconsidered decision is a recommendation to the Secretary of State—

- (a) the TRA must produce a report on the reconsideration for the Secretary of State to consider; and
- (b) the Secretary of State must accept or reject the reconsidered decision.

(10) Where the Secretary of State accepts a reconsidered decision under paragraph (9)(b), the Secretary of State must—

- (a) publish a notice of the reconsidered decision and the Secretary of State’s acceptance of the reconsidered decision;
- (b) by public notice make provision giving effect to that decision.

(11) Where the Secretary of State rejects a reconsidered decision under paragraph (9)(b), the Secretary of State must—

- (a) publish a notice of the reconsidered decision and the Secretary of State’s rejection of the reconsidered decision; and

(b) lay a statement before the House of Commons setting out the reasons for rejecting the reconsidered decision.

(12) Where paragraph (11) applies and the original decision was given effect by public notice, the Secretary of State must by public notice make provision to the effect that the earlier notice ceases to have effect.

(13) For the purpose of paragraph (8)(b), (10)(b) or (12), a public notice means—

- (a) a public notice under section 13 of the Act, where the original decision was given effect by a notice made under that section;
- (b) a public notice under Part 12 of the Dumping and Subsidisation Regulations, where the original decision was one referred to in paragraph 29 of Schedule 1 to these Regulations;
- (c) a public notice under Part 9 of the Safeguards Regulations, where the original decision was one referred to in paragraph 40 of Schedule 1 to these Regulations.

The effect of an original decision, withdrawal and termination of a reconsideration

15.—(1) An applicant for reconsideration may make a request to withdraw their application via the TRA’s case management system.

(2) Subject to paragraphs (3) and (4), the TRA may, where it considers appropriate, terminate a reconsideration where it has received a request made under paragraph (1).

(3) Paragraph (2) does not apply where—

- (a) the TRA has made any notification or published any notice relevant to the reconsideration under regulation 14(3), (5) or (6); or
- (b) the Secretary of State has made any notification, published any notice or laid any statement relevant to the reconsideration under regulation 14(8), (10), (11) or (12).

(4) Where the TRA has accepted more than one application for reconsideration in respect of the same original decision (see regulation 11(7)), the TRA must not terminate the reconsideration if any of the applicants for that reconsideration objects to the TRA’s proposed termination.

(5) Where the TRA terminates a reconsideration under this regulation and the original decision was—

- (a) published in a notice, the TRA must publish a notice of termination;
- (b) not published in a notice, the TRA must notify the applicant of the termination.