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UK Trade Remedies Authority

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International Trade Committee

The International Trade Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for International Trade and its associated public bodies.

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Summary

As the UK prepares to operate its own independent trade policy for the first time since 1973, the Government has begun considering a crucial component of trade policy: trade defence. The UK's trade defence framework is presently governed by WTO and EU law. Under EU law, the body responsible for investigating and imposing TDMs is the European Commission. However, once the UK leaves the EU it will cease to be bound by EU trade defence regulations and the Commission will cease conducting trade defence investigations on behalf of UK producers. Accordingly, the Government has proposed establishing the Trade Remedies Authority (TRA) as a new arm's-length body. Under the Trade Bill, which provides for the creation of this body, the TRA's primary function is providing the Secretary of State with advice, support and assistance at his or her request in connection with certain of his or her functions. The TRA is also conferred with functions under the Taxation (Cross-border Trade) Bill (Customs Bill), including conducting trade defence investigations and recommending the imposition of trade defence measures (TDMs).

Together, the Trade and Customs Bills represent an important step to establishing the UK's future trade defence regime. The Secretary of State for International Trade also recently issued a Ministerial Direction permitting the Department for International Trade to expend £8.9 million in advance of Royal Assent on matters such as TRA Board and staff appointments, training and experts to assist with designing the TRA's set up and operational process. However, the Bills do not yet have sufficient detail pertaining to the UK's future trade defence framework and the Government should write to us outlining how it consulted with affected and interested industries before publishing the Trade and Customs Bills.

With less than 12 months before the UK leaves the EU, it is crucial that the TRA is operational by 29 March 2019. Two factors, in particular, will affect the magnitude of the challenge of creating an operational TRA prior the UK leaving the EU. First, trade defence investigations are inherently complex, involving resource-intensive, information gathering exercises and massive calculations. Collecting and analysing the required data necessitates a large staff, with economic, legal, competition, financial analysis and language expertise. Witnesses were sceptical about whether the Government could resource and train staff to perform these investigations in less than 12 months. The second factor was whether the UK could legally 'grandfather' the EU's existing TDMs without conducting new investigations, as conducting these new investigations would add significantly to the TRA's workload. In the light of these issues, we require urgent assurance that the TRA will be operational when the UK leaves the EU. There are a number of obstacles to meeting this deadline and the Government must progress the TRA's establishment as a matter of priority. It should write to us outlining whether it can legally 'grandfather' the EU's existing TDMs and how it plans to progress its work in the light of that position. The Government should also provide the Committee with a timeline for appointing TRA Board members and how it proposes to have the TRA operational by March 2019.

In preparing its independent trade policy, the UK should aspire to have a world-class trade remedies authority. During the inquiry we heard about several areas in respect of which the TRA's structure and operation required further consideration. It is easy to underestimate how contentious trade defence may be. In these circumstances, it is imperative that the TRA's Board appointment process and structure is robustly independent. The Secretary of State presently has a significant role in TRA Board appointments. Witnesses queried whether this role could lead to the TRA becoming ideologically 'stacked'. We also heard that there was a strong case for the appointments of the Chair and chief executive to be subject to approval of this Committee. On balance, we agree. The Government should amend the Trade Bill to require that appointments of the Chair are subject to the approval of this Committee. The Committee should also conduct a pre-appointment hearing with the proposed candidate for chief executive. While it is imperative to appoint the TRA Board as soon as possible, we note that the Secretary of State plans to appoint the Chair before he has the statutory authority to do so in the Trade Bill. Here the case is particularly strong for Parliament to have a say.

We were told that the complexity of the task confronting the TRA further requires that TRA Board members are impartial, independent and have a range of expertise and backgrounds. The need for a variety of expertise may account for the size of the TRA (nine members). However, compared with other trade defence bodies, nine Board members is a large number and could make decision-making expensive or cumbersome. There is also an argument that particular TRA Board members should be appointed who represent, or have expertise in, the interests of particular groups (for example, consumers or trade unions). The Government should consider whether it is necessary to appoint all nine members initially, and ensure it publishes clear guidance on the independence of the people who are to be appointed and the roles of TRA Board members in the decision-making process.

Considerations of independence are particularly germane to the TRA's functions and powers, and the way in which it exercises them. The TRA's statutory functions are broadly separated between advising and assisting the Secretary of State (Trade Bill) and conducting trade defence investigations (Customs Bill). The Government should reflect, in particular, on the division of responsibilities under the Customs Bill in respect of trade defence investigations. In essence, the Bill divides the roles of the TRA and the Secretary of State into investigating and recommending the imposition of measures, and deciding to impose measures, respectively. When deciding whether to recommend the imposition of a TDM, the TRA must apply an economic interest test which concerns matters like the economic significance of, and likely impact on, affected industries and consumers in the UK. This test is then applied again by the Secretary of State when determining whether to accept or reject the TRA's recommendation(s). Reasonable minds may differ as to whether politicians should be involved in decisions to impose TDMs. However, to the extent they are, a clear distinction should be drawn between 'technocratic' decisions of the investigating authority and 'political' decisions. The Customs Bill fails to do so insofar as it requires the TRA to apply an economic interest test. This failure, in turn, risks the TRA making essentially political decisions as to what is in the UK's economic interest. Accordingly, the Government should amend the Customs Bill to remove the obligation on the TRA to apply the economic interest test proposed in the Bill.

Ultimately, the integrity and credibility of the UK's future trade regime depends on the openness and transparency with which decisions are made. Without a transparent regime, the UK risks having decisions of the TRA being subject to dispute settlement proceedings at the World Trade Organization. Most significantly, it is a requirement under WTO law that Member States have a system for appeals against decisions to impose TDMs. The Bills are presently silent on this issue, save for conferring a power to make regulations for, or in connection with, the review or appeal of the Secretary of State or TRA's decisions. However, the Minister told us that it intended for interested parties to ultimately have the right of appeal to the Upper Tribunal in respect of any decisions made by the TRA and Secretary of State. Even with this guidance, appeals remains an area in respect of which there is a significant gap in the legislation. With respect to the nature of the mechanism, witnesses strongly favoured the use of a specialist tribunal, as the Government appears to be proposing. We also heard that the standard of review that should be available was merits review instead of judicial review, which only permits the appellate body to review whether the law has been correctly applied, and proper procedures followed. Even with the Government's indication that it intends to have a right of appeal, it is constitutionally inappropriate for Ministers to determine such a mechanism in regulations without parliamentary scrutiny. These are matters for Parliament to decide in primary legislation. Accordingly, the Government should amend the Trade and / or Customs Bills to provide a right of appeal from decisions of the TRA and Secretary of State to a specialist tribunal, such as the Upper Tribunal sitting with some specialist members. Appeals should be determined 'on the merits', with all decisions being appealable.

Introduction

1. As the UK prepares to leave the EU, it is poised to have its own independent trade policy for the first time in over 40 years. A crucial component of an independent trade policy is a trade defence regime. Under this regime, countries can take measures to protect their domestic industries from disruptive trade flows—whether 'fair' or 'unfair'—from third countries. The Government has outlined the beginnings of the UK's future trade defence in the Trade Bill and Taxation (Cross-border Trade) Bill (Customs Bill), introduced to Parliament in November 2017. Crucially, these Bills establish an independent, arm's-length body, the UK Trade Remedies Authority (TRA), which will be responsible for conducting trade defence investigations in the UK. This Report examines the Government's work to date establishing this body, and how the body will operate in the future. It considers the structure and functions of the TRA, and whether the Government's proposed trade defence framework will ensure that the TRA operates independently and effectively.

2. This Report is structured as follows. Chapter one explores the concept of trade defence, and how the EU's trade defence regime operates presently. It also provides an overview of the UK's proposed future trade defence regime. Chapter two considers the capacity of the TRA, and whether it can be operational by the Government's proposed deadline of 29 March 2019. Chapter three examines the appointments process for TRA members and its operational and investigative structure. Chapter four considers the TRA's functions and whether the proposed division of responsibilities between the TRA and Secretary of State adequately guarantees the operational independence of the TRA. Finally, Chapter five explores issues of transparency and the future appeals mechanism from decisions of the TRA and Secretary of State.

3. In the course of our inquiry we took oral evidence from seven witnesses, including the Minister of State for Trade Policy, Rt Hon Greg Hands MP, at two evidence sessions. In addition, we received seven written submissions. We are also drawing on oral evidence we took from three witnesses in relation to the Trade Bill in November 2017. We would like to thank all of those who took the time to provide us with evidence across both inquiries.

1 An Overview of Trade Defence

What is Trade Defence?

4. Trade defence policies are one of the recognised exceptions to the MFN principle under WTO rules and the obligations undertaken by WTO Members in their Schedule of Commitments under the General Agreement on Tariffs and Trade. Where an importing country believes it is necessary to protect their domestic industries from disruptive trade flows—whether 'fair' or 'unfair'—from third countries it can use trade defence policies to restrict imports.[1] These policies manifest in the form of 'trade defence measures' (TDMs) or 'trade remedies'. TDMs usually constitute additional tariffs—whether fixed, variable or ad-valorem—on particular product imports from third countries.[2] There are three primary forms of TDMs:

- anti-dumping measures—on imports of goods exported at prices lower than prices of the same good in the importer's domestic market or less than full cost of production plus a reasonable profit;
- anti-subsidy measures and countervailing duties—on imports of goods benefiting from certain types of government subsidy; and
- safeguards measures—to counter the effects of an unforeseen surge of 'fairly' traded imports.[3]

5. We were told that the first two measures "deal with … unfair trade. It is supposed to be unfair to subsidise your industry or to dump products in other people's markets." By contrast, "the safeguards instrument … deals with fair trade."[4] Safeguards have been described as the 'nuclear option' as they apply to all imports.[5] Unlike anti-dumping and anti-subsidy measures, their objective is to give an industry temporary breathing space to make the necessary adjustments to respond to new imports—safeguards always come with an obligation to restructure.[6]

6. Of the three types of TDMs, Edwin Vermulst, Partner, VVGB, told us that "the anti-dumping instrument is used the most often by far … [t]here are also subsidy cases, more regularly, especially against China and India, but it is less used and the safeguards

1 Institute for Government, "Trade Defence", 2018
2 For example, the European Commission recently resolved to continue anti-dumping on Chinese imports of seamless pipes and tubes of stainless steel for another five years. The duties imposed ranged from 48.3% to 71.9%. See European Commission, "Commission extends anti-dumping measures on Chinese steel products", 6 March 2018.
3 Department for Business, Skills and Innovation, Anti-dumping measures and international trade: selected economic issues, 11 May 2012, p 4
4 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 2 [Edwin Vermulst]
5 UK Steel, UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View report, April 2017, p 4
6 European Commission, Safeguards, 18 March 2013

regulation is hardly ever used".[7] At the end of 2015, the EU had 87 anti-dumping measures (which were extended in 30 cases) and 11 anti-subsidy measures in force.[8] By contrast, the EU opened no safeguard investigations and imposed no safeguard measures in 2015.[9]

7. TDMs have been described as an important component of trade liberalisation.[10] Mr Vermulst told us that, as such measures are "allowed under the WTO rules … the correct use of these instruments is not protectionist."[11] However, the imposition of TDMs can be controversial. It has been argued that TDMs can depress trade flows and have 'chilling' effects on trade beyond their direct impact, such as discouraging imports because of the announcement of a trade defence investigation. Commentators also note that such measures often involve the imposition of significant tariffs, and can create friction between the disputing WTO Member States as investigations could be seen to imply that an exporter has acted unfairly.[12] China, for example, described EU anti-dumping duties imposed in October 2016 as "'unfair and unreasonable' and 'seriously damag[ing to] the interests of Chinese enterprises.'"[13]

UK's Existing Trade Defence Framework

8. The UK's trade defence framework is currently governed by WTO and EU law. Edwin Vermulst told us, "[a]t the international level we have agreements in the WTO … the anti-dumping agreement, the agreement on subsidies and countervailing measures and the safeguards agreement".[14] WTO Member States are required to give effect to these agreements in their domestic law. The EU has done so through: (i) Regulation 2016/1036 (dumping);[15] (ii) Regulation 2016/1037 (subsidisation);[16] and (iii) Regulations 260/2009 and 625/2009 (safeguards).[17]

9. In order to impose a TDM, a concerned country must first conduct an investigation into the existence of dumping or subsidisation and the occurrence of injury. Investigations can be commenced either on receipt of a complaint from producers of the product concerned or on the initiative of the investigating authority. For the UK, the relevant investigating

7 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 5 [Edwin Vermulst]

8 The main countries affected by EU anti-dumping measures were China (53), Indonesia (seven) Malaysia and Russia (six each), India and Taiwan (five each), Korea and Thailand (four each), Ukraine and Korea (three each) and USA and Philippines, Sri Lanka and USA (two each). The main countries affected by EU anti-subsidy measures were China (five), India (four), and Canada, Turkey and USA (one each).

