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STATUTORY INSTRUMENTS

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**2019 No. 1076**

**The Trade Remedies (Amendment) (EU Exit) Regulations 2019**

**PART 2**

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

**Substitution of Part 12 (Transitional Provisions)**

**10.** For Part 12 substitute—

**“PART 12**

**Transitional provisions**

**CHAPTER 1**

**General**

**Interpretation for Part 12**

**94.—(1)** In this Part—

“appropriate date” means—

- (a) in relation to a transition review under regulation 97(2)(a), the day of replacement of EU trade duty;
- (b) in relation to a transition review under regulation 97(2)(b)—
  - (i) the day of publication of the notice under regulation 101C(2)(a); or
  - (ii) the day of expiry if the relevant UK trade remedies measure continues to apply under regulation 97C(2);

“determination notice” means a notice published by the Secretary of State under regulation 96(1);

“EU anti-dumping duty” means a definitive anti-dumping duty imposed by an EU instrument made under—

- (a) the EU anti-dumping regulation;
- (b) an earlier EU regulation under which an EU instrument imposing a definitive anti-dumping duty could have been made;

“the EU anti-dumping regulation” means Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union<sup>(1)</sup>;

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(1) OJ No. L 176, 30.6.2016, p. 21.

“EU countervailing duty” means a definitive countervailing duty imposed by EU instrument made under—

- (a) the EU countervailing regulation; or
- (b) an earlier EU regulation under which an EU instrument imposing a definitive countervailing duty could have been made;

“the EU countervailing regulation” means Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union<sup>(2)</sup>;

“EU regulation” has the same meaning as in Article 288 of the Treaty on the Functioning of the European Union;

“EU trade remedies measure” means an EU anti-dumping duty or an EU countervailing duty;

“recommendation of revocation” means a recommendation made under regulation 100(1) in accordance with regulation 100B;

“recommendation of variation” means a recommendation made under regulation 100(1) in accordance with regulation 100A;

“replacement of EU trade duty” means the coming into force of paragraph 1 of Schedule 7 to the Act in so far as it relates to any EU anti-dumping duty or EU countervailing duty;

“transition review” means a review under regulation 97(2)(a) or (b);

“UK trade remedies measure” means an anti-dumping amount or a countervailing amount applied by public notice under regulation 96A(1).

(2) For the purposes of this Part, “EU countervailing duty” includes a duty that would apply to goods were it not for acceptance by the European Commission of an undertaking in accordance with Article 13 of the EU countervailing regulation.

#### **Treatment of trade remedies measure transitioned under this Part**

**94A.**—(1) This regulation applies for the purposes of the other Parts of these Regulations.

(2) An anti-dumping amount or a countervailing amount applied by public notice under regulation 96A(1) or 102C(2)(a) is to be treated as if it were an anti-dumping or countervailing amount—

- (a) applied under section 13(2) of the Act;
- (b) giving effect to a recommendation made by the TRA under paragraph 17(3) or (4) of Schedule 4 to the Act;
- (c) following an investigation conducted in accordance with Schedule 4 to the Act and the other Parts of these Regulations.

(3) A reference to a public notice under section 13 includes a reference to a public notice under regulation 96A(1) or 102C(2)(a).

#### **New exporter review of trade remedies measure transitioned under this Part**

**94B.**—(1) This regulation applies for the purposes of a new exporter review in relation to an anti-dumping amount or a countervailing amount applied by public notice under regulation 96A(1) or 102C(2)(a).

- (2) Regulation 71 (new exporter review) has effect as if—
- (a) in paragraphs (2), (3)(a)(ii), and the first reference in paragraph (3)(b), for “the United Kingdom”, there were substituted “the European Union”;
  - (b) in paragraph (4), for “regulation 37 (determination of the anti-dumping amount or countervailing amount for non-sampled overseas exporters)” substitute “the EU anti-dumping regulation or the EU countervailing regulation”;
  - (c) in paragraph (7), for “the rate previously calculated in accordance with regulation 38 (determination of residual amount)”, there were substituted “the relevant anti-dumping amount applied by public notice under regulation 96A(1) or 101C(2)(a)”;
  - (d) after paragraph (9), there were inserted—  
“(10) In this regulation, “EU anti-dumping regulation” and “EU countervailing regulation” have the same meaning as in regulation 94.”.

