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STATUTORY INSTRUMENTS

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**2019 No. 910**

**EXITING THE EUROPEAN UNION  
CUSTOMS**

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

<i>Made</i>	- - - -	<i>8th May 2019</i>
<i>Laid before the House of Commons</i>	- - - -	<i>13th May 2019</i>
<i>Coming into force</i>	- -	<i>3rd June 2019</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 13, 32(7) and (8), 51 and 56 of the Taxation (Cross-border) Trade Act 2018<sup>(1)</sup>, and by paragraphs 30 and 31 of Schedule 4, and paragraphs 29 and 30 of Schedule 5, to that Act.

**PART 1**

**Introductory**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 and come into force on 3rd June 2019.

(2) These Regulations (with the exception of this regulation) have effect subject to the modifications in Part 4 until the TRA is established.

(3) Following the establishment of the TRA, any determination or reconsidered decision made by the Secretary of State under Parts 2 and 3 of these Regulations as modified by Part 4, has effect as though it were a determination or reconsidered decision made by the TRA under the corresponding unmodified provision.

(4) 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.

(5) 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.

(6) 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.

(7) Paragraph (8) applies where—

- (a) the TRA is established after the Secretary of State has made an original decision; and
- (b) whether before or after the establishment of the TRA, an application for reconsideration of that decision is made to the Secretary of State.

(8) Where this paragraph applies, an application for reconsideration referred to in paragraph (7) is, after the establishment of the TRA, to be treated for all purposes as if it were made to the TRA.

(9) In this regulation, a “transitional function” is a function which—

- (a) is conferred on the Secretary of State by Part 4 of these Regulations;
- (b) corresponds to a function that will, following the establishment of the TRA, be exercisable by the TRA under Parts 1 to 3 of these Regulations; and
- (c) following the establishment of the TRA, will not be exercisable by the Secretary of State.

## Interpretation

2.—(1) In these Regulations—

“the Act” means the Taxation (Cross-border Trade) Act 2018;

“application for reconsideration” means an application for reconsideration of an original decision (see chapter 2 of Part 2 of these Regulations);

“the Dumping and Subsidisation Regulations” means the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019(2);

“importer” of goods means a person liable to pay import duty in respect of the goods;

“interested party” has the meaning given by—

- (a) regulation 2 of the Dumping and Subsidisation Regulations in relation to an investigation or a review conducted under those Regulations;
- (b) regulation 2 of the Safeguards Regulations in relation to an investigation or a review conducted under those Regulations;

“original decision” has the meaning given by regulation 9(1);

“overseas exporter” has the meaning given by—

- (a) paragraph 32(1) of Schedule 4 in relation to an investigation or a review conducted under the Dumping and Subsidisation Regulations;
- (b) regulation 2 of the Safeguards Regulations in relation to an investigation or a review conducted under those Regulations;

“reconsidered decision” has the meaning given by regulation 14(2);

“the Safeguards Regulations” means the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(3);

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(2) S.I. 2019/450.

(3) S.I. 2019/449.

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(4).

(2) Except as otherwise stated, a reference in these Regulations to a Schedule is a reference to a Schedule to the Act.

## 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.

## **PART 3**

### **Appeal to the Upper Tribunal**

#### **Appeals to the Upper Tribunal in relation to a decision made by the TRA**

16.—(1) Subject to the following paragraphs, any interested party may appeal to the Upper Tribunal for a review of a reconsidered decision in relation to an original decision listed in Schedule 1 to these Regulations.

(2) Where a reconsidered decision relates to an original decision referred to in paragraph 1 or 6 of Schedule 1 to these Regulations, only the applicant who applied for reconsideration of that original decision may appeal to the Upper Tribunal for a review of that reconsidered decision.

(3) Where a reconsidered decision relates to an original decision referred to in paragraph 11, 22, or 33 of Schedule 1 to these Regulations, only an interested party who applied for reconsideration of that original decision may appeal to the Upper Tribunal for a review of that reconsidered decision.

(4) Where a reconsidered decision relates to an original decision referred to in paragraph 21 of Schedule 1 to these Regulations, only the overseas exporter or relevant foreign government who applied for reconsideration of that original decision may appeal to the Upper Tribunal for a review of that reconsidered decision.

(5) Where a reconsidered decision relates to an original decision referred to in paragraph 28 of Schedule 1 to these Regulations, only the importer who applied for reconsideration of that original decision may appeal to the Upper Tribunal for a review of that reconsidered decision.

