PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TAXATION (CROSS-BORDER TRADE) BILL

First Sitting

Tuesday 23 January 2018

(Morning)

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not later than

Saturday 27 January 2018

The Committee consisted of the following Members:

Chairs: † Ms Karen Buck, Mrs Anne Main

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Chapman, Douglas *(Dunfermline and West Fife)* (SNP)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Dowd, Peter *(Bootle)* (Lab)
† Hair, Kirstene *(Angus)* (Con)
† Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hill, Mike *(Hartlepool)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Menzies, Mark *(Fylde)* (Con)
† Morris, Grahame *(Easington)* (Lab)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Rowley, Lee *(North East Derbyshire)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Stride, Mel *(Financial Secretary to the Treasury)*
† Stuart, Graham *(Parliamentary Under-Secretary of State for International Trade)*
† Sturdy, Julian *(York Outer)* (Con)
† Wragg, Mr William *(Hazel Grove)* (Con)

Colin Lee, Gail Bartlett, *Committee Clerks*

† attended the Committee

Witnesses

Anastassia Beliakova, Head of Trade Policy, British Chambers of Commerce;

William Bain, Policy Adviser, Europe and International, British Retail Consortium;

Peter MacSwiney, Chairman, Agency Sector Management (UK) Limited, Co-chair of the Joint Customs Consultative Committee's (JCCC) Customs Brexit Group (CBG), Trade Chair for the JCCC

Gordon Tutt, Association of Freight Software Suppliers (AFSS)

Jeremy White, Barrister in international trade and Customs and Excise law, Consultant Editor, Tolley's Customs & Excise Duties Handbook

Barbara Scott, Director, Customs Associates Ltd

Sue Davies, Strategic Policy Adviser, Which?

Helen Dennis, Policy and Advocacy Manager, Fairtrade

Public Bill Committee

Tuesday 23 January 2018

(Morning)

[Ms Karen Buck *in the Chair*]

Taxation (Cross-border Trade) Bill

9.25 am

The Chair: Before we begin, will everyone ensure that their phones are switched to silent, including me, and remove all signs of illicit tea and coffee? We have three motions to consider, which we can hopefully do formally. We are considering the programme motion, a motion to enable the reporting and publication of evidence, and a motion to allow us to deliberate in private about questions before the oral evidence session.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 23 January) meet—

(a) at 2.00 pm on Tuesday 23 January;

(b) at 11.30 am and 2.00 pm on Thursday 25 January;

(c) at 9.25 am and 2.00 pm on Tuesday 30 January;

(d) at 11.30 am and 2.00 pm on Thursday 1 February;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Tuesday 23 January	Until no later than 10.25 am	British Chambers of Commerce; Agency Sector Management; Association of Freight Software Suppliers
Tuesday 23 January	Until no later than 11.25 am	Jeremey White, Barrister; Customs Associates Ltd; Fairtrade; Which?
Tuesday 23 January	Until no later than 2.45 pm	Trades Union Congress; Unite; GMB; Public and Commercial Services Union
Tuesday 23 January	Until no later than 3.15 pm	Hansard Society
Tuesday 23 January	Until no later than 4.15 pm	UK Chamber of Shipping; British International Freight Association; British Ports Association
Tuesday 23 January	Until no later than 5 pm	UK Steel; Chemical Industries Association; British Ceramic Confederation

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3; Schedules 1 and 2; Clauses 4 to 10; Schedule 3; Clauses 11 to 13; Schedules 4 and 5; Clauses 14 to 20; Schedule 6; Clauses 21 to 29; Schedule 7; Clauses 30 to 43; Schedule 8; Clauses 44 to 50; Schedule 9; Clauses 51 to 56; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 1 February.—(*Mel Stride*.)

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Mel Stride*.)

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(*Mel Stride*.)

The Chair: The deadline for amendments to be considered at the first line-by-line sitting of the Committee was the rise of the House yesterday and the next deadline will be the rise of the House on Thursday for the Committee's sitting a week today. Copies of written evidence that the Committee receives will be made available in the Committee Room.

9.27 am

The Committee deliberated in private.

Examination of Witnesses

Anastassia Beliakova, William Bain, Peter MacSwiney and Gordon Tutt gave evidence.

9.29 am

The Chair: Good morning, witnesses. Thank you for coming along. We are now resuming our public sitting. We are going to hear evidence from the British Chambers of Commerce, the British Retail Consortium, Agency Sector Management and the Association of Freight Software Suppliers. I remind Members that all questions should be limited to matters within the scope of the Bill and that we have to stick to the timings set out in the programme motion, so we will have to conclude this session by 10.25 am. Will the witnesses start by introducing themselves for the record?

William Bain: Good morning, Ms Buck. I am Willie Bain from the British Retail Consortium. It is very nice to be back.

Anastassia Beliakova: Good morning, Ms Buck. I am Anastassia Beliakova. I am head of trade policy at the British Chambers of Commerce.

Peter MacSwiney: Good morning, I am Peter MacSwiney from Agency Sector Management.

Gordon Tutt: Good morning everyone, I am Gordon Tutt from the Association of Freight Software Suppliers.

The Chair: Thank you very much. Can we start with Peter Dowd?

Q1 Peter Dowd (Bootle) (Lab): This is a broad question in relation to the concerns that your members may have expressed—any of you can pick this up—on the capacity of Her Majesty's Revenue and Customs and UK Border Force to absorb changes to the customs arrangements.

Anastassia Beliakova: An issue that our members have raised—this was something that we heard from members even before the whole Brexit question arose—is staffing capacity and in particular the ability to help businesses with day-to-day questions that they may

have. That is particularly important when businesses apply for various trade facilitations, such as inward processing relief, or for various forms of certification, such as to be an authorised economic operator. There used to be a helpline at HMRC that is no longer available. Businesses would find it helpful if that were reintroduced. Another concern they have raised is that there is an evidenced shortage of staff dedicated to goods checks. That has been ongoing for a number of years, and questions are being asked about whether there is sufficient resource and focus allocated to goods checks and support. Those questions will become much more acute with all the coming changes.

Peter MacSwiney: There are always questions raised about the Customs Declaration Service, which is the replacement for the customs handling of import and export freight programme. I have said many times that I still believe that between CDS and CHIEF, the computer system will have sufficient capacity to handle the declarations. To pick up on Anastassia's point, to enable goods to move freely through the border post-Brexit we will have to rely on advance information and bulk entries done with some form of simplified procedure. As far as I can see, Border Force is not engaging very much with trade. What it wants the processes to be and what data elements it wants are still unclear. Customs seems to be getting bogged down with the authorisation process. All of that could do with being streamlined.

Gordon Tutt: Our association members have customers who cover a wide range of different trade sectors. One of the common problems we have is getting approvals processed quickly. That is particularly worrying. One of the recent changes that has been mooted is that before a trader can have their approval granted, they will have to have their software contracts in place. Most traders would not want to go to the cost and trouble of organising and paying a software contract if they did not know they would get the approval. It puts the cart before the horse. Having said that, we are expecting to have discussions with HMRC through the Joint Customs Consultative Committee sub-group on how we can best streamline the whole approval process.

William Bain: One of the key things that our members have said to us is that the last big change they were asked to adjust to, which was the introduction of the Union customs code, took companies three years to get ready for. There is good engagement with HMRC, but there is concern about the capacity of the new CDS system to handle perhaps 255 million customs declarations a year, depending on the kind of deal that is or is not negotiated in the next few months.

Q2 Peter Dowd: I have one more question, if I may. What is your satisfaction level, on a level between one and 10, or your confidence that the Government will fully engage prior to making customs-related regulations once the outcome of the Brexit negotiations is clear? How confident are you that the lines of communication are actually in place?

Peter MacSwiney: The lines of communication are in place. I do not think there is enough time to have any real meaningful discussions. I think the original view from the trade was that a five-year transitional period would be a minimum. Even if we get two years, it is difficult to see what we could achieve in that timeframe.

Gordon Tutt: From a technical perspective, we always work on a general rule that it takes two years from the time that we have the full technical specifications to the time we can actually implement. That gives you an idea of where we are at the moment. We are working closely with HMRC's technical teams on the CDS development. It is not an easy task. We are looking at a replacement to a service and a system that both the Government and the trade are highly dependent on. Clearly, we want to make sure that we get that absolutely right. We believe that Customs has taken some very sensible approaches, but we probably need to further mitigate the risk by enabling CHIEF to continue for a longer period, thereby allowing the transition from the current service to CDS over a longer period of time.

Q3 Chris Davies (Brecon and Radnorshire) (Con): Would you not agree that the essence of the Bill is as an enabling Bill for when we leave the EU? All the Bill is trying to do is put arrangements in place. Would you not agree that the whole framework and the essence of the Bill is correct in that respect?

Gordon Tutt: First, yes, you are right—it is an enabling Bill. It is very good that much of it is already contained in the Union customs code, so it actually provides a really good basis for future UK legislation. It also avoids an awful lot of new requirements on trade, particularly on our side of the systems, because it adopts much of the concepts of the technology and the data that are already maintained in the UCC legislation.

