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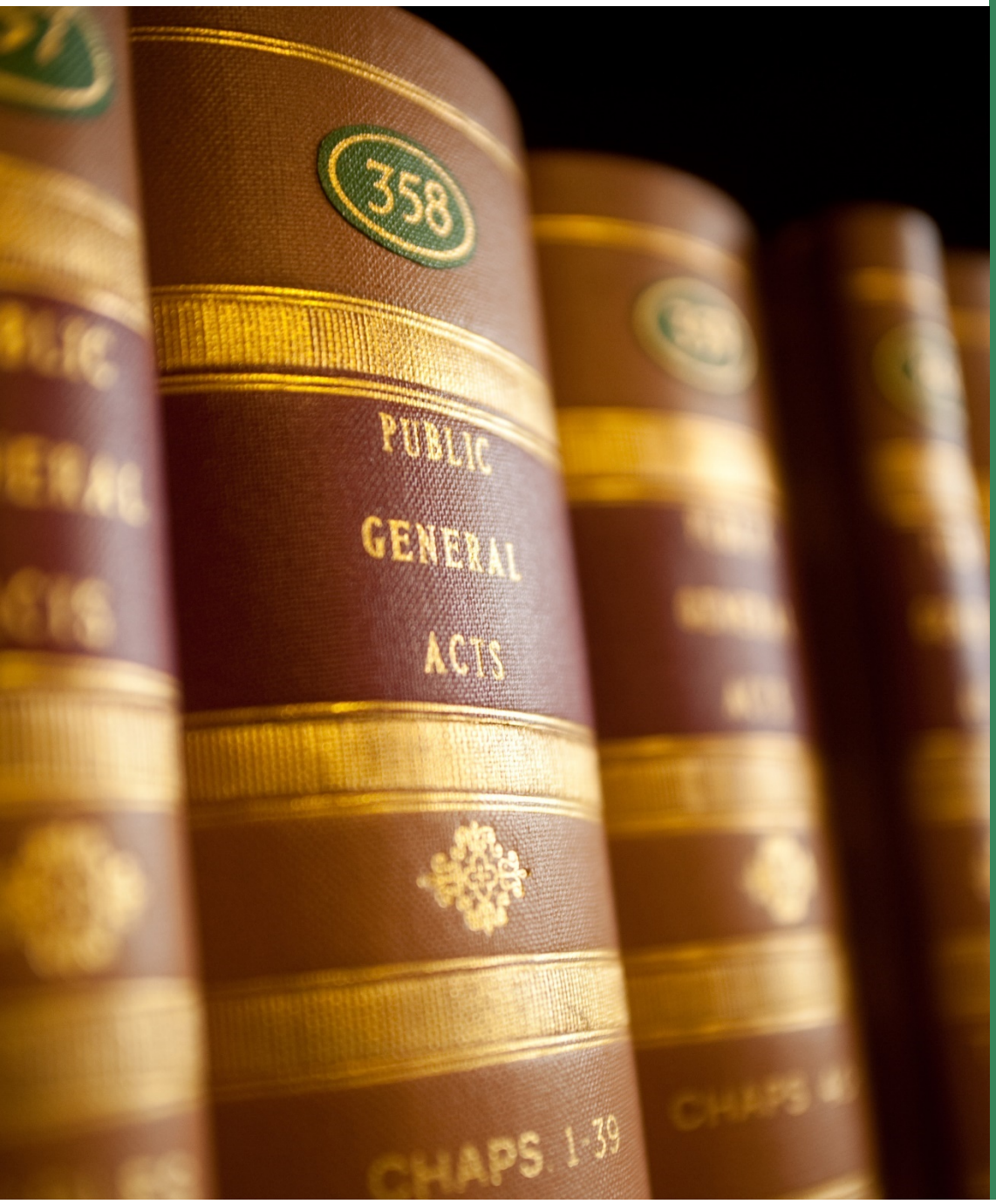
Trade Bill 2019-21: Committee Stage Report

By Dominic Webb



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Summary

The Committee Stage of the *Trade Bill 2019-21* took place over eight sittings between 16 and 25 June 2020. The first three sittings heard evidence from witnesses while the remaining five sessions scrutinised the Bill in detail.

A large number of amendments and new clauses were debated at Committee Stage. A number were pushed to a vote but the Bill was not amended. The Bill goes forward to Report Stage unchanged from its introduction into the House of Commons.

Much of the debate was on transparency and Parliamentary scrutiny of trade agreements. There was also some discussion of the role of the devolved governments. Concerns over the implications of a trade deal with the US were raised during the Committee Stage.

Parliamentary scrutiny of trade agreements

The Opposition argued that the current UK system gave Parliament only a minimal role in scrutinising treaties through the *Constitutional Reform and Governance Act 2010 (CRAG)*. When the UK had been an EU Member State, there had been extensive scrutiny of trade treaties by the European Parliament. The Opposition argued that the Bill provided an opportunity to create a new statutory framework for treaty scrutiny, which should apply to future trade agreements (such as with the US), not just EU trade agreements which were being rolled over into UK agreements. It was not enough to rely on assurances from Ministers.

The Opposition proposed a number of amendments and new clauses designed to increase transparency and scrutiny. These included requirements for:

- Parliamentary approval for the start of trade negotiations
- Impact assessments
- Negotiation texts to made available
- Select committees to have the power to trigger debates when they have concerns about trade negotiations
- Parliamentary approval of trade agreements

Some Government amendments to the previous Trade Bill, but removed from the current Bill, were tabled again by the Opposition. For example, an amendment was proposed requiring the Government to produce a report showing the differences between the UK agreement with a third country and the EU agreement which it replaced. The Minister said that the Government would provide these reports on a voluntary basis.

The Government argued that the powers in the Bill were needed to ensure that the UK benefited from continuity agreements. The Government argued that:

- The agreements had already been scrutinised at EU level so further detailed scrutiny was unnecessary
- The regulation-making power in clause 2 would be subject to the affirmative procedure
- The regulation-making power in clause 2 would also be subject to a five year sunset period which could only be extended with the consent of Parliament
- Initiating, negotiating and signing international agreements were Executive functions under the royal prerogative. The amendments would limit the government's ability to negotiate effectively

New agreements vs continuity agreements

In the Government's view, the Bill was about the continuity agreements not new agreements with countries which did not have an agreement with the EU. On new agreements, such as with the US, the Minister said that the Government's commitment to scrutiny was demonstrated by the fact that it had published negotiation objectives and an economic impact assessment. The new agreements would also need to go through the CRAG procedure. Any legislative changes required by a future trade agreement would have to through Parliament in the usual way. The Minister said that his door was open to further discussions with opposition parties about the scrutiny of future trade agreements.

International obligations

The Opposition tabled a number of amendments which sought to ensure that regulations implementing trade agreements were consistent with a range of criteria, including the sustainable development goals, human rights law, workers' rights, labour standards and environmental regulations. In response, the Minister said that the rolled over agreements were consistent with international obligations and that none of the continuity agreements already signed had reduced EU standards.

Food standards

A number of amendments were proposed with the aim of protecting UK food standards, including food production standards. The Minister said that the UK was committed to high standards in food and farming. All imports would have to meet UK import requirements and food safety standards.

Labour and the SNP tabled new clauses designed to ensure that imported food met the same standards as food produced in the UK. The Minister said that the EU approvals regime for agricultural products would be transposed onto the UK statute book. Imports under the UK's continuity trade agreements would continue to comply with existing import standards. However, banning safe food imports which met import standards but did not follow UK production methods would disrupt the food supply chain.

Devolution

The SNP proposed an amendment requiring Ministers to gain the consent of the devolved administrations before making changes to regulations that directly affected them. Mr Hosie referred to commitments given to a Scottish Minister by the former Minister for Trade Policy. These included a commitment that UK Government Ministers would not normally use the Bill's powers in devolved policy areas without consent and never without consultation. The UK Government also committed to consulting the devolved nations before extending the sunset power in clause 2. The Minister restated these commitments. However, the Government rejected a statutory consent provision for the devolved administrations as this would give them a veto over a reserved matter. The Minister said this would be constitutionally inappropriate.

A further amendment would require the approval of the devolved parliaments before implementing any trade deal agreed after the passage of the Bill. It was argued that modern trade agreements could cut across devolved policy areas. It was, therefore, important to give a statutory voice to the devolved nations. The Minister said that it was a principle of the UK constitution that negotiation of international agreements was a prerogative power of the UK government. It would therefore be inappropriate to give the devolved nations a veto.

1. Introduction

This paper summarises the debates on the *Trade Bill 2019-21* at Second Reading and Committee Stage in the House of Commons.

