UK STEEL
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Preparing for Trade Remedies Investigations

GUIDANCE FOR THE STEEL SECTOR

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1 BACKGROUND AND INTRODUCTION

1.1 Types of trade remedy

There are three types of trade remedy[1] covering 3 different types of problem:

- Anti-dumping – injurious/unfair pricing
- Anti-subsidy (countervailing duty) – subsidised prices
- Safeguards – sudden surge in imports (even if fairly traded)

Further detail on each of the 3 types is provided below:

- **Anti-dumping** (AD) is by far the most common trade remedy. It is regularly used by all major economies, including countries traditionally seen as export oriented such as Japan, Korea and China. Dumping is defined as the situation where the export price is below the domestic price (the latter must fully cover cost of production (COP) so a price below COP is always dumped). In order to adopt measures, the dumped imports must cause material injury to domestic industry.

- **Countervailing duty** (CVD/anti-subsidy) investigations have been much less common, though their use has dramatically increased in recent years. The reason for lower use of CVD has been a) more complicated and less established calculation methodologies compared to dumping b) the fact that subsidy investigations involve the investigation of a government whilst a dumping investigation only investigates the commercial information of exporting companies c) the fact that general subsidies cannot be addressed. In order to be considered a subsidy there must a financial contribution, a benefit, and it must be specific (i.e. to a company, sector or region). In order to adopt measures, subsidised imports must cause material injury to domestic industry.

- **Safeguard** investigations do not require 'unfair trade' to be proved and consequently the WTO requirements for safeguard measures are more stringent (e.g. sudden, sharp, and significant increase in imports, unforeseen developments, serious injury, more time limited etc). Unlike AD/CVD measures, which are adopted on a country/company specific basis, safeguards can only be imposed against all sources of imports. Some exclusions are possible on the basis of free trade agreements or developing countries. Recent years have seen an upsurge in the use of safeguards by developing countries. Safeguards provide quick and effective protection with no requirement to undertake complex calculations of dumping or subsidy margins. The fact that they restrict imports from all sources, plus the fact that in the longer term all WTO members affected by the measures can take retaliatory action against the country imposing the restrictions, makes them politically more difficult. Also for measures lasting for longer than four years the industry benefiting from them is required to demonstrate that it is implementing a restructuring plan.

Some of the key differences between the 3 trade remedies are listed in the table below.

Anti-Dumping	Subsidy & CVD	Safeguards
• Price comparison • Material injury • Individual company measures • Country specific • Tariffs	• Subsidy (specific, benefit etc.) • Material injury • Individual company measures • Country specific • Investigation of another government's policy • Tariffs	• Such increased quantities • Serious injury • Applies to all imports • No detailed calculations • Duration limited • Like or directly competitive products • Quotas or tariffs • Unforeseen developments • Risk of retaliation

[1] Trade remedies is the most used term for anti-dumping, countervailing duties and safeguards. In the EU they are called trade defence instruments but this terminology is only used in the EU. The UK has decided to use trade remedies like the rest of the world. Another term sometimes used for trade remedies, particularly in academic literature, is commercial policy instruments

More detail on each of the 3 types is provided in sections 2, 3 and 4 of this guidance. However, it is useful to draw out some key points of difference between AD or CVD and safeguards at the outset:

- AD and CVD both require more analysis than safeguards. This is because dumping and subsidy margins must be calculated, which is a detailed and complicated task.
- AD and CVD can both be targeted against countries that are particularly causing problems in terms of unfair trade. Safeguards are a blunter tool because they have to apply to all imports.
- AD and CVD have company specific measures whereas safeguards apply to all sources. If there is a quota or tariff rate quota (TRQ), the quota may be allocated by country.
- SG have a higher injury standard than AD/CVD (serious rather than material)
- SG can cover both like and directly competitive products. AD and CVD can only cover like goods.

In terms of comparing anti-dumping and countervailing duties, the following comments can be made:

- Traditionally, the UK has been supportive of anti-subsidy measures. It is more sceptical of anti-dumping duties due to the fact that dumping is a form of price discrimination which, in itself, is not necessarily problematic.
- Subsidy investigations involve investigation of another government's policy which can make them more controversial. Dumping investigations involve individual company pricing behaviour.
- An application for anti-dumping duties can be easier than CVD for the industry making the complaint. This is because it only involves gathering evidence on domestic and export prices. Subsidy applications involve gathering information on national and provincial government policies in overseas markets.
- The WTO specificity requirement means that not all subsidies can be countervailed. For example, a subsidy that is generally available (e.g. a tax concession that is available to all companies meeting specified conditions) cannot be addressed under this agreement. Anti-dumping can be useful in dealing with some subsidy situations. If such a subsidy has a distorting impact on export prices, such practices can legitimately be addressed under anti-dumping rules (as long as the export price is below the 'normal value'). The reason for dumping is not investigated.

1.2 The role of trade remedies

Trade remedies are sometimes considered by academic economists as protectionist and working to the disadvantage of importing industries/consumers. It is possible that, in the past, especially prior to the WTO, trade remedies were used in a more protectionist manner. However today, trade remedies are a critical part of the rules based global trading system created by the GATT[2] in 1947, and enhanced by the formation of the WTO in 1995. Backed up by effective WTO dispute settlement procedures (AD has been the most active area of WTO dispute settlement), they support free trade by providing mechanisms to deal with dysfunction and distortions in global trade. There is no global competition policy (as there is within the EU where no trade remedies are necessary) and trade remedies are the only mechanism that exists to deal with distortions to world trade and markets.

It can be argued that if trade remedies work well, in principle, they should correct market distortions so that the market can be closer to the 'free trade' outcome i.e. they support free trade (creating a 'level playing field') rather than providing protection to domestic industry. They are particularly important from a steel industry perspective given that developed countries agreed, as part of GATT negotiations in the early 1990s, to remove their tariffs on steel products. It is to trade remedies alone then that the steel industries of the developed countries (US, EU, Japan, Canada, South Korea, Australia etc) must turn to provide protection from unfairly traded goods.

In addition, trade remedies also have a function of providing a safety valve facilitating domestic constituency 'buy-in' to trade liberalisation. The successes of the GATT in liberalising world trade since 1947 would not have been possible without the possibility to use trade remedies. Critically, and in defence of the above points, the lack of trade remedies between EU member states is not at all a controversial issue. This is because of the degree of economic integration and including significant coordination, harmonisation, and adoption of common regulations, policies and institutions.

[2] The General Agreement on Tariffs and Trade, the treaty (as amended in 1995) which underpins the WTO.

1.3 Trade remedies and steel

1.3.1 Initiations and measures

Steel accounts for a significant proportion of global trade remedy activity as indicated by the data presented below. The data is all from the WTO and is for the period 1995-2018 since the creation of the WTO.

Table 1 - Investigations initiated 1995-2018

	XV Base metals & articles	All products	Metals % of total
Anti-Dumping	1774	5725	31%
Anti-Subsidy	237	541	44%
Safeguards	83	347	24%

Table 2 - Measures adopted 1995-2018

	XV Base metals & articles	All products	Metals % of total
Anti-Dumping	1222	3805	32%
Anti-Subsidy	143	285	50%
Safeguards	43	172	25%

Table 3 - % of Successful Applications 1995-2018

	XV Base metals & articles	All products
Anti-Dumping	68%	66%
Anti-Subsidy	60%	53%
Safeguards	52%	50%

Figure 1: Global Anti-Dumping Initiations

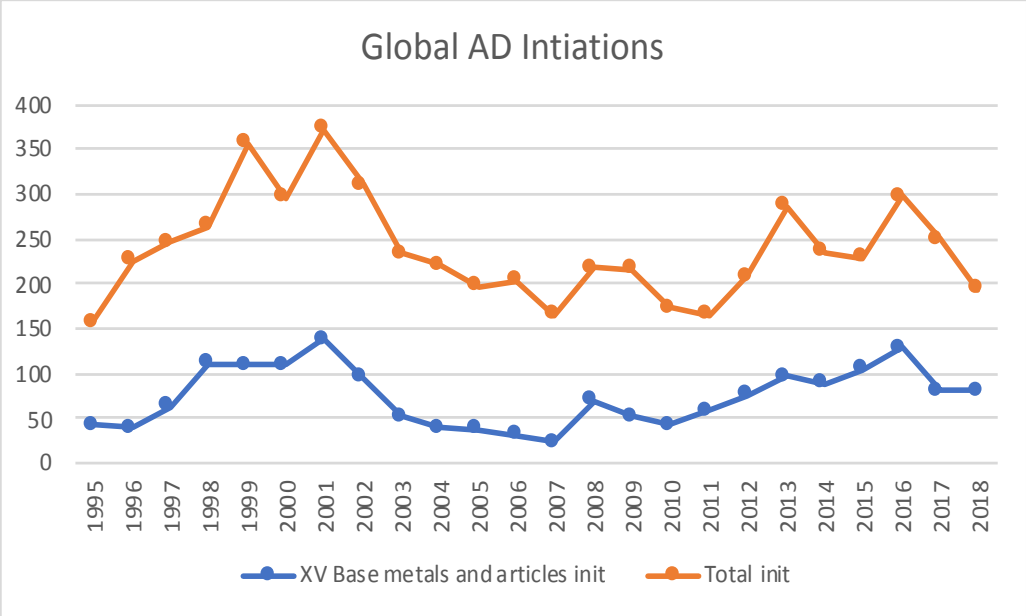


Figure 2: Global Countervailing Duties Initiations

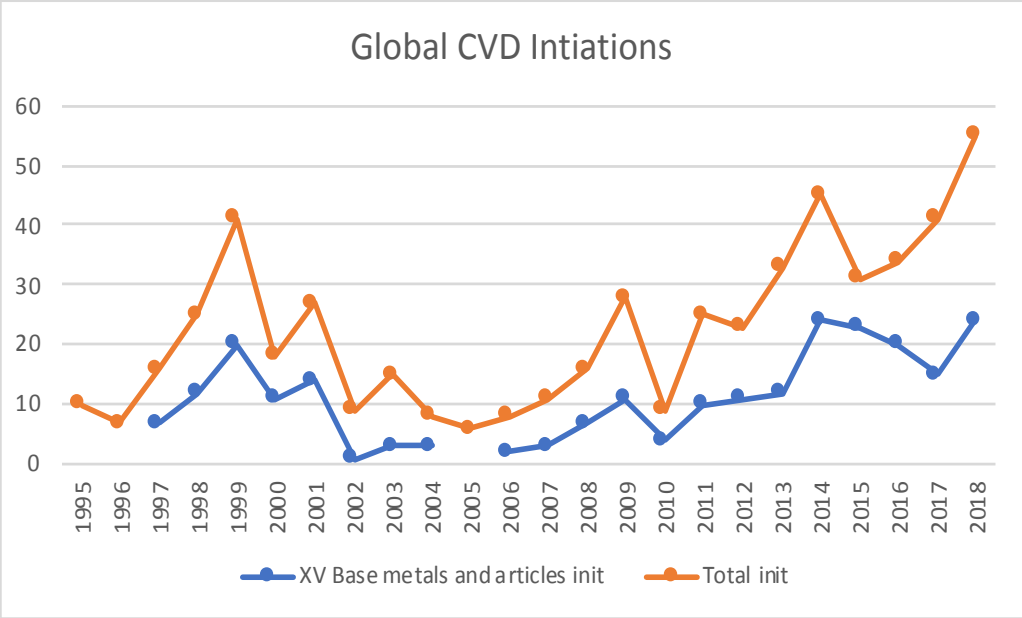
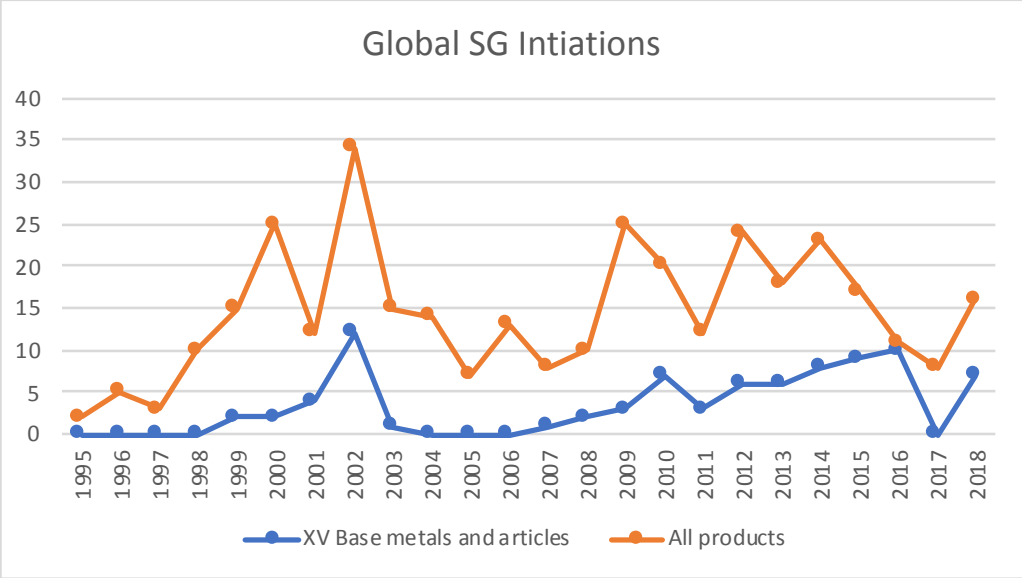


Figure 3: Global Safeguard Initiations



The following comments can be made on the trends in Tables 1-3 and Figures 1-3:

Initiations and Measures – importance of metals

- As table 1 shows, anti-dumping is by far the most used trade remedy in terms of investigations initiated.
- Anti-subsidy is far less common for reasons explained above. But the importance of CVD is growing as can be seen in figure 2.
- Around a third of anti-dumping investigations involve products of HS Section XV Base Metals and Articles (including steel). A higher proportion (44%) of CVD cases involve metals. Only around a quarter of safeguard investigations involve metals.
- Not all trade remedy investigations result in measures. Table 2 shows the number of measures adopted for the same period.