9 European Commission, 34rd Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2015), October 2016, pp 6, 15

10 UK Steel, UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View report, April 2017, p 2

11 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 4 [Edwin Vermulst]

12 Department for Business, Skills and Innovation, Anti-dumping measures and international trade: selected economic issues, 11 May 2012, pp 5–8

13 "China Protests The European Union's Unfair Duties And Tariffs On Steel", *Forbes*, 9 October 2016

14 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 2 [Edwin Vermulst]

15 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016

16 Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016

17 Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports; Council Regulation (EC) No 625/2009 of 7 July 2009 on the common rules for imports from certain third countries. There are also some specific bilateral safeguards regulations, notably in the EU-Korea FTA for sensitive areas in which Korea practices 'duty drawback' (refunding the duties paid on component parts of goods that are later exported). These safeguards were agreed as a means to diffuse opposition to the EU-Korea FTA from the car industry, but are not expected to be widely used.

authority is currently the European Commission. Bernard O'Connor, Partner, Nctm, told us that the EU's "trade defence investigations [system] is primarily an administrative system."[18] This means that the Commission, in effect, undertakes all aspects of the investigation and imposition process. According to its website, the Commission:

- examines evidence provided by complainants and decides whether to launch investigations or review existing measures;
- conducts investigations; and
- decides on all the actions—for example, whether to impose or not provisional and definitive trade defence measures, whether to accept or reject undertakings, whether to grant refunds and whether to terminate, amend or extend the measures.[19]

However, before the Commission imposes a measure it must consult the Trade Defence Instruments Committee (TDI Committee). The TDI Committee is composed of representatives of all EU-28 Member States and is chaired by a representative of the Commission. Mr Vermulst told us that the TDI Committee "have to be consulted and … basically give their stamp of approval. If a qualified majority is against, then the measure cannot be adopted, but that is fairly rare."[20]

10. The EU is a "very substantial user" of TDMs.[21] Between 1995 and 2010, the EU was the third largest user of such measures, although these only affected a small proportion of goods (in 2015 only 0.25% of total imports into the EU were affected by dumping or subsidisation measures).[22] However, the frequency with which the EU has initiated trade defence cases has declined over time. In the period 2009–2013, an average of 51 cases was initiated per year compared to an average of 67 cases for the previous 13 years.[23]

UK's Future Trade Defence Framework

11. Once the UK leaves the EU it will cease to be bound by EU regulations governing trade defence. The Commission will also cease conducting trade defence investigations on behalf of UK producers. In response, the Government confirmed in the Queen's Speech that it would introduce a Trade Bill to create the "necessary legislative framework to allow the UK to operate its own independent trade policy" after Brexit, which included establishing a UK trade remedies system.[24] Subsequently, the Department said in the Trade White Paper that it would introduce "legislation (including a trade bill and a customs

18 Q 43
19 European Commission, Introduction to trade defence policy
20 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 6 [Edwin Vermulst]
21 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 3 [Edwin Vermulst]
22 Department for Business, Skills and Innovation, Anti-dumping measures and international trade: selected economic issues, 11 May 2012, p 5
23 European Commission, Actions against imports into the EU, 20 October 2016
24 HC Deb, 19 September 2017, col 10289; PMO, Queen's Speech 2017: background briefing notes, 21 July 2017, p 20; Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 11.

bill) that… [c]reates a UK trade remedies framework".[25] As part of this commitment, the Government said it would establish "a new, independent, trade remedies investigating authority as a new arm's length body".[26]

12. The Trade Bill was presented to Parliament on 7 November 2017. The Bill did not establish an overarching trade remedies framework but instead provided for the creation of a new non-departmental public body, the TRA. The Minister of State for Trade Policy told us that the Government was creating the TRA "to ensure that the UK can continue to provide a safety net to domestic industries after the UK has left the EU".[27] Under the Trade Bill, the TRA's primary function is providing the Secretary of State with advice, support and assistance at his or her request in connection with: (i) the conduct of an international trade dispute;[28] (ii) functions of the Secretary of State relating to trade; and (iii) functions of the TRA. The Bill also empowers the TRA to "otherwise provide such advice, support and assistance as it considers appropriate" in relation to international trade and trade remedies.[29]

13. The subsequent Customs Bill, presented to Parliament on 20 November 2017, provides further clarity regarding the UK's future trade remedies framework. According to the Explanatory Notes, the Bill impacts directly on the UK's future international trade policy as it outlines the "basis of a new UK trade remedies framework that can be used to impose additional Customs duty in certain circumstances".[30] The most relevant aspect of the Customs Bill is that it empowers the TRA to conduct trade defence investigations and recommend the imposition of TDMs to the Secretary of State. Greg Hands told us that the "TRA will have full autonomy to conduct trade remedies investigations based on the framework set out in the [Customs Bill]."[31]

14. Witnesses expressed two concerns to us in evidence about the Government's approach to establishing the UK's trade remedies regime. First, we were told that it "seems odd" that the "raison d'être of the TRA"—conducting trade defence investigations—was not clearly stated in clause 5 of the Trade Bill, but instead included in the Customs Bill.[32] Second, we heard a variety of views about the content of the Bills. Daniel Moulis, Principal Partner, Moulis Legal, was most positive, telling us that "generally speaking … the legislation is a good start with things to fill in."[33] Conversely, other witnesses described the Bills as "scaffolding",[34] "very rudimentary",[35] and said that "a lot of very important concepts are missing from the primary legislation".[36] Gareth Stace, Director, UK Steel, likewise told us

25 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 11
26 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 35
27 Q 1 [Greg Hands]
28 Clause 6(2) of the Trade Bill clarifies that: "[a]dvice, support and assistance requested [in relation to an international trade dispute] may include, among other things— (a) analysis of trade remedy measures imposed in countries or territories other than the United Kingdom, and (b) analysis of the impact of such measures on producers and exporters in the United Kingdom."
29 Trade Bill, clause 6(4) [Bill 122 (2017–19)]
30 Explanatory Notes to the Taxation (Cross-border Trade) Bill, para 16 [Bill 128 (2017–19)]
31 Q 1 [Greg Hands]
32 Manufacturing Trade Remedies Alliance (TRA0001), para 6
33 Q 84
34 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 36 [Bernardine Adkins]
35 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 34 [Edwin Vermulst]
36 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 55 [Edwin Vermulst]

that "there is very little detail" in the Bill, and that UK Steel was concerned any "secondary legislation or guidance will be just the same with lack of detail".[37] George Peretz QC, Monckton Chambers, further told us:

> You also have to fill in the very large gaps in schedule 4, which at the moment is a bit like one of those pictures that requires to be coloured in in order to see how the thing will work. It is quite sketchy. I described it in a piece I wrote as like a map of Africa drawn by west European explorers at the beginning of the 19th century. You can see the edges and the outline but there are vast spaces in the middle with spaces marked, 'Here be dragons'.[38]

We further heard that the UK's approach differed from other countries as most countries "copy and paste from the WTO agreement" when establishing their trade defence frameworks.[39] Accordingly, the Manufacturing Trade Remedies Alliance (MTRA) said that "as much of the UK's framework should be in primary legislation as possible"[40] and Dr Laura Cohen, Chief Executive, British Ceramics Confederation, added that, "[a]s a minimum, … the UK should have pasted the WTO Anti-Dumping Agreement provisions on calculation into the primary legislation".[41]

15. The Minister told us that the Government had "carefully considered the right balance between primary and secondary legislation" in preparing the Bills. He further said that the rules required to enable the TRA to operate "will be at a level of detail that would not be sensible to include in primary legislation". As such, while the Trade Bill will not require secondary legislation to establish the TRA, it is anticipated that the Government will introduce secondary legislation "set[ting] out the detailed rules under which the TRA will operate".[42]

16. **Establishing a trade defence regime is critical to protect UK domestic industries from injury from adverse trading practices. The Trade and Customs Bills are important, necessary steps in this respect, and we welcome the Government's attention to this subject.**

17. **The Bills do not yet have sufficient detail pertaining to the UK's future trade defence framework.** ***The Government should write to us outlining how it consulted with affected and interested industries before publishing the Trade and Customs Bills. The Government should ensure that Parliament has adequate opportunity to scrutinise trade defence regulations. The Government should set out why it believes that the negative procedure is preferable for scrutiny of trade defence regulations.***

37 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 37 [Gareth Stace]
38 Q 49 [George Peretz QC]
39 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 34 [Edwin Vermulst]
40 Manufacturing Trade Remedies Alliance (TRA0001), para 9
41 Q 107 [Dr Laura Cohen]
42 Department for International Trade (TRA0003)

2 Capacity and Delivery

Background

18. In this Chapter we consider whether the TRA will have the capacity and capability to perform its functions after Brexit. The date by which the TRA will need to be operational will depend on the nature of any agreement reached between the EU and UK. In a 'no deal' scenario, the UK will inherit responsibility for trade defence as of 29 March 2019. However, both parties could agree for the UK to continue to be bound by EU law, including trade defence legislation, during any transition period. In the light of these possible outcomes, we examine two issues that will particularly affect the magnitude of the challenge of creating an operational TRA by March 2019, namely the nature of trade defence investigations and the continuation of the EU's existing TDMs.

Government's Policy

19. The Government's policy is that the UK will "need the Trade Remedies Authority set up and operational by March 2019."[43] The Minister said that the estimated cost for the TRA is "around £15 million to £20 million per annum" and would have approximately 100 staff.[44] The Minister nevertheless conceded that the "Trade Bill … is yet to begin its passage through the Lords",[45] and that the Department was yet to recruit people for the body.[46] These issues were echoed in a letter from Permanent Secretary for the Department, Antonia Romeo, to Dr Fox on 29 March 2018. She said that DIT "must spend on the TRA before Royal Assent of the Trade Bill" as delaying doing so "would jeopardise the Department's preparation for the UK's exit from the EU with implication for our future trade policy." Accordingly, she sought a direction to spend £8.9 million in advance of Royal Assent on "Board appointments, staff, estates, infrastructure and IT, training, digital, and legal and industry experts to assist with TRA set up and operational process design".[47] The Secretary of State responded the same day, approving the request in a Ministerial Direction.[48]

Nature of Trade Defence Investigations

20. Witnesses told us that there were two primary obstacles to the TRA having the requisite capacity to conduct trade defence investigations and perform its other functions by March 2019. The first pertained to the nature of trade defence investigations, and thus the expertise required to conduct them. The investigations which the TRA will be required to undertake are inherently complex. As Bernard O'Connor told us, the two key issues for the TRA in any investigation are the existence and occurrence of dumping / subsidisation and the existence and occurrence of injury. Assessing injury requires the investigating

43 Q 25 [Greg Hands]

44 Q 2 ("The size of the authority is still to be determined but you can get a feel for how large the authority might be by looking at similar authorities or how these things operate elsewhere. For example, DG Trade at the European Commission is obviously a much larger body and considers things far beyond trade remedies. They have about 500 staff across all functions, of which just over 100 work on trade remedies. That will perhaps give you an idea of the size of the authority as it is likely to be.")