The Second Reading debate took place on 20 May 2020. The Public Bill Committee sat eight times between 16 and 25 June 2020.

Further information on the Bill is available from the links below:

- Bill page on Parliament's website
- Text of the Bill as introduced into the House of Commons 18 March 2020
- Library Briefing paper prepared for Second Reading
- Hansard: Second Reading debate
- Hansard: Committee Stage proceedings
- Public Bill Committee proceedings (gives details of amendments and new clauses at Committee Stage in the House of Commons)

2. Second Reading

The Second Reading debate took place on 20 May 2020.[1]

Introducing the Bill, the Secretary of State for International Trade, Liz Truss, said:

> Let me turn to the contents of the Bill. We can have fair trade only if it is free trade. The Bill will embed market access for British companies by enabling the UK to join the WTO's Government procurement agreement as an independent member. This will provide businesses with continued access to the extraordinary opportunities of the global procurement market, worth some £1.3 trillion a year. The GPA is an agreement between 20 parties that mutually opens up Government procurement. We have already seen in the UK the way that competition drives up quality while keeping prices low. The GPA keeps suppliers competitive and provides them with opportunities overseas. It is a driver of growth, not a threat to our economy. The idea that we can, or even should, do everything domestically is not desirable or practical in this increasingly interconnected world. Instead, we should be making sure that we have resilient supply chains through a more diverse range of partners. We will be an international champion for free and fair competition in the coming months and years through our discussions at the WTO, the G20 and bilaterally. We will urge other countries not to heed that false, but enticing, call for protectionism.
>
> Let me be clear to the House: the GPA sets out rules for how public procurement covered by the agreement is carried out. As an independent member, we are free to decide what procurement is covered under the agreement. The UK's GPA coverage does not and will not apply to the procurement of UK health services. Our NHS is not on the table.
>
> We are also committed to continuing our trade with existing partners that have agreements through the EU, such as South Korea and Chile. To date, we have signed 20 such trade agreements representing 48 countries, and others are still under negotiation. This accounts for £110 billion of UK trade in 2018, which represents 74% of continuity trade. People said that we would not be able to roll over these agreements—well, they were wrong, and we will be signing more in the coming months. This work is part of securing the Government's aim to have 80% of UK trade covered by free trade agreements in the next three years.[2]

The Secretary of State told the House that the Bill could not be used to implement a trade agreement with the EU or with the US. It could only be used to transition agreements with countries which had signed a trade agreement with the EU before 31 January 2020. These powers were subject to a five year sunset clause which could only be extended with the consent of both Houses of Parliament.[3]

1 HC Deb 20 May 2020 cc611-61
2 HC Deb 20 May 2020 cc612-3
3 HC Deb 20 May 2020, cc613-4

The Shadow Secretary of State, Emily Thornberry, moved an amendment that recognised the need for trade legislation but criticised the Bill in a number of respects including:

- failure to give Parliament a proper role in consultation, scrutiny, debate and approval of trade agreements
- failure to guarantee that the UK's current high standards and rights will be protected in future trade agreements
- that the Trade Remedies Authority (TRA) was not answerable to Parliament or representative of a full range of stakeholders[4]

The Bill was described as "a massive missed opportunity".

Emily Thornberry said:

> In conclusion, I believe that this Trade Bill offers a historic opportunity, but that opportunity has so far been missed. Instead of a bold, strategic vision for the future of our trade policy, we have a stopgap piece of legislation that even Ministers are trying to talk down. Instead of issues such as climate change and human rights being put at the heart of our trade policy, they have been ignored or consciously dropped. Instead of opening our trade policy to the expertise of others, the Government are denying them even a seat at the table. And instead of restoring Parliament's sovereignty over trade policy, this Bill leaves MPs even more powerless than before. That is why I urge colleagues on both sides of the House to support the Opposition's amendment. After five decades, let us spend the time and effort we need to get this historic Bill right.[5]

For the SNP, Stewart Hosie argued that the Bill gave Ministers wide powers to modify existing trade agreements, that the Bill failed to provide Parliament with adequate powers of scrutiny or approval over trade agreements and that there was no way for the devolved administrations to have formal input into trade agreements.[6]

Sarah Olney, speaking for the Liberal Democrats, criticised the Bill for giving MPs less of a role in scrutinising and approving trade agreements than MEPs.[7]

The Opposition's amendment was defeated by 352 votes to 262. The Bill was given a Second Reading by 355 votes to 254.

4 HC Deb 20 May 2020, cc614-5
5 HC Deb 20 May 2020, cc617
6 HC Deb 20 May 2020, c620
7 HC Deb 20 May 2020, c642

3. Committee Stage: evidence from witnesses

The Committee heard evidence from the following witnesses:

16 June 2020, First sitting

- Allie Renison, Head of EU and trade policy, Institute of Directors
- Jonathan Brenton, Head of Trade Policy, Confederation of British Industry
- Konrad Shek, Deputy director for policy and regulation, Advertising Association
- Roy Freeland, Perpetuum Ltd

16 June 2020, Second sitting

- L Alan Winters, Director of the UK Trade Policy Observatory, University of Sussex
- George Riddell, Director, Trade Policy, Ernst and Young
- Nick von Westenholz, EU Exit and International Trade Director, National Farmers' Union
- Richard Warren, UK Steel
- Ian Cranshaw, Chemical Industries Association
- Rosa Crawford, TUC
- George Peretz QC, Monckton Chambers
- Simon Walker CBE, Chair Designate, Trade Remedies Authority (TRA)

18 June 2020, First sitting

- David Lawrence, Trade Justice Movement
- Tom West, ClientEarth
- Sam Lowe, Centre for European Reform and member of the Strategic Trade Advisory Group
- Nick Ashton-Hart, Digital Trade Network

Scrutiny of trade agreements

L Alan Winters, director of the UK Trade Policy Observatory at the University of Sussex, told the Committee that "In general, the Bill is trying to do sensible things in a basically sensible way. The issues that arise are about whether or not it is drafted in a way that would allow it to be used for things beyond these intentions."[8]

He noted that the Bill granted the Government quite wide powers to make secondary legislation and that the power to extend the Bill's

[8] PBC 16 June 2020 c25

provision by periods of five years was "not in the spirit of the Bill, which is about cleaning up."[9]

Asked how the Bill could be improved with respect to Parliamentary scrutiny, Professor Winters said:

> I would suggest that one has something in the Bill that gives concrete form to the statements that we have that the Government expect not to use it to make major changes, and that such changes would come with primary legislation. At a practical level, one would need some sort of early-stage scrutiny to identify issues that were mere technicalities or minor issues, and to flag up larger issues that might require primary legislation.[10]

David Lawrence of the Trade Justice Movement emphasised the importance of Parliamentary scrutiny of trade agreements. He said there were four elements to an ideal scrutiny procedure:

- Full debate and vote on negotiation objectives
- Regular reports back to Parliament during negotiations and, ideally, publication of texts from each negotiating round
- Debate on the final agreement and a vote to approve it
- Throughout the whole process, there should be public consultation and independent impact assessment.[11]

Sam Lowe of the Centre for European Reform told the Committee:

> if there is not going to be further legislation to lay down the scope for Parliament's engagement in future trade agreements, it seems to me that it would be possible to expand the remit of the Bill to cover that. I think that is right, in that the Trade Remedies Authority and GPA provisions are forward- looking, so there is no reason why you could not do that as well.
>
> The UK's general approach to scrutiny is very poor. I think parliamentary scrutiny is very poor. Parliament has very little ability to influence trade negotiations or set the agenda of trade negotiations.[12]

Food imports

Nick von Westenholz of the NFU raised two main issues: (a) standards of production of food imports and (b) scrutiny of trade agreements (both rolled over agreements and new agreements).

He said that attempts had been made to make amendments on food standards to the *Agriculture Bill*. In conversations with MPs, the NFU had heard that these amendments should be made to the *Trade Bill* not the *Agriculture Bill*.

