
STATUTORY INSTRUMENTS

2019 No. 450

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

PART 4

Injury and causation

Determination of injury and causation in accordance with this Part

27.—(1) This Part applies where the TRA is required to determine whether dumped goods or subsidised imports have caused or are causing injury to UK industry in accordance with paragraph 5 of Schedule 4 to the Act.

(2) Where the TRA has determined that goods have been or are being dumped (in accordance with Part 2) or goods that have been or are being imported into the United Kingdom benefit from a countervailable subsidy (in accordance with Part 3) it must determine whether—

- (a) a UK industry has suffered or is suffering injury in accordance with regulation 30 (determination of injury); and
- (b) the dumped goods or subsidised imports, as the case may be, have caused or are causing that injury to that UK industry.

Meaning of threat of material injury

28.—(1) For the purpose of paragraph 5 of Schedule 4 to the Act, “threat of material injury” means injury which, although it has not yet occurred, is clearly foreseen and imminent.

(2) In determining whether there is a threat of material injury, the TRA may consider, among other things—

- (a) the extent to which any significant rate of increase in the volume of the importation of the dumped goods or subsidised imports into the United Kingdom indicates a likelihood of substantially increased importation;
- (b) whether the overseas exporter has sufficient freely disposable, or an imminent substantial increase in, capacity indicating that there is a likelihood of substantially increased importation of the dumped goods or subsidised imports into the United Kingdom taking into account the availability of other export markets to absorb the additional exports of those goods;
- (c) whether the dumped goods or subsidised imports are entering the United Kingdom at prices which will have a significant depressing or suppressing effect on prices of the like goods in the United Kingdom and whether such prices are likely to increase the demand for further imports of the goods concerned;
- (d) the inventories of the overseas exporters of the goods concerned; and
- (e) in the case of subsidies only, the nature of the subsidy and the trade effects that the TRA determines are likely to arise from that subsidy.

Disregarding a producer for the purpose of the definition of a UK industry

29.—(1) This regulation applies where the TRA is considering whether a producer is a “producer in the United Kingdom of like goods” (“UK producer”) for the purpose of the definition of a “UK industry” in paragraph 6 of Schedule 4 to the Act.

(2) The TRA may determine that a producer is not a UK producer where that producer is—

- (a) an importer of the goods concerned;
- (b) related to an overseas exporter of the goods concerned in the exporting country or territory;
or
- (c) related to an importer of the goods concerned in the United Kingdom.

(3) For the purpose of paragraph (2), a producer is “related” to another person (“P”) if—

- (a) the producer controls directly or indirectly, or is controlled directly or indirectly by, P; or
- (b) the producer and P together control the same third party directly or indirectly or are controlled directly or indirectly by the same third party.

(4) The TRA may only determine that a producer is not a UK producer where the producer is related to P and the TRA considers that the effect of the relationship is such as to cause that producer to behave differently to the other unrelated producers of the like goods in the United Kingdom.

(5) For the purpose of this regulation, one entity is considered to control another entity, directly or indirectly, where it is legally or operationally in a position to exercise restraint or direction over the other.

Determination of injury

30.—(1) For the purpose of this Part, the TRA must determine whether a UK industry has suffered or is suffering injury during the injury period.

(2) In order to determine whether a UK industry is suffering or has suffered injury the TRA must consider—

- (a) the volume of the dumped goods or subsidised imports during the injury period;
- (b) the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period;
- (c) the consequent impact of the dumped goods or subsidised imports on a UK industry during the injury period; and
- (d) any other factors it considers relevant.

(3) The TRA must conduct its examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom, but where data relating to the like goods cannot be separated from data relating to a wider category of goods, which includes the like goods, the TRA may use the data relating to that wider category of goods.

(4) For the purpose of this Part, the “injury period” is the period of investigation taking account of developments in the three twelve month periods preceding the period of that investigation unless the TRA considers that it is appropriate to use an alternative period, in which case the injury period means that alternative period.

The volume of the dumped goods or subsidised imports

31. In considering the volume of dumped goods or subsidised imports during the injury period for the purpose of regulation 30(2)(a), the TRA must consider whether there has been a significant increase in the dumped goods or subsidised imports in the United Kingdom either in absolute terms or relative to domestic production or consumption.

The effect of the dumped goods or subsidised imports on prices

32. In considering, for the purpose of regulation 30(2)(b), the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period the TRA must consider whether—

- (a) there has been significant price undercutting by the dumped goods or subsidised imports as compared with the price of the like goods produced in the United Kingdom; or
- (b) the dumped goods or subsidised imports have depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree.

The impact of the dumped goods or subsidised imports on a UK industry

33. In considering, for the purpose of regulation 30(2)(c), the consequent impact of the dumped goods or subsidised imports on a UK industry, the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including—

- (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity;
- (b) factors affecting domestic prices of the like goods;
- (c) in the case of dumping, the magnitude of the margin of dumping;
- (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments.

Cumulation

34.—(1) This regulation applies where goods from more than one foreign country or territory are subject to simultaneous dumping or subsidisation investigations by the TRA.

(2) Where this regulation applies, the TRA may cumulatively assess the effects of all the dumped goods or subsidised imports, as the case may be, pursuant to paragraph 5(4) of Schedule 4 to the Act, provided that—

- (a) the amount of dumping or subsidisation established in relation to the dumped goods or subsidised imports from each foreign country or territory is more than minimal;
- (b) the volume of the dumped goods or subsidised imports imported from each foreign country or territory is not negligible; and
- (c) the TRA considers that a cumulative assessment is appropriate in light of the conditions of competition.

(3) For the purpose of paragraph (2)(c), the TRA must consider the conditions of competition between—

- (a) the imports of the dumped goods or subsidised imports from different sources; and
- (b) the dumped goods or subsidised imports and the like goods in the United Kingdom.

Causation and non-attribution

35.—(1) For the purpose of making a determination under regulation 27(2)(b), the TRA must examine whether any known factors other than the dumped goods or subsidised imports (“other known factors”) have caused or are causing injury to a UK industry.

(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.

(3) For the purpose of paragraph (2), other known factors may include—

- (a) the volume and the prices of imports that are not dumped or subsidised into the United Kingdom;
- (b) contraction in demand or changes in the pattern of consumption of the like goods in the United Kingdom;
- (c) trade restrictive practices of and competition between the overseas exporters and the UK industry;
- (d) developments in technology;
- (e) the export performance and productivity of the UK industry.