
STATUTORY INSTRUMENTS

2019 No. 450

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

PART 3

Subsidisation

CHAPTER 1

Introduction

Purpose of Part 3

19.—(1) The TRA is to determine, in accordance with paragraph 3 of Schedule 4 to the Act and this Part, whether goods that are imported into the United Kingdom are subsidised.

(2) In carrying out that determination, the TRA must determine—

- (a) whether a countervailable subsidy within the meaning of paragraph 3 of Schedule 4 to the Act exists in relation to goods; and
- (b) the amount of the subsidy that is attributed to those goods.

(3) For the purpose of paragraph (2)(a), the TRA must determine whether—

- (a) a subsidy exists in accordance with paragraph 3(3) of Schedule 4 to the Act and for the purpose of regulations 20 (meaning of financial contribution by a foreign authority) and 21 (benefit conferred); and
- (b) the subsidy is specific in accordance with regulation 22 (specificity).

CHAPTER 2

Determination of whether there is a countervailable subsidy

Meaning of financial contribution by a foreign authority

20.—(1) For the purpose of paragraph 3 of Schedule 4 to the Act, a foreign authority makes a financial contribution where—

- (a) the practice of a foreign authority involves a direct or potential direct transfer of funds or liabilities;
- (b) subject to paragraph (2), revenue otherwise due to a foreign authority is foregone or is not collected;
- (c) a foreign authority provides goods or services other than general infrastructure;
- (d) a foreign authority purchases goods; or
- (e) a foreign authority makes payments to a funding mechanism or entrusts or directs a private body to undertake one or more of the type of functions in sub-paragraphs (a) to (d), which

would normally be vested in the foreign authority, and the practice in no real sense differs from practices normally followed by foreign authorities.

(2) Where revenue due is foregone or not otherwise collected, the TRA may determine that no financial contribution has been made and in doing so the TRA must, in particular, have regard to footnote 1 and Annexes I to III to the Agreement on Subsidies and Countervailing Measures (being part of Annex 1A to the WTO Agreement)(1).

(3) For the purpose of—

- (a) paragraph (1)(a), the direct or potential direct transfer of funds includes grants, loans, equity infusions and loan guarantees;
- (b) paragraph (1)(b), revenue otherwise due, which is foregone, includes fiscal incentives such as tax credits.

Benefit conferred

21.—(1) The TRA is to determine whether a financial contribution by a foreign authority confers a benefit for the purpose of paragraph 3 of Schedule 4 to the Act in accordance with this regulation.

(2) The TRA must determine whether a person has directly or indirectly had a benefit conferred by a financial contribution or income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade 1994 (being part of Annex 1A to the WTO Agreement).

(3) Where a foreign authority provides equity, the TRA may determine that a benefit is conferred where it considers that the investment decision is inconsistent with the usual investment practice, including for the provision of risk capital, of private investors in the foreign country or territory where the financial contribution was granted.

(4) Where a foreign authority grants a loan, the TRA may determine that a benefit is conferred where it considers there is a difference between the amount that the recipient receiving the loan pays on the loan from the foreign authority and the amount that the recipient would pay for a comparable commercial loan which the recipient could actually obtain on the market.

(5) When making a determination under paragraph (4), the TRA may make adjustments for fees payable by the recipient to receive the loan.

(6) Where a foreign authority guarantees a loan, the TRA may determine that a benefit is conferred where it considers there is a difference between the amount that the recipient receiving the guarantee pays on a loan guaranteed by the foreign authority and the amount that the recipient would pay on a comparable commercial loan in the absence of the government guarantee.

(7) When making a determination under paragraph (6), the TRA may make adjustments for fees payable by the recipient to receive the guarantee.

(8) Where a foreign authority makes a financial contribution by way of the provision of goods or services, the TRA may determine that a benefit is conferred where the remuneration for the goods or services is inadequate, as determined by reference to the prevailing market terms and conditions for the goods or service in the foreign country or territory where the financial contribution was made.

(9) Where a foreign authority makes a financial contribution by way of the purchase of goods, the TRA may consider that a benefit is conferred where the remuneration paid by the foreign authority for the goods is more than adequate, as determined by reference to the prevailing market terms and conditions for the goods in the foreign country or territory where the financial contribution was made.

(10) For the purpose of paragraphs (8) and (9), in considering whether remuneration is inadequate or more than adequate the TRA may have regard to price, quality, availability, marketability, transportation and other conditions of purchase or sale.

(1) Available from: https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

(11) For the purpose of this regulation, where the TRA considers that the prevailing market terms and conditions for the goods or services in question in the foreign country or territory are not an appropriate benchmark, the TRA may—

- (a) adjust the terms and conditions on the basis of actual costs, prices and other factors available in that country or territory, by an appropriate amount which reflects normal market terms and conditions; or
- (b) use the terms and conditions prevailing in the market of another foreign country or territory or on the world market, which would be available to the recipients.

Specificity

22.—(1) The TRA must determine whether a subsidy is specific for the purpose of paragraph 3 of Schedule 4 to the Act in accordance with this regulation.

(2) In order to determine whether or not a subsidy is specific, the TRA must consider whether—

- (a) the subsidy is explicitly—
 - (i) in terms of access, limited to certain enterprises or industries;
 - (ii) contingent on export performance;
 - (iii) contingent on the use of domestic over imported goods;
 - (iv) limited to a specific geographical region within the jurisdiction of the granting authority; or
- (b) the subsidy is in fact applied in a specific manner.