Mr von Westenholz told the Committee that the NFU was not opposed to the idea of trade agreements – they could provide scope to increase exports of UK food. He went on to say:

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9 PBC 16 June 2020 c26
10 PBC 16 June 2020 c29
11 PBC 18 June 2020 c68-9
12 PBC !8 June 2020 c80

> At the same time, however, all trade agreements will also look to increase access to UK markets for overseas producers, which will increase competition for UK farmers. Again, that in itself is fine, but we want to ensure that that competition is fair—whether it is Canadian farmers, US farmers or anybody else. The reason why we talk about overseas farmers meeting equivalent standards to UK farmers' is simply on the basis of fairness; we are certainly not opposed to trade liberalisation, as long as that liberalisation is fair.[13]
>
> […]
>
> the point is that UK farmers—like most EU farmers—operate under high standards of production in terms of the requirements they observe, particularly on animal welfare, for example. That is not to say that there are not farmers around the world who operate high standards of welfare. But in many cases in the UK, those are legal requirements, for example those around stocking densities for poultry, access to light, limitations on veterinary medicines that they can use—antibiotics, for example—and many other things. All those will have a connected direct or indirect cost for farmers, and will increase the cost of production in comparison to farmers overseas, who do not have to meet the same requirements.
>
> For farmers who then have to compete directly against produce that is produced more cheaply because the regulatory burden is lower, it is, for us, a simple issue of fairness. In a way, I am loth to put too much emphasis on the differences of approach, because, as I have said, many farmers overseas will produce to high welfare, but we know that many farmers overseas produce to lower requirements because, very simply, they are not required to by their legal and regulatory structures.[14]

He suggested the establishment of a trade, food and farming commission which could look into how equivalent standards between countries could be measured.[15] Mr von Westenholz concluded his evidence by saying:

> the UK Government should be seizing this moment to be a global leader in negotiating trade agreements that accommodate some of these sorts of policy areas, such as animal welfare, environmental impacts and climate change, and being creative and imaginative in how future trade agreements ought to look—not looking backwards and seeing how trade agreements have been done in the past, and merely looking to replicate those.[16]

Trade remedies

Richard Warren of UK Steel said that trade remedies were extremely important for the steel sector as a large proportion of the trade remedies carried over from the EU were in steel. Continuity trade agreements were also important, especially securing an agreement with Turkey which was an important market for UK steel. Representation of industry among the non-executive members of the TRA was important.

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13 PBC 16 June 2020 cc34-5
14 PBC 16 June 2020 c35
15 The Government has now announced the establishment of a commission – see 10 July 2020, DEFRA and DIT Press Release, Trade and Agriculture Commission membership announced
16 PBC 16 June 2020 c37

George Peretz QC said that it was important that the TRA was established by the Bill. The *Taxation (Cross-border Trade) Act 2018* conferred powers on the TRA. It was, therefore, unsatisfactory that the TRA had not yet been established on a statutory basis.

Simon Walker CBE, chair designate of the TRA, said that the role of the TRA's board would be governance rather than decision-making. The board's role would be to set strategy, hold the TRA's Executive to account and maintain the TRA's independence.

Mr Walker was not in favour of having representatives of different interest groups on the board as this might compromise their objectivity and might reduce the ability to appoint members on merit. Nevertheless, Mr Walker said:

> Will there be people with trade union or industry experience, with close links with farming or with the devolved Administrations? I absolutely hope so. I very much hope that there will be people in those categories who apply for the board and are appointed, but they will be appointed as individuals who will work together as a board to hold to account the Executive.[17]

Consultation with trade unions

Rosa Crawford summarised the TUC's view of the Bill as follows:

> We are concerned that what we see in the Trade Bill is not a framework that would support the trade policy that workers need. Our main concerns focus on the fact that it provides no role for trade unions or Parliament in the negotiation of trade deals. It fails to provide a role for trade unions at the Trade Remedies Authority—to be able to have a say on the measures to prevent unfair trade and dumping. It provides no assurance that workers' rights will be respected in trade deals, and it fails to ensure that UK procurement rules will promote respect for workers' rights. It provides no assurance that public services will be protected in trade deals.[18]

The TUC called for the Bill to ensure that unions would be consulted during trade negotiations on both continuity and future trade agreements.

On public procurement, the TUC called for an addition to the Bill that:

> states that the GPA schedule that the UK files will make sure that it at least replicates article 18(2) of the EU's 2014 public procurement provisions, which makes it clear that social standards must be part of the criteria used for settling public contracts, and that contractors must uphold those international labour and environmental standards. We would want the UK to go further than that and actually make it a compulsory criterion that the highest standards are used by contractors who receive public money, because that is the way to ensure that we get the best quality public services and provisions through our procurement arrangements.[19]

17 PBC 16 June 2020 cc58-9
18 PBC 16 June 2020 c46
19 PBC 16 June 2020 c49

The TUC also called for the Bill to exclude public services and Investor-State Dispute Settlement (ISDS) provisions from trade agreements.

Concerns over UK-US trade deal

Tom West of ClientEarth told the Committee that the main concerns were that the US might try to change UK regulation in areas such as agriculture, food standards and chemicals. David Lawrence of the Trade Justice Movement added provision of public services, digital services and investor protection provisions as areas of concern.[20]

Continuity of trade agreements

Sam Lowe of the Centre for European Reform pointed out that the Bill covered some agreements, such as that being negotiated with Japan, which were new agreements, not just continuations of the EU-Japan agreement.[21]

Nick Ashton-Hart, of the digital trade Network, pointed out that the UK's rolled over agreements were not exactly the same as the EU agreements they replaced.[22]

20 PBC 18 June 2020 cc72-3
21 PBC 18 June 2020 c76
22 PBC 18 June 2020 cc81-2

4. Committee Stage: detailed scrutiny of the Bill

4.1 Clause 1: Implementation of the Agreement on Government Procurement

Labour standards, environmental standards, SMEs and public health

Bill Esterson tabled a number of amendments on the GPA which would allow labour standards, environmental standards, helping SMEs and public health considerations to be taken into account in procurement.

Mr Esterson said that these amendments:

> call for the Government to pursue with GPA partners the potential for the inclusion of labour standards, environmental standards, support for small and medium-sized businesses and consideration of public health consequences in our annexes to the GPA.[23]

In response, the Minister (Greg Hands MP) said:

> Ensuring continuity in the terms of the UK's participation will not prevent public procurers from taking into account a range of factors when conducting procurement. Social, labour and environmental considerations can continue to be taken into account, as they are today, so long as they are consistent with the UK's international obligations, including, importantly, under the GPA, non-discrimination obligations. Those obligations already apply to the UK under our current GPA membership.[24]

The Minister described the amendments as unhelpful as the Government would have to enter into negotiations with its GPA partners each time even a minor change to the UK's GPA schedules was made. This would be an "unrealistic and wasteful use of the Government's time."[25]

Reviews of impact of regulations

Bill Esterson proposed a number of probing new clauses (NC1-4, NC 10 and NC 14). These required the Secretary of State to conduct reviews of the impact of regulations made under section 1(1) in a number of areas and lay the reviews before Parliament. The areas covered were:

- Social impact
- Climate change and environmental impact
- Public health
- Economic impact
- Impact on SMEs
- Impact on equalities

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23 PBC 18 June 2020 c96
24 PBC 18 June 2020 c120
25 PBC 18 June 2020 c122

The Minister said that an impact assessment had already been prepared for the Bill. He said that the powers in the Bill would be used for technical and administrative purposes and as such would have no significant impact in the areas covered by the new clauses.

The Minister said that the powers in this clause could also be used when a new party acceded to the GPA or a party left. The Minister made the following commitment in the case of an accession:

> Recognising concerns that regulations made to reflect new accessions could have material impacts, however, we will engage the International Trade Committee and the House of Lords treaties Sub-Committee in advance of any new party acceding to the GPA. This will provide ample opportunity to explore potential impacts before any regulations are made.[26]

4.2 Clause 2: Implementation of International Trade Agreements

Parliamentary scrutiny of trade agreements

The Shadow Minister, Gareth Thomas, put forward a number of amendments and new clauses relating to issues including parliamentary scrutiny of trade agreements, consent for the launch of trade negotiations, requirements for impact assessments to be carried out and negotiation texts to be made available. Scrutiny was also needed to ensure that the trade-offs in any trade deal were in the national interest.

Mr Thomas argued that the Bill should establish proper scrutiny arrangements for future trade deals, such as the UK-US trade agreement currently being negotiated. Mr Thomas referred to a number of concerns about the UK-US deal, such as anti-microbial resistance and hormone-fed beef, and said that this illustrated the need for better Parliamentary scrutiny of trade deals. The process of Parliamentary scrutiny should have a statutory basis rather than relying on assurances from Ministers. Mr Thomas said the existing scrutiny procedures under the *Constitutional Reform and Governance Act 2010* were inadequate. Mr Esterson noted the scrutiny powers of the European Parliament with respect to trade agreements and said that the UK should be looking, at least, to replicate them.

