

International Trade Committee

Oral evidence: UK Trade Remedies Authority, HC 743ii

Wednesday, 14 March 2018

Ordered by the House of Commons to be published on Wednesday, 14 March 2018.

Watch the meeting

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

Questions 42 - 109

Witnesses

I. 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.

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

Examination of witnesses

Witnesses: George Peretz QC, Bernard O'Connor and Daniel Moulis.

Q42 **Chair:** First of all, I apologise to the witnesses. We have had a long private session this morning, probably a record length of private session with a number of things to discuss. It is great to see the witnesses. We appreciate the distance you have travelled, particularly Mr Moulis, and all of you, in fact, to be here this morning. Some we know, we have met before, some we have not met before. For the record, can I ask you to introduce yourselves, starting on my left and your right?

Bernard O'Connor: My name is Bernard O'Connor. I am a lawyer in Brussels, doing a lot of trade defence law.

Daniel Moulis: My name is Daniel Moulis, an Australian lawyer, private lawyer. I have my own firm, Moulis Legal, and I have some experience in the topics of interest to your inquiry.

George Peretz: I am George Peretz, I am a barrister at Monckton Chambers and I specialise in a number of areas, competition and customs, but also a bit of international trade law.

Q43 **Chair:** We have experts from the EU, Australia and the UK here. By way of introduction, could you please provide an overview of the structure and operation of the trade defence systems in your jurisdiction? Is the process similar to what the United States does? I will start with Mr O'Connor.

Bernard O'Connor: The European Union system for doing trade defence investigations is primarily an administrative system, whereby it is the Administration that will gather the information on the basis of a complaint from the complaining industry, the domestic industry, but it is the Administration that then gathers the information and determines whether there is dumping or whether there is injury. It will then take a decision in relation to dumping or injury and whether it is in the interest of the Union to adopt measures and then that decision is appealable to a court of law. It is a very simple administrative system.

The system in the United States is a little more adversarial, whereby the Administration first of all divides its evaluation into injury and into dumping, into two different agencies. You have the Department of Commerce and you have the international trade body. To call it adversarial is maybe a slight exaggeration, but what happens is the complainants and the importers, the lawyers for both sides, sign up to an agreement to treat confidentially all information that they receive. Both sides see the detailed confidential information of the other side.

They are adversarial in terms of what figure should be used to determine whether there is dumping or whether there is injury. The Administration



HOUSE OF COMMONS

steps back and acts as the referee in this process, leading then to a decision. They do not really have a domestic or a political interest test. If 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.

Q44 **Chair:** Thank you. In Australia, Mr Moulis?

Daniel Moulis: It is quite similar to what you see in your own Trade Bill.

Q45 **Chair:** Do you think there has been poaching of ideas going on?

Daniel Moulis: I think there probably has, and it is a good thing too. It is quite similar in terms of its set-up and its administrative investigation, headed up by a commissioner, a statutory officer. There is only one person appointed in that role, who has his or her own staff. The staff members are members of the Department. One contrast I noted, and I do not know if it has any strong relevance, is that the commissioner and the Commission have the privileges and immunities of the Crown, in the light of the Commonwealth, whereas here it is the opposite. Again, I do not know whether that has anything to do with independence, and that might be something that you want to look at.

It is not a board setup or a CEO set-up, it is organised in divisions. One division will look after a particular case or a number of cases. There is a lot of detail to our system, having been operating it for a long time, with time limits for different stages of the investigation. A public record needs to be maintained so that people can make comment and see what other people are saying.

In terms of a comparison with the US, I second what Bernard said, where they have a bifurcated system. They have a different entity, the International Trade Commission looking at the question of injury. They do not have an economic interest test, although I sometimes wonder whether those things are taken into account in the ITC in some way, shape or form when they are looking at injury questions.

We then have a review system to an anti-dumping review panel, which is a merits review. I can talk more about that later. They have to come up with a decision that is the correct or preferable decision. There is legal review as an option as well after that. You have the administrative writs, or the prerogative of writs, we have a codified system of administrative review in the courts, which is not a merits review, of course.

Q46 **Chair:** George Peretz, any reflections on what you have heard?

George Peretz: I have very little to add to what they have said.

Chair: That is good to hear in a Committee that is always running late.

George Peretz: It seemed to be a fair characterisation that the US has a system where the Administration effectively acts as a referee, or that is the fundamental conception. In the European system and I think in the



HOUSE OF COMMONS

system that we see in the Bill, it is a more investigative system with the authority not so much acting as a referee but acting as a traditional government agency, taking a decision that is right in the public interest.

Chair: I think the idea that the Trump Administration might be acting as a referee might be somewhat jarring in people's minds.

Q47 **Matt Western:** Could I open a question to all of you? When we were sitting on the Trade Bill we heard from witnesses that the sorts of trade remedies and investigations are very highly resource intensive. Could you give an overview on what kinds of expertise you would be expecting to be conducting those sorts of investigation and what sort of staffing levels would be required?

Bernard O'Connor: The dumping and injury section of the European Commission is about 136 people. Of those, I would think around 40 are investigators. You need to investigate two issues. You need to investigate dumping and you need to investigate injury. In injury, you need to investigate or you need to essentially request information from the complaining industry and then you need to verify it, which requires a considerable amount of work.

In terms of the dumping, you need to ask questions of the exporting producers, then you need to verify that information in the country of origin. This can take quite a considerable amount of time, particularly if you have many exporting producers who want to get individual margins. You need to take the time to go to that country of origin and spend a day, two days, three days, with each exporter that is sampled. It is very intense work that needs to be done.

Daniel Moulis: It is highly resource intensive with lots of moving parts. I think, reading through your Trade Bill, there is going to need to be competition expertise, there is going to need to be the financial analysis that you always need to have. You are probably going to need to have people who are experts in industry in the broad sense because of your economic interest test and also to some degree the public interest test, which is a superadded test.

In Australia, there are 60 people in the Anti-Dumping Commission, budget currently running about AUS\$15 million per annum. There are proposals to increase that quite significantly, perhaps increase the resources by another 50%, again with the current political sentiment in Australia being quite protectionist. Yes, you do need to send teams into foreign countries to sit down with the company to look through their records. That is an important part of the process. As you can see, there are a lot of moving parts, a lot of people involved and a lot of different specialties.

Q48 **Matt Western:** Sorry, the figure you quoted, was it AUS\$15 million or AUS\$50 million?



Daniel Moulis: AUS\$15 million. At present it is about AUS\$15 million and there are proposals to increase it. It is staff, travel and rent.

George Peretz: I do not have much to add to that. A mix of economic, legal, specialist skills, language skills. I have heard it said that both the United States and, I suspect, Australia have the advantage of having a number of Chinese Australians and Chinese Americans who are fluent in both languages. That may be another issue.

Q49 **Mr Leslie:** We have had a good bit of analysis from you and I want some opinions now about a British approach to this and some of the risks and obstacles that might need to be navigated. My own intuition is that we are entering a new era of quite potentially volatile protectionist activity. We have seen the national security grounds on the American steel arrangements and how that is an area of policy that will be contested.