45 Qq 2, 26

46 Q 2 (Mr Hands further told us that "there are very few people currently engaged in the UK on trade remedies".)

47 Letter from Permanent Secretary to Secretary of State regarding Technical Ministerial Direction, 29 March 2018

48 Letter from Secretary of State to Permanent Secretary regarding Ministerial Direction, 29 March 2018

authority to "request information from the complaining industry and then … verify it." Similarly, when considering whether dumping / subsidisation exists, the TRA will "need to ask questions of the exporting producers, then … verify that information in the country of origin."[49]

21. Witnesses told us that the process of obtaining and verifying information is "highly resource intensive with lots of moving parts".[50] We were told that "[t]here is a lot of data that has to be disgorged, a lot of various analytical tests."[51] Even where the dumping calculation is straightforward, witnesses appearing before the Public Bill Committee said "it is a massive calculation with thousands of data entries on a spreadsheet or in a model".[52] We were told this process "can take quite a considerable amount of time", especially where "you have many exporting producers who want to get individual margins".[53] This is because the investigating authority "need[s] to send teams into foreign countries to sit down with the company to look through their records"[54] which ordinarily takes several days for each exporter sampled.[55] The intensive, complex nature of the exercise is reflected in the time it takes to conduct a new investigation. The maximum time limit for investigating dumping usually varies from 12 to 18 months,[56] although some countries, such as the US, set a detailed timetable for each stage of investigation.[57]

22. We also heard that trade defence investigations are demanding as there are "a lot of people involved and a lot of different specialties".[58] In Australia, we were told that "there are 60 people in the Anti-Dumping Commission, [with a] budget [of] about AUS$15 million per annum".[59] In the European Commission, there are 136 staff, of which about 40 are investigators.[60] Staff involved in trade defence investigations also possess a wide variety of expertise, including "economic, legal, specialist skills, [and] language skills".[61] In addition, we were told that because of the 'superadded' economic and public interest tests in the Customs Bill, the TRA will likely need "competition expertise … financial analysis […] [and] people who are experts in industry in the broad sense".[62]

23. Given the complex nature of investigations and the expertise required, several witnesses doubted whether the Government's ambition was achievable. Two witnesses rated the possibility of the TRA being operational for March 2019 as "red".[63] Mr Peretz QC identified several key concerns, including that "you cannot seriously start appointing

49 Q 47 [Bernard O'Connor]
50 Q 47 [Daniel Moulis]
51 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 12 [Bernardine Adkins]
52 Trade Bill Committee, 23 January 2018, cols 69–70
53 Q 47 [Bernard O'Connor]
54 Q 47 [Daniel Moulis]
55 Q 47 [Bernard O'Connor] (These teams ordinarily "spend a day, two days, three days, with each exporter that is sampled. It is very intense work that needs to be done.")
56 Qq 102–103 [Dr Laura Cohen, Cliff Stevenson]. For example, India's trade defence regime has a time limit for investigations of 12 months, although it can be extended to 18 months; the EU's time limit is 15 months, although expedited investigations usually take 12 months; and the WTO Anti-Dumping Agreement provides a time limit of 18 months.
57 T.D. Satish, "Time-limit for anti-dumping investigations", 24 April 2012. See also United States International Trade Commission, Antidumping and Countervailing Duty Handbook, June 2015, pp III-6–III-8.
58 Q 47 [Daniel Moulis]
59 Q 47 [Daniel Moulis]
60 Q 47 [Bernard O'Connor]
61 Q 48 [George Peretz QC]
62 Q 47 [Daniel Moulis]
63 Q 51 [George Peretz QC, Bernard O'Connor]

people to head the organisation until you have at least the Trade Bill through". He also said there was "not very much trade expertise in London to draw on because we have not been doing it for 40 years."[64] Bernard O'Connor further told us that there was "an awful lot of work to do to be able to get a system in place and there will be a rush on day one."[65] By contrast, Mr Moulis was more sanguine, giving an "amber" rating.[66]He said:

> If you are starting off without a lot of existing investigations or without a lot of measures that you have to police, then it is possible to get the thing up and running by that time. Yes, there will be some difficulties in converting the thinking and putting it in place, but I do not think those problems are new ones or that they are insurmountable.[67]

EU Trade Defence Measures

24. A possible mitigating factor we heard about which may minimise the risk that the TRA will not be operational by March 2019 concerns the continuing application of the EU's existing TDMs in the UK after Brexit. As a matter of law, it has been argued that an automatic consequence of leaving the EU is that the EU's TDMs (for example, anti-dumping tariffs) will no longer be applicable.[68] Bernardine Adkins, Partner, Gowling WLG, told us that "[o]nce we have left we have left, and we cannot benefit from those [TDMs]."[69] However, we heard that it was a separate issue as to whether the UK could elect to continue to apply the EU's TDMs after Brexit. Mr Moulis said he was "not clear as to whether [the UK is] continuing over the existing anti-dumping measures that are in place in the EU". However, he told us that this question could affect the TRA's capacity as the likelihood of the TRA being operational by March 2019 "depends [a lot] on what the opening workload is going to be".[70] He further added that, "i[f] you are starting off without a lot of existing investigations or without a lot of measures that you have to police, then it is possible to get the thing up and running by that time".[71]

25. We were told that the uncertainty as to whether the UK could continue ('grandfather') the EU's existing TDMs pertains to the way in which the EU determines whether to impose TDMs. In assessing a proposed TDM, the European Commission considers whether there is injury to an EU industry.[72] While a UK domestic industry may, in some cases, form part of the aggrieved EU industry, this is not necessarily the case. Bernard O'Connor told us that "if you are trying to introduce new measures in an area where there are already European measures, theoretically there will not be injury to the United Kingdom market. How then you are going to find, in a rollover situation, injury is going to be difficult." EU Regulations also require the Commission to consider whether imposing a TDM is

64 Q 49 [George Peretz QC]
65 Q 50 [Bernard O'Connor]
66 Q 51 [Daniel Moulis]
67 Q 50 [Daniel Moulis]
68 Philippe De Baere, *Building a trade defence system in the UK*, Paper presented at UCL Seminar
69 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 9 [Bernardine Adkins]
70 Q 49 [Daniel Moulis]
71 Q 50 [Daniel Moulis]
72 See, for example, European Commission, Anti-dumping, 11 April 2018; European Commission, Anti-subsidy, 12 April 2018.

against the interests of the EU ('Union interest test'). While the collective interests of the EU, as 28 Member States, may overlap exactly with the interests of the UK, this is also not necessarily the case.

26. We heard three differing views as to whether the UK could 'grandfather' the EU's TDMs without conducting a new investigation. Gareth Stace told us that doing so "would not be against WTO rules".[73] By contrast, several witnesses said this approach was contrary to WTO rules. Ms Adkins said that "[w]e simply cannot legally cut and paste over what is already in place"; the UK would need to "start out afresh".[74] Mr O'Connor similarly said that "[i]f the United Kingdom wants to maintain trade defence measures in place it will have to start de novo for each one; it will have to start anew to do this sort of thing."[75] Finally, Edwin Vermulst was more circumspect. He told us that "[y]ou have to have UK producers in order to maintain a measure".[76] However, if there is UK production, Mr Vermulst said it may be possible to continue the measure with "a review in order to see, for example, whether the dumping margin that was calculated on an EU-wide basis would be different if it was supplied only for the UK."[77]

27. The Department's policy on whether it can grandfather EU TDMs without re-investigation remains unclear. In November 2017, the Department issued a call for evidence to identify which UK businesses produce goods currently subject to EU anti-dumping or anti-subsidy measures. It further confirmed that if an EU TDM "does not receive an application to be maintained, or does not meet the required criteria, it will be terminated" once the TRA is operational.[78] While a welcome step, and one which will minimise the TRA's workload, it does not clarify the extent of the work that will be required to continue to protect UK domestic industries subject to EU TDMs after Brexit.

28. **The TRA is a vital aspect of the architecture of the UK's future trade policy. With less than 12 months before the UK leaves the EU, it is crucial that the TRA is operational by 29 March 2019, and we require urgent assurance that it will be. If the UK does not reach a deal with the EU, the UK must have a trade defence regime in place as of March 2019 or risk UK businesses being damaged.**

29. **The Department has taken several recent steps to progress the operationality of the TRA, including issuing a Ministerial Direction to expend £8.9 million on the TRA and undertaking a review of the EU's existing trade defence measures. However, in retrospect it ought to have been foreseeable that the establishment of the TRA would be comparatively uncontroversial relative to other matters contained in the Trade Bill. By electing not to establish the TRA in a separate Bill, the Government has created a number of obstacles to meet its stated deadline: the Trade Bill is yet to pass the Commons; no executive TRA members have been appointed; and the TRA has no staff**

73 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 17 [Gareth Stace]

74 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 9 [Bernardine Adkins]

75 Q 50 [Bernard O'Connor]. See also Q 50 [Daniel Moulis] ("[T]he question of whether material injury is being caused to the industry in this place would be a live question rather than just carrying things over.")

76 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 14 [Edwin Vermulst]

77 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 21 [Edwin Vermulst]

78 Department for International Trade, Call for evidence to identify UK interest in existing EU trade remedy measures, 28 November 2017

in place or trained. In such circumstances, it is difficult to see how, on any view, the TRA can be fully operational by March 2019. ***If the Government is to have any hope of achieving its objectives, it must progress the TRA's establishment as a matter of priority. We request that the Government writes to us with its position on whether it can legally 'grandfather' the EU's existing trade defence measures and how it plans to progress its work on the TRA in the light of that position. Failure to resolve this issue could result in either the TRA undertaking extensive, unnecessary work or the UK being subject to dispute settlement proceedings at the World Trade Organization.***

30. ***The Department should write to us with a timeline for the appointment of the Board members to the TRA and how it proposes to have the TRA operational by March 2019. We expect that the Department will report regularly to the National Audit Office on its spending pursuant to the Ministerial Direction.***

3 TRA Appointments and Structure

Background

31. In this Chapter we consider how Board members of the TRA are appointed and the overall structure of the body. First, we address concerns raised about the Secretary of State's powers to make appointments, and the need for the TRA to have a balance of expertise. We then consider the executive structure of the TRA, and how the investigation process with respect to injury and dumping / subsidisation will be structured.

Appointments Process

Role of Government and Parliament

32. The TRA will consist of, at most, nine people including a Chair, non-executive and executive members, and a chief executive. The Secretary of State is responsible for appointing the Chair and non-executive members of the TRA.[79] The Chair is responsible for appointing the chief executive, subject to the Secretary of State's approval, and executive members.[80] Subject to clauses five to ten of Schedule 4 to the Trade Bill, the terms and conditions of the Chair and non-executive members' appointments are determined by the Secretary of State.[81] The Secretary of State also determines remuneration for non-executive members, and otherwise determines the funding for the TRA.[82]

33. It has been argued that the "composition of the members of the TRA is critical because trade remedies is a highly political area of policy where there are very different views."[83] Some witnesses told us that they were concerned about the impact of the Secretary of State's power to appoint Board members of the TRA on the TRA's independence. The MTRA told us that to "improve the independence of the TRA, and prevent it from being ideologically 'stacked'", the TRA Board member appointment process should be modelled on the Health and Safety at Work Act 1974 (HASAWA).[84] According to Tom Reynolds, MTRA, HASAWA "stipulates the Secretary of State, in making appointments … must consult with organisations for three of the members. There could be representatives of the employers, and three of the representatives could be from the trade unions". He suggested that this model "might lend itself well to the establishment of the [TRA]".[85]

34. We also heard that Parliament, including this Committee, could have a greater role in Board appointments to the TRA. George Peretz QC has argued that there is a strong case for Board appointments (or at least the Chair and chief executive) to be subject to approval of this Committee.[86] He told us that the best way of testing the capacity of the appointee to "deal effectively with public comment, criticism, to engage, to respond intelligently to

