

## SCHEDULES

### SCHEDULE 4

Section 13

#### DUMPING OF GOODS OR FOREIGN SUBSIDIES CAUSING INJURY TO UK INDUSTRY

##### PART 1

##### KEY DEFINITIONS

###### *Meaning of “dumped”*

- 1 (1) For the purposes of this Schedule, goods are “dumped” in the United Kingdom if—
- (a) they are imported into the United Kingdom, and
  - (b) their export price is less than their normal value;
- and references to the “dumping” of goods are to be read accordingly.
- (2) The “normal value” of goods means—
- (a) the comparable price, in the ordinary course of trade, for like goods (see paragraph 7) when destined for consumption in the exporting foreign country or territory, or
  - (b) such other price or value as may be determined in accordance with provision made by regulations for specified cases where it is not appropriate to use the price in paragraph (a).
- (3) Regulations may make provision for the purposes of this paragraph—
- (a) about what constitutes or does not constitute—
    - (i) the “export price” of goods;
    - (ii) “the comparable price”;
    - (iii) “in the ordinary course of trade”;
    - (iv) “the exporting foreign country or territory”;
  - (b) about how any of those matters are to be determined;
  - (c) to ensure that a fair comparison is made between the export price of goods and their normal value;
  - (d) about the use of sampling to determine the export price or normal value of goods.

###### *Meaning of “the margin of dumping”*

- 2 For the purposes of this Schedule, “the margin of dumping”, in relation to goods, means the amount which is the difference between—
- (a) their export price as determined in accordance with paragraph 1, and
  - (b) their normal value as determined in accordance with that paragraph.

*Meaning of “subsidised”, “countervailable subsidy” and related terms*

- 3 (1) For the purposes of this Schedule—
- (a) goods are “subsidised” if they are goods in respect of whose manufacture, production, export or transport a countervailable subsidy is granted, and
  - (b) references to the “subsidisation” of goods are to be read accordingly.
- (2) For the purposes of this Schedule, a “countervailable subsidy” is a subsidy which is specific and which is granted directly or indirectly for the manufacture, production, export or transport of goods.
- (3) For the purposes of this Schedule, a “subsidy” exists if there is—
- (a) a financial contribution by a foreign authority which confers a benefit, or
  - (b) a form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade 1994 (being part of Annex 1A to the WTO Agreement) received from a foreign authority which confers a benefit.
- (4) For the purposes of this Schedule, a “foreign authority” means a government or public body within the territory of a foreign country or territory.
- (5) Regulations may make provision for the purposes of this paragraph—
- (a) about what constitutes or does not constitute a “subsidy”, “a financial contribution by a foreign authority”, “a government” or a “public body” and how any of those matters are to be determined;
  - (b) about what constitutes or does not constitute “a benefit” and how it is to be determined whether a benefit is conferred;
  - (c) about what constitutes or does not constitute a subsidy which is “specific” and how it is to be determined whether such a subsidy is granted directly or indirectly as described in sub-paragraph (2).

*Meaning of “the amount of the subsidy”*

- 4 (1) For the purposes of this Schedule, “the amount of the subsidy”, in relation to goods, means the amount of the benefit conferred during a specified period by the countervailable subsidy as attributed to the goods in question.
- (2) Regulations may make provision—
- (a) about how the amount of the benefit conferred by the countervailable subsidy is to be determined for those purposes;
  - (b) about what constitutes or does not constitute “benefit” for those purposes;
  - (c) about how the amount of the benefit conferred is to be attributed to the goods in question.
- (3) Such regulations may, among other things, make provision about the use of sampling or cumulative assessments.
- (4) “Specified period” means such period as may be specified by regulations.

*Meaning of “injury”*

- 5 (1) For the purposes of this Schedule, “injury” to a UK industry in particular goods (see paragraph 6) means—
- (a) material injury, or the threat of material injury, to the industry, or
  - (b) material retardation of the establishment of the industry.

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- (2) Regulations may make provision about—
  - (a) what constitutes or does not constitute material injury to a UK industry or the threat of such injury for the purposes of this Schedule;
  - (b) what constitutes or does not constitute material retardation of the establishment of a UK industry for the purposes of this Schedule.
- (3) Regulations may make provision about how it is to be determined for the purposes of this Schedule whether—
  - (a) the dumping of goods in the United Kingdom has caused or is causing injury to a UK industry in those goods, or
  - (b) the importation of subsidised goods into the United Kingdom has caused or is causing injury to a UK industry in those goods.
- (4) Such regulations may, among other things, make provision about the use of sampling or cumulative assessments.

*Meaning of “UK industry”*

- 6 (1) For the purposes of this Schedule, a “UK industry” in particular goods means—
  - (a) all the producers in the United Kingdom of like goods (see paragraph 7), or
  - (b) those of them whose collective output of like goods constitutes a major proportion of the total production in the United Kingdom of those goods.
- (2) Regulations may make provision for the purposes of sub-paragraph (1)—
  - (a) about what constitutes or does not constitute—
    - (i) a producer in the United Kingdom of like goods;
    - (ii) such a producer’s output of like goods;
    - (iii) the total production in the United Kingdom of like goods;
    - (iv) a major proportion of that total production;
  - (b) about how any of those matters are to be determined.

*Meaning of “like goods”*

- 7 (1) For the purposes of this Schedule, “like goods”, in relation to goods, means—
  - (a) goods which are like those goods in all respects, or
  - (b) if there are no such goods, goods which, although not alike in all respects, have characteristics closely resembling those of the goods in question.
- (2) Regulations may make provision about—
  - (a) what constitutes or does not constitute “like goods” for the purposes of this Schedule;
  - (b) how “like goods” is to be determined for those purposes.