For a start, having looked at the British proposal in the Trade Bill—March 2019—we still do not have it through the Commons let alone the House of Lords on the legislative front. How concerned should we be about the scale of getting that operation up and running by March 2019 and the regulatory underpinnings, the appeal systems that will be needed, the personnel, or am I worrying unduly?

George Peretz: I think certainly in terms of March 2019 you are clearly right that there is, to put it mildly, a real challenge. As you say, the legislation has to get through and you cannot seriously start appointing people to head the organisation until you have at least the Trade Bill through that sets up the TRA. You have to take time finding the right people, you then have to recruit people.

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". That will all need filling in, it will need exploring, and again that will take time. It will certainly take time to get it right. I think trying to get it done by March 2019 is a pretty tall order.

An analogy with a similar task: if you think about how the original competition regulator was set up to administer the new competition legislation, you had an Act in 1998 and the system did not get up and running until two years later in 2000. That was an instance where you already had an existing regulator that was sort of doing the same job and a large amount of expertise in that area already in London. One of the problems we have is there is not very much trade expertise in London to draw on because we have not been doing it for 40 years.

Daniel Moulis: It is possible. It is a big ask, but I think it is possible. A lot depends on what the opening workload is going to be, and I am not



HOUSE OF COMMONS

clear as to whether you are continuing over the existing anti-dumping measures that are in place in the EU, in other words assuming that they continue to exist here. I am not sure about that.

Q50 **Mr Leslie:** Won't we have to do a lot of that afresh? How can you roll over—

Daniel Moulis: I think you would, because the 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. 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.

Bernard O'Connor: I would like to give you an anecdote. Back in the 1970s when the European Union began to ramp up its use of trade defence remedies, it did not have the skills. It imported skills from the United Kingdom. Two individuals were recruited. Neil Macdonald and Neville Williams were recruited to the Commission basically to train the Commission to do this sort of work.

Chair: Will the Commission repay the favour?

Bernard O'Connor: Negotiations: I do not share Daniel's view that it can be done easily. If 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. I have not seen any provisions in relation to transitions. I see quite a number of technical difficulties, because 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.

Whether then you take some sort of transition measure where you make a new investigation akin to an expiry review rather than a new review starting from scratch, maybe these are things you can do. To come back to your basic question, I think you have 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.

Q51 **Mr Leslie:** A quick traffic light, red being very, very concerned, amber is doable, green no problems at all, on the project, TRA, March 2019, where would you rank it on the traffic lights?

Bernard O'Connor: March 2019, red.

Daniel Moulis: Amber.

George Peretz: Red for March 2019, yes.

Q52 **Chair:** Can I clarify a couple of things, Daniel Moulis first? I think you said the Australian budget for the TRA was AUS\$16 million.



HOUSE OF COMMONS

Daniel Moulis: At the moment it is about AUS\$15 million, I think AUS\$14.3 million is the most recent number.

Q53 **Chair:** They are thinking of increasing that budget by about 50%?

Daniel Moulis: By another AUS\$3 million but they are going to increase the staff or resources. There are proposals to do that at the moment. I was just trying to give an idea.

Q54 **Chair:** Is Australia becoming more protectionist, did you say?

Daniel Moulis: Yes, I think we are seeing that. We are seeing those kinds of policies.

Q55 **Chair:** Would you describe Australia as already protectionist and it is becoming more protectionist?

Daniel Moulis: Australia has struggled with its anti-dumping settings for many years. There is some degree of policy capture, if you like, in that the sentiments of the Government and the sentiments of the political parties—because the Opposition party and the ruling party are both in favour of strong anti-dumping laws—are absorbed by the commissioner or the Anti-Dumping Commission and we see in their findings on, say, the subjective elements that perhaps they would lean more one way than the other way.

I notice under your legislation you have the ability, or the Secretary of State has the ability, to issue guidelines as to how certain things should be considered, not in relation to a specific case but more generally. We have the same thing in Australia. There has only been one guideline. It is a ministerial determination and it has to do with findings of injury and what could constitute a finding of material injury. In some respects it could be considered by some to be a little soft in the way that it approaches the question of material injury, so in that subjective element there is a bit of a green light for the Commission to say to itself, "We think in this situation there is material injury".

We do not have an economic interest test, we do not have a public interest test. The Minister may impose the measures, so it is conceivable that having a recommendation from the commission, well evidenced, properly thought out and researched, he could say no, but that has not happened.

Q56 **Chair:** When leading diplomats or Australian representatives have told this Committee that Australia is a free-trading country, is that because it likes to think of itself as a free-trading country, is that an ideal, an aspiration but in reality that is maybe underpinned with quite severe teeth?

Daniel Moulis: I think that is a fair comment, yes. It is an aspiration of Australia and we have—

Q57 **Chair:** It is not a current reality?



Daniel Moulis: In terms of the dumping system there certainly is quite an emphasis on the dumping system and protection. We do not have both sides of the policy debate being voiced in Australia. Both sides of politics seem to be quite insistent upon strong anti-dumping protection, for domestic reasons.

Q58 **Chair:** Thank you very much. George Peretz, you said, to put it mildly, it would be a challenge—you said the red light. We certainly know from the Committee—and I am sure DIT know—that finding experts in London is not an easy thing to do. If you were not to put it mildly, if you were to call it frankly—you said red light, but you said to put it mildly it is a challenge—what would you say?

George Peretz: It is very difficult to see how, realistically, you can do it, given the amount of work that would likely need to be done as of March 2019 in the probable no-deal scenario or quasi no-deal scenario that we are contemplating. There would then be a lot of work to do.

Bernard has already discussed the problem of rolling over the existing EU trade defence instruments by which we are covered and how you deal with that. DIT has started some thinking about that. They have called for those industries that are covered by existing TDIs to put in evidence to DIT, which is a sensible starting point. You then have to do something with all of that and there are very difficult legal issues about the extent to which you can take account of or build on work that the EU had done. It almost certainly is not as simple as saying we will do exactly as the EU did, so you have that problem.

It is quite difficult at the moment, because if one puts oneself in the place of somebody who is being approached to do one of these jobs, you do not know when you are going to be starting work. Is it going to be March 2019, is it going to be the end of the transitional period, whenever that is? You obviously have the doubt, of which you all as MPs are very much aware, that at the moment we simply do not know whether the UK is going to remain in a customs union with the EU. We know what the Government's policy is, but there is a real issue about whether Parliament is going to sign up to that. If you put your position in the place of the most talented person who is approached to be chair or CEO of this body, the rather basic questions about when you are going to be starting work and what you are going to be doing cannot at the moment be answered. That seems to me to be a real problem.

Chair: One of the leading parliamentarians trying to ensure the UK is in the customs union is Mr Leslie on the Committee, so you may be creating difficulty for a future CEO, but we will leave that as it is.

Q59 **Faisal Rashid:** Under the Trade Bill, the TRA is responsible for conducting investigations into both existence of dumping and subsidisation and material injury to domestic producers. How does this unified structure compare to the EU and Australia's approach?



HOUSE OF COMMONS

Daniel Moulis: Thank you very much for the question. Again, that Bill follows the structures that we have in Australia, in that we have one Commission that considers the questions of both dumping and material injury and whether the dumping has caused the injury. In the US, they have a bifurcated system in the sense that two separate agencies look at those things.