79 With respect to non-executive members, the Secretary of State must consult the Chair before appointing the other non-executive members (Trade Bill, Schedule 4, clause 2(3) [Bill 122 (2017–19)]).
80 Trade Bill, Schedule 4, clause 2 [Bill 122 (2017–19)]
81 Trade Bill, Schedule 4, clause 4 [Bill 122 (2017–19)]
82 Trade Bill, Schedule 4, clauses 11–16, 29 [Bill 122 (2017–19)]
83 Trade Bill Committee, 23 January 2018, col 65 [Cliff Stevenson]
84 Manufacturing Trade Remedies Alliance (TRA0001), para 18
85 Trade Bill Committee, 23 January 2018, col 66.
86 George Peretz QC, Briefing Paper: The Government's proposed legislation for trade remedies, UK Trade Forum, 22 January 2018

public concerns" was by way of an approval hearing before the Committee.[87] Mr Peretz QC also told us that, in principle, the Chair and chief executive should have the confidence of Parliament. For Mr Peretz QC, doing so would act as a "bit of a deterrent to any tendency that there might be by any Secretary of State to appoint his or her friends and relations, acquaintances, to the job".[88]

35. However, in evidence before us, Greg Hands said that it was not the Government's intention "for there to be [Select Committee] hearings for members of the board of the [TRA]".[89] Mr Hands noted that amendments to this effect had been debated in the Public Bill Committee on the Trade Bill and "the Committee decided not to have that as part of the process".[90] In addition, the Secretary of State wrote to the Chair of the Committee on 29 March 2018 in relation to the appointment of the Chair of the TRA. He said that recruitment would begin shortly and that, to ensure the TRA's independence, the Secretary of State would be "inviting input from the Devolved Administrations and key external stakeholders—including domestic industry, trade union and consumer groups—on the content of the TRA Chair job description and person specification."[91]

Impartiality and expertise of appointees

36. In considering TRA appointments, witnesses also told us that TRA Board appointees "need to be impartial and independent people"[92] with a "range of expertise and a range of backgrounds".[93] We heard that these expertise and backgrounds should include "economic and legal skills",[94] "a good knowledge of the way that the WTO systems work, how the countries' systems work",[95] "a consumer voice",[96] and "balanced representation of trade unions and manufacturing employers".[97] To ensure an adequate range of expertise and backgrounds, some witnesses argued that the Trade Bill should require the "Secretary of State to appoint members of the TRA from a specified range of backgrounds and based on a specified range of experience and expertise".[98] The Law Society of Scotland also suggested considering "whether criteria or qualifications should be set out to determine eligibility for appointments to the TRA."[99] However, Mr Moulis said that the TRA may be "asking for trouble" if Board members "who appear to be representative of a particular interest group" were appointed. He added that, "[i]f there is any suggestion that they have come from a particular background and they are going to favour the views of that background, they should not be there." Instead, he told us the key was to have "guidelines as to the independence of the people who you are appointing, but with experience in particular[] areas."[100]

87 Q 71
88 Q 71
89 Q 27
90 Q 22
91 Letter to the Chair from the Secretary of State regarding the recruitment of a non-executive Chair of the TRA, 29 March 2018
92 Q 73 [Daniel Moulis]
93 Q 73 [George Peretz QC]
94 Q 73 [George Peretz QC]
95 Q 91 [Daniel Moulis]
96 Q 73 [George Peretz QC]; Which? (TRA0002), para 9.
97 Q 106 [Rosa Crawford]. See also British Ceramic Confederation (TRA0004).
98 George Peretz QC, Briefing Paper: The Government's proposed legislation for trade remedies, UK Trade Forum, 22 January 2018
99 Law Society of Scotland (TRA0007), p 4
100 Q 73 [Daniel Moulis]

37. In evidence before us, Greg Hands dismissed any suggestion that particular groups should be represented on the TRA's Board. For the Minister, "the most important consideration" was "mak[ing] sure that the people appointed are experts in the field".[101] The Minister indicated that TRA Board appointees may "have a background in one of those groups, but it is very important that they are not seen to be appointed by one of those groups."[102] The Minister told us he expected appointees to take "a UK-wide view of the issue[s]",[103] but the Government did not intend to legislate to require that appointees have "a balance of different party political backgrounds, sectors or different parts of the United Kingdom".[104]

Structure of the TRA

38. In the remainder of this Chapter, we consider the structure of the TRA. In particular, we examine other trade defence bodies and consider whether the TRA's Board structure is the most appropriate approach, and how the TRA will structure its trade defence investigations.

Board structure

39. Witnesses told us that the approach of other countries to the decision-making structures of their trade defence bodies varies considerably. In Australia, for example, the Anti-Dumping Commission is "headed up by a commissioner, a statutory officer. There is only one person appointed in that role, who has his or her own staff".[105] Cliff Stevenson, consultant to the MTRA, told us that the Commissioner is the "equivalent of a board of members and does sign off on the cases", with recommendations then made to the Minister.[106] In the US, two bodies are involved in the trade defence investigation process: the US International Trade Commission (ITC) and the Department of Commerce. The ITC is headed by six Commissioners and, after a hearing on a proposed TDM, the Commissioners cast their votes in favour of, or against, the measure.[107] By contrast, in the case of the EU, the whole investigation takes place under the political control of the Commission with ultimate adoption decided by EU Member States in the Council of Ministers.[108]

40. In the light of these approaches, witnesses questioned whether having nine TRA Board members was necessary. Mr Moulis told us that two things could happen with a body of this size: "[e]ither you get a groupthink or you start to get things splintering and you start to get some decisions made in perhaps a bit of a radical way or even it could come to a grinding halt, and it would not be able to make decisions".[109] We also heard that there was a "lot of uncertainty and lack of clarity" around the decision-making process of the TRA's Board members and "what the role of these up to nine TRA members will [be]".[110]

101 Q 13
102 Q 6
103 Q 8
104 Q 32
105 Q 45 [Daniel Moulis]
106 Q 105 [Cliff Stevenson]
107 United States International Trade Commission, Antidumping and Countervailing Duty Handbook, June 2015, pp II-3–II-25
108 Manufacturing Trade Remedies Alliance (TRA0001), para 11
109 Q 73 [Daniel Moulis]
110 Q 105 [Cliff Stevenson]

Mr Stevenson told us that "[i]f the members are going to sign off on whether duties will be adopted in a particular case then … this is a level of decision making that is more complex than any other system in the world."[111] The MTRA further added that there could be extra levels of Board decision-making, and queried whether it will be TRA's Board members or senior departmental officials within the staff teams employed by the TRA that will sign off on recommendations to the Secretary of State.[112]

Investigative structure

41. Trade remedies bodies also vary in how they approach trade defence investigations. The two primary approaches to investigative structures are the unified (for example, the EU, India and Australia) and bifurcated (for example, the US and Canada) models. China uses a third model, with a "[s]ingle ministry but different departments dealing with dumping and injury".[113] The principal difference between the two primary approaches is that a bifurcated system has two specialist bodies, one which investigates dumping / subsidisation and another which investigates whether material injury has been caused by the dumping / subsidisation.[114] By contrast, in a unified structure one body "considers the questions of both dumping and material injury and whether the dumping has caused the injury".[115] The TRA has a unified investigative structure. For example, the Customs Bill provides that the TRA may investigate both whether goods are being dumped and whether the dumping has caused or is causing injury.[116]

42. Witnesses and commentators differ as to which is the preferred approach. UK Steel have argued that the bifurcated approach has several benefits, including that: (i) findings are more objective; (ii) the process is more efficient, as both investigations can run in parallel; and (iii) it enables the development of knowledgeable, experienced teams, with skillsets suited to the two very different types of investigation.[117] However, several witnesses suggested that the unified approach was preferable. Mr O'Connor told us that having a single body investigate both injury and dumping / subsidisation "create[s] efficiencies". He added that a "unified system is cheaper overall for all players involved, not only the Administration but those subject to investigations."[118] The MTRA likewise "support[ed] the idea of a single unit within a single authority." They noted in written evidence that:

> In terms of the authority's budget it means that capacity can be directed towards wherever there is an intensity of work. Having two separate departments means that there might be times where there is spare capacity in one or both organisations. Also, the cost of interested parties participating in an investigation is increased through having to deal with different departments.[119]

111 Q 105 [Cliff Stevenson]
112 Manufacturing Trade Remedies Alliance (TRA0001), para 14
113 Manufacturing Trade Remedies Alliance (TRA0001), para 3
114 UK Steel, UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View report, April 2017, p 6
115 Q 59 [Daniel Moulis]
116 Taxation (Cross-border Trade) Bill, Schedule 4, clause 8(1) [Bill 128 (2017–19)]. Similar functions are conferred on the TRA in respect of the investigation and imposition of anti-subsidy measures (see Taxation (Cross-border Trade) Bill, Schedule 4, clause 8(3) and Schedule 5, clause 6(1) [Bill 128 (2017–19)]).
117 UK Steel, UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View report, April 2017, p 6
118 Q 60 [Bernard O'Connor]
119 Manufacturing Trade Remedies Alliance (TRA0001), para 4

The MTRA further told us that, given the limited timeframe, having a simpler structure may mean the TRA is better placed to function as of March 2019.[120]

43. **It is easy to underestimate how contentious trade defence may be. Even where the decision to impose a trade defence measure follows a rigorous process, the consequences of a measure can place the interests of producers, consumers and workers in conflict, as well as having wider economic and diplomatic consequences. Managing these competing demands requires a trade defence regime which is robustly independent, and which protects the interests of the UK economy as a whole. Robust independence can only be ensured through an appointment process which is fair and open, and is seen to be so. There is a strong argument that the TRA's independence would best be ensured by removing the appointment process for TRA Board members from the sole discretion of the Secretary of State.** ***We consider that appointments of the Chair of the TRA should be conditional upon the approval of this Committee, and that this should be set out in statute. We would also expect to conduct a pre-appointment hearing with the proposed candidate for chief executive of the TRA.***

44. **We accept that for the TRA to be operational by March 2019, it is necessary to appoint its first Chair as soon as possible and welcome the Secretary of State's announcement that he will do so. However, we note that he is doing so without the statutory authority that would be conferred upon him by the Trade Bill because it is not yet law.** ***In these circumstances, Parliament must have a say and there is a particularly strong argument for the appointment to be conditional on a resolution of this Committee that it approves the appointment. There may also be an argument for the appointment of the Chair to be for a short, fixed term so that it can be reviewed soon after the Trade Bill receives Royal Assent, although we also recognise that this could have a disruptive effect on the body at a critical time.***

45. **Diverse representation is also vital to ensuring that the TRA is viewed, both domestically and internationally, as credible and transparent. In circumstances where the Government has proposed appointing as many as nine TRA Board members, there is a strong case for requiring that some TRA Board members be appointed to represent the interests of particular groups (for example, consumers and trade unions) or that appointees to the TRA have expertise which would enable them to understand one of these groups' interests in detail.** ***In any event, the Department should publish guidelines as to the independence of the people who are to be appointed.***

46. **Compared to trade defence bodies in other jurisdictions, the TRA is very large with up to nine members. We are concerned that this could make decision-making cumbersome. It may also be unduly expensive.** ***To avoid unnecessary complexity in decision-making which could result from such a large body, the Department should publish clear guidance on the roles of the TRA members in the decision-making process for recommending the imposition of trade defence measures. We further recommend that the Department consider whether it ought to appoint fewer TRA members, at least initially, to progress the operationality of the body. Nine members is a maximum, not a quota.***

120 Manufacturing Trade Remedies Alliance (TRA0001), para 5

47. **We consider that, on balance, the proposed 'unified' investigative structure for the TRA is the correct one. While a bifurcated approach may offer benefits in terms of objectivity of decision-making, we do not consider that these benefits outweigh the efficiencies created by a unified approach. This approach must not, however, be used as in such a way as to politicise the decision-making process of the TRA and to compromise its operational independence.**

4 Functions of the TRA

Background

48. The TRA is assigned functions under both the Trade and Customs Bills. These functions are broadly separated between advising and assisting the Secretary of State (Trade Bill) and conducting trade defence investigations (Customs Bill). In this Chapter, we examine how the Bills address the functions of both the TRA and Secretary of State and whether the proposed division of responsibilities adequately guarantees that the TRA will operate independently.

