
STATUTORY INSTRUMENTS

2019 No. 450

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

PART 2

Dumping

CHAPTER 1

Introduction

Purpose of Part 2

6.—(1) This Part applies where the TRA is required to determine whether goods have been or are being dumped into the United Kingdom in accordance with paragraph 1 of Schedule 4 to the Act.

(2) In order to make such a determination the TRA must—

- (a) determine the normal value of the goods concerned;
- (b) determine the export price of the goods concerned; and
- (c) carry out a fair comparison between the normal value and the export price to establish whether the export price is lower than the normal value.

CHAPTER 2

Determination of the normal value

Normal value

7.—(1) The TRA must use the comparable price to determine the normal value unless it is not appropriate to use that price.

(2) For the purpose of paragraph 1(2) of Schedule 4 to the Act, it is not appropriate to use the comparable price to determine the normal value of the goods concerned where—

- (a) there are no sales of the like goods in the ordinary course of trade in the domestic market of the exporting country or territory;
- (b) because, of a particular market situation or the low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison between the like goods destined for consumption in the exporting country or territory and the goods concerned; or
- (c) the overseas exporter in the exporting country or territory does not sell the like goods on the domestic market of the exporting country or territory.

(3) For the purpose of paragraph (2)(b), the volume of sales of the like goods destined for consumption in the domestic market of the exporting country or territory is sufficient to permit a proper comparison where—

- (a) the sales constitute 5 per cent. or more of the volume of sales of the goods concerned exported to the United Kingdom; or
 - (b) the sales constitute less than 5 per cent. of the volume of sales of the goods concerned exported to the United Kingdom but the TRA considers they are sufficient.
- (4) For the purpose of paragraph (2)(b), a “particular market situation” includes situations where—
- (a) prices are artificially low;
 - (b) there is significant barter trade;
 - (c) prices reflect non-commercial factors.

Alternative methodologies to determine the normal value

- 8.—(1) Where there is no comparable price, or it is not appropriate to use the comparable price in accordance with regulation 7(2), the TRA must determine the normal value of the goods—
- (a) by determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits;
 - (b) by determining the price of the like goods when exported to an appropriate third country or territory provided that price is representative (see regulation 10); or
 - (c) in accordance with regulation 14 (normal value in respect of imports from particular foreign countries and territories) where that regulation applies.
- (2) Where regulation 7(2)(c) applies, the TRA may also calculate the normal value on the basis of the data from other overseas exporters of the goods concerned in the exporting country or territory.

The ordinary course of trade

- 9.—(1) The TRA may consider the sales of the like goods in the exporting country or territory as not being in the ordinary course of trade where—
- (a) the goods are sold at prices below the per unit (fixed and variable) costs of production plus administrative, selling and general costs;
 - (b) the goods are sold between parties that the TRA considers to be associated unless the TRA is satisfied that the relationship has no effect on prices; or
 - (c) it otherwise considers it appropriate.
- (2) For the purpose of paragraph (1)(a), the TRA may only regard such sales as not being in the ordinary course of trade where it considers that the sales are made—
- (a) within an extended period of time;
 - (b) in substantial quantities; and
 - (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.
- (3) For the purpose of paragraph (2), the TRA may consider that prices provide for the recovery of costs within a reasonable period of time, even where they are below per unit costs at the time of sale, provided that they are above weighted average per unit costs for the period of investigation.
- (4) For the purpose of this regulation—
- (a) “per unit costs of production” means the total costs of production determined in accordance with regulation 11 (costs of production) divided by the production volume;
 - (b) an “extended period of time” is normally one year but it may be as short as six months if the TRA considers that appropriate;

- (c) sales below per unit costs are regarded as made in substantial quantities where the TRA establishes that—
 - (i) the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs calculated by reference to the sales volume; or
 - (ii) the volume of sales below per unit costs represent not less than 20 per cent. of the volume sold in the transactions under consideration for the determination of the normal value;
- (d) the “administrative, selling and general costs” means an amount calculated in accordance with regulation 12 (the amounts for administrative, selling and general costs and for profits) disregarding an amount for profits; and
- (e) parties are “associated” where they meet the definition of “related persons” in the Customs (Import Duty) (EU Exit) Regulations 2018(1)

Appropriate third country or territory and representative price

10. For the purpose of making a determination under regulation 8(1)(b), the TRA may take the following into account—

- (a) whether the volume of trade from the exporting country or territory to the third country or territory is similar to the volume of trade from the exporting country or territory to the United Kingdom;
- (b) whether the overseas exporter’s sales to the third country or territory are in the ordinary course of trade; and
- (c) any other factors it considers relevant.