Anastassia Beliakova: To add to that, yes, of course it is an enabling Bill. We and our members welcome the fact that it aims to replicate the UCC as much as possible because, as has already been mentioned, a lot of effort and time have been put into adhering to the new aspects of the Union customs code. However, what we have noticed is that some elements of the code have not been addressed in the Bill.

For instance on origin, the means of defining origin have been set out. However, origin declaration has not been mentioned. That is just as important, if not more so in some aspects, than rules of origin, when it comes to international trade. There are various means in which businesses now declare origin. Sometimes it is through sub-certification; sometimes it is through certificates of origin. We published a paper last week—there are copies available for the Committee—that shows that businesses are worried about compliance issues after Brexit. They want to know that there will be certainty going forward and support for them with that. We would view it as quite important to have at least one clause in primary legislation ensuring continuity in the means of origin declaration, which is further elaborated in secondary legislation.

Q4 Chris Davies: Do you not think there is enough flexibility in the Bill already?

William Bain: It is a very flexible Bill—it has extensive powers to make delegated legislation. It does throw up some other issues that the BRC would like to see resolved during this process. For example, to get as free a flow of goods as possible, we not only need a deal with the EU on customs arrangements, we also need it on things such as transit, security, haulage and particularly VAT.

One of our concerns is that the way the Bill is drafted at the moment throws up some issues about doing business in the future. For example, companies may

have to register in every EU member state in which they provide services and in many member states in which they take goods to and from the UK. That is something that we would strongly urge the Committee to look at as the Bill proceeds.

Peter MacSwiney: I will stick to the system issue, if you like. I echo what Anastassia has said. The phrase "free circulation" is still in there. I do not see how that applies. Origins should be the criteria. You said it is a very flexible Bill—it is. Our members have some concerns that it allows HMRC to make it up as it goes along. That is a worry.

I am also concerned about some of the references to electronic systems and to things being delivered by a customs information paper or a public notice. At Heathrow, for instance, public notice 216 applies, which I think was written in the mid '80s. We have been trying to rewrite it for the last 10 years probably. It suddenly popped up last year having been rewritten with no consultation and did not show any significant changes.

I have a real concern about who will be responsible for determining day-to-day processes such as the presentation of goods, which the Bill mentions—what is that? It cannot be the physical presentation in the post-Brexit world, because there will be too much of it, so the inventory systems have the concept of presentation against an electronic record. Those things really need to be thought out.

Q5 Kirsty Blackman (Aberdeen North) (SNP): Around the VAT issue, do you have concerns about moving from acquisition to import VAT? What do you think could be put in place to mitigate the issues that you see coming?

William Bain: Yes, that is a huge concern because companies will have a big cash flow hit. The movement of goods within the European Union has been treated as VAT-free up to now. If the UK is treated as a third country afterwards, companies ostensibly will face an up-front cash payment. There are policies—domestic and in terms of the negotiations—that could mitigate that. The Government could introduce a deferment scheme, as is the case in Spain. They could look at other domestic policies to tackle it. More fundamentally, they could look at a form of self-assessment for VAT, which would obviate the need for up-front payments.

Some international solutions could be looked at. As I pointed out earlier, whatever happens domestically, UK companies will still face the burden of having to register for VAT purposes in each member state where they offer services and in most member states where they provide goods. That requires an international solution such as staying in the EU VAT area—even though that might involve treaty change—the establishment of a new common VAT area, or some other strong VAT co-operation. The domestic element and the negotiation element are both required to sort the problem out in the round.

Anastassia Beliakova: VAT and future potential VAT cash flow issues are a serious concern for our members. To echo the points already made, international measures that are not contingent on negotiations could be adopted. Deferment schemes are one. There are already deferment schemes in the UK, but they could be more generous. For instance, they ask businesses to provide bank guarantees, which is yet another cash flow issue for businesses. Some companies can waive it, but only after they have had a clean record of VAT payments for three years, which not all SMEs, for instance, could provide.

Another potential solution is to consider postponed accounting, which in effect is what we already have as members of the EU VAT area. The Government could consider setting out policy that would introduce postponed VAT accounting for imports from all third countries. That would alleviate future concerns in relation to Brexit and simplify existing procedures quite significantly.

Peter MacSwiney: The Joint Customs Consultative Committee has requested a return to postponed accounting; that is not popular with the Treasury, of course.

Q6 Kirsty Blackman: A couple more questions. On the division between primary and delegated legislation in the Bill, are you happy with how much is being done with secondary legislation or do you feel that the balance is not right?

William Bain: We are less concerned with the process than with the outcomes. The reality is that we need an operational statute book on 30 March 2019. As I say, some issues not dealt with in the Bill are very relevant to the process of getting goods in and out of the country and to the customs process in the round. We would appreciate some further treatment of those issues, such as haulage permits or what you do with people driving trucks into the country, who need permission to move from Belgium into the UK. Some issues that we think are important in the customs process could be addressed by the Bill.

Peter MacSwiney: The JCCC was keen that the legislation should reflect how business actually works. That was why we requested some input into the primary legislation, which was refused. The problem you have potentially is the interpretation of the law. You have two options: if the law categorically states, "You can do this", that is fine—but if the law does not categorically state that you cannot do it, can you still do it? Those may sound like very similar points of view, but actually they are not. It depends very much on the interpretation of the authorities as to how much flexibility they will allow trade. There could be a clearer guide on the facilitative, rather than being prescriptive of the letter of the law.

Q7 Kirsty Blackman: Finally, given the information that you have had from the Government and this Bill, do you feel that businesses are adequately prepared for what will happen in March 2019?

Anastassia Beliakova: The Bill, as has already been said, is very facilitative of all possible future options. Because none of them seem to have been narrowed down at the moment, it is very difficult for businesses to prepare. There is the working assumption that imports VAT is something that they will have to deal with once we leave the EU VAT area, but again that has not been fully clarified. Hence, with this kind of situation, businesses are still waiting for further clarity.

Gordon Tutt: On a technical level, when it comes to having the legislation and the systems ready, the time period to take on not only the technical changes but the additional volume and participants that may be required is very challenging. We should learn a lesson from the implementation of the UCC, which was introduced without very much thought about how it could be

introduced within the timescale; subsequently, the concept of transitional regulation was introduced to allow trade and the member states—the customs authorities—to have time to adopt the changes. Our legislation in the UK perhaps needs to reflect better the ability to introduce transitional elements, where required, in a controlled manner.

Peter MacSwiney: Our concern, on behalf of our customers—predominantly freight forwarders—is that they are only just beginning to realise the extent of the changes. They are also just beginning to wake up to the fact that they are going to have to talk to their customers. From that point of view, I do not think they are particularly prepared at all.

William Bain: We have good lines of engagement with HMRC. We are having a meeting at the BRC with customs and tax experts from our member companies on Thursday, so we welcome that, but clearly there is only so much you can do when you do not know what the trading conditions will be the day after Brexit. We do not have clarity as yet on the transition. That is critical for business, in terms of the investment decisions being made in the first quarter of this year, and it is also about getting enough staff trained up and the IT systems changed and ready. All of those things take time, and getting the earliest possible clarity on as much of the terms of the transition as possible would be welcome—as early as possible.

The Chair: I would love to call Grahame Morris, but I cannot, because he has lost his voice. Anneliese will ask a question for him.

Anneliese Dodds (Oxford East) (Lab/Co-op): Thank you, Ms Buck. The question that Mr Morris asked me to ask on his behalf is, if anything, even more pertinent after something that Mr Bain said. In the general area of customs—we are talking not only about duties, charges and processes strictly for customs, but about issues to do with migration, security, veterinary checks and haulage—I wondered, on behalf of Mr Morris, whether members of the panel would expand on what changes might be needed there. Are those being taken sufficiently in the round with matters strictly dealt with in the Bill?

William Bain: It is particularly important for food retailers because we deal with perishable items. I will use the anecdote, which is true, that a retailer can put in an order for orange juice. It comes via Zeebrugge and Dover and is on the shelves the following day. Our companies deal with just-in-time supply contracts and sourcing mechanisms. If you put friction into that process, you can introduce a day's delay. For example, at Tilbury, I understand that if your crate has not arrived by 3 o'clock, it is processed the next day. You have to refrigerate it overnight. Those things add extra costs. They increase the possibility of food waste. They increase the possibility of having gaps on the shelves and products not being there when consumers want to buy them.

Meat products are a particularly huge issue. If we leave the European Union sanitary and phytosanitary rules system, you have to check meat items as they leave the country they are being exported from—let us say from France—and you also have to check them when they arrive in the UK. That will add huge friction into the process, and that is something that the food retail sector in particular has been very critical of. It also affects non-foods.

There are many furniture stores among our membership that import items—flat-packs—from the rest of the EU. If there are long delays at customs, that affects the ability of those goods to get to consumers as well. So non-food and food are concerned about the possibilities of more friction in the system.

Anastassia Beliakova: There are two considerations here: what businesses need to prepare for and what happens at the border. A lot has been said about CDS, which is a critical part of the picture, but that is just one element. We have been trying to draw attention to the fact that origin declaration, which is separate from customs declaration, also needs to be clarified.

