
STATUTORY INSTRUMENTS

2019 No. 450

**EXITING THE EUROPEAN UNION
CUSTOMS**

**The Trade Remedies (Dumping and
Subsidisation) (EU Exit) Regulations 2019**

<i>Made</i>	- - - -	<i>at 5.05 p.m. on 4th March 2019</i>
<i>Laid before the House of Commons</i>	- - - -	<i>5th March 2019</i>
<i>Coming into force</i>	- -	<i>6th March 2019</i>

The Secretary of State for International Trade, in exercise of the powers conferred by sections 13, 32(7) and (8), 51 and 56 of, and Schedule 4 to, the Taxation (Cross-border Trade) Act 2018⁽¹⁾, makes the following Regulations.

PART 1

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

(2) These Regulations come into force on 6th March 2019.

(3) These Regulations have effect subject to the modifications in Part 13 until the TRA is established.

(4) Following the establishment of the TRA, any preliminary decision or determination made by the Secretary of State under Parts 7, 9, 11 and 12 of these Regulations as modified by Part 13, has effect as though it were a recommendation made by the TRA under the corresponding unmodified provision.

(5) 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.

(6) 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.

(7) 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.

(8) A “transitional function” is a function which—

- (a) is conferred on the Secretary of State by the Part 13 these Regulations,
- (b) corresponds to a function that will, following the establishment of the TRA, be exercisable by the TRA under Parts 2 to 12 of these Regulations, and
- (c) following the establishment of the TRA, will not be exercisable by the Secretary of State.

Interpretation

2. In these Regulations—

“absorption review” has the meaning given by regulation 72 (absorption review);

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

“applicant UK industry” has the meaning given by paragraph 9(1)(a)(i) of Schedule 4 to the Act;

“application” means an application referred to in paragraph 9(1)(a) of Schedule 4 to the Act;

“circumvention review” has the meaning given by regulation 73 (circumvention review);

“comparable price” in relation to goods means the price of the goods, in the ordinary course of trade, destined for consumption in the exporting country or territory;

“contributor” means a person other than an interested party who has made themselves known to the TRA for the purpose of participating in an investigation or a review;

“expiry review” has the meaning given by regulation 70 (expiry review);

“the export price” in relation to goods means the price determined by the TRA in accordance with regulation 15 (export price);

“exporting country or territory” has the meaning given by regulation 3 (exporting country or territory);

“facilitation visit” means a visit conducted by the TRA, other than a verification visit, for the purpose of facilitating the progress of an investigation;

“goods concerned” means the goods described in the relevant notice of initiation of a dumping investigation under regulation 65(1) or of a subsidisation investigation under regulation 65(2);

“goods identified” means the goods in relation to which the applicant UK industry is requesting the TRA to conduct an investigation;

“goods subject to review” means the goods described in the notice of initiation of a review under paragraph 1 of Schedule 3;

“interested party” means—

- (a) a government of the relevant foreign country or territory;
- (b) an overseas exporter or importer of the goods concerned or the goods subject to review;
- (c) a trade or business association of producers, overseas exporters or importers of the goods concerned or the goods subject to review;
- (d) a producer of the like goods in the United Kingdom; or
- (e) a trade or business association of UK producers of the like goods;

“interim review” has the meaning given by regulation 69 (interim review);

“investigation” means a dumping investigation or a subsidisation investigation;

“minimal” means—

- (a) in the case of dumping, a dumping margin of less than 2 per cent. expressed as a percentage of the export price;
- (b) subject to paragraph (c), in the case of subsidisation, an amount of subsidy of less than 1 per cent. ad valorem; or
- (c) where the exporting country or territory is a developing foreign country or territory in sub-paragraph (b), for 1 per cent. substitute 2 per cent.;

“new exporter” has the meaning given by regulation 71 (new exporter review);

“new exporter review” has the meaning given by regulation 71 (new exporter review);

“non-confidential summary” has the meaning given by regulation 45(6)(a);

“period of investigation” means a period of at least one year ending as close as possible to the date of the initiation of the investigation or such other period as the TRA considers appropriate;

prices are “depressed” or there is a “depressing” effect on prices where prices in the United Kingdom of the like goods are reduced;

prices are “suppressed” or there is a “suppressing” effect on prices where price increases in the United Kingdom of the like goods, which would otherwise have occurred, are prevented;

“price undercutting” means the price of the goods concerned or the goods subject to review is lower than the price of the like goods in the United Kingdom;

“review applicant” means a person who applies to the TRA for the initiation of a review;

“review application” means an application for a review made in accordance with Part 7;

“scope review” has the meaning given by regulation 74 (scope review);

“statement of essential facts” has the meaning given by regulation 62(1)(a);

“statement of reasons” has the meaning given by regulation 45(6)(b);

“subsidised imports” means goods that benefit from a countervailable subsidy that are imported into the United Kingdom;

“UK producer” has the meaning given by regulation 29 (disregarding a producer for the purpose of the definition of a UK industry);

“verification visit” means a visit conducted by the TRA to any premises the principal purpose of which is to verify information supplied to it in or with a completed questionnaire referred to in regulation 54 (registration of interest and the issuing of questionnaires);

“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(2).

Meaning of “exporting country or territory”

3.—(1) For the purpose of these Regulations, the exporting country or territory of goods means the foreign country or territory from which the goods are exported.

(2) But the TRA may in appropriate circumstances consider the foreign country or territory of origin of the goods as the exporting country or territory where the goods are not exported directly to the United Kingdom from that foreign country or territory.

(3) The circumstances referred to in paragraph (2) include circumstances where—

(2) 1971 c.80.

- (a) the goods are merely transhipped through the foreign country or territory from which they are directly exported;
- (b) the goods are not produced in the foreign country or territory from which they are directly exported;
- (c) there is no comparable price in the foreign country or territory from which the goods are directly exported.

Meaning of “negligible” in relation to dumped goods

4. For the purpose of these Regulations, the volume of dumped goods is negligible where the exporting country or territory accounts for less than 3 per cent. of imports of the like goods imported into the United Kingdom, except where the exporting countries or territories individually account for less than 3 per cent. of imports of the like goods imported into the United Kingdom but collectively account for more than 7 per cent. of imports of the like goods into the United Kingdom.

Meaning of “negligible” in relation to subsidised imports

5.—(1) For the purpose of these Regulations, whether or not the volume of subsidised imports is negligible, in respect of an exporting country or territory that is not a developing country or territory, is determined in accordance with paragraph (2), and in respect of an exporting country or territory that is a developing country or territory, is determined in accordance with paragraph (3).

(2) The volume of subsidised imports is negligible where the exporting country or territory that is not a developing country or territory accounts for less than 3 per cent. of imports of the like goods imported into the United Kingdom, except where the exporting countries or territories individually account for less than 3 per cent. of imports of the like goods imported into the United Kingdom but collectively account for more than 7 per cent. of imports of the like goods imported into the United Kingdom.

(3) The volume of subsidised imports is negligible where the exporting country or territory is a developing country or territory and imports from such a country or territory account for less than 4 per cent. of imports of the like goods imported into the United Kingdom, except where the developing countries or territories individually accounts for less than 4 per cent. of imports of the like goods imported into the United Kingdom, but collectively account for more than 9 per cent. of imports of the like goods imported into the United Kingdom.

PART 2

Dumping

CHAPTER 1

Introduction

Purpose of Part 2

6.—(1) This Part applies where the TRA is required to determine whether goods have been or are being dumped into the United Kingdom in accordance with paragraph 1 of Schedule 4 to the Act.

- (2) In order to make such a determination the TRA must—
 - (a) determine the normal value of the goods concerned;
 - (b) determine the export price of the goods concerned; and

- (c) carry out a fair comparison between the normal value and the export price to establish whether the export price is lower than the normal value.

CHAPTER 2

Determination of the normal value

Normal value

7.—(1) The TRA must use the comparable price to determine the normal value unless it is not appropriate to use that price.

(2) For the purpose of paragraph 1(2) of Schedule 4 to the Act, it is not appropriate to use the comparable price to determine the normal value of the goods concerned where—

- (a) there are no sales of the like goods in the ordinary course of trade in the domestic market of the exporting country or territory;
- (b) because, of a particular market situation or the low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison between the like goods destined for consumption in the exporting country or territory and the goods concerned; or
- (c) the overseas exporter in the exporting country or territory does not sell the like goods on the domestic market of the exporting country or territory.

(3) For the purpose of paragraph (2)(b), the volume of sales of the like goods destined for consumption in the domestic market of the exporting country or territory is sufficient to permit a proper comparison where—

- (a) the sales constitute 5 per cent. or more of the volume of sales of the goods concerned exported to the United Kingdom; or
- (b) the sales constitute less than 5 per cent. of the volume of sales of the goods concerned exported to the United Kingdom but the TRA considers they are sufficient.

(4) For the purpose of paragraph (2)(b), a “particular market situation” includes situations where—

- (a) prices are artificially low;
- (b) there is significant barter trade;
- (c) prices reflect non-commercial factors.

Alternative methodologies to determine the normal value

8.—(1) Where there is no comparable price, or it is not appropriate to use the comparable price in accordance with regulation 7(2), the TRA must determine the normal value of the goods—

- (a) by determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits;
- (b) by determining the price of the like goods when exported to an appropriate third country or territory provided that price is representative (see regulation 10); or
- (c) in accordance with regulation 14 (normal value in respect of imports from particular foreign countries and territories) where that regulation applies.

(2) Where regulation 7(2)(c) applies, the TRA may also calculate the normal value on the basis of the data from other overseas exporters of the goods concerned in the exporting country or territory.

The ordinary course of trade

9.—(1) The TRA may consider the sales of the like goods in the exporting country or territory as not being in the ordinary course of trade where—

- (a) the goods are sold at prices below the per unit (fixed and variable) costs of production plus administrative, selling and general costs;
- (b) the goods are sold between parties that the TRA considers to be associated unless the TRA is satisfied that the relationship has no effect on prices; or
- (c) it otherwise considers it appropriate.

(2) For the purpose of paragraph (1)(a), the TRA may only regard such sales as not being in the ordinary course of trade where it considers that the sales are made—

- (a) within an extended period of time;
- (b) in substantial quantities; and
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(3) For the purpose of paragraph (2), the TRA may consider that prices provide for the recovery of costs within a reasonable period of time, even where they are below per unit costs at the time of sale, provided that they are above weighted average per unit costs for the period of investigation.

(4) For the purpose of this regulation—

- (a) “per unit costs of production” means the total costs of production determined in accordance with regulation 11 (costs of production) divided by the production volume;
- (b) an “extended period of time” is normally one year but it may be as short as six months if the TRA considers that appropriate;
- (c) sales below per unit costs are regarded as made in substantial quantities where the TRA establishes that—
 - (i) the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs calculated by reference to the sales volume; or
 - (ii) the volume of sales below per unit costs represent not less than 20 per cent. of the volume sold in the transactions under consideration for the determination of the normal value;
- (d) the “administrative, selling and general costs” means an amount calculated in accordance with regulation 12 (the amounts for administrative, selling and general costs and for profits) disregarding an amount for profits; and
- (e) parties are “associated” where they meet the definition of “related persons” in the Customs (Import Duty) (EU Exit) Regulations 2018(3)

Appropriate third country or territory and representative price

10. For the purpose of making a determination under regulation 8(1)(b), the TRA may take the following into account—

- (a) whether the volume of trade from the exporting country or territory to the third country or territory is similar to the volume of trade from the exporting country or territory to the United Kingdom;
- (b) whether the overseas exporter’s sales to the third country or territory are in the ordinary course of trade; and

- (c) any other factors it considers relevant.

Costs of production

11.—(1) The TRA must determine the costs of production of the like goods in the exporting country or territory for the purpose of regulation 8(1)(a) in accordance with this regulation.

(2) Where paragraph (3) applies, costs of production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned.

(3) This paragraph applies where the records of the overseas exporter of the goods concerned—

- (a) are in accordance with generally accepted accounting principles of the exporting country or territory; and
- (b) reasonably reflect the costs associated with the production and sale of the like goods in the exporting country or territory.

(4) In making a determination under this regulation the TRA must—

- (a) consider any evidence on the proper allocation of costs provided that such allocations have been historically utilised by the overseas exporter, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs;
- (b) adjust costs where appropriate for non-recurring items of cost which benefit future or current production;
- (c) adjust costs where they are affected by start-up operations; and
- (d) take into account any other factors it considers relevant.

(5) Where the records of the overseas exporter do not meet the criteria in paragraph (3) the costs of production may be calculated by the TRA using any other reasonable basis.

(6) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).

The amounts for administrative, selling and general costs and for profits

12.—(1) The TRA must determine a reasonable amount for administrative, selling and general costs and for profits for the purpose of regulation 8(1)(a) in accordance with this regulation.

(2) Subject to paragraph (3), the TRA must determine reasonable amounts for the administrative, selling and general costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.

(3) Where the TRA cannot determine reasonable amounts in accordance with paragraph (2), it may determine them on the basis of—

- (a) the actual amounts incurred and realised by the overseas exporter in question in respect of production and sales in the domestic market of the exporting country or territory of the same general category of goods;
- (b) the weighted average of the amounts incurred and realised by other overseas exporters subject to investigation in respect of production and sales of the like goods in the domestic market of the exporting country or territory; or
- (c) any other reasonable method provided that the amount for profit so established does not exceed the profit normally realised by other overseas exporters on sales of goods of the same general category in the domestic market of the exporting country or territory.

(4) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).

Adjustments

13.—(1) Where paragraph (3) applies, the TRA may for the purpose of paragraph (2), make adjustments to the amounts determined in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits).

(2) The purpose of the adjustments made in accordance with this regulation is to calculate what the overseas exporter's costs and profits would be in the market of the exporting country or territory if costs, prices and profits in that market were substantially determined by market forces.

(3) This paragraph applies where the TRA considers that the amounts calculated in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits) are unrepresentative because they do not reasonably reflect the overseas exporter's production, administrative, selling or general costs or profits in a market if those costs and profits were substantially determined by market forces.

(4) In making adjustments the TRA may have regard to the following—

- (a) corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory;
- (b) international prices, costs or benchmarks; or
- (c) any other factors it considers relevant.

(5) For the purpose of paragraph (4)(a), the TRA may determine whether a third country or territory is an appropriate representative third country or territory taking into account—

- (a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection of that country or territory;
- (b) whether the country or territory has a similar level of economic development to the exporting country or territory; and
- (c) any other factors it considers relevant.

(6) For the purpose of this regulation, domestic costs, prices and profits are “substantially determined by market forces” where they are substantially determined by free market forces and the costs or prices in the domestic market are not artificially low as a result of factors including substantial government intervention.

Normal value in respect of imports from particular foreign countries and territories

14.—(1) This regulation applies in respect of imports from exporting countries or territories—

- (a) that are not members of the WTO;
- (b) that are members of the WTO but the terms of their membership contain specific provisions regarding the determination of the normal value; or
- (c) where there is a complete or substantially complete monopoly of its trade and where all or substantially all domestic prices are fixed by the government.

(2) Where this regulation applies, the TRA may calculate the normal value of the goods concerned—

- (a) on the basis of the comparable price;
- (b) in accordance with regulation 10 (appropriate third country or territory and representative price) or regulations 11 (costs of production) and 12 (the amounts for administrative, selling and general costs and for profits); or

- (c) in accordance with paragraph (3) of this regulation.
- (3) The normal value of the goods concerned may be determined—
 - (a) on the basis of the costs of production of the like goods plus a reasonable amount for administrative, selling and general costs and for profits in an appropriate third country;
 - (b) on the basis of the price of exports from a third country or territory to other foreign countries or territories provided that price is representative;
 - (c) where paragraph (1)(b) applies, in accordance with the terms of the membership in that paragraph; or
 - (d) on any other basis the TRA considers is reasonable including the price actually paid or payable for the goods in the United Kingdom adjusted where necessary to include a reasonable profit margin.
- (4) For the purpose of paragraph (3)(a), the TRA may determine whether a third country or territory is an appropriate third country or territory taking into account—
 - (a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection;
 - (b) whether the country or territory has a similar level of economic development to the exporting country or territory; and
 - (c) any other factors it considers relevant.

CHAPTER 3

Determination of the export price

Export price

- 15.**—(1) Subject to paragraph (3), the export price is the price the goods concerned are sold for, or the agreed price at which they are to be sold, to either—
- (a) an importer in the United Kingdom; or
 - (b) a third party outside of the United Kingdom for export to the United Kingdom (“third party”).
- (2) This paragraph applies where there is no export price or the TRA determines that the price is unreliable because of an association or a compensatory arrangement between the overseas exporter and the importer of the goods concerned in the United Kingdom or the overseas exporter and a third party.
- (3) Where paragraph (2) applies, the TRA may construct the export price in accordance with paragraph (4).
- (4) The TRA may construct the export price on the basis of—
- (a) the price at which the goods concerned are first sold to an independent buyer in the United Kingdom; or
 - (b) where the goods concerned are not resold to an independent buyer in the United Kingdom, or are not resold in the condition as imported, on such other reasonable basis as the TRA determines.
- (5) Where the export price of the goods concerned is constructed in accordance with paragraph (4), the TRA may make adjustments—
- (a) for actual costs incurred by the importer or exporter of the goods concerned in the United Kingdom; and

- (b) for profits that would usually be accrued by an importer of the goods concerned in the United Kingdom that is not an associate of or does not have a compensatory arrangement with the overseas exporter.
- (6) The adjustments that the TRA may make in accordance with paragraph (5) include adjustments in relation to—
 - (a) transport costs;
 - (b) insurance;
 - (c) handling, loading and ancillary costs;
 - (d) import duties;
 - (e) any taxes payable in the United Kingdom by reason of the importation or resale of the goods in the United Kingdom;
 - (f) a reasonable margin for profit as determined by the TRA;
 - (g) selling, general and administrative costs;
 - (h) any other costs incurred in the importation and resale of the goods.
- (7) For the purpose of this regulation—
 - (a) there is an “association” where the parties meet the definition of “related persons” in the Customs (Import Duty) (EU Exit) Regulations 2018(4);
 - (b) a person is an “independent buyer” in relation to an overseas exporter if there is no association between the buyer and the overseas exporter.

CHAPTER 4

Comparison between the normal value and the export price

Comparison

- 16.—**(1) A comparison for the purpose of regulation 6(2)(c) must be made—
- (a) by reference to the same level of trade, normally the ex-factory level, or where that is not possible (because, for example, that information is not available for both the normal value and the export price at that level) such other level as the TRA considers appropriate; and
 - (b) in respect of sales made at as near as possible the same time.
- (2) To ensure the comparison is fair, the TRA may make adjustments for any differences which affect price comparability including differences relating to—
- (a) conditions and terms of sale;
 - (b) taxation;
 - (c) levels of trade;
 - (d) quantities;
 - (e) physical characteristics.

Methodologies for comparing the normal value and the export price

- 17.—**(1) The TRA must make the comparison for the purpose of regulation 6(2)(c) by comparing—
- (a) the weighted average normal value with the weighted average of prices of all comparable export transactions;

- (b) the normal value and export prices on a transaction by transaction basis; or
 - (c) where paragraph (2) applies, a weighted average normal value to individual export transactions.
- (2) This paragraph applies where—
- (a) the TRA finds a pattern of export prices which differ significantly among different importers or purchasers in the United Kingdom, parts of the United Kingdom or time periods; and
 - (b) the TRA is satisfied that these differences cannot be taken into account appropriately by using either of the methodologies in paragraph (1)(a) or (1)(b).

Currency conversion

18.—(1) This regulation applies where the TRA is required to make a comparison between the normal value and the export price for the purpose of regulation 6(2)(c).

(2) Subject to paragraphs (3) and (4), where the TRA is required to make a currency conversion in order to carry out the comparison referred to in paragraph (1), it must use the rate of exchange on the date of sale of the goods.

(3) When a sale of foreign currency on forward markets is directly linked to the export sale involved, the TRA must use the applicable rate in the forward sale of the goods.

(4) In conducting a currency conversion, the TRA—

- (a) must disregard short-term fluctuations in exchange rates; and
- (b) may consider sustained movements in exchange rates during the period of investigation, provided that it allows overseas exporters at least 60 days to adjust their export prices to reflect such movements.

(5) For the purpose of this regulation—

- (a) “the rate of exchange” means the currency exchange rate that the TRA considers to be most appropriate taking into account, among other things, the material terms of the sale; and
- (b) the TRA may treat the “date of sale” for the purpose of paragraph (2) as the date of either the—
 - (i) invoice;
 - (ii) contract;
 - (iii) purchase order; or
 - (iv) order confirmation,

that establishes the material terms of sale.

PART 3

Subsidisation

CHAPTER 1

Introduction

Purpose of Part 3

19.—(1) The TRA is to determine, in accordance with paragraph 3 of Schedule 4 to the Act and this Part, whether goods that are imported into the United Kingdom are subsidised.

- (2) In carrying out that determination, the TRA must determine—
 - (a) whether a countervailable subsidy within the meaning of paragraph 3 of Schedule 4 to the Act exists in relation to goods; and
 - (b) the amount of the subsidy that is attributed to those goods.
- (3) For the purpose of paragraph (2)(a), the TRA must determine whether—
 - (a) a subsidy exists in accordance with paragraph 3(3) of Schedule 4 to the Act and for the purpose of regulations 20 (meaning of financial contribution by a foreign authority) and 21 (benefit conferred); and
 - (b) the subsidy is specific in accordance with regulation 22 (specificity).

