

SCHEDULES

SCHEDULE 4

DUMPING OF GOODS OR FOREIGN SUBSIDIES CAUSING INJURY TO UK INDUSTRY

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;

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- (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 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).
- (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.

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- (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,
 - (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 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.

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- (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—
- (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.