
STATUTORY INSTRUMENTS

2020 No. 99

The Trade Remedies (Amendment) (EU Exit) Regulations 2020

PART 2

Amendment of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019

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17. This Part amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019⁽¹⁾.

Amendment of regulation 64 (termination)

18. In regulation 64—

- (a) in paragraph (1), omit sub-paragraph (a);
- (b) after paragraph (1), insert—

“(1A) The TRA must terminate an investigation in relation to some or all of the goods where, at any stage during the investigation, it determines that the margin of dumping or the amount of subsidy in respect of those goods is minimal.”.

Amendment of regulation 68 (the conduct of a review)

19. In regulation 68, for paragraphs (3) and (4) substitute—

“(3) The TRA must make a determination that an anti-dumping amount or a countervailing amount should be revoked in respect of goods from a particular overseas exporter where, at any stage during a review, it determines that the margin of dumping or the amount of subsidy is minimal.

(4) Where regulation 36(5) applies in respect of goods from a particular overseas exporter (“E”), but an anti-dumping amount or a countervailing amount remains in place for at least one other overseas exporter in respect of such goods, E—

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

(4A) Paragraph 4 does not apply where the Secretary of State has accepted a recommendation made by the TRA (see regulation 76) which is in accordance with a determination referred to in paragraph (3).”.

Insertion of Part 9A (investigation in light of an international dispute decision)

20. After Part 9, insert—

“PART 9A

Investigation in light of an international dispute decision

General

Investigation in light of an international dispute decision

88A.—(1) The Secretary of State may direct the TRA to investigate whether the application to goods of an anti-dumping amount or a countervailing amount should be maintained, varied, or revoked in light of an international dispute decision(2).

(2) In this Part, “international dispute investigation” means an investigation required by the Secretary of State under paragraph (1).

Suspension of an anti-dumping amount or a countervailing amount

88B.—(1) The Secretary of State may by public notice suspend the application to goods of an anti-dumping amount or a countervailing amount for the period it is subject to an international dispute investigation.

(2) The suspension begins the day after the day on which the public notice is published.

(3) The suspension ends the day after the day on which—

(a) the TRA publishes notice under regulation 88F(2); or

(b) the Secretary of State publishes notice under—

(i) paragraph 22(4)(a) of Schedule 4 to the Act;

(ii) regulation 88G(4); or

(iii) regulation 88I(4)(a).

Investigation

Initiation

88C.—(1) The TRA must publish notice of its initiation of the international dispute investigation.

(2) The notice must contain the information set out in paragraph 1 of Schedule 5A.

Conduct

88D. Parts 2 to 6 apply to an international dispute investigation to the extent the TRA considers relevant.

(2) The term “international dispute decision” is defined in paragraph 22(6) of Schedule 4 to the Act.

Determination

88E.—(1) The TRA must determine whether the application to goods of the anti-dumping amount or the countervailing amount should be maintained, varied, or revoked in light of the international dispute decision.

(2) The TRA may make different determinations for different goods or descriptions of goods, including by reference to—

- (a) an overseas exporter or a description of overseas exporter;
- (b) a foreign country or territory or a description of foreign country or territory.

Determination

Determination to maintain

88F.—(1) This regulation applies if the TRA determines the application to goods of an anti-dumping amount or a countervailing amount should be maintained.

(2) The TRA must publish notice of the determination.

(3) The notice must contain the information set out in paragraph 2 of Schedule 5A.

Determination to vary

88G.—(1) This regulation applies if the TRA determines the application to goods of an anti-dumping amount or a countervailing amount should be varied.

(2) If the TRA is satisfied the application to goods of an anti-dumping amount or a countervailing amount in accordance with the determination meets the economic interest test⁽³⁾, the TRA must recommend to the Secretary of State that the application to goods of the anti-dumping amount or the countervailing amount should be varied.

(3) The TRA may recommend—

- (a) varying the goods or the description of goods to which the anti-dumping amount or the countervailing amount applies;
- (b) varying the period for which the anti-dumping amount or the countervailing amount applies;
- (c) varying how the anti-dumping amount or the countervailing amount is determined;
- (d) any other variation.