There is a sense that once you have found dumping behaviourally, the next question is what are you going to do about it, but that is only half or one third of the overall analysis, which involves material injury and causation. There is a concern behaviourally that when pressure is placed on an organisation like that, they found something that is dumping, that is a pejorative term, or that is how it has turned out. I guess it need not be a pejorative term in terms of economic theory and it might not cause injury. It might be a very good thing for competition. There is that suggestion that perhaps once dumping has been found it is a little easier to find injury.

It is a little bit different for you here, in that you do have this superadded economic interest test where you introduce these other elements. I certainly feel that that indicates a more liberal and a more open trading policy when you have those kinds of sentiments in your legislation. There is also a public interest test. I do not know what else might be added on to that.

What I will say is that your economic interest test is a positive economic interest test. I have not reviewed all the systems around the world, but that could be a first in the sense that what is being said there is 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 to say, "We should be imposing dumping duties, so don't pay too much attention to the economic interest or the community interest", but it is important to think about.

Getting back to your question, I do not have an issue with a system where the dumping and the injury are all decided in the same organisation, because of the fact that you have this other test that does introduce these other issues into the analysis, which I think are softening or moderating.

George Peretz: I personally think that the board structure in the Bill is essentially right: you give what one might call the more technical tasks, the technocratic tasks, of establishing whether there is dumping or subsidies, establishing the extent of that, of establishing whether there is domestic injury to a more technocratic independent body that can reach its own view based on its expertise about whether those criteria are met. If they are not met, that brings the whole thing to an end and it is then under WTO rules.



If those criteria are met, you pass the final decision as to whether it is in the economic interest or in the public interest to the Secretary of State, who is accountable to Parliament. That seems to be right because it is a profoundly political decision. If you think of something like a steel tariff you may be balancing the interests of the steel industry having the tariff imposed against the interests of the automotive or beer industry, looking at the American example, in not having it imposed, or indeed the interests of consumers in not having it imposed. That seems to me to be a political judgment, which is the politicians accountable to all of you, to decide and to give their reasons for either doing or not doing it.

There are a couple of wrinkles in what is currently being proposed. One thing that seems to be slightly odd is that the Trade Remedies Authority would be given the power to say no and to call the remedy to a halt on an economic interest test. That seems to me to be wrong in principle. It does not seem to me that that is an appropriate decision for a bureaucrat to be asked to make, because it is a political decision.

It is probably quite sensible for the TRA to be able to reach a view on that question because they have economic expertise and they can attach numbers to the figures, but the final decision on that should be for the Secretary of State. It may be right for the TRA to be able to give its view on economic interest to the Secretary of State and for the Secretary of State then to take the final decision. That happens in some competition cases where the authority recommends and publishes a report and the Secretary of State decides. Public interest seems to me to be entirely a matter for the Secretary of State.

One issue is what you mean by public interest. One of the issues one can see coming up there, and it might be helpful to have something in the face of the legislation that deals with this, is what do you do in a situation where, to take the matter crudely, the exporting country starts issuing threats, "If you do this, we will do that". Is that a matter that the Secretary of State can properly take into account in the public interest?

You may remember some years ago that there was an issue about a decision to prosecute, which went through the courts. The issue was that the decision not to prosecute was taken because of pressure from Saudi Arabia. This is a very difficult issue as to how one would respond to that sort of threat. It may well be helpful for Parliament to reach a view, just in principle, about what the public interest is and whether that sort of criterion should or should not be taken into account.

Q60 Faisal Rashid: In your view what are the benefits of a unified structure as compared to a US-Canada approach?

Bernard O'Connor: It is very much in relation to efficiencies. An investigation needs to get into the nitty-gritty of a particular sector, of a particular industry, and not only into the industry itself. Let's say, we talk about fasteners, you are talking about screws, you are talking about bolts, you are talking about nuts, you're talking about washers, a whole



HOUSE OF COMMONS

series of different product types within a sector. To understand whether there is dumping or whether there is injury requires a good knowledge of that industry to be able to do the work that is done. Having investigators who can either be injury investigators or dumping investigators I think does create efficiencies.

Anti-dumping and anti-subsidy investigations are not only expensive for the administration but are also quite expensive for the industries concerned, whether you are on the complainant's side or if you are an exporting producer. I think having a unified system is cheaper overall for all players involved, not only the Administration but those subject to investigations.

I would just make one further comment as to the role of the investigator. We have a public interest test in the European Union but there is a prejudice towards the imposition of measures. It is not to do with protectionism—it is the idea that if you consider that you should have an anti-dumping system in place, then if a complainant makes the case, a prima facie case, that there is dumping and the dumping is causing injury, and the investigating authority confirms that, there is a bias in whether you should have a right to a remedy. There is the possibility for the public interest to come in and say, "No, in this case it is not appropriate", but the bias is once you accept the idea of dumping and that dumping can be harmful, then you should have a right.

George Peretz: Just to add that one feature of the EU regime is that they do not, unlike us, have a fairly fundamental constitutional principle that taxes should only be imposed after the House of Commons has agreed them. One of the reasons why I think am attracted to the structure in the Bill that the final decision is made by the Secretary of State, who is accountable to Parliament, is that I think it is more respectful of our constitutional tradition, which is where the decision about tax is ultimately for you or at least a Minister accountable to you. The EU does not have that issue that issue because works in a very different way.

Q61 **Chair:** Thank you. I am just remembering the Saudi thing that you referenced, Mr Peretz, was the Al Yamamah arms deal in December 2006 where Lord Goldsmith, who was then the Attorney General, took the decision to call off the Serious Fraud Office.

George Peretz: Yes, and then there was a subsequent case brought by Corner House and it went up to the Supreme Court.

Q62 **Mr Evans:** Looking at the measures that President Trump has just done on steel and aluminium, is that anti-dumping or politics?

Bernard O'Connor: It is national security. Without prejudicing some of the arguments that might come out in courts of law, whether in Geneva or elsewhere, formally it is a measure for national security. Under WTO rules we have GATT Article XX1 that allows countries to take measures on



HOUSE OF COMMONS

this basis. The WTO rules really place very, very few restrictions, if any, on the capacity of a state to determine what is in their national interest or not. Can you accuse the United States of being protectionist or trying to bypass anti-dumping or other types of trade measures? I think there are people who are going to say that, yes.

Q63 **Mr Evans:** Let's take him at his word that it is national security. Is the response by the European Union therefore political and wise?

Bernard O'Connor: This is a very difficult question.

Chair: Maybe it is a question that you should be addressing to an Australian.

Bernard O'Connor: There is no doubt that there are two issues that the European Union has to face up to. One is the lack of access or the stopping of access to the United States market, the other is the issue of potential deflections of trade. Products from Brazil, from Turkey that had been going to the United States no longer can, and then come into the more open European market. The European Union has to address both of these things. There are separate processes and procedures that need to be followed in relation to both of them. I think there is strong legal and economic argument to say that the European Union could put safeguards in place to stop the deflections of trade.

Q64 **Mr Evans:** I understand that, but putting a tax or a tariff on Levi jeans is hardly national security.

