



Select Committee Evidence

International Trade Committee UK Trade Remedies Authority Inquiry

Which? is the largest consumer organisation in the UK with more than 1.7 million members and supporters. We operate as an independent, apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

1. The Government must ensure that consumer interests are at the heart of future UK trade policy. Consumers are central to future economic success and trade policy needs to deliver tangible consumer benefits and protect consumer interests.
2. Which? recognises the need to establish a trade remedies system as the UK leaves the EU, if the UK is to set its own trade policy. An arms' length Trade Remedies Authority (TRA) is an appropriate approach to deliver this. Consumer interests should be taken into account, along with wider public interest considerations, in determining whether remedies are appropriate. We therefore support the inclusion of an "economic interest" test within the Taxation (Cross-border Trade) Bill, which includes consumer interests, which would need to be taken into account by the new TRA when assessing the appropriate response to a complaint. The Secretary of State would also have the ability to reject the TRA's advice if they are not satisfied that the economic interest test has been met or if it is not otherwise in the public interest to accept the recommendation.
3. The governance and working practices of the TRA will be important in ensuring that this test, and therefore the consumer interest, is taken into account in a meaningful way in practice. The TRA needs to have a clear duty to consumers, which includes a comprehensive and transparent consideration of consumer impacts in both the short and longer-term as part of any investigations. It must also be governed and structured in such a way that it has the capacity to do this. Based on best practice by other public bodies, measures that would help to assure this include consumer representation on



the Board of the TRA, clear procedures for transparency and publication of the assessments that underpin its advice, including how it has balanced consumer relative to other interests in order to determine what recommendation is appropriate.

General comments

4. Which? welcomes the Government's vision to "build a future trade policy that delivers benefits not only for the UK's economy, but for businesses, workers and consumers alike". It is critical that consumers, in particular, are central to the Government's approach on trade. Consumers and consumer confidence are key to the prosperity of the UK and integral to the economy. Every month consumers spend £100 billion in the UK and, in doing so, support UK businesses, manufacturers and employees. Delivering a Brexit which works for consumers will be vital to maintaining this support. This includes ensuring that future trade policy works for consumers, delivers meaningful benefits and ensures that important standards and protections are upheld.
5. In leaving the EU, we recognise the need to establish a UK trade remedies regime, including the establishment of a TRA that the Trade Bill will create. The imposition of remedies, to protect a national industry when it is subject to dumping, can be legitimate, but it is important that when determining whether to introduce measures that there is full consideration of what the wider impact will be, including on consumers or on other industries or sectors that may then pass any additional costs on to consumers.
6. We therefore fully support the inclusion of an economic interest test in the Taxation (Cross-border Trade) Bill which includes the economic significance of affected industries and consumers, the likely impact on affected industries, the likely impact on particular geographic areas, or particular groups and the likely consequences for the competitive environment, and for the structure of markets for goods. Trade defence complaints have often involved products that will be used by intermediary industries and therefore it is important that the wider implications and what this will ultimately mean for consumers, as well as potentially for wider public policy, is addressed.
7. We support the approach that the Government has proposed based on the long-standing UK position of the lesser duty rule. The intention of this is to ensure that duties are set out a level that addresses the harm or injury to the affected sector, rather than going beyond this and setting higher duties (for example if an investigation found a dumping margin of 10%; but then decided to impose a duty of 15%) which would mean higher prices for other businesses that may rely on the goods and for consumers.
8. The Trade Bill establishes the TRA, but is limited in terms of specifying how it should operate in practice – including what its statutory duties will be and how it will be required to take account of different interests. It is largely left to the TRA to establish its own procedures - and to the Secretary of State to provide guidance. We therefore welcome the Committee's Inquiry and hope that it can establish some important principles that will ensure that the public can have confidence that the TRA will protect

their interests and has robust procedures in place to do this. This should include a duty to protect the interests of consumers and procedures for the conduct of transparent, independent and robust assessments of any potential impacts.

What is existing best-practice with respect to the structure and operation of non-departmental public bodies?

9. Which?'s experience in the establishment of public bodies and regulators, whether NDPBs or non-Ministerial Government Departments, that are relevant has been that:
- There needs to be a clear statutory duty on the body to take into account and protect the interests of consumers and the extent that this applies, relative to other interests, should be explicit.
 - There should be robust governance mechanisms in place to ensure that the body is able to deliver on this duty, as well as clear accountability mechanisms, so that there is effective scrutiny of the extent to which it is delivering this.
 - To generate confidence in the body, there should be an independent Board comprised of members that have the appropriate mix of skills and expertise and a clear duty to put the public interest first. There can be benefits in including a representative on the Board with a background in consumer interests to ensure that the body is fulfilling this responsibility (and has the ability to provide effective challenge).
 - There should be clear mechanisms in place to guard the independence of the body, including robust procedures for declaration of interests and handling of any conflicts that may arise. This extends to political independence and so the reporting and accountability mechanisms should ensure that the body is able to conduct its work and take its own decisions to publish its findings without political interference.
 - Transparency is key to ensuring confidence, showing that the body is operating independently and assuring confidence in its decision-making. This should include transparent decision-making processes, as well as a requirement to report annually on its work and its assessment of the impact on consumers (as in the case of the Competition and Markets Authority for example).
 - The body must have access to a breadth of relevant technical expertise and have clear procedures in place for how it will conduct investigations and take account of different interests as part of the process.
 - Any committees that are put in place to assist the body should have clear and transparent operational procedures, including to ensure appointments are made in the public interest and that any potential interests are declared and managed effectively.
 - Effective mechanisms are needed for stakeholder engagement, including consumer engagement, to ensure that the body understands consumers' interests and how these may apply in different circumstances that it has to consider. This includes consultation as part of investigations, as well as more formalised mechanisms for consultation at a more strategic level in order to agree priorities and ensure that there is confidence in its procedures and approach.