(4) If the TRA is not satisfied that the application to goods of an anti-dumping amount or a countervailing amount in accordance with the determination meets the economic interest test, the TRA must publish notice of the determination.

(5) A notice under paragraph (4) must contain the information set out in paragraph 2 of Schedule 5A.

Determination to revoke

88H.—(1) This regulation applies if the TRA has determined that the application to goods of an anti-dumping amount or a countervailing amount should be revoked.

(2) The TRA must recommend to the Secretary of State that the application to goods of the anti-dumping amount or the countervailing amount should be revoked.

(3) The economic interest test is set out in paragraph 25 of Schedule 4 to the Act.

Recommendation

Acceptance or rejection of a recommendation

88I.—(1) The Secretary of State must accept or reject a recommendation made by the TRA under regulation 88G(2) or 88H(2).

(2) The Secretary of State must accept a recommendation made under regulation 88G(2) unless the Secretary of State is satisfied—

- (a) it is not in the public interest to accept the recommendation; or
- (b) the TRA determination that the application of the anti-dumping amount or the countervailing amount to goods in accordance with the determination to vary meets the economic interest test is not a determination the TRA could reasonably have made.

(3) The Secretary of State must accept a recommendation made under regulation 88H(2) unless the Secretary of State is satisfied it is not in the public interest to accept the recommendation(4).

(4) If the Secretary of State rejects a recommendation, the Secretary of State must—

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

Amendment of regulation 94 (interpretation for Part 12)

21. In regulation 94(1)—

- (a) in the definition of “appropriate date”, in paragraph (b)(i), before “day of publication” insert “day after the”;
- (b) in the definition of “EU countervailing duty”, for “by EU instrument” substitute “by an EU instrument”.

Amendment of regulation 94A (treatment of trade remedies transitioned under this Part)

22. In regulation 94A—

- (a) in paragraph (2)—
 - (i) for “102C(2)(a)” substitute “101C(2)(a)”;
 - (ii) for “an anti-dumping or countervailing amount” substitute “an anti-dumping amount or a countervailing amount”;
- (b) in paragraph (3), for “102C(2)(a)” substitute “101C(2)(a)”.

Amendment of regulation 94B (new exporter review of trade remedies measure transitioned under this Part)

23. In regulation 94B(1), for “102C(2)(a)” substitute “101C(2)(a)”.

(4) Paragraph 22(4) of Schedule 4 to the Act applies if the Secretary of State accepts a recommendation that the application to goods of an anti-dumping amount or a countervailing amount should be varied or revoked in light of an international dispute decision. The Secretary of State must publish notice of the recommendation and of the acceptance of it, notify interested parties, and make provision by public notice to give effect to the recommendation.

Amendment of regulation 94C (scope review of trade remedies measure transitioned under this Part)

24. In regulation 94C(1), for “102C(2)(a)” substitute “101C(2)(a)”.

Amendment of regulation 96A (transition of EU trade remedies measure)

25. In regulation 96A(4)(a), for “accepted a recommendation of revocation under regulation 101(1)” substitute “accepted under regulation 101(1) a recommendation of revocation”.

Amendment of regulation 96C (transition of expired EU trade remedies measure)

26. In regulation 96C(1), for “accepted a recommendation of variation under regulation 101(1)” substitute “accepted under regulation 101(1) a recommendation of variation”.

Amendment of regulation 97C (continuation of expired UK trade remedies measure)

27. In regulation 97C(2), for “102C(2)(a)” substitute “101C(2)(a)”.

Amendment of regulation 101A (rejection of recommendation)

28. In regulation 101A(1), for “a recommendation made under regulation 101(1)” substitute “under regulation 101(1) a recommendation”.

Amendment of regulation 101B (acceptance of recommendation before replacement of EU trade duty)

29. In regulation 101B—

- (a) in paragraph (1), for “a recommendation made under regulation 101(1)” substitute “under regulation 101(1) a recommendation”;
- (b) in paragraph (2), in sub-paragraphs (a)(i) and (b)(i), for “101A(2)(a)” substitute “101A(2)(a)(i) to (iii)”.

