
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

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 [^{F1}amount] 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 [^{F2}paragraph (2)(b)] 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 [^{F2}paragraph (2)(b)] takes place in the United Kingdom.

- F1** Word in reg. 73(7)(b)(iii) inserted (23.7.2019) by The Trade Remedies (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1076), regs. 1, **8(2)(a)**
- F2** Words in reg. 73(10) substituted (23.7.2019) by The Trade Remedies (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1076), regs. 1, **8(2)(b)**
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Commencement Information

- I1** Reg. 73 in force at 6.3.2019, see reg. 1(2)

Changes to legislation:

There are currently no known outstanding effects for the The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, Section 73.