- Table 3 shows the number of measures as a percentage of initiations. For anti-dumping investigations, around one third of investigations result in no measures. For subsidy and safeguards, this proportion is around 50%.

Trends in global trade remedy activity

- There was a peak in global trade remedy activity in the period 1999-2001 as shown in figures 1-3.
- The trend remains cyclical in the ensuing period.
- The past decade has seen a dramatic increase in use of countervailing duties. This partly reflects the commencement of using countervailing duties against China by major trade remedy users. Previously trade remedy activity against China was focused on anti-dumping using non-market economy methodologies.

1.3.2 Main users and targets

The following tables show the countries using trade remedies the most and those most being targeted AD and CVD investigations.

Table 4 - AD countries initiating 95-18

Countries initiating	Metals	All
United States	383	694
European Union	198	510
Canada	166	241
Australia	117	344
India	108	919
Brazil	95	417
Argentina	90	368
Mexico	70	155
Thailand	62	82
South Africa	60	231
Indonesia	49	136
Turkey	42	227
Colombia	37	92
Malaysia	34	90
Pakistan	32	129
Taipei, Chinese	30	46
Russian Federation	28	47
China	25	274
Egypt	24	101

Table 5 - AD countries targeted 95-18

Countries targeted	Metals	All
China	399	1327
Korea, Republic of	138	428
Taipei, Chinese	104	302
Russian Federation	92	167
India	84	236
Japan	73	221
Ukraine	70	93
Turkey	53	98
Brazil	48	156
South Africa	48	78
Thailand	46	230
Malaysia	46	152
Viet Nam	34	78
Indonesia	32	211
Spain	30	66
Germany	28	119
Mexico	28	81
Romania	27	41
Italy	24	72
Kazakhstan	23	30
United States	22	290
United Kingdom	16	51
European Union	15	128
France	15	56

Table 6 - Subsidy countries initiating 95-18

Countries initiating	Metals	All
United States	123	243
Canada	48	69
European Union	22	81
Australia	16	31
India	7	13
South Africa	5	13
Taipei, Chinese	5	5
Brazil	3	12
New Zealand	3	9
Egypt	2	12
China	1	12
Russia	1	1

Table 7 - Subsidy countries targeted 95-18

Countries targeted	Metals	All
China	81	160
India	36	86
Korea, Republic	19	30
Turkey	14	18
Viet Nam	10	14
Brazil	9	12
Indonesia	7	24
Italy	7	15
Malaysia	6	11
Thailand	6	19
Taipei, Chinese	5	10
South Africa	4	7
France	3	7
Oman	3	7

Table 8 - Safeguard countries initiating 95-18

Countries initiating	Metals	All
Indonesia	12	29
India	8	43
Chile	6	20
Malaysia	5	5
Colombia	4	7
Jordan	4	18
Bulgaria	3	6
Czech Republic	3	9
South Africa	3	6
Thailand	3	5
United States	3	12
Venezuela	3	6

Tables 4-8 show the main users and targets of dumping, subsidy and safeguard investigations. The data for both metals and all products is included but the tables are ordered by metals. Some comments can be made on the main users and targets of trade remedy activity:

- **AD users** – The 4 main pre-WTO users of anti-dumping (US, EU, Canada, Australia) account for the most AD investigations initiated in the metals sector. However, in terms of all products, it is India, US, EU and Brazil that have been the four main users during this period.
- **AD targets** – China is by far the biggest target of anti-dumping activity. As can be seen from table 5, sometimes the EU is targeted as a whole and other times individual member states are targeted.
- **Subsidy users** – The US is by far the biggest user of countervailing duties for both metals and all products. The four big traditional trade remedy users dominate anti-subsidy activity.
- **Subsidy targets** – Again China tops the targets of anti-subsidy activity. India has also been a significant target.
- **Safeguard users** - The biggest users of safeguards tend to be developing countries and not the traditional users of anti-dumping. The reason for this may be because the creation of the WTO in 1995 saw most liberalisation in these countries. The developed country users had relatively more open markets in 1995. It is possible, therefore, that these more developed developing country markets saw surges in imports in sectors that had been behind high protection. Note that Czech Republic and Bulgaria initiated safeguard investigations before they were members of the EU.

- **Safeguard targets** – There are no individual targets of safeguard investigations as safeguards can only be adopted against all sources of imports.

1.4 Law and institutions

1.4.1 World Trade Organisation

Most provisions of the WTO concern liberalisation and reduction of trade-restrictive measures. Trade remedies is one of the areas of WTO rules where WTO provisions allow protection to be increased, albeit temporarily. The following table indicates which WTO agreements authorise the use of trade remedies.

	GATT 1994	Agreement
Anti-Dumping	Article VI	Agreement on Implementation of Article VI (Anti-Dumping Agreement)
Subsidies	Article VI Article XVI	Agreement on subsidies and countervailing measures (SCM)
Safeguards	Article XIX	Agreement on safeguards

In summary, the WTO agreements:

- Establish the right for a country to seek protection, usually in the form of increased tariffs where injury is caused to domestic industry.
- Define substantive concepts such as a) dumping, subsidy and increased imports b) injury and causation. The agreements set out a methodological framework that all WTO members must follow.
- The agreements also establish procedural rights that WTO member states must offer to exporters of other members in trade remedy investigations. Once an investigation has been initiated, the agreements establish defined rights for exporters with regard to preparing a defence and influencing the outcome of the decision.
- The WTO has binding dispute settlement and, although not perfect, has proved to be successful in resolving many trade disputes since 1995. Trade remedies has been a major area of dispute during this period. For the period 1995-2018 there were 573 requests for consultations. Panels were requested in 336 of these disputes and reports issued in 249 cases. Trade remedies accounted for a high proportion of consultations requested: a) Anti-Dumping 131 b) SCM 122 c) Safeguards 59. The WTO panel and Appellate Body reports have provided a substantial body of jurisprudence on how the agreements in the area of trade remedies should be interpreted. This has been a success in terms of moderating over-use of trade remedies. However, there has also been criticism of WTO panels and Appellate Bodies for over-reach into reviewing issues of fact rather than only reviewing the law. This is one of the topics in discussions around reforming and modernising the WTO.

1.4.2 EU trade defence legislation

Until the UK leaves the EU, it remains part of the EU's trade defence system. If the UK leaves the EU with a deal, during any implementation period EU trade defence rules will continue to apply.

The EU has regulations for each of the 3 types of trade remedy:

- Anti-dumping: Regulation 2016/1046 as amended by Regulation 2017/2321.
- Anti-Subsidy – Regulation 2016/1037 as amended by Regulation 2017/2321
- Safeguards – Regulation 2015/478 (imports from WTO countries) and EU regulation 2015/755 (imports from non-WTO countries).

The European Commission runs EU trade defence investigations on behalf of member states. EU members are consulted in advisory committees and, ultimately, definitive measures can only be adopted by the member states in the Council of Ministers. EU measures can be challenged in the European Courts of Justice.

The EU has recently modernised its legislation and adopted a new anti-dumping methodology in relation to state distortions. This provides for the possibility to impose higher duties and to include consideration of environmental and social standards.

1.4.3 UK trade remedies

The UK now has a full suite of trade remedy legislation, more or less equivalent to that of the EU. The key laws are:

- **Primary legislation**
  - Taxation (Cross-Border Trade) Act 2018 ("Taxation (CBT) Act 2018")
- **Secondary legislation (statutory instruments)**
  - The Trade Remedies (Dumping and Subsidisation)(EU exit) Regulations 2019 ("UK Dumping and Subsidy Regulations").
  - The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers)(EU Exit) Regulations 2019 ("UK Safeguard Regulations")

The abbreviations underlined denote the terminology that will be used throughout this document. DIT intends to produce guidance to the TRA/TRID (see next paragraph) on how this legislation should be implemented. At the time of writing, the public of this guidance is imminent.

The trade bill, which has not been passed, would have created a new independent body, the Trade Remedies Authority. Although the "TRA" has been set up in Reading and now employs more than 100 people, it still does not officially exist. Transitional arrangements have been put in place where the TRA will operate as the Trade Remedies Investigation Directorate (TRID) as a part of DIT. Throughout the document, therefore, the terminology TRA/TRID will be used.

When the TRA/TRID is independent, it will run investigations and make recommendations to the Secretary of State. Ultimately it is the Secretary of State that will decide whether to adopt measures or not.

In terms of the TRA, the plan is for the following:

- TRA will be a non-departmental public body
- The total members of the TRA must not exceed nine. This should include a Chair, other non-executive members, a Chief Executive and other executive members
- The number of non-executive members should be greater than the executive members as far as practicable
- The TRA must prepare an annual report on performance of functions
- The TRA must have regard to guidance published by the Secretary of State (but not in respect of ongoing investigations). Secretary of State must consult TRA in doing this and must protect operational independence and ability to make impartial assessments.

TRA/TRID or Secretary of State determinations can be appealed in the Upper Tribunal. There will also be an initial process of 'reconsideration', whereby parties can formally request that the TRA reconsiders any issue.

1.5 The role of UK companies in trade remedy investigations

The TRA/TRID runs the investigation. Business is expected to provide data and information to assist the authority in its analysis. A summary of this process is as follows:

- **Application** – UK industry submits a request for trade remedies with relevant evidence included. This must include some data but only sufficient to make a prima facie case.
- **Questionnaire** – A detailed questionnaire is sent to UK producers requesting detailed information on sales, cost of production and other data used to assess injury (e.g. production, employment etc.).
- **Hearings and submissions** – Additional arguments and information can be provided through oral hearings and written submissions. This is often required to respond to points that have been made by exporters and importers opposed to any measures.
- **Disclosure** – The TRA/TRID will disclose its findings to interested parties prior to them becoming definitive. Further oral hearings and/or written submissions may be required to provide final arguments.

The following table shows critical data that is required by the TRA/TRID in order to make decisions on the key issues in an anti-dumping investigation. The third column shows the data that must be provided by UK industry and how it will be used. The bulk of data provided by UK producers will be used to make the injury

determination. In addition, UK industry data will be used to calculate the non-injurious price (NIP). The NIP is used to determine the level of anti-dumping duty based on the lesser duty rule (i.e. the AD duty will be the lesser of the dumping and injury margin).

In industries where there are numerous producers, it is likely that only a sample of producers will be selected to provide detailed data. This is unlikely in steel where the level of concentration is high but could be relevant for some downstream products.

The 2nd column shows that it is exporters that provide the data in order to calculate the dumping margin. Also, the export prices of the exporting companies involved in the investigation will be used to calculate the injury margin. Finally, the exporters' price and volume will be used in the injury analysis.

DECISION-MAKING DATA	EXPORTER		UK INDUSTRY
	Domestic Market	**UK Market**	**UK Market**
Dumping Margin (%)	Domestic Price (Normal Value) Cost of production	Export Price to UK	
Injury Margin (%)		Export price to UK	Non-Injurious Price
Injury Indicators		Export price Export volume	Sales (volume/value) Market Share/Price Profitability Production/Employment Etc.

The data required from UK industry is similar in both anti-subsidy and safeguard investigations. The focus for UK industry as applicants is in providing the data necessary for the determination of injury. For exporters to the UK the data requirements are, of course, different for subsidy investigations. No information is required for domestic prices but full details of subsidy schemes that an exporter may be benefiting from are required.

Note that this guidance focuses only on the UK industry role as an applicant for trade remedies. UK steel companies may be importers or users of products that are subject to UK trade remedy investigations. In such circumstances, companies can register as interested parties and provide relevant information and comments to the TRA/TRID.

Data to be provided by users and importers is not included in the above table. Users and importers provide data on import transactions. This will be used partly in the injury analysis to determine price undercutting, injury margin and import volumes. In addition it will be used to determine the impact of the measures on importers and users in the context of the economic interest test.

2 UK SUBSTANTIVE ISSUES - DUMPING/SUBSIDY

2.1 Overview

The WTO rules have three main requirements relating to substance that must be met before anti-dumping or countervailing measures can be adopted.

- **Dumped or subsidised imports**
  - **Dumping -** The export price of a product sold is considered to be dumped if it is less in an export market than the comparable price for that product in the domestic market (note: the domestic price must at least cover costs).

  - **Subsidy -** There must be a financial contribution from government that confers a benefit. The subsidy must be specific (i.e. to a company, a sector, or a region)

- **Injury -** The domestic industry making the complaint must be suffering material injury. That is, it must be experiencing significant and measurable problems.

- **Causal link -** It must be demonstrated that the dumped and/or subsidised imports are causing the injury identified. In this context, it must also be ensured that factors other than dumped imports are not causing the injury.

If these three tests are satisfied, a WTO member can adopt anti-dumping or countervailing duties against imports from the country in question.

The UK has an additional requirement before anti-dumping or countervailing duties can be adopted. The measures must be in the public interest, one component of which is the economic interest of the UK. The EU has a compulsory Union interest requirement. Other countries (e.g. Canada) have a possible public interest test that only applies when particular circumstances are triggered.

It can be noted that there is no public interest test requirement in the WTO anti-dumping and subsidies agreements. Thus, many major users of anti-dumping/countervailing (including the US, Australia, India etc) impose measures once the 3 basic WTO requirements are met.

In the case of safeguards, because there is no unfair trade as such, these remedies can have political implications and thus the final decision is usually a political one whether there is an explicit public interest test or not. In the US, for example, the President has no role in dumping and subsidy measures but does have to sign off on safeguards.

2.2 Dumping

2.2.1 Basic definition of dumping

Dumping occurs where the price of a product sold in the export market is lower than the "normal value" for the same product when sold on the domestic market.

Dumping is defined in paragraph 1(1), Schedule 4 of the Taxation (CBT) Act 2018

1) For the purposes of this Schedule, goods are “dumped” in the United Kingdom if—
   (a) they are imported into the United Kingdom, and
   (b) their export price is less than their normal value;

Normal value is defined in paragraph 1(2):

2) The “normal value” of goods means—
   (a) the comparable price, in the ordinary course of trade, for like goods…….when destined for consumption in the exporting foreign country or territory, or
   (b) such other price…..where it is not appropriate to use the price in paragraph (a).