CHAPTER 2

Determination of whether there is a countervailable subsidy

Meaning of financial contribution by a foreign authority

20.—(1) For the purpose of paragraph 3 of Schedule 4 to the Act, a foreign authority makes a financial contribution where—

- (a) the practice of a foreign authority involves a direct or potential direct transfer of funds or liabilities;
- (b) subject to paragraph (2), revenue otherwise due to a foreign authority is foregone or is not collected;
- (c) a foreign authority provides goods or services other than general infrastructure;
- (d) a foreign authority purchases goods; or
- (e) a foreign authority makes payments to a funding mechanism or entrusts or directs a private body to undertake one or more of the type of functions in sub-paragraphs (a) to (d), which would normally be vested in the foreign authority, and the practice in no real sense differs from practices normally followed by foreign authorities.

(2) Where revenue due is foregone or not otherwise collected, the TRA may determine that no financial contribution has been made and in doing so the TRA must, in particular, have regard to footnote 1 and Annexes I to III to the Agreement on Subsidies and Countervailing Measures (being part of Annex 1A to the WTO Agreement)(5).

- (3) For the purpose of—
 - (a) paragraph (1)(a), the direct or potential direct transfer of funds includes grants, loans, equity infusions and loan guarantees;
 - (b) paragraph (1)(b), revenue otherwise due, which is foregone, includes fiscal incentives such as tax credits.

Benefit conferred

21.—(1) The TRA is to determine whether a financial contribution by a foreign authority confers a benefit for the purpose of paragraph 3 of Schedule 4 to the Act in accordance with this regulation.

(2) The TRA must determine whether a person has directly or indirectly had a benefit conferred by a financial contribution or 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).

(3) Where a foreign authority provides equity, the TRA may determine that a benefit is conferred where it considers that the investment decision is inconsistent with the usual investment practice,

(5) Available from: https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

including for the provision of risk capital, of private investors in the foreign country or territory where the financial contribution was granted.

(4) Where a foreign authority grants a loan, the TRA may determine that a benefit is conferred where it considers there is a difference between the amount that the recipient receiving the loan pays on the loan from the foreign authority and the amount that the recipient would pay for a comparable commercial loan which the recipient could actually obtain on the market.

(5) When making a determination under paragraph (4), the TRA may make adjustments for fees payable by the recipient to receive the loan.

(6) Where a foreign authority guarantees a loan, the TRA may determine that a benefit is conferred where it considers there is a difference between the amount that the recipient receiving the guarantee pays on a loan guaranteed by the foreign authority and the amount that the recipient would pay on a comparable commercial loan in the absence of the government guarantee.

(7) When making a determination under paragraph (6), the TRA may make adjustments for fees payable by the recipient to receive the guarantee.

(8) Where a foreign authority makes a financial contribution by way of the provision of goods or services, the TRA may determine that a benefit is conferred where the remuneration for the goods or services is inadequate, as determined by reference to the prevailing market terms and conditions for the goods or service in the foreign country or territory where the financial contribution was made.

(9) Where a foreign authority makes a financial contribution by way of the purchase of goods, the TRA may consider that a benefit is conferred where the remuneration paid by the foreign authority for the goods is more than adequate, as determined by reference to the prevailing market terms and conditions for the goods in the foreign country or territory where the financial contribution was made.

(10) For the purpose of paragraphs (8) and (9), in considering whether remuneration is inadequate or more than adequate the TRA may have regard to price, quality, availability, marketability, transportation and other conditions of purchase or sale.

(11) For the purpose of this regulation, where the TRA considers that the prevailing market terms and conditions for the goods or services in question in the foreign country or territory are not an appropriate benchmark, the TRA may—

- (a) adjust the terms and conditions on the basis of actual costs, prices and other factors available in that country or territory, by an appropriate amount which reflects normal market terms and conditions; or
- (b) use the terms and conditions prevailing in the market of another foreign country or territory or on the world market, which would be available to the recipients.

Specificity

22.—(1) The TRA must determine whether a subsidy is specific for the purpose of paragraph 3 of Schedule 4 to the Act in accordance with this regulation.

(2) In order to determine whether or not a subsidy is specific, the TRA must consider whether—

- (a) the subsidy is explicitly—
 - (i) in terms of access, limited to certain enterprises or industries;
 - (ii) contingent on export performance;
 - (iii) contingent on the use of domestic over imported goods;
 - (iv) limited to a specific geographical region within the jurisdiction of the granting authority; or
- (b) the subsidy is in fact applied in a specific manner.

(3) For the purpose of paragraph (2)(b), the circumstances in which a subsidy is in fact applied in a specific manner include—

- (a) where it is or has been used or granted disproportionately to certain enterprises or industries or regions;
- (b) where there is discretion as to its granting, such discretion has been exercised in favour of specific enterprises or industries or regions.

(4) When determining whether or not a subsidy is specific, in addition to the matters referred to in paragraph (2), the TRA must consider—

- (a) whether the foreign authority establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy;
- (b) whether the criteria or conditions are clear and verifiable;
- (c) whether the terms of the subsidy are strictly adhered to;
- (d) whether eligibility for the subsidy is automatic; and
- (e) any other factors it considers relevant.

(5) For the purpose of this regulation—

- (a) the setting or changing of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy;
- (b) “objective criteria or conditions” means criteria or conditions that are neutral, do not favour certain industries or enterprises over others, and which are economic in nature and horizontal in application, such as the number of employees or size of enterprises;
- (c) a subsidy is contingent on export performance where, in law or in fact and whether solely or as one of several conditions, it is tied to actual or anticipated exportation or export earnings, but the mere fact that a subsidy is granted to enterprises which export does not for that reason alone mean the subsidy is contingent on export performance;
- (d) a subsidy is contingent on the use of domestic over imported goods where, in law or in fact, and whether solely or as one of several conditions, it is tied to the use of domestic over imported goods.

(6) When determining whether a subsidy is a subsidy that is contingent on export performance the TRA must, in particular, have regard to footnote 1 and Annexes I to III to the Agreement on Subsidies and Countervailing Measures (being part of Annex 1A to the WTO Agreement).

CHAPTER 3

Calculation of the amount of subsidy that may be attributed to the subsidised imports

Calculation steps

23.—(1) The TRA must calculate the amount of subsidy attributable to goods.

(2) In order to make its calculation the TRA must determine—

- (a) the total amount of the countervailable subsidy in accordance with regulation 24 (determination of the amount of benefit conferred);
- (b) the amount of the countervailable subsidy that is attributable to the period of investigation in accordance with regulation 25 (determination of the amount of the countervailable subsidy that is attributable to the period of investigation); and
- (c) which goods the countervailable subsidy may be allocated to during the period of investigation in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).

(3) The TRA must determine the rate of subsidy attributable to the goods by dividing the countervailable subsidy amount determined in accordance with regulation 25 (determination of the amount of subsidy that is attributed to the period of investigation) by the value of goods determined in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).

(4) The amount of the subsidy must be expressed as an ad valorem rate of the value of the subsidised imports.

(5) Where an overseas exporter benefits, directly or indirectly, from more than one countervailable subsidy during the period of investigation, the TRA must follow the steps in paragraphs (2) to (4) for each of those subsidies.

(6) For the purpose of paragraph 4(4) of Schedule 4 to the Act, the specified period is the period of investigation.

Determination of the amount of benefit conferred

24.—(1) The TRA must determine the total amount of benefit conferred by the countervailable subsidy taking into account the type of subsidy and any other factors the TRA considers relevant.

(2) In the circumstances referred to in—

(a) regulation 21(4), the benefit is the difference between the amount paid on the government loan and the amount that would be paid for a comparable commercial loan which the recipient could actually obtain on an open market; or

(b) regulation 21(6), the benefit is the difference between the amount paid on the loan guaranteed by the government and the amount that would be paid on a comparable commercial loan on an open market in the absence of the government guarantee.

(3) The TRA must deduct from the amount of benefit conferred by the countervailable subsidy—

(a) any application fees or other costs necessarily incurred to qualify for or obtain the countervailable subsidy; and

(b) export taxes, duties, or other charges levied on the export of the goods to the United Kingdom intended to offset the countervailable subsidy.

Determination of the amount of the countervailable subsidy that is attributable to the period of investigation

25.—(1) Subject to paragraphs (2) to (4), the amount of the countervailable subsidy that is attributable to the period of investigation is the total amount received in the period of investigation.

(2) Where a qualifying countervailable subsidy is not received during the period of investigation, but part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(3) Where a qualifying countervailable subsidy is received during the period of investigation, but only part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(4) For the purpose of paragraphs (2) and (3), a “qualifying countervailable subsidy” is one which has a value of at least 1 per cent. of all the sales of the goods to which the countervailable subsidy is attributable.

Determination of the goods the subsidy is attributable to during the period of investigation

26.—(1) Subject to paragraphs (2) to (5), the subsidy attributable to the period of investigation must be attributed to all of the sales of goods during the period of investigation.

(2) Where the TRA considers that the countervailable subsidy received is linked to a specific category of goods, then the TRA must attribute the subsidy to those goods.

(3) Where the TRA considers a countervailable subsidy is linked to the export of particular goods, the TRA must attribute the subsidy to all of the exports of those particular goods during the period of investigation.

(4) Where the TRA considers a countervailable subsidy is linked to the sale of particular goods, the TRA must attribute the subsidy to all of those goods sold during the period of investigation.

(5) Where the TRA considers a countervailable subsidy is linked to sales to a particular market, the TRA must attribute the subsidy to all of the goods sold to that market during the period of investigation.

PART 4

Injury and causation

Determination of injury and causation in accordance with this Part

27.—(1) This Part applies where the TRA is required to determine whether dumped goods or subsidised imports have caused or are causing injury to UK industry in accordance with paragraph 5 of Schedule 4 to the Act.

(2) Where the TRA has determined that goods have been or are being dumped (in accordance with Part 2) or goods that have been or are being imported into the United Kingdom benefit from a countervailable subsidy (in accordance with Part 3) it must determine whether—

- (a) a UK industry has suffered or is suffering injury in accordance with regulation 30 (determination of injury); and
- (b) the dumped goods or subsidised imports, as the case may be, have caused or are causing that injury to that UK industry.

Meaning of threat of material injury

28.—(1) For the purpose of paragraph 5 of Schedule 4 to the Act, “threat of material injury” means injury which, although it has not yet occurred, is clearly foreseen and imminent.

(2) In determining whether there is a threat of material injury, the TRA may consider, among other things—

- (a) the extent to which any significant rate of increase in the volume of the importation of the dumped goods or subsidised imports into the United Kingdom indicates a likelihood of substantially increased importation;
- (b) whether the overseas exporter has sufficient freely disposable, or an imminent substantial increase in, capacity indicating that there is a likelihood of substantially increased importation of the dumped goods or subsidised imports into the United Kingdom taking into account the availability of other export markets to absorb the additional exports of those goods;
- (c) whether the dumped goods or subsidised imports are entering the United Kingdom at prices which will have a significant depressing or suppressing effect on prices of the like goods in the United Kingdom and whether such prices are likely to increase the demand for further imports of the goods concerned;
- (d) the inventories of the overseas exporters of the goods concerned; and

- (e) in the case of subsidies only, the nature of the subsidy and the trade effects that the TRA determines are likely to arise from that subsidy.

Disregarding a producer for the purpose of the definition of a UK industry

29.—(1) This regulation applies where the TRA is considering whether a producer is a “producer in the United Kingdom of like goods” (“UK producer”) for the purpose of the definition of a “UK industry” in paragraph 6 of Schedule 4 to the Act.

(2) The TRA may determine that a producer is not a UK producer where that producer is—

- (a) an importer of the goods concerned;
- (b) related to an overseas exporter of the goods concerned in the exporting country or territory; or
- (c) related to an importer of the goods concerned in the United Kingdom.

(3) For the purpose of paragraph (2), a producer is “related” to another person (“P”) if—

- (a) the producer controls directly or indirectly, or is controlled directly or indirectly by, P; or
- (b) the producer and P together control the same third party directly or indirectly or are controlled directly or indirectly by the same third party.

(4) The TRA may only determine that a producer is not a UK producer where the producer is related to P and the TRA considers that the effect of the relationship is such as to cause that producer to behave differently to the other unrelated producers of the like goods in the United Kingdom.

(5) For the purpose of this regulation, one entity is considered to control another entity, directly or indirectly, where it is legally or operationally in a position to exercise restraint or direction over the other.

Determination of injury

30.—(1) For the purpose of this Part, the TRA must determine whether a UK industry has suffered or is suffering injury during the injury period.

(2) In order to determine whether a UK industry is suffering or has suffered injury the TRA must consider—

- (a) the volume of the dumped goods or subsidised imports during the injury period;
- (b) the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period;
- (c) the consequent impact of the dumped goods or subsidised imports on a UK industry during the injury period; and
- (d) any other factors it considers relevant.

(3) The TRA must conduct its examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom, but where data relating to the like goods cannot be separated from data relating to a wider category of goods, which includes the like goods, the TRA may use the data relating to that wider category of goods.

(4) For the purpose of this Part, the “injury period” is the period of investigation taking account of developments in the three twelve month periods preceding the period of that investigation unless the TRA considers that it is appropriate to use an alternative period, in which case the injury period means that alternative period.

The volume of the dumped goods or subsidised imports

31. In considering the volume of dumped goods or subsidised imports during the injury period for the purpose of regulation 30(2)(a), the TRA must consider whether there has been a significant increase in the dumped goods or subsidised imports in the United Kingdom either in absolute terms or relative to domestic production or consumption.

The effect of the dumped goods or subsidised imports on prices

32. In considering, for the purpose of regulation 30(2)(b), the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period the TRA must consider whether—

- (a) there has been significant price undercutting by the dumped goods or subsidised imports as compared with the price of the like goods produced in the United Kingdom; or
- (b) the dumped goods or subsidised imports have depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree.

The impact of the dumped goods or subsidised imports on a UK industry

33. In considering, for the purpose of regulation 30(2)(c), the consequent impact of the dumped goods or subsidised imports on a UK industry, the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including—

- (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity;
- (b) factors affecting domestic prices of the like goods;
- (c) in the case of dumping, the magnitude of the margin of dumping;
- (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments.

Cumulation

34.—(1) This regulation applies where goods from more than one foreign country or territory are subject to simultaneous dumping or subsidisation investigations by the TRA.

(2) Where this regulation applies, the TRA may cumulatively assess the effects of all the dumped goods or subsidised imports, as the case may be, pursuant to paragraph 5(4) of Schedule 4 to the Act, provided that—

- (a) the amount of dumping or subsidisation established in relation to the dumped goods or subsidised imports from each foreign country or territory is more than minimal;
- (b) the volume of the dumped goods or subsidised imports imported from each foreign country or territory is not negligible; and
- (c) the TRA considers that a cumulative assessment is appropriate in light of the conditions of competition.

(3) For the purpose of paragraph (2)(c), the TRA must consider the conditions of competition between—

- (a) the imports of the dumped goods or subsidised imports from different sources; and
- (b) the dumped goods or subsidised imports and the like goods in the United Kingdom.

Causation and non-attribution

35.—(1) For the purpose of making a determination under regulation 27(2)(b), the TRA must examine whether any known factors other than the dumped goods or subsidised imports (“other known factors”) have caused or are causing injury to a UK industry.

(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.

(3) For the purpose of paragraph (2), other known factors may include—

- (a) the volume and the prices of imports that are not dumped or subsidised into the United Kingdom;
- (b) contraction in demand or changes in the pattern of consumption of the like goods in the United Kingdom;
- (c) trade restrictive practices of and competition between the overseas exporters and the UK industry;
- (d) developments in technology;
- (e) the export performance and productivity of the UK industry.

PART 5

The level of an estimated anti-dumping or countervailing amount or anti-dumping or countervailing amount

Determination of an adequate amount to remove the injury

36.—(1) Pursuant to paragraphs 14(4) and 18(7) of Schedule 4 to the Act, the TRA is to determine the anti-dumping amount or countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) that is adequate to remove the injury caused to a UK industry by dumped goods or subsidised imports in accordance with this regulation (“relevant amount”).

(2) The TRA must determine the relevant amount which it is satisfied is necessary to prevent injury to UK industry based on an assessment of the minimum increase in import prices of the dumped goods or subsidised imports that would remove injury.

(3) Subject to paragraph (4), the TRA must take into account any information it considers relevant in order to calculate the relevant amount.

(4) The TRA must disregard factors other than the importation of the dumped goods or subsidised imports that caused or are causing injury to UK industry when making its determination.

(5) Where the amount determined in accordance with this regulation is less than 2 per cent. of the price of the imports then the TRA must disregard that amount and the amount adequate to remove the injury is zero.

Determination of the anti-dumping amount or countervailing amount for non-sampled overseas exporters

37.—(1) For the purpose of this regulation a “non-sampled overseas exporter” is an overseas exporter that—

- (a) co-operated with the TRA’s investigation; and

(b) was not selected by the TRA to be part of a sample selected in accordance with regulations 56 (the use of sampling in respect of Part 2 of these Regulations) or 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations).

(2) Where the TRA has limited its examination in accordance with regulation 56 (the use of sampling in respect of Part 2 of these Regulations) or 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations) the TRA must determine an anti-dumping amount or a countervailing amount for non-sampled overseas exporters (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) (“a non-sampled overseas exporter amount”).

(3) Subject to paragraph (5), the non-sampled overseas exporter amount is the weighted average of the amounts determined for the overseas exporters in the sample.

(4) When determining the weighted average of the amounts determined for the overseas exporters within the sample, the TRA must disregard amounts determined in respect of overseas exporters who the TRA has determined are non-cooperating in accordance with regulation 49 (non-cooperation).

(5) Where the TRA has calculated an individual anti-dumping amount or countervailing amount in accordance with regulations 56(7) or 57(5) in respect of a particular overseas exporter then the anti-dumping amount or countervailing amount determined for that overseas exporter is the amount calculated by the TRA pursuant to those regulations.

Determination of a residual amount

38.—(1) The TRA must determine an anti-dumping amount or a countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) (a “residual amount”) for overseas exporters to which this regulation applies.

(2) This regulation applies to an overseas exporter where—

- (a) the TRA has not determined an individual anti-dumping amount or countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) for that overseas exporter; and
- (b) the exporter is not a non-sampled overseas exporter within the meaning of regulation 37 (determination of the anti-dumping amount or countervailing amount for non-sampled overseas exporters).

(3) The TRA may determine the residual amount using any reasonable means.

(4) When determining the residual amount pursuant to this regulation the TRA may take account of any information available including—

- (a) information contained in the application;
- (b) information received from other interested parties during the investigation including other overseas exporters;
- (c) published price lists;
- (d) official import statistics or customs returns;
- (e) relevant data pertaining to the world market or other representative markets.

PART 6

Initiation and conduct of an investigation

CHAPTER 1

General provisions and the use of information

Purpose of Part 6

39. Pursuant to paragraphs 9, 10, 29 and 31 of Schedule 4 to the Act, the initiation and conduct of investigations are subject to this Part.

General provisions

40.—(1) Subject to any contrary provision made in this Part, the TRA may do anything it considers appropriate in connection with the exercise of any of its functions in accordance with these Regulations.

(2) In particular, the TRA may—

- (a) consider information supplied to it by any person;
- (b) request that any person supply information to it;
- (c) set time limits for responses to its requests and vary such time limits;
- (d) specify the format or structure of responses to its requests;
- (e) accept information supplied to it outside any applicable time limit.

Revision of scope of an investigation

41.—(1) This regulation applies after the TRA has published a notice of its determination to initiate an investigation in accordance with paragraph 9(5)(d) or (6)(c) of Schedule 4 to the Act.

(2) Subject to paragraphs (3) and (4), the TRA must not revise the scope of an investigation.

(3) The TRA may revise the scope of a dumping investigation so as to amend—

- (a) the description of the goods concerned; or
- (b) the period of investigation,

where it has provided interested parties and contributors with reasons for the proposed revision and has given them an opportunity to comment.

(4) The TRA may revise the scope of a subsidisation investigation so as to—

- (a) amend the description of the goods concerned;
- (b) include alleged subsidies not referred to in the notice of initiation; or
- (c) amend the period of investigation,

where it has provided interested parties and contributors with reasons for the proposed revision and has given them an opportunity to comment.

(5) In determining whether to revise the scope of an investigation under paragraph (3) or (4), the TRA must consider—

- (a) the likelihood of it having determined to initiate an investigation with the scope as set out in its proposed revision had the information available to it after the initiation of an investigation been set out in the application;

- (b) whether the proposed revision may cause any prejudice to the interests of any interested party or contributor; and
 - (c) whether the proposed revision will prevent the TRA from proceeding with the investigation expeditiously.
- (6) Where the TRA has made a determination under this regulation to revise the scope of the investigation, it must publish an amended notice of initiation.

Limitation on consolidation

- 42.—(1) Subject to paragraphs (2) and (3), the TRA may consolidate investigations.
- (2) The TRA must not consolidate a dumping investigation with a subsidisation investigation (or vice versa).
- (3) The TRA must not consolidate investigations unless it has first provided reasons for the proposed consolidation to interested parties and has provided them with an opportunity to comment.
- (4) Where the TRA has made a determination under this regulation to consolidate investigations, it must publish an amended notice of initiation.

Deemed service

43. Any document submitted to the TRA is deemed to have been submitted on the earlier of —
- (a) the first working day after the day on which it is received by the TRA; or
 - (b) the day on which the TRA issues an acknowledgement of receipt.

Public file

44. The TRA must, in respect of every investigation, 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 investigation.

Confidential information

- 45.—(1) Paragraph (3) applies where a person—
- (a) supplies information to the TRA in connection with the exercise by the TRA of any of its functions under the Act or these Regulations;
 - (b) either—
 - (i) requests the TRA to treat that information as confidential on the grounds that that information is by its nature confidential; or
 - (ii) supplies that information to the TRA on a confidential basis;
 - (c) demonstrates to the TRA good cause as to why the TRA must treat such information as confidential; and
 - (d) submits—
 - (i) a non-confidential summary (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;

- (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 46(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 44 (public file) which would enable a person other than the TRA to have a reasonable understanding of—
 - (i) the substance of the information to which it relates; and
 - (ii) its potential relevance to the exercise of any function by the TRA under the Act or these Regulations;
 - (b) a “statement of reasons” means a statement setting out the reasons of a person supplying information to the TRA as to why the TRA should treat that information as confidential and why summarisation of that information in accordance with this regulation is not possible.

