



Department for International Trade

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Angus Brendan MacNeil MP
International Trade Committee
House of Commons
London
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Dear Angus

Thank you for your Committee's recent report on the United Kingdom's trade remedies policy. The report follows written and oral evidence from the Department for International Trade, the Trade Remedies Investigations Directorate (TRID) and external organisations, including the Manufacturing Trade Remedies Alliance, the British Ceramic Confederation and UK Steel. HM Government welcomes the Committee's report published on 22nd March and the Committee's recognition of the significant progress on the trade remedies framework.

HM Government welcomes the Committee's overall assessment of the United Kingdom's trade remedies policy and the recognition of the work undertaken to establish the Trade Remedies Authority (TRA) as the Department for International Trade's first Non-Departmental Public Body. As you know, the TRA will carry out investigations and make recommendations as part of our new independent trade remedies system, providing a safety net for our producers against dumped and subsidised goods, or unforeseen surges in imports.

I have addressed each of the report's recommendations and conclusions for the Department for International Trade in an Annex to this letter.

A number of the points raised by the Committee are for response from the TRA. I have, therefore, noted the recommendations and the TRA has agreed to respond to them once it is formally established following Royal Assent of the Trade Bill.

It was a pleasure, as ever, to join your Committee's meeting. Once again, thank you for the report. I hope that these responses are useful to the Committee, I warmly welcome the Committee's continued engagement with our crucial work to ensure British businesses are able to rely on robust and proportionate protection from unfair trading practices elsewhere in the world.

With best wishes.

Yours ever,

A handwritten signature in purple ink, appearing to read 'Ranil Jayawardena', with a long horizontal flourish extending to the right.

RANIL JAYAWARDENA MP
Minister for International Trade

Annex A: HM Government's Response to the ITC Report

The UK trade remedies policy

Recommendation 1:

We note the significant progress made by the Government since our predecessor Committee's inquiry, and that the policy and legal framework for the UK trade defence regime is now largely in place. (Paragraph 14)

The Government's response:

The Government welcomes the Committee's acknowledgement of the significant progress that we have made in establishing the trade remedies system. The policy and legal frameworks have been created to protect producers in the United Kingdom. Without these robust frameworks, our producers would be exposed to injury from unfair trading practices and unforeseen surges in imports, with potentially damaging consequences for the industry and the economy more widely.

Recommendation 2:

Further clarification is required to set out the position of businesses in Northern Ireland in respect of trade remedies and the extent to which they fall within the remit of the TRA. We therefore ask the Government to confirm whether for the movement of goods into Northern Ireland from Great Britain, where EU trade remedies exist, the goods will be considered "at risk" and EU trade remedies will apply; and for the movement of goods into Northern Ireland from the rest of the world, where EU trade remedies exist, unless the EU duty is less than or equal to the UK duty, EU trade remedies will apply. We further ask the Government to confirm whether, when EU trade remedies apply to the movement of goods into Northern Ireland, they will apply with the same terms as they do to imports to the EU. We recommend that the Government publishes guidance on this matter for businesses operating in Northern Ireland. (Paragraph 20)

The Government's response:

Northern Ireland (NI) is part of the United Kingdom's customs territory and will benefit from the United Kingdom's robust trade remedies system where NI businesses will be able to submit applications for investigations to the TRA (once established) as will the rest of the Union and its businesses. The new trade remedies system will protect all domestic businesses, including businesses in Northern Ireland, from injury caused by unfair trading practices such as dumping and subsidies, and unforeseen surges in imports. The impact on NI industry as a result of imports subject to import duty will be considered in trade remedy investigations together with the impact on businesses in the rest of the United Kingdom and NI.

In relation to the movement of goods into Northern Ireland from Great Britain, I can confirm that goods are 'not at risk' if the applicable EU duty is equal to zero and the goods are not subject to commercial processing. Goods brought into Northern Ireland from countries outside of both the EU and the United Kingdom are 'not at risk' where the applicable duty in the United Kingdom is equal to or higher than the applicable EU duty, and the goods are not subject to commercial processing. Further guidance is available on how to declare goods into Northern Ireland from Great Britain or from countries outside of both the United Kingdom and the EU, so that the correct duty is applied.