Normal value is usually taken to be domestic price but can also be based on the cost of production or export prices to a third country.

Dumping = Normal Value – Export Price

Where normal value is higher of domestic price or cost of production.

There is a common misunderstanding that dumping is selling below cost of production. It is true that a price below cost of production is always a dumped price. This is because domestic prices below cost of production cannot be used as the basis of normal value. In such cases, normal value will often be based on the cost of production. However, even if the export price is above cost of production, it will still be considered to be dumped if it is below the domestic price. This is illustrated with the simple example below:

Situation 1 **Domestic price 1**	**100**	**Situation 2** **Domestic price 2**	**100**
Cost of production	80	Cost of production	80
Export price 1	100	Export price 2	90
NV = domestic price Export price = Normal value **NO DUMPING**		NV = Domestic Price Export Price < Normal value **DUMPING**	
Situation 3 **Domestic price 3**	**60**	**Situation 4** **Domestic price 4**	**70**
Cost of production	80	Cost of production	80
Export price 3	60	Export price 4	90
NV = Cost of production Export price < Normal value **DUMPING**		NV = Cost of production Export Price > Normal value **NO DUMPING**	

Although this is the basic principle behind the analysis of dumping, there is some flexibility built into the WTO provisions:

- Investigating authorities normally use weighted averages in calculating whether dumping is occurring. Therefore, individual consignments sold at different prices will usually not be of consequence, provided that on average the prices are not dumped and any dumped consignments are not targeted on any particular region, customer, or time period (i.e. there is a pattern of export prices that differ by region, customer or time period). Individual transactions may be sufficient to establish a prima facie case of dumping for the purpose of making an application. But all transactions for a defined investigation period (usually one year) will actually form the basis of the calculation.
- Insignificant (minimal) dumping margins are ignored. Insignificant is defined as less than 2%.
- If aggregate export volumes of the product concerned from any one country to the export market concerned are small, they are unlikely to be the cause of any injury. The UK legislation provides that no investigation can be initiated where the imports from the country concerned account for less than 3% of total imports, unless the imports from all such countries when grouped together account for more than 7% of total imports.
- Export and domestic prices may diverge if there are differences in the product or terms of sale that account for this divergence.

A final point to note here is that there is no such thing as an 'innocent' dumper. Even if an exporter is forced to start dumping in order to stay in the market, anti-dumping rules require that export price must be equal to or greater than the domestic price. No account is taken of why dumping may have started.

2.2.2 Overview of dumping calculation

The end result of an anti-dumping investigation is often the imposition of an anti-dumping duty. The WTO anti-dumping agreement states that the amount of the anti-dumping duty must not exceed the 'margin of dumping' (Article 9.3). As implied by this provision, the objective of the dumping calculation is to produce a single figure representing the margin of dumping.

The elements of a dumping calculation are as 'simple' as the following formula.

$$Dumping = Normal\ Value - Export\ Price$$

As mentioned above, the normal value is usually based on the comparable price in the domestic market of the exporting country. When this is compared with the dumping margin this gives an absolute amount of dumping. Thus, if the normal value is 100 and the export price is 80, the absolute level of dumping is 20.

However, anti-dumping authorities usually express the margin of dumping in percentage terms (referred to as the ad valorem rate). The calculation of the dumping margin, therefore, requires the expression of the absolute dumping margin as a percentage of the export price. This means that the dumping margin can be expressed as a formula as follows:

$$Dumping\ Margin\ (\%) = \frac{Normal\ Value - Export\ Price\ (1)}{Export\ Price (2)} x100$$

The export price (1) used in the numerator is not necessarily the same export price (2) used in the denominator. This is because the comparison of normal value and export price is normally done at the ex-factory level. If the export price of a product is "delivered" to the UK, EP1 will have to be adjusted so as to be comparable to the domestic price. See section 2.2.5 on 'comparison' below for further information on this. Anti-dumping/countervailing duties are imposed at the UK border. Therefore, export price (2) will be the UK border price (CIF) in order that the absolute dumping margin is calculated as the equivalent dumping margin at the CIF level where customs duties are applied.

Note that this calculation will be done for each cooperating exporter.

The actual calculation, although based on this simple formula, can be extremely complicated. Particular complications are:

- Where there are multiple grades/models and transactions
- Comparability of prices and adjustments (fair comparison)
- Domestic price tests in establishing normal value

One complication is where there are multiple types of products sold. If there is only one type or grade of product sold, the calculation is relatively straightforward in terms of applying the above formula, though there are still various issues that need to be addressed in establishing normal value as set out below. However, where there is more than one type, grade or model, it is normal to make multiple 'calculations' for each type or grade. The reason for this to ensure that only prices of comparable products are compared. It may well be, for example, that the product sold on the domestic market is of a higher grade than the product exported. In this case, it would be normal that the export price is lower than the domestic price, even in the absence of dumping. Thus, it needs to be ensured that comparisons only take place between prices that are comparable.

In this situation, a weighted average of the margins for each type must effectively be taken to calculate the overall margin of dumping. It would also be possible to make a fair comparison by making adjustments to each price to ensure that like is always being compared with like. It is not an obligation of the WTO rules to make the price comparisons type by type. However, as a practical matter, it is much easier to make the comparison in this way, rather than attempting to make adjustments to each price to ensure comparability. Thus, establishing normal value usually involves identifying a series of normal values for each type, model or grade.

It should be noted that the WTO Appellate Body has stated that any interim calculations per model or type are not formally 'margins of dumping'. There can only be one overall margin of dumping per exporter.

2.2.3 Normal Value

By far the most complicated part of the calculation is the determination of normal value. The key detail of the UK legislation on normal value is contained in regulations 7 and 14 of the UK Dumping and Subsidy Regulations. Here we can distinguish the calculation of normal value between two situations:

- WTO members/market economy situations (regulation 7)
- Non-WTO members, non-market economies (NMEs), non-market economy methodologies permitted by WTO accession protocols (regulation 14).

The current understanding of the UK approach is that it will principally be done under regulation 7. The UK has studied other trade remedy regimes and has decided to focus its approach on that of Australia. Australia treats all other WTO members as market economy situations. If there are state distortions (including NME-type situations), the Australian AD Commission will make adjustments to the data while maintaining use of a market economy methodology.

The new anti-dumping methodology of the EU is also a similar approach.

However, the UK legislation includes the possibility for all normal value options permitted by the WTO. More explanation of this distinction follows below.

Standard approach to normal value

Taking the standard approach to normal value, there are basically four reasons why domestic prices will not be used:

- Prices are not in the ordinary course of trade (OCT). This includes prices below cost of production or prices for transactions between associated parties (transfer prices). Prices that are not in the ordinary course of trade are defined in an open way as including situations where the TRA/TRID considers it appropriate to determined that prices are not in the OCT.
- Domestic prices can be rejected when a particular market situation exists. This includes the situation where prices are artificially low, where there is significant barter trade, or where prices reflect non-commercial factors.
- Low volume of sales – When the domestic volume is less than 5% of the export volume for the exporter concerned, domestic prices can be rejected.
- An alternative will, of course, have to be used in situations where the exporter does not sell goods on domestic market.

Regulation 8 provides two alternatives that can be used when domestic prices are rejected. This includes:

- Cost of production plus a reasonable rate of profit.
- Price of like goods when exported to a 3rd country.

Regulation 11 states that the cost of production should normally be calculated by the TRA/TRID on the basis of the records of the exporter. Regulation 13 provides for adjustments to the exporters' cost of production in the case that they may be distorted. The purpose of the adjustments to COP are to calculate what the overseas exporter's costs and profits would be if they were substantially determined by market forces. The UK legislation allows the TRA/TRID to use costs/profits from an appropriate representative third country or international prices, costs or benchmarks.

There is some ongoing ambiguity around the WTO consistency of this approach. A WTO dispute settlement ruling in *EU – Biodiesel* declared that such adjustments are not WTO consistent. If it is true that such adjustments are not consistent with WTO rules, global trade remedies will be weakened in that there will be no WTO-consistent method of countering certain types of state distortion. However, the situation is ongoing and there do appear to be other provisions within WTO rules that can permit such adjustments. Note that this issue is distinct from the issue of non-market economies (i.e. it is dealing with state distortions in market economies).

The EU recently amended its dumping methodology to include consideration of environmental and labour standards when choosing data from a third country. The UK will not have similar provisions in its legislation.

Key tip for applicants on standard methodology to normal value *– where there are state distortions that affect cost of production, this will have the impact of distorting the dumping calculation. In such cases, UK industry should submit evidence of cost distortions in the overseas market. The TRA/TRID can then investigate whether an adjustment is required. The European Commission is publishing country reports to assist EU industries in having evidence to request such cost adjustments. The first report published concerns China. Evidence in other countries' anti-dumping investigations may also be useful in this regard.*

Alternative normal value methodologies

Regulation 14 covers the situations where alternative methodologies might be used. An example of an alternative methodology was the EU's former analogue country approach in the case of non-market economies. Such alternative methodologies can be used in cases against an exporting country:

(a) that is not a member of the WTO;
(b) that is a member of the WTO but the terms of its membership contain specific provisions regarding the determination of the normal value; or

(c) where there is a complete or substantially complete monopoly of its trade and where all or substantially all domestic prices are fixed by the government.

The TRA/TRID has more flexibility in the construction of normal value when these situations apply. In the analogue country approach, for example, no information from the country concerned has to be used. The price and cost data can merely be replaced by data from a representative third country.

It is unlikely that there will be situations where a) or c) will be used but it is good to have them in the UK legislation to keep all options open for the future.

Option b) is definitely available in the case of Vietnam and Tajikstan. There is some ambiguity around whether it is still available to use in the case of China. China was the first country where this option became available so it is worth providing a bit of explanation on this.

During the negotiation of China's accession to the WTO (and subsequently the same for Vietnam), there was a recognition that China did not meet the NME criteria mentioned above. However, there was also an acknowledgement of the fact that China did not meet the requirements of a fully functioning market economy. Thus, a special provision was included in the Chinese accession protocol that allowed the continued use of alternative methods to establish dumping, unless it could be established that the Chinese producers concerned are operating in a market economy environment. Certain parts of this provision expired in December 2016. However, the remaining parts still authorise the use of an alternative methodology.

China has challenged this in the WTO and a dispute settlement panel is yet to rule. The panel has now been suspended at the request of China, with reports suggesting that China was going to lose the panel and that it would be confirmed that the non-market economy methodology could still be used against China where market economy conditions do not apply. Some countries, such as the US, are continuing to use this provision in cases against China. Other regimes, such as the EU and Australia, have changed their methodology to use only the normal value adjustments (for market economies) discussed in the second paragraph above. It can be noted that the latter is much more restrictive than the former and, thus, provides less opportunity to adequately deal with Chinese government distortions.

Summary of the likely approach to normal value in the UK

As mentioned above, DIT has stated that their intention is to use "particular market situation" (PMS) as the basis of calculating normal value. Alongside this, DIT has suggested that it will only use the regulation 8, 11 and 13 possibilities to calculate an alternative normal value (i.e the standard approach).

Whether this will be sufficient to deal with the situations that arise, particularly in relation to China, remains to be seen. It may well be the case that using the adjustment approach under regulation 13 to deal with state distortions becomes onerous if the TRA/TRID decides to determine whether each individual cost item can be used or not. The analogue country methodology allows easier wholesale rejection of data and complete replacement with data from another source.

There is still some confusion within DIT and the TRA/TRID about the role of PMS in the use of alternative methodologies PMS concerns the issue of the basis for rejecting domestic prices or costs. There is some overlap between 'not in the ordinary course of trade' and 'particular market situation'. The TRA/TRID has discretion in the reasons that it uses to determine that prices and costs are not in the ordinary course of trade. It is arguable that all of the elements of PMS could be defined as not being in the ordinary course of trade. In the end, the key thing here is that the basis for rejecting actual prices or costs has not been subject to any WTO dispute or even to any particular controversy. The uncertainty has arisen over the WTO consistency of alternative methodologies to calculate normal value. There are two critical questions here:

- Can authorities adjust cost of production for state distortions without resorting to a non-market economy approach?
- Can the non-market economy approach still be used against China?

It is reasonable for UK industry to argue that the answer to both of these questions is yes. DIT's approach to cost of production adjustments suggested that they are assuming that the answer to the first question is yes. In relation to the second question, DIT has indicated that they would not be prepared to use an alternative methodology against China until the WTO position is clearer. Nonetheless, it is in the legislation if UK industries can persuade the TRA/TRID to use these possibilities.

It can be noted that the possibility to use an NME methodology no longer exists in the EU legislation. All EU adjustments for state distortions (including non-market economy situations), in the case of WTO members, will be dealt with under the standard methodology. It is interesting to note also that the EU does not specify whether the rejection of prices and costs due to state distortions is due to not being in the ordinary course of trade or particular market situation.

Key tip for applicants on the possibility to use a non-market economy (NME) approach with China *– Given that the TRA/TRID is supposed to be independent, it is free to apply the UK legislation according to its own interpretations (subject of course to any guidance provided by the Secretary of State). Where UK industries are making an application for anti-dumping duties against China, if there are very significant state distortions in relation to the goods concerned, it might be worth talking to TRA/TRID about the possibility of using the NME approach. Expectations should not be too high on this but it will be worth keeping it on the agenda. In the case of a no deal Brexit, the TRA/TRID will have a massive workload and using this methodology may help in managing that in that it is a simpler approach.*

2.2.4 Export Price

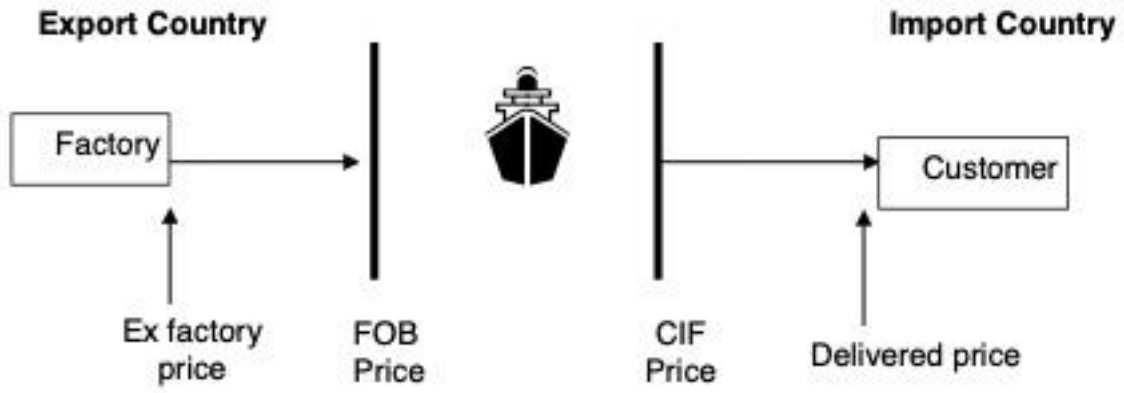
The key issues in the determination of export price are level of trade and related sales.