When it comes to getting goods through the border—the just-in-time, the ferry coming in and so on—you need several systems working together. You need the customs declaration in place and already authorised. That needs to happen before the truck arrives and rolls off. There needs already to be an interlink with the relevant agencies—whether for food, plant and so on—who have already approved all this. This needs various means of declaration, and several IT systems need to work together and be integrated with the relevant port systems and make sure that there are no further delays. So we think there are some other elements that have not been covered sufficiently in the debate.

Peter MacSwiney: We have some pretty slick systems in place now for traditional freight. We do not really have any port systems in the ro-ro ports. We do not have any space and any procedures that lend themselves to goods being stopped and looked at this side of the channel. I think absolutely it has to work on advance information on a permission to load basis on the other side. Once you have that, the goods would have to roll freely through the ro-ro ports specifically on the basis that they are eligible to be entered into the UK, and the fiscal processes should take place after that. After they have gone through the border, they are accounted for separately.

Gordon Tutt: In terms of the systems we have currently for undertaking customs procedures, we probably have some of the most advanced systems in the world for doing these transactions. We have a lot of advantages over other countries in that we have got integration with our community systems providers in the ports, who can provide advance information. Customs and the Border Force to some extent use that information now. We have advance notification through the various systems internationally.

Where we seem to fail in this country is not with the revenue and the customs systems; it is actually with the other Government Departments. It might surprise you that within the airline arrivals, some of the notifications are still done on paper. That is not because trade and the port and community systems do not have the systems to provide this information—it is purely that those Departments do not have the ability to accept that information electronically. If we are to avoid delaying goods unnecessarily, where we have known, trusted traders bringing goods which present no risk fiscally or from a security point of view, that information should be passed freely to these other Government Departments, thereby avoiding any unnecessary delays.

Peter MacSwiney: The processes at Heathrow and Gatwick—both are run by the same community system provider—are different, and within the specific airports the transit sheds operate different procedures as well, so it absolutely could do with being streamlined.

Q8 Julian Sturdy (York Outer) (Con): Ms Beliakova, I want to take you back to an earlier comment that you made, and which you put in your written evidence as well. You said that no clarification on the continuity of country of origin declaration is a concern. Could you outline the potential implications of that, as you, or your customers, see it?

Anastassia Beliakova: There are two considerations. The first is ensuring that businesses know that in future they can continue to rely on what they currently use to declare origin. At the British Chambers of Commerce, we facilitated 650,000 shipments through the use of certificates of origin last year. That is worth £22 billion to the UK economy—it is really critical. In the future, we do not know whether the existing means of declaring origin will continue. It is really important that businesses are told that they can.

It is also important from a strategic perspective for the UK Government, when we perhaps enter into new negotiations. If other countries ask for their means of declaring origin to be written into the agreement, that would cause significant compliance issues and would mean that there were far too many complicated rules for businesses to comply with. If there were provision in the legislation for the existing means of declaring origin, there would be a much stronger basis for the UK in future negotiations to make a case for the existing means to continue.

Q9 Julian Sturdy: I understand about the agreements, but if that existing means did not continue what implications do you feel that would have on potential trade?

Anastassia Beliakova: The intention of the Department for International Trade is now to roll over existing EU trade agreements, most of which accept preferential certificates of origin as a means of showing that the goods come from the EU. If in the future those agreements are not rolled over and there is not the same provision for the same means of declaring origin, that means that companies will not be able to get the reduced duty rate when they export to that market—or, indeed, import from it.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): Good morning—it is nice to see you all here. Earlier this week, the director general of the CBI said that the UK should seek to negotiate a comprehensive customs union with the EU. Having listened to all the complications that you have just outlined, would you support that proposal?

William Bain: The BRC is less concerned at this stage with the means of delivering frictionless and tariff-free trade with the EU, but what we do see is the overwhelming priority of the Government to focus on securing that. Our biggest market is the European Union, and it is likely to remain so for many decades to come.

To put it into perspective, our members say that 79% of food imports come from the European Union. That shows the sensitivity of sourcing contracts and supply contracts. For example, some retailers offer ready meals with cheddar from the Republic of Ireland in them, so it is used as an ingredient in products. If we do not get a deal that ensures tariff-free trade with the EU, the tariff on Irish cheddar is 44.5%. On beef from Ireland, it is 38.9%. On Dutch tomatoes, it is nearly 29%. That will have a serious impact on consumers, which is why we have said that, above all, by whatever mechanism they achieve it, the Government should aim for frictionless trade and zero-tariff trade with the European Union. Otherwise, consumers will face a big hit to their living standards.

Anastassia Beliakova: The same principle of having as little friction as possible in future trade with the EU is, of course, very critical for our members. On the specific question of the customs union, we are currently surveying our members—literally as we speak, or at least in the next few days—so, as and when those results are available, I will be very happy to share them with the Committee.

Peter MacSwiney: All the efforts over the last few years have been to remove bureaucracy. SITPRO made it its mission in life to try and simplify trade, and now we are introducing an inhibition to trade in the form of a customs entry. Taking what William said, of course duty plays a part, but even if there is a duty-free element you still have to do a customs entry, and it is hard to see where the benefit of that is. So, I would say that some form of customs union would be useful and beneficial.

Gordon Tutt: From a systems point of view—obviously, we are a vested interest here—the more declarations that are done, the more money for our members. That is why we take a very neutral position on this. But clearly, as my colleagues have said, there are a whole range of issues here, particularly in the movement of goods, which traditionally posed no threat. That goes in both directions—both into the UK and leaving the UK. We need to find a mechanism to allow those goods to move freely, without hindrance and without additional cost to trade.

Q10 Nic Dakin (Scunthorpe) (Lab): Can I follow up Kirsty Blackman's question about statutory instruments? Is it helpful or unhelpful to business confidence, including the confidence of your members, that so much of the detail—some people estimate that there will need to be about 1,500 statutory instruments—is left to secondary legislation? Is that helpful or unhelpful to business confidence?

Gordon Tutt: Having experienced some of the European legislation in recent years, particularly the way the UCC was written, I do not see that the current UK proposal is any more onerous than what we have seen coming out of Brussels—in fact, in some ways it is a lot clearer. And we do have the confidence here in the UK; again, I can only speak on behalf of my members. We have a very good rapport with customs and with other Government agencies, in that we can actually discuss the detail and get clear understanding, and intervention where it is necessary. So, I am not unduly concerned with what is being proposed.

Peter MacSwiney: I think of the point we made earlier. As Gordon has just said, the engagement is good but the timescales are not.

William Bain: The key point, Mr Dakin, is that obviously companies want to know what the impact on them and the wider industry will be. Having legislation

with an impact assessment is very helpful, in being able to explore the pinch points—whether on customs, VAT or the staffing implications. The retail industry wants to see this legislation as early as possible, and to engage with Government about it. We know that this legislation is not amendable in this House or in the House of Lords, so it is even more important that industry has a very strong engagement with it at the earliest opportunity.

Q11 Nic Dakin: What role could trade associations—as in chambers of commerce—play in facilitating overall custom co-ordination, both with the EU and more broadly? What are the opportunities?

Anastassia Beliakova: We already provide a lot of advice to businesses when it comes to trade. That is due to our role in trade facilitation with certificates of origin, but we also help with any queries that companies have regarding compliance with origin or local regulations in other markets. We also support businesses with any questions regarding taxation.

We hear from our members that they want to know what they should be preparing for. At the moment, the kind of guidance that we can provide is not prescriptive. It is more, "These are the various areas that you could consider". One of them, of course, is VAT; another is origin declaration; and a third one is various rules of origin and existing trade agreements that the UK has by its membership of the EU. But because businesses don't know what they don't know, and we are working between assuming that everything will continue as it is and anticipating further changes, we would like to work even more closely with HMRC and Government more widely to provide support as and when changes become clear.

Peter MacSwiney: The current infrastructure is good. The Joint Customs Consultative Committee and the sub-groups are a decent forum. We are all members of one or more of those groups, and that works pretty well. I would like to see more engagement from the Border Force with the end user. It seems to be more focused on intergovernmental negotiations and discussions, rather than coming out to the wider trade.

Gordon Tutt: Most trade associations attending the JCCC are also, through either their own trade associations or affiliate trade associations, part of the trade contact group that discusses arrangements with TAXUD—the taxation and customs union directorate-general—for customs legislation in the EU. We are working closely with our European trade associations to try to ensure that there is a commonality in approach, to avoid unnecessary disruption to trade both from the UK and from the EU.

William Bain: The practical benefit is the experience across different industries and sectors in dealing with the movement of goods and services and being able to identify the potential difficulties with compliance.

One further point on the movement of goods is that at the moment there are 30 separate Government agencies that deal with this process. We are not expecting the Government to rationalise those or shuffle them in some way, but we would urge that the level of integration and co-operation between them should increase as we move towards Brexit day and, if there is a transitional period, any expiry of it, because dealing with 30 separate agencies is onerous for business.

