

# International Trade Committee

## Oral evidence: UK Trade Remedies Authority, HC 743i

Wednesday 7 March 2018

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Watch the meeting

Members present: Angus Brendan MacNeil (Chair); Mr Marcus Fysh; Mr Ranil Jayawardena; Mr Chris Leslie; Emma Little Pengelly; Julia Lopez; Faisal Rashid; Catherine West; Matt Western.

Questions 1-41

### Witness

**I:** Rt Hon Greg Hands, Minister of State for Trade Policy, Department for International Trade.

Written evidence from witnesses:

- Rt Hon Greg Hands

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/uk-trade-remedies-authority/written/79291.html>

## Examination of witness

Witness: Greg Hands.

**Q1 Chair:** Good morning, Minister. Thank you very much for coming. We are always delighted when you are present at the Committee: the more often, the better as far as we are concerned. We have two inquiries to discuss today. We will start with questions about the Trade Remedies Authority, mainly, and then we will move on to the US-UK trade inquiry. I will indicate when we switch over.

I understand you have a short statement on each inquiry, Minister. Please read the first statement and I will ask you to make the second when we start our questions on US-UK trade. First, the Trade Remedies Authority.

**Greg Hands:** Thank you, Mr Chairman. With the permission of the Committee, I would like to make a brief opening statement. This session of the Committee concerns the new UK Trade Remedies Authority, sometimes known as the TRA, that is being established by the Department for International Trade. As the Committee is already aware, the UK trade remedies regime is being legislated for by two Bills. The Trade Bill will establish the TRA as a new non-departmental public body. The Taxation (Cross-border Trade) Bill sets out the trade remedies framework that the TRA will be responsible for delivering, including the role of the Secretary of State. Let me explain why this body is so important to the UK's future independent trade policy.

The World Trade Organisation, the WTO, allows its members to provide a safety net to protect domestic industries against injury caused by unfair trading practices, such as dumping and subsidies, and unforeseen surges in imports. The safety net usually takes the form of an increase of duty on imports of specific products following an investigation. These are known as trade remedy measures.

Trade remedy measures are key to ensuring an effective rules-based system for international trade. They do so by levelling the playing field and restoring the competitive balance. The European Commission is currently responsible for undertaking trade remedies investigations and imposing measures on behalf of the UK. Once we leave the EU we may no longer be part of this process. That is why we are creating the Trade Remedies Authority to ensure that the UK can continue to provide a safety net to domestic industries after the UK has left the EU.

Specifically, the TRA will be responsible for making an assessment in a case for a trade remedy measure based on the evidence available. It will then make impartial recommendations to Ministers. This impartiality is vital. Decisions on trade remedies cases can have material impacts on markets. That is why we need to create an independent and objective investigation process that businesses can have full confidence in.

Our assessment of other countries' trade remedies systems revealed that it is common to have elements of the investigation process delivered by authorities that are independent of the Executive. That is why we are setting up this function as a non-departmental public body to ensure that the TRA has the appropriate degree of separation from the Department for International Trade.

The TRA will have full autonomy to conduct trade remedies investigations based on the framework set out in the Taxation (Cross-border Trade) Bill. This framework also sets out the role of the Secretary of State in making a final decision on whether to accept or reject the TRA's recommendations to apply measures. That is needed to provide an opportunity for the Secretary of State to intervene in exceptional cases, if the measures are not in the wider interest, for example, where there are national security issues. This final step is a common factor in other trade remedies systems, where the final decision to apply measures is typically made by Government Ministers.

In conclusion, a UK-specific trade remedies system, which aligns with the WTO agreements, will ensure that we are able to apply measures that are calculated on the basis of the UK market and reflect our specific market conditions and interests. The creation of the TRA will ensure that the UK can continue to provide a safety net to domestic industries by the time the UK leaves the EU.

**Q2 Chair:** Thank you very much, Minister. What progress has the Department made in recruiting staff for the Trade Remedies Authority, and how many will you need by March 2019? I am further reminded that, when it comes to trade negotiators, they need about 10 years, they say, to be at the top of their game. What sort of level of experience do you look for the TRA staff to have? Will you get some from other countries? Effectively, what is the state of play?

**Greg Hands:** It is still obviously very early days in the life of the body. Both Bills are still on their passage through the Commons. Obviously, the Trade Bill, which establishes the authority, is yet to begin its passage through the Lords. However, we are giving consideration to these questions.

We are expecting funding for the authority to be agreed shortly by HM Treasury. Our estimates for the cost of the authority, in the explanatory notes to the Bill, are around £15 million to £20 million per annum. 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.