The Trade Remedies Authority

Recommendation 3:

Operating its own trade defence regime is a new challenge for the UK. In order to prepare for the establishment of the TRA, the Government has had to recruit around 100 officials, many in areas where the relevant expertise is expensive and scarce and provide training so that this new organisation can carry out its complex functions in a professional and effective manner. This process has been made more difficult because of uncertainty over when the TRA would become operational, and because of the changes to normal working practices brought about by the covid-19 pandemic. We commend the Department for International Trade for the progress it has made in creating the new authority. (Paragraph 33)

The Government's response:

The Government welcomes the Committee's recognition of the progress in establishing the TRA. Trade remedy measures are key to ensuring an effective rules-based system for international trade as they can level the playing field and restore the competitive balance. The Government has considered what is appropriate for, as well as benefits, industry in the United Kingdom when operating an independent trade policy. The TRA will be able to build expertise in our key industries, and the recruitment of experienced and highly capable colleagues has been an important strategy when forming this new Non-Departmental Public Body. The TRA investigative team will assess cases based on data from the United Kingdom, ensuring that measures work for our markets. I am very pleased that central roles have been filled with experienced individuals including Simon Walker as Chairman-Designate and Oliver Griffiths as Chief Executive-Designate. Both bring extensive expertise to TRID and will stand the TRA in good stead when it is formally established.

Recommendations 4, 5 and 6:

We note that there has already been a very high staff turnover within Trade Remedies Investigations Directorate (TRID). We acknowledge that there have been difficult circumstances, but it is disappointing there are still far fewer staff in post than projected. The Minister told us in January that TRID had 107 staff in post against a projected total of 143 which means that TRID's current staffing level is around 25% lower than that required. (Paragraph 34)

We also note concerns expressed by witnesses that the lack of experience of TRA staff will place them at a disadvantage when dealing with other more experienced stakeholders. There was a very significant initial spend on staff training, and we are concerned that some of the benefits of this training may have been lost because of the high initial staff turnover rate. We welcome the recent appointment of a new Chief Executive with trade policy experience. (Paragraph 35)

The evidence we have received in this inquiry indicates that the recruitment, retention and training of TRA staff remains a critical factor in establishing the UK's new trade defence regime and presents one of the most significant areas of risk for the future success and credibility of the regime. We are not convinced that TRID has taken sufficient action to deal with its high staff turnover rate and it still does not have in place the number of staff that it needs. These issues must be resolved quickly to ensure the effective and successful operation of the UK trade remedies system. We ask that the TRA write to us within three months of its establishment setting out initial steps it has taken to address these issues. (Paragraph 36)

The Government's response:

The Government is pleased to note that the Committee has welcomed the appointment of Oliver Griffiths as Chief Executive-Designate of the TRA and recognises the extensive trade policy experience which he brings to the role.

The recommendations relating to staff training and turnover rates will be responded to by the TRA within three months of its establishment.

Recommendation 7:

We note that the initial recruitment for members of the TRA Board is now complete. We recommend that an initial priority of the Board is to prepare and publish a clear statement of detailed governance arrangements to provide clarity on the TRA's decision-making processes and its arrangements for interfacing with stakeholder groups. (Paragraph 45)

The Government's response:

The Government notes the Committee's recommendation for the TRA Board. The TRA will respond to the Committee on this point once it is formally established.

Recommendation 8:

We are encouraged that the TRA Chair Designate, Simon Walker, stressed to us the importance of the independence of the TRA from Government. It is unfortunate that the TRA had to begin its operations in 2021 whilst still operating as a Directorate within the Department for International Trade. The TRA's independence will be necessary in order to provide confidence to UK domestic producers and consumers that the UK trade defence regime is fair and accessible. (Paragraph 50)

The Government's response:

The Department of International Trade made clear from the outset that the TRA would be established in law as a Non-Departmental Public Body to establish an objective and robust trade remedies regime and to enable independent investigations to take place. The Committee will be aware that the legal framework for this was set out in the Trade Bill and was therefore, dependent on Royal Assent for that Bill. The Government's strong view was that delays to the Trade Bill should not prevent the United Kingdom from undertaking crucial trade remedies activities over the course of the transition period. The Government took swift action in 2020 to ensure that TRID could undertake crucial trade remedies activities from within the Department for

International Trade to ensure continuity and support for British businesses. In that time, TRID has been able to build relationships with businesses in the United Kingdom and begin eleven transition reviews.