Mr Thomas described the amendments as follows:

> Amendment 4 would put in place a structure for proper parliamentary scrutiny of free trade agreements. New clause 5 sets out the process for scrutiny of those free trade agreements before they could be signed, including giving parliamentarians a vote on whether to approve the start of negotiations. That would help to lock in scrutiny of trade negotiations from the very beginning of the process.
>
> New clause 7 sets it out that Ministers could not just publish a one-line sentence saying, "Please give us permission to start negotiations." They would have to set out a detailed mandate for which they wanted support. New clause 6 would require a full sustainability impact assessment to guide members of the public

[26] PBC 18 June 2020 c128-9

> on the likely implications of a free trade agreement. New clause 8 sets out the parliamentary process in more detail, including giving Select Committees more privileged access to confidential negotiations. It would require Parliament to vote on whether to approve a free trade agreement. It is surely shocking that a future free trade agreement with the US, China or any other country should not be put to a vote. Every Member of the House should have the opportunity to vote on that.
>
> Amendments 6, 7 and 19 would introduce the super-affirmative process, which is the process for giving Select Committees the power to scrutinise trade agreements and, crucially, to trigger debates where there are a series of concerns. Ministers tabled new clauses 19 and 20 on Report during consideration of the previous Trade Bill. They have the effect of injecting just a bit more scrutiny and openness into future discussions on the continuity of trade agreements, and they could be similarly helpful in the context of other free trade agreements that we might want to negotiate. They require further clarity from Ministers about any departures from the detail of an original EU free trade agreement of which we are members, and with respect to a UK-specific free trade agreement that we have signed. This is not my drafting; the proposals are taken, word for word, from the amendments moved by Ministers. It will be interesting to hear the Minister's justification for rowing back on that tiny bit of additional scrutiny that the then Secretary of State was willing to provide as a result of serious concerns among Conservatives Members about the lack of opportunities for transparency and scrutiny.[27]

Fleur Anderson criticised the Bill for being too narrow as it dealt only with rolling over EU agreements, not new agreements. She described the Bill as "a huge missed opportunity to establish a framework for future trade negotiations."[28]

She said:

> To summarise, the amendments and new clauses that my colleagues and I have tabled would address the democratic deficit and create a stronger trade policy, which would ensure greater prosperity across our country. They would ensure a meaningful vote and debate for MPs on the Government's negotiating objectives from the start, and a much-needed widening of the scope of a Bill that is silent on too many crucial issues. They would ensure far greater transparency during the negotiations, proper public consultation and meaningful engagement with civil society, businesses and trade unions, and the introduction of much-needed impact assessments that look beyond economic metrics to include the impact on the environment, human rights and developing countries. The Trade Bill would be far better for them.[29]

The Minister, Greg Hands, said that the clause 2 power was needed to provide for continuity of existing trading relationships not new trade agreements. This power would ensure that the UK continued to benefit from EU trade agreements with third countries which were in place before exit day. These agreements had already been scrutinised as EU

27 PBC 23 June 2020 c155
28 PBC 23 June 2020 c187
29 PBC 23 June 2020 c188

agreements so additional scrutiny would not be a proportionate use of Parliamentary time.

Mr Hands said the Government had taken additional measures:

- The implementing regulations under clause 2 would be subject to the affirmative procedure
- There was a 5 year sunset period which could only be extended with the consent of Parliament
- The Government had voluntarily produced parliamentary reports showing significant differences between the UK continuity agreement and the original EU agreement.[30]

Gareth Thomas asked why the parliamentary reports were no longer a statutory requirement as they had been in the previous Bill, following an amendment. The Minister gave a commitment that the Government would continue to publish these reports.[31]

Turning to Amendment 5 which would bring new FTAs in the scope of the Bill, Mr Hands said that the Bill was not concerned with implementing trade agreements with countries, such as the US, which did not have trade agreements with the EU before 31 January 2020. The Minister said:

> I must stress that scrutiny of FTAs with new countries is a conversation that must take place separately from consideration of the Bill.[32]

Gareth Thomas asked the Minister to confirm that there was no statutory requirement for a debate or vote on any future UK-US agreement. The Minister said that the Government had published negotiation objectives for the trade deal with the US and an economic impact assessment. The Government would also publish an impact assessment at the end of deal. The Minister said that these measures demonstrated the Government's commitment to scrutiny of new deals. In addition, new agreements would have to go through the *Constitutional Reform and Governance Act 2010* procedure and any legislative changes required as a result of a future trade agreement would go through Parliament in the normal way.[33]

The Opposition pressed the Minister on the absence of provisions in the Bill on scrutiny of future trade agreements:

> Gareth Thomas: What we find objectionable is the lack of proper scrutiny in the process. That is the significant issue. I gently say to the Minister, he has not so far advanced an answer—I am agog to hear it—to the criticisms of a whole series of witnesses, from the business community and the trade union movement to trade exporters, about the failure of the Government to give Parliament a proper debating and voting opportunity on big new free trade agreements, such as a UK-US deal.
>
> Greg Hands: We are going slightly around in circles, conflating the continuity arrangements and future free trade agreements. I will

30 PBC 23 June 2020 c189
31 PBC 23 June 2020 c190
32 PBC 23 June 2020 c192
33 PBC 23 June 2020 c191

> happily debate with the hon. Gentleman the merits of our proposals for future free trade agreements. I reiterate that my door remains open to his suggestions as to how we might scrutinise future free trade agreements. However, the Bill is about continuity arrangements for the 40 or more EU agreements that we currently have. Many of the witnesses, whatever they said about future trade agreements, were unanimous in talking about the importance of the continuity agreements.[34]

The Minister said that his door was open to further discussions with all Opposition parties about the scrutiny of future deals.[35]

Turning to amendment 6, the Minister said:

> Amendment 6 would disapply CRAG to international trade agreements and instead seek to apply a super-affirmative procedure to scrutiny of continuity agreements before regulations could be made under clause 2. Like other Opposition amendments, that would undermine the constitutional balance and upset an established, well-functioning system of scrutiny. It would also create a two-tier system of scrutiny for international agreements, whereby trade agreements on the one hand, and other important international agreements on the other, are scrutinised in an entirely inconsistent way. It is worth reminding ourselves that CRAG was designed to cover international treaties of all the types we would expect.[36]

On New clause 5, which would create a structure for Parliamentary scrutiny of negotiations on proposed trade agreements, the Minister said that initiating, negotiating and signing international agreements were Executive functions under the royal prerogative. New clause 5 would undermine that "cornerstone of our constitution" and would limit the government's ability to negotiate effectively.[37]

Gareth Thomas pressed the Minister on whether the Government would abide by the proposals in the February 2019 Command Paper:

> Gareth Thomas: I want to press the Minister on the proposals that were in the Command Paper last year. He has not quite answered us on that. The Command Paper said clearly that the Government would work with a Committee and give it access to sensitive information that is not suitable for wider publication, including private briefings from negotiating teams. On the record, is the Minister willing to confirm that they will do that with the International Trade Committee and the relevant Lords Committee, or not?
>
> Greg Hands: I should be clear that the Command Paper was published by a previous Government in a different parliamentary context. However, we have in our approach so far followed what was set out in the Command Paper in relation to publishing negotiation objectives and impact assessments, and reporting back after the first round. I would again ask for confidence in our deeds, in terms of our overall commitment to parliamentary scrutiny.[38]

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34 PBC 23 June 2020 c195
35 PBC 23 June 2020 c192
36 PBC 23 June 2020 c193
37 PBC 23 June 2020 c196
38 PBC 23 June 2020 c197

New clause 7 related to Parliamentary approval to launch trade negotiations. The Minister said that the principle of the royal prerogative was relevant here. He said that partners being, in effect, in negotiation with both Government and Parliament would mean "uncertainty, delays, and ultimately worse trade agreements for UK businesses and consumers."[39]

New clause 8 was on the availability of agreement texts. The Minister said that the amendment had practical flaws. It boiled down to whether the Government negotiated international agreements, drawing on Parliamentary expertise and subject to scrutiny, or whether Parliament was in control of negotiations. The Minister argued that the former was preferable as it meant the UK's negotiating partners were dealing with a single voice – that of the UK government.[40]

On New Clause 9 (Reports on proposed free trade agreements), the Minister said that the Government had introduced an amendment to this effect in the previous Bill. However, the Government has made a commitment to publishing such reports on a voluntary basis.[41]

On New Clause 20, which would require a Parliamentary report to be published at least 10 sitting days before regulations were made, the Minister said that trade negotiations could go down to the wire making it difficult to have such a 10 day period. He also referred to the 21 days scrutiny period under CRAG.[42]

Amendments 4 and 5 were negatived on division.[43]

Exclusion of agreements where EU agreement signed but not ratified

Gareth Thomas introduced Amendment 9 which would exclude from the scope of clause 2(1) agreements where the equivalent EU-third country agreement had been signed but not ratified by 31 January 2020.[44] Mr Thomas said that this would exclude agreements with Vietnam and Canada.