Costs of production

11.—(1) The TRA must determine the costs of production of the like goods in the exporting country or territory for the purpose of regulation 8(1)(a) in accordance with this regulation.

(2) Where paragraph (3) applies, costs of production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned.

- (3) This paragraph applies where the records of the overseas exporter of the goods concerned—
 - (a) are in accordance with generally accepted accounting principles of the exporting country or territory; and
 - (b) reasonably reflect the costs associated with the production and sale of the like goods in the exporting country or territory.
- (4) In making a determination under this regulation the TRA must—
 - (a) consider any evidence on the proper allocation of costs provided that such allocations have been historically utilised by the overseas exporter, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs;
 - (b) adjust costs where appropriate for non-recurring items of cost which benefit future or current production;
 - (c) adjust costs where they are affected by start-up operations; and
 - (d) take into account any other factors it considers relevant.

(5) Where the records of the overseas exporter do not meet the criteria in paragraph (3) the costs of production may be calculated by the TRA using any other reasonable basis.

(6) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).

The amounts for administrative, selling and general costs and for profits

12.—(1) The TRA must determine a reasonable amount for administrative, selling and general costs and for profits for the purpose of regulation 8(1)(a) in accordance with this regulation.

(2) Subject to paragraph (3), the TRA must determine reasonable amounts for the administrative, selling and general costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.

(3) Where the TRA cannot determine reasonable amounts in accordance with paragraph (2), it may determine them on the basis of—

- (a) the actual amounts incurred and realised by the overseas exporter in question in respect of production and sales in the domestic market of the exporting country or territory of the same general category of goods;
- (b) the weighted average of the amounts incurred and realised by other overseas exporters subject to investigation in respect of production and sales of the like goods in the domestic market of the exporting country or territory; or
- (c) any other reasonable method provided that the amount for profit so established does not exceed the profit normally realised by other overseas exporters on sales of goods of the same general category in the domestic market of the exporting country or territory.

(4) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).

Adjustments

13.—(1) Where paragraph (3) applies, the TRA may for the purpose of paragraph (2), make adjustments to the amounts determined in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits).

(2) The purpose of the adjustments made in accordance with this regulation is to calculate what the overseas exporter's costs and profits would be in the market of the exporting country or territory if costs, prices and profits in that market were substantially determined by market forces.

(3) This paragraph applies where the TRA considers that the amounts calculated in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits) are unrepresentative because they do not reasonably reflect the overseas exporter's production, administrative, selling or general costs or profits in a market if those costs and profits were substantially determined by market forces.

(4) In making adjustments the TRA may have regard to the following—

- (a) corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory;
- (b) international prices, costs or benchmarks; or
- (c) any other factors it considers relevant.

(5) For the purpose of paragraph (4)(a), the TRA may determine whether a third country or territory is an appropriate representative third country or territory taking into account—

- (a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection of that country or territory;
- (b) whether the country or territory has a similar level of economic development to the exporting country or territory; and
- (c) any other factors it considers relevant.

(6) For the purpose of this regulation, domestic costs, prices and profits are “substantially determined by market forces” where they are substantially determined by free market forces and the costs or prices in the domestic market are not artificially low as a result of factors including substantial government intervention.

Normal value in respect of imports from particular foreign countries and territories

14.—(1) This regulation applies in respect of imports from exporting countries or territories—

- (a) that are not members of the WTO;
- (b) that are members of the WTO but the terms of their membership contain specific provisions regarding the determination of the normal value; or
- (c) where there is a complete or substantially complete monopoly of its trade and where all or substantially all domestic prices are fixed by the government.

(2) Where this regulation applies, the TRA may calculate the normal value of the goods concerned—

- (a) on the basis of the comparable price;
- (b) in accordance with regulation 10 (appropriate third country or territory and representative price) or regulations 11 (costs of production) and 12 (the amounts for administrative, selling and general costs and for profits); or
- (c) in accordance with paragraph (3) of this regulation.

(3) The normal value of the goods concerned may be determined—

- (a) on the basis of the costs of production of the like goods plus a reasonable amount for administrative, selling and general costs and for profits in an appropriate third country;
- (b) on the basis of the price of exports from a third country or territory to other foreign countries or territories provided that price is representative;
- (c) where paragraph (1)(b) applies, in accordance with the terms of the membership in that paragraph; or
- (d) on any other basis the TRA considers is reasonable including the price actually paid or payable for the goods in the United Kingdom adjusted where necessary to include a reasonable profit margin.

(4) For the purpose of paragraph (3)(a), the TRA may determine whether a third country or territory is an appropriate third country or territory taking into account—

- (a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection;
- (b) whether the country or territory has a similar level of economic development to the exporting country or territory; and
- (c) any other factors it considers relevant.