I can now confirm to the Committee that the TRA will be formally launched on 1st June 2021, from which point it will operate as an independent Non-Departmental Public Body.

Recommendation 9:

Transparency will be critical if the TRA is to gain the confidence of UK domestic producers and consumers, and to demonstrate compliance with WTO rules. It should be a priority for the Board when it is establishing its processes and planning its first annual report. (Paragraph 55)

The Government's response:

The Government notes the Committee's recommendation for the TRA Board. The TRA will respond to the Committee on this point once it is formally established.

Transition of EU measures

Recommendation 10:

We heard from industry witnesses that working relationships with TRID had so far been positive and constructive. The transition to a UK trade defence regime requires UK producers covered by transitioned measures to provide information to inform the reviews of those measures. It is not clear whether there are specific reasons why a forward timetable cannot be published to help businesses plan for the reviews. We recommend that as a minimum, the TRA provides as much advance notice as possible to industries participating in transition reviews. (Paragraph 65)

The Government's response:

The Secretary of State for International Trade has issued guidance to the effect that transition reviews should be initiated in the United Kingdom in the order in which they expire in the EU. This both provides a useful guideline for businesses and should enable the TRA (and TRID as was) to best manage its case load. Looking ahead to the establishment of the TRA, it will consider the ways in which it can provide businesses with as much notice as possible before initiating a transition review. This must be balanced with the need for the TRA to manage its overall case load, which covers not only transition reviews but also requests for new remedies investigations. The list of investigations being undertaken and the relevant public facing documents are available to interested parties registered on the TRID/TRA portal.

Recommendation 11:

TRID is currently conducting a review of steel safeguard measures, in order to determine whether they should be extended for a further three to five years after the current measures expire in the middle of 2021. We heard that these measures are of critical importance to the UK steel industry. During this inquiry, we did not hear evidence from steel importers, but we are aware that imported steel is critical for many major UK industries. The balancing of different interests in this area will be complex and politically sensitive and will be an early test of the TRA's capacity, expertise and effectiveness. (Paragraph 70)

The Government's response:

The Committee rightly notes the importance of the steel safeguard review for the British steel industry. The Department for International Trade champions free trade for British steel manufacturers and recognises that the steel safeguard measure provides a safety net for our producers to protect against injury caused by import surges.

TRID is currently conducting a transition review to consider whether it is appropriate to vary the United Kingdom's safeguard tariff rate quotas (TRQs), extend them or revoke them. This will include consideration of whether the TRQs are set at the appropriate level to protect domestic production where necessary while minimising disruption to trade flows. All interested parties, including importers, domestic producers and overseas exporters, are able to participate in the review to provide evidence to factor into TRID's assessment.

The Government expects the TRA to take over the review once it is established and for it to conclude by the end of June, when the measure is due to expire. If the TRA concludes as a result of its review that the measures should be extended or varied then it will provide an impartial and evidence-based recommendation to the Secretary of State. I must reiterate that this review is being undertaken entirely independently based on available evidence.

Recommendation 12:

The Government took steps to transition only those EU trade remedies which apply to UK industry and is now carrying out full transition reviews to recalculate and reassess those measures. Our evidence suggests that there remains a risk that the UK's approach to transitioning EU measures could be subject to legal challenge. The need to conduct transition reviews as well as new investigations places an additional pressure on the newly established TRA and further underlines the importance of making rapid progress in recruiting and training TRA staff so that the TRA is fully resourced for its role. (Paragraph 75)

The Government's response:

During the transition period, the Secretary of State for International Trade assessed which definitive EU remedy measures in force at the end of the transition period should be transitioned into the United Kingdom's independent trade remedies system. This assessment was driven by evidence from our industries to determine which of the EU's 118 trade remedy measures mattered to the United Kingdom's domestic producers and should be maintained. As a result, the Government maintained 43 trade remedy measures, including the steel safeguard measure, to ensure continuity of protection for United Kingdom producers. Each of these measures were originally established on the basis of a full investigation covering the whole territory of the EU, including evidence from the United Kingdom as an EU member at the time. The continuation of these measures is therefore justified in respect of both the territories of the United Kingdom with our independent trade remedies policy, and the EU.