Level of trade - The export price taken from an invoice may be at one of several levels according to the particular transaction. A typical export transaction may have four levels at which the export price could be established:

1) **Ex factory price** = price at factory gate
2) **FOB Price** = ex factory price + inland transport in exporting country
3) **CIF price** = FOB price + shipping & insurance costs
4) **Delivered price** = CIF Price + inland transport in the importing country

The terms “FOB” (free on board) and “CIF” (cost, insurance and freight) are INCOTERMS. Incoterms are standardised commercial trade terms that help buyers and sellers in agreeing their mutual responsibilities. They are produced by the International Chamber of Commerce.

These four different levels can be illustrated as follows:



Related sales - Export prices may be considered to be unreliable where the exporter sells through a related company either in the domestic market or in the overseas market where the anti-dumping investigation is taking place. Sales between related parties are internal transactions such that prices do not necessarily reflect the market and will more likely depend on how the parent company concerned wishes to distribute profits between the various entities that it owns. In the situation where prices are unreliable due to association between the buyer and seller, investigating authorities are directed to ‘construct’ an export price on the basis of the first unrelated sale.

A constructed export price is, therefore, calculated on the basis of the first resale price to an independent purchaser. Adjustments are made to this price to remove all additional costs to ensure that it is comparable with the normal value.

Constructing the export price would typically involve the following steps:

- P1 is usually considered to be unreliable.
- In such situations, export price is constructed from the first independent sale (P2)
- Constructed export price = P2 – costs and profits of importer

2.2.5 Comparison

A fair comparison must be made – Regulation 6 of the UK Dumping and Subsidy Regulations requires that the TRA/TRID carries out a fair comparison between the normal value and export price. This means ensuring that only the prices of comparable products are compared.

Regulation 16 requires that comparisons should be made at the same level of trade (i.e. prices must be compared between equivalent types of sale). For example, the delivered price to an end user is likely to be different from the border price to an importing trading company. The comparison of export price and normal value is normally done at the ex-factory level. There is no requirement to make the calculation at the ex factory level but it is often the easiest thing to do. This usually requires adjustments to both the export price and domestic price.

The comparison should also be made for products sold as nearly as possible at the same time (i.e. an export transaction from the first month of the investigation period should not be compared with the normal value at the end of the investigation period). One year periods of investigation are common and this can involve comparison of sales at different times. Care must particularly be taken in inflationary situations. Some authorities do a monthly analysis of dumping (i.e. only compare prices within one month) and aggregate the results to produce the overall margin of dumping.

Like goods and fair comparison - A fair comparison can only ever be made between like goods. However, not all like goods have prices that are necessarily comparable. The term like goods is used in both the dumping and injury contexts. Paragraph 7, schedule 4 of the Taxation (CBT) Act 2018 defines like goods as those that are like the goods in all respects or have characteristics closely resembling those of the goods in question.

For the dumping calculation, a fair comparison is only possible for products that are identical or, where not identical, if adjustments are made for any product differences. Making such adjustments can be difficult so investigating authorities usually make the comparison on a type by type basis.

Thus, it is important to note that non-comparable products may be contained within a like goods definition. Consequently, the most straightforward approach is to make the comparison on a type by type basis. However, even in this case, adjustments may be necessary for differences in the nature of the transactions.

See section 2.4.3 for more discussion of like goods in the context of injury.

Average export price or transaction by transaction? - There are a number of ways in which the price comparison can be done. Regulation 17(1) of the UK Dumping and Subsidy Regulations set out 3 options:

(a) the weighted average normal value with the weighted average of prices of all comparable export transactions;
(b) the normal value and export prices on a transaction by transaction basis; or
(c) a weighted average normal value to individual export transactions in the circumstances described below.

The second possibility (b) is usually not practical. If the product is such that domestic and export transactions occur every day, this approach might be possible. Usually however, it is not possible to match transactions so easily.

Therefore, the more normal method is to undertake a weighted average to weighted average calculation. This means that imports that are dumped can be cancelled out by imports sold at prices greater than normal value.

In the limit, if half the imports are dumped by 10% and the other half are not dumped by -10% (i.e. the export price is greater than the normal value by this amount), then the dumping margin would be 0%. The dumped imports would be cancelled out by the non-dumped imports. This can be a problem if the dumped goods are targeted on a particular customer, time period or region.

Regulation 17(2) sets out the conditions for option (c):

(i) that the TRA finds a pattern of export prices which differ significantly among different importers, purchasers, parts of the UK or time periods and,

(ii) that those difference cannot be taken into account appropriately by using either of the first two methodologies.

The reason why this is permitted is to ensure that such differences are adequately taken into account in a way that they would not be in the other methods of calculation. If this is the case, an explanation must be provided as to why the other methods are not adequate. Option (c) is provided for in the WTO agreements but it is not defined. It is usually interpreted to mean that some form of 'zeroing' takes place.

What is zeroing? - Zeroing is a methodology that has been extensively used by anti-dumping authorities in two situations:

1) a weighted average normal value is compared with transaction by transaction export prices (what some refer to as 'simple zeroing')
2) where there are multiple 'dumping comparisons' for different models of the product under investigation (so-called 'model zeroing').

Zeroing is not a term that is contained in the UK legislation or the WTO anti-dumping agreement. Neither are the terms simple zeroing or model zeroing formally used. In dispute settlement, the US has referred to the concept of 'not providing offsets for export transactions that exceed normal values'.

Simple zeroing occurs where export prices from individual transactions are compared with a weighted average export price. Take an example where there are three equal volume export transactions of $110, $100, and $90. If the weighted normal value was 100, and if a weighted average export price was used (in this case $100), there would be no dumping. Dumping (normal value – export price) for each of the transactions would be -$10, $0 and $10, averaging out at zero dumping.

However, if the negative dumping was zeroed, the $10 dumped transaction would no longer be offset. In this case dumping would be $3.33 (i.e. the average of 0, 0 and $10). Thus, zeroing in this case would mean a finding of dumping even though there is no dumping on a weighted average to weighted average basis.

Model zeroing occurs where there are multiple models, types or grades of a product. In order to make a fair comparison, as explained above, anti-dumping authorities usually make a comparison by model. The results of this stage of analysis are then aggregated to produce an overall dumping margin. In the past, most anti-dumping authorities applied zeroing in this situation. That is, models/grades with an export price greater than normal value were zeroed in order to prevent them offsetting models/grades that were dumped. However, the WTO jurisprudence is now clear that model zeroing is not permitted. On the other hand, although there remains some ambiguity, simple zeroing does seem to be permitted by the conditions set out in Regulation 17(2) for option (c) as outlined above.

It may be down to the applicant UK industry to identify situations where the TRA/TRID might need to use zeroing in an anti-dumping investigation. On the other hand, any targeting of dumping may only be apparent in the detail of the data, so only the TRA/TRID would be able to assess if any zeroing was necessary.

Allowances and adjustments - Where there are differences in the products under comparison and it is shown that the differences affect the price comparability of the products, an allowance or adjustment must be made by the TRA/TRID.

A number of specific types of adjustments are mentioned in regulation 17 of the UK dumping/subsidies regulations, though the list is not exhaustive:

- **Conditions and terms of sale** - Conditions and terms of sale could include factors such as discounts and rebates applied to sales. It could also include cost of credit if different credit periods are provided to domestic and export customers. Commissions paid to agents may also be relevant under this provision.
- **Taxation** - If domestic taxes are not imposed on products exported or import duties are refunded for export sales, allowances can be made. Differences in taxation cannot be the cause of dumping.

- **Level of trade** - where the domestic and export distribution chain have distinct differences (e.g. if all domestic sales are made to end users, while export sales are to distributors) this is likely to result in a price difference between domestic and export prices.
- **Quantities** - Export sales may be made in larger quantity consignments than domestic sales. If, for example, the export product is transported only in full lorries while less than full lorries are regularly sent out on the domestic market, the per unit cost of transport may vary.
- **Physical Characteristics -** To the extent that there are differences in physical characteristics of the two products being compared, an adjustment should be made.

It is often that case that different adjustments apply to different transactions. Thus, even if the price comparison uses a weighted average to weighted average methodology, it is still necessary to work from a transaction by transaction listing. The adjustments can be made as necessary to each transaction and the weighted average price calculated from the adjusted transaction prices.

Constructed export prices and adjustments - In cases where the export price is "constructed" from the first independent sale, it is necessary to make allowances for costs and profits. This would include duties and taxes, incurred between importation and resale, and for profits accruing. Great care must be taken to ensure that the constructed export price is adjusted for any differences that occur in relation to the normal value. When both the normal value and export price are at the ex-factory level, there are often fewer adjustments to make. However, when the export price is constructed at a different level of trade, perhaps even from the first independent sale in the overseas export market, there is a need to ensure that all the comparison factors are taken into account.

Currency Conversions - Regulation 18 of the UK Dumping and Subsidy Regulations requires that exchange rate conversions should be done at the rate prevailing on the date of sale of the goods. The date of sale is the date on which the material terms of the sale are established. This can be either the invoice, contract, purchase or order confirmation. An allowance can be made where there have been sustained movements in exchange rates during the investigation period. Exporters can be allowed at least 60 days to have adjusted export prices. Thus, sudden devaluations in exchange rates that cause dumping can be adjusted for, provided that the exporter has set prices on the basis of changed exchange rates within a reasonable period of time. 'Reasonable' is defined as at least 60 days, leaving open the possibility that it could be longer.

2.2.6 Dumping recap

It is perhaps helpful to provide a brief recap of some of the key points contained in section 2.2:

- Dumping is defined as the situation where export price is less than normal value.
- Normal value is usually domestic price.
- Domestic prices must be above cost of production and must pass other tests to be used.
- There are two key issues: a) when data can be rejected (i.e. not in ordinary course of trade or particular market situation) b) what alternative data can be used.
- The controversy over the treatment of state distorted COP is all about whether third country benchmarks can be used.
- The UK has included non-market economy options in the legislation.
- There is a possibility that the non-market economy methodology could still be used against China, though the current government is unlikely to want to use this.

2.3 Subsidy

2.3.1 Overview of countervailable subsidies

The WTO Subsidies and Countervailing Measures (SCM) Agreement has a two track approach to dealing with subsidies.

- **Track 1 -** Using the WTO's dispute settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. The Boeing/Airbus disputes in the WTO are an example of this approach.
- **Track 2** - Unlike dispute settlement proceedings under the SCM Agreement, CVD investigations do not call into question the status of subsidy measures or require the WTO member granting subsidies to remove or amend them. Their purpose is to enable the investigating country to offset the injurious effects of subsidies granted to imports entering its territory by means of a levy at the border. It is this track that this guidance is concerned with.

Paragraph 3 of the Taxation (CBT) Act 2018 sets out the basic requirements for goods to be considered as subsidised for the purpose of countervailing duties:

- **Countervailable subsidy -** Goods are 'subsidised' if a countervailable subsidy is granted
- **Specificity -** A countervailable subsidy is a subsidy which is specific
- **Financial Contribution/Benefit -** A subsidy exists if there is a financial contribution by a foreign authority which confers a benefit

2.3.2 Financial Contribution

Types of financial contribution are defined in regulation 20 of the Dumping and Subsidy Regulations (2018)

- a direct or potential transfer of funds (e.g. grants, loans, equity injection or loan guarantees)
- government revenues (which are otherwise due) foregone or not collected (e.g. tax credits)
- government provision of goods and services (other than general infrastructure)
- government purchase of goods
- any of the above functions performed by a private body (e.g. a bank) on the instruction of the government.

In some cases it may not be public/government bodies that provide the subsidy. If the government concerned entrusts or directs private suppliers to provide some form of subsidy, this can be still be considered as a financial contribution.

2.3.3 Benefit

Calculating the benefit for a grant or tax foregone is relatively straightforward because this will be a specific amount of money. Some of the other types of financial contribution require consideration of whether terms more favourable than those available on the market have been granted. Benchmarks need to be identified against which any benefit can be measured. Regulation 21 of the UK Dumping and Subsidy Regulations gives some guidance in this regard:

Financial Contribution	Benchmark
Provision of equity	Investment decision inconsistent with usual investment practice
Loan	Difference between the amount paid on the loan from government and the amount that would paid for a comparable commercial loan that could be obtained on the market.
Provision of goods and services	Remuneration for goods or service is inadequate, as determined by reference to prevailing market terms and conditions.
Purchase of goods	Remuneration from government is more than adequate (by reference to the prevailing market conditions).

Sometimes prevailing terms and conditions in the market of the exporting country concerned may not be appropriate as a benchmark. In this case, the TRA/TRID may:

- adjust the actual data in the exporting country by an appropriate amount that reflects normal market terms and conditions, or
- use the terms and conditions prevailing in the market of another country or on the world market.

2.3.4 Specificity

Specificity exists where a subsidy is not generally available to firms within the exporting country, so that its access is "limited to certain enterprises or industries" (Regulation 22 UK Dumping and Subsidy Regulations 2019). Specificity may also be found where the subsidy is contingent on export performance, contingent on the use of domestic over imported goods or limited to a specific geographic region within the exporting country.