Obviously, a lot of those decisions will be operational decisions for the Trade Remedies Authority, the chair and chief executive. We are looking forward to recruiting people. We think there is a good body of expertise in the UK in this space, although obviously there are very few people currently engaged in the UK on trade remedies, because it is a European Commission competence.

- Q3 **Chair:** In the next week, the interesting character who is currently President of the United States is planning to put tariffs on steel at 25% and aluminium at 10%. How do you envisage the Trade Remedies Authority operating in such an environment?

**Greg Hands:** First, let me say we are very disappointed by the President's apparent intention to do that. We await something more concrete as to what might actually happen, as opposed to what is being tweeted about. I know we had a very interesting discussion last time about Twitter feeds and the President certainly has one of the more interesting Twitter feeds, if I may say so.

**Mr Leslie:** Second to yours.

**Greg Hands:** I am not going to get drawn by Mr Leslie as to the parallels with mine, although thank you for the retweet over the weekend, Mr Chairman, on a matter totally unrelated to trade.

In terms of our Trade Remedies Authority, we are clear that we have looked at best practice internationally. We have looked at the Canadian, Australian and indeed the EU systems, and I think our system, being an arm's length independent body but none the less with a final ministerial say so, is the right balance. There will be a Minister at the end of it who is accountable to Parliament, if the Secretary of State overrides the recommendation of the TRA.

- Q4 **Chair:** Being accountable to Parliament is one thing but will it have the muscle to worry Mr Trump like the European Union might have?

**Greg Hands:** I think that is not necessarily the right way of looking at a Trade Remedies Authority. A Trade Remedies Authority is not there to get involved in some kind of wider political-style interaction with a foreign country. It is there to do the technical assessment of whether dumping has happened and what degree of injury has been caused. So the right question is whether that authority will have the right degree of technical expertise, the right people working for it and be set up in the right way to be able to carry out its functions properly.

- Q5 **Catherine West:** What role does the Minister see for trade unions, charities, the third sector and other groups in relation to the future TRA?

**Greg Hands:** The TRA is set up to respond to a wide variety of stakeholders. It is important that those who are making the decision or the recommendation should be independent of interest groups, whether they be consumer groups, producer groups or particular parts or regions of the UK and other stakeholders. I think the expectation is that the TRA will accept evidence primarily from businesses that will feel that they have



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been injured by the trade practices of a foreign power, but we would of course expect the TRA to be in listening mode when it comes to other stakeholders.

- Q6 **Matt Western:** Sorry, Minister, but are you are saying that you see the body being totally independent of those groups—the sector bodies and so on? Is that what you just said?

**Greg Hands:** I see it as operating independently from everybody. It may be that those appointed to it will 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. That is what I mean by operational independence. We would expect those in the Trade Remedies Authority to have an expertise in the sector and know something about the sector, but they will not per se be answerable to particular parties or players within a trade remedies dispute.

- Q7 **Chair:** But if appointing them seems to taint them, as you are somehow indicating there, who can do the appointing? Surely anyone appointed will be tainted, under that logic?

**Greg Hands:** If I recall correctly—it is laid out in the Bill—the Secretary of State appoints the chair and the chair then appoints the chief executive. The Secretary of State also appoints the other non-executives, but the body is then appointed by the chief executive on the TRA. The appointments follow pretty standard practice. They will follow the ministerial guide for appointments. Obviously the Secretary of State is ultimately answerable to Parliament. It is important that those appointments are made independently and are seen to be independent.

- Q8 **Matt Western:** Thinking back to the evidence sessions that we had on the Trade Bill, clearly the various bodies we heard from were particularly keen that they did have clear involvement. I know they would say that, wouldn't they, but I thought that was fairly well understood from those sessions.

**Greg Hands:** Sorry, what was fairly well understood?

**Matt Western:** Their desire to have involvement in the TRA.

**Greg Hands:** In terms of the appointments or the functioning of the TRA?

**Matt Western:** Involvement in and representation on. Correct me if I am wrong, but it was about hearing from other countries' experiences as well.

**Greg Hands:** I think the right way to do the board of the TRA is to have a panel of experts—people with expertise—rather than feeling beholden to one group or another. I think that is the right way of ensuring that it is truly independent. We want people who will take a UK-wide view of the issue, people who will also take not only a producer interest and people who will not necessarily be beholden either to producer interest or to consumer interest, but who will take a whole view of the problem in front of them.



