

2022 No. 414

CUSTOMS

TRADE

**The Trade Remedies (Miscellaneous Amendments) Regulations
2022**

Made - - - - 29th March 2022
Laid before the House of Commons 31st March 2022
Coming into force - - 3rd May 2022

The Secretary of State for International Trade makes the following Regulations in exercise of the powers conferred by sections 13(5), 32(1), (7) and (8), 51(1)(b) and 56 of, and paragraphs 21, 30, 31 and 32(3) of Schedule 4, and paragraphs 21, 29 and 31(3) of Schedule 5 to, the Taxation (Cross-border Trade) Act 2018(a).

Citation and commencement

1. These Regulations may be cited as the Trade Remedies (Miscellaneous Amendments) Regulations 2022 and come into force on 3rd May 2022.

Amendment of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019

2. Regulation 2 (interpretation) of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(b) is amended as follows—

- (a) in the definition of “interested party” after paragraph (e) insert—
 - “(f) an overseas producer of the goods concerned or the goods subject to review;”;
- (b) after the definition of “overseas exporter” insert—
 - ““overseas producer” means a person outside of the United Kingdom that produces goods;”;
- (c) for the definition of “pace of liberalisation” substitute—
 - ““pace of liberalisation” means—
 - (i) in respect of a definitive safeguarding amount, the process by which the amount of import duty applicable to the goods becomes progressively smaller, in accordance with paragraph 17(4)(b) of Schedule 5 to the Act;

(a) 2018 c. 22. The Secretary of State for International Trade is the appropriate Minister for the purposes of sections 51(1) and 56 by virtue of sections 51(4)(a) and 56(5) respectively.
(b) S.I. 2019/449, relevant amending instrument is S.I. 2020/99. There are other amendments, but these are not relevant to this instrument.

- (ii) in respect of a tariff rate quota, the process by which the amount of import duty applicable to goods becomes progressively smaller, or the amount of the quota becomes progressively larger, or both, in accordance with paragraph 18(5)(b) of Schedule 5 to the Act;”.

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

3.—(1) The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of “interested party” after paragraph (e) insert—

“(f) an overseas producer of the goods concerned or the goods subject to review;”;

(b) after the definition of “non-confidential summary” insert—

““overseas producer” means a person outside of the United Kingdom that produces goods;”

(c) in the definition of “review application” after “Part 7” insert “or 12”.

(3) In regulation 94 (interpretation for Part 12) after the definition of “appropriate date” insert—

““circumvention” has the meaning given in regulation 73(2);”;

(4) After regulation 96D (transition of EU exemption after replacement of EU trade duty) insert—

“PART 3A

Exemptions to UK trade remedies measures

UK trade remedies measure exemption review

96E.—(1) The TRA(b) may conduct a review (a “UK trade remedies measure exemption review”) to consider whether goods imported by a review applicant should be exempted from the application of a UK trade remedies measure.

(2) The TRA must initiate a UK trade remedies measure exemption review—

(a) where a review application is made by or on behalf of an importer or overseas exporter; and

(b) the TRA is satisfied that the review application contains sufficient information to substantiate the need for a review in accordance with paragraph (4) or (5).

(3) Parts 2, 3, 4 and 6 apply to a UK trade remedies measure exemption review to the extent that the TRA considers relevant.

(4) Where the review applicant is an overseas exporter, a review application must include evidence that the overseas exporter is not engaged in circumvention of the UK trade remedies measure.

(5) Where the review applicant is an importer, the application must include evidence that—

(a) the importer is not related to an overseas exporter which is subject to the UK trade remedies measure; and

(b) the importer is not engaged in circumvention of the UK trade remedies measure.

(a) S.I. 2019/450 as amended by S.I. 2019/1076, 2020/99 and 2021/942. There are other amendments, but these are not relevant to this instrument.

(b) See sections 13 and 38 of the Taxation (Cross-border Trade) Act 2018 for the meaning of “TRA”.