(6) Where the TRA has rejected an application under regulation 11(1) or (5), only the applicant who applied for reconsideration may appeal to the Upper Tribunal for a review of that decision.

#### **Appeals to the Upper Tribunal in relation to a determination made by the Secretary of State**

17.—(1) An interested party may appeal to the Upper Tribunal for a review of a determination made by the Secretary of State listed in Schedule 2 to these Regulations.

(2) In Schedule 2 to these Regulations and for the purpose of paragraph (1)—

- (a) Part 1 contains a list of determinations made under Schedule 4 or 5;
- (b) Part 2 contains a list of determinations made under the Dumping and Subsidisation Regulations;
- (c) Part 3 contains a list of determinations made under the Safeguards Regulations;
- (d) Part 4 contains a determination made under these Regulations.

#### **Conduct and outcome of appeal**

18.—(1) In determining an appeal made under regulation 16 (appeals to the Upper Tribunal in relation to a decision made by the TRA) or 17 (appeals to the Upper Tribunal in relation to a determination made by the Secretary of State), the Upper Tribunal must apply the same principles as would be applied by a court on an application for judicial review.

(2) The Upper Tribunal may—

- (a) dismiss the appeal; or
- (b) set aside the whole or part of the reconsidered decision or the determination to which the appeal relates.

(3) Where the Upper Tribunal sets aside the whole or part of a reconsidered decision or determination, it must refer the matter back to the TRA or the Secretary of State, as appropriate, with a direction that the TRA or the Secretary of State reconsider the reconsidered decision or determination and make a new decision in accordance with its ruling.

## **PART 4**

### **Transitional provisions relating to the TRA**

#### **CHAPTER 1**

##### **General modifications**

#### **General modifications**

19. Unless otherwise specified in this Part, these Regulations have effect as if—

- (a) for “TRA”, in each place where this occurs (excluding regulation 1), there were substituted “Secretary of State”;
- (b) for “TRA’s”, in each place where this occurs, there were substituted “Secretary of State’s”;
- (c) for “it”, where this is a reference to the TRA, in each place where this occurs, there were substituted “the Secretary of State”;

- (d) for “recommendation” or “recommendations”, in each place where this occurs, there were substituted “preliminary decision” or “preliminary decisions” as appropriate.

## CHAPTER 2

### Further modifications

#### Modifications to Part 1

- 20.** Regulation 2 (interpretation) has effect as if—
- (a) in paragraph (1), in the definition of “the Act”, after “2018”, there were inserted “as modified by the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 4 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019<sup>(5)</sup> and the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 6 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019<sup>(6)</sup>”;
  - (b) in paragraph (2), after “the Act”, there were inserted “as modified by the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 4 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019 and the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 6 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019”.

#### Modifications to Part 2

- 21.** Regulation 5 (confidential information) has effect as if—
- (a) in paragraph (1)(a), for “its”, there were substituted “the Secretary of State’s”;
  - (b) paragraph (5) were omitted.
- 22.** Regulation 6 (permitted disclosure) has effect as if—
- (a) in paragraphs (1) and (3), “the TRA or”, in each place where this occurs, were omitted;
  - (b) paragraph (2) were omitted.
- 23.** Regulation 8 (non-cooperation) has effect as if—
- (a) in paragraph (1)—
    - (i) for “its”, where this first occurs, there were substituted “the Secretary of State’s”;
    - (ii) for “its”, where this next occurs, there were substituted “the”;
  - (b) in paragraph (2)(a), for “its”, there were substituted “the”.
- 24.** Regulation 11 (the TRA’s acceptance or rejection of an application for reconsideration) has effect as if, in paragraphs (3), (5) and **(6)(b)**, for “its”, in each place where this occurs, there were substituted “the Secretary of State’s”.
- 25.** Regulation 13 (reconsideration by the TRA) has effect as if, in paragraph (8), for “its”, there were substituted “the Secretary of State’s”.
- 26.** Regulation 14 (outcome of reconsideration) has effect as if—
- (a) in paragraph **(2)**, for “its”, there were substituted “the Secretary of State’s”;
  - (b) in paragraph (5)(a), “and” were omitted;
  - (c) paragraph (5)(b) were omitted;
  - (d) in paragraph (6)—

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<sup>(5)</sup> S.I. 2019/429.

<sup>(6)</sup> S.I. 2019/914.