The EU's agreement with Vietnam had not yet been ratified and UK scrutiny had not been completed when the UK left the EU. A UK-Vietnam agreement could be different to the EU-Vietnam agreement but would be covered by the Bill as originally drafted and so be subject to little scrutiny. Mr Thomas said Vietnam had a "less than perfect record of upholding labour rights".[45]

On an agreement with Canada, Mr Thomas raised concerns about Investor-State Dispute Settlement (ISDS), the negative list approach to services and how a UK-Canada agreement might be different to CETA and therefore require proper scrutiny.

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39 PBC 23 June 2020 c198
40 PBC 23 June 2020 c199
41 PBC 23 June 2020 c200
42 PBC 23 June 2020 c200
43 PBC 23 June 2020 c205
44 PBC 23 June 2020 c206
45 PBC 23 June 2020 c206

The Minister said that the amendment would make the scope of the clause 2 power much narrower. However, it would do so in an unreasonable way. CETA would be excluded and development-focused agreements would be excluded. Mr Thomas said that this was a probing amendment and it was withdrawn.[46]

SDGs, human rights law, workers' rights and labour standards

Bill Esterson introduced Amendment 10 which sought to ensure regulations made under clause 2(1) were consistent with a range of criteria including the Sustainable Development Goals, human rights law, workers' rights and labour standards.[47]

Mr Esterson referred to a briefing by Amnesty which said that the Bill granted very wide powers to Ministers, which would leave protection of domestic rights open to alteration. He also referred to concerns about labour and human rights abuses in countries with which the UK had signed continuity trade agreements.

Fleur Anderson said:

> Trade deals must contain mechanisms that effectively enforce the UN sustainable development goals and international treaties on labour and human rights; otherwise we will inevitably see a race to the bottom for workers and citizens everywhere, leading to more precarious work, substandard workers' rights, increased gender discrimination and human rights abuses, and an increased threat of the undermining of public services and social welfare systems. As Rosa Crawford saliently noted, a race to the bottom can never be won. The amendment will ensure that such mechanisms exist and will bake in compliance with our global commitments.[48]

For the Government, the Minister said that the rolled over agreements were consistent with international obligations as they seek to replicate existing EU agreements which fully comply with those obligations. He said that none of the continuity agreements already signed had reduced EU standards.

Amendment 10 was negatived on division.

Environmental obligations

Bill Esterson introduced amendment 11 which would require regulations made under clause 2(1) to be consistent with environmental obligations under international law, such as the Paris Agreement. He said that the Bill was an opportunity to redesign trade policy to support environmental objectives and that it was important that environmental objectives be written into legislation.

The Minister pointed to the UK's strong record on the environment and said that the Government had no intention of lowering standards. The

46 PBC 23 June 2020 c212
47 PBC 23 June 2020 c212
48 PBC 23 June 2020 c219

amendment was therefore unnecessary. The amendment was negatived on division.[49]

Public services

Bill Esterson introduced Amendment 12 which related to the provision of public services. He explained the reason for the amendment:

> It is about ensuring that international trade agreements do not undermine the ability of Governments at national or local level to run services in the public sector or in a public monopoly in the private sector. Importantly, it also has provision for bringing services that have been privatised back into the public sector—as we have just seen with the probation service—when they have failed after a botched privatisation. We have seen the desirability of doing that all too often with outsourcing, as more and more councils seek to bring services back in-house.
>
> However, with negative lists, standstill clauses and ratchet clauses in international trade agreements, it is becoming increasingly difficult for Governments to do these things.[50]

In response, the Minister said:

> The amendment is not necessary, because this is a continuity Bill. None of the agreements in question restrict our ability to deliver public services in that way. We have always protected our right to choose how we deliver public services in our trade agreements.[51]

The amendment was negatived on division.[52]

Food standards

Mr Esterson introduced Amendment 13 on food standards. The amendment said that regulations could only be made if the trade agreement to which they related was consistent with standards for food safety and quality set by the Department of Health, the Food Standards Agency and others.

Mr Esterson said that US trade officials were looking for a trade deal with the UK which would involve lower food production standards. He said that the level of food poisoning was ten times higher in the US than the EU.

Fleur Anderson told the Committee:

> The chorus of voices in the food sector who are concerned about the future of food standards in our trade policy is deafening. The NFU has expressed concerns, noting that in our current and forthcoming trade negotiations other countries will not only urge the UK to follow their own sanitary and phytosanitary standards arrangements, which in many cases diverge from current UK practice, but resist any suggestion that their own producers meet the production standards and additional costs required of UK farmers, who will then lose out. That leads us to the conclusion that it is hard to see how trade liberalisation will not inevitably lead to an increase in food imports produced in ways that would be illegal in the UK.[53]

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49 PBC 23 June 2020 c226
50 PBC 23 June 2020 c227
51 PBC 23 June 2020 c227
52 PBC 23 June 2020 c228
53 PBC 23 June 2020 c232

In response the Minister said:

> As the Committee will know, the UK's food standards for both domestic production and imports are overseen by the Food Standards Agency and Food Standards Scotland. Those agencies provide independent advice to the UK and Scottish Governments and will continue to do so to ensure that all food imports comply with the UK's high safety standards.
>
> Through the work of those independent organisations, consumers are protected from unsafe food that does not meet our high domestic standards. I reassure the Committee that all imports, whether under continuity agreements, most favoured nation terms or new free trade agreements, must comply with our import requirements and food safety standards. Countries seeking access to our markets in future will have to abide by those food standards.[54]

He said that the UK was committed to high standards for food and agriculture. Levels of protection would not be reduced after the end of the transition period. The Amendment was negatived on division.[55]

Henry VIII powers

Amendment 14 would remove clause 2(6)(a) from the Bill. This allows regulations to modify retained direct principal EU legislation or primary legislation that is retained EU law. Gareth Thomas said that the amendment would remove a "Henry VIII power" from the Bill. He said that clause 2(6)(a) was a "power grab" by the Government.

The Minister said that without this power, the Government would be unable to implement its obligations and would risk being in breach of international law. He said the power was "proportionate and contained" as it only allowed amendment of primary legislation that is retained EU law.

Mr Thomas withdrew the amendment but said that he might return to the issue at Report stage.

Consent of devolved governments

Stewart Hosie proposed amendment 8 which would require the consent of a devolved government if regulations under clause 2(1) contained matters within the remit of a devolved government.

Mr Hosie explained the purpose of amendment 8 as follows:

> It certainly strikes us as fundamental that, if we are to respect the devolved settlement in the UK, Ministers must gain the consent of the devolved Administrations before making changes to regulations that directly affect them, possibly negatively or in a way that runs counter to their policy objectives.[56]

Mr Hosie referred to commitments given in a letter of 18 March by the then Minister for Trade Policy, Conor Burns MP, to Ivan McKee, a Minister in the Scottish Government. Mr Hosie said:

> I know that the Minister is aware of those commitments, but I suspect that many other Committee members may not be. The

54 PBC 23 June 2020 c234
55 PBC 23 June 2020 c235
56 PBC 23 June 2020 c237

> non-legislative commitments I refer to are as follows. The first is that UK Government Ministers will not normally use the powers conferred by the Bill in devolved areas without Scottish and other devolved Ministers' consent, and that they will never do so without consulting them. The second is that the UK Government will consult the Scottish Government and other devolved Administrations before extending the sunset for the power in clause 2—that is, before extending the period during which clause 2 powers can be used under the Bill.
>
> The third is that in relation to the Trade Remedies Authority—the TRA—the Secretary of State will notify the devolved Administrations of decisions to initiate a trade investigation that will have a particular impact on the devolved nation. The fourth is that the Secretary of State will notify the devolved Administrations of the TRA's recommendations to the Secretary of State at the same time as consulting other Government Departments, so that they can feed in their views. The fifth is that the devolved Administrations can proactively submit to the TRA any information that they consider relevant to an investigation. The final commitment is that the Secretary of State will seek the devolved Administrations' suggestions on the optimal way of recruiting TRA non-executive members with regional knowledge, skills and experience.
>
> I hope the Minister can confirm that those non-legislative commitments still stand.[57]

With respect to amendment 8, Mr Hands said:

> As parts of these agreements touch on devolved matters, this legislation will create concurrent powers. We have sought to put in place concurrent powers to provide greater flexibility in how transitional agreements are implemented, allowing each devolved Administration to implement the agreements independently in some cases, while also allowing the UK Government to legislate on a UK-wide basis where it makes practical sense to do so. This approach permits greater administrative efficiency, reducing the volume of legislation brought through the UK Parliament and through the devolved legislatures.
>
> I recognise that the devolved Administrations and members of this Committee seek reassurance that those powers will be used appropriately. The Government have already made clear that we will not normally use them to legislate within devolved areas without the consent of the relevant devolved Administration or Administrations, and never without consulting them first. I am, of course, happy to restate that commitment here.[58]

Mr Hands said that a statutory consent provision in the Bill would give the devolved administrations a veto over a reserved matter which would be constitutionally inappropriate.[59]

In response to Mr Hosie, the Minister restated the commitments made by Conor Burns to Ivan McKee.[60]

Amendment 8 was withdrawn.