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To what extent does the TRA's proposed structure and operation comply with best practice?

10. The Bill establishes the following:
 - The TRA will consist of a Chair and non-executive directors appointed by the Secretary of State.
 - It will have a Chief Executive appointed by the Chair with the approval of the Secretary of State (or by the Secretary of State if the Chair is not in place).
 - Other executive directors can be appointed by the Chair, but the total number of members must not exceed nine – and there must be more non-executive directors than executive directors.
 - The TRA may appoint employees and make other staffing arrangements. It can also establish committees and its committees can establish sub-committees. These can include people who are not member or employees of the TRA.
 - The TRA may determine its own procedures and the procedures of its committees.
 - It must publish annual accounts and prepare an annual report on the performance of its functions during each financial year for the Secretary of State who is required to lay it before Parliament.
 - It must have regard to guidance published by the Secretary of State. In publishing guidance, the Secretary of State must consult the TRA and have regard to the need to protect its operational independence and its ability to make impartial assessments when performing its functions.

11. It is important that the TRA can operate effectively and that its consideration of consumers' interests, as part of the wider public interest, is more than just a "tick box" exercise. There should therefore be a statutory duty on the TRA to take account of consumer interests. Other mechanisms that should be considered in order to ensure that it does this and ensure public confidence in the robustness of its approach include:
 - Appointing a member of the Board who can provide a background in promoting consumer interests.
 - An appropriate balance of expertise and experience among its members, employees and committees, which includes capacity to understand and assess consumer impacts.
 - Clear memoranda of understanding (MoU) with other relevant agencies, such as the Competition and Markets Authority, where responsibilities may overlap and where collaborative working is beneficial.
 - Clear procedures for declaration and handling of interests to ensure confidence in the independence of the TRA.
 - A requirement for a high level of openness and transparency of its decision-making and for effective stakeholder engagement, including engagement of consumers and their representatives.

Does the TRA possess the correct level of independence from the Secretary of State to perform its functions adequately?

12. The Secretary of State will make the key TRA appointments and can also issue guidance to the TRA – although the Bill, as currently drafted, requires that before

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publishing guidance, the Secretary of State must consult the TRA, and have regard to the expertise of the TRA and the need to protect its operational independence, and its ability to make impartial assessments when performing its functions. The extent to which the TRA can act independently will therefore be very reliant on the approach of the Secretary of State. It is therefore essential that some safeguards are built into the Bill and also adopted as part of the TRA's procedures to ensure that it can act independently and can voice concerns if it feels that its advice is being misinterpreted.

14. Elements that should be built into the legislation include:
- Clear statutory duties on the TRA to act in the public interest and to take account of consumer, as well as other relevant interests.
 - A requirement on the Board to act independently and in the public interest, including adopting procedures for identification and management of any potential conflict of interests.
 - A requirement on any bodies established by the TRA, including its committees and sub-committees to act independently and in the public interest and to have procedures in place to ensure this.
 - A requirement on the TRA to operate transparently and to make public the basis of its decisions and recommendations.
 - A requirement on the TRA to apply the economic interest test transparently, including a requirement to publish its assessment.
 - A requirement on the TRA to consult relevant stakeholders including consumer interest groups.
 - Enabling the TRA to publish its advice independently of Ministers.
 - Extending the requirement on the TRA to publish an annual report to make it clear that this must set out how it has taken into account the impact on different interests, including consumers.
 - Placing a requirement on the Secretary of State to publish the rationale for their decision, including how they have taken account of the TRA's advice and the reasons for any divergence from its recommendation.

Is the division of responsibilities between the Trade Remedies Authority and the Secretary of State in the Trade Bill and Taxation (Cross-border Trade) Bill workable and appropriate?

15. The responsibilities, as described, are appropriate. The TRA will conduct the investigation and has a responsibility to apply the economic interest test. The Secretary of State would be free to reject this advice on the grounds that the economic interest test was not met or for wider public interest reasons.
16. The Bills should, however, make it explicit that the TRA has to operate openly and transparently and, as set out above, that it must publish its advice to Ministers. The Taxation (Cross-border Trade) Bill should be more explicit that a full and transparent assessment needs to be published, so that it is clear how the TRA has reached its decisions, as well as a requirement for processes to be in place to deal with any potential conflicts. The TRA should also be explicit about how it has weighed different interests and the rationale behind the advice it provides. The Secretary of State in turn

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must be required to publish an impact assessment and basis for any deviation in approach, including any assessment of the public interest.

What further regulations, if any, are required under the Trade Bill or Taxation (Cross-border Trade) Bill to ensure the Trade Remedies Authority operates effectively?

17. Please see the issues that we have set out in relation to Question 3 and which we have proposed to help ensure public confidence in the TRA and ensure that costly duties are not imposed without a clear rationale and full and transparent consideration of all of the potential impacts. Anti-dumping duties can be in place for many years - and therefore it is essential that there is a full consideration of their likely impact and what they will achieve before a decision is made to introduce them. A "sunset" provision should also be considered to ensure that decisions have to be kept under review and their continuation justified.

Which?
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