- (i) for “recommendation to the Secretary of State”, there were substituted “preliminary decision”;
- (ii) sub-paragraph (a) were omitted;
- (iii) in sub-paragraph (b), “unless paragraph (7) applies” were omitted;
- (e) paragraph (7) were omitted;
- (f) in paragraph (8)—
  - (i) for “referred to in paragraph (7)”, there were substituted “which the Secretary of State gave effect to by public notice”;
  - (ii) sub-paragraph (a) were omitted;
  - (iii) in sub-paragraph (b), for “that decision”, there were substituted “the reconsidered decision”;
- (g) in paragraph (9)—
  - (i) for “recommendation to the Secretary of State”, there were substituted “preliminary decision”;
  - (ii) sub-paragraph (a) were omitted;
  - (iii) in sub-paragraph (b), for “accept or reject”, there were substituted “decide to give effect, or not to give effect, to”;
- (h) in paragraph (10)—
  - (i) for “accepts”, there were substituted “decides to give effect to”;
  - (ii) in sub-paragraph (a), for “acceptance of”, there were substituted “decision to give effect to”;
- (i) in paragraph (11)—
  - (i) for “rejects”, there were substituted “decides not to give effect to”;
  - (ii) in sub-paragraph (a), for “rejection of”, there were substituted “decision not to give effect to”;
  - (iii) in sub-paragraph (b), for “rejecting”, there were substituted “deciding not to give effect to”;
- (j) after paragraph (11), there were inserted—
  - “(11A) in the application of paragraphs (6) and (9), a preliminary decision referred to in paragraphs 13 to 17, 19, 31 or 32 of Schedule 1 to these Regulations is to be treated as if it were a decision other than a preliminary decision.”;
- (k) in paragraph (13)(c), for “paragraph 40”, there were substituted “paragraph 39”.

27. Regulation 15 (the effect of an original decision, withdrawal and termination of a reconsideration) has effect as if—

- (a) paragraph (3)(a) were omitted;
- (b) in paragraph (3)(b), for “regulation 14(8), (10), (11) or (12)”, there were substituted “regulation 14(3), (5), (6), (8), (10), (11) or (12)”.

### Modifications to Part 3

28. The heading to regulation 17 (appeals to the Upper Tribunal in relation to a determination made by the Secretary of State) and that regulation have effect as if, for “determination” or

“determinations”, in each place where this occurs, there were substituted “decision” or “decisions” as appropriate.

**29.** Regulation 18 (conduct and outcome of appeal) has effect as if—

- (a) for “determination”, in each place where this occurs, there were substituted “decision”;
- (b) in paragraph (3)—
  - (i) “the TRA or”, in each place where this occurs, were omitted;
  - (ii) “as appropriate,” were omitted.

### **Modifications to Schedule 1 to these Regulations**

**30.** Schedule 1 to these Regulations has effect as if—

- (a) in the sub-heading to Part 3 of that Schedule, for “determinations or recommendations”, there were substituted “determinations, preliminary decisions or decisions”;
- (b) in each of paragraphs 13 to 17, 19, 31 and 32 for “determination”, there were substituted “preliminary decision”;
- (c) in paragraph 20—
  - (i) for “regulation 75(1)”, there were substituted “regulation 75(2)”;
  - (ii) for “determination”, there were substituted “decision”;
- (d) paragraphs 21 and 24 were omitted;
- (e) in paragraphs 25 and 36—
  - (i) for “suspension recommendation”, in each place where this occurs, there were substituted “preliminary decision on suspension”;
  - (ii) for “determination”, in each place where this occurs, there were substituted “decision”;
- (f) in paragraphs 26 and 37, for “determination”, in each place where this occurs, there were substituted “decision”;
- (g) in paragraph 29, for “regulation 100(1)”, there were substituted “regulation 99(1)”;
- (h) for paragraph 35, there were substituted—

“A preliminary decision made under regulation 37(1) or (2) following a review.”;
- (i) in paragraph 39, for “that the application of a tariff rate quota should continue unvaried (see regulation 50(4)(a))”, there were substituted “following the transition review”;
- (j) paragraph 40 were omitted.