## **PART 2**

### **DUMPING AND SUBSIDISATION INVESTIGATIONS**

*Dumping and subsidisation investigations*

- 8 (1) The TRA may investigate—

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- (a) whether goods have been or are being dumped in the United Kingdom, and
  - (b) whether the dumping of the goods has caused or is causing injury to a UK industry in those goods.
- (2) References in this Schedule to a “dumping investigation” are to an investigation under sub-paragraph (1).
- (3) The TRA may investigate—
- (a) whether goods which have been or are being imported into the United Kingdom are subsidised, and
  - (b) whether the importation of the subsidised goods has caused or is causing injury to a UK industry in those goods.
- (4) References in this Schedule to a “subsidisation investigation” are to an investigation under sub-paragraph (3).

*Initiation of a dumping or a subsidisation investigation*

- 9 (1) The TRA may initiate a dumping or a subsidisation investigation in relation to goods only if—
- (a) it is requested to initiate an investigation in an application made—
    - (i) by or on behalf of a UK industry in the goods (“the applicant UK industry”), or
    - (ii) in exceptional circumstances, by the Secretary of State,
  - (b) it is satisfied that the application contains sufficient evidence that—
    - (i) the goods have been or are being dumped in the United Kingdom and the dumping has caused or is causing injury to a UK industry in those goods, or
    - (ii) as the case may be, the goods have been or are being imported into the United Kingdom and are subsidised, and the importation of the subsidised goods has caused or is causing injury to a UK industry in those goods,
  - (c) it is satisfied that it appears from that evidence that—
    - (i) the volume of dumped goods (whether actual or potential), and the injury, is more than negligible, and the margin of dumping in relation to those goods is more than minimal, or
    - (ii) as the case may be, the volume of subsidised goods (whether actual or potential), and the injury, is more than negligible, and the amount of the subsidy in relation to those goods is more than minimal, and
  - (d) the market share requirement is met or the TRA waives the requirement in relation to the application.
- (2) The market share requirement is met if—
- (a) in the case of an application under sub-paragraph (1)(a)(i), the TRA is satisfied that the applicant UK industry has a share of the market for like goods for consumption in the United Kingdom (whether produced there or elsewhere) which is sufficient to justify initiating the investigation;
  - (b) in the case of an application under sub-paragraph (1)(a)(ii), the TRA is satisfied that a UK industry in the goods has a share of the market for like goods for consumption in the United Kingdom (whether produced there or elsewhere) which is sufficient to justify initiating the investigation.

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- (3) Regulations may make provision about—
- (a) what constitutes or does not constitute an application made by or on behalf of a UK industry for the purposes of sub-paragraph (1)(a)(i);
  - (b) when an application is made for the purposes of sub-paragraph (1)(a);
  - (c) the information to be contained in such an application;
  - (d) the time limit for determining such an application;
  - (e) what constitutes or does not constitute “negligible” and “minimal” for the purposes of sub-paragraph (1)(c)(i) or (ii);
  - (f) how it is to be determined for those purposes whether those thresholds have been exceeded;
  - (g) what constitutes or does not constitute “the market for like goods for consumption in the United Kingdom” and a UK industry’s “share” of that market for the purposes of sub-paragraphs (1)(d) and (2);
  - (h) how any of those matters are to be determined for the purposes of sub-paragraphs (1)(d) and (2).
- (4) If any of the requirements of sub-paragraph (1)(a) to (d) in respect of a dumping or a subsidisation investigation (as the case may be) are not met, the TRA must reject the application and notify the applicant accordingly (unless it is the requirement in sub-paragraph (1)(a) that is not met because the application has been withdrawn).
- (5) If the requirements of sub-paragraph (1)(a) to (d) in respect of a dumping investigation are met, the TRA must—
- (a) accept the application,
  - (b) notify the governments of the relevant foreign countries or territories,
  - (c) initiate the investigation,
  - (d) publish notice of its decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
  - (e) notify the Secretary of State and interested parties (see paragraph 32(3)) accordingly.
- (6) If the requirements of sub-paragraph (1)(a) to (d) in respect of a subsidisation investigation are met, the TRA must—
- (a) accept the application,
  - (b) after the governments of the relevant foreign countries or territories have been invited to participate in consultations, initiate the investigation,
  - (c) publish notice of its decision to initiate the investigation (including notice of the goods which are the subject of the investigation), and
  - (d) notify the Secretary of State and interested parties accordingly.
- (7) “Relevant foreign country or territory” means—
- (a) in the case of an application for a dumping investigation, the exporting foreign country or territory (within the meaning of paragraph 1(2)) of the alleged dumped goods;
  - (b) in the case of an application for a subsidisation investigation, a foreign country or territory within whose territory is located a foreign authority which is alleged to have granted one or more of the subsidies in question.
- (8) Notices under sub-paragraphs (5)(d) and (e) and (6)(c) and (d) must specify the date of the initiation of the investigation.

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- (9) Nothing in this paragraph prevents the TRA initiating both a dumping investigation and a subsidisation investigation in relation to the same goods if the requirements of sub-paragraph (1)(a) to (d) are met in the case of each investigation.

*Conduct of a dumping or a subsidisation investigation*

- 10 (1) Regulations may make provision about the conduct of a dumping or a subsidisation investigation.
- (2) Such regulations may, among other things, make provision about—
- (a) the stages of an investigation;
  - (b) time limits for completion of a stage or of an investigation;
  - (c) the termination of an investigation in certain circumstances in relation to some or all of the goods;
  - (d) the information which must or may be provided or made available by the TRA to others;
  - (e) requests by the TRA for information from others and the consequences of not providing the information requested or of providing information which is false or misleading;
  - (f) requests by the TRA to visit premises in or outside the United Kingdom and the consequences of not agreeing to such requests;
  - (g) the conduct of such visits;
  - (h) the consequences of otherwise impeding an investigation;
  - (i) the treatment of confidential or other information provided to or by the TRA;
  - (j) the provision and conduct of oral hearings.