CHAPTER 3

Determination of the export price

Export price

15.—(1) Subject to paragraph (3), the export price is the price the goods concerned are sold for, or the agreed price at which they are to be sold, to either—

- (a) an importer in the United Kingdom; or
- (b) a third party outside of the United Kingdom for export to the United Kingdom (“third party”).

(2) This paragraph applies where there is no export price or the TRA determines that the price is unreliable because of an association or a compensatory arrangement between the overseas exporter and the importer of the goods concerned in the United Kingdom or the overseas exporter and a third party.

(3) Where paragraph (2) applies, the TRA may construct the export price in accordance with paragraph (4).

(4) The TRA may construct the export price on the basis of—

- (a) the price at which the goods concerned are first sold to an independent buyer in the United Kingdom; or
- (b) where the goods concerned are not resold to an independent buyer in the United Kingdom, or are not resold in the condition as imported, on such other reasonable basis as the TRA determines.

(5) Where the export price of the goods concerned is constructed in accordance with paragraph (4), the TRA may make adjustments—

- (a) for actual costs incurred by the importer or exporter of the goods concerned in the United Kingdom; and
- (b) for profits that would usually be accrued by an importer of the goods concerned in the United Kingdom that is not an associate of or does not have a compensatory arrangement with the overseas exporter.

(6) The adjustments that the TRA may make in accordance with paragraph (5) include adjustments in relation to—

- (a) transport costs;
- (b) insurance;
- (c) handling, loading and ancillary costs;
- (d) import duties;
- (e) any taxes payable in the United Kingdom by reason of the importation or resale of the goods in the United Kingdom;
- (f) a reasonable margin for profit as determined by the TRA;
- (g) selling, general and administrative costs;
- (h) any other costs incurred in the importation and resale of the goods.

(7) For the purpose of this regulation—

- (a) there is an “association” where the parties meet the definition of “related persons” in the Customs (Import Duty) (EU Exit) Regulations 2018(2);

- (b) a person is an “independent buyer” in relation to an overseas exporter if there is no association between the buyer and the overseas exporter.

CHAPTER 4

Comparison between the normal value and the export price

Comparison

- 16.—**(1) A comparison for the purpose of regulation 6(2)(c) must be made—
- (a) by reference to the same level of trade, normally the ex-factory level, or where that is not possible (because, for example, that information is not available for both the normal value and the export price at that level) such other level as the TRA considers appropriate; and
 - (b) in respect of sales made at as near as possible the same time.
- (2) To ensure the comparison is fair, the TRA may make adjustments for any differences which affect price comparability including differences relating to—
- (a) conditions and terms of sale;
 - (b) taxation;
 - (c) levels of trade;
 - (d) quantities;
 - (e) physical characteristics.

Methodologies for comparing the normal value and the export price

- 17.—**(1) The TRA must make the comparison for the purpose of regulation 6(2)(c) by comparing—
- (a) the weighted average normal value with the weighted average of prices of all comparable export transactions;
 - (b) the normal value and export prices on a transaction by transaction basis; or
 - (c) where paragraph (2) applies, a weighted average normal value to individual export transactions.
- (2) This paragraph applies where—
- (a) the TRA finds a pattern of export prices which differ significantly among different importers or purchasers in the United Kingdom, parts of the United Kingdom or time periods; and
 - (b) the TRA is satisfied that these differences cannot be taken into account appropriately by using either of the methodologies in paragraph (1)(a) or (1)(b).

Currency conversion

- 18.—**(1) This regulation applies where the TRA is required to make a comparison between the normal value and the export price for the purpose of regulation 6(2)(c).
- (2) Subject to paragraphs (3) and (4), where the TRA is required to make a currency conversion in order to carry out the comparison referred to in paragraph (1), it must use the rate of exchange on the date of sale of the goods.
- (3) When a sale of foreign currency on forward markets is directly linked to the export sale involved, the TRA must use the applicable rate in the forward sale of the goods.
- (4) In conducting a currency conversion, the TRA—

- (a) must disregard short-term fluctuations in exchange rates; and
 - (b) may consider sustained movements in exchange rates during the period of investigation, provided that it allows overseas exporters at least 60 days to adjust their export prices to reflect such movements.
- (5) For the purpose of this regulation—
- (a) “the rate of exchange” means the currency exchange rate that the TRA considers to be most appropriate taking into account, among other things, the material terms of the sale; and
 - (b) the TRA may treat the “date of sale” for the purpose of paragraph (2) as the date of either the—
 - (i) invoice;
 - (ii) contract;
 - (iii) purchase order; or
 - (iv) order confirmation,that establishes the material terms of sale.