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Q9 **Chair:** Do you think there are any risks in that sort of hope? It could be a naive hope. If you get a panel that comes from Bristol or London, how could it possibly have a UK-wide view?

**Greg Hands:** We haven't said that the people have to come from any specific part of the UK.

Q10 **Chair:** You are not putting in any safeguards for the breadth of the UK; you are just hoping that they will have a UK-wide view. How you will determine a UK-wide view, I don't know, but you seem to think there is a need. It seems a tad naive just to hope that people will have a UK-wide view without actually ensuring that they do.

**Greg Hands:** I think the appointments would conform with standard practice for appointments to non-departmental bodies. There would be an expectation that—

Q11 **Chair:** Is it not more serious than a normal non-department body? Is this just a bland organisation or are we talking about something quite serious that will be UK-wide?

**Greg Hands:** In terms of where people come from, I would expect the chair and the chief executive to ensure that there is diversity on the board, in the same way that we would expect most boards to be diverse—

Q12 **Chair:** That is a hope from Government. Why don't Government move on from "hope" to "ensuring"? Surely if you are in government you don't just hope; you ensure.

**Greg Hands:** With a relatively small board, Chair, it would be very difficult to ensure that all of the different parameters of diversity in this question could be properly accounted for.

Q13 **Chair:** So we don't try and account for any of them?

**Greg Hands:** That will best be done by the chair and the chief executive in those appointments, to ensure that there is a properly diverse board. Most importantly, they must make sure that the people appointed are experts in the field—that is the most important consideration.

Q14 **Mr Fysh:** Good morning, Minister. After we leave the European Union, if we are in some kind of customs union with the EU, what ability will we have to remedy unfair trade practices that the rest of the world might come up with?

**Greg Hands:** There are probably two parts to that question. We are totally opposed to being in a customs union with the European Union, and I think you are right that the ability to have a properly functioning Trade Remedies Authority would be much circumscribed. Turkey has a trade remedies authority, to the best of my knowledge, so clearly it is possible while being in some kind of a partial customs union with the European Union.

It is very much our view that during the implementation period, if we are still in a customs arrangement of sorts with the EU, it will probably make

sense for the EU to do our trade remedies, so long as we have a proper say in that authority and in the decision-making process, so that the UK or UK interests are effectively represented in that body.

- Q15 **Mr Fysh:** After the implementation period, what appetite do you think the EU would have to include us in their consideration of what their trade remedies should be, and how much could that be tailored for the needs of our economy?

**Greg Hands:** After the implementation period we will be entirely independent when it comes to trade remedies. We need the Trade Remedies Authority set up for 29 March 2019. How it operates during the implementation period is a matter that doesn't have 100% clarity, because it depends on the terms of the implementation period. Obviously, during the implementation period we would not do anything that is contrary to the agreed terms of the implementation period, and neither would the Trade Remedies Authority. But after the implementation period is over, the UK will clearly have an entirely independent Trade Remedies Authority and it will be able to do its own investigations and make its own recommendations, entirely independent of the European Union.

- Q16 **Mr Fysh:** Can I just confirm, though, that if we were in a customs union with the EU, we would not have that independent control of trade remedies?

**Greg Hands:** If we were subject to the common external tariff, it is hard to imagine how we could have a properly operating UK Trade Remedies Authority, but the assumption is that the common external tariff is not operating; that we are entirely subject to that common external tariff.

- Q17 **Mr Jayawardena:** I have one very quick question, further to earlier questions. Can you just confirm that the Government's intention, through the normal appointments process, is to get the very best people, whoever they are, to join the TRA?

**Greg Hands:** Yes.

- Q18 **Mr Jayawardena:** Thank you. Can you also assure us that, as the Government have said in the past, the TRA will be operational by March 2019?

**Greg Hands:** Yes. It is obviously dependent on the legislation.

- Q19 **Mr Jayawardena:** The Government have previously said March 2019, so that we are ready for the day we leave. Is that still the Government's intention?

**Greg Hands:** Yes, very much so.

- Q20 **Mr Jayawardena:** Thank you. I have one last question. Clearly this is a new thing for us; as you said, it has previously been a European competence. Given that trade remedy investigations are resource-intensive, what negotiations or discussions have we had with other trade remedy bodies around the world—perhaps you or your officials have had them—to better understand the processes that we will need to embed in



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what is a brand new organisation and a new function for us, as we conduct these investigations?