*Provisional affirmative determinations and final affirmative or negative determinations*

- 11 (1) In the case of a dumping investigation, an “affirmative determination” in relation to goods means a determination that—
- (a) the goods have been or are being dumped in the United Kingdom, and
  - (b) the dumping of the goods has caused or is causing injury to a UK industry in those goods.
- (2) In the case of a subsidisation investigation, an “affirmative determination” in relation to goods means a determination that—
- (a) the goods have been or are being imported into the United Kingdom and are subsidised, and
  - (b) the importation of the subsidised goods has caused or is causing injury to a UK industry in those goods.
- (3) At any stage during a dumping or a subsidisation investigation, the TRA may make an affirmative determination, based on the evidence then before it, in relation to goods which are the subject of the investigation (referred to in this Schedule as “a provisional affirmative determination”).
- (4) But the TRA may only make such a determination if it is satisfied that interested parties (see paragraph 32(3)) have been given an adequate opportunity to provide information to it regarding the investigation.

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- (5) The TRA must make a final determination in relation to each of the goods which are the subject of a dumping or a subsidisation investigation.
- (6) A final determination under sub-paragraph (5) in relation to goods is—
  - (a) an affirmative determination (referred to in this Schedule as a “final affirmative determination”), or
  - (b) if the TRA determines that it cannot make an affirmative determination in relation to the goods, a negative determination (referred to in this Schedule as a “final negative determination”).
- (7) The TRA may make different final determinations in relation to different goods which are the subject of the investigation.
- (8) The TRA must—
  - (a) publish notice of its final negative determination or final negative determinations under sub-paragraph (5), and
  - (b) notify the Secretary of State and interested parties accordingly.

#### *Termination of a dumping or a subsidisation investigation*

- 12 A dumping or a subsidisation investigation in relation to goods terminates (if it has not already terminated by virtue of provision made under paragraph 10(1))—
- (a) in a case where the TRA makes a final negative determination in relation to the goods, when notice of that determination is published under paragraph 11(8)(a),
  - (b) in a case where the TRA makes a final affirmative determination in relation to the goods and determines that there is not a recommendation which it could make under paragraph 17(3) or (4) in relation to them, when notice of that determination is published under paragraph 17(10)(b),
  - (c) in a case where the TRA makes a final affirmative determination in relation to the goods and makes a recommendation under paragraph 17(3) or (4) in relation to them which the Secretary of State rejects, when the notice of rejection is published under paragraph 20(4)(a), or
  - (d) in a case where the TRA makes a final affirmative determination in relation to the goods and makes a recommendation under paragraph 17(3) or (4) in relation to them which the Secretary of State accepts, at the end of the day of publication of the public notice under section 13 giving effect to the recommendation.

### **PART 3**

#### **PROVISIONAL REMEDY: REQUIRING A GUARANTEE**

#### *TRA's duty to recommend requiring guarantees*

- 13 (1) This paragraph applies where the TRA makes a provisional affirmative determination in relation to goods which are the subject of a dumping or a subsidisation investigation.
- (2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.

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- (3) The TRA may recommend to the Secretary of State—
- (a) in the case of a dumping investigation that, in respect of all the relevant goods, all importers of those goods should be required to give a guarantee in respect of any additional amount of import duty which would have been applicable, or potentially applicable, to the goods under section 13 if an anti-dumping amount had been applied to the goods based on the provisional affirmative determination (“an estimated anti-dumping amount”), or
  - (b) in the case of a subsidisation investigation that, in respect of all the relevant goods, all importers of those goods should be required to give a guarantee in respect of any additional amount of import duty which would have been applicable, or potentially applicable, to the goods under section 13 if a countervailing amount had been applied to the goods based on the provisional affirmative determination (“an estimated countervailing amount”).
- (4) The TRA may make a recommendation under sub-paragraph (3) only if it is satisfied that requiring a guarantee in accordance with its recommendation—
- (a) is necessary to prevent injury being caused during the investigation to a UK industry in the relevant goods, and
  - (b) meets the economic interest test (see paragraph 25).
- (5) The TRA may make different recommendations under sub-paragraph (3) for different relevant goods or descriptions of relevant goods, including by reference to—
- (a) specified overseas exporters or descriptions of overseas exporter;
  - (b) specified foreign countries or territories or descriptions of foreign countries or territories.
- (6) But the TRA may only make one recommendation under paragraph (a) or, as the case may be, paragraph (b) of sub-paragraph (3) in relation to any particular relevant good.
- (7) And the TRA may make different recommendations under paragraph (a) or (b) of sub-paragraph (3) for different relevant goods or descriptions of relevant goods only if the recommendations which it makes under that paragraph when taken together cover all the relevant goods.
- (8) If the TRA determines that there are one or more recommendations which it could make under paragraph (a) or, as the case may be paragraph (b), of sub-paragraph (3), it must make that recommendation or those recommendations (subject to sub-paragraphs (6) and (7)).
- (9) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3), it must—
- (a) publish notice of its provisional affirmative determination in relation to the goods,
  - (b) publish notice of its determination that there is no recommendation which it could make under sub-paragraph (3), and
  - (c) notify the Secretary of State and interested parties (see paragraph 32(3)) accordingly.

*TRA’s recommendations regarding requiring a guarantee*

- 14 (1) A recommendation under paragraph 13(3) to require the giving of a guarantee in respect of goods must specify those goods and include—