In line with the recommendation in paragraph 36, the TRA will write to the Committee on how it will address recruitment and training issues once it is established.

New trade defence investigations**Recommendation 13:**

TRID has published comprehensive guidance on its processes for initiating and conducting new investigations and was ready to accept new applications from the start of this year. We commend the Department for International Trade for its work to achieve this. (Paragraph 102)

The Government's response:

The Government welcomes the Committee's recognition of the comprehensive guidance which TRID has published to ensure transparency and ease of use for businesses, and its readiness to accept new applications from the start of 2021.

Recommendation 14:

Some witnesses told us that it was too soon to judge how the UK trade remedies regime will be applied in practice and whether the UK will adopt a different approach to that of the EU. We also, however, heard concerns from manufacturers and trade unions that under the UK system, it will be more difficult to secure trade remedies and remedies will be lower. (Paragraph 103)

The Government's response:

The United Kingdom's system carefully balances the interests of our producers, importers and downstream users to provide real and robust protections to industries in the United Kingdom which are suffering injury caused by unfair trading practices, without imposing unnecessary costs on downstream users. The Department for International Trade engaged with stakeholders including manufacturers, unions, downstream industry and others as it developed the system and made amendments to what is now the Taxation (Cross-border Trade) Act 2018 to address their concerns. The Department also held a series of detailed workshops to inform the development of the relevant secondary legislation.

The Department for International Trade is mindful of facilitating continuity for business where appropriate. However, this has also been an opportunity to create a system that is right for the United Kingdom and for our approach to trade. This means that the system in the United Kingdom incorporates some measures similar to the EU, for example an economic interest test and lesser duty rule. The Government's aim is to make these processes as objective and transparent as possible to create consistency for business.

Recommendation 15:

The operation of the UK trade remedies regime will be of continuing interest to this Committee, and we welcome the Minister's comments that the regime will remain under review to ensure it provides the right protection for UK industries. (Paragraph 104)

The Government's response:

The Government is committed to monitoring the functioning of the United Kingdom's trade remedies system to ensure that it provides real and robust protections where needed, without imposing unnecessary costs on downstream users and consumers. Once established, the TRA will be subject to a first tailored review 18 months after it been established as a new independent body. This is standard under Cabinet Office guidance for Non-Departmental Public Bodies. The Government is also committed to keeping the policy framework under review to ensure that it is functioning as intended. The Department for International Trade expects to review the trade remedies policy framework within three years of the system becoming operational to examine the effectiveness of the British trade remedies process over these vital early years.

Recommendation 16:

We heard concerns that the Government chose to define unions as contributors in the UK regime rather than interested parties as in the EU regime. The TUC told us that this means they cannot trigger new investigations, they have access to less information during an investigation and they cannot initiate an appeal against a decision. We ask the Government to explain, in its Response to this report, why it chose to reduce the role of unions in the UK trade defence regime. (Paragraph 105)

The Government's response:

The Government recognises that trade unions and other organisations such as consumer groups, can provide a crucial insight into the wider impacts and considerations associated with a particular trade remedy decision. For instance, as part of the economic interest test, the TRA may want to understand the potential regional and distributional impacts, including evidence on the impacts to the workforce, which the unions can provide. That is why the investigation process and the transition review process allow trade unions and other stakeholders to participate in an investigation where they have relevant information to take account of their voice.

However, it is fair that British producers, and the exporters whose goods are under investigation, are the primary contributors to a TRA investigation or review. They hold the evidence to determine whether dumping, subsidisation or unforeseen surges of imports are causing injury to industry in the United Kingdom. That is why these interested parties are in a position to request that the TRA begins a new investigation and to appeal against a TRA decision.