### **Scope review of trade remedies measure transitioned under this Part**

**94C.**—(1) This regulation applies for the purposes of a scope review in relation to an anti-dumping amount or a countervailing amount applied by public notice under regulation 96A(1) or 102C(2)(a).

- (2) Regulation 74 (scope review) has effect with the omission of paragraph (4)(a).

## **CHAPTER 2**

### **Dumping and subsidisation investigation**

#### **Investigation before replacement of EU trade duty**

**95.** The TRA must not initiate an investigation under paragraph 8(1) or (3) of Schedule 4 to the Act before replacement of EU trade duty.

#### **Application before replacement of EU trade duty**

**95A.** The TRA must disregard a request to initiate an investigation under paragraph 9(1) (a) of Schedule 4 to the Act if the application by or on behalf of a UK industry is made before replacement of EU trade duty.

## **CHAPTER 3**

### **Transition of EU trade remedies measure**

#### **Determination to transition EU trade remedies measure**

**96.**—(1) The Secretary of State may by publishing a notice determine to transition an EU trade remedies measure.

- (2) A notice under paragraph (1) may be published at any time before replacement of EU trade duty.

#### **Transition of EU trade remedies measure**

**96A.**—(1) The Secretary of State must by public notice make provision giving effect to an EU trade remedies measure specified in a determination notice.

- (2) A notice made under paragraph (1) must—

- (a) be made before replacement of EU trade duty;
  - (b) take effect on replacement of EU trade duty;
  - (c) specify—
    - (i) the anti-dumping amount or the countervailing amount;
    - (ii) the goods or the description of the goods to which the anti-dumping amount or the countervailing amount applies;
    - (iii) the period beginning on replacement of EU trade duty for which the anti-dumping amount or the countervailing amount is to apply to those goods;
  - (d) refer to the relevant determination notice;
  - (e) if applicable, include a statement that the anti-dumping amount or the countervailing amount is subject to a transition review under regulation 97(2)(b).
- (3) Subject to regulations 96B and 96C, the information specified under paragraph (2)(c) must be consistent with the relevant EU trade remedies measure as it applies immediately before replacement of EU trade duty.
- (4) Paragraph (1) does not apply if the Secretary of State—
- (a) has accepted a recommendation of revocation under regulation 101(1) in relation to the relevant EU trade remedies measure; or
  - (b) has published a notice withdrawing the relevant determination notice.
- (5) A notice under paragraph (1) does not take effect if the relevant EU trade remedies measure is no longer in force.

#### **Transition of expired EU trade remedies measure**

**96B.**—(1) This regulation applies if an EU trade remedies measure specified in a determination notice remains in force pending the outcome of an EU expiry review.

(2) The period specified under regulation 96A(2)(c)(iii) must end 30 days after replacement of EU trade duty unless regulation 96C applies.

(3) In this regulation, “EU expiry review” means a review conducted by the European Commission in accordance with—

- (a) Article 11(2) of the EU anti-dumping regulation; or
- (b) Article 18 of the EU countervailing regulation.

#### **Transition of varied EU trade remedies measure**

**96C.**—(1) This regulation applies if the Secretary of State has accepted a recommendation of variation under regulation 101(1) in relation to the relevant EU trade remedies measure.

(2) The information specified under regulation 96A(2)(c) must be consistent with that recommendation.

## CHAPTER 4

### Transition review

#### *General*

#### **Transition review of EU trade remedies measure**

**97.**—(1) The TRA must review every EU trade remedies measure specified in a determination notice.

(2) The TRA may conduct a transition review—

- (a) before replacement of EU trade duty, in which case the review is of an EU trade remedies measure; or
- (b) after replacement of EU trade duty, in which case the review is of a UK trade remedies measure.

#### **Continuation of transition review**

**97A.**—(1) This regulation applies if—

- (a) the TRA is conducting a transition review under regulation 97(2)(a); and
- (b) the relevant EU trade remedies measure is transitioned as a UK trade remedies measure.

(2) The TRA must continue the transition review as a review of a UK trade remedies measure being conducted under regulation 97(2)(b).