- (a) the TRA's recommendation regarding—
    - (i) the form of the guarantee,
    - (ii) how an estimated anti-dumping amount or an estimated countervailing amount applicable to the goods should be determined for the purpose of calculating the amount of the guarantee,
    - (iii) how the amount of the guarantee should be calculated, and
    - (iv) the period during which the requirement to give a guarantee should apply, and
  - (b) such other content as regulations may require.
- (2) The form of guarantee referred to in sub-paragraph (1)(a)(i) may be cash, a bond or a bank guarantee.
- (3) The recommendation referred to in sub-paragraph (1)(a)(ii) must be such that an estimated anti-dumping amount or an estimated countervailing amount does not exceed—
- (a) the margin of dumping or, as the case may be, the amount of the subsidy, in relation to the goods as determined by the TRA as part of its provisional affirmative determination, or
  - (b) the amount which the TRA is satisfied would be adequate to remove the injury to a UK industry in the goods if that amount is less than the margin of dumping or, as the case may be, the amount of the subsidy referred to in paragraph (a).
- (4) Regulations may make provision for the purposes of sub-paragraph (3)(b) about how the amount which the TRA is satisfied would be adequate to remove the injury described in that provision is to be determined.
- (5) The period referred to in sub-paragraph (1)(a)(iv)—
- (a) must not exceed 6 months in the case of a dumping investigation (but see paragraph 16 regarding extensions), or 4 months in the case of a subsidisation investigation, and
  - (b) if the recommendation is accepted by the Secretary of State, must begin—
    - (i) on the day after the date of publication of the notice under paragraph 15(5)(b), or
    - (ii) if later, on the day which is the day after the end of the period of 60 days beginning with the date of the initiation of the investigation.

*Secretary of State's power to require a guarantee*

- 15 (1) If the TRA makes a recommendation under paragraph 13(3), the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that it is not in the public interest to accept it.
- (3) In considering that, the Secretary of State must accept the TRA's determination that requiring a guarantee in accordance with the recommendation meets the economic interest test (see paragraph 25), unless the Secretary of State is satisfied that the determination is not one that the TRA could reasonably have made.
- (4) If the recommendation is rejected, the Secretary of State must—

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- (a) publish notice of the TRA’s provisional affirmative determination in relation to the goods, of the recommendation and of the rejection of it,
  - (b) notify interested parties (see paragraph 32(3)) accordingly, and
  - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (5) If the recommendation is accepted, the Secretary of State must—
- (a) publish notice of the TRA’s provisional affirmative determination in relation to the goods and of the recommendation,
  - (b) publish a notice that all importers of the goods specified in the recommendation are required to give a guarantee in accordance with the recommendation and regulations under paragraph 6 of Schedule 6, and
  - (c) notify interested parties accordingly.
- (6) The notice under sub-paragraph (5)(b) must—
- (a) specify, in accordance with the TRA’s recommendation, the matters referred to in paragraph 14(1)(a)(i) to (iv), and
  - (b) include such other content as regulations may require.
- (7) For the purposes of this Schedule, “the period of a provisional remedy” in respect of goods means the period during which the requirement to give a guarantee in respect of the goods applies.
- (8) The period of a provisional remedy in respect of goods ceases (if it has not already expired) when the dumping investigation or, as the case may be, the subsidisation investigation in relation to the goods terminates.

*Extension of the period of a provisional remedy in a dumping investigation*

- 16 (1) Regulations may make provision for, or in connection with, the extension by the Secretary of State, on the recommendation of the TRA, of the period of a provisional remedy which has been applied in respect of goods in the case of a dumping investigation.
- (2) Any such extension must not result in the period of the provisional remedy being a period of more than 9 months beginning with the date when the requirement to give a guarantee in respect of goods first applied.
- (3) The regulations must require that if the period of a provisional remedy is extended, the Secretary of State—
- (a) publishes a revised notice under paragraph 15(5)(b) containing the revised period of the provisional remedy in accordance with the TRA’s recommendation, and
  - (b) notifies interested parties (see paragraph 32(3)) accordingly.

## PART 4

### DEFINITIVE REMEDIES: ANTI-DUMPING AMOUNT OR COUNTERVAILING AMOUNT

#### *TRA's duty to recommend an anti-dumping amount or countervailing amount*

- 17 (1) This paragraph applies where the TRA makes a final affirmative determination in relation to goods which are the subject of a dumping or a subsidisation investigation.
- (2) Goods in relation to which that determination is made are referred to in this paragraph as relevant goods.
- (3) In the case of a dumping investigation, the TRA may recommend to the Secretary of State—
- (a) that an additional amount of import duty (referred to in this Schedule as an “anti-dumping amount”) should be applicable for a specified period to all the relevant goods except, in the case of goods in respect of which an undertaking is accepted under provision made by or under Part 5, during any period when the undertaking applies, and
  - (b) how an anti-dumping amount applicable to the relevant goods should be determined.
- (4) In the case of a subsidisation investigation, the TRA may recommend to the Secretary of State—
- (a) that an additional amount of import duty (referred to in this Schedule as a “countervailing amount”) should be applicable for a specified period to all the relevant goods except, in the case of goods in respect of which an undertaking is accepted under provision made by or under Part 5, during any period when the undertaking applies, and
  - (b) how a countervailing amount applicable to the relevant goods should be determined.
- (5) The TRA may make a recommendation under sub-paragraph (3) or (4) only if it is satisfied that the application of an anti-dumping amount or a countervailing amount in accordance with its recommendation meets the economic interest test (see paragraph 25).
- (6) The TRA may make different recommendations under sub-paragraph (3) or (4) for different relevant goods or descriptions of relevant goods, including by reference to—
- (a) specified overseas exporters or descriptions of overseas exporters;
  - (b) specified foreign countries or territories or descriptions of foreign countries or territories.
- (7) But the TRA may only make one recommendation under sub-paragraph (3) or, as the case may be, sub-paragraph (4) in relation to any particular relevant good.
- (8) And the TRA may make different recommendations under sub-paragraph (3) or (4) for different relevant goods or descriptions of relevant goods only if the recommendations which it makes under that sub-paragraph when taken together cover all the relevant goods.
- (9) If the TRA determines that there are one or more recommendations which it could make under sub-paragraph (3) or, as the case may be, sub-paragraph (4), it must

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make that recommendation or those recommendations (subject to sub-paragraphs (7) and (8)).

- (10) If the TRA determines that there is no recommendation which it could make under sub-paragraph (3) or (4) (as the case may be), it must—
- (a) publish notice of its final affirmative determination in relation to the goods,
  - (b) publish notice of its determination that there is no recommendation which it could make under sub-paragraph (3) or (4), and
  - (c) notify the Secretary of State and interested parties (see paragraph 32(3)) accordingly.