### **Modifications to Schedule 2 to these Regulations**

**31.** Schedule 2 to these Regulations has effect as if—

- (a) in the headings and sub-headings of that Schedule, for “determinations”, in each place where this occurs, there were substituted “decisions”;
- (b) for “the acceptance or rejection”, in each place where this occurs, there were substituted “a decision made”;
- (c) for “of a recommendation made by the TRA”, in each place where this occurs, there were substituted “to give effect, or not to give effect, to a preliminary decision”;
- (d) in paragraph 13, for “of”, there were substituted “to give effect, or not to give effect, to”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed by the authority of the Secretary of State for International Trade

8th May 2019

*George Hollingbery*  
Minister of State for Trade Policy  
Department for International Trade

## SCHEDULE 1

Regulations 9, 14 and 16

### Original decisions of the TRA

#### PART 1

##### Determinations or recommendations made under Schedule 4

1. A determination made under paragraph 9(4) to reject an application for the initiation of a dumping investigation or subsidisation investigation.
2. A final negative determination made under paragraph 11(6)(b).
3. A recommendation made under paragraph 17(3) in relation to an anti-dumping amount.
4. A recommendation made under paragraph 17(4) in relation to a countervailing amount.
5. A determination notified under paragraph 17(10) that no recommendation can be made under paragraph 17(3) or (4).

#### PART 2

##### Determinations or recommendations made under Schedule 5

6. A determination made under paragraph 7(5) to reject an application for the initiation of a safeguarding investigation.
7. A final negative determination made under paragraph 9(5)(b).
8. A recommendation made under paragraph 16(3) (including any recommendation in accordance with paragraph 16(4)) in relation to a definitive safeguarding amount or tariff rate quota.
9. A determination notified under paragraph 16(11) that no recommendation can be made under paragraph 16(3).

#### PART 3

##### Determinations or recommendations made under the Dumping and Subsidisation Regulations

10. A determination made under regulation 64(1) or (2) to terminate an investigation.
11. A determination made under regulation 67 to reject a review application.
12. A determination made under regulation 68(6) to terminate a review.
13. A determination made under regulation 69(6)(a) following an interim review.
14. A determination made under regulation 70(11)(a) following an expiry review.
15. A determination made under regulation 71(6)(a) following a new exporter review.
16. A determination made under regulation 72(7)(a) following an absorption review.
17. A determination made under regulation 73(7)(a) following a circumvention review.
18. A determination made under regulation 73(9) to grant an exemption.
19. A determination made under regulation 74(5)(a) following a scope review.

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20. A recommendation made under regulation 75(1) or a determination made under regulation 75(4) to terminate a review.
21. A determination made under regulation 78(5) that it is not appropriate to accept an undertaking.
22. A determination made under regulation 83(2) to reject an application for a breach investigation.
23. A determination made under regulation 83(5) that an undertaking has been breached or that there are adequate reasons to allow the undertaking to continue to apply.
24. A determination made under regulation 84(5)(a) or a recommendation made under regulation 84(6) following an undertaking review.
25. A suspension recommendation made under regulation 85 or a determination that it is not appropriate to make such a recommendation under that regulation.
26. A recommendation made under regulation 87 to extend the period of suspension or a determination that it is not appropriate to make such a recommendation under that regulation.
27. A recommendation made under regulation 88(1) to reinstate an anti-dumping amount or a countervailing amount.
28. A determination as to the amount of repayment of an anti-dumping amount or a countervailing amount made under regulation 89(8)(a).
29. A recommendation made under regulation 100(1) following a transition review.

## PART 4

### Determinations or recommendations made under the Safeguards Regulations

30. A determination made under regulation 30(1) to terminate an investigation.
31. A determination made under regulation 34(4)(a) following a mid-term review.
32. A determination made under regulation 35(7)(a) following an extension review.
33. A determination made under regulation 35 to reject an extension review application.
34. A determination made under regulation 36(3) to terminate a review.
35. A recommendation made under regulation 37(1) following a review or a determination made under regulation 37(5) to terminate a review.
36. A suspension recommendation made under regulation 39 or a determination that it is not appropriate to make such a recommendation under that regulation.
37. A recommendation made under regulation 41 to extend the period of suspension or a determination that it is not appropriate to make such a recommendation under that regulation.
38. A recommendation made under regulation 42(1) to reinstate a definitive safeguarding remedy.
39. A determination made under regulation 50(1) that the application of a tariff rate quota should continue unvaried (see regulation 50(4)(a)).
40. A recommendation made under regulation 51(1) following the transition review.



## SCHEDULE 2

Regulation 17

### Determinations of the Secretary of State that are subject to appeal

#### PART 1

##### Determinations made under Schedule 4 or 5

1. The acceptance or rejection under paragraph 20(1) of Schedule 4 of a recommendation made by the TRA in relation to an anti-dumping amount or a countervailing amount.
2. The acceptance or rejection under paragraph 19(1) or 20(1) of Schedule 5 of a recommendation made by the TRA in relation to a definitive safeguarding amount or tariff rate quota.