Permitted disclosure

- 46.—**(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

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

(2) The TRA must have regard to information supplied to it by an applicant UK industry, an interested party, a contributor or any other person from whom it has requested information, provided that the information—

- (a) is verifiable;
- (b) has been appropriately submitted such that the TRA may use the information without undue difficulty;
- (c) has been supplied to it within any applicable time limit; and
- (d) where relevant, has been supplied to it in a form that it has requested.

(3) The TRA must not have regard to oral statements referred to in regulation 61(4) unless—

- (a) those statements are reproduced in writing; and
- (b) it has made the written reproductions available to interested parties and contributors.

(4) The TRA may disregard information which it treats as confidential (which it would otherwise have had regard to) where the person supplying that information has not supplied a non-confidential summary or a statement of reasons in accordance with regulation 45 (confidential information), unless it is satisfied from appropriate sources that such information is correct.

(5) The TRA may make a determination on the basis of information obtained from secondary sources, including information supplied in an application, provided that it—

- (a) does so with special circumspection; and
- (b) where practicable, verifies such information from independent sources, including but not limited to published price lists, official import statistics or customs returns and data pertaining to the relevant markets.

Acceptance or rejection of information

48.—(1) Where a person has supplied information to the TRA outside any applicable time limit, the TRA may accept such information where it considers that—

- (a) doing so would not significantly impede the progress of an investigation; or
- (b) it is appropriate to accept that information, having regard to the potential significance of the information on any determination it may make and any explanation provided by that person as to why it should accept that information.

(2) Where the TRA rejects information for any reason, it must publish its reasons for rejection in the statement of essential facts (see regulation 62) or, where such information is rejected after the statement of essential facts has been published, in the final affirmative or final negative determination.

Non-cooperation

49.—(1) Where the TRA determines that an interested party has failed to cooperate with an investigation or has otherwise significantly impeded the progress of an investigation (a “non-cooperative party”), it may disregard the information supplied by that party.

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

- (a) determines that that interested party has acted to the best of their ability to cooperate with an investigation; or

- (b) has accepted that compliance with any request for information to be supplied in a particular form would be unreasonably burdensome to that party.

CHAPTER 2

Initiation of an investigation

Application

50.—(1) An application made by an applicant UK industry for the initiation of a dumping investigation must contain as much of the information listed in paragraph 1 of Schedule 1 as is reasonably available to them.

(2) An application made by an applicant UK industry for the initiation of a subsidisation investigation must contain as much of the information listed in paragraph 2 of Schedule 1 as is reasonably available to them.

(3) An application referred to in paragraphs (1) and (2) may contain such additional information as the applicant UK industry considers relevant.

(4) Where an applicant UK industry, by notice in writing to the TRA, withdraws their application prior to the publication of the notice referred to in paragraph 9(5)(d) or (6)(c) of Schedule 4 to the Act, the application is considered not to have been made.

Market share requirement

51. For the purpose of paragraph 9 of Schedule 4 to the Act, the market share requirement is met where the TRA is satisfied that a UK industry’s “share” of the market is—

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

Assessment of an application

52.—(1) The TRA must examine the accuracy and adequacy of the information contained in, or supplied with, an application to determine whether it is sufficient to justify the initiation of an investigation under paragraph 9 of Schedule 4 to the Act.

(2) For the purpose of paragraph 9(1)(a)(i) of Schedule 4 to the Act, an application is made by or on behalf of a UK industry where the TRA determines that the application is supported by UK producers whose collective output constitutes at least 25 per cent. of the total production in the United Kingdom of the like goods, and is not opposed by other UK producers of the like goods whose collective output is greater than or equal to that percentage.

(3) The TRA may reject an application where it considers that it does not satisfy the requirements in regulation 50(1) or (2), but it must not do so where the requirement in question has been expressly waived by it.

(4) The TRA may reject an application if it is not made via the TRA’s case management system.

Publicising an application

53.—(1) The TRA must not publicise an application until it has determined to initiate the investigation.

(2) However, the TRA may—

- (a) request additional information from any person before determining whether to initiate an investigation; and

- (b) arrange visits to any premises in the United Kingdom for the purpose of determining whether to initiate an investigation.
- (3) As soon as the TRA has published a notice of initiation of an investigation, it must provide the full text of the application received under regulation 50 (application) to—
 - (a) overseas exporters known to it and the government of the relevant foreign country or territory; or
 - (b) where the number of overseas exporters involved is such that it is impracticable for the TRA to contact all overseas exporters known to it individually, the government of the relevant foreign country or territory.

CHAPTER 3

Conduct of an investigation

Registration of interest and the issuing of questionnaires

54.—(1) Where the TRA has made a determination to initiate an investigation, it must set a period during which interested parties and any other person may make themselves known to the TRA (a “registration period”).

(2) In a dumping investigation, the TRA must, as far as practicable, issue a questionnaire (see regulation 55) to—

- (a) all interested parties, other than the government of the relevant foreign country or territory, who have made themselves known to the TRA during the registration period;
- (b) all UK producers, importers and overseas exporters (or associations thereof) which the applicant UK industry has identified in their application; and
- (c) all contributors who have made themselves known to the TRA during the registration period.

(3) In a subsidisation investigation, the TRA must, as far as practicable, issue a questionnaire to—

- (a) all interested parties who have made themselves known to the TRA during the registration period;
- (b) all UK producers, importers and overseas exporters (or associations thereof) which the applicant UK industry has identified in their application; and
- (c) all contributors who have made themselves known to the TRA during the registration period.

(4) However, where the TRA uses sampling in accordance with regulation 56 (the use of sampling in respect of Part 2 of these Regulations) or 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations), the TRA may limit the issuing of a questionnaire to those interested parties included in that sample.

(5) Where an interested party or a contributor makes themselves known to the TRA after the end of the registration period, the TRA may issue a questionnaire to that person.

(6) Where an interested party makes themselves known to the TRA after the end of the registration period, the TRA may include that party in a sample referred to in regulation 56 (the use of sampling in respect of Part 2 of these Regulations) or 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations).

(7) The TRA must not issue a questionnaire after the statement of essential facts is published (see regulation 62).

Form of questionnaires and deficiency notice

55.—(1) Subject to paragraph (2), the questionnaire referred to in regulation 54 (registration of interest and the issuing of questionnaires) may take such form and contain such questions and other material as the TRA considers appropriate for the purpose of the investigation.

(2) A questionnaire must set out the date by which it must be returned to the TRA.

(3) Where, following a review of the returned questionnaire, the TRA determines that it is incomplete or that the information supplied to it is inadequate, it may issue a notice to the relevant interested party or contributor requesting clarification or supplementary information (a “deficiency notice”).

(4) The deficiency notice must set out a time limit by which any missing, clarificatory or supplementary information is to be supplied.

The use of sampling in respect of Part 2 of these Regulations

56.—(1) The TRA may use sampling in relation to an investigation in accordance with this regulation to determine whether goods are dumped for the purpose of Part 2 of these Regulations.

(2) The TRA may, where it considers it appropriate, limit its examination to a sample of—

- (a) overseas exporters;
- (b) importers; or
- (c) categories of goods.

(3) The TRA must determine which overseas exporters, importers or categories of goods, as the case may be, to include in the sample based on either—

- (a) the largest volume of exports from the exporting country or territory to the United Kingdom that the TRA is reasonably able to investigate; or
- (b) a statistically valid method.

(4) Subject to paragraph (5), where the TRA considers it appropriate to limit its examination in accordance with this regulation to a sample, it must consult with overseas exporters and importers, as the case may be, about the proposed sample and, where possible, obtain their consent to the proposed sample.

(5) Paragraph (4) does not apply where the TRA considers that consultation or obtaining consent is impracticable.

(6) An overseas exporter who is not included in a sample in accordance with this regulation may request that the TRA calculate an individual margin of dumping provided that the overseas exporter has supplied the necessary information in time for that information to be considered during the course of the investigation.

(7) Where an overseas exporter makes a request in accordance with paragraph (6), the TRA must accept the request and calculate an individual margin of dumping unless the number of exporters is so large that individual examinations are unduly burdensome and would prevent the timely completion of the investigation.

The use of sampling in respect of Parts 3, 4 and 5 of these Regulations

57.—(1) The TRA may use sampling in relation to an investigation in accordance with this regulation to determine—

- (a) whether imports of the goods concerned into the United Kingdom are subsidised;
- (b) whether the dumped goods or subsidised imports, as the case may be, have caused or are causing injury to a UK industry; or

- (c) the amount necessary to remove the injury.
- (2) The TRA may, where it considers it appropriate to do so, limit its examination under Parts 3, 4 and 5 of these Regulations to a sample of—
 - (a) importers;
 - (b) overseas exporters;
 - (c) categories of goods;
 - (d) UK producers;
 - (e) transactions for the purchase of the like goods in the United Kingdom; or
 - (f) anything else the TRA considers it appropriate to sample in order to make its determination.
- (3) Where the TRA limits its examination in accordance with this regulation it may use any reasonable method to determine the sample.
- (4) An overseas exporter who is not included in a sample in accordance with this regulation may request that the TRA calculate an individual anti-dumping amount or countervailing amount provided that the overseas exporter has supplied the necessary information in time for that information to be considered during the course of the investigation.
- (5) Where an overseas exporter makes a request in accordance with paragraph (4), the TRA must accept the request and calculate an individual anti-dumping amount or countervailing amount unless the number of exporters is so large that individual examinations are unduly burdensome and would prevent the timely completion of the investigation.

Verification visit

- 58.**—(1) This regulation applies to a verification visit conducted by the TRA.
- (2) Subject to paragraph (8), the TRA may make such arrangements in connection with a verification visit in the United Kingdom as it considers appropriate.
 - (3) Subject to paragraphs (4) to (8), the TRA may make such arrangements in connection with a verification visit in any foreign country or territory as it considers appropriate.
 - (4) The TRA may carry out a verification visit in any foreign country or territory provided that all of the following are satisfied—
 - (a) it has advised the person that it proposes to visit of the following—
 - (i) the date of the proposed visit;
 - (ii) the general nature of the information to be verified; and
 - (iii) any further information required from the person;
 - (b) it has obtained the prior agreement of the person in question;
 - (c) it has notified the government of the relevant foreign country or territory of the information set out in paragraph (5); and
 - (d) that government does not object.
 - (5) The information referred to in paragraph (4)(c) is—
 - (a) the name and address of the person to be visited by the TRA; and
 - (b) the date of the visit as agreed with that person.
 - (6) Paragraph (7) applies where, prior to carrying out a verification visit, the TRA receives enquiries or requests for clarification relevant to such a visit from the person or the government of the relevant foreign country or territory.

(7) Where this paragraph applies, the TRA must, where practicable, respond to the enquiries or provide the clarification in advance of the visit.

(8) The TRA must not conduct a verification visit after the statement of essential facts is published (see regulation 62).

Verification report

59.—(1) The TRA must—

- (a) provide a written report on a verification visit (a “verification report”) to the person subject to that visit;
- (b) require the person subject to a verification visit to supply it with a version of the verification report with summarisation of information that it requests the TRA to treat as confidential (a “non-confidential verification report”); and
- (c) set a time limit by which the non-confidential verification report is to be supplied.

(2) In the application of regulation 45 (confidential information) to this regulation, a reference in that regulation to—

- (a) the supply of information is to be taken to include information obtained by the TRA from the person subject to a verification visit; and
- (b) a non-confidential summary is to be taken to include a non-confidential verification report.

Facilitation visit

60.—(1) Subject to paragraph (3), the TRA may make such arrangements in connection with a facilitation visit in the United Kingdom as it considers appropriate.

(2) Subject to paragraph (3), in exceptional circumstances, the TRA may make such arrangements in connection with a facilitation visit in any foreign country or territory as it considers appropriate, provided that the requirements set out in regulation 58(4) to (7) are met.

(3) The TRA must not conduct a facilitation visit after the statement of essential facts is published.

(4) In the application of regulation 58 (verification visit) to paragraph (2), reference in that regulation to a verification visit is to be taken to include a facilitation visit.

Hearing

61.—(1) The TRA may conduct a hearing at any time during an investigation either—

- (a) at the request of any interested party; or
- (b) on its own initiative.

(2) The TRA must notify interested parties and contributors of any processes and procedures to be adopted at a hearing in advance of it taking place.

(3) When deciding whether and how to conduct a hearing, the TRA must have regard to—

- (a) the need to preserve the confidentiality of information it is treating as confidential in accordance with regulation 45(3) or (4); and
- (b) whether holding a hearing and whether such processes and procedures it proposes to adopt at a hearing would be convenient to interested parties and contributors.

(4) The TRA must allow interested parties and contributors to present their views by written and oral statements (see regulation 47(3)).

(5) Where the TRA decides to conduct a hearing, it—

- (a) must give sufficient notice of the hearing to interested parties and contributors;

- (b) must allow interested parties and contributors to attend; and
 - (c) may request that an interested party or a contributor intending to attend to supply the TRA with the information they wish to rely on at the hearing.
- (6) Where the TRA makes a request referred to in paragraph (5)(c), it must set a time limit by which such a request must be complied with.
- (7) An interested party or a contributor is not under an obligation to attend a hearing.
- (8) The TRA must not determine that an interested party who fails to attend a hearing is a non-cooperative party (see regulation 49) or that such failure to attend is otherwise prejudicial to its interests.

Essential facts and disclosure

62.—(1) Before making a final affirmative or final negative determination for the purpose of paragraph 11(5) of Schedule 4 to the Act, the TRA must—

- (a) publish a statement (a “statement of essential facts”) which sets out—
 - (i) the final determination that it intends to make (“intended final determination”);
 - (ii) a summary of the facts considered by the TRA during the investigation;
 - (iii) those facts referred to in sub-paragraph (ii) that formed the basis of the intended final determination; and
- (b) inform interested parties who have supplied information that has been considered by the TRA—
 - (i) how it has used the information supplied by that party in making the intended final determination; and
 - (ii) of the details of the TRA’s analysis forming the basis of the intended final determination.

(2) The TRA must specify in the statement of essential facts a period during which it will consider comments on that statement from interested parties, contributors or any other person who has supplied information to it.

CHAPTER 4

Consultation and termination of an investigation

Consultation in a subsidisation investigation

63. The TRA must not make a provisional affirmative or final affirmative determination in a subsidisation investigation unless it has given the government of the relevant foreign country or territory reasonable opportunity for consultation.

Termination

64.—(1) The TRA must terminate an investigation where, at any stage during the investigation, it determines that—

- (a) the margin of dumping or the amount of subsidy is minimal;
- (b) the volume of dumped goods or subsidised imports is negligible; or
- (c) the injury is negligible.

(2) The TRA may, where it considers it appropriate, terminate an investigation on the request of the applicant UK industry.

(3) Where the TRA rejects a request referred to in paragraph (2), it must—

- (a) publish a notice of its determination setting out the reasons for its determination; and
 - (b) notify interested parties and contributors.
- (4) Where the TRA terminates an investigation under this regulation, it must—
- (a) publish a notice of its determination in accordance with paragraph 65(8); and
 - (b) notify interested parties and contributors.

CHAPTER 5

Content of notices

Content of notices

65.—(1) The notice published by the TRA in accordance with paragraph 9(5)(d) of Schedule 4 to the Act (initiation of a dumping investigation) must contain the information listed in paragraph 1 of Schedule 2.

(2) The notice published by the TRA in accordance with paragraph 9(6)(c) of Schedule 4 to the Act (initiation of a subsidisation investigation) must contain the information listed in paragraph 2 of Schedule 2.

(3) The notice published by the TRA in accordance with paragraph 13(9)(a) and (b) of Schedule 4 to the Act (provisional affirmative determination with no recommendation regarding requiring a guarantee) must contain the information listed in paragraph 3 of Schedule 2.

(4) The notice published by the Secretary of State in accordance with paragraph 15(4)(a) and (5) (a) of Schedule 4 to the Act (acceptance or rejection of a recommendation requiring a guarantee) must contain the information listed in paragraph 4 of Schedule 2.

(5) The notice published by the TRA in accordance with paragraph 17(10)(a) and (b) of Schedule 4 to the Act (final affirmative determination with no recommendation on an anti-dumping amount or a countervailing amount) must contain the information listed in paragraph 5 of Schedule 2.

(6) The notice published by the Secretary of State referred to in paragraph 20(4)(a) and (5)(a) of Schedule 4 (acceptance or rejection of the TRA's recommendation on an anti-dumping amount or a countervailing amount) must contain the information listed in paragraph 6 of Schedule 2.

(7) The notice published by the TRA referred to in paragraph 11(8) of Schedule 4 to the Act (final negative determination) must contain the information listed in paragraph 7 of Schedule 2.

(8) The notice published by the TRA in accordance with regulation 64(4)(a) must contain the information listed in paragraph 8 of Schedule 2.

(9) A notice referred to in paragraph (1), (2), (3), (5), (7) or (8) of this regulation may contain any other information the TRA considers appropriate.

(10) A notice referred to in paragraph (4) or (6) of this regulation may contain any other information the Secretary of State considers appropriate.

PART 7

Initiation and conduct of a review

CHAPTER 1

General provisions and the initiation of a review

Purpose of Part 7

66. Reviews by the TRA of the continuing application, including the variation and extension, of an anti-dumping amount or a countervailing amount to goods pursuant to paragraph 21 of Schedule 4 to the Act are subject to the following provisions of this Part.

Initiation of a review

67.—(1) If the TRA is satisfied that there is sufficient information substantiating the need for a review, the TRA may initiate an interim review, an absorption review, a circumvention review or a scope review—

- (a) where a review application is made by or on behalf of an interested party; or
- (b) on its own initiative.

(2) If there is sufficient evidence substantiating the need for an expiry review, the TRA may initiate an expiry review—

- (a) where a review application is made by or on behalf of UK industry in the goods; or
- (b) on its own initiative in special circumstances.

(3) The TRA must initiate a new exporter review—

- (a) where a review application is made by or on behalf of a new exporter; and
- (b) the TRA is satisfied that the review application contains sufficient information substantiating the need for a review in accordance with regulation 71 (new exporter review).

(4) The TRA may, in particular, reject a review application where—

- (a) it considers the review application is made in relation to a change in circumstances that is not of a lasting nature;
- (b) it has conducted a previous review or rejected a previous review application in respect of the relevant anti-dumping amount or countervailing amount and—
 - (i) the review application relates to matters which are similar to those arising under that previous review or set out in that previous review application; and
 - (ii) there is no change of circumstances since the termination of that previous review or rejection of that previous review application which substantiates the need for a new review;
- (c) information on which the review application relies could have been provided to the TRA in the investigation or a previous review; or
- (d) the review applicant has not complied with procedural requirements in accordance with this Part.

(5) The TRA may reject a review application if it is not made via the TRA's case management system.

(6) Where the TRA rejects a review application, it must notify the review applicant.

(7) Where the TRA has made a determination to initiate a review, the TRA must—

- (a) publish a notice of its decision to initiate a review (for the purpose of this Part a “notice of initiation of a review”); and
- (b) notify the Secretary of State and interested parties.

(8) A notice of initiation of a review must contain the information listed in paragraph 1 of Schedule 3.

(9) Where a review application is made in respect of goods subject to a countervailing amount, the TRA must notify the government of the exporting country or territory and the Secretary of State prior to the initiation of that review.

CHAPTER 2

Conduct of a review

The conduct of a review

68.—(1) Where the TRA considers it appropriate, the TRA may expand or limit the issues to be considered in a review.

(2) The TRA must provide interested parties with an opportunity to provide comments prior to acting in accordance with paragraph (1).

(3) Where the application of an anti-dumping amount or a countervailing amount in respect of goods from a particular overseas exporter (“E”) is revoked, but remains in place for one or more other overseas exporter, E—

- (a) may be subject to a subsequent review carried out in respect of the exporting country or territory; and
- (b) following a subsequent review, may have an anti-dumping amount or a countervailing amount applied to the goods which were previously subject to the application of an anti-dumping or a countervailing amount.

(4) Paragraph (3) does not apply where the application of the anti-dumping amount or countervailing amount is revoked following a determination that the dumping margin or amount of subsidy is minimal.

(5) The TRA may, where it is satisfied that there is sufficient information to justify doing so, extend a review initiated in respect of one overseas exporter to any, or all, other overseas exporters who export the dumped goods or subsidised imports which are subject to the relevant public notice made under section 13 of the Act.

(6) The TRA may, where it considers it appropriate, terminate a review on the request of the review applicant.

(7) Where the TRA constructs the export price in accordance with regulation 15 (export price), the TRA may deduct any anti-dumping amount paid where it is not reflected in resale prices and subsequent selling prices in the United Kingdom.

(8) Parts 2, 3, 4 and 6 apply to reviews to the extent that the TRA considers relevant.

(9) If the TRA applies any part of Parts 2, 3, 4 or 6 to a review, any references in those Parts to “goods concerned” should be read as “goods subject to review”.

(10) Following a review, the anti-dumping amount or countervailing amount applicable to goods must be such that it does not exceed—

- (a) the margin of dumping or the amount of subsidy in relation to the goods;
- (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 the amount of subsidy referred to sub-paragraph (a).

(11) Part 5 applies to—

- (a) an interim review where the TRA considers varying the level of an anti-dumping amount or a countervailing amount by varying its level and duration;
- (b) an interim review where the TRA reassesses the amount adequate to remove the injury;
- (c) an expiry review where the TRA considers varying the level of an anti-dumping amount or a countervailing amount;
- (d) a new exporter review where the TRA calculates an individual anti-dumping amount or an individual countervailing amount;
- (e) an absorption review.