Amendment of regulation 101C (acceptance of recommendation after replacement of EU trade duty)

30. In regulation 101C—

- (a) in paragraph (1), for “a recommendation made under regulation 101(1)” substitute “under regulation 101(1) a recommendation”;
- (b) in paragraph (3)(a), for “101A(2)(a)” substitute “101A(2)(a)(i) to (iii)”.

Amendment of regulation 102 (general modifications)

31. In regulation 102(d), after sub-paragraph (xi), insert—
“(xia) regulation 88C(1)”.

Insertion of regulation 113A (modifications to regulation 68)

32. After regulation 113, insert—

“113A. Regulation 68(4A) has effect as if, for “accepted a recommendation”, there were substituted “decided to give effect to a preliminary decision.”.

Insertion of regulation 130A (modifications to Part 9A)

33. After regulation 130, insert—

“Modifications to Part 9A

130A. Part 9A (investigation in light of an international dispute decision) has effect as if—

- (a) for “recommendation”, in each place it occurs, there were substituted “preliminary decision”;
- (b) in regulation 88A—
 - (i) in paragraph (1), the words “direct the TRA to” were omitted;
 - (ii) in paragraph (2), for “required” there were substituted “initiated”;
- (c) in regulation 88B(3)(b)(iii), after “regulation” there were inserted “88I(3)(a) or”;
- (e) in regulations 88G(2) and 88H(2), for “recommend to the Secretary of State”, there were substituted “make a preliminary decision”;
- (e) for the section heading after regulation 88I and for regulation 88I, there were substituted—

“Decision

Decision to give effect to a preliminary decision

88I.—(1) The Secretary of State must decide whether or not to give effect to a preliminary decision made under regulation 88G(2) or 88H(2).

(2) The Secretary of State must decide to give effect to the preliminary decision unless the Secretary of State is satisfied it is not in the public interest to give effect to the preliminary decision.

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

- (a) publish notice of the preliminary decision and of the decision to give effect to it;
- (b) notify interested parties;
- (c) make provision by public notice under section 13 of the Act to give effect to the preliminary decision.

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

- (a) publish notice of the preliminary decision and of the decision not to give effect to it;
- (b) notify interested parties;
- (c) lay a statement before the House of Commons setting out the reasons for which the Secretary of State is satisfied it is not in the public interest to give effect to the preliminary decision.”.”.

Insertion of regulation 141A (modifications to Schedule 5A)

34. After regulation 141, insert—

“Modifications to Schedule 5A

141A. Schedule 5A (content of international dispute investigation notices) has effect as if, in paragraph 2—

- (a) in the heading, there were omitted “with no recommendation”;
- (b) sub-paragraph (h) were omitted.”

Insertion of Schedule 5A (content of international dispute investigation notices)

35. After Schedule 5, insert—

“SCHEDULE 5A Regulations 88C(2), 88F(3), and
88G(5)

Content of international dispute investigation notices

Notice of initiation

- 1.** The information referred to in regulation 88C(2) is—
 - (a) the date of initiation of the investigation;
 - (b) the name of the exporting country or territory;
 - (c) a description of the goods concerned;
 - (d) a description of the anti-dumping amount or the countervailing amount to which the investigation relates;
 - (e) a summary of the international dispute decision;
 - (f) a summary of the investigation process; and
 - (g) any other information the TRA considers relevant.

Notice of determination

- 2.** The information referred to in regulation 88F(3) and 88G(5) is—
 - (a) the name of the exporting country or territory;
 - (b) a description of the goods concerned;
 - (c) a description of the anti-dumping amount or the countervailing amount to which the notice relates;
 - (d) a summary of the investigation;
 - (e) a summary of the international dispute decision;
 - (f) the determination made in light of the international dispute decision;
 - (g) the reason for the determination;
 - (h) the date of the determination; and
 - (i) any other information the TRA considers relevant.”