Q12 Anneliese Dodds: I will be quick and roll two things into one because I see that we are running out of time. We touched on the issue of trusted trader schemes and potential new impediments to that given the need for pre-approval of software. Is there anything else that prevents the further expansion of those trusted trader approaches? Some have suggested that they would be one way of facilitating processes.

Secondly, regarding HMRC capacity, we have obviously seen a big reduction in headcount and changes with all the offices becoming regional hubs. Are there other alterations that you would make to HMRC's set-up to facilitate the big challenges coming down the road with these new systems?

Gordon Tutt: May I begin by answering the first question? Within the UCC legislation, which is carried over into the new UK legislation, there is a recognition of the role of the authorised economic operator. That is quite important, but it means that there will be potentially hundreds, if not thousands, of UK companies that may wish to become AEOs to gain the benefits once we leave the EU.

The problem is that unless you have a proven record of customs transactions, you cannot apply to become an AEO, so in some ways we are going to disadvantage traders that are probably acting completely in accordance with regulations, are good taxpayers and are honest and trustworthy companies. None of that is taken into consideration. We have had some discussions with HMRC and it is almost as though we might need something like a provisional AEO status so that those companies, which pose no risk, can take on some of the benefits, such as guarantee waivers and being able to operate the self-assessment schemes, where there is no risk either to the Treasury or to the safety and security of the country. That is a key point.

I would add that the provisions of the self-assessment scheme, which are part of the UCC regulations and will be carried over into UK law, can also perhaps provide some answers to some of the problems that we have not successfully been able to find solutions to.

Anastassia Beliakova: On AEO, the issue is actually your second point of HMRC capacity, and the way the process is run in the UK. AEO is an international system. It is recognised by standards at the World Customs Organisation, so there are certain aspects that a country that has this scheme must adhere to.

However, the process of approving companies—just how long that takes, and all those practical aspects—is up to the customs authority of each country to implement. We have heard time and again from our members that that takes far too long. I have an example of a company that had already been approved for AEO but it took 12 months for them to get the reapproval, although they did not have to go through the exact same process again. It should have been much faster.

I have spoken to customs authorities in other countries such as Austria. There, owing to their much more customer-service-focused approach—and, it has to be said, they do have many more customs officers—it takes a company about three months from the start to the very end of the process. Yet they are no less rigorous than we are. We are very stringent in our approach, and if we want to help more companies achieve this status, the practicalities need to be rethought.

William Bain: That is a key issue. AEO status is part of the solution, but it is no silver bullet for the customs issues that companies are likely to face. There are 10 times fewer AEO companies in the UK compared with Germany; penetration among small and medium-sized enterprises is particularly low. There is a lot of work that Government could do to make the process of applying easier but, as was said earlier, there has to be a history of previous customs transactions. I believe it is three years before companies can apply.

The other thing that is necessary in any withdrawal agreement solution is that there should be mutual recognition between the UK and EU AEO systems. The EU has already done that with America, China and some other countries. That is critical.

On HMRC resources, I revert to an earlier point: that Dover and Eurotunnel do not have capacity to conduct SPS—Sanitary and Phytosanitary Certificate—checks. If we end up outside of the EU SPS regime and we have to check fresh meat and plant products coming into the country, there is not the capacity to do that at Dover. You have to find an offsite solution and that will draw further on HMRC resources—to have veterinary staff in position to perform these checks. That will increase the burden on the HMRC budget.

The Chair: Emma Hardy has a quick, mini-supplementary, four people want to ask another question, and we have 14 or 13 minutes—just to give you an idea of how to manage the time.

Q13 Emma Hardy: A quick question. You talk a lot about the need for clarity and time. Even if you were given the clarity you needed in the next couple of months, how long would you need a transition period to be to swap over to any new system?

Peter MacSwiney: It is hard to see the transition period being less than five years, in all honesty, based on experience of introducing systems over the past 20 years. Introducing a system is one thing, but educating the trade and getting the processes in place really does take a long time. It is hard to see that being done in much less than that.

Gordon Tutt: I would support Peter on that. We should not make the same mistakes as with the UCC. There are elements of that that cannot be introduced, even within the current transitional arrangements. We need to be mindful that it takes a long time to get the systems in place and, more importantly, to make sure that they have the connectivity to other trade systems around the world that are often providing this information. Five years sounds awful—and that is the worst case scenario. But if you work on a basis of five years, you can introduce elements much quicker, but some elements could take up to five years to introduce.

Q14 Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): I will try to be brief. The fundamental issue for this Committee is that we must have a Bill that will cope with any scenario we face. It is unfortunate, but one of those scenarios could be a relatively hard border around UK and a big increase in friction in our trading relationship with the EU. If that were to happen, listening to the very good evidence you have given, will this Bill give us the powers and framework required to deal with that and then try and reduce as many of those barriers as possible? Alternatively, will some of these many known unknowns need to be addressed in our proceedings if we are to do that?

Peter MacSwiney: I think it would probably do the job. I have said it before and I will say it again: on this side of the channel, we will get our systems and processes sorted out, because that is what we do. I do not think it will address the issues on the other side of the channel. That is likely to be a bigger problem than what happens in the UK.

William Bain: The key issue for moving goods between the rest of the European Union and the UK is partly customs, but also regulation. The Bill puts in place different eventualities on customs, but it does not answer the questions on the regulatory framework, so that has to be dealt with. Also, these other issues about what happens to the common transit convention, to security agreements and to haulage permits and driver permits all affect the flow of goods. If those are not dealt with in this Bill, we encourage the Committee to explore how they can be dealt with otherwise.

Q15 The Chair: I can get everybody in if they are really quick. Does anybody else on the panel want to quickly respond to that?

Gordon Tutt: There is everything in the Bill that we need in terms of whatever the solution is. There are already provisions within that legislation to allow flexibility, to prevent goods from being detained at the border and to allow them to be moved up into inland examination points under controlled mechanisms. That already exists within that legislation.

Q16 Mike Hill (Hartlepool) (Lab): You have already answered the question I was going to ask; I represent the port town of Hartlepool. A quick question: do you have an estimate of how many retail businesses will be drawn into customs arrangements for the first time?

Anastassia Beliakova: I believe the figure has been cited as being 130,000 businesses who are dealing with customs declarations for the first time—that is, those estimated to be currently trading just with the EU. Of course, there will be businesses of different sizes. If you are a very large business, you will be working directly with the new system's CDS and then you need time to integrate into that. If you are a smaller business, you are dependent on the provisions that your intermediaries, your freight forwarders, have put in place. A whole host of businesses will be affected that depend on a number of different bodies and Government putting the right measures in place with sufficient notice.

Q17 Peter Dowd: Just a very quick one. There are quite wide-ranging issues here today. How about the actual hard costs for your various organisations and the companies you represent of the introduction of the new processes, new liaison arrangements and new engagement processes?

Anastassia Beliakova: It would be very difficult to assess, because there are a number of factors. One is just the cost of a customs declaration. That will perhaps be more challenging for a smaller business that is trading ad hoc. If you are a large business trading at big volumes, the cost will be quite marginal for you.

But then there are other considerations. There is the time issue. Are you going to factor in any potential delays? If so, does that mean you have to provide for

more warehousing facilities? Does that mean you have to keep an inventory? All those things are very difficult to quantify for a median figure, but they are things we know our members are starting to consider—some quite actively.

William Bain: If you move away from a just-in-time supply and sourcing mechanism, you have to look at stockpiling. That means you have to look at extra warehousing capacity. You have to change IT systems in terms of VAT and customs. All that comes at a cost for businesses, at a time in which we see the pressures in terms of footfall and retail spending.

Peter MacSwiney: As a software supplier, we support about 350 companies in probably 800 locations. We estimate that making the necessary changes, just to roll out our system, is going to cost in excess of £250,000 over the next two years. I do not know whether that is any help to you.

Gordon Tutt: One of the other issues is underwritten by the fact that some of the changes being introduced to the software systems would have been required anyway as part of the requirements to meet the UCC—new data set, new message types, more engagement in terms of electronic transactions. In addition, we are already working on CHIEF replacement, so the costs of that are already borne as part of the decision to replace CHIEF. As high as these costs are for some of the software suppliers and some of the trade sector, some of that cost would have already existed had we decided to remain within the EU.

Q18 Kirsty Blackman: Customs and immigration forces were put together in the Border Force. Given the Government's political priority around immigration, do you feel that there is a resourcing issue with customs staff or do you feel that it is a structural issue and that decoupling customs and immigration would fix that?

Peter MacSwiney: I think there is a structural issue. It is the view, certainly at the airports, that freight is the poor relation where the Border Force is concerned.

Anastassia Beliakova: I would say it is both. It is very difficult to assess within the Border Force how much emphasis is given to goods checks versus checks on people. We have heard from members that it seems as if the focus has definitely shifted over the years. It is therefore an area that would require either a change of focus with more focus to goods, or more people dedicated just on goods checks, from our perspective.

Q19 The Financial Secretary to the Treasury (Mel Stride): First, thank you very much for coming. It has been a really helpful session. I have two questions, which you have two minutes to answer; if you can give me a one-word answer for each one down the line, that would be perfect.