Bernard O'Connor: This is where we discuss whether the European Union considers what the United States has done is national security or whether it is anti-dumping or safeguards. The European Union wants to argue that what the United States is doing is safeguards, and because they are using safeguards that is a different regime, it is not the national security regime that gives them carte blanche. There are certain procedures that a state must follow if it wants to put safeguards in place and there is then potential for injured parties to take retaliation.

Q65 **Mr Evans:** Who is the adjudicator in all of this?

Bernard O'Connor: The European Commission.

Q66 **Mr Evans:** They will adjudicate whether it is national security?

Bernard O'Connor: No, sorry, at that stage, no. If the European Union is to determine that it will take retaliatory action on Levi jeans, that is the European Commission. At the end of the day, the adjudicator in terms of who is right and who is wrong and who did good and who did bad is the WTO in Geneva.

Q67 **Mr Evans:** How long will that take?

Bernard O'Connor: In a functioning WTO, to get to the very final determination, it can take two to three years.



HOUSE OF COMMONS

Mr Evans: Amazing.

George Peretz: That is an important qualification, though well-functioning, given the problems with it.

Q68 **Mr Evans:** Yes, that did not go unnoticed. As far as the TRA, the chairman and the non-executives are going to be selected by the Secretary of State. Is that normal in these sorts of bodies?

Bernard O'Connor: I do not know. For the European Union it is the Commission. As you know, the Commission is a college of currently 28 commissioners.

Q69 **Chair:** From all 28 countries?

Bernard O'Connor: The 28 countries, one commissioner per country. Within that, within the College of Commissioners, it is the President who gives primary responsibility for one commissioner to run the Trade Defence Authority. But at the end of the day, any decision is the collective decision of the College of Commissioners on the recommendation of the specific commissioner who has responsibility for the issue.

Q70 **Chair:** That is the Swede, Cecilia Malmström, is that right?

Bernard O'Connor: Malmström is the commissioner in charge at the moment, yes.

Q71 **Mr Evans:** Given what you said about the politics in play in some of these things as well, are you suggesting, Mr Peretz, that it is this Committee that should have a hearing to decide whether the person is the right person to be appointed?

George Peretz: Yes. I suspect I am preaching to the choir on this one.

Chair: Preach away, please.

George Peretz: It does seem to me to be sensible, first because it seems to me to be an essential aspect of the job—because it is going to be a high-profile job, as we can see—that the person who does it to the top level is able to deal effectively with public comment, criticism, to engage, to respond intelligently to public concerns. What better way of testing that than an approval hearing before this Committee?

Also, it seems to me in principle that the chair and the CEO should have the confidence of Parliament. Given the exposed position that they will be in, it will strengthen them to be able to say, "Parliament has confidence in us as individuals able to do this job". Finally, of course, it is 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. It is a check. Of course, I am not making any comment about the current Secretary of State, it is just a general comment about all Secretaries of State in this Government and future Governments.



Q72 Mr Evans: In which case do you believe that this Committee, should we then be given that power, should have the final say over that appointment? I am making reference to the recent DCMS hearing where they looked at Baroness Stowell as being Chair of the Charities Commission. They said no and they were overruled by the Secretary of State. What is your view on that?

George Peretz: I do not have any view on that because I know very little about it. I think ultimately it is a political decision. I do not have any strong views. In many cases one imagines that if a Select Committee, even if it does not formally have a veto, indicates extreme unhappiness, that in many circumstances that would be enough to persuade the Secretary of State to withdraw the candidature. Whether you want formally to have the power to veto just in case a Secretary of State does not decide to do that, I do not think I have any very strong views on that. It is ultimately a question for you, if I can throw it back at you.

Q73 Mr Evans: Ultimately for either the person or indeed the non-executives, what sort of qualities ought we to be looking for? Should they be nominees from perhaps the world of business or trade unions? What is your view on that?

George Peretz: I think you need a range of expertise and a range of backgrounds. You need people who have economic and legal skills, at least to the extent of being able to readily understand economic and legal argument and to deal intelligently with it. You need people who can explain themselves well to the public and deal well with public concerns. It is not just a question of having a trade union background or industry background but experience of a range of different sectors.

As you see from the steel tariff example, you can easily have a situation where some of industry is for a particular tariff and some of industry is against it. Some trade unions will be in favour of it and some trade unions will be against it. It is not an area where there is a neat employer-employee division. I think it would also be helpful to have a consumer voice, somebody with experience of working for Which? or organisations like that because the consumer perspective is important and sometimes gets ignored.

Daniel Moulis: I wonder if you are asking for trouble if you start appointing people who appear to be representative of a particular interest group at that level. I think I would be concerned about that. Probably a better way to do it is to have guidelines as to the independence of the people who you are appointing, but with experience in particularly areas. That is really the key.

It seems to me from the Bill that there could be a lot of people on this TRA board, if you like. I also wonder whether it is necessary to have so many people on the board, because then two things could happen. Either 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



HOUSE OF COMMONS

could come to a grinding halt, and it would not be able to make decisions, so I think it is very important who you appoint. They need to be impartial and independent people who have the experience that you need. If 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.

Bernard O'Connor: I have written down three words. You need a good administrator, you need a good communicator and you do not need a politician.

- Q74 **Chair:** The European Commission—and I hesitate to ask this because of time—at least has a geographical spread in the Swede Cecilia Malmström leading this at the moment. One of the questions we were asking the Minister last week about was on the geographic representation in the United Kingdom of the three nations and the other nation, Northern Ireland, that are in the United Kingdom. In Australia is there any geographical thought or it is just whoever happens to be in Canberra that morning?

Daniel Moulis: It is interesting you should raise that. No, there is no geographical thought. Obviously there are rules as to whether injury to a regional industry can be considered to be injury to the entire industry in a country, and there are some rules in the WTO about that.

Why I think it is an interesting question is that the administration of the anti-dumping system recently moved—five or six years ago—from Canberra, where the bureaucrats are, the internationalists, if you like, to Melbourne, which is the industrial heartland of Australia.

- Q75 **Chair:** Was there a change of tone?

Daniel Moulis: There were suggestions that would possibly be a good thing. I just raise that in the sense of saying that, yes, the different influences of different areas and different people can make a difference.

- Q76 **Chair:** The UK TRA might not need to be based in London, as most UK politicians would think, but could be based somewhere sensible like Glasgow. I do not know what the mirth is in the Committee over that; while Scotland is still in the UK, of course.

Daniel Moulis: I do recall a time we used to have a body called the Anti-Dumping Authority—I am going back to the years 1988 to 1998—which was headed up by a chairman, Don Fraser, and his CEO, Jock Maguire, both of whom were Scotsmen and Jock is famous for being asked, "What's your impression and how do you decide whether there's been material injury?" I will not try a Scottish brogue but he said, "I like to see some blood on the floor".

- Q77 **Chair:** So are you saying Scotland already has the expertise?

Daniel Moulis: So it seems.



- Q78 Julia Lopez:** Can I explore that? How should we interpret that move to Melbourne? Is that a victory for business over bureaucrats, or is it a victory of producers over consumers? Should we see it as a positive thing for free trade, or a negative thing?

Daniel Moulis: I think it is a negative. I am not making a value judgment about it, I am simply commenting on what happened and we do see it as a move towards a more protectionist system and the likelihood that dumping duties would be imposed more often, as opposed to having it, say, in a place like Canberra, which is where the Department of Foreign Affairs and Trade is, where the bureaucrats are, where they are more into the analysis and the macro-economic issues that you are faced with.