The specificity requirement is a major limitation on countervailing subsidies where the goods or services provided can be widely used in the economy (e.g. gas, electricity). Any such subsidy is unlikely to be specific, unless, for instance, there are preferential prices to certain sectors. However, if a subsidy appears to be generally available, but in reality is only accessed by, or is only usable by, certain firms or sectors, the subsidy may be treated as de-facto specific as provided for in regulation 22(2)(b).

2.3.5 Calculation steps

Regulation 23 of the Dumping and Subsidy Regulations 2019 sets out the following steps to calculate the amount of countervailable subsidy.

- Calculate the total amount of countervailable subsidy (amount of benefit)
- Attribute the amount of countervailable subsidy that is attributable to the period of investigation (POI) and to the goods concerned.
- Determine the rate of subsidy by dividing the countervailable subsidy amount attributed to the POI/Goods.
- The amount of subsidy must be expressed as an ad valorem rate of the value of subsidised imports.

2.3.6 Example of subsidy schemes found in organic coated steel from China investigation

Organic Coated Steel (original investigation) – examples of Chinese subsidies found:

Provision of HR and CR steel for less than adequate remuneration. Benefit calculated against the benchmark of world market prices of HRS and CRS from various specialized steel journals like Steel Business Briefing, MEPS and CRU. Price differential exceeded 25%.	23.02% to 32.44%.
Provision of land use rights for less than adequate remuneration – benchmark of prices of land in Taiwan.	34% to 1.36%.
Debt for equity swaps	0% to 0.05%
Provision of electricity for less than adequate remuneration	0.07% to 0.17%
Preferential loans and interest rates	0.25% to 0.97%
Equity infusions	0.0%to 0.08%
Unpaid dividends	0.0% to 1.36%
Tax policies for deduction of R&D expenses	0.02% to 0.04%
Income tax credit of purchase of domestically manufactured production equipment	0.38%
Preferential tax policies for companies recognized as high and new technology companies	0.9%

Total definitive subsidy margins were found to be 23.8% to 26.8% for cooperating companies. All other companies were found to be 44.7%.

2.4 Injury and causal link

2.4.1 How is injury determined?

Paragraph 5, schedule 4 of the Taxation (CBT) Act 2018 defines injury as either:

(a) material injury – i.e. the injury has to be significant

(b) threat of material injury, to the industry – injury that has not yet occurred but is clearly foreseen and imminent (regulation 27).
(c) material retardation of the establishment of the industry - there is currently no domestic industry, but the establishment of such an industry is prevented by dumped or subsidised imports

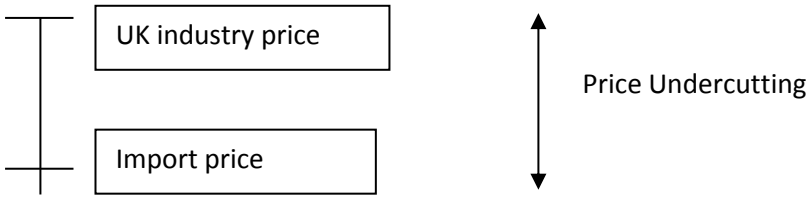
Regulation 30 of the UK Dumping and Subsidy Regulations covers the determination of injury. The TRA/TRID must consider:

(a) the volume of the dumped goods or subsidised imports during the injury period;
(b) the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period;
(c) the consequent impact of the dumped goods or subsidised imports on a UK industry during the injury period; and
(d) any other factors it considers relevant.

Points (a) and (b) concern exporters' behaviour in the market in terms of the import prices and volumes.

- The change in volume must be assessed in both absolute and relative terms. The latter is usually the more important indicator as an absolute increase in import volume does not necessarily reveal very much in itself. For example, it is possible that dumped imports increased but market share fell. This can occur where the growth of the market is greater than the increased imports. In such a case it might not be correct to determine that the absolute increase in dumped imports is injurious. Likewise, there are situations in which the absolute level of imports can be falling while market share increases. This can occur where the fall in imports is less than the fall in domestic industry sales. This results in an increased market share for imports despite a reduction in the size of the overall market. Thus, injury can be occurring even if the absolute level of imports is falling. The evidence on both absolute and relative levels of imports should be presented but emphasis should be placed on the latter.

- The effect on prices is considered by determining whether there has been significant price undercutting i.e. the dumped or subsidised imports are lower than the price of like goods produces in the UK. It is also possible that UK industry prices are depressed by the low import prices. Perhaps the UK industry lowers its price to the import level in order to maintain market share. In this case, price undercutting would under-estimate injury. Also, prices may be suppressed if costs have increased but UK industry prices were prevented from increasing in response to the cost change.



It is not necessarily the case that injury will be indicated in both market share and price undercutting. In some cases, if UK industry reduces price to maintain market share, there may be no price undercutting and no change in market share. However, if there has been a significant drop in import price in such a situation, injury will be shown in the impact analysis below.

Point (c) considers the situation of the domestic industry in terms of how the dumped or subsidized imports have impacted the UK industry.

The impact on the domestic industry is assessed in relation to 15 injury factors. WTO rules require that all 15 factors must be evaluated. These are set out in Regulation 33 of the UK Taxation (CBT) Act 2018.

Actual and potential decline in sales	Utilisation of capacity	Employment
Profits	Factors affecting domestic prices	Wages
Output	Magnitude of dumping margin	Growth
Market share	Cashflow	Ability to raise capital or investments
Productivity	Inventories	
Return on investments		

Injury is not always visible in the same way. The injury analysis is often focused on market shares and profits in actual investigations. However, as mentioned above, there are cases where injury does not appear in the form of loss of market share. In certain cases, the share of the domestic industry can increase in a situation where dumping and injury are in fact occurring.

In the following example, market share trends would suggest no injury. The domestic industry has increased market share, against both dumped imports and non-dumped imports. The market share of dumped imports has fallen. However, in this case, the price of imports decreased significantly over the period of investigation (-20%). In response, the domestic industry decreased their prices. This price reduction had a -6% impact on domestic industry profitability.

Thus, the injury indicators need to be looked at as whole in order to understand how the different trends fit together.

Note that in this case that price undercutting was zero because the domestic industry had also lowered price.

Domestic Industry	**Trend over IP**
Market share	50% to 60%
Prices	-10%
Profit	-6%
Dumped Imports	
Market share	20% to 15%
Prices	-10%
Price undercutting	0%

From a practical perspective, the most important indicator is profitability. If profitability is unaffected, it is highly unlikely that there is injury. This is because most of the above indicators are affected by either a fall in prices or a fall in quantity sold. Thus, given that profit will change as prices and/or quantities change, profit trends are a reasonable overall indicator of injury.

Profit is equal to revenue minus costs, where revenue is price multiplied by quantity.

Profit = Revenue – Cost

Profit = Price x Quantity - Cost

Profit	**=**	**Price**	**x**	**Quantity**	**-**	**Cost**
Return on investment *Cashflow*		*Factors affecting domestic price* *Magnitude of dumping margin*		*Sales Volume* *Output* *Market Share* *Inventory* *Employment*		*Productivity* *Wages*

The above table shows how negative developments of any of the injury indicators highlighted by italics will have a negative impact on profitability. Thus, if some injury indicators have been positive, and others negative, profitability is the one measure that balances them out.

Key tip for applicants in establishing that they have suffered injury *– ensure that the injury indicators that show injury are highlighted. It is wise to acknowledge any indicators that do not show injury but ensure that this is done in terms of an overall summary of how the injury indicators establish that injury has occurred. Obviously, not too much should be made of injury indicators that do not show injury, but not acknowledging them and indicating how they fit into the overall injury picture, leaves the way open for other interested parties to highlight them and claim that there is no injury.*

2.4.2 Causation and non-attribution

Regulation 27 includes a causation requirement. The TRA/TRID must determine whether dumped or subsidized imports have caused or are causing injury to UK industry.

In practice, trade remedy authorities normally find causation on the basis of a strong time coincidence between the trends in imports and the various injury indicators. The data that is available is not usually sufficient to do any formal statistical or economic modelling.

Regulation 35 requires that injury caused by other known factors must not be attributed to the dumped goods or subsidized imports.

- **Volume and prices of imports not dumped or subsidised** - have imports from countries not involved in the anti-dumping investigation increased in quantity and are they sold at low prices? This also includes exporters found during the investigation not to be dumping.

- **Contraction in demand or changes in the pattern of consumption** - has there been a fall in demand for the product which has particularly hit the domestic industry? A change in the pattern of consumption might be seen in a situation where a substitute product is affecting the sales of a product produced by the domestic industry.

- **Trade-restrictive practices of and competition between the overseas exporters and UK industry**- this is not a straightforward provision. If it merely mentioned "trade-restrictive practices of…… the overseas exporters", this would require an analysis whether some anti-competitive practice by the domestic industry and/or the foreign producers is causing injury rather than unfair prices. The addition of "and competition between" in the middle of this phrase makes it more ambiguous. If it can be read as one provision i.e. "trade restrictive practices of and competition between", it perhaps is consistent with the interpretation above on anti-competitive practice. On the other hand, if it should be read as "trade restrictive practices…between" and "competition practices " as separate provisions, the meaning of this provision is much less clear. In either case, any anti-competitive behaviour on behalf of any market participant needs to be taken into account in interpreting the injury factors.

- **Developments in technology** - has the domestic industry fallen behind in its development or application of technology?

- **Export performance and productivity of UK industry** - Has the domestic industry been affected by a fall in exports, particularly caused through a loss in competitiveness (which may be indicated by reduced productivity)? If the domestic industry has seen a similar fall in export sales to that experienced in the domestic market, is the problem a broader one than merely the dumped imports?

Because the UK steel industry will inevitably be more concentrated than the EU steel industry, it is likely that there will be applications made by one or two companies. It can be expected that exporters and importers will argue that it is the monopoly/oligopolistic position of UK producers that is causing injury.

2.4.3 Like goods and causality

When undertaking the injury analysis, the TRA/TRID must ensure that like goods are compared when analysing imports and UK production. However, unlike in the case of the dumping calculation, where only comparable products can be compared, imported and domestic goods don't need to be identical for the injury determination. Paragraph 7 of schedule 4 of the Taxation (CBT) Act 2018 defines like goods as those goods that are like those goods in all respects or have characteristics closely resembling those of the goods in question. There can, nevertheless, be quite big differences in products that cause injury to each other. In order to cause injury, however, the imported goods must be competing against the UK industry product.

2.5 Economic and public interest test

2.5.1 UK legislation on EIT/PIT

Having a public interest test (PIT) is not a requirement of the WTO agreements on dumping and subsidies. Indeed, most WTO members, including all the big anti-dumping/countervailing duty users, do not have a

mandatory PIT in dumping and subsidy investigations. The EU is only trade remedy system of major users to have a mandatory public interest test. There are specific reasons why a PIT is necessary in the EU due to the fact that it is necessary to balance the interests of 28 member states, some of whom agree to impose AD/CVD measures even though they might not have a domestic industry. Canada is the main other WTO member to have an explicit public interest provision. However, unlike the EU, it is not mandatory in every investigation. For other major users such as the US, Australia and India, there is no PIT at all. In other words, once dumping or subsidy, injury and causality are established, measures are automatically introduced in these countries.

The UK has decided to be innovative in its approach to public interest by setting out a detailed economic interest test within the public interest test. Although this does more or less replicate the analysis of the EU in the Union interest test, an economic interest test is a new concept that does not exist anywhere else in the world.

Paragraph 25 of the Taxation (CBT) Act 2018 sets out the provisions of the Economic interest test. Note that it is not yet clear how the TRA/TRID will implement this test but some comments on how this test might look can be made in the second column below:

UK Law on EIT	Comment
(2) The economic interest test is met in relation to the application of an anti- dumping remedy or anti-subsidy remedy if the application of the remedy is in the economic interest of the United Kingdom.	This could be interpreted in a number of ways; only practical application of the test will in time show how it will be.
(3) That test is presumed to be met unless the TRA/TRID or, as the case may be, the Secretary of State is satisfied that the application of the remedy is not in the economic interest of the United Kingdom.	The EU has a clear weighting in favour of the adoption of measures (see below the table for more information on this). The UK presumption set out in the law is less clear. DIT has stated that the guidance will include some guidance to make it clear that this is a meaningful presumption. The DIT website does say that the TRA will "*use the economic interest test to check if measures will have a disproportionate impact on the wider UK economy, such as on consumers and other users of the product*". This establishes that a remedy will not fail the EIT just because the negative impact on users is larger than the benefit to EU industry of the remedy. The negative impact must be disproportionate to the benefit of the measures.
(4) When considering whether the application of an anti-dumping remedy or anti-subsidy remedy is not in the economic interest of the United Kingdom, the TRA/TRID or the Secretary of State must— *(a) take account of the following so far as relevant—*	
(i) the injury caused by the dumping of the goods, or the importation of the subsidised goods, to a UK industry in the goods and the benefits to that UK industry in removing that injury,	The benefit of the remedy is explicitly considered.
(ii) the economic significance of affected industries and consumers in the United Kingdom,	The size of the market and production for the products purchased by importers and users will be compared to that of the UK industry applying for the remedy.
(iii) the likely impact on affected industries and consumers in the United Kingdom,	Although it appears that the applicant industry is included here, the impact of the remedy is already considered in (i) above. Thus, this provision will require the TRA/TRID to calculate the negative impact of the remedy on importers and particularly on users/consumers. This will include an analysis of the impact of the duty on the cost of production for users of the goods that will be subject to the remedy. For consumer products, it will include an impact assessment of the duty on retail prices.