Would you describe HMRC's engagement with yourselves—your own organisation, in the context of the discussions and the issues we have gone over today—as having been good, average or poor? Starting with Gordon.

Gordon Tutt: Very good.

Peter MacSwiney: I endorse that.

Anastassia Beliakova: Very good.

William Bain: Good, but we need answers on what is going to happen.

Mel Stride: That is more than one word—you can tell who the former politician is. My final question has clearly been identified. Naturally, there are many challenges and uncertainties out there. Some come from the sheer fact that we have decided to leave the EU and the short time frame, for example, for decisions. Many of the issues we have described come out of the negotiations and the uncertainty about where we may land in that respect.

However, what the Bill is doing and the focus of this Committee is to make sure that we are as close as we can be to existing arrangements and, secondly, that we have the flexibility to be nimble enough to move and adjust our configuration to accommodate wherever we land on day one. Very quick answers down the line: in essence, in broad terms, do you think the Bill is about right?

Gordon Tutt: Yes, I do.

Peter MacSwiney: I think it probably is, but it needs to focus on implementation and people must have the attitude that they are using it to facilitate trade and not to inhibit it.

Anastassia Beliakova: Yes, but more clarity on policy is needed, particularly on VAT.

William Bain: We would advise that it also deals with the other issues we have spoken about today which affect the flow of goods in and out of the UK.

Mel Stride: Thank you very much.

The Chair: I also thank the witnesses very much for their attendance. We will now close the session and move on to the next panel.

Examination of Witnesses

Sue Davies, Jeremy White, Barbara Scott and Helen Dennis gave evidence.

10.24 am

Q20 The Chair: Good morning to our new witnesses. Thank you for attending. You may have seen some of the last session, so you know what to expect. May I start by asking you to introduce yourselves?

Helen Dennis: I am Helpen Dennis and I work at the Fairtrade Foundation.

Jeremy White: I am Jeremy White from the Pump Court Tax Chambers. I am here today as the customs duties spokesman of the Chartered Institute of Taxation.

Sue Davies: Hello, I am Sue Davis from *Which?*

Q21 Jonathan Reynolds: One of the Opposition's general concerns about a lot of the Brexit-related legislation is about the level of clarity. A lot of the concerns relate to the powers that will then go to the Executive and the future policy consequences of that. In your assessment, do you think that this Bill provides the right level of legislative scrutiny and safeguards as to what the policy intentions will be?

Sue Davies: I want to say at the start that from the perspective of *Which?* we focus on making sure that we get the best outcome for consumers from Brexit. We took a neutral position on the referendum, and that also applies to trade policy. Our interest in the Bill lies

in making sure that it is as explicit as possible, within that, on how consumer interests will be taken into account.

In relation to what is in the Bill and what is dealt with by subsequent legislation, we want to make sure that any changes are limited to technical matters, and that anything with wider policy significance—particularly given the sensitivities of trade issues to some extent—is dealt with openly, so that we can see and weigh up its pros and cons. We feel that some aspects of the Bill need to be strengthened to make the consumer interest more explicit. There is recognition in the Bill, for example, of the need to take into account consumer interest when setting import duties. We also strongly support the inclusion of what is called the economic test in relation to trade remedies, because we want to make sure that we have a thorough understanding before we potentially raise consumer prices in order to support particular industries. There are aspects of the Bill that we think are important, but we also think that there could be greater clarity to make sure we see how the consumer impact will be assessed.

Helen Dennis: On the delegated powers issue: across the board we do have some concerns, more so with the Trade Bill and the process for agreeing future trade deals than are necessarily within this legislation. Here, we do have a lot of delegated powers around setting tariffs, establishing rules of origin. We are thinking about it from the perspective of developing countries, where in some instances there is a high dependency on the UK market and where there are products with tight margins, so changes to tariffs could make or break the livelihoods of producers. If you were to ask for a vote on every single tariff change, that would not be workable, so this is about finding the right balance in terms of moving forward.

It is a question to throw back to parliamentarians: to consider the role that parliamentarians feel they should have around parliamentary scrutiny, consideration of different tariff changes and rules of origin—the things we were discussing earlier. The Government have set out quite an ambitious vision about trade for development, for example in their trade White Paper, in which they want to use trade policies to improve access for developing countries. At the moment, however, we do not see those improvements in this legislation, because the focus is on continuity and maintaining the status quo for now, but we do not want to lose sight of future improvements and future discussions. I would say that actually, as things stand at the moment, there should probably be a process whereby Members of Parliament can call things in or request further scrutiny, but that is part of the wider discussion about trade policy going forward, including how the Houses want to be involved in that and how public consultation is built into it. It is something that needs to be thought about in tandem with the ongoing discussions about the Trade Bill, as well.

Jeremy White: I have a problem with the structure of the Bill, the consequence of which is that parliamentary scrutiny will be excessively difficult. I can illustrate that with this visual aid that I have brought in, which is a handbook that I edit. This is the regulatory framework for customs duties in the Union—the Union Customs Code—and its guidance. The UCC and its implementing provisions are about this wide, very finely typed—about 1,300 pages. The rest—this part here—is the necessary European and national guidance on the matter.

Therefore, when we think about the implementing provisions, of which we have maybe 15 or 20 pages of detail in the Bill, which are meant to be implemented by this, we know that the statutory instruments are going to be an enormous burden. The problem is that the Bill is overly ambitious. It fails to distinguish between those provisions that I will call just charges and the machinery—the regulatory framework. This book does not concern the charges, the tariff schedules, the trade instruments or the preferential agreements. They are in another book, of about the same size. I am not concerned about those, and the Bill would deal with them.

The trouble is that it brings into force the repeal of the UCC, in effect, on exit day. That being so—it is hard-wired into the Bill—its commencement provision requires there to be statutory instruments of this magnitude on exit day. The problem is that since the destruction of the Bill is a recast, they will be recast into other, English language. Such an approach might be appropriate for a no-deal arrangement with the EU, but it creates burdens of cost and risk in respect of any trading activity that follows afterwards, particularly if we have any transition period at all or are subject to obligations under the leaving treaty—I will call it the leaving treaty, but whatever it is—to preserve the regulatory framework of the UCC.

To be realistic, we cannot expect the EU to be in favour of or agree to any kind of regulatory framework that is different from the UCC. The UCC is what they have budgeted for. At the moment, it is in an implementation phase; we will probably come to that in other questions, and the problems of the timetable for its implementation now that, yesterday, the Commission has endorsed a report following the revised road map for the implementation of the UCC, which I could cover later.

The primary point then is that if we have a complete recast on exit day, anybody who is involved in trade, particularly if we have obligations to retain the same effects as the UCC, will have to be looking at both the UCC and the English implementation at the same time for every single piece of endeavour—almost every importation. As I said, the scrutiny will not just be on the basis of whether the legislation achieves its objective with respect to any changes from the UCC; it will also have to look at it on the basis of whether it preserves the effect of the UCC that was intended. That is an enormous burden, and I would say that it makes parliamentary scrutiny unnecessarily and excessively difficult.

Q22 Kirsty Blackman: The Chartered Institute of Taxation submission is particularly damning; it is quite difficult to pick out a particular issue to ask you about because it has so much about how unclear this legislation is and how many unintended consequences it might have. In terms of the members that you have, the organisations that you work with, making decisions now for what will happen in 15 months' time, are organisations making decisions now that will have a negative impact because of the process that we are undergoing, and is there a way that this process could be made better in order, for example, to safeguard supply chains in the UK rather than moving them to Europe?

Jeremy White: That is an important point. The CIOT's report brings out some evidence of some members having already amended their supply chains in order to cope with arrangements, because of the uncertainty.

Uncertainty is a burden that trade faces at the moment, and it has to make decisions about it, so you are right. The CIOT has noticed that clients—enterprises that are members—are changing their supply chains because of the uncertainty, so anything that the Bill can do to reduce uncertainty would be good. For example, if the Bill can, by its commencement provisions, instead allow the withdrawal Bill to operate—therefore the UCC is automatically incorporated—and then exercise the powers to modify that application, that will reduce a lot of uncertainty and there will be no need to read this book—the UCC—and the English version. This book has to be read anyway, and this, and there will be a very small amount of variation where we want to improve on the UCC for the United Kingdom.

This is about uncertainty and cost, and what enterprises want to do. Everything can be resolved by law and by allocating resources to the issues, but that just increases cost, besides the parliamentary scrutiny being a burden for Parliament and for those who want to assist it—charities such as the CIOT and so on. Businesses themselves will see this as an issue of cost that it is unnecessary for them to incur.

Q23 Kirsty Blackman: In terms of the measures on developing countries, Helen, how do you feel that the Bill explores those issues? Do you feel that it adequately ensures that fair trade happens, for example, and that developing countries are given a fair deal?