(3) For the purpose of paragraph (2)(b), the circumstances in which a subsidy is in fact applied in a specific manner include—

- (a) where it is or has been used or granted disproportionately to certain enterprises or industries or regions;
- (b) where there is discretion as to its granting, such discretion has been exercised in favour of specific enterprises or industries or regions.

(4) When determining whether or not a subsidy is specific, in addition to the matters referred to in paragraph (2), the TRA must consider—

- (a) whether the foreign authority establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy;
- (b) whether the criteria or conditions are clear and verifiable;
- (c) whether the terms of the subsidy are strictly adhered to;
- (d) whether eligibility for the subsidy is automatic; and
- (e) any other factors it considers relevant.

(5) For the purpose of this regulation—

- (a) the setting or changing of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy;
- (b) “objective criteria or conditions” means criteria or conditions that are neutral, do not favour certain industries or enterprises over others, and which are economic in nature and horizontal in application, such as the number of employees or size of enterprises;
- (c) a subsidy is contingent on export performance where, in law or in fact and whether solely or as one of several conditions, it is tied to actual or anticipated exportation or export earnings, but the mere fact that a subsidy is granted to enterprises which export does not for that reason alone mean the subsidy is contingent on export performance;

- (d) a subsidy is contingent on the use of domestic over imported goods where, in law or in fact, and whether solely or as one of several conditions, it is tied to the use of domestic over imported goods.
- (6) When determining whether a subsidy is a subsidy that is contingent on export performance the TRA must, in particular, have regard to footnote 1 and Annexes I to III to the Agreement on Subsidies and Countervailing Measures (being part of Annex 1A to the WTO Agreement).

CHAPTER 3

Calculation of the amount of subsidy that may be attributed to the subsidised imports

Calculation steps

- 23.**—(1) The TRA must calculate the amount of subsidy attributable to goods.
- (2) In order to make its calculation the TRA must determine—
- (a) the total amount of the countervailable subsidy in accordance with regulation 24 (determination of the amount of benefit conferred);
 - (b) the amount of the countervailable subsidy that is attributable to the period of investigation in accordance with regulation 25 (determination of the amount of the countervailable subsidy that is attributable to the period of investigation); and
 - (c) which goods the countervailable subsidy may be allocated to during the period of investigation in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).
- (3) The TRA must determine the rate of subsidy attributable to the goods by dividing the countervailable subsidy amount determined in accordance with regulation 25 (determination of the amount of subsidy that is attributed to the period of investigation) by the value of goods determined in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).
- (4) The amount of the subsidy must be expressed as an ad valorem rate of the value of the subsidised imports.
- (5) Where an overseas exporter benefits, directly or indirectly, from more than one countervailable subsidy during the period of investigation, the TRA must follow the steps in paragraphs (2) to (4) for each of those subsidies.
- (6) For the purpose of paragraph 4(4) of Schedule 4 to the Act, the specified period is the period of investigation.

Determination of the amount of benefit conferred

- 24.**—(1) The TRA must determine the total amount of benefit conferred by the countervailable subsidy taking into account the type of subsidy and any other factors the TRA considers relevant.
- (2) In the circumstances referred to in—
- (a) regulation 21(4), the benefit is the difference between the amount paid on the government loan and the amount that would be paid for a comparable commercial loan which the recipient could actually obtain on an open market; or
 - (b) regulation 21(6), the benefit is the difference between the amount paid on the loan guaranteed by the government and the amount that would be paid on a comparable commercial loan on an open market in the absence of the government guarantee.
- (3) The TRA must deduct from the amount of benefit conferred by the countervailable subsidy—

- (a) any application fees or other costs necessarily incurred to qualify for or obtain the countervailable subsidy; and
- (b) export taxes, duties, or other charges levied on the export of the goods to the United Kingdom intended to offset the countervailable subsidy.

Determination of the amount of the countervailable subsidy that is attributable to the period of investigation

25.—(1) Subject to paragraphs (2) to (4), the amount of the countervailable subsidy that is attributable to the period of investigation is the total amount received in the period of investigation.

(2) Where a qualifying countervailable subsidy is not received during the period of investigation, but part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(3) Where a qualifying countervailable subsidy is received during the period of investigation, but only part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(4) For the purpose of paragraphs (2) and (3), a “qualifying countervailable subsidy” is one which has a value of at least 1 per cent. of all the sales of the goods to which the countervailable subsidy is attributable.

Determination of the goods the subsidy is attributable to during the period of investigation

26.—(1) Subject to paragraphs (2) to (5), the subsidy attributable to the period of investigation must be attributed to all of the sales of goods during the period of investigation.

(2) Where the TRA considers that the countervailable subsidy received is linked to a specific category of goods, then the TRA must attribute the subsidy to those goods.

(3) Where the TRA considers a countervailable subsidy is linked to the export of particular goods, the TRA must attribute the subsidy to all of the exports of those particular goods during the period of investigation.

(4) Where the TRA considers a countervailable subsidy is linked to the sale of particular goods, the TRA must attribute the subsidy to all of those goods sold during the period of investigation.

(5) Where the TRA considers a countervailable subsidy is linked to sales to a particular market, the TRA must attribute the subsidy to all of the goods sold to that market during the period of investigation.