

---

STATUTORY INSTRUMENTS

---

**2019 No. 450**

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

**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<sup>(1)</sup>;

“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<sup>(2)</sup>;

“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—

---

(1) OJ No L 176, 30.6.16, p 21.

(2) OJ No L 176, 30.6.16, p 55.

- (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-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.