UK Law on EIT	Comment
(iv) the likely impact on particular geographic areas, or particular groups, in the United Kingdom, and	This explicitly provides for the interests of particular geographic regions to be taken into account. If a steel plant is the major employer in the area, the value of keeping jobs in that sector can be taken into account here. The UK legislation also includes consideration of the impact on particular groups. Quite what this means in practice remains to be seen. There has been some suggestion that this could take into account factors such as gender, race, disability and sexual orientation. This provision has no equivalent in the EU legislation on Union interest, though such issues could be considered under the EU provisions.
(v) the likely consequences for the competitive environment, and for the structure of markets for goods, in the United Kingdom, and	Again this is a provision that is not in the EU legislation, although it can be considered. Given the concentrated nature of UK steel production, it is possible that users and importers will claim that remedies will be anti-competitive. This is one of the issues that needs to be closely monitored on the non-confidential files of the TRA/TRID to see what arguments other parties are submitting.
(b) take account of such other matters as the TRA/TRID or, as the case may be, the Secretary of State considers relevant.	There is an open provision that gives the TRA/TRID discretion to consider other issues that are raised by interested parties. This provides, for example, the possibility for environmental issues to be considered where the imports may not be meeting the higher standards of UK production.

DIT has said that it will be providing guidance to the TRA/TRID on how the economic interest test should be implemented. At the time of writing this is not available yet. However, the DIT website states that, if the economic interest test shows that imposing a measure could have a significant negative impact, TRA/TRID will consider another approach. This could include:

- limiting the length of a measure to less than the standard 5 years
- applying specific duties or minimum import prices instead of a percentage of the product value (also known as ad-valorem)
- removing the specific goods from a measure that will most negatively be affected

2.5.2 EU provisions on Union interest

The UK provisions can be compared with the EU provisions on Union interest:

- A determination as to whether the Union's interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers.

- In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to apply such measures.

The weighting towards the adoption of measures is much stronger than the presumption in the UK legislation. The need to eliminate the trade distorting effects of injurious dumping is given special attention. Further, measures will only not be in the Union interest if it can be clearly concluded that it is not in the Union's interest.

2.5.3 Issues for UK applicants to consider in relation to EIT/PIT

It is highly likely that the economic interest test is potentially going to play a much bigger role in UK trade remedy investigations compared to those of the EU. Key issues for UK applicants to consider in providing arguments in favour of measures include:

- The issues that will be considered in the EIT will continue to evolve throughout the investigation. It is critical that UK producers keep a close eye on the non-confidential files to check what arguments are being submitted. Counter arguments will have to be submitted on every such point.
- UK producers should submit arguments that measures are good for the competitive environment and structure of the market. Some academic economists emphasise the 'benefits' of cheap imports to the economy (even if unfairly traded), often suggesting that a cost-benefit approach should be adopted in a public interest test (PIT). However, this ignores the economic and political realities that result in not one WTO member applying a PIT in this way. A PIT is not about balancing the interests of producers, users and consumers. Although it is inevitable that an AD/CVD measure will increase the cost of import, it is in users and consumers interest for effective competition to be maintained. There are also social considerations (e.g. jobs, regional considerations) that politically and economically are important to consider when taking such actions.
- Any geographic considerations (e.g. importance of jobs) should also be emphasised.
- Be aware of other arguments that could be submitted in favour of measures in line with the final open provision e.g. environmental standards.

2.6 Lesser duty rule and the level of measures

2.6.1 Overview of lesser duty rule (LDR)

The WTO AD agreement sets the maximum level of duty possible as the level of dumping. However, it also states that it is desirable that "the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry". The WTO subsidies agreement contains a similar provision. It is not an obligation.

The UK will adopt a mandatory lesser duty rule in determining the level of any anti-dumping or countervailing duties[3]. It will not adopt any of the recent EU changes to the way in which it applies the LDR. In the UK, whichever margin is the lower will be the basis of any duty for both anti-dumping and countervailing duties.

Dumping margin = 20%	Dumping margin = 20%
Injury margin = 15%	Injury margin = 25%
Duty = 15%	Duty = 20%

2.6.2 What is a duty sufficient to remove the injury?

There is no further guidance in the WTO agreements on how a lesser duty should be calculated. In order to calculate a duty sufficient to remove the injury, it is logical to attempt to calculate an "injury margin" i.e. the amount by which the import price should increase to be sufficient to remove the injury. By calculating the injury margin in a comparable way to the dumping margin (the margin sufficient to remove the dumping), the lesser of the two can be determined.

It is an interesting question to consider whether all of the injury can be "captured" in a single statistic. Given the qualitative nature of the injury determination (based on many different factors), a single % is only ever going to be a proxy for the amount of injury. The methodology that is commonly used is to define a non-injurious price (NIP). When compared with the import price, this allows the calculation of an injury margin in a

[3] Of the 32 main users of AD, 23 do not have a mandatory lesser duty rule. Of the 9 that have an LDR, one of the main users (Australia) is only mandatory in certain circumstances (i.e. it is conditional). The EU lesser duty rule is no longer mandatory in every case as it was previously, now being conditional on there not being a significant level of raw material distortions in the exporting country. Also, the EU has included a presumption that the LDR will not apply in the case of subsidised imports and that countervailing duties will be set at the subsidy margin, unless it can be clearly shown that this is not in the Union interest.

similar way to the dumping margin. The reliability of this method as a true indicator of the margin of injury is not always clear. On the other hand, the advantage of the calculation is that it is transparent and relatively easy to understand.

2.6.3 How does the EU apply the lesser duty rule?

To the extent that other countries use the lesser duty rule, they all follow the approach created by the EU. The basic method adopted by the European Union is that a 'non-injurious price' (also has been called a target price) is calculated based on the domestic industry price that would be required to remove the injury. This is calculated by reference to the cost of production of the EU domestic industry, with a reasonable profit added. The difference between the non-injurious price and the price of dumped imports is used to calculate an injury margin for each company. That is, a single % is calculated for each exporter to represent the "amount" of injury being caused by dumped imports. A similar methodology is used by Australia.

Example of an EU injury margin calculation:

EU industry cost of production	94
Reasonable rate of profit	6
Non-injurious price	100
Import price (CIF)	80
Difference between NIP and import price	20
Margin of injury	25%

The injury margin is calculated according to the following formula.

$$\text{Injury margin} = \frac{\text{Non-injurious price} - \text{Import Price}}{\text{Import price}}$$

As with the dumping calculation, it is the CIF price that must be used as the denominator because that is the level at which an import duty is applied. In this example, the import price is at the CIF level, so the same import price is used in the numerator and the denominator. It is usually the case that the non-injurious price is calculated ex works and the CIF import price is usually used as being equivalent to that.

The EU has recently included a minimum 6% profit in its provisions. As mentioned above, it has also defined situations where the LDR would not apply (e.g. where there are raw material distortions in dumping investigation or in most subsidy investigations). It has also included provisions to reflect future costs of compliance with environmental and labour regulations in calculating the non-injurious price.

2.6.4 UK regulations on LDR

Regulation 36(2) of the UK Dumping and Subsidy Regulations require the TRA/TRID to determine the relevant amount necessary to prevent injury to UK industry. It instructs the TRA/TRID to base the analysis on an assessment of the minimum increase in import prices of the dumped goods or subsidised imports that would remove injury.

Regulation 36(4) states that the TRA/TRID must disregard factors other than the importation of the dumped goods or subsidised imports that caused or are causing injury to UK industry when making its determination. Quite what impact this will have on the calculation remains to be seen. However, it can be noted that the EU does not have an explicit provision requiring the Commission to adjust the calculation for other causes of injury. It may be implicit in the EU calculation but the explicit inclusion of such a provision in the UK legislation again raises the possibility of UK measures being subject to increased risk of challenge in the UK courts.

The UK will not adopt similar changes to the reforms in EU legislation on the lesser duty rule described above.

3 UK SUBSTANTIVE ISSUES – SAFEGUARDS

3.1 Overview

The basic requirements for a safeguard are:

- Increased imports
- Serious injury
- Causal link
- Economic interest/Public interest

Note that a safeguard investigation can concern not only 'like goods' but can also include 'directly competitive goods'. This is different from dumping and subsidy investigations which can only cover like goods. One example could be that an anti-dumping investigation on non-allow seamless tubes could only apply a duty on that particular steel product. However a safeguard could adopt measures on welded tubes, and stainless variants as well.

3.2 Significant increase in volume of imports

Paragraph 1 of the Taxation (CBT) Act 2018 goods are imported into the United Kingdom in "increased quantities" if—

(a) the volume of imports of the goods increases, whether in absolute terms or relative to the total production in the United Kingdom of like goods and directly competitive goods, and
(b) that increase is significant.

As discussed in section 2.4.1 above, in relation to injury in dumping/subsidy investigations, it is the relative trend (market share) that is usually more useful in terms of the analysis.

3.3 Foreseeability

There is a requirement that importation of the goods concerned in increased quantities was not foreseeable. This would be the case where the TRA/TRID considers that the increase is a result of unforeseen developments. In this regard, the TRA/TRID may consider:

(a) changes in patterns of demand for the goods concerned, like goods and directly competitive goods;
(b) global overcapacity or increases in production capacity of the goods concerned;
(c) economic or political crises; and
(d) any other factors it considers relevant.

The WTO requirements that the increased imports justifying the safeguard were 'unforeseen' have been complicated in the UK regulations by using the term 'not foreseeable' (regulation 6 of the UK Safeguard Regulations). This does create an additional level of possible ambiguity for UK industry.

3.4 Serious injury

Serious injury is defined in paragraph 2, schedule 5 of the Taxation (CBT) Act 2018 as a significant overall impairment of UK producers. The definition also incorporates the possibility of threat of such impairment[4].

Regulation 8 of the UK safeguard regulations requires that, to determine if there has been serious injury, the TRA/TRID must assess all relevant economic factors having a bearing on UK producers including—

[4] The issue of "threat of serious injury" could be of critical importance if/when the TRA/TRID comes to consider whether the UK should maintain the safeguards measures on steel products currently in force in the EU. The Commission in its definitive determination essentially found that the EU steel industry was "fragile", that imports had been increasing, and that there was therefore a real and imminent threat of the injury getting worse if imports continued to increase as a result of the US safeguards.

(a) the rate and volume of increase of the importation of the goods concerned into the United Kingdom, in absolute or relative terms;
(b) the export capacity of the goods concerned in foreign countries or territories and the likelihood that the capacity will be exported to the United Kingdom;
(c) the share of the domestic market in the United Kingdom taken by the importation of the goods concerned in increased quantities;
(d) changes in the UK producers' level of—
    I. sales;
    II. productivity;
    III. production;
    IV. capacity utilisation;
    V. profits and losses; and
    VI. employment.

In terms of the way in which injury will be assessed, the analysis will be similar to that for dumping and subsidy investigations. See section 2.4.1 above.

One very important difference is that there must be a determination of serious injury in the case of safeguards, whereas anti-dumping and anti-subsidy only require material injury to be caused. Thus, the injury threshold, and level of impairment, must be higher for a safeguard investigation.

3.5 Causation

The TRA/TRID must determine whether serious injury is being caused to UK producers by the imports in increased quantities. In this regard, the TRA/TRID may consider:

- Price effects – effect of imports on UK goods, including depression or suppression of prices.
- Volume effects – effect of import volumes on UK goods.
- Any other known relevant factors.

The TRA/TRID must consider whether any known factors other than the imports have caused serious injury to UK producers. In doing this, injury caused by other factors should not be attributed to the imports.

3.6 Level of measures

In the case of AD/CVD, the TRA/TRID must calculate dumping/subsidy and injury margins. Due to the lesser duty rule, the duty is the lower of the two. In the case of safeguards, there is no lesser duty calculation as there are no dumping or subsidy margins. If the decision is to impose duties as the remedy, the only calculation in relation to that duty is the increase in price that would remove the injury. Regulation 10(2) requires the TRA/TRID to determine the minimum increase in average import prices of the goods concerned that would prevent or remove serious injury. In making this assessment, the TRA/TRID must have regard to:

- The weighted average import price
- An assessment of the prices that UK producers could have expected to achieve under normal conditions of competition the absence of the importation of the goods concerned in increased quantities into the UK.

In practice this is similar to the injury margin calculation in dumping and subsidy investigations. See section 2.6 for more details.

However, it is also possible for tariff rate quotas (TRQs) to be used as the remedy in safeguards measures[5]. A TRQ allows a specified quantity to be imported under the normal duty rate (i.e. zero in the case of steel products), with a higher duty then be plied to imports in excess of this quantity. The level of quota must be fixed in relation to the volumes imported during a recent representative period, while the higher duty should comply with the conditions outlines in the previous paragraph. Quotas can be sub-divided between major importing countries.

[5] Although the WTO Agreement also allows for outright quotas to be used as a remedy, the UK legislation does not permit this.

3.7 Economic Interest and Public Interest Tests

For safeguards, the economic interest and public interest tests, in principle, are identical to the equivalent tests in anti-dumping and anti-subsidy investigations. See section 2.5 for further details.

One major difference is that there is no presumption in favour of measures as there is for AD /CVD. This is because safeguards do not necessarily involve unfair trade and, thus, do not have the same strength of argument in favour of adopting measures. Thus, for UK safeguard investigations, the analysis of the economic interest is likely to put a much higher weight on the negative impact of measures.

Another difference with dumping and subsidy investigations is that the Secretary of State is able to come to a different conclusion from the TRA/TRID on the economic interest. This means that, effectively, in the case of safeguards, the Secretary of State will conduct their own economic interest analysis. In dumping and subsidy investigations, the Secretary of State must accept the TRA/TRID's determination unless it is one that could not have reasonably been made.

4 UK TRADE REMEDY PROCEDURES

4.1 Overview of procedure

4.1.1 Overview of procedure for trade remedies

The following table provides an overview of what happens during an anti-dumping (AD) or a countervailing duty (CVD investigation.

Table 9 - Overview of AD/CVD Investigations

Key Events	Issues	UK Timing(prov)	EU Timing
Complaint/ Application	Identification of problem, data, co-ordination, informal discussion Application	1+ years prior to initiation	1+ years prior to initiation
Initiation	Notice of initiation	Day 1 of investigation	Day 1 of investigation
Questionnaire	Sampling		
Hearings/Submissions	Non-confidential files		
Verification	2-3 day audit for each domestic producer		
Provisional Measures		Min 60 days from initiation 6-8 months (AD) 7-8 months (CVD) (retroactive 90 days)	Min 60 days from initiation 7-8 months (AD) (retroactive 90 days)
Hearings/Submissions	Non-confidential files		
Definitive Measures		11-13 months WTO maximum 18 months.	Max 13-14 months (AD)
Interim Review		Minimum 1 year after definitive	Minimum 1 year after definitive
Expiry Review	Notice of impending expiry Application	Up to 5 years	5 years

The stages of a safeguard investigation are similar, except that provisional measures can be adopted at any time following initiations and definitive determinations for safeguard investigations are likely to occur around 8-10 months after initiation.