(12) Where it is not possible for the TRA to recalculate the anti-dumping amount or countervailing amount, the TRA may determine that the amount should not be varied.

Interim review

69.—(1) The TRA may conduct a review (an “interim review”) to consider whether—

- (a) 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) the application of an anti-dumping amount or a countervailing amount to goods is having the effect of removing the injury to a UK industry in the goods.

(2) Otherwise than on its own initiative in accordance with regulation 67 (initiation of a review), the TRA may not initiate an interim review in relation to goods within a year of the imposition or variation of an anti-dumping amount or a countervailing amount pursuant to a public notice made under section 13 of the Act.

(3) An interim review application must include—

- (a) evidence that since the application of an anti-dumping amount or a countervailing amount, there has been a change in circumstances which is of a lasting nature; and
- (b) the required information.

(4) The required information is information that—

- (a) the continued imposition of an anti-dumping amount or a countervailing amount is not necessary to offset the relevant dumping or subsidisation;
- (b) the injury would be unlikely to continue or recur if the anti-dumping amount or countervailing amount were removed or varied; or
- (c) the existing anti-dumping amount or countervailing amount is not sufficient to offset the injury caused by the dumped goods or subsidised imports.

(5) In conducting an interim review, the TRA may consider, among other things—

- (a) whether the circumstances in respect of the dumped goods or subsidised imports, or injury, caused by the dumped goods or subsidised imports have changed significantly;
- (b) whether the existing application of an anti-dumping or a countervailing amount is necessary or sufficient to offset or prevent the injury caused by dumped goods or subsidised imports previously established in accordance with Part 6; or
- (c) whether, and if so to what level, it is appropriate to vary the anti-dumping amount or countervailing amount.

(6) Following an interim review, the TRA may determine that the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review should be—

- (a) maintained;
- (b) varied; or
- (c) revoked.

(7) Where the goods subject to review are subject to an anti-dumping amount or a countervailing amount, the TRA must have regard to the current and prospective impact of the anti-dumping amount or countervailing amount when making a determination regarding the future application of an anti-dumping amount or a countervailing amount.

(8) The TRA must not treat compliance with an undertaking in accordance with Part 8 as evidence of—

- (a) the cessation of dumping;
- (b) the elimination of the effect of a subsidy; or
- (c) a lasting change in circumstances which justifies the initiation of an interim review.

(9) The TRA may only make a determination that the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review be varied by extending its duration where it has reassessed—

- (a) the margin of dumping or the amount of subsidy; and
- (b) the amount adequate to remove the injury.

(10) Where the TRA determines that the application of an anti-dumping amount or a countervailing amount be extended in accordance with this regulation, it may make a recommendation under regulation 75 (TRA recommendation to the Secretary of State) only if it is satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test (see paragraph 25 of Schedule 4 to the Act) and, where it is not so satisfied, it must instead make a determination that the application of the anti-dumping amount or countervailing amount to those goods should be revoked.

(11) Where—

- (a) the countervailing amount imposed is less than the amount of subsidy; and
- (b) after the period of investigation, export prices have decreased or there has been no movement, or insufficient movement of resale prices of the goods subject to review in the United Kingdom to reflect the application of that amount,

the TRA may determine that the countervailing amount be increased to attain the price increase required to remove injury caused by the subsidised imports.

(12) Where the TRA determines that a countervailing amount be increased pursuant to paragraph (11), the level after the increase must not exceed the amount of the subsidy.

Expiry review

70.—(1) The TRA may conduct a review to consider 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 relevant goods were to expire (an “expiry review”).

(2) The TRA may make a determination that the anti-dumping amount or countervailing amount should be varied—

- (a) by extending the duration; and
- (b) where it considers it appropriate, by amending the level.

(3) The TRA must notify interested parties of the expiry of the application of an anti-dumping amount or a countervailing amount in sufficient time to allow interested parties to make an application for an expiry review.

(4) The TRA may only consider an application for an expiry review if it is made at least three months but not more than 12 months before the scheduled expiry of the relevant anti-dumping amount or countervailing amount.

(5) An expiry review application must include evidence that if the application of an anti-dumping amount or a countervailing amount were to expire in accordance with the terms of the public notice made under section 13 of the Act, the following would be likely to continue or recur—

- (a) the dumping or subsidisation of the goods subject to review; and
- (b) the injury caused by the dumped goods or subsidised imports.

(6) In conducting an expiry review, where relevant, the TRA must consider whether—

- (a) dumping or subsidisation of the goods subject to review is continuing or is likely to recur;
- (b) injury has been removed, or reduced, in whole or in part due to the application of the anti-dumping amount or countervailing amount; and
- (c) the circumstances of the relevant exporting country or territory, or overseas exporter, are such that the injury caused by the dumped goods or subsidised imports is likely to continue or recur.

(7) The TRA may only make a determination that the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review be varied in any way other than by extending its duration where it has reassessed—

- (a) the margin of dumping or the amount of subsidy; and
- (b) the amount adequate to remove the injury.

(8) Where the goods subject to review are subject to an anti-dumping amount or a countervailing amount, the TRA must have regard to the current and prospective impact of the anti-dumping amount or countervailing amount when making a determination regarding the future application of an anti-dumping or a countervailing amount.

(9) Where an application for an expiry review has been made in accordance with this regulation, an anti-dumping amount or a countervailing amount which applies to the goods subject to review is to be treated as continuing (where it would otherwise cease to do so) until the TRA has made a determination in accordance with paragraph (11)(a) or the Secretary of State has accepted or rejected the TRA's recommendation in accordance with regulation 76 (acceptance or rejection of the TRA's recommendation by the Secretary of State).

(10) In order to extend the application of an anti-dumping amount or a countervailing amount pursuant to paragraph (9), the Secretary of State must make a public notice under section 13 of the Act on initiation of the expiry review.

(11) Following an expiry review, the TRA may determine that—

- (a) the application of the relevant anti-dumping amount or countervailing amount to some or all of the goods subject to review should expire as set out in the public notice made under section 13 of the Act;
- (b) the application of the relevant anti-dumping amount or countervailing amount at the same level to some or all of the goods subject to review should be extended by a period of no more than five years; or
- (c) the application of the relevant anti-dumping amount or countervailing amount at a different level to some or all of the goods subject to review should be extended by a period of no more than five years.

(12) Where the TRA determines that the application of an anti-dumping amount or a countervailing amount be extended in accordance with this regulation, it may make a recommendation under regulation 76 (acceptance or rejection of the TRA's recommendation by the Secretary of State) only if it is satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test (see paragraph 25 of Schedule 4 to the Act).

New exporter review

71.—(1) The TRA may conduct a review (a “new exporter review”) to consider whether the application of an anti-dumping amount or a countervailing amount to goods should be varied in the case of a new exporter.

(2) A “new exporter” is an overseas exporter that did not export the goods subject to review into the United Kingdom during the period of investigation in respect of which the application of the relevant anti-dumping amount or countervailing amount is based.

(3) A review application for a new exporter review must include evidence that—

(a) the review applicant is not related to any overseas exporter—

(i) who is subject to the application of an anti-dumping amount or a countervailing amount in respect of the dumped goods or subsidised imports; and

(ii) who exported the dumped goods or subsidised imports to the United Kingdom during the period of investigation;

(b) the review applicant did not export the goods subject to review to the United Kingdom during the period of investigation and either—

(i) is exporting the goods subject to review to the United Kingdom; or

(ii) has a contractual obligation to export a significant quantity of the goods subject to review to the United Kingdom.

(4) Where an anti-dumping amount or a countervailing amount has been determined using sampling in accordance with regulation 37 (determination of the anti-dumping amount or countervailing amount for non-sampled overseas exporters), an anti-dumping amount or a countervailing amount applied to the goods subject to review must be the same as the non-sampled overseas exporter amount determined in accordance with that regulation.

(5) Where the TRA initiates a new exporter review in relation to an anti-dumping amount—

(a) the TRA must notify the Secretary of State; and

(b) the Secretary of State must suspend, by a public notice made under section 13 of the Act, the collection of any anti-dumping amount for the review applicant's goods pending the outcome of the new exporter review.

(6) Following a new exporter review, the TRA may determine that—

(a) the review applicant is not a new exporter;

(b) the review applicant is a new exporter and the non-sampled overseas exporter amount should be applied to the review applicant's exports of the goods subject to review;

(c) the review applicant is a new exporter and an individual anti-dumping amount or individual countervailing amount should be applied to the review applicant's exports of the goods subject to review at a rate calculated during the review; or

(d) the review applicant is a new exporter and an undertaking should be accepted in accordance with Part 8.

(7) If the TRA makes a determination under paragraph (6)(a) in respect of an anti-dumping amount, the Secretary of State may, by a public notice made under section 13 of the Act, apply the

rate previously calculated in accordance with regulation 38 (determination of the residual amount) in respect of the relevant review applicant from the date of the initiation of the new exporter review.

(8) If the TRA makes a determination under paragraph (6)(b) or (c) in respect of an anti-dumping amount, the Secretary of State may, by a public notice made under section 13 of the Act, apply the rate specified in the TRA's recommendation in respect of that new exporter from the date of the initiation of the new exporter review.

(9) If the Secretary of State accepts an undertaking, Part 8 applies to the extent it is relevant.

Absorption review

72.—(1) The TRA may conduct a review (an “absorption review”) to consider whether there has been a sufficient change to the export price or resale price of goods to reflect the application of an anti-dumping amount.

(2) An absorption review application must include evidence that after the period of investigation relating to the application of an anti-dumping amount—

- (a) export prices of the goods subject to review have decreased; or
- (b) there has been no movement, or insufficient movement, in the resale price or subsequent selling prices of the imported goods subject to review.

(3) In conducting an absorption review, the TRA must consider, among other things—

- (a) available information from overseas exporters, importers and UK industry in respect of the export prices, resale prices and subsequent selling prices;
- (b) whether the application of an anti-dumping amount has led to movements in resale prices and subsequent selling prices;
- (c) any other relevant factors which may have had an impact on prices.

(4) Subject to paragraph (5), for the purpose of making a determination under this regulation, the TRA may make any assessment, finding or determination relevant to the calculation of the anti-dumping amount which it could have made in the investigation to which the anti-dumping amount relates.

(5) The TRA must not reassess the economic interest test (see paragraph 25 of Schedule 4 to the Act) when carrying out an absorption review.

(6) The TRA must not recommend the application of an anti-dumping amount exceeding twice the anti-dumping amount most recently applied to the goods subject to review.

(7) Following the conclusion of an absorption review, the TRA may determine that the level of an anti-dumping amount to some or all of the goods subject to review should be—

- (a) maintained; or
- (b) varied.

Circumvention review

73.—(1) The TRA may conduct a review (a “circumvention review”) to consider whether activity is being undertaken to circumvent the application of an anti-dumping amount or a countervailing amount to goods.

(2) For the purpose of this regulation, “circumvention” exists where—

- (a) there is a change in the pattern of trade between—
 - (i) a foreign country or territory not listed in the relevant public notice made under section 13 of the Act (a “third country”) and the United Kingdom; or

- (ii) individual companies in the exporting country or territory listed in the public notice made under section 13 of the Act (“the relevant exporting country or territory”) and the United Kingdom; and
- (b) the change in the pattern of trade results from a practice, process or work which has insufficient economic justification other than the avoidance of the anti-dumping amount or countervailing amount;
- (c) there is injury or the remedial effects of the anti-dumping amount or countervailing amount are being undermined in respect of prices or quantities of the goods subject to review; and
- (d) either—
 - (i) there is dumping in relation to the normal values previously established for the goods subject to review; or
 - (ii) the countervailable subsidy still confers a benefit on the goods subject to review.
- (3) The practice, process or work referred to in paragraph (2)(b) includes—
 - (a) the minor modification of the dumped goods or subsidised imports to make them subject to a different customs code and so not subject to the anti-dumping amount or countervailing amount, provided that the modification does not alter the essential characteristics of the good;
 - (b) channelling the consignment of dumped goods or subsidised imports via third countries;
 - (c) the reorganisation by overseas exporters of their patterns and channels of sales in the relevant exporting country or territory in order to export dumped goods or subsidised imports to the United Kingdom through exporters of goods which are subject to a lower anti-dumping amount or countervailing amount;
 - (d) the assembly of parts by an assembly operation in the United Kingdom or a third country.
- (4) For the purpose of paragraph (3)(d), an assembly operation is one—
 - (a) which started or substantially increased after, or immediately prior to, the initiation of the relevant investigation;
 - (b) which uses parts from the relevant exporting country or territory;
 - (c) where 60 per cent. or more of the total value of the parts of the assembled goods come from the relevant exporting country or territory, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 per cent. of the manufacturing cost; and
 - (d) where the remedial effects of the anti-dumping amount or countervailing amount are being undermined in terms of the prices or quantities of the assembled like goods and there is evidence of either dumping of the goods in relation to the normal values previously established or importation of subsidised imports into the United Kingdom.
- (5) A circumvention review application must include sufficient evidence of the matters alleged to constitute circumvention.
- (6) In order to determine whether circumvention exists, the TRA may consider, among other things—
 - (a) the nature of the relationship between persons in the export chain;
 - (b) the timing of the change in the pattern of trade; and
 - (c) the nature of the change in the pattern of trade.
- (7) Following a circumvention review, the TRA may determine that—

- (a) the application of an anti-dumping amount or a countervailing amount should remain unchanged; or
- (b) the application of the relevant anti-dumping amount or countervailing amount imposed should be varied—
 - (i) to apply to some or all of the goods subject to review;
 - (ii) to apply to goods from a third country; or
 - (iii) where circumvention exists in the form described in paragraph (3)(c), to apply an anti-dumping or a countervailing amount at a level less than or equal to that specified in the relevant public notice made under section 13 of the Act.

(8) At any time during a circumvention review, the TRA may exempt an importer or overseas exporter from any anti-dumping amount or countervailing amount which it may impose as a result of a determination under paragraph (7)(b) where the conditions in paragraph (10) are met.

(9) The TRA may grant an exemption after the conclusion of a circumvention review where the importer or overseas exporter did not import or export the goods subject to review during the circumvention review and the conditions in paragraph (10) are met.

(10) The TRA may grant an exemption in favour of—

- (a) an overseas exporter, who it determines not to be engaged in circumvention, where the practice, process or work referred to in paragraph (3) takes place outside the United Kingdom; or
- (b) an importer, who is not related to an overseas exporter which is subject to the anti-dumping amount or countervailing amount to which the circumvention review relates, where the practice, process or work referred to in paragraph (3) takes place in the United Kingdom.

Scope review

74.—(1) The TRA may conduct a review (a “scope review”) to consider whether the goods or the description of goods to which an anti-dumping amount or a countervailing amount is applicable should be varied.

(2) Otherwise than on its own initiative in accordance with regulation 67 (initiation of a review), the TRA may not initiate a scope review in relation to goods within a year of the imposition or variation of an anti-dumping amount or a countervailing amount pursuant to a public notice made under section 13 of the Act.

(3) A scope review application must include evidence that—

- (a) the goods or the description of the dumped goods or subsidised imports should be varied; and
- (b) the nature of the variation does not justify an investigation in accordance with Part 6.

(4) In order to determine whether it is appropriate to initiate a scope review, the TRA must consider—

- (a) whether it would have included the goods or description of goods subject to review in the original investigation had it had the information contained in that application before it at the time of that investigation;
- (b) the relationship between the goods subject to review and the like goods in the domestic market in the United Kingdom;
- (c) the impact, or potential impact, of any change in scope on the intended effects of the anti-dumping amount or countervailing amount;
- (d) whether any prejudice could be caused to the interests of any interested party or contributor;

- (e) whether the application of rules of customs would resolve the issues raised by the review applicant; and
 - (f) any other factors it considers relevant.
- (5) Following a scope review, the TRA may determine that the goods or the description of goods to which an anti-dumping amount or a countervailing amount is applicable should be—
- (a) maintained; or
 - (b) varied.

CHAPTER 3

TRA recommendation and decision of the Secretary of State

TRA recommendation to the Secretary of State

75.—(1) Following the conclusion of a review, the TRA must make a recommendation to the Secretary of State, where it is satisfied that (where applicable) the economic interest test is met and that—

- (a) the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review should be varied;
 - (b) the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review should be revoked;
 - (c) the period of the application of an anti-dumping amount or a countervailing amount should be extended; or
 - (d) an anti-dumping amount or a countervailing amount should be applied to a new exporter at a particular level.
- (2) The TRA's recommendation must include—
- (a) a description of the goods to which the recommendation relates;
 - (b) the names of overseas exporters, or where impracticable, the exporting countries or territories;
 - (c) where relevant, the recommended period for which the anti-dumping amount or countervailing amount should be applicable, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation, unless the TRA makes a recommendation in accordance with paragraph (3); and
 - (d) the reasons for its recommendation.
- (3) The TRA may recommend that the application of a varied anti-dumping amount or countervailing amount should be applicable to goods from a date before the date set out in the public notice made under section 13 of the Act giving effect to the recommendation where—
- (a) the recommendation is in respect of a review in accordance with regulation 73 (circumvention review); and
 - (b) the requirements set out in paragraph 21(10) of Schedule 4 to the Act are satisfied.
- (4) Where the TRA terminates a review but does not make a recommendation in accordance with paragraph (1), the TRA must—
- (a) publish a notice containing the information set out in paragraph 2 of Schedule 3; and
 - (b) notify the Secretary of State and interested parties.

Acceptance or rejection of the TRA's recommendation by the Secretary of State

76.—(1) Where the TRA makes a recommendation in accordance with regulation 75 (TRA recommendation to the Secretary of State), the Secretary of State must accept or reject the recommendation.

(2) The Secretary of State may reject the TRA's recommendation only if the Secretary of State is satisfied that it is not in the public interest to accept the recommendation.

(3) In considering that, where the recommendation is one which comprises or includes extending the period for which an anti-dumping amount or a countervailing amount applies following an interim or expiry review, 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, unless the Secretary of State is satisfied that the determination is not one that the TRA could reasonably have made.

(4) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 3 or 4 of Schedule 3;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

(5) Where the Secretary of State accepts the TRA's recommendation, the notice published by the Secretary of State under paragraph 21(7)(a) of Schedule 4 to the Act must contain the information set out in paragraph 3 or 4 of Schedule 3.

PART 8**Undertakings****Requests and offers of undertakings**

77.—(1) In respect of a subsidisation investigation—

- (a) where the TRA intends to request an undertaking from a relevant foreign government, it must obtain the consent of the Secretary of State to approach the relevant foreign government;
- (b) where the TRA intends to request an undertaking from an overseas exporter, it must obtain the consent of the relevant foreign government to approach the relevant overseas exporter.

(2) A refusal to offer, or accept an invitation to offer, an undertaking must in no way prejudice consideration of the case against the overseas exporter or relevant foreign government.

TRA's power to recommend acceptance of undertakings

78.—(1) The TRA may make a recommendation to the Secretary of State under paragraph 23(1) of Schedule 4 to the Act to accept an undertaking in respect of goods only if—

- (a) it is satisfied that 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 of Schedule 4 to the Act);
- (c) it is satisfied that it is appropriate to accept the undertaking; and

- (d) it has complied with the requirements set out in regulation 77 (requests and offers of undertakings).
- (2) In making an assessment as to whether it is appropriate to recommend the acceptance of an undertaking for the purpose of paragraph (1)(c), the TRA may consider—
 - (a) the adequacy of the terms and conditions of an undertaking including—
 - (i) the sufficiency of provision for the supply of information to the TRA to enable the monitoring of compliance with the undertaking, including regular supply of information relevant to the fulfilment of the undertaking and provision to permit verification of relevant information;
 - (ii) the provision of a non-confidential version of the undertaking by the overseas exporter or relevant foreign government;
 - (iii) what constitutes a breach of the undertaking and the consequences of any such breach;
 - (b) whether acceptance is impractical; and
 - (c) reasons of general policy.
- (3) The terms and conditions of the undertaking must cover—
 - (a) the supply of information to the TRA for the purpose of compliance monitoring;
 - (b) compliance monitoring by the TRA;
 - (c) activities that may be considered a breach of the undertaking;
 - (d) the circumstances in which the undertaking will cease to apply;
 - (e) when an anti-dumping amount or a countervailing amount applies in the alternative to the continuation of the undertaking; and
 - (f) anything else which the TRA considers necessary.
- (4) A recommendation to accept an undertaking may only be made when accompanied by a recommendation in accordance with paragraph 17(3)(a) or (4)(a) of Schedule 4 to the Act and must—
 - (a) specify the goods in respect of which the undertaking is offered;
 - (b) identify the overseas exporter or relevant foreign government who offered the undertaking;
 - (c) contain details of the undertaking, including the full terms and conditions of the undertaking; and
 - (d) include the reasons for the TRA's determination that the acceptance of the undertaking is appropriate.
- (5) If an undertaking is offered by an overseas exporter or a relevant foreign government and the TRA determines that it is not appropriate to accept an undertaking, it must—
 - (a) where it is practicable, notify the overseas exporter or relevant foreign government of the reasons for its determination; and
 - (b) where possible, provide the overseas exporter or relevant foreign government an opportunity to provide comments.
- (6) The terms and conditions of the undertaking must be in accordance with paragraph 18(6) of Schedule 4 to the Act.

Secretary of State's power to accept undertakings

79.—(1) Where the TRA makes a recommendation under regulation 78 (TRA's power to recommend acceptance of undertakings) that the Secretary of State accept an undertaking, the Secretary of State must accept or reject the recommendation.

(2) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 4; and
- (b) notify interested parties.

(3) Where the Secretary of State intends to reject the TRA's recommendation, the Secretary of State must—

- (a) where it is practicable, notify the overseas exporter or relevant foreign government of the reasons for that; and
- (b) where possible, provide the overseas exporter or relevant foreign government an opportunity to provide comments.

