



Department for
International Trade



Department for
Business, Energy
& Industrial Strategy

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The Rt Hon. The Lord Lansley CBE

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12th October 2020

Dear Andrew, Jeremy,

I would like to thank you for your important contributions to day 3 of the Grand Committee for the Trade Bill. We heard a wide range of incisive comments from Noble Lords, which provided scrutiny of the highest order for this legislation.

I resolved to follow up with you directly following your contributions to amendment 91, and may I reassure your Lordships that we look forward to engaging with you and Parliament on these important issues.

The proposed amendment to section 32 of the Taxation (Cross-Border) Trade Act 2018 would require that any regulations made under section 15 of the Act are subject to the 'made affirmative procedure'.

Section 15 of the Act is crucial to the UK's enforcement of World Trade Organization (WTO) and Free Trade Agreement (FTA) disputes. It allows the UK to respond to disputes in the international trading system in line with international arrangements to which the UK is a party, and our rights as an independent WTO Member. Section 15 was recently amended to reflect the practicalities of dispute settlement in the current climate, where the government needs to defend UK interests in the absence of a functioning Appellate Body at the WTO.

In Grand Committee, Lord Lansley raised the infrequency of import duty variations made as a result of trade disputes. The impracticality of all regulations of this nature being made under the 'made affirmative' is not down to the expected frequency or number of regulations that would be made under this power. Rather it is due to the sensitivities inherent in the trade dispute resolution system. The conduct of state-to-state trade disputes is a matter of foreign diplomacy, covered by the Royal Prerogative, and can touch on extremely sensitive issues with far reaching geopolitical implications. The choice of which products to vary the duty of is highly strategic and sensitive. It would be highly inappropriate for matters of such diplomatic sensitivity to be debated in Parliament.

Furthermore, in the implementation of permissible import duty variations in specific circumstances, it is critical that we respond effectively and efficiently. There are many circumstances where the application of duty variations is contingent on meeting WTO timing requirements. A recent example of this is provided by the EU's response to the US section 232 Steel and Aluminium tariffs. The ability of the EU to protect its interests and apply rebalancing measures in accordance with the WTO Agreement on Safeguards was dependent on the EU implementing these measures within the 90-day limit. Thus, delay to the application import duty variation could have a detrimental effect on British business.

Lord Purvis raised the impact of Dispute Settlement Body (DSB) procedure on the sensitivity of import duty variations.

There are many circumstances whereby the DSB will not be involved in proposed import duty variations. For example, the ability of the UK to respond to FTA disputes, where there is no DSB, is of even greater importance while the WTO Appellate Body impasse continues.

Moreover, while the DSB does give authorisation for members to retaliate up to a given value, it is up to the member in question to decide the exact level of retaliation, and how and when such tariffs should be implemented. WTO members do not ask the DSB to authorise a proposed list of retaliatory import duties. If regulations were made under an affirmative procedure, the Government would have to detail which products would be subject to countermeasures and explain why it has selected some products over others, which will raise issues of market sensitivity, as well as matters of geopolitical sensitivity. For this reason, if regulations under section 15 of the Taxation (Cross-Border) Trade Act 2018 are made affirmative, the government will lose significant negotiation capital, and will be unable to effectively protect British interests at the WTO, and in FTAs.

I have placed a copy of this letter in the libraries of both Houses.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grimstone', written in a cursive style.

Lord Grimstone of Boscobel, Kt
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Department for Business, Innovation & Industrial Strategy