*TRA's recommendations about an anti-dumping amount or a countervailing amount*

- 18 (1) This paragraph applies to a recommendation by the TRA under paragraph 17(3) or (4) in relation to goods.
- (2) The specified period referred to in paragraph 17(3)(a) or (4)(a)—
- (a) must be a period of 5 years unless the TRA considers that a lesser period is sufficient to counteract—
    - (i) the dumping of the goods which has caused or is causing injury to a UK industry in the goods, or
    - (ii) the importation of the subsidised goods which has caused or is causing injury to a UK industry in the goods, and
  - (b) if the recommendation is accepted by the Secretary of State, must begin on the day after the date of publication of the public notice under section 13 giving effect to the recommendation (see paragraph 20(5)(c)) unless the TRA is authorised by regulations under paragraph 19 to recommend a date before then.
- (3) In the case of a recommendation of such a prior date made by virtue of paragraph 19, the reference in sub-paragraph (2)(a) to a period of 5 years is to be read as a reference to a period of 5 years plus the relevant period (within the meaning of paragraph 19).
- (4) See also paragraph 21 regarding the possibility, following a review, of extensions or variations to the period for which an anti-dumping amount or a countervailing amount applies to goods.
- (5) The recommendation referred to in paragraph 17(3)(b) or (4)(b) as to how an anti-dumping amount or a countervailing amount applicable to goods should be determined may be by reference to either or both of the following—
- (a) the value of the goods, and
  - (b) the weight or volume of the goods or any other measure of their quantity or size.
- (6) But that recommendation must be such that an anti-dumping amount or a countervailing amount applicable to goods does not exceed—
- (a) the margin of dumping or, as the case may be, the amount of the subsidy, in relation to the goods, or
  - (b) the amount which the TRA is satisfied would be adequate to remove the injury to a UK industry in the goods if that amount is less than the margin of dumping or, as the case may be, the amount of the subsidy referred to in paragraph (a).

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- (7) Regulations may make provision for the purposes of sub-paragraph (6)(b) about how the amount which the TRA is satisfied would be adequate to remove the injury described in that provision is to be determined.
- (8) A recommendation under paragraph 17(3) or (4) must include such other content as regulations may require.
- 19 (1) Regulations may make provision authorising the TRA, in specified circumstances, to recommend under paragraph 17(3) or (4) that the specified period for which an anti-dumping amount or a countervailing amount should apply to goods begins on a date (“the relevant date”) before the day after the date of publication of the public notice under section 13 giving effect to the recommendation.
- (2) Such a recommendation may only be made in relation to goods in respect of which a requirement to give a guarantee under paragraph 15 is applied (“the provisional remedy”).
- (3) “The relevant date” must be—
- (a) in a case where a notice under paragraph 29(1) (registration) has been published in respect of the goods—
    - (i) a date during the period of 90 days before the beginning of the period of the provisional remedy provided it is not a date before the date of publication of that notice, or
    - (ii) a date during the period of the provisional remedy, or
  - (b) in any other case, a date during the period of the provisional remedy.
- (4) Regulations may provide that, in the case of a recommendation made by virtue of sub-paragraph (1), the recommendation as to how an anti-dumping amount or a countervailing amount should be determined must be such that an anti-dumping amount or a countervailing amount applicable for all or part of the relevant period must not exceed a particular amount.
- (5) “The relevant period” is the period—
- (a) beginning with the relevant date, and
  - (b) ending with the date of publication of the public notice under section 13 giving effect to the recommendation.

*Secretary of State’s power to accept or reject a recommendation*

- 20 (1) If the TRA makes a recommendation under paragraph 17(3) or (4), the Secretary of State must decide whether to accept or reject the recommendation.
- (2) The Secretary of State may reject the recommendation only if the Secretary of State is satisfied that it is not in the public interest to accept it.
- (3) In considering that, the Secretary of State must accept the TRA’s determination that the application of an anti-dumping amount or a countervailing amount to goods in accordance with the recommendation meets the economic interest test (see paragraph 25), unless the Secretary of State is satisfied that the determination is not one that the TRA could reasonably have made.
- (4) If the recommendation is rejected, the Secretary of State must—
- (a) publish notice of the TRA’s final affirmative determination in relation to the goods, of the recommendation and of the rejection of it,

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- (b) notify interested parties (see paragraph 32(3)) accordingly, and
  - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (5) If the recommendation is accepted, the Secretary of State—
- (a) must publish notice of the TRA’s final affirmative determination in relation to the goods, of the recommendation and of the acceptance of it,
  - (b) must notify interested parties accordingly, and
  - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (6) See paragraphs 21 and 22 for variation or revocation of the application of an anti-dumping amount or a countervailing amount.

*Reviews of continuing application of an anti-dumping amount or a countervailing amount*

- 21 (1) Regulations may make provision for, or in connection with, reviews by the TRA of the continuing application of an anti-dumping amount or a countervailing amount to goods.
- (2) References in this paragraph to “a review” are to a review by virtue of provision made under sub-paragraph (1).
- (3) Regulations under sub-paragraph (1) may, among other things, provide for a review to consider—
- (a) whether the continuing application of an anti-dumping amount or a countervailing amount to goods is necessary or sufficient to offset—
    - (i) in the case of an anti-dumping amount, the dumping of the goods which has caused or is causing injury to a UK industry in the goods, or
    - (ii) in the case of a countervailing amount, the importation of the subsidised goods which has caused or is causing injury to a UK industry in the goods;
  - (b) whether the application of an anti-dumping amount or a countervailing amount to goods is having the effect of removing injury to a UK industry in the goods;
  - (c) whether injury to a UK industry in the goods would be likely to continue or recur if the application of an anti-dumping amount or a countervailing amount to the goods were to expire, or it were to be varied or revoked;
  - (d) whether activity is being undertaken to circumvent the application of an anti-dumping amount or a countervailing amount to goods and whether the application should be varied to prevent that;
  - (e) whether the application of an anti-dumping amount or a countervailing amount to goods in the case of a particular overseas exporter, or a particular description of overseas exporter, should be varied;
  - (f) the goods or description of goods to which an anti-dumping amount or a countervailing amount is applicable.
- (4) Regulations under sub-paragraph (1) may, among other things, make—
- (a) provision for the TRA to investigate certain matters;
  - (b) provision for the period for which an anti-dumping amount or a countervailing amount applies to goods by public notice under section 13 to