#### **Termination of transition review**

**97B.**—(1) This regulation applies if—

- (a) a transition review is being conducted under regulation 97(2)(a); and
- (b) the Secretary of State has published a notice withdrawing the relevant determination notice.

(2) The TRA must by publishing a notice terminate that transition review.

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

#### **Continuation of expired UK trade remedies measure**

**97C.**—(1) This regulation applies if a UK trade remedies measure would otherwise expire during a transition review being conducted under regulation 97(2)(b).

(2) The UK trade remedies measure continues to apply until the day the Secretary of State has published a notice in accordance with 101A(2) or 102C(2)(a).

#### *Initiation*

#### **Initiation of transition review**

**98.**—(1) The TRA must publish a notice to initiate a transition review before the expiry of—

- (a) the relevant EU trade remedies measure, if the review is conducted under regulation 97(2)(a); or
  - (b) the relevant UK trade remedies measure, if the review is conducted under regulation 97(2)(b).
- (2) A notice under paragraph (1) must—
- (a) specify—
    - (i) the relevant EU trade remedies measure, if the review is conducted under regulation 97(2)(a); or
    - (ii) the relevant UK trade remedies measure, if the review is conducted under regulation 97(2)(b);
  - (b) contain the information set out in sub-paragraphs (c), (d), (f), (g), and (k) to (o) of paragraph (1) of Schedule 3.
- (3) The TRA may satisfy a requirement of paragraph (2) by reference to a document on an Internet site that is available to the public and free of charge.

#### **Notification of transition review**

- 98A.**—(1) The TRA must notify the parties of a transition review—
- (a) before and after initiating the transition review, if the review relates to a countervailing amount;
  - (b) after initiating the transition review, if the review relates to an anti-dumping amount.
- (2) In this regulation, “the parties” means—
- (a) the government of the exporting country or territory;
  - (b) the Secretary of State.

#### *Conduct*

#### **Conduct of transition review**

- 99A.**—(1) In a transition review, the TRA must consider—
- (a) whether the application of the anti-dumping amount or the countervailing amount is necessary or sufficient to offset—
    - (i) the dumping of the relevant goods; or
    - (ii) the importation of the relevant subsidised goods;
  - (b) whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount or the countervailing amount were no longer applied to those goods.
- (2) The TRA may also—
- (a) consider—
    - (i) whether it is appropriate to recalculate the anti-dumping amount or the countervailing amount;
    - (ii) whether the goods or the description of the goods to which the anti-dumping amount or the countervailing amount applies should be varied;
    - (iii) any of the matters of a review conducted under Chapter 2 of Part 7;

- (b) reassess—
  - (i) the margin of dumping or the amount of the subsidy;
  - (ii) in accordance with Part 5, the anti-dumping amount or the countervailing amount adequate to remove the injury to a UK industry in the relevant goods caused by the dumped goods or the subsidised imports.
- (3) For the purposes of conducting a transition review under regulation 97(2)(a)—
  - (a) an EU anti-dumping duty is to be treated as an anti-dumping amount;
  - (b) an EU countervailing duty is to be treated as a countervailing amount.

### **Determination of export price**

**99B.**—(1) This regulation applies if the TRA constructs an export price for the purposes of a transition review in accordance with regulation 15.

(2) The TRA may deduct any anti-dumping amount paid if it is not reflected in resale prices and subsequent selling prices in the United Kingdom.

### **Relationship with other Parts**

**99C.** The TRA may apply Parts 2, 3, 4, and 6 to the extent the TRA considers relevant for the purposes of a transition review.

### *Recommendation*

### **Recommendation following transition review**

**100.**—(1) The TRA must make a recommendation to the Secretary of State following a transition review to vary or revoke the application of the anti-dumping amount or the countervailing amount to the relevant goods.

- (2) A recommendation under paragraph (1) must—
  - (a) be made in accordance with—
    - (i) regulation 100A, if the recommendation is variation;
    - (ii) regulation 100B, if the recommendation is revocation;
  - (b) include—
    - (i) a description of the goods to which the recommendation relates;
    - (ii) the names of overseas exporters or, where impracticable, the exporting countries or territories;
    - (iii) a summary of the review;
    - (iv) the reasons for the recommendation.