- Q79 Julia Lopez:** I have a question for Mr Peretz. What is your understanding of the requirement in the Trade Bill that the Secretary of State must have regard to the need to protect the TRA's operational independence when requesting advice, support and assistance? How would this statutory duty work in practice and how would somebody assess whether that duty has been fulfilled?

George Peretz: It is slightly difficult to know exactly what that means. Sometimes a problem one comes across as a lawyer, if one has expressed a view about something rather firmly in public it can make it then slightly awkward when you are asked to adjudicate on it later, because people will say you have already made your mind up about it. That may be the concern, that the TRA is called to come down off the fence too early and having heard the argument that it would hear in a genuine set of proceedings. That is how I interpret it anyway, but "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 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.

- Q80 Mr Jayawardena:** I am sure you would agree with the evidence that we have received that the UK's trade defence regime needs to be open and transparent, and have integrity and credibility. The Government has promised to do this, as we have seen in the Procedure Committee on getting the Bill through Parliament already. Do you agree that the Bills as tabled provide adequate guarantees of transparency and credibility in decision-making on trade defence and, if not, what explicit practical further measures would you suggest?

Chair: I was going to say that was a leading question but it tailed off at the end.

George Peretz: Transparency, as has already been explained, is always difficult here because you have a clash between the interests of the people who are often providing very confidential information, both domestic industry and exporters, against the interests of the other side in challenging that. That is an issue that there is quite a lot of experience in



HOUSE OF COMMONS

dealing with here in other contexts, particularly in competition law, which is one of the areas I specialise in, and quite often it is dealt with by setting up confidentiality rooms and allowing legal representatives for the parties to see information on condition that they do not pass it back to their client. There are other ways of managing it.

One point I would emphasise, which is a bit of a blank area in the Bill, is what seems to me—perhaps as a barrister you might say I would say that—is that what is important for anybody taking decisions like these is that they have an adequate and effective appeal mechanism and that they can be challenged in a court or tribunal. At the moment what you have is simply a blank sheet of paper saying there will be an appeals mechanism, but there is very little in there about what that will look like. There are important decisions about who does it—I have suggested the upper tribunal with some specialist members—and the standard of review, and I can talk about what that should be if you are interested, but they are all left up in the air.

However it is done, the British courts, the English courts, the Scottish courts, have a lot of experience in dealing with regulatory appeals and have a history of digging and scrutinising them quite carefully. Certainly the earlier decisions of the authority would be appealed and of course there will be a range of issues to appeal, because they will all be new. The courts will look very carefully at those and will dig very deeply, probably rather more searchingly, and I was having a conversation with Bernard outside, than the general court looks at EU measures because our courts tend to dig much deeper than the general court does. You have witnesses, cross-examination and expert evidence. You do not have that in the general court.

Q81 Mr Jayawardena: I am conscious of time, but it would be very interesting if you could provide written evidence on the points you have just made around the appeal process. That would be very helpful.

George Peretz: I am happy to do that.

Q82 Mr Jayawardena: If I can turn to Mr O'Connor, you wanted to come in on that, then I have a very quick question for Mr Moulis.

Bernard O'Connor: How do you guarantee transparency? This new process is a classically administrative law process where you give competence to an authority and you tell them to get on with the work, so long as they comply with certain types of rules. What I see missing in the Trade Bill is what exactly these rules are, so what are the rules to show that there is dumping or that there is injury? Until you have that you cannot have transparency, in a way.

The other thing I see that is missing is a lot of due process. That is the other classical way in which you ensure that the discretion is exercised in an appropriate manner. So clear rules, good due process and then, as George says, a good appeal system—that is what you need to have.



HOUSE OF COMMONS

Q83 **Mr Jayawardena:** Thank you for the succinct answer. If I can turn to Australia, Mr Moulis, thank you for attending our Committee. It is much appreciated.

Daniel Moulis: It is an honour.

Q84 **Mr Jayawardena:** We value the expertise you provide to us; indeed, it demonstrates the friendship between both countries. Does the Australian trade defence system have an equivalent test to the economic or union interest tests that are applied elsewhere?

Daniel Moulis: Thank you for the question. The answer is no. Whether those considerations come through by way of some attenuation of injury consideration is another question altogether, and that has to do with signalling or perhaps we might have a case to do with renewable energy or some other public good. Have they thought about things differently? Sometimes there are reports that appear to go outside normal administrative precedent and there might be something special about that case, but there is no economic interest test.

I know you want to wrap up. I did jot down four things in response to your other question. A public record is important. I have already mentioned that and I think it is important not to leave that to regulations. It should be stated in the law itself. Robust review; independent review. There was mention of reconsideration in the Bill. I am not sure whether reconsideration ever really works. It is hard for an institution to say, "Oh yes, we got it wrong". The non-attribution principle should probably be legislated, in other words that there can be other causes of injury. Again I think that is probably left to regulation, but generally speaking I think that the legislation is a good start with things to fill in.

Q85 **Mr Jayawardena:** If you are able to expand on these points perhaps in further writing that would be helpful.

Daniel Moulis: It would be a pleasure.

Q86 **Mr Fysh:** I would like to reiterate that. I had a series of questions about the appeals mechanisms and it would be really good, because we do not have time now, if you could submit some things in writing to our inquiry on that. That would be helpful in terms of the balance between merits and the best way of assessing those and then the appeals mechanisms and the best way of assessing those within the context of English law, which I know Mr Peretz in particular you have written in public about that before. That would be really useful.

Just one technical question, because we heard from a witness last week about it. With regards to what Turkey does with its trade remedies, the suggestion has been that that is quite an active authority but of course they are in an at least partial customs union with the EU. Could you, Mr O'Connor, give some information to us about the extent to which Turkey's trade remedies actions can at all influence what the EU does on its trade remedies and whether what Turkey's trade remedies authorities do has



any impact on the trade between Turkey and the EU itself, or is that completely separate? Are we talking about Turkey's relationship with the rest of the world, not with the EU?

Bernard O'Connor: Turkey has a customs union with the European Union. However, the provisions on trade defence also apply. That means that the European Union can and quite often does place trade defence measures vis-à-vis trade originating in Turkey. Turkey then has its own trade defence system that it operates and can operate against goods coming from the European Union or from any other third country. Is there an influence backwards and forwards? Very hard to give a general answer. There is a very famous WTO case from a couple of years ago where Turkey was required to take certain measures because of its customs union with the European Union and it got into trouble in the WTO. A number of other countries took a case against it—the Turkey textiles case—but in trade defence I am not aware of an influence by Turkey on the way in which the European Union operates its trade defence system.

Q87 **Chair:** Thank you. A final question for this panel. Last week, we had some discussion with the Minister over the makeup of the TRA. Where should they be from, who should they be? The idea was that they would be experts and then the Minister hesitated when I asked him if the experts happened to be from France and Spain, or France and Germany, would that be good enough for the Minister? The danger was the default was to be around London. Any comments on that sort of question or observation?

Bernard O'Connor: That you should take in your experts from the continent?

Q88 **Chair:** Who should the experts be and where should they be from for the TRA?