**Greg Hands:** How we have established the Trade Remedies Authority—obviously subject to the legislation passing—has been highly informed by our discussions with trade partners. I mentioned that we had spoken to at least Canada, the EU, the US and Australia when looking at that. In terms of how the future Trade Remedies Authority will inform itself, nobody is currently at the Trade Remedies Authority.

Q21 **Mr Jayawardena:** No, but the Department, in creating it, has been having those discussions.

**Greg Hands:** Absolutely. That has been a crucial part of looking at best practice around the world, in terms of how it will operate.

**Chair:** Excellent.

Q22 **Catherine West:** I have a very quick question about the role of this Committee. George Peretz QC, a UK barrister, has written that the appointment of the TRA members, or at least its chair and CEO, should be subject to the approval of this Committee. Is that your current thinking? Do you agree with that position? Is that still something that you are considering?

**Greg Hands:** We debated this in Committee, if I am not mistaken, and I think the Committee decided not to have that as part of the process.

Q23 **Chair:** Which Committee?

**Mr Leslie:** The Bill Committee.

**Greg Hands:** Yes, the Bill Committee.

**Chair:** Not this Committee.

Q24 **Mr Leslie:** The Bill Committee finished a while back. Why have you not scheduled Report stage yet?

**Greg Hands:** You will know, Chair, the mysteries of parliamentary management. Timetabling is something that would be foolish of me to opine on.

Q25 **Mr Leslie:** But you need the Bill fairly soon to establish the TRA by March 2019, don't you?

**Greg Hands:** We are clear that we need the Trade Remedies Authority set up and operational by March 2019. Precisely when the two Bills will come back for Report stage remains to be seen, but keep an eye out for the announcement of coming business.

Q26 **Mr Leslie:** Would you like it fairly soon?

**Greg Hands:** In a general sense, the Department for International Trade wants to get on with it. This is a key part of our post-Brexit international trade architecture, so of course we would like to get on with it.



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- Q27 **Mr Leslie:** Even though the Committee of the Trade Bill might have dismissed certain issues, on Report all Members of the House get a chance to vote on issues. Obviously, one of the issues is the question about the customs union. I suspect that there is a majority in the Commons in favour of a customs union. That is a very big issue.

On the question about the membership of the TRA, amendments are down for Report stage. You will have seen, Minister, that I have tabled amendments 12 to 15, which are about this Committee having confirmation hearings for those members of the Trade Remedies Authority. In the same way that the Treasury Committee has confirmations for members of the Office for Budget Responsibility, I think it is quite appropriate that this very important set of TRA members should be confirmed by the International Trade Committee. Are you saying that you will resist those again on Report?

**Greg Hands:** What I would say is that that is not a uniform process across different non-departmental bodies and different Select Committees. You quote one example, but there are many examples to the contrary. It is not our intention for there to be hearings for members of the board of the Trade Remedies Authority.

- Q28 **Mr Leslie:** But will you be open-minded on Report? Otherwise, I feel that we should just push those to a vote on the Floor of the House. You might be defeated on that.

**Greg Hands:** If you want to put forward those amendments, obviously the Commons will debate them in the usual way.

- Q29 **Mr Leslie:** Other amendments have been tabled about making sure that the members of the TRA have a mixed party political background, in the same way that the US independent trade commission has a legal obligation to have members from a variety of party political backgrounds. Would you want to see that too?

**Greg Hands:** No, because, as I have already stated, the important point about the body is to get people with the right expertise.

- Q30 **Chair:** Who judges the right expertise? If you have a bias, and you prefer Scottish Nationalist trade negotiators or trade remedies people, you will think that they are the best. If you prefer Conservatives, you will think that they are the best. If you prefer Labour, you will think that they are the best. There is a bias there, and you seem to be resisting the plurality of approach that Mr Leslie is suggesting.

Incidentally, the Committee will look at the people appointed to this; whether statutory or not, we will exercise a right to do that, I am fairly certain. Why resist that plurality of approach?

**Greg Hands:** To be honest, Chair, I am not aware of any such independent non-departmental body having to have a balance between party political affiliations of its membership.

- Q31 **Chair:** Are we not in a new world in which we have taken back control? Let's take some control.



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**Greg Hands:** Let me stress this to you again, Chair: the important thing is that we have people with the right expertise. This will be an evidence-based process.

Q32 **Chair:** But if they have the right expertise you have nothing to fear.

**Greg Hands:** The thing is the right expertise, not necessarily a balance of different party political backgrounds, sectors or different parts of the United Kingdom. The point is to have people who are expert in that field and can make the expert, evidence-based judgment, first, as to whether there has been an instance of dumping or subsidy, and secondly, what the degree of injury is. There won't be a particular Labour or SNP line.