Functions Conferred by the Trade Bill

Advise, support and assist

49. The TRA's primary function under clause 5 of the Trade Bill is to provide the Secretary of State with "advice, support and assistance" at their request in connection with the performance of certain functions.[121] However, before requesting such advice, support and assistance, the Secretary of State must:

- consult the TRA; and
- have regard to the expertise of the TRA and to the need to protect: (i) its operational independence; and (ii) its ability to make impartial assessments when performing its functions.[122]

50. The Trade Bill does not further clarify what is meant by "operational independence", nor how the duty to have regard to such independence is intended to operate. The Government has said only that the TRA was intended to be an independent, arm's-length body.[123] Greg Hands further told us that the TRA was set up as a non-departmental public body to "ensur[e] that it has appropriate degree of separation from the Department".[124] According to the Minister, operational independence for the TRA means "operating independently from everybody"; that is, its members must not be seen to be appointed by any particular sector or interest group.[125]

51. When asked about the duty to have regard to the TRA's independence witnesses noted it was "slightly difficult to know exactly what that means".[126] George Peretz QC told us:

> … 'have regard to' is one of those legal phrases that is always slightly difficult to pin down. What it really means is that if you are ever challenged about

121 These are: (i) the conduct of an international trade dispute; (ii) functions of the Secretary of State relating to trade; and (iii) functions of the TRA. Clause 6(2) further provides that "[a]dvice, support and assistance requested [in relation to an international trade dispute] may include, among other things— (a) analysis of trade remedy measures imposed in countries or territories other than the United Kingdom, and (b) analysis of the impact of such measures on producers and exporters in the United Kingdom." (see Trade Bill, [Bill 122 (2017–19)]).

122 Trade Bill, clause 6(3) [Bill 122 (2017–19)]

123 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 35

124 Department for International Trade (TRA0003)

125 Q 6

126 Q 79 [George Peretz QC]

> it you have to prove and explain that you did look at it and think about it but it does not tie you down to going in any particular direction, having thought about it.[127]

Publication of guidance

52. The Trade Bill also confers a broad power on the TRA to "otherwise provide such advice, support and assistance as it considers appropriate" in relation to international trade and trade remedies.[128] The TRA's discretion in performing this and other functions—including conducting trade defence investigations—is subject to one overarching condition; namely, the duty to "have regard to guidance published by the Secretary of State."[129] The Minister told us that the Trade Bill places "clear limits on the Secretary of State's ability to issue guidance to the TRA".[130] For example, the Bill prohibits the Secretary of State from publishing guidance "in relation to a specific trade remedies investigation" and requires them to have regard to the TRA's operational independence.[131]

53. Notwithstanding these purportedly clear limits, witnesses expressed several concerns about the TRA's independence arising from this power. The MTRA told us the power to publish guidance "gives the [Secretary of State] a lot of power to influence the practices and procedures of the TRA and potentially make changes which could have a significant impact on the system."[132] Which? likewise said that the "extent to which the TRA can act independently [is] very reliant on the approach of the Secretary of State."[133] Accordingly, we were told that it was "essential that some safeguards are built into the Bill and also adopted as part of the TRA's procedures to ensure that it can act independently and can voice concerns if it feels that its advice is being misinterpreted."[134] The MTRA even suggested that Parliament could potentially have some role in limiting the ability of the Secretary of State to "produce guidance that makes significant changes to the system".[135] By contrast, Mr Moulis queried whether the publication of guidance was as serious a concern. He noted that, in Australia, the same power had only been exercised once to produce a ministerial determination on "findings of injury and what could constitute a finding of material injury."[136]

Functions Conferred by the Customs Bill

Trade defence investigations

54. The TRA's most significant function under the Customs Bill is conducting trade remedies investigations.[137] The TRA may initiate a dumping or a subsidisation investigation if it is requested to do so by or on behalf of a UK industry, or, in exceptional circumstances,

127 Q 79
128 Trade Bill, clause 6(4) [Bill 122 (2017–19)]
129 Trade Bill, Schedule 4, clause 34(1) [Bill 122 (2017–19)]
130 Department for International Trade (TRA0003)
131 Trade Bill, Schedule 4, clauses 34(3) and (4) [Bill 122 (2017–19)]
132 Manufacturing Trade Remedies Alliance (TRA0001), para 23
133 Which? (TRA0002), para 12
134 Which? (TRA0002), para 12
135 Manufacturing Trade Remedies Alliance (TRA0001), para 23
136 Q 55
137 See Taxation (Cross-border Trade) Bill, Schedule 4, clauses 8(1), (3) and Schedule 5, clause 6(1) [Bill 128 (2017–19)]

by the Secretary of State.[138] Before commencing an investigation, the TRA must also be satisfied as to other matters, such as that the complaint contains evidence that dumping or subsidisation has caused or is causing injury to a relevant UK industry.[139]

55. Once the TRA commences an investigation, it has several options available to it. Subject to regulations, it could terminate an investigation or make no recommendation.[140] Alternatively, the TRA can recommend the imposition of a TDM to the Secretary of State if it considers that the conditions for imposition are met. It is then for the Secretary of State to "decide whether to accept or reject the recommendation", having regard to the economic and public interest tests contained in the Customs Bill (discussed below).[141] George Peretz QC explains the division of responsibilities between the TRA and Secretary of State as follows:

> [T]he TRA will determine whether the legal conditions for the application of trade remedies are met and calculate the amount of duty that may be imposed […] The TRA will then, if it finds that a remedy can be imposed and unless it finds that the remedy is against the UK economic interest, make a recommendation to the Secretary of State who can then, but only then, impose a trade remedy, but need not do so if he considers that the remedy is against the UK economic interest or the public interest.[142]

56. We heard from witnesses about the approach of other jurisdictions to the investigation and imposition of TDMs. Mr O'Connor told us that the EU is a "very simple administrative system".[143] Under this system, the Commission conducts the investigation and recommends which measures ought to be imposed. However, the imposition of such measures is approved by the TDI Committee, which is composed of the Member States. We were also told that the Australian system is "quite similar to [the] Trade Bill […] in terms of its set-up and its administrative investigation".[144] The MTRA added that, "in Australia, the Commission is fronted by a single Commissioner who makes the recommendation to the [M]inister based on the technical findings of the Commission staff."[145] The Minister must then be satisfied that goods exported to Australia have been dumped or subsidised, and that dumping or subsidisation has caused, or is threatening, material injury to an Australian industry producing like goods.[146] By contrast, Mr Vermulst told us that "[t]he US is probably the most legalised system. There is no political influence whatsoever."[147]

138 Taxation (Cross-border Trade) Bill, Schedule 4, clause 9[Bill 128 (2017–19)]
139 Taxation (Cross-border Trade) Bill, Schedule 4, clause 9[Bill 128 (2017–19)]
140 Taxation (Cross-border Trade) Bill, Schedule 4, clause 10(2)(c) [Bill 128 (2017–19)]
141 Taxation (Cross-border Trade) Bill, Schedule 4, clauses 15(1) and 20(1) [Bill 128 (2017–19)]. The latter provides: "Secretary of State may reject the recommendation only if the Secretary of State is satisfied that— amount to goods in accordance with the recommendation does not meet the economic interest test (see paragraph 25), or (b) it is not otherwise in the public interest to accept the recommendation."
142 George Peretz QC, Briefing Paper: The Government's proposed legislation for trade remedies, UK Trade Forum, 22 January 2018
143 Q 43 [Bernard O'Connor]
144 Q 45 [Daniel Moulis]
145 Manufacturing Trade Remedies Alliance (TRA0001), para 12
146 Anti-Dumping Commission, Australia's Anti-Dumping and Countervailing (anti-subsidy) System, 18 August 2014; Anti-Dumping Commission, Understanding the Anti-Dumping Review Panel Process, June 2013.
147 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2016–17) 603-I, Q 53 [Edwin Vermulst]

Mr O'Connor added that, in the US, "[i]f there is dumping and if there is injury, there is an entitlement to remedies, whereas we have a political process in the European Union to evaluate the advisability or not of it."[148]

57. Several witnesses queried the proposed division of responsibilities which leaves the ultimate determination regarding the imposition of TDMs to the Secretary of State. Bernardine Adkins told us that there will be times when politicians should be involved in the trade defence process. However, she said that the proposed system reflected "1970s thinking".[149] Referring to the previous UK Monopolies and Mergers Commission, she added, "[i]t was all behind closed doors, and it was very much lobbying. At the end of that it was like, 'What was in the head of the Secretary of State?' We have moved on since then."[150] Edwin Vermulst agreed with Ms Adkins that "the idea of politicising the system to some extent … goes back to the old days".[151] He further told us that this "is [not] a good development" and likened the UK's approach to that of "some other countries, especially developing countries, that have a system … where you need a Minister, basically, at the end of the day to make a decision. That becomes very politicised […]".[152]

58. By contrast, Mr Peretz QC said that the "board structure in the Bill is essentially right". On this approach, you leave "the more technical tasks, the technocratic tasks, of establishing whether there is dumping or subsidies… to a more technocratic independent body that can reach its own view based on its expertise about whether those criteria are met."[153] The final decision as to whether to impose TDMs is then passed to the Secretary of State. Mr Peretz QC said that this "seems to be right because it is a profoundly political decision" and "politicians [are] accountable to all of you [parliamentarians], to decide and to give their reasons for either doing or not doing it."[154]

59. The Government told us that the UK trade remedies framework ensures that "there is ultimately a political decision based on an evidence-based investigation."[155] According to Greg Hands, this approach achieves "the right balance between having both an independent assessment and political accountability at the end of the day."[156] The Minister further told us that the "Secretary of State can only confirm a recommendation to take action; the Secretary of State cannot overturn it if the [TRA] recommends no action".[157] By way of assurance, the Minister said that "[t]his final step is a common factor in other trade remedies systems".[158]

148 Q 43 [Bernard O'Connor]
149 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 40 [Bernardine Adkins]
150 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2016–17) 603-I, Q 40 [Bernardine Adkins]
151 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2016–17) 603-I, Q 44 [Edwin Vermulst]
152 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2016–17) 603-I, Q 44 [Edwin Vermulst]
153 Q 59 [George Peretz QC]
154 Q 59 [George Peretz QC]
155 Q 37 [Greg Hands]
156 Q 37 [Greg Hands]
157 Q 38
158 Q 1

Economic interest test

60. The Customs Bill places several limitations on the TRA's ability to recommend the imposition of TDMs. One of the limitations we heard about was the economic interest test. For example, the Customs Bill provides that the TRA may only recommend the imposition of an anti-dumping or anti-subsidy measure as a definitive measure "if it is satisfied that the application of an anti-dumping amount or a countervailing amount meets the economic interest test".[159] The economic interest test requires that the TRA, in considering whether the application of a TDM is not in the economic interest of the UK, must take account of the following matters, where relevant:

- the economic significance of affected industries and consumers in the UK;
- the likely impact on affected industries and consumers in the UK;
- the likely impact on particular geographic areas, or particular groups, in the UK; and
- the likely consequences for the competitive environment, and for the structure of markets for goods, in the UK.[160]

61. Witnesses told us that the proposed 'superadded' economic interest test was unique to the UK's trade remedies framework, although the EU's framework does include a 'Union interest' test. The UK's proposed approach was also said to be unique as it uses a "positive economic interest test".[161] Unlike the EU's present approach, which we were told adopts a "presumption that measures will be put in place",[162] the UK's proposed approach effectively adopts a presumption against imposing TDMs unless it is in the UK's economic interest to do so. Mr Moulis told us that this "could be a first in the sense that … it must be in the economic interest to impose the measures. If you look at the systems in the EU and the way it is worded in the EU, there is a cautionary sentence in their economic interest test". Mr Moulis suggested that the inclusion of such a test "indicate[d] a more liberal and a more open trading policy".[163] Cliff Stevenson agreed, adding that, having regard to the totality of the framework, "there is potential that this will be the most liberal anti-dumping system in the world".[164]

62. We heard differing views as to the appropriateness of the proposed economic interest test, and who should apply it. Which? told us that the test was beneficial as it ensured that "there is full consideration of what the wider impact will be, including on consumers or on other industries or sectors that may then pass any additional costs on to consumers" when considering whether to impose TDMs.[165] By contrast, Dr Laura Cohen of the British Ceramics Confederation was critical of the test, but said that "[i]f there is an economic interest test it is really important that the independent body carries it out and it is not

159 Taxation (Cross-border Trade) Bill, Schedule 4, clause 17(5)) [Bill 128 (2017–19)]. With respect to provisional measures, the Customs Bill similarly provides that the TRA may only require a guarantee "if it is satisfied that requiring a guarantee in accordance with its recommendation: (a) is necessary to prevent injury being caused during the investigation to a UK industry in the relevant goods; and (b) meets the economic interest test" (see Taxation (Cross-border Trade) Bill, Schedule 4, clause 13(4) [Bill 128 (2017–19)]).