Bernard O'Connor: In terms of expertise you have a big body of expertise in Brussels, and that is where trade defence is operated on the Continent.

Q89 **Chair:** Should the UK poach from Brussels for the TRA?

Bernard O'Connor: My anecdote was that the European Commission did so from the United Kingdom back in the 1970s. Now, the 1970s is slightly before my time—not really—but I do know the two individuals who came. I heard the other day that they had been invited over because they were experts. Yes, there is a pool of talent. I am not aware that there is a pool of technical or legal talent in London or in the United Kingdom because I think there have been very good United Kingdom members of the various trade committees in Brussels but five individuals. There is not the pool of expertise that you have in Brussels.

Q90 **Chair:** Thank you. Any advice from Australia?



HOUSE OF COMMONS

Daniel Moulis: There are many qualified people in the world who could contribute.

Q91 **Chair:** So the UK should be definitely looking outside its borders?

Daniel Moulis: As a component of the people who are on the authority or who are in the position of, say, the CEO of the authority, a legal background is important, a good knowledge of the way that the WTO systems work, how the countries' systems work. I certainly think you will be able to find a person if you cannot find one here, which I cannot comment on.

Q92 **Chair:** Was that maybe a recommendation of Mr O'Connor?

Bernard O'Connor: I think it was Brussels he was talking about.

George Peretz: I think that is right. We may well have to look outside the borders, either to expat Brits or people who are not British but are happy to come over and help.

Q93 **Chair:** Similar to the Bank of England?

George Peretz: Possibly. One point worth bearing in mind, and sometimes people forget this, is that unless we agree to the contrary with the EU there will be the possibility of trade remedies happening between us and the EU and it is possible to agree not to have them. Australia and New Zealand, as I understand it, have that arrangement with each other, that they have agreed not to impose trade remedies on each other. It has not, as far as I am aware so far, been proposed between the UK and the EU. The question of recruiting people from the European Commission may have to be done with slightly more tact than one might initially appreciate.

Q94 **Chair:** Trade remedies being an uncomfortable medicine, which is maybe what you are alluding to?

George Peretz: There are certainly a lot of good people and you would expect people of that calibre to be entirely professional about it and to act in the interests of the UK when they are employed by the UK.

Q95 **Chair:** Thank you. Panel, thank you very much for coming in front of the Committee this morning. Your expertise is greatly appreciated. We look forward to taking that and producing it in a report. Especially Mr Moulis for coming halfway across the world, it is definitely appreciated. You are all appreciated. Thank you very much, and hopefully this will not be your last interaction because not just the Committee but I think the UK in general are looking for expertise in this area and you have certainly provided that this morning. Thank you all.

Examination of witnesses

Witnesses: Laura Cohen, Cliff Stevenson and Rosa Crawford.

Q96 **Chair:** Thank you very much for coming here this morning. Can I ask you to introduce yourselves—just name, rank and serial number—for the record?

Laura Cohen: I am Dr Laura Cohen, Chief Executive of the British Ceramic Confederation, the trade association for UK ceramic manufacturers. I also chair the Manufacturing Trade Remedies Alliance, a group of seven manufacturing trade associations, three trade unions and the TUC working together to ensure that we have a good framework for trade remedies in the UK after we leave the EU.

Cliff Stevenson: My name is Cliff Stevenson. I am a freelance consultant working on trade remedies for the last 30 years, based in the UK and I am working as consultant to the Manufacturing Trade Remedies Alliance at the moment.

Rosa Crawford: I am Rosa Crawford, Policy Officer covering trade at the Trades Union Congress. The Trades Union Congress is part of the Manufacturing Trade Remedies Alliance, along with Unite, GMB and community or affiliated trade unions.

Q97 **Chair:** Thank you, panel. Can you please from your perspective give an overview of the EU's trade defence system from the businesses you represent and the trade union perspective? How are the concerns of business raised with and managed by the European Commission?

Cliff Stevenson: I did an evaluation for the European Commission of EU trade defences commencing in 2005 and I went round and spoke to a good range of stakeholders, all sides of the case, and the member state representatives and the officials. The interesting thing about it was that they all had complaints about the system and it felt at the end like it was the right balance of complaints. On the whole, you can always find things to criticise but the EU system does get the right balance and does a pretty good job of fairly efficiently administering these measures. The system works in a way that allows business to have a lot of engagement with the case, so the Commission allows almost unlimited ability to put in written submissions, the Commission will take account of every point that is made in those submissions in the regulation, will say why it agreed with it or disagreed with it.

Then there is also the possibility to request a number of hearings, often a business will have three hearings during the course of the investigation, but again there are no restrictions on that. Then there is good access to the files, online digital access to the non-confidential files. Of course, as was discussed in the last session, there is not access to all the confidential information, so a lot of the information on the non-confidential files has all the interesting bits redacted—the really interesting bits. Where you remove information on grounds of



HOUSE OF COMMONS

confidentiality there is an obligation to summarise it or provide it in different form, so turning data into indices.

Alongside all of those things I would say the EU system is not perfect. It is quite costly to use for a business. It takes quite a long time to get from noticing there is a problem to getting any relief, so there are always problems in the system but on the whole I would say that it works very well in terms of the possibility for business to engage with it.

Q98 Chair: You have covered a lot. Is there anything Laura or Rosa would like to add to that? Rosa?

Rosa Crawford: From the trade union perspective, I think I would echo Cliff's comments that while the EU system is not perfect there are improvements that have been made recently, particularly from the trade union point of view that have improved the level of engagement the trade unions have in feeding into the investigation process and into influencing the whole trade remedies system. This is something that the TUC has been working with our European trade union affiliates with for a number of years, then in November we had agreement on the reform of the trade defence instruments. For trade unions there were a number of things that improved our access and engagement with the process. Now it is written into the rules that trade unions can request an investigation into anti-dumping. Trade unions have a role in the union interest test, assessing whether it is in the whole union's interest to take measures and now, very importantly, labour standards can be factored into investigations of unfair trade practice, which is a key principle for trade unions, so that countries do not gain a comparative advantage by abusing labour rights. For us, those are really important steps forward. We want to go further and we want to have more of a say in the process and for labour standards to be more mainstream, but those are key improvements to the system.

As Cliff highlighted, there is 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, which we think is a very important principle and one we want taken forward in any standalone UK trade remedies system. I think we have seen real progress at the EU level and for trade unions across Europe. We welcome that, but we are pushing for further improvements to have stronger measures to protect our industries.

Laura Cohen: Trade remedies are for when overseas manufacturers are not playing by the rules, and I emphasise that we do not want special treatment; we just want a level playing field. The EU system is broadly okay, but it is certainly not perfect. It takes too long for measures to come into place and it does not go back far enough to look at the damage to the industry.

From a ceramics perspective we have two main, current EU anti-dumping tariffs in place against Chinese-manufactured tableware and Chinese-



HOUSE OF COMMONS

manufactured wall and floor tiles. Just a couple of examples to bring these to life, up to 2004 on tableware Chinese imports were steady at about £20 million a year into the UK. They rocketed to £160 million of imports a year by 2012. Anti-dumping duties were introduced in 2012-13. Chinese imports have held steady. They have not disappeared, but even that has allowed our members to stabilise and invest. UK manufacturing jobs in our sector have increased by 20% to 5,000 since 2013 when the definitive measures came in.