Helen Dennis: There is certainly that intention in the legislation, and that is good to see. Certainly, bringing forward a UK preference scheme and guaranteeing in law the duty-free, quota-free access for the least developed countries is all very positive. It takes the best bits of current EU policy and brings them over into UK policy. What we are grappling with at the moment is those countries that do not qualify for that access, which are not LDCs but still have developing country status in some way; they may have an economic partnership agreement or a free trade agreement. We do not yet have absolute clarity and guarantees that their market access will be preserved in the same way. There is definitely a stated intention from Government, but not a guarantee.

I would say we have heard more than we have seen. Obviously, the next six months or so are going to be critical. What we have heard were potential discussions about people changing their sourcing—away from Kenya to Ethiopia, for example—in relation to cut flowers, and discussion about trading routes: things that currently come via other EU countries into the UK, whether that is flowers via the Netherlands or tea or coffee that is processed in Germany. There is lots of complexity around every commodity. I would say that at the moment there has been more hearing than seeing action, but I think the next few months will be crucial.

The challenge of one of the points that we have been trying to make with quite a short submission about this is that because we do not have an absolute guarantee at the moment that the transition of the economic partnership agreements and free trade agreements will occur in March 2019, although we know that the Government are working hard on it, we want to ensure that the preference scheme is able to accommodate additional countries that may not be listed in the schedules at the moment, as a kind of fall-back option in case we cannot transition those free trade agreements and so on over in time. Obviously, we want to avoid the cliff edge for developing countries just as we want to avoid the cliff edge for UK business.

The Chair: We welcome Barbara Scott to the panel. Barbara, would you like to introduce yourself?

Barbara Scott: My apologies for the Metropolitan line this morning. I am the director of Customs Associates. I am an independent customs consultant and have been for many years, advising businesses on importing and exporting, currently for trade outside the Union.

The Chair: Thank you. We will bring you in to questions from now.

Q24 Anneliese Dodds: Many thanks to Mr White for setting out quite a different approach to how the Bill could have been structured. It has been quite salutary for the Committee to hear that. In the comments that you made, Helen Dennis, about the proposed system for least developed countries, you said that you felt that the Government have taken the best bits of the existing approach. Certainly, the exclusion of arms is retained here. There is a question about the extent of conditionality, because in the European system there is conditionality about good governance and environmental sustainability. Could you comment on that? I understand that that is not replicated to the same extent.

I have an additional question about the distorted economies. We have very little detail about how distorted economies will be dealt with in the Bill. Do you have any comments on that, given that there are severe human rights concerns in many of those economies about certain elements of production, including modern slavery?

Helen Dennis: You are right to say that the three tiers of the EU preference scheme are not cited in the legislation. At the moment, in the Generalised Scheme of Preferences, there is Everything But Arms duty-free and quota-free access for the least developed countries, and there is broad GSP and something called GSP-plus, which countries can access if they have ratified certain human rights agreements and conventions. That highlights that the Bill is being kept incredibly loose. We have had discussions with officials at the Department for International Trade about this, and the stated intention is probably to cut and paste the preference scheme.

At one point, I thought that there would probably be some wider discussions about the shape of the preference scheme: whether we would go for one tier, two tiers or three tiers, whether we wanted to roll over the human rights conditionality, and more. I do not know whether it is to do with the time, resources and everything that needs to be done in the next year, but the preference seems to be, essentially, to cut and paste for now, and to look at those improvements later. You are right to say that that is not in the legislation, so the detail of rules of origin and the different tiers of a preference scheme are just more issues that the Secretary of State would bring forward in regulations. It was implied in the first question whether that is satisfactory. Do members want to have a say in shaping a preference scheme and on whether there should be human rights conditionality? That is an important question that needs considering.

On your second question about distorted economies, there probably are divergent opinions—certainly in civil society and non-governmental organisations—about the use of trade agreements and tools to enforce human rights obligations. Obviously, everyone wants to see that, but trade is quite a blunt tool for doing that. Its application at EU level is still fairly recent, so there probably is not enough evidence yet to see whether the GSP-plus has the desired effect. I am not an expert, but I know that after the Rana Plaza tragedy in Bangladesh, the United States was able to use trade policy to move forward some of those conversations about labour conditions and rights in Bangladesh. There are ways in which trade policy can be used for those discussions, but whether they are applied as conditions in trade agreements is a question for discussion.

Q25 Chris Davies: May I go back to Mr White's response? I would have thought that you would be very happy with what the Government have come up with, because you may be able to produce yet another volume of your book. You have certainly given the first volume great marketing—many points to you for that. The previous panel seemed, in general, to approve of the Bill. They liked its flexibility and agreed that it is an enabling Bill. They are the ones whose members will have to implement it. You, as a lawyer, do not seem as happy with it. Forgive me for saying this, but every lawyer I have encountered in an evidence session since we decided to trigger article 50 has seemed very dismissive and upset about the way we are going forward. Is this lawyer-speak, or is it something that will cause problems for the Bill?

Jeremy White: Good lawyers—and even good editors—work only for their clients, not for themselves. Barbara is a colleague of mine, and you should ask her that question, too. We are interested only in making sure that the Bill is fit for purpose. Our charity is made up of lawyers and consultants, and we all agree that although the Bill is not designed to do something bad, it tries to do too much. We applaud its ambition and, to a point, its flexibility, but let me make a couple of pleas for special items.

On the replacement of VAT on acquisitions being dealt with in a VAT return, we see flexibility in the Bill and in the announcements of HMRC and the Treasury. That can be replaced by postponed accounting of import VAT. That kind of flexibility is good. When we look at the flexibility that we would like to see in respect of some of the special procedures and information systems, we think, "Yes, that will be good." In particular, guarantee waivers—taking a different view from the EU on guarantees—are a good thing. The Bill would give us that structure, and we applaud that.

Our problem is with the cost that would follow, both in terms of parliamentary scrutiny and for the trade, if we commenced a UK recast. Having to look at both the UK recast and the Community law would create an unnecessary cost. As I said, we are not concerned about parts of the current law such as tariff schedules and trade instruments, which we know will have to be recast. Each paragraph of the Chartered Institute of Taxation report is quite dense—a number of people were fighting to get their arguments in, and some of it is a bit too dense—but one talks about international obligations. We do not want the flexibility of a UK approach that is inconsistent with our international obligations, because that would just lead to more cost. Although we might, in individual cases, obtain a result that we liked based on a simple reading of the English recast, it might be incompatible with either a Community obligation or an international obligation, and we would end up with everything having to be reversed on appeal and the whole enterprise being more expensive.

The problem with an unnecessary recast is that it would produce an amount of uncertainty. It is that, not the flexibility, that we object to. If I put my own hat on, you are right that I would never be able to retire, because, instead of being paid once for reading this version, I would have to be paid twice—once for reading this version and once for reading the English recast—in any case I was involved in.

Q26 Chris Davies: Which version is that, again? Would you like to mention the book again, by any chance?

Jeremy White: To go right back to the beginning, this is not personal. I am definitely arguing against my personal interest, as you pointed out. You are right.

Chris Davies: We will leave it there. Thank you very much.

Q27 Peter Dowd: Welcome, Ms Scott. As you said, your business has repeatedly asked for the new legislation to replicate as far as possible the current customs regulations, and you were disappointed to find that that is not the case. You also said that the Bill looks like an "antiquated" piece of legislation, rather than a modern law for a modern and forward-thinking new customs administration. Would you like to put a bit of meat on the bones of that?

Barbara Scott: Sure. I presume that Jeremey has already mentioned the fact that the new draft Bill moves away from the Union customs code. We had been told that the Union customs code would be the way forward for UK legislation, so we were surprised to see the new draft Bill presented in this way. If it is to be changed—personally, I do not see how we can change something in such a short period, given that the Union customs code took 10 years to put in place—how can we present something new that is a strong and proper piece of legislation? We will not be able to do that in the time available, which is all the more reason for picking up the Union customs code and tweaking it.

If we are going to change things, why produce something that to me looks like going back to the legislation that we had? Perhaps those drafting the Bill started by looking at legislation before the Union customs code, or even the Community customs code, because a lot of the wording is not modern. Perhaps that is the way that this has always been done, but it seems to me that we could at least use plain English that people understand, and present it in a clearer way. The wording of the Union customs code is sometimes a bit odd, but it is written in clear English that most traders and non-lawyers can understand. If we are to change this legislation, it would have been nice to have seen something a lot more fitting for today. A totally new customs regime is coming in, and if it is to be different, this would have been an opportunity to make it a shining star for Britain.

Q28 Peter Dowd: Mr White, paragraphs 3.4 and 3.5 of evidence from the Chartered Institute of Taxation state that

"new UK legislation is needed to create a separate UK Customs regime."

I think everyone acknowledges that.

"However, we believe the Government's approach, of providing Ministers with exceptional (yet apparently permanent) powers to create a Customs regime from scratch, with minimum parliamentary involvement or scrutiny, in a very short space of time, is unnecessary."

Why? What is wrong with that? The Financial Secretary is a very reasonable person, and I am sure that nobody would want to pull the wool over anybody's eyes. What is the problem with that idea?