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57 PBC 23 June 2020 c238
58 PBC 23 June 2020 c241
59 PBC 23 June 2020 c241
60 PBC 23 June 2020 c240

Joint Ministerial Committee

Gareth Thomas proposed New clause 16 on the role of the Joint Ministerial Committee. Mr Thomas said:

> New clause 16 would put on the face of the Bill a joint ministerial committee, and give it powers to discuss international trade issues with the devolved Administrations.
>
> […]
>
> In the new world, post-Brexit, we need the devolution settlements to be slightly updated to reflect the significance of the international trade agreements that will be negotiated. Putting into statute the joint ministerial committee and effectively establishing a ministerial forum for international trade seems to us to be the most sensible way to lock in proper consultation between Whitehall and each of the devolved Administrations.[61]

Mr Thomas said that the issue of geographical indications, such as Welsh lamb and Scottish salmon was an example of an issue which the Joint Ministerial Committee might want to discuss.

The Minister said that under the UK constitution, negotiation of international trade agreements was a reserved matter, where the UK Government acted on behalf of the UK as a whole. He said that the Department for International Trade had worked, and would continue to work, closely with the devolved administrations on trade policy.

Mr Hands said that New clause 16 was "unnecessary and impractical". He said that a new bespoke ministerial forum for trade had had its first meeting in January. He went on to say:

> I am also happy to put on record my commitment to continuing to work closely with the devolved Administrations at all stages of trade negotiations, not only through the ministerial forum for trade, but via bilateral ad hoc engagement to reflect the sometimes fast-paced nature of trade negotiations. Indeed, I spoke about the US free trade agreement with all my counterparts in the devolved Administrations last month and have also recently written about the Trade Bill and other trade policy issues.[62]

Mr Hands said that the proposed new clause would give the devolved administrations a statutory role in international trade negotiations – a reserved area. This would be "constitutionally inappropriate."

Sunset provisions

The Bill contained a sunset provision relating to the regulation-making powers in clause 2. The power to make these regulations would lapse after five years. This period could be extended but only with the agreement of both Houses.

Gareth Thomas introduced a number of amendments relating to the sunset period (amendments 16, 17 and 20-23).

Mr Thomas said:

> What my hon. Friends and I have done—in a very generous way, I think—is provide a menu of options to the Minister to

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61 PBC 23 June 2020 c239
62 PBC 23 June 2020 c240

> demonstrate his and his Department's faith in their ability to complete these roll-over agreements. Surely, if it is that easy to get the roll-over agreements completed, they will not need to go beyond five years, which is the purpose of amendment 16. Perhaps, if they are feeling a little nervous, they might want to go for amendment 17 and have a limit of 10 years on the face of the Bill. If they are feeling very nervous that they will not get negotiations done with South Korea, Canada, Andorra, Japan or Turkey by the end of the implementation period on 31 December, perhaps they would want to put back into the Bill their own amendments, as encapsulated in amendments 20 to 23.[63]

He continued:

> if we limit the provisions of the Bill purely to its original claimed purpose—just to do the continuity work that is necessary to maintain existing relationships—we should limit the time that is required. It is in that spirit that I offer to the Committee this menu of sensible options to limit the power in the Bill.[64]

Mr Thomas noted that the Government had agreed to reduce the sunset period to three years during the passage of the previous Trade Bill.

The Minister said that the five year period was not needed to negotiate the rolled-over agreements but to make sure they remained operable after they had been signed.

Mr Hands said that he could not support amendment 16 which would remove the power to extend the sunset clause beyond five years. This could undermine the UK's ability to implement obligations arising from trade agreements beyond the first five years.[65]

Amendment 17, which sought to place a limit of 10 years on the sunset period, was unnecessary as it could only be extended beyond five years with the agreement of both Houses. Amendments 20-23 sought to reduce the length of the sunset period, and the period by which it could be extended, from five years to three. The Minister said that the five year period struck the right balance between flexibility of negotiations and constraints placed on the power.

Amendments 16, 17 and 20 were negatived on division.[66]

Statement on equalities legislation

Gareth Thomas introduced new clause 18 which would require the Government to make a statement on the impact on equalities legislation of any regulations made under clause 2. Mr Thomas said that clause 2 allowed Ministers to make regulations which may modify primary legislation that is retained EU law. He said that this included a wide range of primary legislation and could potentially include equalities legislation such as the *Equality Act 2010* and the *Modern Slavery Act 2015*. Safeguards were necessary to ensure that equalities legislation could not be amended by Ministers. Mr Thomas also referred to an amendment on equalities made by the Government at Lords Report

63 PBC 25 June 2020 c255
64 PBC 25 June 2020 c256
65 PBC 25 June 2020 c256
66 PBC 25 June 2020 cc260-61

Stage of the previous Bill. This amendment had been removed from the new Bill.

The Minister said that the previous amendment was made when there was uncertainty among Parliamentarians over the Government's trade continuity programme and its impact on equalities legislation. None of the 20 continuity agreements signed so far had impacted on equalities or needed equalities legislation to be amended. The Minister reiterated that regulations under clause 2 would be subject to the affirmative procedure.[67]

Devolution

New clause 22, put forward by Plaid Cymru, would require the approval of Parliament and the devolved parliaments before implementing any trade deal agreed after the passage of the Bill.

Stewart Hosie said that some industries were disproportionately important to the economies of Scotland, Wales or Northern Ireland. For example, the white fish industry was particularly important to Scotland. He said that modern trade agreements were more about regulation than tariffs and quotas and might therefore cut across devolved policy areas. It was, therefore, important to give a statutory voice to the devolved nations to make sure their interests were protected. He largely accepted that the clause 2 powers were designed to roll over existing trade agreements, but the breadth of these powers and the period of time for which they would be in force, were a concern.

The Minister said that it was a principle of the UK constitution that negotiating international agreements was a prerogative power of the UK government. This ensured that the UK spoke with a single voice in the negotiations. The proposed new clause would give the devolved administrations a veto over trade agreements. This would be inappropriate for a reserved matter.[68]

4.3 Schedule 2: Regulations under Part 1

Procedure for regulations under clause 1(1)

Gareth Thomas introduced amendment 18 which would require the affirmative resolution procedure for regulations made under clause 1(1). Mr Thomas said that without the amendment, the government would be able to bring in regulations to implement obligations arising from the UK's independent membership of the GPA with very little scrutiny. Such scrutiny was necessary to ensure there was no reduction in standards.

The Minister said he was satisfied that the Bill contained sufficient Parliamentary scrutiny. The power in clause 1(1) was intended to allow the UK to make technical changes such as when parties joined or left the GPA. The UK needed to be able to respond quickly. This might not be possible with the affirmative procedure.

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67 PBC 25 June 2020 cc267-68
68 PBC 25 June 2020 cc269-70

Mr Thomas and Mr Esterson argued that the Minister was exaggerating the time pressures. The amendment was negatived on division.[69]

4.4 Schedule 4: The Trade Remedies Authority

Parliamentary approval of Chair of TRA

Amendment 1 would require a Parliamentary Committee to assent to the Secretary of State's recommendation for the chair of the TRA. Bill Esterson said that the Opposition supported the creation of the TRA. However, the Bill as drafted did not contain any Parliamentary scrutiny of the chair of the TRA, leaving the Secretary of State "free to appoint someone in their own image".[70] Mr Esterson said:

> Fundamentally, this is about ensuring that the chair is scrutinised properly, to ensure that there is a balance in the competing interests.[71]

The Minister said that it was established practice that decisions on public appointments were for Ministers who were accountable to Parliament and the public. He referred to Cabinet Office guidance on which posts should be subject to pre-appointment scrutiny. He said that these did not apply to the TRA. He said that the TRA was required to produce an annual report which must be laid before Parliament. The TRA would also be subject to scrutiny by the National Audit Office and Parliamentary Committees. The amendment was negatived on division.[72]

Term of office

Stewart Hosie spoke to amendments 35 and 36. Amendment 35 would establish a fixed term of office of five years for members of the TRA, renewable once. Mr Hosie said this would give TRA members greater security of tenure and thus enhance their independence. Amendment 36 sought to provide greater clarity on when an executive member of the TRA would be considered "unable or unfit to carry out the functions of their office." Mr Hosie did not push these amendments to a division but asked the Minister to consider how amendments could be brought forward at a later stage to deal with these issues.