On tiles, the Chinese imports in 2004 were about £3 million a year, which then rose quite rapidly to £30 million a year. The EU imposed anti-dumping duties in 2011, so the imports fell back to about half that. Again, the measures were renewed on 22 November 2017 in an expiry review and since 2011 UK manufacturing employment has increased by about 40% to about 1,000-plus UK jobs.

Both these measures have really benefited UK jobs in the supply chain, not least the kaolin and ball clay industry, which has a high concentration in Devon and Cornwall and employs 1,500 people. We have 2,500 UK manufacturing jobs in our material supplier section of membership too.

Summing up, it is not perfect, but it has given us breathing space to help provide more of a level playing field.

Chair: Thank you. Before I bring in Matt Western, Nigel Evans, do you want to come in?

Q99 **Mr Evans:** For clarification, on the tiles example, it was a tariff that was imposed, not a quota?

Laura Cohen: It was an anti-dumping tariff that was imposed. It depends if the Chinese manufacturers co-operated or not. It was between 13.9% and 36.5% for those who co-operated and 69.7% for non-co-operating manufacturers.

Q100 **Mr Evans:** What is "co-operation"?

Laura Cohen: They were willing to say that the EU officials could come in and have a look around the factory and scrutinise what was going on.

Cliff Stevenson: They would have filled out a questionnaire as well, so to co-operate in an investigation means that you will fill out the questionnaire that the European Commission has sent and that you will be ready to fully co-operate in a two- to three-day verification on-site and that you will respond to any requests for information.

Q101 **Mr Evans:** It sounds quite brutal, so it is an offer that they cannot refuse, is it?

Laura Cohen: Clearly a large number did refuse, but there is sampling that goes on by the European Commission that determined which ones they visit and send full questionnaires to.



HOUSE OF COMMONS

Q102 **Matt Western:** From the point of identification of dumping to the introduction of the tariffs, how long did that take?

Laura Cohen: It is quite a long time. I cannot remember the exact time, but I think it usually takes about 12 to 18 months for the full measures to come in. Perhaps Cliff may be able to help.

Cliff Stevenson: When an industry first notices that there is a problem it cannot automatically go to the Commission and submit a complaint, because the Commission would expect, and rightly, a certain time to have elapsed so that you had enough data to show that it was not just a one-month, seasonal trend.

Q103 **Chair:** I have it on high authority from an Irishman based in Brussels that it is 15 months that this takes, and I think I have interpreted the hand signals from the back of the room correctly.

Laura Cohen: Certainly Cerame-Unie, our European association, was having a series of meetings with the Commission before the complaint was submitted and having discussions with its members, including ourselves, well before they reached that stage, reviewing the data and thinking about what to do.

Q104 **Matt Western:** The MTRA has said that in the TRA, the UK TRA as proposed, the decision-making is not clear and that there could be additional levels of decision making introduced. Could you first expand on that point and then explain what potential further levels of decision making you would identify and what primary concerns you have in relation to that matter?

Laura Cohen: First, I want to say that our members are going to be incurring enormous costs, something akin to the EU cost of bringing a case in the UK. We are concerned that this economic interest test, public interest test methodology, is unclear and we think experimental and complex. For example, there might be cost models not used anywhere else in the world, but there will not be anything in secondary legislation, just some guidance, officials have said, and we heard from the Australian witness that this is a superadditive EIT, a first. We also do not know yet what the role of the Trade Remedies Authority is going to be. If the executives and non-executives review each case that takes extra time and we think that may be unique and experimental.

There is also the possible legal action, as we have heard from the previous witnesses. For example, if the TRA economic interest test finds in favour of adoption of measures and that is overruled by the Secretary of State's economic interest test all this is extra time and cost for UK manufacturers, where dumping and injury have already been proven, and uncertainty. Our members are really concerned, and on top of that that could result, given the lack of detail about the dumping and injury margin calculations in primary legislation, in perhaps some of the weakest trade remedies in the world.



HOUSE OF COMMONS

We also want a low-cost, easy appeal process like the Australian anti-dumping review panel. At the end of the day, we have some great manufacturers in the UK. They need to be able to compete on a level playing field. They have enough uncertainties around the Brexit process, they do not need all these extra uncertainties around the decision making here.

Rosa Crawford: For trade unions it is extremely concerning that we do not have this level of clarity about the proposed standalone UK trade remedies system, particularly concerns that Laura has flagged up around the fact that the economic interest test, multiple economic interest tests in fact, are very broadly defined in the primary legislation. We think this would give significant leeway to the Secretary of State not to take action when there are cases of dumping and the fact that the public interest test is so extremely broad.

While we were given indications that the secondary legislation would be providing further clarity it is now extremely concerning that it only looks like it will be guidance that provides further definition for the economic interest test, which clearly is going to be much further down the line in terms of the legislative process. The Trade Bill and the Customs Bill may already be through Parliament by the time we see what an economic interest test will look like, by which time it is far too late for MPs to have a say and to judge those measures, but also for trade unions to be able to say whether this is an adequate measure or if in fact it does prove an impediment to swift measures being taken when there is unfair trade practice that, after all, costs jobs and devastates communities.

The fact is that we do not have this clarity now, we do not have the primary legislation spelling out very clearly the measures that really should only be in extreme circumstances such as issues around national security when the public interest is really threatened and where there is real damage to the economy threatened, otherwise we think there should be a presumption in favour of measures, as witnesses in the previous panel were also indicating. The fact that there is not clarity around the function and role of the TRA and the process as well is very worrying. The fact that the Government has talked about transparency in relation to this legislation is not the case and for trade unions that is a major concern.

Laura Cohen: To build on what Rosa has said, in the EU legislation around the union interest test there is wording about giving special consideration to the need to eliminate trade-distorting effects of injurious dumping and to restore effective competition. That is missing from the UK Customs Bill and it is really important that it should be there.

Q105 **Chair:** Thank you. You may be anticipating the final question that I had, but thank you for that evidence.

Cliff Stevenson: I have things that I could say about that, but I will comment on the levels of decision making. There is a lot of uncertainty and lack of clarity at the moment because it is absolutely not clear what



HOUSE OF COMMONS

the role of these up to nine TRA members will do. If the members are going to sign off on whether duties will be adopted in a particular case then I have a big concern that this is a level of decision making that is more complex than any other system in the world. You then have to ask questions about how they would make the decision, whether they would vote on it, if they disagree. If you compare it to the Australian system, which in some ways is akin to the UK system, under ministerial control but with a separate arm's-length authority, in that case the Anti-Dumping Commission has one commissioner, as we heard earlier, that effectively is the equivalent of a board of members and does sign off on the cases. It depends what the role of the TRA members are, because if they are playing a governance role and in fact it is the most senior official in the DIT that will sign off on the proposal to send to the Minister, then that is a system that is much more akin with systems elsewhere.

