

UK INITIATES ITS FIRST "TRANSITION REVIEW" TRADE DEFENCE INVESTIGATION: OVERVIEW AND FURTHER INFORMATION ON UK TRANSITIONED MEASURES AND ASSOCIATED REVIEWS

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Legal Briefings

On 10 February 2020, the UK initiated its first so-called “transition review” trade defence investigation.

The investigation concerns EU anti-dumping duties imposed via [Commission Implementing Regulation 2015/110](#) on certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, China, and Russia.

The current EU anti-dumping duties range from 10.1% to 90.6%. They were imposed based on an assessment that the welded tube and pipe products imported into the EU from Belarus, China and Russia were found to be dumped and causing injury to the EU industry. The duties are not based on an assessment of dumping or injury in respect of the UK market.

The object of the investigation is to determine whether to continue to apply anti-dumping duties to the products at issue once the UK has a fully independent trade policy – which could be as soon as 1 January 2021. More specifically, the investigation will determine:

- whether the application of the anti-dumping amount is necessary or sufficient to offset

dumping of the relevant goods in the UK market; and

- whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

If the UK has a fully independent trade policy on 1 January 2021, the anti-dumping duties which are currently applicable will continue to apply until the conclusion of the transition review investigation (unless the EU duties are terminated before that date, which is unlikely). The final determination of whether to impose duties will also take into account the wider economic and public interest.

As set out in the [notice of initiation](#), interested parties have until 25 February 2020 to register via the following website: <https://www.trade-remedies.service.gov.uk>. Registration following the deadline may mean that the position of the interested party may not be taken into account.

More general information about UK transition measures and reviews, including other EU trade defence measures likely to be transitioned by the UK, is provided below.

WHY HAS THE UK DECIDED TO “TRANSITION” EU TRADE DEFENCE MEASURES?

Within the EU, trade defence measures are not imposed by Member States. Rather, the exclusive competence lies with the EU. In practice, this means that EU anti-dumping, anti-subsidy and other trade defence measures generally relate to the EU as a whole – and they are imposed by the European Commission.

Currently, the UK is no longer an EU Member State, but it is treated as an EU Member State pursuant to the Withdrawal Agreement concluded between the EU and the UK during a “transition period”. Once the transition period has ended, it is expected that the UK will have a fully independent trade policy.[1]

The “transition” policy and associated legal framework seeks to provide interim protection to UK industries that could be benefiting from EU trade defence measures at the time when they would no longer be directly applicable to the UK – i.e. after the transition period established by the Withdrawal Agreement has ended (most likely 1 January 2021). It does this by allowing EU trade defence measures to continue to apply after the UK has an independent trade policy.

The carrying-over or “transition” of EU trade defence measures is in theory balanced by an automatic requirement for a transition review (see below).

WHICH EU TRADE DEFENCE MEASURES WILL BE “TRANSITIONED”?

The UK government sought input in 2018 and 2019 on EU anti-dumping and anti-subsidy measures that could be in the UK interest to carry-over over as part of the UK’s exit from the EU. EU anti-dumping and anti-subsidy measures were finally selected for the possibility of transition based on satisfaction of criteria related to support from UK producers and market share of UK producers.

In 2019, the UK published a [list](#) of EU anti-dumping and anti-subsidy measures that will in principle be transitioned and subject to a transition review, once EU trade defence measures are no longer directly applicable in the UK (subject to further updating and additional consideration of subsequent events).

Strictly speaking, EU anti-dumping and anti-subsidy measures will only be formally brought into the UK regime following a Notice of Determination from the Secretary of State which gives effect to the corresponding EU trade remedies measure. This allows a transition review to be conducted in respect to the measures. Hence, for the recently initiated transition review concerning certain welded tubes and pipes, the Secretary of State issued a [Notice of Determination](#) stating that the EU measure was to be transitioned.

It is noted that the UK has not yet taken a view on transitioning EU safeguard measures, and in particular those concerning steel. It is expected, however, that this will be done during the course of 2020.

HOW LONG DO TRANSITION MEASURES APPLY?

EU anti-dumping and anti-subsidy measures that are transitioned are automatically subject to a so-called “transition review” to determine whether trade defence measures should still be applied to the UK territory. As a matter of law, transition reviews must generally be initiated before the expiry date of the corresponding EU measure. As a result, when the UK will conduct a transition review will in principle depend on the date of expiry of the measure. However, the situation is somewhat modified in instances where expiry reviews are initiated during the Withdrawal Agreement “transition period” (which will extend to at least 31 December 2020) or are on-going when the UK has a fully independent trade policy (likely 1 January 2021). For such situations, it is possible that the UK already decides to initiate an investigation during the Withdrawal Agreement transition period, or that investigations are initiated within 30 days from when the UK begins to operate an independent trade policy (e.g. on 1 January 2021).

WHAT IS THE OBJECT OF A TRANSITION REVIEW?

In short, the broad purpose of a transition review will be to determine whether the continued imposition of a trade defence measure is necessary and, if so, what level of duty is necessary. In practice, they will be much like new investigations since they will calculate key data for the first time – in particular, injury for UK producers and dumping on the UK market, where relevant. UK specific economic and broader public interests will also be taken into account.

WHAT IS THE WTO BASIS FOR TRANSITIONED MEASURES AND REVIEWS?

The imposition of the trade defence measures is governed by three WTO Agreements – namely the WTO Anti-dumping Agreement, the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Safeguards. None of these agreements specifically provides for transitioned measures or transition reviews. As such, there is significant scope for legal debate on whether the measures can be transitioned at all and the precise rules that must be followed in order to impose duties following a transition review (e.g. those for new investigations?).

MUST A TRADER WAIT FOR A TRANSITION REVIEW TO ADDRESS/OBTAIN RELIEF IN RESPECT OF TRANSITIONED MEASURES?

The method of conducting transitional reviews later for those which are due to expire later as a matter of EU law is meant to avoid a bottleneck of reviews. However, the effect is also that EU anti-dumping and anti-subsidy duties could be applied in the UK for a number of years without any specific investigation. For example, EU anti-dumping duties on ironing boards from China, which the UK has provisionally indicated will be transitioned, are only due to expire on 2 October 2024. Anti-dumping duties continue to apply pending the outcome of a transition review. If a transition review is initiated near 2 October 2024, this would mean that anti-dumping duties would continue to apply well into 2025 if not later.

Impacted traders do not necessarily have to wait for a transition review to be initiated. As a matter of WTO and UK law, companies can ask for reviews of trade defence measures in order to assess the need for the continued application of the duty (and companies which did not export during the investigation leading to the trade defence measures in force can also ask for a so-called “new shipper” review). Further, companies can also seek refunds on duties where they can establish that products subject to trade defence measures were not dumped or subsidised, as relevant. It remains to be seen how the UK will handle requests for reviews in advance of intended transition reviews. WTO law, however, generally dictates that measures should be reviewed where there is sufficient evidence that they are not warranted or no longer fit for their purpose.

[1] Pursuant to the Withdrawal Agreement, the transition period will end on 31 December 2020. It is possible to extend the transition period for one or two years, but this decision must be made by July 2020. At this stage, it appears unlikely that the transition period will be extended. As a result, it is likely that the UK will have a fully independent trade policy on 1 January 2021.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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