(3) The TRA must make a recommendation of revocation if the TRA is not satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test(3).

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(3) Paragraph 25 of Schedule 4 to the Act contains provisions relating to the economic interest test.

### **Recommendation of variation**

**100A.**—(1) This regulation applies if the TRA is making a recommendation under regulation 100(1) to vary the application of the anti-dumping amount or the countervailing amount applicable to the relevant goods.

(2) The TRA must—

- (a) be satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test;
- (b) have had regard to the current and prospective impact of the anti-dumping amount or the countervailing amount;
- (c) specify the information set out in regulation 96A(2)(c).

(3) The TRA must not make a recommendation comprising or including—

- (a) an anti-dumping amount that exceeds the margin of dumping;
- (b) a countervailing amount that exceeds the amount of subsidy;
- (c) an anti-dumping amount or a countervailing amount that is more than an amount the TRA is satisfied would be adequate to prevent or remove injury to the UK industry caused by the dumped or subsidised goods;
- (d) a period for which the anti-dumping amount or the countervailing amount is to apply that extends more than five years after the appropriate date.

(4) The TRA may recommend—

- (a) a different anti-dumping amount or a different countervailing amount to apply in respect of some of the relevant goods;
- (b) maintaining the anti-dumping amount or the countervailing amount if it has not been possible for the TRA to recalculate that amount.

### **Recommendation of revocation**

**100B.**—(1) This regulation applies if the TRA is making a recommendation under regulation 100(1) to revoke the application of the anti-dumping amount or the countervailing amount applicable to the relevant goods.

(2) The TRA must recommend the appropriate date as the date the anti-dumping amount or the countervailing amount is revoked.

### *Decision*

#### **Decision on recommendation following transition review**

**101.**—(1) The Secretary of State must accept a recommendation made under regulation 100(1) unless the Secretary of State is satisfied that it is not in the public interest to accept that recommendation.

(2) In considering whether a recommendation of variation is not in the public interest, the Secretary of State must accept the relevant TRA determination that the economic interest test is met unless the Secretary of State is satisfied that that determination is not a determination that the TRA could reasonably have made.

#### **Rejection of recommendation**

**101A.**—(1) This regulation applies if the Secretary of State rejects a recommendation made under regulation 101(1).

- (2) The Secretary of State must—
  - (a) publish a notice containing—
    - (i) a description of the goods to which the notice relates;
    - (ii) a summary of the review;
    - (iii) the recommendation made under regulation 100(1);
    - (iv) the reasons for rejecting the recommendation;
  - (b) notify interested parties<sup>(4)</sup>;
  - (c) lay a statement before the House of Commons setting out the reasons for rejecting the recommendation.

#### **Acceptance of recommendation before replacement of EU trade duty**

**101B.**—(1) This regulation applies if the Secretary of State accepts a recommendation made under regulation 101(1) before replacement of EU trade duty.

- (2) The Secretary of State must publish a notice containing—
  - (a) in relation to a recommendation of variation—
    - (i) the information set out in regulation 101A(2)(a);
    - (ii) a statement that the EU trade remedies measure will be transitioned on replacement of EU trade duty;
  - (b) in relation to a recommendation of revocation—
    - (i) the information set out in regulation 101A(2)(a);
    - (ii) a statement that the EU trade remedies measure will not be transitioned on replacement of EU trade duty.

#### **Acceptance of recommendation after replacement of EU trade duty**

**101C.**—(1) This regulation applies if the Secretary of State accepts a recommendation made under regulation 100(1) after replacement of EU trade duty.

- (2) The Secretary of State must—
  - (a) make provision by public notice giving effect to that recommendation;
  - (b) notify interested parties.
- (3) A notice made under paragraph (2)(a) must—
  - (a) contain the information set out in regulation 101A(2)(a);
  - (b) specify —
    - (i) the anti-dumping amount or the countervailing amount;
    - (ii) the goods or the description of the goods to which the anti-dumping amount or the countervailing amount applies;
    - (iii) the period beginning on the appropriate date for which the anti-dumping amount or the countervailing amount is to apply to those goods.”

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(4) The term “interested party” is defined in regulation 2.