Recommendation 17:

The UK trade defence regime includes both an economic interest test and public interest test. We heard evidence that the economic interest test would require not just economic assessment, but also an element of political judgement, and some witnesses questioned whether this was an appropriate function to be carried out by an independent TRA. We have some sympathy with these concerns and believe that it will be difficult in practice to separate the objective factors set out in legislation from more subjective judgements such as the assessment of relative harm on different stakeholders. It remains to be seen how these tests will operate in practice, how transparent the processes will be and how contentious the outcomes of these tests will be. (Paragraph 106)

The Government's response:

The economic interest test which will be conducted by the TRA before it makes a recommendation to Ministers is an evidence-based economic assessment. As part of this, the TRA will consider economic factors which are clearly laid out in legislation (Paragraphs 23 and 25, Schedule 4, Taxation (Cross-border trade) Act 2018). The legislation includes several factors, such as the benefits to the United Kingdom industry in removing injury caused by dumping and the likely impact of measures on other industries and consumers in the United Kingdom to make an objective and reasoned recommendation to Ministers. The rationale and reasoning behind the TRA's

assessment will be clearly set out in a statement of essential facts for interested parties to comment on prior to the recommendation, and will be detailed in the recommendation itself, which will be made public following the Secretary of State's final decision to ensure transparency.

It is then for Ministers to make a final decision. As part of this the Secretary of State will consider whether measures are in the public interest herself. This ensures that the final decisions rests with Ministers who are accountable to Parliament.

Recommendation 18:

If the TRA recommends an anti-dumping or anti-subsidy measure, the Secretary of State must accept the TRA's determination meets the economic interest test, unless he or she is satisfied that the determination is not one that the TRA could reasonably have made. For safeguard measures, the Secretary of State can reject the recommendation if he or she considers that it does not meet the economic interest test. The Government should set out, in response to this report, the rationale for the Secretary of State having a greater role in the economic interest test in respect of safeguarding measures. (Paragraph 107)

The Government's response:

The Government thanks the Committee for referencing this important distinction between the role of the Secretary of State in anti-dumping and anti-subsidy measures and her role in safeguard measures.

Anti-dumping and countervailing measures respond to unfair trading practices of specific exporting countries. Therefore, the starting presumption is that measures should be imposed unless TRID / the TRA can demonstrate that doing so is not in the United Kingdom's economic interests. The role of the Secretary of State in these cases is to assure herself that the determination on the economic interest test is reasonable.

By comparison, safeguard measures respond to unexpected import surges. These import surges may cause serious economic injury to domestic producers but are not necessarily reflective of unfair trading practices. Safeguards apply to all countries (with some minor exceptions) and therefore have a much broader impact. This is recognised in the WTO requirements and in our framework, both in the reversal of the presumption that measures should be imposed, and in the greater role of the Secretary of State in being able to reject a recommendation if she concludes that imposing a safeguard is not in the United Kingdom's economic interest. Unlike anti-dumping and countervailing measures, safeguards are not targeted at specific countries or exporters and can have much more wide-ranging impacts on the economy than anti-dumping or countervailing measures.

Across all trade remedy measures, the Secretary of State's scope to make decisions in current legislation is limited. She cannot amend or vary a recommendation. She may only reject a recommendation to impose a measure if she considers that it is not in the public interest or in relation to the economic interest test. If this happens, the Secretary of State must set out her reasons in a statement to the House of Commons.

Recommendation 19:

UK businesses will no longer be able to collaborate with European partners in order to share the considerable expertise and costs required to launch and participate in trade defence investigations. We are encouraged that TRID has established a support service to help businesses understand the application process. (Paragraph 108)

The Government's response:

The Government's aim was to provide continuity of protection to businesses in the United Kingdom. The cost to business was an important consideration when developing the United Kingdom's trade remedies framework. For that reason, TRID created their pre-application office to help domestic industries, particularly small and medium-sized businesses, to navigate the trade remedies system and to provide advice and guidance as they prepare to submit applications.

Recommendation 20:

Good working relationships between the TRA and HMRC will be important to the effective functioning of the UK trade remedies regime. We ask that the TRA write to us, within three months of its formal establishment, to explain how the two bodies are working together to support the operation of the regime. (Paragraph 115)

The Government's response:

I recognise the importance of communication and building strong relationships when setting up a new organisation, such as the TRA. The TRA will write in response to this with further information in the three months after it is established.