(6) The TRA may determine to reject a review application, in particular where it has conducted a previous review into an application made by the relevant review applicant in respect of the relevant UK trade remedies measure and there is no change of circumstances.

(7) Where the TRA rejects a review application, the TRA must notify the review applicant.

(8) Where the TRA initiates a UK trade remedies measure exemption review, the TRA must—

- (a) publish a notice of its decision to initiate a review; and
- (b) recommend that the Secretary of State suspends, by a public notice, the application of the UK trade remedies measure to the review applicant's goods pending the outcome of the UK trade remedies measure exemption review.

(9) A notice under paragraph (8)(a) must—

- (a) specify the relevant UK trade remedies measure; and
- (b) contain the information set out in paragraph 1(d), (f), (g) and (k) and (l) of Schedule 3.

(10) The TRA may satisfy a requirement of paragraph (9) by reference to a document on an Internet site that is available to the public and free of charge.

Suspension of application of a UK trade remedies measure

96F.—(1) Where the TRA makes a recommendation under regulation 96E(8)(b), the Secretary of State must decide whether to accept or reject that recommendation.

(2) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must notify the review applicant of the reasons for the decision.

(3) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State may suspend, by public notice, the application of the UK trade remedies measure to the review applicant's goods pending the outcome of the UK trade remedies exemption review.

TRA recommendation on exemption to a UK trade remedies measure

96G.—(1) Where the conditions in paragraphs (2) and (3) are met, the TRA may make a recommendation to the Secretary of State to exempt the review applicant's goods from the application of a UK trade remedies measure (a "UK trade remedies measure exemption recommendation").

(2) The first condition is that the UK trade remedies measure applies an EU trade remedies measure that was extended following an EU circumvention review.

(3) The second condition is that the TRA has determined that—

- (a) where the review applicant is an overseas exporter, the review applicant is not engaged in circumvention of the UK trade remedies measure; or
- (b) where the review applicant is an importer, the review applicant—
 - (i) is not related to an overseas exporter which is subject to the UK trade remedies measure; and
 - (ii) is not engaged in circumvention of the UK trade remedies measure.

(4) Where the TRA determines not to make a recommendation under paragraph (1), it must—

- (a) publish a notice of the reasons for its decision;
- (b) notify the Secretary of State and the review applicant; and
- (c) where the Secretary of State has suspended the application of the UK trade remedies measure to the review applicant's goods, the TRA must recommend that

the Secretary of State reinstates the application of the UK trade remedies measure to the review applicant's goods.

(5) Where the TRA has made a recommendation in accordance with paragraph 4(c), the Secretary of State may, by a public notice, reinstate the application of the UK trade remedies measure to the review applicant's goods from the day after the day that the public notice is made.

(6) Where the TRA makes a UK trade remedies measure exemption recommendation, the recommendation must include—

- (a) details of the review applicant's goods;
- (b) details of the public notice which applies the UK trade remedies measure concerned;
- (c) the name of the importer or overseas exporter concerned; and
- (d) the reasons for the recommendation.

(7) In this regulation, "EU circumvention review" means a review conducted pursuant to Article 13 of the EU anti-dumping regulation, Article 23 of the EU countervailing regulation or a circumvention review conducted pursuant to powers under an earlier EU regulation under which a circumvention review could have been conducted.

Acceptance or rejection by the Secretary of State of the TRA's recommendation to grant an exemption to a UK trade remedies measure

96H.—(1) Where the TRA makes a UK trade remedies measure exemption recommendation in accordance with regulation 96G the Secretary of State must accept or reject the recommendation.

(2) The Secretary of State may reject the TRA's recommendation only if satisfied that the recommendation is not one that the TRA could reasonably have made.

(3) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State must—

- (a) publish a notice containing the information set out in paragraph 3A of Schedule 3;
- (b) notify the review applicant of the reasons for the decision; and
- (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

(4) Where the Secretary of State rejects the TRA's recommendation, the Secretary of State may, by public notice, apply the rate previously applied under the UK trade remedies measure to goods imported by the review applicant from day after the day that the public notice is made.