#### PART 2

##### Determinations made under the Dumping and Subsidisation Regulations

3. The acceptance or rejection under regulation 76(1) of a recommendation made by the TRA following a review.
4. The acceptance or rejection under regulation 85(9) of a recommendation made by the TRA to suspend an anti-dumping amount or a countervailing amount.
5. The acceptance or rejection under regulation 87(7) of a recommendation made by the TRA to extend the period of suspension.
6. The acceptance or rejection under regulation 88(3) of a recommendation made by the TRA to reinstate an anti-dumping amount or a countervailing amount.
7. The acceptance or rejection under regulation 101(1) of a recommendation made by the TRA following a transition review.

#### PART 3

##### Determinations made under the Safeguards Regulations

8. The acceptance or rejection under regulation 38(1) of a recommendation made by the TRA following a review.
9. The acceptance or rejection under regulation 39(9) of a recommendation made by the TRA to suspend a definitive safeguarding remedy.
10. The acceptance or rejection under regulation 41(7) of a recommendation made by the TRA to extend the period of suspension.
11. The acceptance or rejection under regulation 42(3) of a recommendation made by the TRA to reinstate a definitive safeguarding remedy.
12. The acceptance or rejection under regulation 52(1) of a recommendation made by the TRA following the transition review.

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## PART 4

### Determinations made under these Regulations

13. The acceptance or rejection under regulation 14(9)(b) of the TRA's reconsidered decision.

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### EXPLANATORY NOTE

*(This note is not part of these Regulations)*

These Regulations provide for the reconsideration of decisions taken by the Trade Remedies Authority (TRA), when established, under Schedules 4 and 5 to the Taxation (Cross-border Trade) Act 2018 (“the Act”), the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (“the Dumping and Subsidisation Regulations”) and the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (“the Safeguards Regulations”). They also provide for decisions made by the TRA and the Secretary of State under such legislation to be appealed to the Upper Tribunal. The TRA itself will be established by the Trade Bill when it receives Royal Assent.

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“ADA”) and the Agreement on Subsidies and Countervailing Measures (“SCMA”) in Annex 1A to the Marrakesh Agreement establishing the World Trade Organization (concluded on 15 April 1994, entered into force 1 January 1995) (“WTO Agreement”) require WTO Members to have in place an independent process to review decisions made by their investigating authority under ADA and SCMA. Consistent with those international agreements, these Regulations provide for certain decisions on anti-dumping and countervailing measures made under Schedule 4 to the Act and the Dumping and Subsidisation Regulations to be reconsidered by the TRA and appealed to the Upper Tribunal. These Regulations also provide for reconsideration and appeals of certain decisions made under Schedule 5 to the Act and the Safeguards Regulations, which implement the Agreement on Safeguards (“SGA”) in Annex 1A to the WTO Agreement, even though SGA does not require WTO Members to have in place an independent review process.

*Part 1* (Introductory) sets out the introductory provisions of the Regulations and includes definitions that apply throughout.

*Part 2* (General provisions and reconsideration by the TRA) sets out general provisions in relation to the TRA's reconsideration of decisions made by it, such as the TRA's treatment of confidential information and the requirement to maintain a public file. This Part also provides for who can apply for reconsideration, for the procedures to be followed by the TRA when deciding whether to accept or reject an application for reconsideration, and for the conduct of reconsideration.

*Part 3* (Appeal to the Upper Tribunal) provides for who may appeal to the Upper Tribunal and the standard of review adopted by the Tribunal. Most decisions made by the TRA must first go through reconsideration before they can be appealed.

*Part 4* (Transitional provisions relating to the TRA) temporarily modifies the effect of these Regulations pending the establishment of the TRA. The modified effect is such that the Secretary of State will reconsider determinations or decisions made under Schedules 4 and 5 to the Act as modified by the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 4 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019 and the Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 6 and Transitional Provisions) (Modification) (EU Exit) Regulations

2019, the Dumping and Subsidisation Regulations as modified by Part 13 of those Regulations and the Safeguards Regulations as modified by Part 10 of those Regulations. This Part also provides for certain decisions made under such legislation to be appealed to the Upper Tribunal.

Schedule 1 lists the decisions made by the TRA that are subject to reconsideration and appeal. Schedule 2 lists the determinations made by the Secretary of State that are subject to appeal.

An impact assessment has not been prepared for this instrument as the expected impact of the trade remedies system has already been assessed in the impact assessment accompanying the Act.

A copy of the Explanatory Memorandum is published alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Further information is available from the Department for International Trade, 3 Whitehall Place, London SW1A 2AW and on the gov.uk website ([www.gov.uk](http://www.gov.uk)).