Monitoring compliance with an undertaking

80.—(1) The TRA must monitor compliance with the terms and conditions of an undertaking (see regulation 78).

- (2) Part 6 applies to this Part to the extent that the TRA considers relevant.

The acceptance of a new undertaking in place of an existing undertaking

81. Regulations 77 (requests and offers of undertakings), 78 (TRA's power to recommend acceptance of undertakings) and 79 (Secretary of State's power to accept undertakings) apply to the acceptance of a new undertaking in place of an existing undertaking.

Undertakings ceasing to apply

82.—(1) An undertaking ceases to apply prior to the end of the period specified in the public notice made under section 13 of the Act where—

- (a) an anti-dumping amount or a countervailing amount is no longer applicable to the dumped goods or subsidised imports listed in that notice;
- (b) the undertaking is withdrawn by the overseas exporter or relevant foreign government;
- (c) the Secretary of State withdraws acceptance of the undertaking; or
- (d) the TRA notifies the Secretary of State that the undertaking otherwise ceases to apply in accordance with its terms or conditions.

(2) Where an undertaking ceases to apply, in accordance with paragraph (1)(a), (b) or (c), the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 2 of Schedule 4; and
- (b) notify interested parties.

Breach of an undertaking

83.—(1) Where there is evidence of a breach of an undertaking, the TRA may initiate an investigation (a "breach investigation")—

- (a) following an application made by, or on the behalf of, an interested party or the Secretary of State; or
- (b) on its own initiative.

(2) The TRA may reject an application for a breach investigation where it considers that there is insufficient evidence of the breach alleged.

- (3) Where the TRA initiates a breach investigation, it must notify interested parties accordingly.

(4) The TRA must provide interested parties with an opportunity to comment prior to making a determination that an undertaking has been breached.

(5) Except where the TRA determines that there are adequate reasons to allow the undertaking to continue to apply, where the TRA determines that an undertaking has been breached—

- (a) the acceptance of the undertaking must be withdrawn; and
- (b) an anti-dumping amount or a countervailing amount must be applied to the goods in accordance with the terms and conditions of the undertaking from the date of the breach as determined by the TRA.

(6) Where the acceptance of an undertaking is withdrawn following the TRA's determination of a breach, the TRA must publish a notice containing the information set out in paragraph 3 of Schedule 4.

Reviews by the TRA of the continuing application of an undertaking

84.—(1) The TRA may conduct a review (an “undertaking review”) to consider whether—

- (a) the period of application of the undertaking should be extended so that it continues after it would otherwise expire;
- (b) the continuing application of the undertaking is necessary or sufficient to offset—
 - (i) the dumping of the goods in respect of which the undertaking is given; or
 - (ii) the subsidisation of the goods in respect of which the undertaking is given;
- (c) injury to UK industry in the goods would be likely to continue or recur if the application of the undertaking were to expire or be varied, or its acceptance were to be withdrawn;
- (d) the goods in respect of which the undertaking applies should be varied; or
- (e) the undertaking including the terms and conditions continues to be appropriate.

(2) The TRA may initiate an undertaking review—

- (a) where a review (see Part 7) has been initiated in respect of the dumped goods or subsidised imports listed in the relevant public notice made under section 13 of the Act; or
- (b) on its own initiative.

(3) The TRA must provide interested parties with an opportunity to comment during the course of a review under this regulation.

(4) Regulation 80 (monitoring compliance with an undertaking) applies to an undertaking review.

(5) Following an undertaking review, the TRA may determine that—

- (a) the terms and conditions of an undertaking should remain unchanged;
- (b) the terms and conditions of an undertaking should be varied;
- (c) a new undertaking, offered by the overseas exporter or relevant foreign government, should be accepted;
- (d) the level of the anti-dumping amount or countervailing amount that may be applied in the alternative to the continuation of the undertaking specified in the relevant public notice made under section 13 of the Act should be varied; or
- (e) the acceptance of an undertaking should be withdrawn.

(6) Where the TRA makes a determination in accordance with paragraph (5)(b) to (e), it must make a recommendation to the Secretary of State in accordance with its determination.

(7) Where the TRA makes a recommendation to the Secretary of State, the Secretary of State must accept or reject the recommendation.

(8) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 4 of Schedule 4; and
- (b) notify interested parties.

(9) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must notify interested parties accordingly.

(10) Where the Secretary of State intends to make a decision which will result in an undertaking ceasing to apply, the Secretary of State must—

- (a) where it is practicable, notify the overseas exporter or relevant foreign government of the reasons for that decision; and
- (b) where possible, provide the overseas exporter or relevant foreign government an opportunity to provide comments.

PART 9

Suspension

Suspension of an anti-dumping amount or a countervailing amount

85.—(1) The TRA may make a recommendation to the Secretary of State (a “suspension recommendation”) that the application of an anti-dumping amount or a countervailing amount be suspended for a specified period (the “period of suspension”) in relation to some or all of the goods specified in a public notice made by the Secretary of State under section 13 of the Act.

(2) The TRA may make a suspension recommendation where—

- (a) paragraph (3) applies;
- (b) it is satisfied that a suspension is appropriate; and
- (c) the applicant UK industry has been given the opportunity to comment on the suspension proposed in the application for suspension (see regulation 86).

(3) This paragraph applies where the TRA, whether or not as a consequence of considering an application in accordance with regulation 86 (application for suspension), considers that the circumstances in paragraph (4) exist.

(4) Those circumstances are that—

- (a) market conditions have changed temporarily; and
- (b) as a consequence of the change in market conditions, the injury caused to a UK industry is unlikely to recur if the application of an anti-dumping amount or a countervailing amount were to be suspended.

(5) In considering whether to make a suspension recommendation, the TRA may take such steps as it considers appropriate.

(6) Where the TRA rejects an application for suspension, the TRA must notify the applicant.

(7) Where the TRA considers that it is not appropriate to make a suspension recommendation, it must—

- (a) publish a notice of the reasons for its determination; and
- (b) notify the Secretary of State and interested parties.

(8) Where the TRA considers that it is appropriate to make a suspension recommendation, the recommendation must include—

- (a) the reasons for its determination;
 - (b) the recommended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation; and
 - (c) any other information it considers relevant.
- (9) If the TRA makes a suspension recommendation, the Secretary of State must decide whether to accept or reject it.
- (10) Where the Secretary of State accepts the suspension recommendation, the notice published by the Secretary of State under paragraph 26(6)(a) of Schedule 4 to the Act must contain the information set out in paragraph 1 of Schedule 5.
- (11) The Secretary of State may only reject a suspension recommendation where the Secretary of State considers that it is not in the public interest to accept it.
- (12) Where the Secretary of State rejects a suspension recommendation, the Secretary of State must—
- (a) publish a notice containing the information set out in paragraph 1 of Schedule 5;
 - (b) notify interested parties; and
 - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.
- (13) Where an anti-dumping amount or a countervailing amount is suspended under this Part, the period of suspension counts towards the specified period of the anti-dumping amount or countervailing amount as stated in the relevant public notice.

Application for suspension

- 86.**—(1) An application for suspension of an anti-dumping amount or a countervailing amount in accordance with regulation 85 (suspension of an anti-dumping amount or a countervailing amount) (a “suspension application”) may be made to the TRA by or on behalf of an interested party.
- (2) A suspension application to the TRA must include as far as possible information regarding—
- (a) the change in the market conditions;
 - (b) the temporary nature of that change; and
 - (c) the effect of the change on UK industry.
- (3) Where a suspension application is withdrawn by the applicant, the TRA may still consider whether it is appropriate to make a suspension recommendation (see regulation 85).

Period of suspension

- 87.**—(1) The period of suspension referred to in regulation 85(1) must not exceed nine months commencing on the day after the publication of the public notice under section 13 of the Act giving effect to the suspension.
- (2) Following an application by an interested party or where the TRA otherwise considers that it is appropriate, the TRA may recommend to the Secretary of State that the period of nine months in paragraph (1) be extended to a maximum of 21 months (“extended period of suspension”).
- (3) Where the TRA makes a recommendation in accordance with paragraph (2), but the duration of the extended period of suspension recommended is less than 21 months, the TRA may make a further recommendation to the Secretary of State to increase the duration of the extended period of suspension where it considers it is appropriate to do so and provided that the overall duration of the extended period of suspension does not exceed 21 months.

(4) Where the TRA rejects an application for an extension of the period of suspension, the TRA must notify the applicant.

(5) Where the TRA considers that it is not appropriate to make a recommendation to extend the period of suspension, it must—

- (a) publish a notice of its determination and the reasons for it; and
- (b) notify the Secretary of State and interested parties.

(6) Where the TRA considers that it is appropriate to make a recommendation to extend the period of suspension, the recommendation must include—

- (a) the reasons for its recommendation;
- (b) the recommended extended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation; and
- (c) any other information the TRA considers relevant.

(7) If the TRA makes a recommendation in accordance with this regulation, the Secretary of State must decide whether to accept or reject it.

(8) Where the Secretary of State accepts a recommendation, the notice published by the Secretary of State under paragraph 26(6)(a) of Schedule 4 to the Act must contain the information set out in paragraph 3 of Schedule 5.

(9) The Secretary of State may only reject a recommendation where the Secretary of State considers that it is not in the public interest to accept the recommendation.

(10) Where the Secretary of State rejects a recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 3 of Schedule 5;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

Reinstatement of an anti-dumping amount or a countervailing amount

88.—(1) The TRA may make a recommendation to the Secretary of State to reinstate an anti-dumping amount or a countervailing amount where it determines that the circumstances in regulation 85(4) no longer exist.

(2) Where the TRA makes a recommendation in accordance with this regulation, the recommendation must include—

- (a) the reasons for its recommendation; and
- (b) any other information it considers relevant.

(3) If the TRA makes a recommendation in accordance with this regulation, the Secretary of State must decide whether to accept or reject it.

(4) Where the Secretary of State accepts the recommendation, the Secretary of State must—

- (a) publish a public notice under section 13 of the Act containing the information set out in paragraph 4 of Schedule 5; and
- (b) notify interested parties.

(5) The Secretary of State may only reject a recommendation where the Secretary of State considers that it is not in the public interest to accept the recommendation.

(6) Where the Secretary of State rejects a recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 4 of Schedule 5;

- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

PART 10

Investigations regarding repayments

Investigations regarding repayments

89.—(1) The TRA may conduct an investigation (a “repayment investigation”) to determine whether HMRC should make a repayment of an anti-dumping amount or a countervailing amount (the “amount”) under the Customs (Import Duty) (EU Exit) Regulations 2018(6).

(2) The determination in paragraph (1) is a determination that the dumping margin or amount of the subsidy has been—

- (a) eliminated; or
- (b) reduced to a level that is lower than the amount specified in the public notice made by the Secretary of State under section 13 of the Act.

(3) An importer may only make an application for a repayment investigation if they make an application (a “qualifying application”) to the TRA in accordance with this regulation.

(4) A qualifying application must contain—

- (a) a description of the goods to which the application relates;
- (b) evidence of the amount paid in respect of those goods;
- (c) details of the amount of the repayment requested;
- (d) sufficient evidence of the matters referred to in paragraph (2);
- (e) relevant evidence from the overseas exporter or a commitment that such evidence will be provided within 30 days of a request by the TRA;
- (f) information regarding the relationship between the importer and the overseas exporter; and
- (g) any other relevant information.

(5) In conducting a repayment investigation, the TRA must determine whether there has been dumping or subsidisation applying the same methodology as in the original investigation, unless the TRA considers that it is inappropriate to do so.

(6) Where the TRA constructs the export price in accordance with regulation 15 (export price), the TRA may deduct any anti-dumping amount paid where it is not reflected in resale prices and subsequent selling prices in the United Kingdom.

(7) The TRA must reject an application for a repayment investigation and notify the importer where the application does not satisfy the requirements set out in paragraph (4)(d) or (e).

(8) Where the TRA makes a determination that HMRC should make a repayment under the Customs (Import Duty) (EU Exit) Regulations 2018, it must—

- (a) calculate the amount of the repayment;
- (b) send a notification to HMRC that the TRA is satisfied that a repayment is due; and
- (c) publish a notice containing the information set out in paragraph 9 of Schedule 2.

(9) Where the TRA makes a determination that HMRC should not make a repayment under the Customs (Import Duty) (EU Exit) Regulations 2018, it must notify the importer.

PART 11

Miscellaneous

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

90.—(1) The TRA may recommend to the Secretary of State (an “extension recommendation”) that the period of a provisional remedy, which has been applied in respect of goods in the case of a dumping investigation, be extended.

(2) The TRA may only make an extension recommendation where—

- (a) paragraph (3) or (4) applies; and
- (b) the TRA is satisfied that the extension meets the economic interest test (see paragraph 25 of Schedule 4 to the Act).

(3) This paragraph applies where the TRA receives a request to extend the period of the provisional remedy from or on behalf of overseas exporters representing a significant volume of the dumped goods.

(4) This paragraph applies where—

- (a) the TRA considers that extending the period of the provisional remedy is appropriate in the circumstances;
- (b) the TRA issues a notification to overseas exporters notifying them that the TRA considers it appropriate to extend the period of the provisional remedy (“proposed extension”); and
- (c) overseas exporters representing a significant volume of the dumped goods do not object to the proposed extension.

(5) An extension recommendation must include—

- (a) a description of the goods to which the recommendation relates;
- (b) the overseas exporters that support or do not object to the extension;
- (c) the recommended period of extension, which must not exceed the period referred to in paragraph 16(2) of Schedule 4 to the Act and which must begin on the day on which the provisional remedy would have otherwise expired; and
- (d) the reasons for the TRA’s recommendation.

(6) If the TRA makes an extension recommendation, the Secretary of State must decide whether to accept or reject it.

(7) The Secretary of State may only reject the TRA’s recommendation where the Secretary of State is satisfied that it is not in the public interest to accept it.

(8) In making a decision under paragraph (6), the Secretary of State must accept the TRA’s determination that an extension meets the economic interest test (see paragraph 25 of Schedule 4 to the Act) unless the Secretary of State is satisfied that the recommendation is not one that the TRA could reasonably have made.

(9) Where the Secretary of State accepts an extension recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 6; and
- (b) notify interested parties.

(10) Where the Secretary of State rejects an extension recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 6;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

Relevant period in a dumping investigation

91.—(1) The TRA may recommend that an anti-dumping amount should apply to goods from the relevant date specified in paragraph 19(3)(a)(i) of Schedule 4 to the Act where paragraph (2) applies.

(2) This paragraph applies where the Secretary of State has published a notice under paragraph 29(1) of Schedule 4 to the Act and the TRA considers in a dumping investigation that—

- (a) there is a history of dumping which caused injury or the importer is, or should have been, aware that the overseas exporter practises dumping and that such dumping would cause injury to a UK industry;
- (b) the injury caused to a UK industry was caused by a massive volume of dumped goods in a short period of time; and
- (c) in light of the timing and volume of the dumped goods and other circumstances (for example a rapid build-up of inventories of the dumped goods), the application of the anti-dumping amount to be applied is likely to seriously undermine the remedial effect of that amount.

(3) Before making the recommendation in paragraph (1), the TRA must allow importers to submit any evidence they consider relevant.

Relevant period in a subsidisation investigation

92.—(1) The TRA may recommend that a countervailing amount should apply to goods from the relevant date specified in paragraph 19(3)(a)(i) of Schedule 4 to the Act where paragraph (2) applies.

(2) This paragraph applies where the Secretary of State has published a notice under paragraph 29(1) of Schedule 4 to the Act and the TRA considers in a subsidisation investigation that in critical circumstances—

- (a) there is a massive volume of imports of the subsidised goods into the United Kingdom in a short period of time;
- (b) the massive imports of the subsidised imports caused injury to a UK industry, which is difficult to repair; and
- (c) it is necessary in order to preclude the recurrence of such injury to a UK industry to recommend that a countervailing amount apply to goods from the relevant date specified in paragraph 19(3)(a)(i) of Schedule 4 to the Act.

Meaning of export subsidisation

93.—(1) For the purpose of paragraph 27 of Schedule 4 to the Act, “export subsidisation” (and “export subsidy” accordingly) has the meaning given by this regulation.

(2) Subject to paragraph (3), export subsidisation means the granting of a subsidy which is contingent, in law or in fact, upon export performance.

(3) The fact that a subsidy is granted to enterprises which export does not for that reason alone mean that it is an export subsidy.

(4) When considering whether or not a subsidy is an export subsidy, the TRA must take into account footnote 1 and Annexes I to III to the Agreement on Subsidies and Countervailing Measures (being part of Annex 1A to the WTO Agreement).

PART 12

Transitional Provisions

Interpretation for Part 12

94.—(1) In this Part—

“corresponding EU duty” means the EU anti-dumping duty or EU countervailing duty in respect of which a relevant determination (referred to in regulation 95(1)(a) or (b)) that an anti-dumping amount or countervailing amount applies to goods was made;

“EU anti-dumping duty” means a definitive anti-dumping duty that has, before replacement day, been imposed by provision made under Regulation (EU) 2016/1036 of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union⁽⁷⁾;

“EU countervailing duty” means a definitive countervailing duty that has, before replacement day, been imposed by provision made under Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union⁽⁸⁾;

“EU regulation” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU tertiary legislation” means any provision made under an EU regulation;

“qualifying application” means an application made to the Secretary of State by or on behalf of a UK industry in the goods to which the application relates; and

“replacement day” means the day on which Part 1 of Schedule 7 to the Act comes into force in so far as it relates to any EU anti-dumping duty and any EU countervailing duty.

(2) For the purpose of this Part, references to Regulation (EU) 2016/1036 and Regulation (EU) 2016/1037 shall be taken to include references to earlier EU regulations under which provision was made for the imposition of, as the case may be, definitive anti-dumping duties and definitive countervailing duties.

Application of this Part

95.—(1) This Part applies where—

- (a) an EU anti-dumping duty has been the subject of a qualifying application and, in respect of that duty, the Secretary of State has, before replacement day, made a relevant determination; or
- (b) an EU countervailing duty has been the subject of a qualifying application and, in respect of that duty, the Secretary of State has, before replacement day, made a relevant determination.

(2) A relevant determination referred to in paragraph (1)(a) is a determination that, where the EU anti-dumping duty is expected to apply to goods immediately before replacement day, an anti-

⁽⁷⁾ OJ No L 176, 30.6.16, p 21.

⁽⁸⁾ OJ No L 176, 30.6.16, p 55.

dumping amount in the same amount as the EU anti-dumping duty applies to the same goods upon and from replacement day until the appropriate date.

(3) A relevant determination referred to in paragraph (1)(b) is a determination that, where the EU countervailing duty is expected to apply to goods immediately before replacement day, a countervailing amount in the same amount as the EU countervailing duty applies to the same goods upon and from replacement day until the appropriate date.

(4) An EU countervailing duty expected to apply to goods immediately before replacement day includes a duty which would so apply were it not for the acceptance by the European Commission, before replacement day, of an undertaking referred to in Article 13 of Regulation (EU) 2016/1037.

(5) In this regulation, the “appropriate date” means—

- (a) the date upon which the EU anti-dumping duty or the EU countervailing duty, as the case may be, is due to expire; or
- (b) where upon replacement day the relevant duty is undergoing an expiry review (pursuant to Regulation (EU) 2016/1036 in the case of an anti-dumping duty or Regulation (EU) 2016/1037 in the case of a countervailing duty), the date that is 30 days after replacement day.

Notification etc of determination

96.—(1) The Secretary of State must—

- (a) publish a notice of a determination referred to in regulation 95(1);
- (b) notify the government of the exporting country or territory of any such determination; and
- (c) make provision by public notice to give effect to the determination.

(2) The notice under paragraph (1)(c) must—

- (a) specify, in accordance with regulation 95(2) or (3)—
 - (i) the goods to which the anti-dumping amount or countervailing amount applies;
 - (ii) the anti-dumping amount or the countervailing amount;
 - (iii) the period for which the anti-dumping amount or countervailing amount applies;
- (b) refer to the EU tertiary legislation pursuant to which the EU anti-dumping duty or EU countervailing duty was imposed.

(3) Paragraph (4) applies where the Secretary of State has made a determination referred to in regulation 95(1) and before replacement day—

- (a) the Secretary of State has reconsidered the matter and determined that the anti-dumping or countervailing amount should not apply to the same goods as the EU anti-dumping or EU countervailing duty as appropriate upon and from that day;
- (b) the EU anti-dumping or EU countervailing duty is varied or ceases to apply to goods; or
- (c) the Secretary of State otherwise withdraws such a determination.

(4) Where this paragraph applies, the Secretary of State must, where relevant—

- (a) publish a notice withdrawing any notice of the determination already published under paragraph (1)(a);
- (b) notify the government of the exporting country or territory accordingly, to the extent that the Secretary of State has already notified that country or territory under paragraph (1)(b) of the determination;
- (c) publish a notice revoking any public notice already given under paragraph (1)(c).

Treatment of amounts under this Part etc

97.—(1) Amounts applicable to goods under this Part shall be treated as if they were amounts applicable to goods following the Secretary of State’s acceptance of a recommendation made by the TRA under paragraph 17(3) or (4) of Schedule 4 to the Act and, subject to the provision made by this Part and to the extent that the context permits, section 13 of the Act, that Schedule and the other Parts of these Regulations apply in relation to the former amounts as they do in relation to amounts applicable to goods following that acceptance.

(2) For the purpose of the application, in accordance with paragraph (1), of the other Parts of these Regulations in relation to amounts applicable to goods under this Part, a reference in any of those Parts to a public notice under section 13 of the Act shall, in the case of such amounts, be taken to include a public notice referred to in this Part.

(3) Where the TRA conducts a new exporter review of an amount applicable to goods under this Part, regulation 71 (new exporter review) has effect with the modifications specified in paragraph (4).