160 See Taxation (Cross-border Trade) Bill, Schedule 4, clause 25 [Bill 128 (2017–19)]

161 Q 59 [Daniel Moulis]

162 Q 106 [Cliff Stevenson]

163 Q 59 [Daniel Moulis]

164 Q 108

165 Which? (TRA0002), para 5

repeated by the Secretary of State."[166] Conversely, George Peretz QC said it was "wrong in principle" for the TRA "to call the remedy to a halt on an economic interest test". While he agreed that "it may be right for the TRA to be able to give its view on economic interest to the Secretary of State", Mr Peretz QC concluded that it is not "an appropriate decision for a bureaucrat to be asked to make, because it is a political decision."[167]

63. **In a highly politicised area such as trade defence, separating politics from decision-making can be challenging. However, the credibility of the TRA depends on its ability to perform its functions independently, free from political interference. This principle is inviolable. It is imperative that the Government maintains its commitment that the TRA will be an independent, arm's-length body, and ensures a clear separation of powers between the Secretary of State and the TRA.**

64. **The TRA's independence must be carefully guarded. The Trade Bill, for example, permits the Secretary of State to request assistance from the TRA and publish guidance as to how it is to perform its functions, including conducting trade defence investigations. These functions are conditioned on the Secretary of State having regard to the TRA's operational independence. Yet, we agree with the evidence we heard that the duty 'to have regard to' is a phrase which, legally, is difficult to pin down. In our view, this duty provides insufficient guarantees of the independence of the TRA. *Accordingly, the Government should publish guidelines for the Secretary of State to consider which clearly outline the factors which characterise the TRA's operational independence. In issuing a direction to the TRA or publishing guidance, the Secretary of State should also publish a written summary outlining how he or she took into account the TRA's operational independence. This requirement should be reflected on the face of the Trade Bill.***

65. **The issues of independence and separation of powers are particularly germane to trade defence investigations. The Customs Bill essentially divides the roles of the TRA and the Secretary of State into investigating and recommending the imposition of measures, and deciding to impose measures, respectively. Reasonable minds may differ as to whether politicians should be involved in decisions to impose trade defence measures. Accepting that the Government has resolved to involve the Secretary of State, it is critical that the technocratic functions of the TRA and the political functions of the Secretary of State are clearly separated. In our view, the Government has failed to maintain this distinction insofar as it requires the TRA to apply an economic interest test when considering whether to recommend the imposition of trade defence measures. While the TRA could well express a view on the economic interest, it is wrong in principle for it to decline to recommend a measure on this basis as doing so involves making an essentially political decision. Extracting the TRA from this consideration will make it easier for the body to perform its functions independently, and therefore credibly. *Accordingly, the Government should amend the Customs Bill to remove the obligation on the TRA to apply the economic interest test proposed in the Bill.***

166 Q 106 [Dr Laura Cohen]
167 Q 59 [George Peretz QC]

5 Transparency and Review

Background

66. In this chapter we consider issues of transparency and review. In particular, we consider whether the Bills provide adequate guarantees of transparency in the TRA and / or Secretary of State's decision-making processes, and ensure that such decisions can be adequately reviewed on appeal.

Transparency

67. Transparency in public decision-making is a complex issue. Decision-makers must consider "the interests of the people who are often providing very confidential information" and balance those interests "against the interests of the other side in challenging that".[168] With respect to transparency in trade defence, we heard that there has been "real progress at the EU level and for trade unions across Europe".[169] Rosa Crawford, Trades Union Congress, said that the EU's trade defence system provides "a level of transparency and democratic accountability whereby the European Parliament has a say in those trade remedies that are put forward by the Commission".[170]

68. As the UK establishes its own trade defence regime, we heard that the "integrity and credibility" of the regime depends on the openness and transparency with which decisions are made.[171] Bernardine Adkins told us that issues relating to what "was or was not in the public interest … are going to be hotly contested". Ms Adkins added that "[s]unlight is the best disinfectant", and that it "is really important that these things are aired openly, because someone is going to be disaffected."[172] Which? similarly said that "[t]ransparency is key to ensuring confidence, showing that the body is operating independently and assuring confidence in its decision-making."[173]

69. Witnesses identified several areas in the Bills in respect of which transparency could be improved. First, witnesses noted that several key concepts were missing from primary legislation and that including such concepts was "in the interests of transparency" as they "limit the discretion of the authorities".[174] Edwin Vermulst told us that "[s]ales below cost is a type of dumping that occurs very frequently, but in your Bill it is not addressed."[175] Bernard O'Connor similarly told us that the rules which ordinarily govern "a classically administrative law process", such as the investigation and imposition of TDMs, were missing. Such rules include "[those] to show that there is dumping or that there is injury". Mr O'Connor said that, "[u]ntil you have [those rules] you cannot have transparency".[176]

168 Q 80 [George Peretz QC]
169 Q 98 [Rosa Crawford]
170 Q 98 [Rosa Crawford]
171 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 50 [Bernardine Adkins]
172 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 50 [Bernardine Adkins]
173 Which? (TRA0002), para 9
174 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 55 [Edwin Vermulst]
175 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 32 [Edwin Vermulst]
176 Q 82

He also told us that what was "missing is a lot of due process" which is another "classical way in which you ensure that the discretion is exercised in an appropriate manner."[177] Mr Moulis also said that "[a] public record is important", and that "[i]t should be stated in the law itself" rather than regulations.[178]

70. Second, Mr Peretz QC told us that it was important to "encourage the TRA from the outset to be careful and evidence-driven in its approach". One mechanism for doing so is to "ensure that all proposed decisions are subject to thorough review by senior officials not previously involved in the case." According to Mr Peretz QC, this approach "encourage[s] transparency since, in UK appeals (unlike in the EU) there is a strong general duty on the respondent authority to be candid about the reasons for its decision and to disclose relevant information and documents."[179]

71. Third, but related to the issue of due process, Which? told us that the TRA should have "clear procedures for transparency and publication of the assessments that underpin its advice, including how it has balanced consumer [interests]".[180] They suggested such procedures could include a "requirement to report annually on its work and its assessment of the impact on consumers (as in the case of the Competition and Markets Authority for exampe)."[181] Which? further said that the "[Customs] Bill should be more explicit that a full and transparent [TRA] assessment needs to be published, so that it is clear how the TRA has reached its decisions".[182]

Appeals

72. Under WTO law, Member States must have a system for appeals against decisions to impose TDMs.[183] For example, Article 13 of the WTO Anti-Dumping Agreement provides that parties must "maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of [decisions to impose anti-dumping duty]."[184] Neither Bill contains provisions detailing the UK's future appeals mechanism for TDMs. The Customs Bill merely confers the power to make regulations for, or in connection with, the review or appeal of decisions made by the TRA or the Secretary of State.[185]

73. Appeals has been described as an area in respect of which "there is a big hole".[186] George Peretz QC told us that it was "important for anybody taking decisions like these [to] have an adequate and effective appeal mechanism". He said that the Customs Bill is "a blank sheet of paper", and there is very little about what an appeals mechanism will look like, or key issues like "who does it" and "the standard of review".[187] We were also told that it was "constitutionally inappropriate for the Secretary of State, by regulation, to be able to decide [these issues]". Mr Peretz QC said that "questions of who exercises judicial

177 Q 82
178 Q 84
179 George Peretz QC (TRA0005), para 19
180 Which? (TRA0002), para 3
181 Which? (TRA0002), para 9
182 Which? (TRA0002), para 16
183 George Peretz QC (TRA0005), paras 4–5
184 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
185 Taxation (Cross-border Trade) Bill, Schedule 4, clause 30 [Bill 128 (2017–19)]
186 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 38 [Bernardine Adkins]
187 Q 80

power over the executive and what type of judicial power is exercised are, as a matter of principle, ones for Parliament to decide in primary legislation".[188] Accordingly, he said that paragraph 30(b), Schedule 4 of the Customs Bill should be "replaced by a provision setting out which court or tribunal should hear appeals, and what the standard of review should be in relation to the different types of decision that can be made under Schedule 4".[189]

Nature of appeals mechanisms

74. The nature of appeals mechanisms varies as between different trade remedies bodies. In Australia, certain decisions of the Minister and the Anti-Dumping Commissioner are subject to administrative review by the Anti-Dumping Review Panel. Once the Panel has reviewed the Minister's decision, it provides recommendations to the Minister regarding reconsideration. Decisions of the Minister after considering a report of the Panel are then appealable to the Federal Court of Australia by way of judicial review.[190] By contrast, decisions of the European Commission regarding TDMs may be subject to judicial review by the Court of First Instance and the European Court of Justice.[191]

75. Witnesses told us that the UK effectively has two choices as to the nature of its appeals mechanism: "an administrative court" or "a specialist tribunal",[192] although there is a possibility of different decisions going to an administrative court and others to a tribunal (see below).[193] Dr Cohen said that what UK industry wanted was "a low-cost, easy appeal process like the Australian anti-dumping review panel."[194] In a similar vein, two witnesses told us that the UK should use a specialist tribunal rather than the Administrative Court for its appeals mechanism. Ms Adkins said that the Government should "either expand the competence of the Competition Appeals Tribunal or create something akin to the Competition Appeals Tribunal."[195] For her, the Competition Appeals Tribunal was a beneficial model as it "follows European Court style rules, which means it moves very quickly", is "depoliticised", and is comprised of cross-disciplinary experts, including "a judge, an economist and an accountant … who have the capability to understand this data and these analyses that go through".[196] By contrast, Ms Adkins told us that the administrative court system provided a "very narrow window to have check and oversight of [relevant] decisions".[197]

188 George Peretz QC (TRA0005), para 10. See also Law Society of Scotland (TRA0007), pp 4–5.
189 George Peretz QC (TRA0005), para 11
190 Anti-Dumping Commission, Australia's Anti-Dumping and Countervailing (anti-subsidy) System, 18 August 2014; Anti-Dumping Commission, Understanding the Anti-Dumping Review Panel Process, June 2013.
191 Mayer, Brown, Rowe & Maw LLP, Evaluation of EC Trade Defence Instruments: Final Report, December 2005, Annex 1, pp 5, 40
192 See, for example, Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 38 [Bernardine Adkins]
193 George Peretz QC, Briefing Paper: The Government's proposed legislation for trade remedies, UK Trade Forum, 22 January 2018
194 Q 104
195 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 38 [Bernardine Adkins]. See also UK Steel, UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View report, April 2017, p 7 ("The WTO agreements stipulate that AD and CVD decisions can be appealable. The US has a specialist Court of International Trade for this purpose. We do not suggest this degree of specialism is necessary for the UK. The number of cases is likely to be far lower, so the costs of establishing a specialist court are unlikely to be justified. Instead it is suggested that an existing tribunal could perhaps be used, such as the Competition Appeals Tribunal – subject of course to subsequent appeal to higher courts.")
196 Qq 38–9
197 Q 38

76. Mr Peretz QC agreed that a specialist tribunal was the preferable model as it "allows the tribunal rapidly to build up expertise in a specialist area".[198] However, instead of establishing a new tribunal, he told us that decisions should be appealable to the "Upper Tribunal [Tax and Chancery Chamber] with some specialist members".[199] For Mr Peretz QC, appealing decisions to the Upper Tribunal, which presently hears appeals in customs duties cases, has "obvious advantages in terms of consistency and the development of expertise [as] … cases [will be] dealt with by the same tribunal".[200] He further added that "British courts … have a lot of experience in dealing with regulatory appeals and have a history of digging and scrutinising them quite carefully."[201] Accordingly, Mr Peretz QC concluded that:

