
STATUTORY INSTRUMENTS

2019 No. 450

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

PART 7

Initiation and conduct of a 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 exporters, 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.