Jeremy White: Parliamentary scrutiny will be excessively difficult. That is the problem. We are talking about how to get this amount of material recast and properly analysed, with time to debate anomalies, difficulties, or even the uncertainty of it all. There are risks to the Revenue as well, besides business cost. The Revenue might think that it has a proper charge, but the problem with customs machinery as something that is modified or recast is that often the customs debts themselves result from a time when goods were on duty suspension. That is where customs duties are in two parts. First, there is a charge in the thing, in rem, on importation, and then the goods are on duty suspension until there is a charge, in persona, against a person who is then liable for the debt.

In the time between those two events, the goods are subject to all this regulatory machinery. Uncertain or defective provisions that could be subject to litigation will affect the Revenue itself. We will say what we think the legislation is—it will have its explanatory notes and its public notices—but once you have let it go, it is up to the judges to decide what it means, and traders and advisers might come up with a clever, nuanced interpretation of the Bill and statutory instruments that was completely outside your intention. So avoid that uncertainty, that litigation and that cost simply by allowing the withdrawal Bill to incorporate the UCC—as we thought it would—and then enact just the sensible few amendments or modifications that are necessary of the UCC. As I say, I am arguing only for that, not for the whole body of the customs legislation, some of which it is probably best to recast, subject to compliance with EU and international obligations.

Q29 Peter Dowd: You have said:

"The explanatory notes to the Bill state that the new standalone regime will be 'largely based on EU law' and that it is intended that the customs regime 'will continue to operate in much the same way as it does today'."

I want to tease out a little more on that. Do you think that aspiration will be delivered by the Bill?

Jeremy White: Not with its current commencement provision, no.

Q30 Peter Dowd: Finally from me, in relation to the appeals process, you identify in paragraph 6.1 of your evidence:

"We are concerned that taxpayers' rights in relation to an effective appeals process are retained. This Bill could be"—

you do not say "will be"—

"a backwards step in relation to an effective appeals process, because it affords such wide discretion to HMRC. We wish to see the adoption of clear unambiguous legal requirements for customs matters, which minimise commissioners' discretion."

Could you tease that out a bit more? That is in paragraph 6.1 of the Chartered Institute of Taxation's evidence.

Jeremy White: A thorn in the flesh of the people who contributed to that section was clause 23, and in particular where certain results—particularly approvals—are treated as never having been granted if HMRC considers that approval would not have been granted if a deficiency was known at the time it was granted. That is just one example. There are a number of parts of the Bill where this construction is used whereby one authority—an administrative authority, a parliamentary authority or a Minister—considers that kind of discretion.

Yes, that is a useful construction in English for granting a power to make an instrument, but when it comes to affecting a trader's relationship and whether they can be in business or not because they have got an authorisation, it should then be subject to the ordinary appeal to the simple, low-cost traders' tribunal that we have learned to admire. All of the other authorisation-type decisions that HMRC could make are subject to appeal, and they are preserved properly by the Bill. The trouble is the Bill then adds in a few more, using a construction such as "considers" and "discretions". It is bad enough now that sometimes we have to tell a client, "Sorry, you're going to have to pay the money to go to the High Court and challenge the Ministers or HMRC on the basis of judicial review," which is very expensive, discourages litigation and often discourages people from obtaining a remedy for their dispute.

This should not be controversial. It should be, "Yes. That is the right thing to do." If we were able to add to a shopping list, we would say, "Can we please have all of the current disputes going on in the High Court in customs matters dealt with in a tribunal as well, please?" but that may be asking too much. If the scope of the Bill is wide enough for that and you could amend it to get that in, that would be good. We should not really have customs issues going to the High Court at all. They should all be dealt with in the first-tier tribunal tax chamber.

Q31 Mark Menzies (Fylde) (Con): I would like to return to the point made by Helen Dennis on fair trade. Do you agree that it is very important that the Government have a wide remit within the scope of the Bill? Some of the current rules regarding EU regulations and tariffs are detrimental to fair trade. I will cite one example. Colombian coffee producers export low-value green coffee into the EU for the value to be added, usually in Germany and in some cases in Italy. Massive value is added here in the EU to the benefit of German manufacturers and large German brands, which therefore has huge detriment to the coffee producers back in Colombia. That is one example. There are many. Having a wide scope in the Bill will give the Government, in the fullness of time, the ability to make sure that free trade arrangements work as consumers in this country think they work, as opposed to how the EU has currently drawn them up.

Helen Dennis: A lot has been said about value addition and its potential post-Brexit. Our view is probably that the tariffs are not the key issue here. We already have duty-free, quota-free access for the least developed countries. If we take a country such as Colombia, or a GSP-plus country such as Bolivia, it is able to access the market with roasted coffee as well, duty free, but as I said before, with the free trade agreements, they may not all transition over necessarily. The biggest issue in terms of

trade policy and development continues to be subsidy rather than EU tariffs. There are other issues, such as rules of origin or just getting the investment in roasting and processing facilities, that are more of an obstacle to moving into that kind of value-added activity.

Having said that, there is still scope for improving the tariffs. That goes back to the point about how we and the Government do that. Do we say that the Secretary of State has that power and authority, every three years or so, to revise the preference scheme to extend product coverage and potentially country coverage, and so on? Is that a conversation that happens through regulations under delegated powers, or is it something that a Committee of the House or another grouping, or Parliament in its entirety, would want to discuss, debate and have a vote on? There are lots of issues to unpack. I would certainly agree with the premise of your question, but some of the detail on that particular issue around coffee roasting does not impact as many countries as is sometimes talked about.

Q32 Mark Menzies: But those people that it does affect, it affects in a great way. That is why it is really important to have a wide scope in the Bill, so that we can get into the detail in the fullness of time, and get it right.

Helen Dennis: I agree with you on that. There are certain products that we work with, such as bananas and sugar, that are not covered by the GSP. There may be products that we would want to include within a new preference scheme, and we would want to have the opportunity to bring those proposals forward. The Bill certainly does that, by granting the power to the Secretary of State to make those decisions.

The one thing I would want to flag up is that a decision about tariffs affecting one country impacts on other countries. It is important that when those matters are being brought forward, a thorough impact assessment is done of the impact not only directly on that economy but on neighbouring or other competitor countries. If we go back to Colombia for example, it is a big exporter of cut flowers. There is competition between east Africa and some of the Latin American countries. There is no right or wrong answer, but if we are going to make tariff changes, we need to make sure that we have thoroughly considered the potential impacts.

When the Bill lists the things that the Secretary of State or Chancellor must have regard to, at the moment there is nothing that relates to development impact. From our perspective, we would like to see something added there, so that we are thinking about UK interests and consumers, of course, but we are also thinking about development impact when we make changes.

Q33 Douglas Chapman (Dunfermline and West Fife) (SNP): I would like to ask an additional question. In the previous session we heard that, for example, in terms of SMEs, 130,000 small businesses would be affected by this kind of legislation for the very first time. Does the panel have a view on the particular challenges that the Bill might bring to small business and its impact, especially if Mr White's book has to be trawled through every time some decision has to be made? What is the panel's view on that?

Barbara Scott: I work a lot with SMEs who currently find it very hard to understand the Community legislation on customs and international trade law. It is complex and there are a lot of different strands to it. Trade is complex. Things are different depending on what you are doing, whether coffee from Colombia or bicycle parts from China. The legislation and the effect on business is very different, unlike other laws, such as VAT or corporation tax, which generally impact in the same way on most businesses.

This is a huge step change for SMEs and particularly for those who have only traded within the EU. It will be a tough challenge for HMRC to reach out to those people, get them involved and explain how the new legislation will work. There is clearly going to have to be a lot of propaganda and information out there. It is a huge challenge for the state.

Jeremy White: And there is a cost. The SMEs will have to employ agents, because they will not be able to employ in-house staff. I have been told that SMEs will sell out to someone who does have the assistance. The only frictionless trade known to man is customs union. Anything else is costly and can only be managed—just—with all the simplified procedures of the UCC in operation, plus all the information systems that are there to support them. That is big money.

Barbara Scott: When we talk to customs about this, we are constantly hearing, yes, they are being given more resources and will be employing more staff, but can business afford to do that—suddenly to employ new people and understand these new processes? It is a huge cost. People ask, "What is that cost?" It is very difficult to measure. I do not think anyone has attempted to do so yet. It will be a very difficult time for SMEs in particular.

Sue Davies: I cannot comment on SMEs but I want to make the point that if there are additional costs for businesses, they will feed through and lead to increased prices for consumers. That is why it is really important that we have as efficient a system as possible, which still maintains the right level of protection for consumers.

Q34 Mike Hill: I shall ask a question on behalf of my colleague, Grahame Morris, who has lost his voice. He has not lost his question. His voice is somewhere in Dover. Do you have any concerns that the Bill may create opportunities for tax avoidance or evasion?

Jeremy White: Uncertainty always produces that, doesn't it? A little bit of background: all my professional life has been using EU-type rules, EU language and structure. Through all its iterations—when I was a Government lawyer working on the implementation of the Community customs code, then when we began to do work on the Union customs code, then I went back to practice—it is still very similar. It is well known that the opportunities for avoidance are few. There have been some, obviously, in terms of customs valuation. There have been customs valuation schemes in the past. Most of them have been dealt with.