> [A] strong system of appeals, culminating in a carefully-reasoned and thorough decision by a senior English or Scottish Judge who has impartially heard and considered all the evidence, is (where a decision to impose ADD is upheld) likely to be of considerable help to the United Kingdom when there is a challenge to that decision in the WTO disputes system. Any WTO Panel is likely to find such a judgment more persuasive than a decision at administrative level: and any decision that has been tested in, and passed, a thorough domestic appellate process is likely to be able withstand scrutiny at WTO level.[202]

77. While not addressing this issue in detail in oral evidence,[203] Greg Hands subsequently wrote to the Committee and told us that the Government intended to have independent review procedures in place for all TDMs (anti-dumping, anti-subsidy and safeguards). He further said that, while the Government was still determining whether TRA decisions would initially be subject to reconsideration (administrative review), the Government's intention was that "interested parties will ultimately have the right of appeal to the Upper Tribunal, in respect of any decisions made by the TRA." He further said that "[w]e are clear … that challenges against decisions by the Secretary of State will be directly appealable to the Upper Tribunal."[204]

Standard of review

78. The second issue we heard about regarding an appeals mechanism was the standard of review the relevant body would engage in. Witnesses highlighted two possible standards: judicial review and on-the-merits review. Judicial review enables a court to review the lawfulness of a decision or action of a public body. Judicial review is not concerned with whether the 'right' decision was reached but with whether the law has been correctly applied, and the proper procedures have been followed.[205] Conversely, merits review involves an examination of "whether a decision is substantively correct, after consideration of all

198 George Peretz QC, Briefing Paper: The Government's proposed legislation for trade remedies, UK Trade Forum, 22 January 2018
199 Q 80
200 George Peretz QC (TRA0005), para 13
201 Q 80
202 George Peretz QC (TRA0005), para 20
203 See Qq 39–41
204 Rt Hon Greg Hands (TRA0006)
205 See Public Law Project, An Introduction to Judicial Review, 26 June 2013, p 1; Ian David Turner, "Judicial Review, Irrationality and the Review of Merits", *The Nottingham Law Journal*, vol 15(2) (2006), p 37; House of Commons Library, "Judicial Review: A short guide to claims in the Administrative Court", Research Paper 06/44, 28 September 2006, pp 7–8.

relevant issues of law, fact, policy and discretion".[206] This effectively requires the relevant body to "stand[] in the shoes" of the decision-maker and "come up with a decision that is the correct or preferable decision".[207] We were told that, in some instances, both standards of review can be incorporated as part of the appeals process. For example, in Australia there is "a review system to an anti-dumping review panel, which is a merits review […] [and] [t]here is legal review as an option as well after that […] [which is] a codified system of administrative review in the courts".[208]

79. Witnesses primarily advocated the adoption of a merits review process for decisions regarding TDMs. Bernardine Adkins told us that the UK "will end up with a much better product" if a tribunal engages in "a full-blown, on-the-merits inquiry to test the thinking and the analyses that the inquiry does."[209] George Peretz QC agreed that "TRA decisions on the existence and extent of dumping, and the existence and extent of domestic injury, should be subject to merits review."[210] Noting section 195(2) of the Communications Act 2003,[211] he argued that merits review was preferable as: (i) significant factual errors and failures of analysis can be corrected more easily; (ii) errors can be corrected and a fresh decision taken without resubmission for reconsideration; (iii) it is appropriate for a court to review technical and regulatory decisions (for example, existence and extent of dumping); and (iv) existing tribunals with similar powers are cautious not to allow merits review to transform into a re-trial of the regulator's decision but instead focus on specific criticisms of the decision made by the appellant.[212] With respect to the issue of reconsideration, Daniel Moulis added that he was "not sure whether reconsideration ever really works [because] [i]t is hard for an institution to say, 'Oh yes, we got it wrong'."[213]

Appealable decisions

80. Finally, we heard evidence regarding which decisions of the TRA and Secretary of State should be appealable. Absent any explicit statutory provision to the contrary, decisions of both the TRA and Secretary of State in exercise of their duties will be challengeable by judicial review in the Administrative Court.[214] However, we were told that it some instances decisions of regulatory bodies and Ministers are appealable to a specialist tribunal and other decisions to the Administrative Court. George Peretz QC told us that having different avenues of review in respect of different kinds of decisions "leads only to procedural problems when various appeals are made against different decisions in the same procedure, and ultimately pointless arguments about whether a particular decision falls into one category or another".[215] He told us that the better approach was

206 See Michael Asimow and Jeffrey S Lubbers, "The Merits of "Merits Review": a comparative look at the Australian Administrative Appeals Tribunal", *AIAL Forum*, vol 67 (2011), p 59
207 Q 45 [Daniel Moulis]
208 Q 45 [Daniel Moulis]
209 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 38 [Bernardine Adkins]
210 George Peretz QC (TRA0005), para 15
211 This provision provides: "The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal".
212 George Peretz QC (TRA0005), para 16
213 Q 84 [Daniel Moulis]
214 George Peretz QC (TRA0005), para 7
215 George Peretz QC (TRA0005), para 12

for "all decisions of the TRA or Secretary of State under Schedule 4 [to be] appealable to whichever court or tribunal is thought to be appropriate to deal with appeals against decisions to impose [TDMs]".[216]

81. In addition, Mr Peretz QC told us that, while not required by WTO rules, it seemed "fair that domestic complainants that fail to secure the imposition of TDMs (or wish to argue that it should be higher) should have the same rights of appeal as importers appealing against the imposition of TDMs."[217] As such, on this view, decisions to impose, not impose or decline to investigate TDMs would be appealable to one appellate body.

82. **The integrity and credibility of the UK's future trade regime depends on the quality and fairness of the decisions it makes. Openness and transparency are both important in ensuring confidence in decision making, and to avoid unnecessary dispute settlement proceedings at the World Trade Organization. Failure to reflect this could have international ramifications for the UK, including making it more likely that decisions of the TRA will be subject to dispute settlement proceedings at the World Trade Organization. We have heard about several key areas for improvement in the Trade and Customs Bills with respect to the transparency of decision-making. One critical issue is the lack of clarity around how the TRA is to calculate the existence of both dumping and injury. *The Department should accordingly publish detailed guidelines as to how these assessments are to be undertaken to ensure maximum transparency of the UK's future trade defence regime.***

83. **Further to this, it is paramount that the TRA is a body of public record. *The TRA should publish a written summary of its advice to the Secretary of State outlining its reasons for recommending, or declining to recommend, the imposition of measures. In the event that the TRA is still bound to apply an economic interest test, it should provide additional details outlining its assessment of the economic interest and how it determined whether the imposition of measures served or detracted from the UK's economic interest.***

84. **The appeals process is an aspect of trade defence in respect of which legislation is both required, as a matter of law, and comparatively simple. In these circumstances, it is troubling and perplexing that the Government included nothing of substance in either the Trade or Customs Bills about the future appeals mechanism for decisions of the TRA and / or Secretary of State. We appreciate the indication we received from the Minister that there will be some form of appeal from decisions of both the TRA and Secretary of State to the Upper Tribunal. However, it is constitutionally inappropriate for Ministers to determine such a mechanism in regulations without parliamentary scrutiny; questions of who exercises judicial power over the executive and what type of judicial power is exercised are ones for Parliament to decide in primary legislation.**

85. ***In these circumstances, the Government should amend the Trade and / or Customs Bills to provide a right of appeal from decisions of the TRA and Secretary of State to a specialist tribunal, such as the Upper Tribunal sitting with some specialist members. Appeals should be determined 'on the merits', with all decisions being appealable,***

216 George Peretz QC (TRA0005), para 12
217 George Peretz QC (TRA0005), para 14

including decisions not to investigate or impose trade defence measures. The Government should have regard to comparable legislative provisions on appeals, such as sections 192 and 195 of the Communications Act 2003, in legislating for an appellate mechanism.

Conclusions and recommendations

An Overview of Trade Defence

1. Establishing a trade defence regime is critical to protect UK domestic industries from injury from adverse trading practices. The Trade and Customs Bills are important, necessary steps in this respect, and we welcome the Government's attention to this subject. (Paragraph 16)

2. The Bills do not yet have sufficient detail pertaining to the UK's future trade defence framework. *The Government should write to us outlining how it consulted with affected and interested industries before publishing the Trade and Customs Bills. The Government should ensure that Parliament has adequate opportunity to scrutinise trade defence regulations. The Government should set out why it believes that the negative procedure is preferable for scrutiny of trade defence regulations.* (Paragraph 17)

Capacity and Delivery

3. The TRA is a vital aspect of the architecture of the UK's future trade policy. With less than 12 months before the UK leaves the EU, it is crucial that the TRA is operational by 29 March 2019, and we require urgent assurance that it will be. If the UK does not reach a deal with the EU, the UK must have a trade defence regime in place as of March 2019 or risk UK businesses being damaged. (Paragraph 28)

4. The Department has taken several recent steps to progress the operationality of the TRA, including issuing a Ministerial Direction to expend £8.9 million on the TRA and undertaking a review of the EU's existing trade defence measures. However, in retrospect it ought to have been foreseeable that the establishment of the TRA would be comparatively uncontroversial relative to other matters contained in the Trade Bill. By electing not to establish the TRA in a separate Bill, the Government has created a number of obstacles to meet its stated deadline: the Trade Bill is yet to pass the Commons; no executive TRA members have been appointed; and the TRA has no staff in place or trained. In such circumstances, it is difficult to see how, on any view, the TRA can be fully operational by March 2019. *If the Government is to have any hope of achieving its objectives, it must progress the TRA's establishment as a matter of priority. We request that the Government writes to us with its position on whether it can legally 'grandfather' the EU's existing trade defence measures and how it plans to progress its work on the TRA in the light of that position. Failure to resolve this issue could result in either the TRA undertaking extensive, unnecessary work or the UK being subject to dispute settlement proceedings at the World Trade Organization.* (Paragraph 29)

5. *The Department should write to us with a timeline for the appointment of the Board members to the TRA and how it proposes to have the TRA operational by March 2019. We expect that the Department will report regularly to the National Audit Office on its spending pursuant to the Ministerial Direction.* (Paragraph 30)

TRA Appointments and Structure

6. It is easy to underestimate how contentious trade defence may be. Even where the decision to impose a trade defence measure follows a rigorous process, the consequences of a measure can place the interests of producers, consumers and workers in conflict, as well as having wider economic and diplomatic consequences. Managing these competing demands requires a trade defence regime which is robustly independent, and which protects the interests of the UK economy as a whole. Robust independence can only be ensured through an appointment process which is fair and open, and is seen to be so. There is a strong argument that the TRA's independence would best be ensured by removing the appointment process for TRA Board members from the sole discretion of the Secretary of State. We consider that appointments of the Chair of the TRA should be conditional upon the approval of this Committee, and that this should be set out in statute. *We consider that appointments of the Chair of the TRA should be conditional upon the approval of this Committee, and that this should be set out in statute. We would also expect to conduct a pre-appointment hearing with the proposed candidate for chief executive of the TRA.* (Paragraph 43)

7. We accept that for the TRA to be operational by March 2019, it is necessary to appoint its first Chair as soon as possible and welcome the Secretary of State's announcement that he will do so. However, we note that he is doing so without the statutory authority that would be conferred upon him by the Trade Bill because it is not yet law. *In these circumstances, Parliament must have a say and there is a particularly strong argument for the appointment to be conditional on a resolution of this Committee that it approves the appointment. There may also be an argument for the appointment of the Chair to be for a short, fixed term so that it can be reviewed soon after the Trade Bill receives Royal Assent, although we also recognise that this could have a disruptive effect on the body at a critical time.* (Paragraph 44)

