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STATUTORY INSTRUMENTS

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**2019 No. 450**

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

**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.