(4) The modifications are that—

- (a) the reference at paragraph (2), and the first and second references at paragraph (3), to the “United Kingdom” are read as references to the “European Union”;
- (b) the references at paragraphs (2) and (3) to the “period of investigation” are read as references to the investigation period referred to in Regulation (EU) 2016/1036 and Regulation (EU) 2016/1037 as appropriate;
- (c) paragraph (4) is read as if it referred to the corresponding EU duties and to such duties having been determined using sampling in accordance with Regulation (EU) 2016/1036 or Regulation 2016/1037 as appropriate;
- (d) the references at paragraphs (4) and (6)(b) to the “non-sampled overseas exporter amount” are read as references to those amounts as established pursuant to Regulation (EU) 2016/1036 or Regulation (EU) 2016/1037 as appropriate;
- (e) at paragraph (7), for “the rate previously calculated in accordance with regulation 38 (determination of residual amount)”, there were substituted “the relevant anti-dumping amount in accordance with regulation 95(2)”.

(5) In its application to an amount applicable to goods under this Part, regulation 74 (scope reviews) has effect with the omission of paragraphs (2) and (4)(a).

Review of amounts under this Part

98.—(1) The TRA must—

- (a) conduct a review (referred to in this Part as a “transition review”) of every anti-dumping amount and countervailing amount applicable to goods under this Part; and
- (b) initiate each such transition review before the date upon which, in accordance with regulation 95(2) or (3), such amount will cease to apply to the relevant goods.

(2) Prior to initiating a transition review of a countervailing amount, the TRA must notify the government of the exporting country or territory and the Secretary of State.

(3) Upon initiating a transition review (whether of an anti-dumping amount or a countervailing amount), the TRA must—

- (a) publish a notice of its initiation of such a review; and
- (b) notify the government of the exporting country or territory and the Secretary of State.

(4) A notice referred to in paragraph (3)(a) must contain—

- (a) details of the content of the public notice, referred to in regulation 96(1)(c), in respect of the anti-dumping amount or countervailing amount to which the review relates;

- (b) the information referred to in sub-paragraphs (c) to (g) and (k) to (n) of paragraph 1 (notice of initiation of a review) of Schedule 3.
- (5) Where a notice of the initiation of a transition review has been published and provided the Secretary of State has made relevant provision by public notice, the anti-dumping amount or countervailing amount subject to review continues to apply to the relevant goods (where it would otherwise cease to do so) until the Secretary of State makes further provision by public notice.
- (6) A transition review in respect of an anti-dumping amount applicable to goods is a review to consider whether—
- (a) the continuing application of that amount is necessary or sufficient to offset the dumping of the relevant goods in the United Kingdom; and
 - (b) there would be injury to the UK industry in those goods if an anti-dumping amount were no longer to apply to those goods.
- (7) A transition review in respect of a countervailing amount is a review to consider whether—
- (a) the continuing application of that amount is necessary or sufficient to offset the importation of the relevant subsidised goods into the United Kingdom; and
 - (b) there would be injury to the UK industry in those goods if a countervailing amount were no longer to apply to those goods.
- (8) A transition review may include—
- (a) the consideration of whether, and if so to what level, it is appropriate to recalculate the anti-dumping amount or countervailing amount;
 - (b) the reassessment of the margin of dumping or the amount of the subsidy;
 - (c) the reassessment of the amount adequate to remove the injury caused to the UK industry by dumped goods or subsidised imports;
 - (d) the consideration of whether the goods or the description of goods to which an anti-dumping amount or a countervailing amount applies should be varied.
- (9) Parts 2, 3, 4 and 6 apply to reviews conducted under this Part to the extent that the TRA considers relevant.
- (10) Part 5 applies to reviews conducted under this Part.
- (11) Where other Parts of these Regulations are applied to reviews under this Part, references in those Parts to “goods concerned” and similar expressions shall be construed as references to the goods to which the application of an anti-dumping amount or a countervailing amount is being reviewed.
- (12) Where the TRA constructs the export price in accordance with regulation 15 (export price), the TRA may deduct any anti-dumping amount paid where it is not reflected in resale prices and subsequent selling prices in the United Kingdom.
- (13) The TRA may initiate a transition review before replacement day.
- (14) Where the TRA initiates a transition review before replacement day, it may terminate such a review.
- (15) Where the TRA terminates a transition review, it must—
- (a) initiate and conduct a transition review of the relevant anti-dumping or countervailing amount at a later date;
 - (b) publish a notice of the termination containing the information referred to in paragraph 2 of Schedule 3;
 - (c) notify the government of the exporting country or territory and the Secretary of State.

Determinations upon conclusion of transition reviews

99.—(1) Upon concluding a transition review, the TRA must make a determination or determinations covering all of the goods that were the subject of the review.

(2) A determination referred to in paragraph (1) is a determination that the application of an anti-dumping amount or a countervailing amount to goods should be—

- (a) varied; or
- (b) revoked.

(3) The TRA must have regard to the current and prospective impact of an anti-dumping amount or a countervailing amount when making a determination regarding the future application of that amount.

(4) The TRA may make a determination in respect of some of the goods which were the subject of the review which is different to the determination which it makes in respect of others.

(5) Where the TRA makes a determination that the application of an anti-dumping amount or a countervailing amount to goods should be varied, the variation may, amongst other things, comprise or include—

- (a) subject to paragraph (6), reducing the anti-dumping amount or countervailing amount;
- (b) subject to paragraph (6), increasing the anti-dumping amount or countervailing amount;
- (c) reducing the period for which the anti-dumping amount or countervailing amount applies;
- (d) subject to paragraph (8), extending the period for which the anti-dumping amount or countervailing amount applies.

(6) Where the TRA makes a determination that the application of an anti-dumping amount or a countervailing amount to goods should be varied, that variation must not comprise or include reducing or increasing such amount to an amount which—

- (a) in the case of an anti-dumping amount, exceeds the margin of dumping or, if less than the margin of dumping, the amount which the TRA is satisfied would be adequate to remove the injury to UK industry caused by the dumped goods;
- (b) in the case of a countervailing amount, exceeds the amount of the subsidy or, if less than the amount of the subsidy, the amount which the TRA is satisfied would be adequate to remove the injury to UK industry caused by the subsidised imports.

(7) Where the TRA makes a determination that the application of an anti-dumping amount or a countervailing amount to goods should be varied and it has not been possible for the TRA to recalculate the anti-dumping amount or countervailing amount, that variation may include maintaining that amount.

(8) Where the TRA makes a determination that the application of an anti-dumping amount or a countervailing amount to goods should be varied, that variation must not comprise or include extending the period for which the amount applies by a period, calculated from the date of the public notice referred to in regulation 101(5)(a), of more than five years.

TRA's recommendation to the Secretary of State

100.—(1) The TRA must, following the making of a determination referred to in regulation 99 (determinations upon conclusion of transition reviews), make a recommendation to the Secretary of State in respect of the goods to which the determination relates.

(2) A recommendation referred to in paragraph (1) is a recommendation that the application of an anti-dumping amount or a countervailing amount to goods should be—

- (a) varied; or

(b) revoked.

(3) The TRA must not make a recommendation that the application of an anti-dumping amount or a countervailing amount to goods should be varied, unless it is satisfied that such a recommendation would meet the economic interest test and, where it is not so satisfied, it must instead make a recommendation that the application of that amount to those goods should be revoked.

(4) The TRA's recommendation must include—

- (a) a description of the goods to which the recommendation relates;
- (b) the names of the overseas exporters, or where impracticable, the exporting countries or territories concerned;
- (c) the reasons for its recommendation.

Acceptance or rejection of the TRA's recommendation by the Secretary of State

101.—(1) Where the TRA makes a recommendation in accordance with regulation 100 (TRA's recommendation to the Secretary of State), the Secretary of State must accept or reject that recommendation.

(2) The Secretary of State may reject the TRA's recommendation only if satisfied that it is not in the public interest to accept it.

(3) In considering that, where the recommendation is a recommendation that the application of an anti-dumping or a countervailing amount to goods should be varied, 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, unless the Secretary of State is satisfied that that determination is not one that the TRA could reasonably have made.

(4) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must—

- (a) publish a notice of the rejection which contains the following information—
 - (i) a description of the goods to which the recommendation relates;
 - (ii) a summary of the review;
 - (iii) the TRA's recommendation;
 - (iv) the reasons for the TRA's recommendation;
 - (v) the reasons for the Secretary of State's rejection;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

(5) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State must—

- (a) make provision by public notice to give effect to the recommendation;
- (b) notify interested parties.

(6) The notice referred to in paragraph (5)(a) must contain the following information—

- (a) the information referred to in sub-paragraphs (i) to (iv) of paragraph (4)(a);
- (b) where relevant, the revised anti-dumping amount or countervailing amount;
- (c) where relevant, the new period for which the anti-dumping amount or countervailing amount will apply.

(7) The period referred to in paragraph (6)(c) must begin on the day after the date of publication of the public notice.

PART 13

Transitional provisions relating to the TRA

CHAPTER 1

General modifications

- 102.** 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 it occurs, there were substituted “the Secretary of State”; and
 - (d) for “its” in the following provisions, in each place where it occurs, there were substituted “the”—
 - (i) regulation 23(2);
 - (ii) regulation 30(3);
 - (iii) regulation 36(4);
 - (iv) regulation 37(2);
 - (v) regulation 41(5)(a);
 - (vi) regulation 48(2);
 - (vii) regulation 56(2) and (4);
 - (viii) regulation 57(2) and (3);
 - (ix) regulation 64(3)(a) and (4)(a);
 - (x) regulation 67(7)(a);
 - (xi) regulation 78(5)(a);
 - (xii) regulation 98(3)(a);
 - (xiii) paragraphs 7(c) and 9(c), Schedule 2.

CHAPTER 2

Further modifications

Modification to Part 1

103. Regulation 2 (interpretation) has effect as if, in the definition of “application”, for “paragraph 9(1)(a) of Schedule 4 to the Act”, there were substituted “paragraph 9(1)(a)(i) of Schedule 4 to the Act”.

Modifications to Part 6

104. Regulation 40 (general provisions) has effect as if, in paragraphs (1) and (2)(c) and (d), for “its” there were substituted “the Secretary of State’s”.

105. Regulation 41 (revision of scope of an investigation) has effect as if—

- (a) in paragraph (1), for “its determination”, there were substituted “the Secretary of State’s decision”; and

- (b) at the end of paragraph (5)(a), there were inserted “(or been otherwise available to the Secretary of State, where no application was made)”.
- 106.** Regulation 45 (confidential information) has effect as if—
- (a) in paragraph (1)(a), for “its”, there were substituted “the Secretary of State’s”; and
 - (b) paragraph (5) were omitted.
- 107.** Regulation 46 (permitted disclosure) has effect as if—
- (a) in paragraphs (1) and (3), “the TRA or”, in each place where this occurs, were omitted; and
 - (b) paragraph (2) were omitted.
- 108.** Regulation 52 (assessment of an application) has effect as if—
- (a) for the heading of that regulation, there were substituted—
“Assessment of information to determine whether to initiate an investigation”; and
 - (b) for paragraph (1), there were substituted—
“(1) The Secretary of State must examine the accuracy and adequacy of the information—
 - (a) contained in, or supplied with, an application; or
 - (b) obtained or held by the Secretary of State, for the purposes of the initiation of an investigation, where there is no application,to determine whether it is sufficient to justify the initiation of an investigation under paragraph 9 of Schedule 4 to the Act.”.
- 109.** Regulation 53 (publicising an application) has effect as if—
- (a) for the heading of that regulation, there were substituted—
“Publicity”;
 - (b) in paragraph (1), after “application”, there were inserted “or that the Secretary of State is considering whether to make a decision under paragraph 9(1)(a)(ii) of Schedule 4 to the Act”; and
 - (c) in paragraph (3), after “regulation 50 (application)”, there were inserted “, where applicable,”.
- 110.** Regulation 54 (registration of interest and the issuing of questionnaires) has effect as if, for paragraphs (2)(b) and (3)(b), there were substituted—
- “(b) all UK producers, importers and overseas exporters (or associations thereof) which—
 - (i) the applicant UK industry has identified in their application; or
 - (ii) where no application has been made, the Secretary of State has identified as being relevant to the investigation;”.
- 111.** Regulation 61 (hearing) has effect as if, in paragraph (1)(b), for “its” there were substituted “the Secretary of State’s”.
- 112.** Regulation 65 (content of notices) has effect as if—
- (a) in paragraph (3), for “recommendation regarding requiring”, there were substituted “preliminary decision to require”;
 - (b) in paragraph (4)—

- (i) for “paragraph 15(4)(a) and (5)(a)”, there were substituted “paragraph 15(3)(a) and (4)(a)”;
- (ii) for “acceptance or rejection of a recommendation requiring a guarantee”, there were substituted “decision to give effect, or not to give effect, to a preliminary decision to require a guarantee”;
- (c) in paragraph (5), for “recommendation”, there were substituted “preliminary decision”;
- (d) in paragraph (6)—
 - (i) for “paragraph 20(4)(a) and 20(5)(a)”, there were substituted “paragraph 20(3)(a) and 20(4)(a)”;
 - (ii) for “acceptance or rejection of the TRA’s recommendation” there were substituted “decision to give effect, or not to give effect, to a preliminary decision”;
- (e) paragraph (9) were omitted; and
- (f) in paragraph (10), “paragraph (4) or (6) of” were omitted.

Modifications to Part 7

- 113.** Regulation 67 (initiation of a review) has effect as if—
- (a) in paragraphs (1)(b) and (2)(b), for “its”, there were substituted “the Secretary of State’s”;
 - (b) in paragraph (7)(b), “the Secretary of State and” were omitted; and
 - (c) in paragraph (9), “and the Secretary of State” were omitted.
- 114.** Regulation 69 (interim review) has effect as if—
- (a) in paragraph (2), for “its”, there were substituted “the Secretary of State’s”;
 - (b) in paragraphs (6) and (11), for “determine”, there were substituted “make a preliminary decision”;
 - (c) in paragraphs (7) and (9), for “determination”, there were substituted “preliminary decision”;
 - (d) for paragraph (10), there were substituted—

“(10) The Secretary of State may only make a preliminary decision that the application of an anti-dumping amount or a countervailing amount be extended in accordance with this regulation, if the Secretary of State is satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test (see paragraph 25 of Schedule 4 to the Act) and, where the Secretary of State is not so satisfied, the Secretary of State must instead make a preliminary decision that the application of the anti-dumping amount or the countervailing amount to those goods should be revoked.”; and
 - (e) in paragraph (12), for “determines”, there were substituted “makes a preliminary decision.
- 115.** Regulation 70 (expiry review) has effect as if—
- (a) in paragraphs (2) and (7) to (9), for “determination”, there were substituted “preliminary decision”;
 - (b) in paragraph (9), for “accepted or rejected the TRA’s recommendation in accordance with regulation 76 (acceptance or rejection of the TRA’s recommendation by the Secretary of State)”, there were substituted “decided to give effect to the preliminary decision (or not, as the case may be) in accordance with regulation 76 (Secretary of State’s decision whether to give effect to a preliminary decision following the conclusion of a review)”;
 - (c) in paragraph (11), for “determine”, there were substituted “make a preliminary decision”; and

(d) for paragraph (12), there were substituted—

“(12) The Secretary of State may only make a preliminary decision that the application of an anti-dumping amount or a countervailing amount be extended in accordance with this regulation, if the Secretary of State is satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test (see paragraph 25 of Schedule 4 to the Act).”.

116. Regulation 71 (new exporter review) has effect as if—

- (a) in paragraph (5), sub-paragraph (a) (and the “and” after it) were omitted;
- (b) in paragraph (6), for “determine”, there were substituted “make a preliminary decision”;
- (c) in paragraph (7), for “determination”, there were substituted “preliminary decision”; and
- (d) for paragraph (8), there were substituted —

“(8) If the Secretary of State makes a preliminary decision under paragraph (6)(b) or (c) in respect of an anti-dumping amount (and the Secretary of State has decided to give effect to that decision in accordance with regulation 76 (Secretary of State’s decision whether to give effect to a preliminary decision following the conclusion of a review)), the Secretary of State may, by a public notice made under section 13 of the Act, apply the rate specified in the preliminary decision in respect of that new exporter from the date of the initiation of the review.”.

117. Regulation 72 (absorption review) has effect as if—

- (a) in paragraph (4), for “determination”, in the first place it occurs, there were substituted “preliminary decision”;
- (b) in paragraph (6), for “recommend the application of”, there were substituted “make a preliminary decision to apply”; and
- (c) in paragraph (7), for “determine”, there were substituted “make a preliminary decision”.

118. Regulation 73 (circumvention review) has effect as if—

- (a) in paragraph (7), for “determine”, there were substituted “make a preliminary decision”; and
- (b) in paragraph (8), for “determination”, there were substituted “preliminary decision”.

119. Regulation 74 (scope review) has effect as if—

- (a) in paragraph (2), for “its”, there were substituted “the Secretary of State’s”; and
- (b) in paragraph (5), for “determine”, there were substituted “make a preliminary decision”.

120. Chapter 3 of Part 7 (TRA recommendation and decision of the Secretary of State) has effect as if, for the heading of that Chapter, there were substituted—

“Secretary of State’s decision whether to give effect to a preliminary decision”.

121. Regulation 75 (TRA recommendation to the Secretary of State) has effect as if—

- (a) for the heading of that regulation, there were substituted—

“Secretary of State’s preliminary decision following the conclusion of a review”; and

- (b) for that regulation, there were substituted—

“**75.**—(1) Following the conclusion of a review, where paragraph (2) applies, the preliminary decision made by the Secretary of State must include—

- (a) a description of the goods to which the preliminary decision relates;
- (b) the names of overseas exporters, or where impracticable, the exporting countries or territories;
- (c) where relevant, the period for which the anti-dumping amount or countervailing amount should be applicable, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the preliminary decision, unless the Secretary of State makes a determination in accordance with paragraph (3); and
- (d) the reasons for the Secretary of State's preliminary decision.

(2) This paragraph applies where the Secretary of State makes a preliminary decision that—

- (a) the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review should be varied;
- (b) the application of an anti-dumping amount or a countervailing amount to some or all of the goods subject to review should be revoked;
- (c) the period of the application of an anti-dumping amount or a countervailing amount should be extended; or
- (d) an anti-dumping amount or a countervailing amount should be applied to a new exporter at a particular level.

(3) The Secretary of State may, as part of a preliminary decision, determine that the application of a varied anti-dumping amount or countervailing amount should be applicable to goods from a date before the date set out in the public notice made under section 13 of the Act giving effect to the preliminary decision where—

- (a) the preliminary decision is in respect of a review in accordance with regulation 73 (circumvention review); and
- (b) the requirements set out in paragraph 21(10) of Schedule 4 to the Act are satisfied.

(4) Where the Secretary of State makes a preliminary decision other than a preliminary decision referred to in paragraph (2), and decides to give effect to it, the Secretary of State must—

- (a) terminate the review;
- (b) publish a notice containing the information set out in paragraph 2 of Schedule 3; and
- (b) notify interested parties.”.

122. Regulation 76 (acceptance or rejection of the TRA's recommendation by the Secretary of State) has effect as if—

- (a) for the heading of that regulation, there were substituted—

“Secretary of State's decision whether to give effect to a preliminary decision following the conclusion of a review”; and

- (b) for that regulation, there were substituted—

“76.—(1) Where the Secretary of State makes a preliminary decision referred to in regulation 75(2) (Secretary of State's preliminary decisions following the conclusion of a review), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may decide not to give effect to the preliminary decision only if the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(3) Where the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 3 or 4 of Schedule 3;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

(4) Where the Secretary of State decides to give effect to the preliminary decision, the notice published by the Secretary of State under paragraph 21(7)(a) of Schedule 4 to the Act must contain the information set out in paragraph 3 or 4 of Schedule 3.”.

Modifications to Part 8

123. Regulation 77 (requests and offers of undertakings) has effect as if paragraph (1)(a) were omitted.

124. Regulation 78 (TRA’s power to recommend acceptance of undertakings) has effect as if—

- (a) for the heading of that regulation, there were substituted—

“Secretary of State’s decision whether to accept undertakings”;

- (b) in paragraph (1)—

- (i) for “The TRA may make a recommendation to the Secretary of State under paragraph 23(1) of Schedule 4 to the Act to accept an undertaking”, there were substituted “The Secretary of State may accept an undertaking under paragraph 23(1) of Schedule 4 to the Act”;

- (ii) in sub-paragraph (d), for “requirements” there were substituted “requirement”;

- (c) in paragraph (2), for “recommend the acceptance of” there were substituted “accept”; and

- (d) in paragraph (4), for “recommendation”—

- (i) in the first place where it occurs, there were substituted “decision”; and

- (ii) in the second place where it occurs, there were substituted “preliminary decision”.

125. Regulation 79 (Secretary of State’s power to accept undertakings) has effect as if—

- (a) paragraph (1) were omitted; and

- (b) in paragraphs (2) and (3) for “the TRA’s recommendation” there were substituted “an undertaking”.

126. Regulation 81 (the acceptance of a new undertaking in place of an existing undertaking) has effect as if, for “TRA’s power to recommend acceptance of undertakings”, there were substituted “Secretary of State’s decision whether to accept undertakings”.

127. Regulation 82 (undertakings ceasing to apply) has effect as if, in paragraph (1)(d), “the TRA notifies the Secretary of State that” were omitted.

128. Regulation 83 (breach of an undertaking) has effect as if—

- (a) in paragraph (1)(a), “or the Secretary of State” were omitted; and

- (b) in paragraphs (1)(b), for “its” there were substituted “the Secretary of State’s”.