Laura Cohen: On the governance side I think it would be absolutely right that the non-executive directors have a governance role and ensure that the TRA is meeting its *raison d'être* and providing the effective implementation of remedies where manufacturers overseas aren't playing by the rules. Some of the measures could be the number of initial discussions held with officials by potential complainants, the number of those translated into complaints, the percentage implemented at both provisional and definitive stage, the time between the complaint and provisional and final measures, the amount of duty and perhaps comparison with competitor manufacturer markets with similar problems or remedies, the percentage challenged or appealed. Those are all metrics of good governance. It is certainly not exhaustive, but that is what I think should be going on there.

Chair: Thank you. I am conscious we are fast coming up against Prime Minister's questions at midday, which wild horses cannot keep MPs from usually, but Julia Lopez.

Q106 **Julia Lopez:** This has already been answered, but the MTRA suggested that the Secretary of State's role should be limited to a sanity check when it comes to this economic interest test. How would this approach work in practice and would the TRA still apply an economic interest test or would this be a matter for the Secretary of State?

Cliff Stevenson: Laura quoted the provisions from the EU regulation that give this weighting towards adopting measures in the union interest test that you accept that once the basic identification and analysis of the problem of dumping, injury and causality has been met there is a presumption that measures will be put in place. At the moment the word "presumption" is used in the UK legislation, but it really is not the equivalent of what is in the EU. The EIT in the UK approach as it reads is much more a balancing of producer versus consumer interests, and that is not what is in the EU legislation. From the MTRA perspective just bringing that provision from the EU regulation into the UK legislation would do the job.



Rosa Crawford: For trade unions, we have had concerns from the beginning about the inclusion of the economic interest test at all and I think there is a real question as to whether you need this, because it can well serve as a barrier to measures being taken. If we do have to have this in legislation it is very important that working people have a say in what counts as in the economic interest of the country and what would be important to protect jobs and livelihoods. At the moment, one of the other areas where there is no clarity is how trade union interests would be represented adequately in any trade remedies process. In the Trade Bill, as I am sure we will come on to in more detail, there is no assurance that trade unions or manufacturing employers would have any representation on the TRA. For the MTRA, it is very important there is a balanced representation of trade unions and manufacturing employers on the TRA so that we can have influence and a say, and on things like the economic interest test we do have working people's views represented and it is not just something where those who are completely detached from the impact on people's livelihood and jobs are making a say about what is in apparently the economic interest of the country.

Chair: Thank you. Laura Cohen, briefly?

Laura Cohen: If there is an economic interest test it is really important that the independent body carries it out and it is not repeated by the Secretary of State. As MTRA, we have been really concerned by the economic research published by DIT in January to determine, among other things, the potential scope of this. We can send through our concerns about that separately to the Committee if that would be helpful.

Q107 **Chair:** Thank you. A final question. In evidence, Edwin Vermulst, a Brussels trade lawyer, told the Committee that the Trade Bill was very rudimentary and most countries copy and paste from the WTO agreement when establishing their trade defence body. Do you agree with that assessment? Both Laura Cohen and Rosa Crawford have alluded to this. What further regulations do you think are required for the TRA to operate effectively? If I can have brief answers, he said optimistically.

Laura Cohen: We are really concerned, as with the previous panel, about the lack of detail in the Bill. We have been having some informal discussions with DIT about the potential secondary legislation.

Chair: Already?

Laura Cohen: Two out of four meetings have been cancelled at quite short notice, but the key points that are critical for manufacturers, such as the dumping margin and the treatment of non-market economies, have not been scheduled yet. There might be a session on injury scheduled in the middle of April and, as Rosa said, there will not be a session on EIT and PIT because that is going into guidance.

We are really concerned about the lack of parliamentary transparency, particularly for elected MPs and this is completely opposite to the process



HOUSE OF COMMONS

in the EU where MEPs scrutinised heavily and modified the recent trade remedies modernisation.

We are also really concerned that the UK seems to have no intention of pasting the EU anti-dumping or anti-subsidy legal text into UK legislation at the point of leaving the EU. As a minimum, we think the UK should have pasted the WTO Anti-Dumping Agreement provisions on calculation into the primary legislation. Those are absent too.

Chair: Anything to add? That was pretty robust evidence, thank you.

Rosa Crawford: Just to build on that and to build on the concerns that Laura has raised. As indicated already we do not have any guarantee that we will have the voices of working people, trade unions or manufacturer employers represented on the Trade Remedies Authority. We believe that the primary legislation needs to be changed in order to provide that guarantee. At the moment the legislation says it is up to the Secretary of State to appoint the members either directly or indirectly. We want it stated on the face of the Bill that there should be representatives of trade unions and manufacturing employers as well as others as non-executive members of the TRA to ensure that you do have balanced representation and that trade unions' point of view is adequately represented in any trade remedies that are adopted and any process around that.

It is very concerning that while we welcome the engagement with officials, that engagement has not revealed the detail that we need to see about how we will deal with dumping from countries like China, that have had such a devastating impact already on jobs in many communities across the UK and will only get worse if we do not have as a minimum the measures that the EU has now importantly adopted for non-market economies. It is important to highlight that the EU no longer has a compulsory lesser duty rule, whereas it is very concerning that in the UK legislation in the cross-border Trade Bill, there is a compulsory lesser duty rule. For us, this is a step backwards and we do not have adequate measures that we can take against dumping. Again, we want to see changes where there are not adequate protections in the primary legislation, but we also want to see a great deal more detail, as Laura has indicated, about how we deal with countries like China that have been dumping and how we deal with the unfair trade practices already having such a devastating impact.

We want swift engagement by the Department for International Trade and by the Minister to provide this clarity. In your session last week with the Minister there did not seem to be clarity about the role of the TRA and about how he would deal with unfair trade practice and dumping. That is very concerning for trade unions as well.

Q108 **Chair:** I hear your concerns and, particularly as a Scottish MP, the geographical concerns with the TRA as well. I think they both complement each other. Finally, Cliff Stevenson.



Cliff Stevenson: Yes, very quickly. Of course the UK as a member of the WTO is absolutely obliged to respect all of the provisions of the WTO agreement. While there may be some question marks on some provisions as to how they would apply in UK law there are plenty of provisions that have not been cut and pasted in. I absolutely agree with Edwin Vermulst— there is no reason why things that the UK has to respect around the dumping margin or around the analysis of injury should not be in the primary legislation.

In terms of how the regulation could be improved, the alliance at the moment is working on a massive list of priorities for secondary legislation. You can imagine this is such a complex area that there are many things that need to happen for the regulation to be improved. I would say the most important things—especially from the point of view of the alliance, but generally anyway—the most complex things are how the dumping margin will be calculated and how state distortions and subsidies will be treated within that, how the lesser duty rule will be implemented, how the injury margin will be calculated and how this economic interest test will be applied.

I absolutely agree with the view that has been expressed and was expressed in the earlier panel that there is potential that this will be the most liberal anti-dumping system in the world and it will be very difficult to get measures. That is the risk.

Q109 **Chair:** Thank you very much. Panel, thank you, given the time and the danger of a mutiny on the Committee if we carry on any further. If anything occurs to you later please submit it in written evidence. Written evidence is always considered as well as oral. Finally, thank you very much—and also the previous panel—for your time and expertise. The frankness with which you shared your opinions is greatly valued. A parliamentary Committee needs witnesses like you to come forward with frank opinions and calling it as you see it. That is appreciated. Thank you very much.