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- be treated as continuing (where it would otherwise cease to do so) while a review in relation to the application of the amount is ongoing;
- (c) provision for the suspension, by public notice given by the Secretary of State, of the application of an anti-dumping amount or a countervailing amount while a review in relation to it is ongoing;
  - (d) other provision about the conduct of a review.
- (5) Paragraph 10(2) applies to regulations made by virtue of sub-paragraph (4)(d) in relation to a review as it applies to regulations under paragraph 10(1) in relation to an investigation.
- (6) Regulations may make provision for or in connection with—
- (a) the TRA recommending to the Secretary of State that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked, and
  - (b) the Secretary of State accepting or rejecting such a recommendation.
- (7) Where, by virtue of provision made under sub-paragraph (6), the Secretary of State accepts a recommendation that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked, the Secretary of State—
- (a) must publish notice of the recommendation and of the acceptance of it,
  - (b) must notify interested parties (see paragraph 32(3)) accordingly, and
  - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (8) The variation of the application of an anti-dumping amount or a countervailing amount to goods which the TRA may recommend to the Secretary of State by virtue of regulations under sub-paragraph (6) may, among other things, include—
- (a) varying the goods or descriptions of goods to which an anti-dumping amount or a countervailing amount is applicable (including so that it is applicable to goods or descriptions of goods to which it has not previously been applicable);
  - (b) varying the period for which an anti-dumping amount or a countervailing amount is applicable (including extending it beyond the period referred to in paragraph 18(2)(a));
  - (c) varying how an anti-dumping amount or a countervailing amount should be determined.
- (9) Regulations under sub-paragraph (6) may provide that the TRA may recommend that the application of an anti-dumping amount or a countervailing amount as varied should be applicable to goods from a date (“the relevant date”) before the date of publication of the public notice under section 13 giving effect to the recommendation.
- (10) Such a recommendation may only be made if—
- (a) a notice under paragraph 29(1) (registration) has been published in respect of the goods, and
  - (b) the relevant date is not a date before the date of publication of that notice.

*Variation or revocation following an international dispute decision*

- 22 (1) Regulations may make provision for or in connection with—

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- (a) the TRA recommending to the Secretary of State that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked in light of an international dispute decision, and
  - (b) the Secretary of State accepting or rejecting such a recommendation.
- (2) The regulations may, among other things—
- (a) provide for the TRA to investigate certain matters for the purposes of determining whether to make a recommendation to the Secretary of State and what to recommend;
  - (b) make provision about the conduct of such an investigation;
  - (c) provide for the suspension, by public notice given by the Secretary of State, of the application of an anti-dumping amount or a countervailing amount.
- (3) Paragraph 10(2) applies to regulations made by virtue of sub-paragraph (2)(b) in relation to an investigation as it applies to regulations under paragraph 10(1) in relation to a dumping or a subsidisation investigation.
- (4) Where, by virtue of provision made under the regulations, the Secretary of State accepts a recommendation that the application of an anti-dumping amount or a countervailing amount to goods should be varied or revoked, the Secretary of State—
- (a) must publish notice of the recommendation and of the acceptance of it,
  - (b) must notify interested parties (see paragraph 32(3)) accordingly, and
  - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (5) The variation of the application of an anti-dumping amount or a countervailing amount to goods which the regulations may provide for may, among other things, include any of the variations mentioned in paragraph 21(8).
- (6) An “international dispute decision” means—
- (a) a report of a panel or Appellate Body that is adopted by the Dispute Settlement Body of the WTO, or
  - (b) if not within paragraph (a), a decision under the dispute settlement procedures of an arrangement relating to trade to which Her Majesty’s government in the United Kingdom is a party with the government of another country or territory.

## PART 5

### UNDERTAKINGS

#### *Acceptance of undertakings*

- 23 (1) Where the TRA determines to recommend to the Secretary of State under paragraph 17(3) or (4) that an anti-dumping amount or a countervailing amount should be applicable to goods, the TRA may also recommend to the Secretary of State the acceptance of an undertaking in respect of the goods.
- (2) In this Part, an “undertaking” means—
- (a) in the case of the dumping of goods, an undertaking offered by an overseas exporter of the goods—

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- (i) to revise the overseas exporter's prices for export to the United Kingdom, or
    - (ii) to cease exports to the United Kingdom at prices which cause the goods to be dumped;
  - (b) in the case of subsidised goods—
    - (i) an undertaking offered by an overseas exporter of the goods to revise the overseas exporter's prices for export to the United Kingdom, or
    - (ii) an undertaking offered by a relevant foreign government to eliminate or limit the importation into the United Kingdom of the subsidised goods or to take other measures concerning its effects.
- (3) "A relevant foreign government" means the government of a foreign country or territory—
  - (a) which granted one or more of the countervailable subsidies in question, or
  - (b) within whose territory is located a foreign authority which granted one or more of those subsidies.
- (4) Regulations may make provision about—
  - (a) recommendations by the TRA under sub-paragraph (1);
  - (b) the acceptance of undertakings by the Secretary of State on such a recommendation.
- (5) The regulations must secure that the TRA may request an undertaking in respect of goods only—
  - (a) at a time after it has made a provisional affirmative determination in relation to the goods, and
  - (b) if such other requirements as the regulations may specify are met.
- (6) The regulations must secure that the TRA may recommend the acceptance of an undertaking in respect of goods to the Secretary of State only if it is satisfied that—
  - (a) the undertaking is sufficient to eliminate the injurious effect of—
    - (i) the dumping of the goods to a UK industry in those goods, or
    - (ii) the importation of the subsidised goods to a UK industry in those goods,
  - (b) acceptance of the undertaking meets the economic interest test (see paragraph 25), and
  - (c) it is appropriate to accept the undertaking.
- (7) The regulations may make provision for the purposes of sub-paragraph (6)(c) about the circumstances where it is or is not appropriate to accept an undertaking.
- (8) Those circumstances may include that the terms and conditions of an undertaking include provision for the provision of information to enable the monitoring of compliance with the undertaking.
- (9) The regulations must require that if the Secretary of State accepts an undertaking, the Secretary of State—
  - (a) publishes a notice to that effect, and
  - (b) notifies interested parties (see paragraph 32(3)) accordingly.