129. Regulation 84 (reviews by the TRA of the continuing application of an undertaking) has effect as if—

- (a) in paragraph (2)(b), for “its”, there were substituted “the Secretary of State’s”;
- (b) paragraphs (6) and (7), were omitted;
- (c) in paragraph (8), for “accepts the TRA’s recommendation”, there were substituted “makes a determination in accordance with paragraph (5)(b) to (e)”;
- (d) in paragraph (9), for “rejects the TRA’s recommendation”, there were substituted “decides not to make a determination in accordance with paragraph (5)(b) to (e)”.

Modifications to Part 9

130. Part 9 of these Regulations has effect as if, for that Part, there were substituted—

“PART 9

Suspension

Suspension of an anti-dumping amount or a countervailing amount

85.—(1) The Secretary of State may make a preliminary decision (a “preliminary suspension decision”) that the application of an anti-dumping amount or a countervailing amount be suspended for a specified period (the “period of suspension”) in relation to some or all of the goods specified in a public notice made by the Secretary of State under section 13 of the Act.

(2) The Secretary of State may make a preliminary suspension decision where—

- (a) paragraph (3) applies;
- (b) the Secretary of State is satisfied that a suspension is appropriate; and
- (c) the applicant UK industry has been given the opportunity to comment on the suspension proposed in the application for suspension (see regulation 86).

(3) This paragraph applies where the Secretary of State, whether or not as a consequence of considering an application in accordance with regulation 86 (application for suspension), considers that the circumstances in paragraph (4) exist.

(4) Those circumstances are that—

- (a) market conditions have changed temporarily; and
- (b) as a consequence of the change in market conditions, the injury caused to a UK industry is unlikely to recur if the application of an anti-dumping amount or a countervailing amount were to be suspended.

(5) In considering whether to make a preliminary suspension decision, the Secretary of State may take such steps as the Secretary of State considers appropriate.

(6) Where the Secretary of State rejects an application for suspension, the Secretary of State must notify the applicant.

(7) Where the Secretary of State decides that it is not appropriate to make a preliminary suspension decision, the Secretary of State must—

- (a) publish a notice of the reasons for this decision; and
- (b) notify interested parties.

(8) Where the Secretary of State decides that it is appropriate to make a preliminary suspension decision, the preliminary suspension decision must include—

- (a) the reasons for the decision;
- (b) the period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the preliminary suspension decision; and
- (c) any other information the Secretary of State considers relevant.

(9) If the Secretary of State makes a preliminary suspension decision, the Secretary of State must decide whether to give effect to the decision.

(10) Where the Secretary of State decides to give effect to the preliminary suspension decision, the notice published by the Secretary of State under paragraph 26(6)(a) of Schedule 4 to the Act must contain the information set out in paragraph 1 of Schedule 5.

(11) The Secretary of State may only decide not to give effect to a preliminary suspension decision where the Secretary of State considers that it is not in the public interest to give effect to it.

(12) Where the Secretary of State decides not to give effect to a preliminary suspension decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 5;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary suspension decision.

(13) Where an anti-dumping amount or a countervailing amount is suspended under this Part, the period of suspension counts towards the specified period of the anti-dumping amount or countervailing amount as stated in the relevant public notice.

Application for suspension

86.—(1) An application for suspension of an anti-dumping amount or a countervailing amount in accordance with regulation 85 (suspension of an anti-dumping amount or a countervailing amount) (a “suspension application”) may be made to the Secretary of State by or on behalf of an interested party.

(2) A suspension application to the Secretary of State must include as far as possible information regarding—

- (a) the change in the market conditions;
- (b) the temporary nature of that change; and
- (c) the effect of the change on UK industry.

(3) Where a suspension application is withdrawn by the applicant, the Secretary of State may still consider whether it is appropriate to make a preliminary suspension decision (see regulation 85).

Period of suspension

87.—(1) The period of suspension referred to in regulation 85(1) must not exceed nine months commencing on the day after the publication of the public notice under section 13 of the Act giving effect to the suspension.

(2) Following an application by an interested party or where the Secretary of State otherwise considers that it is appropriate, the Secretary of State may make a preliminary

decision that the period of nine months in paragraph (1) be extended to a maximum of 21 months (“extended period of suspension”).

(3) Where the Secretary of State makes a preliminary decision in accordance with paragraph (2), but the duration of the extended period of suspension in accordance with that decision is less than 21 months, the Secretary of State may make a further preliminary decision to increase the duration of the extended period of suspension where the Secretary of State considers it is appropriate to do so and provided that the overall duration of the extended period of suspension does not exceed 21 months.

(4) Where the Secretary of State rejects an application for an extension of the period of suspension, the Secretary of State must notify the applicant.

(5) Where the Secretary of State decides that it is not appropriate to make a preliminary decision to extend the period of suspension, the Secretary of State must—

- (a) publish a notice of the decision and the reasons for it; and
- (b) notify interested parties.

(6) Where the Secretary of State decides that it is appropriate to make a preliminary decision to extend the period of suspension, the preliminary decision must include—

- (a) the reasons for the preliminary decision;
- (b) the extended period of suspension, which must begin on the day after the date of publication of the public notice under section 13 of the Act giving effect to the preliminary decision; and
- (c) any other information the Secretary of State considers relevant.

(7) If the Secretary of State makes a preliminary decision in accordance with this regulation, the Secretary of State must decide whether to give effect to the preliminary decision.

(8) Where the Secretary of State decides to give effect to a preliminary decision, the notice published by the Secretary of State under paragraph 26(6)(a) of Schedule 4 to the Act must contain the information set out in paragraph 3 of Schedule 5.

(9) The Secretary of State may only decide not to give effect to a preliminary decision where the Secretary of State considers that it is not in the public interest to give effect to it.

(10) Where the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 3 of Schedule 5;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

Reinstatement of an anti-dumping amount or a countervailing amount

88.—(1) The Secretary of State may make a preliminary decision to reinstate an anti-dumping amount or a countervailing amount where the Secretary of State determines that the circumstances in regulation 85(4) no longer exist.

(2) Where the Secretary of State makes a preliminary decision in accordance with this regulation, the preliminary decision must include—

- (a) the reasons for the preliminary decision; and
- (b) any other information the Secretary of State considers relevant.

(3) If the Secretary of State makes a preliminary decision in accordance with this regulation, the Secretary of State must decide whether to give effect to the preliminary decision.

(4) Where the Secretary of State decides to give effect to a preliminary decision, the Secretary of State must—

- (a) publish a public notice under section 13 of the Act containing the information set out in paragraph 4 of Schedule 5; and
- (b) notify interested parties.

(5) The Secretary of State may only decide not to give effect to a preliminary decision where the Secretary of State considers that it is not in the public interest to give effect to it.

(6) Where the Secretary of State decides not to give effect to a preliminary decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 4 of Schedule 5;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to make the preliminary decision.”

Modifications to Part 11

131. Regulation 90 (extension of the period of a provisional remedy in a dumping investigation) has effect as if, for that regulation, there were substituted—

“**90.**—(1) The Secretary of State may make a preliminary decision that the period of a provisional remedy, which has been applied in respect of goods in the case of a dumping investigation, be extended (a “preliminary extension decision”).

(2) The Secretary of State may only make a preliminary extension decision where—

- (a) paragraph (3) or (4) applies; and
- (b) the Secretary of State is satisfied that the extension meets the economic interest test (see paragraph 25 of Schedule 4 to the Act).

(3) This paragraph applies where the Secretary of State receives a request to extend the period of the provisional remedy from or on behalf of overseas exporters representing a significant volume of the dumped goods.

(4) This paragraph applies where—

- (a) the Secretary of State considers that extending the period of the provisional remedy is appropriate in the circumstances;
- (b) the Secretary of State issues a notification to overseas exporters notifying them that the Secretary of State considers it appropriate to extend the period of the provisional remedy (“proposed extension”); and
- (c) overseas exporters representing a significant volume of the dumped goods do not object to the proposed extension.

(5) A preliminary extension decision must include—

- (a) a description of the goods to which the decision relates;
- (b) the overseas exporters that support or do not object to the extension;
- (c) the period of extension, which must not exceed the period referred to in paragraph 16(2) of Schedule 4 to the Act and which must begin on the day on which the provisional remedy would otherwise have expired; and

(d) the reasons for the decision.

(6) If the Secretary of State makes a preliminary extension decision, the Secretary of State must decide whether to give effect to the preliminary extension decision.

(7) The Secretary of State may only decide not to give effect to a preliminary extension decision, where the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(8) Where the Secretary of State decides to give effect to a preliminary extension decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 6; and
- (b) notify interested parties.

(9) Where the Secretary of State decides not to give effect to a preliminary extension decision, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 1 of Schedule 6;
- (b) notify interested parties; and
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary extension decision.”.

132. Regulation 91 (relevant period in a dumping investigation) has effect as if—

- (a) in paragraph (1), for “recommend”, there were substituted “determine, as part of making a preliminary decision,”; and
- (b) in paragraph (3), for “recommendation”, there were substituted “determination”.

133. Regulation 92 (relevant period in a subsidisation investigation) has effect as if, in paragraphs (1) and (2)(c), for “recommend”, there were substituted “determine, as part of making a preliminary decision,”.

Modifications to Part 12

134. Regulation 97 (treatment of amounts under this Part etc.) has effect as if, in paragraph (1)—

- (a) for “the Secretary of State’s acceptance of a recommendation made by the TRA”, there were substituted “a decision by the Secretary of State to give effect to a preliminary decision made”; and
- (b) for “acceptance”, there were substituted “decision”.

135. Regulation 98 (review of amounts under this Part) has effect as if—

- (a) in paragraphs (2), (3)(b) and (15)(c), at the end, “and the Secretary of State”, were omitted; and
- (b) in paragraph (3)(a), “its” were omitted.

136. Regulation 99 (determinations upon conclusion of transition reviews) has effect as if—

- (a) for “determination” or “determinations”, in each place where these occur, including the heading, there were substituted “preliminary decision” or “preliminary decisions”, as the case may be;
- (b) after paragraph (2), there were inserted—

“(2A) The Secretary of State must not make a preliminary decision that the application of an anti-dumping amount or a countervailing amount to goods should be varied, unless satisfied that such a decision would meet the economic interest test (see paragraph 25 of Schedule 4 to the Act) and, where the Secretary of State is not so satisfied, the Secretary

of State must instead make a preliminary decision that the application of that amount to those goods should be revoked.

(2B) The Secretary of State’s preliminary decision must include—

- (a) a description of the goods to which the preliminary decision relates;
- (b) the names of the overseas exporters, or where impracticable, the exporting countries or territories concerned;
- (c) the reasons for the preliminary decision.”; and

(c) in paragraph (8), for “regulation 101(5)(a)”, there were substituted “regulation 100(4)(a)”.

137. Regulations 100 (TRA’s recommendation to the Secretary of State) and 101 (acceptance or rejection of the TRA’s recommendation by the Secretary of State) have effect as if, for those regulations (including the headings), there were substituted—

“Secretary of State’s decision whether to give effect to a preliminary decision upon conclusion of a transition review

100.—(1) Where the Secretary of State makes a preliminary decision in accordance with regulation 99 (preliminary decisions upon conclusion of transition reviews), the Secretary of State must decide whether to give effect to the preliminary decision.

(2) The Secretary of State may only decide not to give effect to the preliminary decision where the Secretary of State is satisfied that it is not in the public interest to give effect to it.

(3) Where the Secretary of State decides not to give effect to the preliminary decision, the Secretary of State must—

- (a) publish a notice of the decision which contains the following information—
 - (i) a description of the goods to which the preliminary decision relates;
 - (ii) a summary of the review;
 - (iii) the preliminary decision;
 - (iv) the reasons for the preliminary decision;
 - (v) the reasons for the Secretary of State’s decision not to give effect to the preliminary decision;
- (b) notify interested parties;
- (c) lay a statement before the House of Commons setting out the reasons for deciding not to give effect to the preliminary decision.

(4) Where the Secretary of State decides to give effect to the preliminary decision, the Secretary of State must—

- (a) make provision by public notice to give effect to the preliminary decision;
- (b) notify interested parties.

(5) The notice referred to in paragraph (4)(a) must contain the following information—

- (a) the information referred to in sub-paragraphs (i) to (iv) of paragraph (3)(a);
- (b) where relevant, the revised anti-dumping amount or countervailing amount;
- (c) where relevant, the new period for which the anti-dumping amount or countervailing amount will apply.

(6) The period referred to in paragraph (5)(c) must begin on the day after the date of publication of the public notice.”

Modifications to Schedule 2

138. Schedule 2 (content of notices) has effect as if—

- (a) in paragraph 1(g), “in the application” were omitted;
- (b) in paragraph 3—
 - (i) in the heading before that paragraph, for “recommendation regarding requiring”, there were substituted “preliminary decision to require”;
 - (ii) in sub-paragraph (d), for “determined that there is no recommendation”, there were substituted “decided that there is no preliminary decision”;
- (c) in paragraph 4—
 - (i) in the heading before that paragraph, for “accepting or rejecting a recommendation by the TRA regarding requiring”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision to require”;
 - (ii) in sub-paragraph (f), for “recommendation regarding requiring”, there were substituted “preliminary decision to require”;
 - (iii) in sub-paragraph (g), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”;
 - (iv) in sub-paragraph (h)—
 - (aa) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”;
 - (bb) for “rejection”, there were substituted “decision”;
- (d) in paragraph 5—
 - (i) in the heading before that paragraph, for “recommendation”, there were substituted “preliminary decision”;
 - (ii) in sub-paragraph (e), for “determined that there is no recommendation”, there were substituted “decided that there is no preliminary decision”; and
- (e) in paragraph 6—
 - (i) in the heading before that paragraph, for the words “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
 - (ii) in sub-paragraph (d), for “recommendation”, there were substituted “preliminary decision”;
 - (iii) in sub-paragraph (e), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”;
 - (iv) in sub-paragraph (f)—
 - (aa) for the words “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”;
 - (bb) in paragraph (i), for “rejection”, there were substituted “decision”;
 - (v) in sub-paragraph (g)—
 - (aa) “the TRA’s recommendation on accepting” were omitted; and
 - (bb) in paragraph (i), for “recommendation”, there were substituted “undertaking”; and
 - (vi) in sub-paragraph (h)—
 - (aa) “the TRA’s recommendation on accepting” were omitted; and

- (bb) in paragraph (ii), for “recommendation”, there were substituted “undertaking”.

Modifications to Schedule 3

- 139.** Schedule 3 (content of reviews notices) has effect as if, in paragraphs 3 and 4—
- (a) in the headings before those paragraphs, in each case, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
 - (b) for “regulation 76(4)(a) or (5)”, in each case, there were substituted “regulation 76(3)(a) or (4)”;
 - (c) in sub-paragraphs (c) and (d), in each case, for “recommendation”, there were substituted “preliminary decision”;
 - (d) in sub-paragraph (e), in each case, for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
 - (e) in sub-paragraph (f), in each case—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (ii) for “rejection”, there were substituted “decision”.

Modifications to Schedule 4

- 140.** Schedule 4 (content of undertakings notices) has effect as if —
- (a) in paragraph 1—
 - (i) in the heading before that paragraph, “accepting a recommendation by the TRA” were omitted;
 - (ii) in sub-paragraph (b), for “acceptance of the TRA’s recommendation”, there were substituted “decision to give effect to a determination”;
 - (iii) sub-paragraph (e) were omitted; and
 - (iv) in sub-paragraph (f), for “TRA’s recommendation” there were substituted “undertaking”; and
 - (b) in paragraph 4—
 - (i) in the heading before that paragraph, “accepting a recommendation by the TRA” were omitted;
 - (ii) sub-paragraph (e) were omitted;
 - (iii) in sub-paragraph (f), for “decision to accept the TRA’s recommendation”, there were substituted “determination”; and
 - (iv) in sub-paragraph (g), for “decision”, there were substituted “determination”.

Modifications to Schedule 5

- 141.** Schedule 5 (content of suspension notices) has effect as if—
- (a) in paragraphs 1, 3 and 4—
 - (i) in the headings of those paragraphs for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;

- (ii) in sub-paragraphs (b) and (c) of each paragraph, for “recommendation”, there were substituted “preliminary decision”;
- (iii) in sub-paragraph (d) of each paragraph, for “accept or reject the recommendation”, there were substituted “give effect, or not to give effect, to the preliminary decision”;
- (iv) in sub-paragraph (e) of each paragraph, for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (v) in sub-paragraph (f) of each paragraph—
 - (aa) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”; and
 - (bb) for “rejection”, there were substituted “decision”; and
- (b) in paragraph 4(e)(ii), for “recommendation”, there were substituted “preliminary decision”

Modifications to Schedule 6

142. Schedule 6 (content of notices concerning extensions of provisional remedies) has effect as if, in paragraph 1—

- (a) for “regulation 90(9)(a) or (10)(a)”, there were substituted “regulation 90(8)(a) or (9)(a)”;
- (b) in the heading, for “accepting or rejecting a recommendation by the TRA”, there were substituted “deciding to give effect, or not to give effect, to a preliminary decision”;
- (c) in sub-paragraphs (b) and (c), for “recommendation”, there were substituted “preliminary decision”;
- (d) in sub-paragraph (d), for “accept or reject the recommendation”, there were substituted “give effect, or not to give effect, to the preliminary decision”;
- (e) in sub-paragraph (e), for “accepts the TRA’s recommendation”, there were substituted “decides to give effect to the preliminary decision”; and
- (f) in sub-paragraph (f)—
 - (i) for “rejects the TRA’s recommendation”, there were substituted “decides not to give effect to the preliminary decision”;
 - (ii) for “rejection”, there were substituted “decision”.

Signed by authority of Secretary of State for International Trade

Graham Stuart
Parliamentary Under-Secretary of State for
Investment
Department for International Trade

at 5.05 p.m. on 4th March 2019

SCHEDULE 1

Regulation 50

Content of applications

Content of an application for the initiation of a dumping investigation

1. For the purpose of regulation 50(1), the information to be contained in an application for the initiation of a dumping investigation is—

- (a) a description of the goods in relation to which the applicant UK industry is requesting an investigation, including their—
 - (i) technical characteristics;
 - (ii) current tariff classification;
- (b) a statement identifying the exporting country or territory;
- (c) details of all known overseas exporters of the goods identified;
- (d) details of all known importers in the United Kingdom of the goods identified;
- (e) details of all known UK producers of the like goods (see paragraph 7 of Schedule 4 to the Act), or associations of such UK producers;
- (f) the level of UK industry support for or opposition to the application, including—
 - (i) the total volume and value of production in the United Kingdom of the like goods;
 - (ii) the applicant UK industry's volume and value of production in the United Kingdom of the like goods;
 - (iii) the volume and value of production in the United Kingdom of the like goods by each identified UK producer, or associations of such UK producers;
 - (iv) each identified UK producer's support or opposition to the application;
- (g) information that the goods identified have been or are being dumped within the meaning of Part 1 of these Regulations;
- (h) information on the volume of importation of the goods identified;
- (i) information that the importation of the goods identified has caused or is causing injury to UK industry within the meaning of Part 4 of these Regulations, including—
 - (i) the evolution of the volume of importation of the goods identified;
 - (ii) the effect of such importation on the prices of the like goods which are produced in the United Kingdom;
 - (iii) the impact of such importation on UK industry;
- (j) information that the market share requirement is met.

Content of an application for the initiation of a subsidisation investigation

2. For the purpose of regulation 50(2), the information to be contained in an application for the initiation of a subsidisation investigation is—

- (a) a description of the goods in relation to which the applicant is requesting an investigation, including their—
 - (i) technical characteristics;
 - (ii) current tariff classification;
- (b) a statement identifying the exporting country or territory;
- (c) details of all known overseas exporters of the goods identified;

Status: This is the original version (as it was originally made).

- (d) details of all known importers in the United Kingdom of the goods identified;
- (e) details of the applicant UK industry, including details of all known UK producers of the like goods (see paragraph 7 of Schedule 4 to the Act), or associations of such UK producers;
- (f) the level of UK industry support for or opposition to the application, including—
 - (i) the total volume and value of production in the United Kingdom of the like goods;
 - (ii) the applicant UK industry's volume and value of production in the United Kingdom of the like goods;
 - (iii) the volume and value of production in the United Kingdom of the like goods by each identified UK producer, or associations of such UK producers;
 - (iv) each identified UK producer's support or opposition to the application;
- (g) information that the goods identified, which are imported into the United Kingdom, have been or are being subsidised within the meaning of Part 3 of these Regulations;
- (h) information on the volume of the importation of the goods identified;
- (i) information that the importation of the goods identified has caused or is causing injury to UK industry within the meaning of Part 4 of these Regulations, including—
 - (i) the evolution of the volume of importation of the goods identified;
 - (ii) the effect of such importation on the prices of the like goods which are produced in the United Kingdom;
 - (iii) the impact of such importation on UK industry;
- (j) information that the market share requirement is met.

SCHEDULE 2

Regulations 65 and 89

Content of notices

Notice of initiation of a dumping investigation

1. The information referred to in regulation 65(1) is—
 - (a) where applicable, the contact details of the applicant UK industry, unless the TRA is treating such information as confidential in accordance with regulation 45 (confidential information);
 - (b) the date of initiation of the investigation;
 - (c) the name of the exporting country or territory;
 - (d) a description of the goods concerned;
 - (e) a description of the like goods;
 - (f) where applicable, a description of the UK industry on behalf of which the application is made;
 - (g) the basis on which dumping is alleged in the application;
 - (h) a summary of the factors on which the allegation of injury is based;
 - (i) where the TRA considers that it may be appropriate to use a sampling process in accordance with regulation 56 (the use of sampling in respect of Part 2 of these Regulations) or 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations), a statement to that effect;

- (j) the period of investigation;
- (k) a summary of the investigation process;
- (l) the address of the TRA to which comments by interested parties or persons with sufficient interest in the investigation are to be delivered, or the means by which such comments are to be delivered;
- (m) details of a registration period during which interested parties, or any other person, may make themselves known to the TRA;
- (n) a statement that interested parties may request the TRA to conduct a hearing.