In response, Greg Hands said that appointment would be regulated by the Commissioner for Public Appointments. It might be necessary to make some initial appointments to the board shorter than five years to manage future turnover of members. The Minister said that setting out these details in contractual terms would be the best way to ensure flexibility. Amendment 35 would not allow such flexibility. Terms and conditions for non-executive members of the TRA were being developed in line with the "Code of Conduct for Board Members and Public

69 PBC 25 June 2020 cc276
70 PBC 25 June 2020 cc279
71 PBC 25 June 2020 cc281
72 PBC 25 June 2020 cc285

Bodies". This covered the issues of fitness for office which were the subject of Amendment 36.

TRA reports

Bill Esterson introduced amendments 2 and 3. Amendment 2 would set a deadline for the TRA Annual Report to be laid before Parliament. Amendment 3 would require the TRA to prepare a report on each individual recommendation made to the Secretary of State in connection with an international trade dispute. This report must be laid before Parliament.

Mr Esterson said that Parliament needed to be able to scrutinise the work of the TRA to ensure it was working in the best interests of the economy. He noted that the European Commission was required to report to the European Parliament on trade remedies. The TRA should provide MPs with similar information on the number of cases initiated and the number of measures imposed, for example.

Greg Hands said that the Government recognised the need for the TRA to be impartial, objective and transparent. He said that the TRA was being established as an arm's length body. The TRA was required to produce a report on its functions each year. This report would be laid before Parliament. On amendment 2, the Minister said that it was unreasonable to set a fixed deadline for laying the annual report before Parliament. The accounts would have to be certified by the Comptroller and Auditor-General meaning the timing would be outside the TRA's control. On amendment 3, the Minister said it could be detrimental to the UK's interests to make information public when the UK was involved in international trade disputes.

In response to the Minister's comments, Mr Esterson said:

> it is important that we scrutinise the TRA's work on individual investigations in realtime. I am sure there are alternative ways of doing that in Parliament—bringing reports before Select Committees, for example, where there is need to handle scrutiny sensitively if commercially confidential information is involved. Perhaps the Minister can bring some of those back to us.[73]

Amendment 2 was withdrawn.

4.5 Clause 6: Provision of advice, support and assistance by the TRA

Bill Esterson spoke to Amendment 28. He explained its purpose as follows:

> Amendment 28 would require an analysis of any exercise by the Secretary of State of the power under section 15 of the Taxation (Cross-border Trade) Act 2018, which I assume will be amended when the Finance Bill achieves Royal Assent, to vary import duty as she—it is "she", at the moment—considers appropriate.[74]

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73 PBC 25 June 2020 cc291
74 PBC 25 June 2020 cc291

The Minister explained the purpose of section 15 of the *Taxation (Cross-border Trade) Act 2018*:

> Section 15 of the Taxation (Cross-border Trade) Act provides for the Secretary of State to change the amount of import duty that applies to certain goods as a result of an international dispute. There are several scenarios under which that could come about. The first is if the UK has successfully challenged trade-restrictive measures imposed by another WTO member under the WTO's dispute settlement system. If the other member fails to comply with the WTO's ruling in favour of the UK, the UK Government would be able to impose duties to redress the issue.
>
> Secondly, if there is a dispute between the UK and one of our partners under the terms of a free trade agreement, the UK may be able to impose retaliatory duties. Thirdly, there is the possibility that the UK could be subject to a dispute in the WTO, or as part of an FTA, and be required to provide compensation to the relevant WTO member or FTA partner. That conversation could take the form of imposing lower duties on certain goods. I reassure Members that variations in import duties in response to trade disputes are intended to be temporary in nature, and will be removed when action has been taken by the country or territory in question to bring itself into compliance.
>
> What is clear from all this, and what Parliament has already accepted in passing the Taxation (Cross-border Trade) Act, is that it is for the Government to decide whether it is necessary to change import duties as a result of a dispute. We should be clear, however, that the resulting duties, whether higher or lower, are not trade remedies measures. That is the problem with the amendment. Although the Trade Bill enables the TRA to provide expert support to the Secretary of State in order to build the evidence base for decisions on international disputes where needed, as we have already discussed during our consideration of amendment 3, the TRA does not have a role to play in determining duties arising from international disputes, and those duties are not trade remedies measures. Interesting though they may be to the Opposition, that would expand the role of the TRA into areas for which it is not intended. The TRA will be the UK's expert body on trade remedies—that is the reason we are establishing it. It will not have the wider remit that the amendment would confer on it. I hope the Committee will agree and I ask the hon. Member for Sefton Central to withdraw the amendment.[75]

The amendment was negatived on division.[76]

4.6 Clauses 7 and 8: Collection of exporter information and Disclosure of information

Stewart Hosie spoke to two amendments to clause 7. Amendment 32 would require the Treasury to consult relevant stakeholders when making regulations. Mr Hosie said:

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75 PBC 25 June 2020 cc295
76 PBC 25 June 2020 cc296

> If we are going to request information from businesses, trade groups or anyone else, let us ensure that we consult the relevant stakeholders first, to make sure that we are not requesting information that is not held, that we are requesting it in a way in which it is currently collected and that we are not adding an additional layer or an additional burden for business when it is, in some cases perhaps, simply unnecessary.[77]

Amendment 33 was about protecting legal professional privilege. Mr Hosie was concerned that clause 7(1) granted wide discretion to HMRC and argued that the scope of this provision should be more clearly defined. A similar amendment (amendment 34) was proposed to clause 8.

The Minister said that it was important that the Government improved its understanding of exporters. He said:

> Clause 7 sets out the powers needed for the Government to collect data to establish the number and identity of UK businesses exporting goods and services, particularly smaller businesses and sole traders, who may not be readily identifiable from existing data, but who may need a helping hand from the Government to develop their export potential reaching into existing and new markets. The clause provides the ability for HMRC to collect relevant data by tick boxes on existing tax returns.[78]

Amendment 32 would impair the Government's ability to introduce new questions quickly.

On the issue of legal professional privilege, the Minister provided the Committee with an "absolute assurance" that the Government had no intention of using these powers to seek or share information protected by legal professional privilege.[79] Information collected under clause 7 was would be for trade statistics purposes and would be provided on a voluntary basis.

He said:

> Clause 8 allows for the sharing of data that is already held by HMRC for its administrative functions. We are talking about data to be shared that has already been collected. Such information cannot therefore be subject to legal professional privilege, as it has already been provided to HMRC.[80]

4.7 New clauses

Standards applying to agricultural imports

Labour and the SNP had tabled new clauses on standards relating to animal welfare, food safety and plant health (new clauses 9 and 11) These were designed to ensure imported food met the same standards as food produced in the UK. The Opposition had also tabled new clause 17 on animal welfare and sentience.

Mr Esterson said that the Government had made commitments on food safety but not on food production standards. He said that Government

77 PBC 25 June 2020 c297
78 PBC 25 June 2020 c298
79 PBC 25 June 2020 c299
80 PBC 25 June 2020 c299

backbenchers had been told by Ministers that the Trade Bill was the appropriate place for such an amendment, rather than the Agriculture Bill. Mr Esterson said that US officials had indicated that chlorinated chicken must be part of a UK-US trade agreement.[81]

Mr Hosie said:

> I want to speak to my new clause 11. Trade deals can put pressure on food standards and lead to the importation of food of a low standard. We know, for example, that the US Administration wants the UK to lower its food and animal welfare standards precisely to allow the export of products currently banned in the UK. The new clause includes a ban on the importation of food produced to standards lower than those currently applying in the UK. The US and other countries have far lower animal welfare standards and adopt practices that are illegal in the UK for health and environmental reasons, such as the production of chlorine-washed chicken and hormone fed beef; use various pesticides outlawed in the UK; and produce genetically modified crops, which are completely outlawed in Scotland. We believe that the quality of Scotland's food and drink produce, and indeed that from elsewhere in the UK, as well as the standards of production, are essential to retaining our established international reputation in those products.[82]

The Minister said:

> I can say that there will be no compromise on our standards on food safety, animal welfare and the environment, exactly as we laid out in the election manifesto[83]
>
> […]
>
> As the National Farmers Union confirmed to the Committee last week, the EU's approvals regime for agricultural products is one of the most precautionary in the world. That regime will be transposed onto the UK statute book through the European Union (Withdrawal) Act 2018.[84]