The timings for UK investigation are provisional and not confirmed as yet. These are the timings that DIT has suggested might apply.

4.1.2 Difference between an original investigation and an expiry review

Table 9 shows that anti-dumping and countervailing duties are normally adopted for a period of 5 years. Though the UK may be more likely to reduce the duration of remedies than the EU does.

At the end of the five year period, the domestic industry can request an expiry review of measures. The review assesses whether the dumping/subsidy and injury would re-occur if the measure was removed.

If the UK leaves the EU on 31 October 2019 without a deal, the UK trade remedy system will come into immediate effect. All current EU AD/CVD measures of relevance to UK Steel members will automatically "transition" over and become UK measures. Although it is possible that UK industries submit new requests for measures, the main order of business for the TRA/TRID initially will be to conduct reviews into whether these transitioned measures should be fully adopted as UK measures. (See section 4.4 for more detail.) These transition reviews will be the equivalent of an expiry review where the TRA/TRID will determine if the transitioned measure should be continued and, if so, whether the level of the measure should be amended. See below for more detail on transition reviews and expiry reviews.

Issues to be considered in an expiry review *– If the trade remedy has been successful in removing the injury, the problem exports causing injury may have dramatically reduced and the injury has hopefully been remedied. In some cases, the exports may have stopped altogether. In such cases, the focus has to be on the likelihood of the dumping/subsidy/increased imports, and of injury caused, recurring. Issues that need to be considered here include (i) the availability of spare capacity for the exporting producers (ii) the attractiveness of the UK market compared to other export markets for the*

4.1.3 Who are the main players in trade remedy investigations?

The key players in trade remedy investigations include the following:

- **Domestic industry (manufacturers)** – the industry applying for measures.
- **Exporters** – individual companies behaving in a way that needs remedying.
- **Trade Associations** – Often the application is submitted by a trade association on behalf of its member companies. Associations may also be involved in oral hearings, written submissions, providing a contact point, coordination of data from members on injury/causality & economic interest)
- **Users/importers** – Companies that will bear the cost of the remedy.
- **Lawyers/consultants** – Expert advisers that can be required for assistance on these complex issues.
- **Government/investigating authority** - Dual role of government in supporting UK industry and the TRA/TRID as an independent investigating authority.
- **Trade unions** – Trade unions are now formally considered as interested parties in EU trade remedies legislation. In the UK, trade unions will not be considered as interested parties but rather as 'contributors'. This means that they will not be able to submit applications or appeal against determinations of the TRA/TRID or Secretary of State. However, they will be able to provide information to be considered during the investigation.

4.2 Anti-Dumping/Anti-Subsidy Procedure

4.2.1 Application

An application for anti-dumping or countervailing duties should contain the following information:

REQUIREMENTS OF COMPLAINT	COMMENT
Goods - a description of the goods in relation to which the applicant UK industry is requesting an investigation, including their technical	The definition of the goods concerned is largely within the gift of the applicant industry, and can be critical to the outcome of an investigation. This can be particularly relevant for steel products, given the large range of grades, dimensions and finishes for each type of product. Put simply, a narrow product definition, just focused on those

REQUIREMENTS OF COMPLAINT	COMMENT
characteristics and current tariff classification;	grades etc that are being imported, can concentrate the injury being caused; but too narrow a definition can enable the exporters to legally evade the eventual duties by changing the grades etc they export. Key issues are: 1. The product definition does not need to be confined by the definitions contained in the tariff schedule. The definition can cover products included in multiple tariff sub-headings, but not all of the products covered by those sub-headings need to be included in the product definition. 2. If the TRA/TRID follows the precedent set by the Commission, there will need to be an industrial logic and coherence to the product definition, based on the product's physical characteristics or end uses. You cannot select an arbitrary series of grades simply because these are the ones being imported. 3. "**Captive production**". Under EU practice it is possible to exclude from the scope of the injury investigation your own production of the product in question which is used for processing into downstream products within your own facilities (e.g. hot rolled coil that you subsequently cold roll).
Exporting country - a statement identifying the exporting country or territory	The country or countries concerned should be identified. In principle, it is down to the applicants to decide which countries are included. However, in the case of the EU, the Commission developed the practice of encouraging applicants to include all countries that might be causing a problem rather than selectively targeting particular countries. Of course, if companies in two countries are dumping, for example, yet the application only targets one of the countries, the case may be weakened by the fact that the other country will also be causing injury but must be separated as an 'other' cause of injury.
List of exporters - details of all known overseas exporters of the goods identified	The TRA/TRID will need help in identifying all known exporters. The TRA/TRID will also contact the overseas government(s) concerned and perhaps relevant trade and business associations to identify other exporters.
List of importers - details of all known importers in the United Kingdom of the goods identified	All known UK importers of the goods must be listed.
List of producers - details of all known UK producers of the like goods or associations of such UK producers;	All known UK producers must be listed, including those not involved in the application.
Standing - the level of UK industry support for or opposition to the application, including – • the total volume and value of production in the United Kingdom of the like goods; • the applicant UK industry's volume and value of production in the United Kingdom of the like goods; • the volume and value of production in the United Kingdom of the like goods by each identified UK producer, or associations of such UK producers;	Paragraph 9, Schedule 4 of the Taxation (CBT) Act 2018 requires that an application is made by or on behalf of a UK industry. Regulation 52 of the UK Dumping & Subsidy Regulations indicates that this requirement will be met if the application is supported by UK producers whose collective output constitutes at least 25% of the total production in UK of the like goods. In addition, the application must not be opposed by other UK producers of the like goods whose output is greater than or equal to that percentage. Paragraph 6, Schedule 4 of the Taxation (CBT) Act 2018 defines UK industry as domestic producers as a whole of the like goods or those whose collective output constitutes a major proportion of total domestic production. Domestic producers that are related to exporters of the goods or are themselves importers of the goods can be excluded from the definition of UK industry. The application does not need to made by all producers of the product as long as the above criteria are met.

REQUIREMENTS OF COMPLAINT	COMMENT
• each identified UK producer's support or opposition to the application;	The information requested in the left hand box is that required to assess whether the complaint is supported and therefore made by or on behalf of a UK industry.
Dumping or Subsidy - Either information that the goods identified are dumped or information that the goods identified are subsidised	Information on the dumping or subsidy should be clearly set out. This does not need to be definitive evidence. It is the job of the TRA/TRID to gather that. However, it is necessary that the evidence is sufficient to make a prima facie case. See section 4.2.2 for more information on this issue.
Import volume - information on the volume of importation of the goods identified;	This can be obtained from UK trade data which is readily available from ISSB.
Injury & Causation - information that the importation of the goods identified has caused or is causing injury to UK industry including— • the evolution of the volume of importation of the goods identified; • the effect of such importation on the prices of the like goods which are produced in the United Kingdom; • the impact of such importation on UK industry;	A description of how the imports concerned have caused injury. This will involve presenting data on the key injury indicators listed in section 2.4.1.
Market share requirement - information that the market share requirement is met.	Evidence that the 1% market share requirement is met should be provided. This involves making an estimate of the size of the UK market. Again, ISSB may be able to help.

TRA/TRID has stated that there will be an office responsible for receiving applications. It is normal that a draft application will be discussed with an investigating authority before it is formally submitted. TRA/TRID has suggested that it will provide this service.

4.2.2 Obtaining information on dumping and subsidies

Most of the data that must be provided by UK industry for a trade remedy application, and for the ensuing investigation, relates to their own market position and performance indicators.

However, for the purpose of submitting the application and making a prima facie case that there is a problem, the applicants must provide some information on dumping or subsidies.

In the case of dumping, the type of evidence that might make a prima facie case could include:

- Actual invoices provide very strong evidence of domestic and export prices where it is possible to obtain them.
- Price lists or quotations might be obtained.
- Specialist publications that publish industry prices.
- Data might be purchased from market research companies.
- Estimate of the cost of production based on knowledge of the relevant cost items and identification of local values to make the calculation.
- Trade data could be used to calculate unit values (i.e. value divided by volume) – This could include UK trade data or the trade data of the exporting country (again available from ISSB). In the case of the latter, it might be possible to show that unit values on exports from the country concerned to the UK are below those of unit values to other countries.
- Consultants or lawyers even could be engaged to obtain information in the country concerned.

For information on subsidies, this can be more difficult than obtaining information on prices though there is now a growing body of knowledge about various countries' subsidy schemes. The following sources can be used:

- Findings of other major trade remedy authorities, particularly the EU, US, Australia and Canada. All of their cases are readily available online and contain considerable detail on subsidy schemes in a number of countries. They may also publish analyses or reports on subsidy activities in overseas countries.
- Information can be obtained online from national or provincial government websites. This often requires foreign language skills for the country concerned.
- Company accounts, reports and websites may mention subsidy schemes where it communicates to their customers that they have a competitive advantage.
- In cases against EU companies, the Commission's state aid reports could be helpful.
- Again, as with dumping, consultants or lawyers could be engaged to obtain information in the country concerned.

4.2.3 Initiation

The initiation of a dumping or subsidy investigation must be publicly announced. In the case of the EU, an investigation is initiated on the date that it is published in the Official Journal. There has been no indication as yet where initiation of UK investigations will be announced. It is likely to be online as the TRA/TRID is trying to run as much of the system as possible in a digital format.

Once the investigation has been initiated, interested parties must register their interest with the TRA/TRID. The applicants will presumably already have their interest registered.

4.2.4 Questionnaire

Detailed questionnaires will be sent out to all interested parties. For applicants, the question is likely to include the following sections. This is taken from an EU questionnaire but the UK questionnaire is likely to be very similar.

- Introduction
- Details of product
- Production, purchase and stocks
- Sales
- Distribution system and selling prices
- Transaction by transaction listing.
- Cost of production
- Profitability
- Employment

The questionnaire must be submitted in both confidential and non-confidential versions. The latter will go on the public file so information that is commercially sensitive can legitimately be excluded. Where data is excluded a non-confidential summary of the data should be provided. If that can't be provided, the reasons why should be explained.

The TRA/TRID will review the questionnaire and write deficiency letters to interested parties where there is data missing or there are other problems with the information. It is normal that there may some clarifications that may be required. Of course, if too much information is missing, an interested party could be declared as non-cooperating and thus, information from that company might not be used.

4.2.5 Verification

The TRA is likely to conduct on-site verifications of all data submitted by interested parties. The objective of verification is to check the questionnaires for accuracy and completeness.

Companies should prepare for the verification. One good practice is that, when the questionnaire data is prepared, worksheets should be maintained showing how all data has been calculated. In addition, as much as possible, the worksheets should provide a bridge between accounting records and questionnaire data.

Investigators at verifications will typically undertake the following tasks:

- Identify and check typical/close to average and outlier sales
- Sort data by customers or categories (e.g. rebates, discounts, commissions etc.)
- Cost of production – identify products with highest and lowest consumption of inputs or costs.
- Identify specific sales transactions – pre-selected and onsite.
- Trace transactions through company records and accounts from the initial inquiry to payment by the customer.
- Reconcile all data to financial statements/accounts
- Check the allocation of Selling, General and Administrative (SGA) expenses
- The investigators will collect exhibits – 2 copies should be made of each and numbered (one for the investigator and one for the company to keep).
- Factory tour – investigators will be interested to see things such as incoming raw materials, packaging of finished goods, shipping etc. Personnel involved in the factory tour should be briefed on the key information that needs to be communicated to the investigators.

4.2.6 Hearings and submissions

Oral hearings and written submissions can be critical through the investigation. The application contains initial argumentation on dumping/subsidy, injury and causation. However, during the investigation the relevant issues will evolve as interested parties submit their questionnaires and other written submissions. It is critical, therefore, that the non-confidential files are regularly checked in order to keep track of the arguments being submitted by other interested parties. The information provided in the initial application must be supplemented by additional arguments and evidence according to what issues come up throughout the investigation.

Key tip for applicants on checking the non-confidential files *– Submissions of other interested parties should be regularly checked. This will be relatively easy to do because all non-confidential questionnaires and submissions will be digitally available to all interested parties. There is likely to be lot of documentation available on these files. Thus, it is a task that should be given sufficient resources by UK industry during the investigation. Arguments submitted by other interested parties should be monitored and UK industry counter-arguments should be provided as appropriate to the TRA/TRID at oral hearings and in written submissions.*

4.2.7 Measures

The usual situation is that provisional measures will be adopted. Parties will be able to respond to the provisional findings of the TRA/TRID. Until that point, the TRA/TRID will only have been gathering information. They will not have revealed anything about their emerging findings, so the announcement of provisional measures is important because it is the first opportunity to respond the TRA/TRID's findings.

More oral hearings and written submissions are likely to be necessary at this stage.

In the EU, in most cases where provisional measures are adopted, it is highly likely that they will be made definitive. There are sometimes differences between the provisional and definitive measures but, on the whole, the provisional determination is a fairly full one in the EU. This is different in the US, for example, where provisional measures are adopted earlier in the investigation so there can be more significant changes. Also, more cases are terminated between provisional and definitive determinations in the US than in the EU. How this will work in the UK remains to be seen. However, it is likely that the UK will generally wish to avoid adopting provisional measures unless it is certain that there is a robust case for them. Thus, it is likely that the UK system will work in a similar way to the EU system in this regard.

Definitive measures bring the investigation to a close. Prior to this, the TRA/TRID will have provided a detailed disclosure of their definitive findings and there will be a final opportunity to comment before publication and application of the measures.

Measures may be in the form of duties or price undertakings.

4.2.8 Appeals

There are two strands to the appeals process:

- Reconsideration by the TRA/TRID
- Appeal to the Upper Tribunal

Reconsideration will be a low cost means by which interested parties can request that the TRA/TRID reconsider any particular issue.