Notice of initiation of a subsidisation investigation

2. The information referred to in regulation 65(2) is—
- (a) where applicable, the contact details of the applicant UK industry, unless the TRA is treating such information as confidential in accordance with regulation 45 (confidential information);
 - (b) the date of initiation of the investigation;
 - (c) the name of the exporting country or territory;
 - (d) a description of the goods concerned;
 - (e) a description of the like goods;
 - (f) where applicable, a description of the UK industry on behalf of which the application is made;
 - (g) a description of the alleged subsidy practice to be investigated;
 - (h) a summary of the factors on which the allegation of injury is based;
 - (i) where the TRA considers that it may be appropriate to use a sampling process in accordance with regulation 57 (the use of sampling in respect of Parts 3, 4 and 5 of these Regulations), a statement to that effect;
 - (j) the period of investigation;
 - (k) a summary of the investigation process;
 - (l) the address of the TRA to which comments by interested parties and persons with sufficient interest in the investigation are to be delivered, or the means by which such comments are to be delivered;
 - (m) details of a registration period during which interested parties, or any other person, may make themselves known to the TRA;
 - (n) a statement that interested parties may request the TRA to conduct a hearing.

Notice of a provisional affirmative determination with no recommendation regarding requiring a guarantee

3. The information referred to in regulation 65(3) is—
- (a) a description of the goods to which the notice relates;
 - (b) a summary of the investigation to date and the expected future stages of the investigation;
 - (c) the reasons for the TRA's provisional affirmative determination;
 - (d) the reasons why the TRA has determined that there is no recommendation that it could make under paragraph 13(3) of Schedule 4 to the Act.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding requiring a guarantee

4. The information referred to in regulation 65(4) is—
 - (a) a description of the goods to which the notice relates;
 - (b) a summary of the investigation to date and the expected future stages of the investigation;
 - (c) the person or category of persons who is required to give a guarantee;
 - (d) details of exclusion of goods from the requirement to give a guarantee, if any;
 - (e) the reasons for the TRA's provisional affirmative determination;
 - (f) the reasons for the TRA's recommendation regarding requiring a guarantee;
 - (g) where the Secretary of State accepts the TRA's recommendation, the date the notice comes into effect;
 - (h) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of a final affirmative determination with no recommendation on an anti-dumping amount or a countervailing amount

5. The information referred to in regulation 65(5) is—
 - (a) a description of the goods to which the notice relates;
 - (b) a summary of the investigation;
 - (c) the date the notice comes into effect;
 - (d) the reasons for the final affirmative determination;
 - (e) the reasons why the TRA has determined that there is no recommendation that it could make under paragraph 17(3) or (4) of Schedule 4 to the Act and, where applicable, paragraph 23(1) of that Schedule.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA on an anti-dumping amount or a countervailing amount

6. The information referred to in regulation 65(6) is—
 - (a) a description of the goods to which the notice relates;
 - (b) a summary of the investigation;
 - (c) the reasons for the TRA's final affirmative determination;
 - (d) the reasons for the TRA's recommendation on an anti-dumping amount or a countervailing amount;
 - (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) a specified period for which the anti-dumping amount or countervailing amount is applicable (see paragraph 17(3)(a) or 17(4)(a) of Schedule 4 to the Act);
 - (iii) where applicable, the relevant date and the relevant period (see paragraph 19 of Schedule 4 to the Act);
 - (f) where the Secretary of State rejects the TRA's recommendation—
 - (i) the reasons for the Secretary of State's rejection; and
 - (ii) the date the notice comes into effect;

- (g) where the Secretary of State accepts the TRA's recommendation on accepting an undertaking—
 - (i) a reference to the relevant notice made under regulation 79(2)(a) on the Secretary of State's acceptance of the recommendation;
 - (ii) a statement that the dumped goods or subsidised imports are exempt from the application of an anti-dumping amount or a countervailing amount whilst the undertaking is in force;
 - (iii) details of the consequences of a breach of the undertaking;
- (h) where the Secretary of State rejects the TRA's recommendation on accepting an undertaking—
 - (i) the fact that an undertaking was offered;
 - (ii) the reasons for the rejection of the recommendation.

Notice of a final negative determination

- 7. The information referred to in regulation 65(7) is—
 - (a) a summary of the investigation;
 - (b) the date the notice comes into effect;
 - (c) the TRA's reasons for its determination.

Notice of termination

- 8. The information referred to in regulation 65(8) or 98(15)(b) is—
 - (a) a summary of the investigation to date;
 - (b) the date the notice comes into effect;
 - (c) the reasons for termination.

Notice of repayment of an anti-dumping amount or a countervailing amount

- 9. The notice in regulation 89(8)(c) must include—
 - (a) the amount of the repayment;
 - (b) the goods in respect of which the repayment is due;
 - (c) the TRA's reasons for its determination.

SCHEDULE 3

Regulations 67, 75 and 76

Content of reviews notices

Notice of initiation of a review

- 1. The information to be contained in a notice referred to in regulation 67(8) is—
 - (a) details of the content of the relevant notice referred to in regulation 65(6);
 - (b) where applicable, the contact details for or on behalf of the review applicant, unless the TRA is treating such information as confidential in accordance with regulation 45 (confidential information);

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- (c) the name of the exporting country or territory;
- (d) description of the goods subject to review;
- (e) the name of any person importing or exporting the goods subject to review or the goods subject to the application of an anti-dumping amount or a countervailing amount;
- (f) the type of review initiated;
- (g) the date of initiation of the review;
- (h) the period of investigation for the review;
- (i) where applicable, a description of the UK industry on behalf of which the review application is made;
- (j) a summary of the reasons for initiating a review;
- (k) a summary of the issues involved in the review;
- (l) a summary of the review process;
- (m) the address of the TRA to which comments by interested parties and persons with sufficient interest in the review is to be delivered, or the means by which such comments are to be delivered;
- (n) details of a registration period during which interested parties, or any other person, may make themselves known to the TRA;
- (o) a statement that interested parties may request that the TRA conduct a hearing.

Notice of termination of a review

2. The information to be contained in a notice referred to in regulation 75(4) is—
- (a) a summary of the review;
 - (b) the date of publication of the notice;
 - (c) the reasons for termination.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA on the variation of an anti-dumping amount or a countervailing amount

3. The information to be contained in a notice referred to in regulation 76(4)(a) or (5) is—
- (a) a description of the goods to which the notice relates;
 - (b) a summary of the review;
 - (c) the TRA's recommendation;
 - (d) the reasons for the TRA's recommendation;
 - (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) a specified period during which the varied anti-dumping amount or countervailing amount is applicable;
 - (iii) details of any exemptions from the application of the anti-dumping amount or countervailing amount;
 - (f) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA to revoke the application of an anti-dumping amount or a countervailing amount

4. The information to be contained in a notice referred to in regulation 76(4)(a) or (5) is—
 - (a) a description of the goods to which the notice relates;
 - (b) a summary of the review;
 - (c) the TRA’s recommendation;
 - (d) the reasons for the TRA’s recommendation;
 - (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a public notice made under section 13 of the Act;
 - (ii) the date that the revocation takes effect, which must be the day after the date of publication of the notice;
 - (f) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

SCHEDULE 4

Regulations 79, 82 to 84

Content of undertakings notices

Notice of the Secretary of State accepting a recommendation by the TRA on accepting an undertaking

1. The information to be contained in a notice referred to in regulation 79(2)(a) is—
 - (a) a non-confidential version of the undertaking;
 - (b) a reference to the relevant notice made under regulation 65(6) on the Secretary of State’s acceptance of the TRA’s recommendation;
 - (c) a description of the goods to which the notice relates;
 - (d) the name(s) of the parties to the undertaking;
 - (e) the reasons for the TRA’s recommendation to accept an undertaking;
 - (f) the reasons for the Secretary of State’s acceptance of the TRA’s recommendation;
 - (g) the date that the undertaking comes into effect;
 - (h) the period for which the undertaking applies;
 - (i) where relevant, the anti-dumping amount or countervailing amount applicable in the event the undertaking ceases to apply.

Notice of the Secretary of State that an undertaking ceases to apply

2. The information to be contained in a notice referred to in regulation 82(2)(a) is—
 - (a) a reference to the relevant parallel notice made under regulation 65(6);
 - (b) a description of the goods to which the notice relates;
 - (c) the name(s) of the parties to the undertaking;
 - (d) the reasons why the undertaking ceases to apply;
 - (e) details of the consequences of the undertaking ceasing to apply.

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Notice that the acceptance of an undertaking is withdrawn following a breach of the undertaking

3. The information to be contained in a notice referred to in regulation 83(6) is—
- (a) a reference to the relevant parallel notice made under regulation 65(6);
 - (b) a description of the goods to which the notice relates;
 - (c) the name(s) of the parties to the undertaking;
 - (d) the TRA's determination following the breach investigation;
 - (e) the date of the breach as determined by the TRA;
 - (f) details of the consequences of the undertaking ceasing to apply.

Notice of the Secretary of State accepting a recommendation by the TRA regarding the continuing application of an undertaking

4. The information to be contained in a notice referred to in regulation 84(8)(a) is—
- (a) a reference to the relevant parallel notice made under regulation 65(6);
 - (b) a description of the goods to which the notice relates;
 - (c) the name(s) of the parties to the undertaking;
 - (d) a summary of the review;
 - (e) the TRA's recommendation;
 - (f) the Secretary of State's decision to accept the TRA's recommendation;
 - (g) details of the consequences of the Secretary of State's decision.

SCHEDULE 5

Regulations 85, 87 and 88

Content of suspension notices

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding suspension

1. The information to be contained in a notice referred to in regulation 85(10) or (12)(a) is—
- (a) a description of the goods to which the notice relates;
 - (b) the TRA's recommendation;
 - (c) the reasons for the TRA's recommendation;
 - (d) the Secretary of State's decision to accept or reject the recommendation and the reasons for the decision;
 - (e) where the Secretary of State accepts the TRA's recommendation—
 - (i) that such notice is a public notice under section 13 of the Act;
 - (ii) the period of suspension;
 - (f) where the Secretary of State rejects the TRA's recommendation, the reasons for the Secretary of State's rejection.

Notice of rejection of an application for an extension of the period of suspension

2. The information to be contained in a notice referred to in regulation 87(4) is the reasons for rejecting the application.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding an extension of the period of suspension

3. The information to be contained in a notice referred to in regulation 87(8) or (10)(a) is—
- (a) a description of the goods to which the notice relates;
 - (b) the TRA’s recommendation;
 - (c) the reasons for the TRA’s recommendation;
 - (d) the Secretary of State’s decision to accept or reject the recommendation and the reasons for the decision;
 - (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a public notice under section 13 of the Act;
 - (ii) the period of suspension;
 - (f) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding reinstatement of an anti-dumping amount or a countervailing amount

4. The information to be contained in a notice referred to in regulation 88(4)(a) or (6)(a) is—
- (a) a description of the goods to which the notice relates;
 - (b) the TRA’s recommendation;
 - (c) the reasons for the TRA’s recommendation;
 - (d) the Secretary of State’s decision to accept or reject the recommendation and the reasons for the decision;
 - (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a public notice under section 13 of the Act;
 - (ii) the date that the reinstatement takes effect, which must be the day after the date of publication of the public notice under section 13 of the Act giving effect to the recommendation;
 - (f) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

SCHEDULE 6

Regulation 90

Content of notices concerning extensions of provisional remedies

Notice of the Secretary of State accepting or rejecting a recommendation by the TRA regarding an extension of the period of a provisional remedy in a dumping investigation

1. The information to be contained in a notice referred to in regulation 90(9)(a) or (10)(a) is—
- (a) a description of the goods to which the notice relates;

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- (b) the TRA’s recommendation;
- (c) the reasons for the TRA’s recommendation;
- (d) the Secretary of State’s decision to accept or reject the recommendation and the reasons for the decision;
- (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) that such notice is a revised notice under paragraph 15(5)(b) of Schedule 4 to the Act;
 - (ii) the revised period of the provisional remedy;
 - (iii) the date the notice comes into effect;
- (f) where the Secretary of State rejects the TRA’s recommendation, the reasons for the Secretary of State’s rejection.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under and for the purpose of sections 13, 32, 51 and 56 of, and Schedule 4 to, the Taxation (Cross-border Trade) Act 2018 (“the Act”)(9).

Schedule 4 to the Act establishes a regime under which the Trade Remedies Authority (“the TRA”), when established, will investigate prima facie incidences of dumping (whether goods are imported into the United Kingdom at a price which is less than the normal value of the good in the domestic market of the exporting country or territory) or subsidisation (whether goods that are imported into the United Kingdom benefit from a countervailable subsidy). The TRA itself will be established by the Trade Bill when it receives Royal Assent.

The process of investigation and the circumstances in which such duties may be applied is provided for by agreements under the auspices of the World Trade Organization to which the United Kingdom is a party. Specifically, these agreements are the General Agreement on Tariffs and Trade 1994 (Article VI in particular), the Agreement on Subsidies and Countervailing Measures (“SCMA”) and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“ADA”) in Annex 1A to the Marrakesh Agreement establishing the World Trade Organization (concluded on 15 April 1994, entered into force 1 January 1995). These Regulations are intended to be consistent with the United Kingdom’s obligations under those agreements.

The purpose of these investigations by the TRA is to consider whether there is evidence that goods which are dumped or subsidised are imported into the United Kingdom and are causing injury to a UK industry such that it should recommend to the Secretary of State that an additional amount of import duty be applied to the goods in question. The TRA’s duty to make recommendations for the imposition of provisional and/or definitive measures is set out in Parts 3 & 4 of Schedule 4 to the Act. Any additional amount of import duty is given effect by the Secretary of State publishing a notice under section 13 of the Act.

Part 1 (Introductory) sets out the introductory provisions of the Regulations and includes the definitions that apply throughout. It also provides that the Regulations will apply as modified by Part 13 until the TRA is established.

(9) 2018 c.22

Part 2 (Dumping) of the Regulations provides for how the TRA will determine whether or not there is dumping in accordance with paragraph 1 of Schedule 4 to the Act, and broadly reflects Article 2 of the ADA and Article 2 of Regulation (EU) 2016/1036 of 8 June 2016 on protection against dumped imports from countries not members of the European Union⁽¹⁰⁾. The regulations in this Part set out: how the TRA will determine the normal value (that is, the cost of the goods in the domestic market of the exporting country or territory); how the TRA will determine the export price of the goods; and how the TRA will compare the two fairly in order to determine whether or not goods have been dumped. The regulations contain different methodologies for the calculation of the normal value and provide for the TRA to use the methodology it considers the most appropriate in the circumstances.

Part 3 (Subsidisation) of the Regulations provides for how the TRA will determine whether or not a subsidy exists; whether the subsidy is countervailable, and how the countervailable subsidy is attributed to goods. The regulations in this Part broadly reflect Articles 1, 2 and 14 of and Annexes I to III to the SCMA and Articles 2 to 7 of Regulation (EU) 2016/1037 of 8 June 2016 on protection against subsidised imports from countries not members of the European Union⁽¹¹⁾.

Part 4 (Injury and Causation) of the Regulations provides for how the TRA is to determine whether dumped goods or subsidised imports are causing injury to a UK industry. The regulations, in particular, provide: the meaning of “threat of material injury”; for when a producer may be regarded as a producer in the United Kingdom of like goods for the purpose of the definition of UK industry; how the TRA determines whether or not UK industry has been injured, and how the TRA determines whether or not the injury is caused by the dumped goods or subsidised imports. The regulations in this Part broadly reflect Articles 3 and 4.1(i) of the ADA, Articles 15 and 16.1 of the SCMA, Articles 3 and 4 of Regulation (EU) 2016/1036 and Articles 8 and 9 of Regulation (EU) 2016/1037.

Part 5 (Determination of amounts) of the Regulations provides for how the TRA is to determine the level of an anti-dumping amount or a countervailing amount (or in the case of provisional remedies, an estimated amount). In particular, the regulations in this Part provide: for how the TRA is to determine an amount adequate to remove the injury for the purpose of paragraphs 14(4) and 18(7) of Schedule 4 to the Act; and how the non-sampled and residual rates are calculated. The regulations reflect Article 6 of the ADA; Articles 9, 17 and 18 of Regulation (EU) 2016/1036 and Articles 15, 27 and 28 of Regulation (EU) 2016/1037, although some of the regulations are unique to the UK regime and do not have equivalents in the ADA, SCMA, Regulation (EU) 2016/1036 or Regulation (EU) 2016/1037.

Part 6 (Investigations) of the Regulations provides for the TRA to investigate injury caused to UK industry by dumping or subsidisation so as to recommend to the Secretary of State the imposition of provisional and/or final measures. It broadly reflects Articles 5, 6 and 12 of the ADA; Articles 11, 12, 13 and 23 of the SCMA; Articles 5, 6, 16, 19 and 20 of Regulation (EU) 2016/1036 and Articles 10, 11, 26, 29 and 30 of Regulation (EU) 2016/1037. The regulations in this Part set out: the requirements on the content of an application for the initiation of an investigation; how the TRA will assess such an application; how the TRA will treat confidential information; the conduct of verification visits and hearings, and the disclosure of information forming the basis of the TRA’s determinations.

Part 7 (Reviews) of the Regulations provides for the TRA to review existing anti-dumping amounts or countervailing amounts so as to recommend the maintenance, variation (including extension of duration) or revocation of the relevant measure. It broadly reflects Articles 9.5 and 11 of the ADA; Articles 19.3 and 21 of the SCMA; Articles 11, 12 and 13 of Regulation (EU) 2016/1036 and Articles 18, 19, 20, 22 and 23 of Regulation (EU) 2016/1037. The regulations in this Part set out: the procedure for conducting reviews generally. They also provide for six distinct types of reviews of the application of anti-dumping amounts or countervailing amounts. The first type is an interim review during the life of a measure. The second type is an expiry review at the end of the duration

⁽¹⁰⁾ OJ No L 176, 30.6.16, p 21.

⁽¹¹⁾ OJ No L 176, 30.6.16, p 55.

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of the measure. The third type is a new exporter review where the exporter was not part of the original investigation. The fourth type is an absorption review into whether the measure has been fully reflected in resale prices. The fifth type is a circumvention review into whether the measures are being avoided. The sixth type is a scope review into whether the precise goods to which the measures apply should be varied.

Part 8 (Undertakings) of the Regulations provides for overseas exporters offering certain undertakings, such that various terms and conditions are applied as an alternative to an anti-dumping amount or a countervailing amount. It broadly reflects Articles 8 and 11 of the ADA; Article 18 and 21 of the SCMA; Articles 8 and 10(5) of Regulation (EU) 2016/1036 and Articles 13 and 16(5) of Regulation (EU) 2016/1037. The regulations in this Part set out: the procedure which the TRA must follow when it receives or requests an undertaking; the circumstances in which the TRA may recommend the acceptance of an undertaking and the Secretary of State may accept or reject such recommendation. This Part also contains provisions relating to the TRA's role in monitoring compliance with the undertaking; the acceptance of new undertakings; the circumstances in which an undertaking ceases to apply; investigations into breaches of undertakings and the consequences of a breach, and reviews of the continuing application of an undertaking.

Part 9 (Suspension) of the Regulations provides for the TRA to consider and recommend temporary suspension of an anti-dumping amount or a countervailing amount. It broadly reflects Article 14(4) of Regulation (EU) 2016/1036 and Article 24(4) of Regulation (EU) 2016/1037. The regulations in this Part set out: the circumstances in which the TRA may recommend temporary suspension; the matters which it may consider in making its determination; how an interested party can apply for temporary suspension; the duration of the temporary suspension, and the circumstances in which the TRA may recommend reinstatement of a measure.

Part 10 (Repayments) of the Regulations provides for investigations into whether HMRC should repay anti-dumping amounts or countervailing amounts to an importer when the TRA determines that, in light of new data, that importer has overpaid. It broadly reflects Article 9.3.2 and 9.3.3 of the ADA; Article 11(8) Regulation (EU) 2016/1036 and Article 21 of Regulation (EU) 2016/1037. The regulations in this Part set out: the procedure which the TRA must follow to investigate whether a repayment should be made; the steps it must take following a determination that a repayment should be made, and how an importer can apply for a repayment.

Part 11 (Miscellaneous) of the Regulations provides for when the period of a provisional remedy should be extended in a dumping investigation. This Part also provides for when an anti-dumping amount or a countervailing amount can be collected from a date which is before the date of the section 13 notice giving effect to the Secretary of State's decision for a measure to be imposed, and the meaning of export subsidisation. These provisions broadly reflect: Articles 7.4 and 10.6 of the ADA; Article 20.6 SCMA; Articles 7(6), 10 and 14(1) of Regulation (EU) 2016/1036 and Article 16 of Regulation (EU) 2016/1037.

Part 12 (Transitional provisions) of the Regulations makes provision for various EU anti-dumping duties and countervailing duties in existence when the United Kingdom leaves the EU to remain in place as new UK duties. Among other things, this Part obliges the TRA to carry out a review of these new duties, with a view to their adjustment to meet the circumstances of the UK market (or, in appropriate cases, their revocation i.e. where it is determined that the duty is no longer needed). This Part provides that, upon the conclusion of these "transition reviews", the TRA is to make a recommendation to the Secretary of State as to the variation (or, the revocation) of these duties.

Part 13 (Transitional provisions relating to the TRA) temporarily modifies these Regulations and provides for the Secretary of State to conduct investigations and reviews, and make decisions and determinations under Parts 2 to 12 of these Regulations until the TRA is established.

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 Taxation (Cross-border Trade) Act 2018.

A copy of the Explanatory Memorandum is published alongside this instrument on 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).