Mr Hands said that imports under the UK's continuity agreements would continue to comply with existing import standards. Asked whether he could confirm that he could see no way in which chlorinated chicken from the US would be allowed to be sold in the UK, the Minister said:

> That is absolutely correct. It is a point that we have made on numerous occasions, and I am happy to make it again today.[85]

The Minister continued:

> All imports under all trade agreements, whether continuity or future FTAs, will have to comply with our import requirements. In the case of food safety, the Food Standards Agency and Food Standards Scotland will continue to ensure that all food imports comply with the UK's high safety standards, and that consumers are protected from unsafe food that does not meet those

81 PBC 25 June 2020 c303
82 PBC 25 June 2020 c304
83 PBC 25 June 2020 c305
84 PBC 25 June 2020 c305
85 PBC 25 June 2020 c306

> standards. Decisions on those standards are a matter for the UK and will be made separately from any trade agreements.[86]

The Minister said:

> I will now address each amendment in turn. New clause 9 would mean that all imported agricultural goods had to meet the same production standards as goods produced in the UK today and to be aligned dynamically. I have already talked about the UK's stringent import protections, which are either in place through existing domestic legislation or brought on to the statute book through the withdrawal Act.
>
> As I have mentioned, during the evidence sessions we had on the legislation, the NFU and others described these as some of the most precautionary standards in the world. As Committee members will know, the UK's food standards for domestic production and imports are overseen by the Food Standards Agency and Food Standards Scotland. Those agencies provide independent advice to the UK and Scottish Governments, and will continue to do so, to ensure that all food imports comply with the UK's high safety standards. Through the works of these independent organisations, consumers are protected from unsafe food, which does not meet our high domestic standards.
>
> Members, however, should consider the unintended consequences of this new clause. It would force us to effectively ban safe food imports that meet our current import standards but do not follow the same production methods as we have in the UK. That is crucial to understand. It would significantly disrupt UK food supply chain resilience, commercial relationships and bilateral relations with partner countries.[87]

The amendment would require the Secretary of State to prepare a register of standards under UK law relating to, for example, animal health and welfare and food safety. The amendment would require the production of imported agricultural goods to meet the standards set out in this register. The register would have to be updated within seven days of any changes to a standard contained in it. Greg Hands said that this would mean that the standards of the UK's trading partners would need to remain aligned with UK standards with only seven days' notice. This would be disruptive to trade and could be a particular problem for developing countries.

On new clause 11, the Minister reiterated that "EU import standards … will be replicated in domestic law at the end of the transition period."[88]

Replying to the Minister, Mr Esterson said:

> There is a world of difference between methods and standards, of course there is. How something is produced to a certain standard is one thing; the method used is entirely another. This is the point we have been making again and again in the proceedings of both this Bill and the Agriculture Bill. The Government have been pushing a defence of food safety, but not how it is produced, how animals are looked after or, indeed, how plants are protected. It is really telling that that is the defence being used and that it has taken them a while to get there. There can be and

86 PBC 25 June 2020 c306
87 PBC 25 June 2020 cc307-08
88 PBC 25 June 2020 c309

> there are different methods of production all over the world, of course there are, but they can be to the same high standards.[89]

New clause 9 was negatived on division.[90]

Healthcare services

Stewart Hosie spoke on two new clauses which he proposed. He said that trade deals could adversely affect provision of health services. While the Government had said that the NHS was off the table in trade negotiations, there was evidence that the US was interested in gaining access to the UK healthcare system. New clause 12 would mean that the UK government had a duty to restrict market access to healthcare services.

Mr Hosie said:

> The new clause has a specific carve-out for the NHS and all health-relevant services regulation, making it illegal for the Government to conclude a trade agreement that altered the way NHS services are provided, liberalised further or opened up to foreign investment by dint of a trade agreement—not by a policy change, not by part of the NHS somewhere on these islands saying it would be a good thing to do, but by dint of a trade agreement being forced on us from somewhere else.[91]

On his second new clause, Mr Hosie said:

> Our new clause 13 is an adjunct; we simply sought to add a different degree of protection for the health services in the nations, and to ensure that the Government would not be able to lay before Parliament a trade agreement that would have an impact on the provision of healthcare services without the consent of the devolved Administrations. That is secondary to the substantial points we are trying to make and the protections that we wish to put in place with new clause 12.[92]

The Minister said:

> The Government have been clear and definitive: the NHS is not, and never will be, for sale to the private sector, whether overseas or domestic. No trade agreement has ever affected our ability to keep public services public, nor do they require us to open up the NHS to private providers.
>
> We have always protected our right to choose how we would deliver public services in trade agreements, and we will continue to do so. The UK's public services, including the NHS, are protected by specific exclusions, exceptions and reservations in the trade agreements to which the UK is a party. The UK will continue to ensure that the same rigorous protections are included in future trade agreements.[93]

Mr Hands said that the Government had published negotiating objectives for the agreement with the US which stated that the NHS would not be on the table, including the price the NHS paid for drugs and the services it provided.

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89 PBC 25 June 2020 c310
90 PBC 25 June 2020 c311
91 PBC 25 June 2020 c313
92 PBC 25 June 2020 c314
93 PBC 25 June 2020 c315

The Minister referred again to the scrutiny provisions of CRAG and that Parliament would have to make any legislative changes required by a trade agreement in the usual way.

On new clause 13, the Minister reiterated the argument that negotiation of trade agreements was a reserved matter and that it would be "constitutionally inappropriate" for devolved administrations to have a veto before trade agreements were laid in Parliament.[94]

New clause 12 was negatived on division.[95]

Review of free trade agreements

Gareth Thomas tabled new clause 15 on reviews of free trade agreements. The clause would require the Secretary of State to lay before Parliament a review of each free trade agreement to which the Bill applied. This review was to be laid within five years of an agreement coming into force. Further reviews would be required every five years. The review would be conducted by an independent body and consider economic and social impacts, impacts on human rights and the environment, any Investor-State Dispute Settlement (ISDS) provisions in the agreement, the impact on animal welfare and the effect on developing countries. Mr Thomas said a review after five years would provide an opportunity to see if any of the concerns raised about trade agreements had materialised.

The Minister referred to the Parliamentary reports which the Government was publishing on rolled-over trade agreements. He said that Parliamentary Committees might provide a "more appropriate forum for reviews of our trade agreements."[96] Futhermore, the Minister said, the proposed reports would not be an efficient use of Parliamentary time.

The new clause was negatived on division.[97]

UK participation in EU and EEA organisations

New clause 21 was proposed by Gareth Thomas. This would require the Secretary of State to negotiate a trade agreement with the EU which would enable the UK to co-operate closely with the European Medicines Agency, the European Chemicals Agency, the European Aviation Safety Agency and the European Maritime Safety Agency. Mr Thomas said that proximity to the EU meant that co-operation with European agencies would be sensible. For example, without close co-operation with the European Chemicals Agency, there would be a risk that the UK and EU would diverge on chemicals regulation.

Greg Hands said that the UK's future relationship with the EU had already been discussed extensively in the current Parliament and the previous one. The future relationship had to respect the UK's legal and political autonomy. Options for non-EU countries to be members of EU agencies were very limited.

94 PBC 25 June 2020 c316
95 PBC 25 June 2020 c316
96 PBC 25 June 2020 c318
97 PBC 25 June 2020 c319

On the four agencies lists in the new clause, the Minister said:

> However, I acknowledge that members of the Committee are looking for reassurance about the Government's approach to negotiations with the EU in relation to the four bodies listed in the new clause. On the European Medicines Agency, we have stated that the UK-EU FTA should include commitments to co-operate on pharma co-vigilance, and to develop a comprehensive confidentiality agreement between regulators, in line with agreements between the European Medicines Agency and Swiss, US and Canadian authorities. The UK's published response in respect of the European Chemicals Agency states that the UK-EU FTA should include a commitment to develop a memorandum of understanding to enhance co-operation further, similar to the MOUs that the European Chemicals Agency has agreed with Australia and Canada.
>
> On the European Union Aviation Safety Agency, the UK's published position is that we have proposed a bilateral aviation safety agreement that will facilitate the recognition of aviation safety standards between the UN and the EU, minimising the regulatory burden for industry. On the European Maritime Safety Agency, the UK is discussing with the EU how best to manage our friendly relations, but any solution has to respect our red line of no commitments to follow EU law, and no acceptance of the ECJ.[98]

The new clause was negatived on division.[99]

98 PBC 25 June 2020 cc321-22
99 PBC 25 June 2020 c322

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