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*Reviews of undertakings etc*

- 24 (1) Regulations may make provision for or in connection with—
- (a) monitoring compliance with an undertaking;
  - (b) investigations by the TRA of breach of an undertaking;
  - (c) reviews by the TRA of the continuing application of an undertaking;
  - (d) the circumstances in which an undertaking ceases to apply;
  - (e) the acceptance of a new undertaking in place of an existing undertaking.
- (2) Regulations under sub-paragraph (1)(c) may, among other things, provide for a review to consider—
- (a) whether the continuing application of the undertaking is sufficient to eliminate the injurious effect of—
    - (i) the dumping of the goods to a UK industry in the goods, or
    - (ii) the importation of the subsidised goods to a UK industry in the goods;
  - (b) whether the continuing application of the undertaking is appropriate.
- (3) Paragraph 10(2) applies to regulations under sub-paragraph (1)(b) or (c) in relation to an investigation or review as it applies to regulations under paragraph 10(1) in relation to a dumping or a subsidisation investigation.
- (4) The reference in sub-paragraph (1)(e) to the acceptance of a new undertaking is to the acceptance of an undertaking in respect of goods by the Secretary of State, on the recommendation of the TRA.
- (5) Sub-paragraphs (4) and (6) to (9) of paragraph 23 apply to regulations under sub-paragraph (1)(e) in relation to the acceptance of new undertakings by virtue of those regulations as they apply to the acceptance of undertakings by virtue of regulations under paragraph 23(4).
- (6) References in sub-paragraph (1) to an “undertaking” (other than the reference in sub-paragraph (1)(e) to a “new undertaking”) are to an undertaking accepted by the Secretary of State by virtue of regulations under paragraph 23(4) or sub-paragraph (1)(e).

**PART 6**

SUPPLEMENTARY

*The economic interest test*

- 25 (1) This paragraph applies if the TRA or the Secretary of State is considering, for the purposes of this Schedule, whether the TRA or the Secretary of State is satisfied that the application of an anti-dumping remedy or anti-subsidy remedy meets or does not meet the economic interest test.
- (2) The economic interest test is met in relation to the application of an anti-dumping remedy or anti-subsidy remedy if the application of the remedy is in the economic interest of the United Kingdom.

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- (3) That test is presumed to be met unless the TRA or, as the case may be, the Secretary of State is satisfied that the application of the remedy is not in the economic interest of the United Kingdom.
- (4) When considering whether the application of an anti-dumping remedy or anti-subsidy remedy is not in the economic interest of the United Kingdom, the TRA or the Secretary of State must—
- (a) take account of the following so far as relevant—
    - (i) the injury caused by the dumping of the goods, or the importation of the subsidised goods, to a UK industry in the goods and the benefits to that UK industry in removing that injury,
    - (ii) the economic significance of affected industries and consumers in the United Kingdom,
    - (iii) the likely impact on affected industries and consumers in the United Kingdom,
    - (iv) the likely impact on particular geographic areas, or particular groups, in the United Kingdom, and
    - (v) the likely consequences for the competitive environment, and for the structure of markets for goods, in the United Kingdom, and
  - (b) take account of such other matters as the TRA or, as the case may be, the Secretary of State considers relevant.
- (5) In this paragraph—
- (a) references to the application of an anti-dumping remedy are to—
    - (i) requiring the giving of a guarantee under paragraph 15,
    - (ii) applying an anti-dumping amount to goods, or
    - (iii) accepting an undertaking under provision made by or under Part 5;
  - (b) references to the application of an anti-subsidy remedy are to—
    - (i) requiring the giving of a guarantee under paragraph 15,
    - (ii) applying a countervailing amount to goods, or
    - (iii) accepting an undertaking under provision made by or under Part 5;
  - (c) “affected industries and consumers” means industries and consumers that would be affected if the anti-dumping remedy or anti-subsidy remedy were, or were not, to be applied;
  - (d) “industries” includes—
    - (i) the UK industry referred to in sub-paragraph (4)(a)(i) and other producers of goods,
    - (ii) suppliers of goods or services, and
    - (iii) importers, distributors and retailers of goods;
  - (e) “consumers” includes users of goods or services.

#### *Suspension of anti-dumping or anti-subsidy remedies*

- 26 (1) Regulations may make provision for or in connection with—
- (a) the TRA recommending to the Secretary of State that the application of an anti-dumping remedy or anti-subsidy remedy should be suspended, and
  - (b) the Secretary of State accepting or rejecting such a recommendation.