(5) Where the Secretary of State accepts the TRA's recommendation, the Secretary of State must publish a notice containing the information set out in paragraph 3A of Schedule 3.

Treatment of public notices made under regulations 96F to 96H

96I. A public notice made under regulation 96F(3), 96G(5) or 96H(3)(a), (4) or (5) is to be treated as if it were a public notice made under section 13(4) of the Act. ”.

(5) In regulation 99A (conduct of a transition review), for paragraph (1) substitute—

“(1) In a transition review, the TRA must consider whether—

- (a) the dumping of the goods or the importation of the subsidised goods subject to review would be likely to continue or recur if the anti-dumping amount or countervailing amount were no longer applied to those goods; and
- (b) injury to a UK industry in the goods would be likely to continue or recur if the anti-dumping or countervailing amount were no longer applied to those goods.”.

Amendment of Schedule 3 (Content of review notices)

4. After paragraph 3 insert—

“Notice of the Secretary of State accepting or rejecting a recommendation by the TRA to exempt an importer or overseas exporter from an anti-dumping amount or a countervailing amount or a UK trade remedies measure

3A. The information to be contained in a notice referred to in regulation 96H(3)(a) and (5) is—

- (a) a description of the goods to which the notice relates;
- (b) the name of the importer or the overseas exporter that made the application for an exemption under regulation 96E;
- (c) a summary of the review;
- (d) the reasons for the TRA’s recommendation;
- (e) where the Secretary of State accepts the TRA’s recommendation—
 - (i) the name of the importer or overseas exporter to which the exemption relates; and
 - (ii) the date from which the exemption from the application of the UK trade remedies measure applies.”.

Amendment of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019

5.—(1) The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 2 (public file) —

- (a) the existing text is numbered as paragraph (1);
- (b) in paragraph (1), for “every reconsideration” substitute “a reconsideration”;
- (c) after paragraph (1) insert:

“(2) Paragraph (1) does not apply to a reconsideration of a determination made under paragraph 9(4) of Schedule 4 to the Act to reject an application for the initiation of a dumping investigation or a subsidisation investigation.”

(3) In Schedule 1 (determinations or recommendations made under the Dumping and Subsidisation Regulations), in Part 3, after paragraph 29, insert—

“29A. A determination under regulation 96E(6) to reject a review application.

29B. A recommendation under regulation 96G(1) in relation to an exemption from a UK trade remedies measure.

29C. A determination under regulation 96G(4) not to make a recommendation under regulation 96G(1).”.

(4) In Schedule 2 (determinations of the Secretary of State that are subject to appeal), in Part 2, after paragraph 7 insert—

“8. The acceptance or rejection under regulation 96F(1) of a recommendation to suspend the application of the UK trade remedies measure.

9. The acceptance or rejection under regulation 96H(1) of a recommendation made by the TRA to exempt an importer or overseas exporter from a UK trade remedies measure.”.

(a) S.I. 2019/910.

Signed by authority of the Secretary of State

Penny Mordaunt

Minister of State

Department for International Trade

29th March 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 amends the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) (Regulations) 2019 (S.I. 2019/449).

Regulation 3 amends the Trade Remedies (Dumping and Subsidisation) Regulations 2019 (S.I. 2019/450). In particular, new regulations 96E to 96I are inserted into Part 12 of those Regulations. Regulation 96E gives the TRA the power to conduct a UK trade remedies measure exemption review and to recommend that the application of a UK trade remedies measure to a review applicant's goods should be suspended pending the outcome of the review. Regulation 96F gives the Secretary of State the power to accept or reject a recommendation on suspension. Regulation 96G makes provision for the TRA to make a recommendation that goods imported by an importer or overseas exporter into the UK should be exempted from the application of a UK trade remedies measure that applies an EU trade remedies measure that was extended following an EU circumvention review. Regulation 96H makes provision for the Secretary of State to accept or reject that recommendation. Regulation 99A(1) of those Regulations is amended to clarify what the TRA must consider when conducting a transition review.

Regulation 4 amends the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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