Formal legal challenge of TRA/TRID or Secretary of State determinations can be made in the Upper Tribunal.

4.2.9 Reviews

There are various reviews that can take place:

- **Interim reviews** – can consider changes in circumstances or whether the existing application of the measures is still necessary or sufficient to offset the injury. Interim reviews can result in duty levels being varied. Interim reviews can be partial relating, for example, to dumping for one exporter or to injury for the whole industry.
- **Expiry reviews** – these are full reviews that occur when the measure is due to expire. The review will consider whether dumping/subsidy and injury will recur if the measure is removed. In the UK, duty levels may be recalculated and, if appropriate, the level of the measure varied. In the EU, expiry reviews only consider whether to maintain the measure or not. If there are changed circumstances, it is necessary that a concurrent interim review be requested alongside the expiry review. The UK will be somewhat different in that expiry reviews, as a matter of course, will be able to amend the measures.
- **New exporter reviews** – exporters that did not export during the original investigation period, and are not related to any of the existing exporters covered by the remedy, can request their own level of duty.
- **Circumvention reviews** – Although HMRC will be responsible for the enforcement of UK trade remedies at the border, if there is evidence that measures are being circumvented or illegally evaded this can be specially investigated by the TRA/TRID.
- **Absorption reviews –** if there is evidence that the exporter has lowered their export price to the UK in order to keep the price including the remedy the same as before, this can also be specially investigated.
- **Scope reviews** – a review of the scope of a measure can be requested if there is evidence that products should be added or removed from the scope of the measures.

UK industry should be monitoring the effectiveness of the measures so that, if there is a need for a review under any of these provisions, this can be requested.

4.3 Safeguard procedures

The principles of a safeguard investigation are similar to that for anti-dumping and countervailing duties.

Application - The contents of the application are similar to the anti-dumping/countervailing duty application in section 4.2.1 above. Of course there are some key differences:

- Instead of information on dumping or injury, it is necessary to provide a description of the increased imports alleged to exist, including whether such increase is absolute, relative to domestic production or both;
- information relevant to the existence of serious injury to the UK producers of the goods identified, for the three calendar years preceding the application, and any more recent partial-year data;
- information on relevant unforeseen developments that led to the alleged increased imports of the goods identified;
- a statement giving specific reasons for requesting a provisional safeguarding remedy or definitive safeguarding remedy;
- if a threat of increased injury is being claimed, international developments that would justify this claim, e.g. protectionist measures in other countries, a growth in global excess capacity, economic hardships in major exporting countries.
- if a provisional safeguarding remedy is requested—

- information regarding critical circumstances where delay in taking action would cause damage to UK producers which would be difficult to repair; and
- a statement indicating the level of tariff increase requested as the remedy, and/or a request for a tariff rate quota.

It is also necessary that the application is accompanied by a preliminary adjustment plan unless the TRA waives the requirement for the application to be accompanied by such a plan.

Questionnaire and verification - In terms of the questionnaire and verification, the process for EU industry is very similar to dumping and subsidy investigations. Of course, for exporters, it is very different because there is no need to provide detailed information on domestic prices or even export transactions.

Provisional remedies - Provisional safeguard remedies can be made at any time during the investigation. The remedies might include an additional amount of import duty for a specified period. In addition, the TRA/TRID may recommend that the good should be subject to a quota for the specified period during which a lower rate of import duty should be applicable to imports of goods outside the amount of the quota (provisional tariff rate quota).

In the case of a provisional safeguarding amount or a TRQ, the remedy should not exceed 200 days. The measure, whether volume or duty based, should not exceed the amount which the TRA/TRID is satisfied is necessary to prevent serious injury that would be difficult to repair.

The Secretary of State must decide whether to accept or reject the recommendation of the TRA. The Secretary of State may reject the recommendation only if:

- The application of a provisional safeguarding amount does not meet the economic interest test
- Is not otherwise in the public interest to accept the recommendation.

Note that the Secretary of State can make a different EIT determination to the TRA, unlike dumping/subsidy where the Secretary of State can only reject the TRA's determination if it is one that could not reasonably have been made.

Disclosure - Before making a final determination (affirmative or negative), TRA/TRID must publish a statement and give individual disclosure on company information supplied to TRA. The statement should give a summary of the facts considered in making its determination. A period will be provided within which comments can be provided.

Definitive determination - In making a definitive determination, TRA/TRID must recommend the specified period necessary i) to remove the serious injury ii) to facilitate the adjustment of UK producers to the importation in increased quantities. Measures must not exceed 4 years, though there is the possibility for extension (see below). Where the period is more than a year, a definitive safeguarding duty should become progressively smaller as the period progresses. In the case of a quota, the volume should be progressively increased.

Again, the Secretary of State may reject the TRA's recommendation if it does not meet the economic interest test or is not otherwise in the public interest.

Reviews - Apart from the transition reviews, the three reviews relevant to safeguards are:

1) Mid-term review - Where a definitive safeguard remedy is intended to apply for more than 3 years, the TRA/TRID must initiate a 'mid-term review' not later than half-way through the intended duration of the remedy. The review must consider whether the continuing application of the measure is necessary to remove serious injury and facilitate adjustment by UK producers to the imports in increased quantities. The TRA/TRID must also consider whether an alternative definitive safeguarding amount or tariff rate quota should be applied.

   The mid-term review may consider:

   - Whether circumstances have changed since safeguard was applied
   - Whether it is likely that serious injury will recur if the safeguard is revoked.
   - Whether serious injury has been removed or reduced by the safeguard

- Information on progress in the adjustment plan to help decide if the pace of liberalisation is appropriate.

The TRA/TRID may determine that the remedy should be maintained, varied, or revoked.

2) Extension review - The TRA/TRID may conduct a review to consider whether the expiry of a safeguard remedy would likely result in a continuation or recurrence of serious injury to UK producers. An extension review can be initiated following receipt of an application by the UK industry or on the TRA's own initiative. The safeguard cannot be extended beyond 8 years in total including the original specified period.

3) Scope review – As in the case of dumping/subsidy investigations, a review of the scope of a measure can be requested if there is evidence that products should be added or removed from the scope of the measures.

4.4 Transition Reviews for anti-dumping, countervailing duties and safeguards

If the final Brexit deal allows the UK to have an independent trade policy, a unique, one-off situation arises. There are many aspects of Brexit that are unprecedented but one of them certainly is the situation where a major trading partner is leaving a customs union with a common trade remedies system to start from scratch its own trade remedy regime.

Many of the existing EU measures have been critical in protecting UK industry against unfair trade and, specifically for steel, against surges in imports. In such cases it is necessary to transition the measures into UK remedies. In the case of a no deal Brexit, this will have to happen on 1 November 2019.

Currently it is planned to transition, as they are, 43 of the EU anti-dumping and countervailing duties and the one EU safeguard on steel. TRID will then carry out a transition review on each of these measures. TRID/TRA claims that the transition reviews are necessary to meet the needs of the UK economy and WTO rules. The transition reviews are a one-off event. Once the measures have been made UK-specific, they will be subject to normal interim or expiry reviews for further changes or continuations.

The transition reviews will check the following:

- **Anti-dumping/countervailing duties –** whether the dumping or subsidisation would continue or happen again if the measure was removed
- **Safeguards –** whether a surge of imports which is harming UK producers is still occurring
- **Dumping/Subsidy/Safeguards** – whether harm to UK producers would continue or happen again if the measure was removed
- **Level of measures** – whether the level and form of the measure is appropriate
- **Economic interest –** whether the measure is in the UK's economic interest

The UK duty level will be set the same as the existing EU measure until the review is complete.

The TRA/TRID can recommend to the Secretary of State that a transition measure is kept for up to 5 years (4 years in the case of a safeguard measure) if it meets all the review criteria listed above. The recommendation will include whether the level of the measure should continue as it is, be varied or be revoked

TRA/TRID will recommend to the Secretary of State that the measure be revoked if it decides that:

- the measure is not necessary to offset dumping or the import of subsidised goods or to safeguard UK industries against a surge in imports
- there would be no injury to UK industry if it no longer applied

TRID will also recommend terminating the measure if continuing it is not in the UK's economic interest.

The Secretary of State will decide whether to keep, vary or remove the measure, based on the advice of TRID and by carrying out a 'public interest test'.

For the steel safeguard, the transition review must consider whether, for each specified category of steel products during the original EU investigation period, imports into the UK were in increased quantities and such quantities would be likely to recur if no longer subject to the tariff rate quota (TRQ). In addition, there must be serious injury and the TRQ continuation must be necessary to facilitate the adjustment of UK products to the imports belonging to that category.

The transition review for the steel safeguards may also consider, for each category, whether it is appropriate to a) increase the TRQ amount b) vary the allocation of the TRQ c) reduce the amount of additional import duty d) reduce the period for which goods are subject to quota e) increase the pace of liberalisation.

The transition reviews will be automatically initiated by TRA/TRID, unlike interim or expiry reviews which usually require a request from an interested party.

Given that TRA/TRID has not yet run a single trade remedy investigation, it is impossible to know precisely what the transition reviews will look like. UK producers will be sent a questionnaire and this will be similar to the process outlined in section 4. The questionnaire will be verified during an on-site verification by TRA/TRID investigators.

Key issues for the UK industry to consider in this regard are:

- **Comparison of UK-specific data with original EU investigation -** How does UK industry data on injury compare to the EU28 data for the original EU investigation? The key injury data will be summarised in the EU regulations imposing the measures. For those UK producers that completed questionnaires, it would be interesting to compare how the UK company specific data compares to the EU28 data for the same period. Also, how does the UK company data look today in relation to the original EU28 data. If the UK-specific injury was not as bad at the time of the original investigation as the EU28 injury, this needs to be known as soon as possible. If there is any risk that the injury would not be sufficient to be material or serious (depending on whether it is dumping/subsidy or safeguards), the case for maintaining the measure beyond the transition review may be harder to make and it is important to identify this as soon as possible. Obviously, if the UK-specific injury was greater in the UK than for the EU28 as a whole, this may make a stronger case for maintaining the measure.

- **Reviews will be current and forward looking -** The transition reviews will be current and forward looking. They will look at current injury data from the UK industry questionnaires and determine whether there is ongoing injury or the threat that injury would recur if the measure was terminated. This is different than an original investigation in the sense that the normal analysis of dumping, subsidy, increased imports, injury etc cannot be done due to the fact that the measure has been in effect. There may no injury and there may, in fact, be no imports. It can be noted that this will, in fact, make it difficult for the TRA/TRID to calculate new dumping or subsidy margins, where relevant. Perhaps new injury margins can be calculated. In some cases, therefore, it may well be the case that the decision is simply whether the current level of measures should be maintained or not.

- **Key issues relevant to the transition reviews –** As stated earlier, the transition reviews will largely be similar to expiry reviews. Thus, the key issues will be on the likelihood of the recurrence of dumping/subsidy, increased imports, and material or serious injury as relevant. In making this determination, the TRA/TRID will look at (i) the availability of spare capacity for the exporting producers (ii) the attractiveness of the UK market compared to other export markets for the exporting producers concerned. UK industry should submit any evidence that it has on these issues. Key questions include:

    - What information is available on spare production capacity in the country concerned?
    - Is there any evidence that any of the exporters hold large inventories of particular goods?
    - How attractive is the UK market in relation to other export markets for the exporting producers concerned? Trade data from the country concerned could be used to calculate unit values for different export markets which might be used as evidence that the UK is an attractive market in which to increase supply if trade remedies were removed?
    - Are there impending events that may result in an important third country export market being reduced or closed for the exporting producers? If another country is about to impose trade remedies or other restrictive measures, there may be diversion of exports towards the UK if the trade remedies are terminated.

- Is there any information from published industry sources or financial reports that could help in this regard?

The transition reviews will involve significant time and staff resources for UK producers. It is really important to prepare for the investigation in advance, familiarising all key production, accounts and sales staff with the process and the information that they will be expected to provide. The completion of the questionnaire requires good organisation as it will be created from data from different sources. As mentioned in section 4 on questionnaires and verification, the preparation of thorough worksheets, showing how all data has been calculated and can be linked to company records, is highly desirable and will make the process significantly easier.

5 BREXIT AND UK POLICY/LEGAL ISSUES

5.1 Brexit & Trade Remedies

Brexit has significant implications for trade remedies but the particular implications depend on what the Brexit scenario is. It is useful to start with some facts:

- The UK can only have trade remedies when it has an independent trade policy
- The UK will not have an independent trade policy if it stays in a customs union
- If the UK has an independent policy, there has to be some kind of UK/EU customs border with Ireland. This either has to be on the NI/Ireland border or between Great Britain and the island of NI/Ireland.

At the time of writing, all scenarios are still possible. Some comments can be made about trade remedies in the various different scenarios:

- **Withdrawal agreement of the Theresa May or Boris Johnson variety** - If there is some kind of UK/EU withdrawal agreement, there will be an implementation period of between 14 months and 3 years. During an implementation period, the UK will effectively remain in the EU single market and customs union. This means that the UK will remain within EU trade policy including EU anti-dumping, countervailing duty and safeguards. During this time it will no longer have any vote on EU measures. During the implementation period, the TRA/TRID would conduct the transition reviews (see section 4.4). If the UK decided to amend or terminate any of the transitioned measures, this would not occur until the end of the implementation period.

- **No deal -** If there is no deal on 31 October 2019, the UK will have an independent trade policy from 1 November 2019. (Note: even if an extension of Article 50 beyond 31 October were sought and granted, no deal would remain a possible future outcome.) This means that UK trade remedy law would immediately come into effect. All the planned measures would become UK measures and the process of reviews would start. Once the review had finished, if the decision is to amend or terminate the measure, this will have immediate effect.

- **UK remains in the customs union –** Under some scenarios the UK may still yet remain in the customs union. As stated above, this means that the UK would remain within the remit of EU trade remedies. The UK TRA/TRID and trade remedy legislation would become redundant.

For further information contact:

Richard Warren
Head of Policy and Representation
020 7654 1556
rwarren@makeuk.org

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