This is just an example—we do not know, and it could be handled very well—but in a recast there is always an opportunity of bringing in some uncertainty. Is this exactly the same provision as we had before? Will it prevent a customs valuation scheme? The answer to that is that we do not know because all we have seen in the Bill is a very small, framework principle rule provision, but it still does not adopt exactly the language of the World Trade Organisation customs valuation agreement.

That would be beneficial—that is another point in our report. The way it works is this. All the customs authorities in the world are obviously interested in preventing evasion and avoidance. They have their own legislation, they have got together for a world agreement on how customs valuation should be—taxation based on movements of goods—that is adopted generally, and their Supreme Courts have ruled on it for many years now, or at least since everyone adopted the same since 1994. We have all that body of work, help and certainty. If we then have an English law recast that abandons that language, we do not take the benefit of leveraging off of any of the international law or any of the international judgments.

The answer to your question—that was really all background—is that we do not know until we see what the statutory instrument looks like, if we still go down this road. It would be better not to, but if we do still go down the road of the recast for all purposes, we will see what the statutory instrument says. I would have thought that the advice will be that the statutory instrument has to adhere to the WTO customs valuation agreement.

The Chair: We have a little over 10 minutes to go and three people to ask any further questions.

Q35 Nic Dakin: In sectors like steel that operate pretty much in a free market without tariffs, trade defence instruments are very important in ensuring fair trade. What do you think about the UK's proposed system of public and economic interest tests? How do they compare with elsewhere? To me, at first glance, they seem more cumbersome than what is already there, and therefore there might be higher risk, but I am interested in your views.

Sue Davies: We think it absolutely critical that we have the economic interest test. We completely recognise that there will be cases where we need to consider whether we put remedies in place, but it is really important that when the decision is made to do that, there has also been a full assessment of what the impact would be ultimately on the end consumers. As some of the products or sectors that have involved remedies up to now have often been inputs or intermediaries into other sectors, which will then feed through to consumers, we need to ensure that we are looking at what the short-term impacts could be while also thinking longer term. We were really pleased to see the economic impact test referred to. We think it could be more explicit about the public interest side and the need for a consumer impact assessment, but otherwise we could be going down an unnecessarily protectionist route that could have consequences we are not sure about, because remedies can remain in place for quite a while.

Correspondingly, I appreciate that you are not considering the Trade Bill, but we think that the composition of the Trade Remedies Authority, which will be included in the Trade Bill, and the way that it operates, are also critical, so that we ensure it is transparent and includes consumer interest—for example, consumer representation on its board—so that when it is looking at the need for remedies we all understand exactly how it has traded off those different interests. But we think it would be simplistic and potentially damaging to consumers if we do not have the test in the Bill.

Q36 Nic Dakin: There are four tests here—four different checks. That seems to me to be potentially over-checking. There needs to be a test, but do there need to be four tests?

Sue Davies: We have the economic significance of affected industries and consumers and the likely impact on affected industries and consumers, which enable a wider public policy consideration. For example, there have been remedies in everything from salmon to solar panels in the past. We have got the likely impact on particular geographical areas, which is about regional aspects, and the likely consequences on the competitive environment. So there is a wider competition check, and that is where it will be important to make sure that the Competition and Markets Authority is consulted.

We think the criteria are right. It is how it is done. At the moment it says, "They can take account of the following so far as relevant," whereas we think it is really important that there is a transparent impact assessment, so we think the wording there could be clearer about how it is doing that modelling in assessing the impact. We felt that the criteria seemed sensible.

Barbara Scott: What also needs to be in there is perhaps timings. At the moment, when we have trade remedies under the EU legislation, it takes an inordinate amount of time to put them in place. If we can have something in our legislation that is timeframed and more clear, with a shorter timeframe, that will be a big plus.

Q37 Kirsty Blackman: My question is specifically for Barbara Scott on the issue of HMRC resourcing. Is the authorised economic operator system working as it should, and will it work post Brexit? Is there enough focus within Border Force on customs issues, or does that need to change as well?

Barbara Scott: Currently, we have a bit of a divide between HMRC and Customs and how it operates processes such as economic operators, which Border Force does not come online with. No matter what we do to facilitate authorised economic operators—I detest that term—Border Force will still carry out the same controls whether a trade is authorised or not authorised. That really is something that discourages businesses from actually becoming an AEO.

There is a lot of talk about our not having a high number of AEOs in this country. That is because UK Customs has looked at trade facilitation as far as it can, and was quite facilitative to business before we even had an AEO system. For larger traders, there was a lot of facilitation allowed, whereas perhaps some other EU countries, particularly before the UCC, were not so facilitative and have used that AEO process to be more facilitative, which is why traders in, say, Germany have become authorised and in the UK they have not.

The benefits of AEO currently are very small, which is why I was pleased to see within this Bill that there are opportunities for having different levels of AEO. That could be a particular help to small businesses that cannot get over the extremely high bar that exists at the moment. Something that is smaller—a sort of bronze star for SMEs—might be better than the gold star that a multimillion-pound business can afford to obtain.

Q38 Mel Stride: Thank you all for your evidence today, which has been really helpful. I have a specific question for Mr White regarding his assertion, which I generally agree with, that the simplest way forward

[Mel Stride]

would be to effectively take the UCC on board, but modify it as required. Is there anything in the Bill that would prevent us from doing that? If your thought is that we should be required to do it, given that we might not be prevented from doing it by the Bill, would bringing it into the Bill not just risk us tying our hands in a way that would be unhelpful, given that we do not know exactly where the negotiations are going to land in that respect?

Jeremy White: Technically, I think you would be safe if you amended the commencement provision. At the moment, the way that it operates on exit day is that the repeal in schedule 7 of the taxation Bill automatically repeals the effect of the withdrawal Bill, which would otherwise preserve the UCC as retained EU direct legislation. You would have to effect the taxation commencement provision. That would have to be amended, so that on exit day it no longer immediately repealed the UCC. Then the withdrawal Bill would operate.

Clearly, we would identify some modifications that are required, some deficiencies, and we would have power under regulations, under the withdrawal Bill, to make regulations amending an unnecessary effect or remedying a deficiency. There would also be power under regulations under the taxation Act itself to make regulations. Those regulations would have to be enforced on exit day.

Q39 Mel Stride: But would there not be provisions? The EU withdrawal Bill would annul the effect of the UCC, you are right, but what would stop us from bringing that in, using this Bill, on day one to achieve what you are attempting and would like to see as the outcome?

Jeremy White: At the moment, I think it is schedule 7 of the Bill that itself does the business to repeal the effect of the withdrawal Bill.

Q40 Mel Stride: But, through various powers in the Bill, we could then bring in those aspects and elements that we wished to do so.

Jeremy White: That is right. If you had a qualified commencement provision, so that schedule 7 did not take effect straightaway but had to have a commencement provision, so instead of Royal Assent you had a commencement provision, you would still have the flexibility, if sadly it became appropriate, in a no-deal situation, immediately to bring this into effect. That would be possible.

Someone is still going to have to do the work. As Barbara outlined, someone in HMRC and the Treasury will have to do the work for all of these scenarios for the regulatory framework. Even if they wanted to have a recast, now is not a good time.

To pick up for a second or two on the preference agreements on replication, everything there that will be done will have to be proved. There will have to be proofs of origin. We have got a serious problem outlined, because of the Commission's adoption yesterday of the road map to put back the information systems, which could have included common databases, as we have in other free trade agreements, particularly with China and Switzerland, that that computer system would not be available in the EU until 2025. In the earlier session you were told that a transition to 2025 is better, even legally technically for getting what we want by way of free trade agreements being replicated and being frictionless. If they are not replicated and not frictionless, then we have to be back to all of the paper certificates. We know that we will have to on the anti-dumping—we will have to employ our own police force to investigate in other countries; we will need reciprocal agreements. At the moment we benefit from the Community policing. There will be no police force—no OLAF. That is a serious problem we face on implementation in this area.

Q41 Mel Stride: I am sorry to be a real dog with a bone, but I have one last quick question on this point. On the UCC, your contention is that you would have to amend the Bill under schedule 7 to stop it being switched off, to allow the time to bring it in to UK law and amend accordingly. Why could you not just continue with the provisions of schedule 7 and have secondary legislation that comes into immediate effect at the appropriate time, by way of a made affirmative statutory instrument, for example?

Jeremy White: You could allow schedule 7, part 1 to take effect. That would repeal the UCC and you could have an affirmative instrument that applied it; yes. You could use that structure.

Q42 Mel Stride: In that sense, the Bill as it stands does accommodate your desired outcome.

Jeremy White: Except for the fact that the affirmative instrument, the SI, would have to repeal those parts of the Bill that make specific provision already. The trouble is that it is not just repealing the UCC. There are 33 pages of provision in the Bill that would have to be repealed by the affirmative statutory instrument, which will be messy. It could work, but it is better to amend the commencement provision, I would say, so that part 1 and schedule 7 do not commence as they do now.

The Chair: Order. We have now come to the end of the allotted time for the Committee. I thank all four of the witnesses very much for their attendance.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.