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- (2) The regulations must secure that the TRA may make such a recommendation to the Secretary of State only if the TRA is satisfied that market conditions have temporarily changed such that the injury caused to a UK industry in the goods would be unlikely to recur as a result of the suspension.
- (3) Regulations may make provision for the purposes of sub-paragraph (2) about what constitutes or does not constitute “market conditions” or a temporary change in such conditions.
- (4) Regulations under sub-paragraph (1) may, among other things, make—
  - (a) provision for the TRA to investigate certain matters;
  - (b) provision about the conduct of such an investigation;
  - (c) provision about the period for which a suspension may have effect;
  - (d) provision about whether that period counts towards the period for which the suspended remedy applies.
- (5) Paragraph 10(2) applies to regulations under sub-paragraph (4)(b) in relation to an investigation as it applies to regulations under paragraph 10(1) in relation to a dumping or a subsidisation investigation.
- (6) Where, by virtue of provision made under sub-paragraph (1), the Secretary of State accepts a recommendation that the application of an anti-dumping remedy or anti-subsidy remedy should be suspended, the Secretary of State—
  - (a) must publish notice of the recommendation and of the acceptance of it,
  - (b) must notify interested parties (see paragraph 32(3)) accordingly, and
  - (c) is required under section 13 to make provision by public notice to give effect to the recommendation.
- (7) References in this paragraph to the application of an anti-dumping remedy or anti-subsidy remedy have the same meaning as in paragraph 25.

*Not subject to both application of an anti-dumping amount and a countervailing amount*

- 27 (1) An anti-dumping amount is not applicable to goods if a countervailing amount is already applicable to the goods (and vice versa) for the purpose of dealing with the same situation arising from the dumping of goods or export subsidisation.
- (2) Regulations may make provision about what constitutes or does not constitute “export subsidisation” for those purposes.

*Investigations regarding repayments and discharge of a guarantee*

- 28 (1) Regulations may provide for the TRA to investigate specified matters for the purpose of determining whether—
  - (a) a repayment of an anti-dumping amount or a countervailing amount, or interest paid in respect of any such amounts, should be made under regulations made under paragraph 10 of Schedule 6;
  - (b) the whole or a part of a guarantee given under paragraph 15 should be discharged under regulations made under paragraph 6 of Schedule 6.
- (2) The regulations may make provision about the conduct of any such investigation.

- (3) Paragraph 10(2) applies to those regulations in relation to such an investigation as it applies to regulations under paragraph 10(1) in relation to a dumping or a subsidisation investigation.

#### *Registration*

- 29 (1) The Secretary of State may publish a notice of goods—
- (a) which are the subject of an investigation or other proceedings under provision made by or under this Schedule, and
  - (b) to which an anti-dumping amount or a countervailing amount may be applied or the existing application of an anti-dumping amount or a countervailing amount to which may be varied.
- (2) HMRC must register goods in respect of which such a notice is published.
- (3) Regulations may make provision for, or in connection with, the registration by HMRC of goods—
- (a) to which an anti-dumping amount or a countervailing amount may be applied, or
  - (b) the existing application of an anti-dumping amount or a countervailing amount to which may be varied.

#### *Reconsideration, reviews and appeals*

- 30 Regulations may make provision for or in connection with—
- (a) the reconsideration by the TRA of decisions made by the TRA under provision made by or under this Schedule, and
  - (b) the review or appeal of decisions made by the TRA or the Secretary of State under provision made by or under this Schedule.

#### *Notices*

- 31 (1) Where a notice is required to be published or given by a provision made by or under this Schedule, regulations may make provision about—
- (a) the form of the notice;
  - (b) its content;
  - (c) the manner of publication;
  - (d) the means by which it is given;
  - (e) the time or date on which it is published or given or is to be treated as published or given.
- (2) Such regulations may, among other things, provide—
- (a) for some of the content of the notice to be contained in a separate report to which the notice refers, and
  - (b) for that report to be published or for it to be given, or otherwise made available to, the persons to whom the notice is required to be given.
- (3) The provision made by regulations under this paragraph about the content of a notice is in addition to any such provision made by or under any other provision of this Schedule.

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- (4) Sub-paragraph (1)(c) does not apply to a public notice under provision made under paragraph 21(4)(c) or 22(2)(c) (see section 37(5)).

### *Interpretation*

32 (1) In this Schedule—

- “anti-dumping amount” has the meaning given by paragraph 17(3);
  - “the amount of the subsidy”, in relation to goods, has the meaning given by paragraph 4;
  - “countervailable subsidy” has the meaning given by paragraph 3(2);
  - “countervailing amount” has the meaning given by paragraph 17(4);
  - “dumped” and “dumping” have the meaning given by paragraph 1(1);
  - “dumping investigation” has the meaning given by paragraph 8(2);
  - “final affirmative determination”, in relation to goods, has the meaning given by paragraph 11(6)(a);
  - “final negative determination”, in relation to goods, has the meaning given by paragraph 11(6)(b);
  - “foreign authority” has the meaning given by paragraph 3(4);
  - “foreign country or territory” means a country or territory outside the United Kingdom;
  - “importer” of goods means a person liable to pay import duty in respect of the goods;
  - “injury” to a UK industry in particular goods has the meaning given by paragraph 5;
  - “interested parties” has the meaning given by sub-paragraph (3);
  - “like goods”, in relation to goods, has the meaning given by paragraph 7;
  - “the margin of dumping”, in relation to goods, has the meaning given by paragraph 2;
  - “overseas exporter” means a person outside the United Kingdom that exports goods to the United Kingdom;
  - “the period of a provisional remedy”, in respect of goods, has the meaning given by paragraph 15(7);
  - “provisional affirmative determination”, in relation to goods, has the meaning given by paragraph 11(3);
  - “regulations” means regulations made by the Secretary of State;
  - “subsidisation investigation” has the meaning given by paragraph 8(4);
  - “subsidised” and “subsidisation” have the meaning given by paragraph 3(1);
  - “subsidy” has the meaning given by paragraph 3(3);
  - “UK industry”, in particular goods, has the meaning given by paragraph 6;
  - “the WTO Agreement” means the agreement establishing the WTO signed at Marrakesh on 15 April 1994.
- (2) References in this Schedule to the economic interest test are to be construed in accordance with paragraph 25.
- (3) References in a provision of this Schedule to “interested parties” means the governments of such foreign countries or territories, or such other persons, as may

be specified in regulations made under this sub-paragraph for the purposes of the provision in question.