Q33 **Chair:** If the best experts are all German or French, will you appoint them to the TRA?

**Greg Hands:** I will have to check the rules for the appointments to this kind of body, in terms of nationality. I think your original thrust was whether these people should be somehow representative of different interest groups or political parties or different parts of the UK. I think it would be a mistake to go down that road.

Q34 **Mr Leslie:** Chair, can I just finish my questions on this? I was looking very closely at the US statute on their independent trade commission. I recommend that the Minister does so too, because I think that model has a lot to recommend itself. They have very firm statutory requirements for mixed party background. In fact, they have a requirement that the chair alternates between political party affiliations. I am not proposing that, but I think there should be a mix. They say that there should be no conflict of interest with their business, employment or location, and of course they have confirmation arrangements. Will you at least say that you have an open mind on some of these protections and safeguards being written into the Bill?

**Greg Hands:** I don't believe that the idea that the board should represent a diversity of political parties, or have a diversity of party political backgrounds, is a safeguard at all. I see that as people being appointed because of their political background, which would be at odds with the purpose, which is having an evidence-based, expert view on whether a trade remedy is needed and what the degree of injury might be. I have said that we have looked at practice in other bodies. None of the countries we have looked at has precisely the same system. We have tried to look at—

Q35 **Mr Leslie:** As a compromise, would you at least accept that they should disclose their political affiliation and donations, if you were recommending them for appointment?

**Greg Hands:** We will do this in the way that non-departmental bodies are ordinarily appointed. I am not aware that that is part of an ordinary process for appointment to non-departmental bodies.

**Mr Leslie:** It is, actually.



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Q36 **Faisal Rashid:** Minister, I think you are contradicting yourself. How can you ensure independent member appointments, when the chair is being appointed by the Secretary of State, which is political?

**Greg Hands:** Because, as Mr Leslie will know, having been a Minister, there are a lot of safeguards involved in ministerial appointments. Obviously, a Minister is ultimately accountable to Parliament for those decisions. There are a lot of safeguards and there is a very strict code on ministerial appointments to this kind of a body, so I don't see that as being contradictory at all.

Q37 **Matt Western:** Trade lawyer Edwin Vermulst told the Committee that having a trade defence system in which basically, at the end of the day, the Minister makes a decisions becomes very politicised. How do you respond to that?

**Greg Hands:** I think we have set up our system so that there is ultimately a political decision based on an evidence-based investigation. A decision is made by the Secretary of State, who is then accountable to Parliament. However, all the evidence gathering—looking at whether a trade injury has been caused and whether an unfair trade practice has occurred, and the degree of that injury—is assessed independently. Then the Secretary of State makes a decision based on that evidence. That decision will ultimately be accountable, because the Secretary of State is accountable to Parliament. I think that is the right balance between having both an independent assessment and political accountability at the end of the day.

Q38 **Matt Western:** But why should it not simply be down to that body to make the decision, if it is totally independent in the way you just described?

**Greg Hands:** It is also worth stating that the Secretary of State can only decide not to follow the recommendation of imposing a measure; the Secretary of State cannot override the Trade Remedies Authority and say that we are after all going to put in place tariffs or some kind of trade remedy to right the wrong, if the Trade Remedies Authority has not assessed that to be the case. The Secretary of State can only confirm a recommendation to take action; the Secretary of State cannot overturn it if the Trade Remedies Authority recommends no action. We think that is the right balance. The crucial thing to understand is the independence of the investigation vis-à-vis a decision that is politically accountable at the end of the process.

Q39 **Faisal Rashid:** Bernardine Adkins told the Committee during the inquiry that an area of the Trade Bill in which there is a big hole is appeals. What mechanisms will the Government introduce to enable appeals from decisions of the TRA or the Secretary of State regarding trade defence measures?

**Greg Hands:** Thank you for that question. The Government's approach is that these things are done entirely independently, and there shouldn't be a process of appeal for that. Clearly, the Secretary of State will be



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accountable to Parliament and Parliament would still be able to have its say.

Q40 **Faisal Rashid:** So which body will oversee appeals regarding the defence measures?

**Greg Hands:** I am not aware that there is a body to oversee an appeals mechanism.

Q41 **Faisal Rashid:** Will there be? That is the question.

**Greg Hands:** Can I perhaps write to outline in a bit more detail what body there might be that could have a further look?

**Chair:** In the interests of time, that would be welcome.