8. Diverse representation is also vital to ensuring that the TRA is viewed, both domestically and internationally, as credible and transparent. In circumstances where the Government has proposed appointing as many as nine TRA Board members, there is a strong case for requiring that some TRA Board members be appointed to represent the interests of particular groups (for example, consumers and trade unions) or that appointees to the TRA have expertise which would enable them to understand one of these groups' interests in detail. *In any event, the Department should publish guidelines as to the independence of the people who are to be appointed.* (Paragraph 45)

9. Compared to trade defence bodies in other jurisdictions, the TRA is very large with up to nine members. We are concerned that this could make decision-making cumbersome. It may also be unduly expensive. *To avoid unnecessary complexity in decision-making which could result from such a large body, the Department should publish clear guidance on the roles of the TRA members in the decision-making process for recommending the imposition of trade defence measures. We further recommend that the Department consider whether it ought to appoint fewer TRA members, at least initially, to progress the operationality of the body. Nine members is a maximum, not a quota.* (Paragraph 46)

10. We consider that, on balance, the proposed 'unified' investigative structure for the TRA is the correct one. While a bifurcated approach may offer benefits in terms of objectivity of decision-making, we do not consider that these benefits outweigh the efficiencies created by a unified approach. This approach must not, however, be used as in such a way as to politicise the decision-making process of the TRA and to compromise its operational independence. (Paragraph 47)

Functions of the TRA

11. In a highly politicised area such as trade defence, separating politics from decision-making can be challenging. However, the credibility of the TRA depends on its ability to perform its functions independently, free from political interference. This principle is inviolable. It is imperative that the Government maintains its commitment that the TRA will be an independent, arm's-length body, and ensures a clear separation of powers between the Secretary of State and the TRA. (Paragraph 63)

12. The TRA's independence must be carefully guarded. The Trade Bill, for example, permits the Secretary of State to request assistance from the TRA and publish guidance as to how it is to perform its functions, including conducting trade defence investigations. These functions are conditioned on the Secretary of State having regard to the TRA's operational independence. Yet, we agree with the evidence we heard that the duty 'to have regard to' is a phrase which, legally, is difficult to pin down. In our view, this duty provides insufficient guarantees of the independence of the TRA. *Accordingly, the Government should publish guidelines for the Secretary of State to consider which clearly outline the factors which characterise the TRA's operational independence. In issuing a direction to the TRA or publishing guidance, the Secretary of State should also publish a written summary outlining how he or she took into account the TRA's operational independence. This requirement should be reflected on the face of the Trade Bill.* (Paragraph 64)

13. The issues of independence and separation of powers are particularly germane to trade defence investigations. The Customs Bill essentially divides the roles of the TRA and the Secretary of State into investigating and recommending the imposition of measures, and deciding to impose measures, respectively. Reasonable minds may differ as to whether politicians should be involved in decisions to impose trade defence measures. Accepting that the Government has resolved to involve the Secretary of State, it is critical that the technocratic functions of the TRA and the political functions of the Secretary of State are clearly separated. In our view, the Government has failed to maintain this distinction insofar as it requires the TRA to apply an economic interest test when considering whether to recommend the imposition of trade defence measures. While the TRA could well express a view on the economic interest, it is wrong in principle for it to decline to recommend a measure on this basis as doing so involves making an essentially political decision. Extracting the TRA from this consideration will make it easier for the body to perform its functions independently, and therefore credibly. *Accordingly, the Government should amend the Customs Bill to remove the obligation on the TRA to apply the economic interest test proposed in the Bill.* (Paragraph 65)

Transparency and Review

14. The integrity and credibility of the UK's future trade regime depends on the quality and fairness of the decisions it makes. Openness and transparency are both important in ensuring confidence in decision making, and to avoid unnecessary dispute settlement proceedings at the World Trade Organization. Failure to reflect this could have international ramifications for the UK, including making it more likely that decisions of the TRA will be subject to dispute settlement proceedings at the World Trade Organization. We have heard about several key areas for improvement in the Trade and Customs Bills with respect to the transparency of decision-making. One critical issue is the lack of clarity around how the TRA is to calculate the existence of both dumping and injury. *The Department should accordingly publish detailed guidelines as to how these assessments are to be undertaken to ensure maximum transparency of the UK's future trade defence regime*. (Paragraph 82)

15. Further to this, it is paramount that the TRA is a body of public record. *The TRA should publish a written summary of its advice to the Secretary of State outlining its reasons for recommending, or declining to recommend, the imposition of measures. In the event that the TRA is still bound to apply an economic interest test, it should provide additional details outlining its assessment of the economic interest and how it determined whether the imposition of measures served or detracted from the UK's economic interest*. (Paragraph 83)

16. The appeals process is an aspect of trade defence in respect of which legislation is both required, as a matter of law, and comparatively simple. In these circumstances, it is troubling and perplexing that the Government included nothing of substance in either the Trade or Customs Bills about the future appeals mechanism for decisions of the TRA and / or Secretary of State. We appreciate the indication we received from the Minister that there will be some form of appeal from decisions of both the TRA and Secretary of State to the Upper Tribunal. However, it is constitutionally inappropriate for Ministers to determine such a mechanism in regulations without parliamentary scrutiny; questions of who exercises judicial power over the executive and what type of judicial power is exercised are ones for Parliament to decide in primary legislation. (Paragraph 84)

17. *In these circumstances, the Government should amend the Trade and / or Customs Bills to provide a right of appeal from decisions of the TRA and Secretary of State to a specialist tribunal, such as the Upper Tribunal sitting with some specialist members. Appeals should be determined 'on the merits', with all decisions being appealable, including decisions not to investigate or impose trade defence measures. The Government should have regard to comparable legislative provisions on appeals, such as sections 192 and 195 of the Communications Act 2003, in legislating for an appellate mechanism* (Paragraph 85)

Formal Minutes

Wednesday 2 May 2018

Members present:

Mr Angus Brendan MacNeil, in the Chair

Mr Nigel Evans	Emma Little Pengelly
Mr Marcus Fysh	Julia Lopez
Mr Ranil Jayawardena	Catherine West
Mr Chris Leslie	Matt Western
Faisal Rashid	

Draft Report (*UK Trade Remedies Authority*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 42 read and agreed to.

Paragraph 43 read.

Amendment proposed, to leave out from "be so." to the end of the paragraph, and insert "Consideration should be given to the constructive role the committee can give in the scrutinising of prospective appointees including the proposed candidate for Chief Executive of the TRA". (*Emma Little Pengelly*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Marcus Fysh	Mr Chris Leslie
Mr Ranil Jayawardena	Faisal Rashid
Emma Little Pengelly	Catherine West
Julia Lopez	Matt Western

Whereupon the Chair declared himself with the Noes.

Question accordingly negatived.

Question put, That paragraph 43 stand part of the Report.

The Committee divided.

Ayes, 5	Noes, 2
Mr Marcus Fysh	Mr Ranil Jayawardena
Mr Chris Leslie	Emma Little Pengelly
Faisal Rashid	
Catherine West	
Matt Western	

Paragraph accordingly agreed to.

Paragraph 44 read.

Amendment proposed, to leave out "In these circumstances, Parliament must have a say and there is a particularly strong argument for the appointment to be conditional on a resolution of this Committee that it approves the appointment." (*Mr Ranil Jayawardena*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 2	Noes, 4
Mr Ranil Jayawardena	Mr Chris Leslie
Emma Little Pengelly	Faisal Rashid
	Catherine West
	Matt Western

Question accordingly negatived.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 5	Noes, 2
Mr Marcus Fysh	Mr Ranil Jayawardena
Mr Chris Leslie	Emma Little Pengelly
Faisal Rashid	
Catherine West	
Matt Western	

Paragraph accordingly agreed to.

Paragraphs 45 to 63 read and agreed to.

Paragraph 64 read.

Amendment proposed, to leave out "In our view, this duty provides insufficient guarantees of the independence of the TRA." (*Mr Ranil Jayawardena*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Marcus Fysh	Mr Chris Leslie
Mr Ranil Jayawardena	Faisal Rashid
Emma Little Pengelly	Catherine West
Julia Lopez	Matt Western

Whereupon the Chair declared himself with the Noes.

Question accordingly negatived.

Amendment proposed, to leave out "This requirement should be reflected on the face of the Trade Bill." (*Mr Ranil Jayawardena*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Marcus Fysh	Mr Chris Leslie
Mr Ranil Jayawardena	Faisal Rashid
Emma Little Pengelly	Catherine West
Julia Lopez	Matt Western

Whereupon the Chair declared himself with the Noes.

Question accordingly negatived.

Question put, That paragraph 64 stand part of the Report.

The Committee divided.

Ayes, 4	Noes, 4
Mr Chris Leslie	Mr Marcus Fysh
Faisal Rashid	Mr Ranil Jayawardena
Catherine West	Emma Little Pengelly
Matt Western	Julia Lopez

Whereupon the Chair declared himself with the Ayes.

Paragraph accordingly agreed to.

Paragraph 65 read.

Amendment proposed, to leave out "In our view, the Government has failed to maintain this distinction insofar as it requires the TRA to apply an economic interest test when considering whether to recommend the imposition of trade defence measures." (*Mr Ranil Jayawardena*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Marcus Fysh	Mr Chris Leslie
Mr Ranil Jayawardena	Faisal Rashid
Emma Little Pengelly	Catherine West
Julia Lopez	Matt Western

Whereupon the Chair declared himself with the Noes.

Question accordingly negatived.

Amendment proposed, to leave out "Accordingly, the Government should amend the Customs Bill to remove the obligation on the TRA to apply the economic interest test proposed in the Bill." (*Mr Ranil Jayawardena*).

Question put, That the amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Marcus Fysh	Mr Chris Leslie
Mr Ranil Jayawardena	Faisal Rashid
Emma Little Pengelly	Catherine West
Julia Lopez	Matt Western

Whereupon the Chair declared himself with the Noes.

Question accordingly negatived.

Question put, That paragraph 65 stand part of the Report.

The Committee divided.

Ayes, 4	Noes, 4
Mr Chris Leslie	Mr Marcus Fysh
Faisal Rashid	Mr Ranil Jayawardena
Catherine West	Emma Little Pengelly
Matt Western	Julia Lopez

Whereupon the Chair declared himself with the Ayes.

Paragraph accordingly agreed to.

Paragraphs 66 to 83 read and agreed to.

Paragraphs 84 to 85 read.

Question put, That the paragraphs stand part of the Report.

The Committee divided.

Ayes, 5	Noes, 3
Mr Marcus Fysh	Mr Ranil Jayawardena
Mr Chris Leslie	Emma Little Pengelly
Faisal Rashid	Julia Lopez
Catherine West	
Matt Western	

Paragraphs accordingly agreed to.

Summary agreed to.

Question put, That the Report be the Third Report of the Committee to the House.

The Committee divided.

Ayes, 5	Noes, 1
Mr Marcus Fysh	Mr Ranil Jayawardena
Mr Chris Leslie	
Faisal Rashid	
Catherine West	
Matt Western	

Question accordingly agreed to.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 9 May at 9.30 am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 7 March 2018

Question number

Rt Hon Greg Hands, Minister of State for Trade Policy, Department for International Trade. Q1–41

Wednesday 14 March 2018

George Peretz QC, Barrister at Monckton Chambers, London, **Bernard O'Connor**, Managing Partner, Nctm, Brussels, and **Daniel Moulis**, Founder and Principal of Moulis Legal, Australia. Q42–95

Laura Cohen, Chief Executive, British Ceramic Confederation, **Cliff Stevenson**, Consultant to Trade Remedies Alliance, and **Rosa Crawford**, Policy Officer, EU International Relations, TUC. Q96–109

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

TRA numbers are generated by the evidence processing system and so may not be complete.

1 British Ceramic Confederation (TRA0004)

2 DIT (TRA0003)

3 George Peretz QC (TRA0005)

4 Law Society of Scotland (TRA0007)

5 Manufacturing Trade Remedies Alliance (TRA0001)

6 Rt Hon Greg Hands (TRA0006)

7 Which? (TRA0002)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Continuing application of EU trade agreements after Brexit	HC 520
Second Report	UK-US Trade Relations	HC 481
First Special Report	UK trade options beyond 2019: Government Response to the Committee's First Report of Session 2016–17	HC 585