PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TAXATION (CROSS-BORDER TRADE) BILL

Second Sitting

Tuesday 23 January 2018

(Afternoon)

CONTENTS

Examination of witnesses
Adjourned till Thursday 25 January at half-past Eleven o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

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

Rosa Crawford, Policy Officer, EU and International Relations, TUC

Ben Richards, International Officer, Unite

Kathleen Walker Shaw, European Officer, GMB

Alan Runswick, Branch Chair (Liverpool), PCS

Joel Blackwell, Senior Researcher, Hansard Society

Tim Reardon, Policy Director, Ferry and Cruise, UK Chamber of Shipping

Robert Windsor, Executive Director, British International Freight Association

Richard Ballantyne, CEO, British Ports Association

Gareth Stace, Director, UK Steel

Ian Cranshaw, Head of Business Development and International Trade, Chemical Industries Association

Dr Laura Cohen MBE, Chief Executive, British Ceramic Confederation

Public Bill Committee

Tuesday 23 January 2018

(Afternoon)

[Mrs Anne Main *in the Chair*]

Taxation (Cross-border Trade) Bill

Examination of Witnesses

Rosa Crawford, Ben Richards, Kathleen Walker Shaw and Alan Runswick gave evidence.

2 pm

The Chair: Good afternoon. We will now hear oral evidence from the Trades Union Congress, Unite, GMB and the Public and Commercial Services Union. We have until 2.45 pm for questions to these witnesses, whom I welcome. I will give them a few minutes to introduce themselves before they answer Members' questions.

Kathleen Walker Shaw: Good afternoon, everyone. My name is Kathleen Walker Shaw. I am the European officer for the British trade union GMB.

Alan Runswick: I am Alan Runswick. I am a member of the group executive committee of the Public and Commercial Services Union, which represents 35,000 members who work for Her Majesty's Revenue and Customs, and I work for HMRC.

Ben Richards: Good afternoon. My name is Ben Richards. I work as an international officer for Unite the union.

Rosa Crawford: Good afternoon. My name is Rosa Crawford. I am policy officer in the international department covering trade at the Trades Union Congress.

The Chair: Thank you very much for that. If the gentlemen—or ladies—are finding this room warm and they would like to remove their jackets, they should feel free to do so. I call Peter Dowd.

Q43 Peter Dowd (Bootle) (Lab): Thank you, Mrs Main. My first question is a general one. I would like a view from the coalface, so to speak. If the Bill is passed in its current form, will it offer adequate protections to the UK economy against dumping, for example?

Ben Richards: Our view is that, particularly in the scenario we will move into after Brexit, having an effective trade remedies regime for the UK is vital to protecting our manufacturing industries and the members we represent in those industries.

One of the major problems we have with the Bill is that, because so much of the crucial detail is being put into regulations, it is hard to assess properly at this stage whether it gives adequate protections. Certainly, from reading the Bill as it is now, our view as Unite is that it does not appear to give even the same protections as we currently enjoy in the EU regime, and we want to see a stronger trade remedies regime introduced in the UK in future.

Kathleen Walker Shaw: I work for the GMB, which has a number of members across a number of manufacturing sectors. I have to say that when I read the proposals in the Bill, I was extremely alarmed by how weak the remedies were in terms of anti-dumping cases. This is a complex area of trade law, and we know from the European experience, where there is a very robust system, that you cannot take your eye off the ball when you are pursuing those cases. They are very data, document and resource-heavy cases to bring forward.

I just feel that the provisions in the Bill do not fulfil the promise we were given that British jobs, British industry and the British economy would thrive post-Brexit. I feel that huge risks would be taken with our ability to protect and promote British industry and British jobs if the proposals were not amended.

Rosa Crawford: If I could add some specific concerns that we have, there is a compulsory lesser-duty rule in the Bill, which would mean that anti-dumping measures were not adequate. There is ample evidence that the lesser-duty rule is not efficient. Indeed, at EU level, the rules have been reformed to take away compulsory use of the lesser-duty rule, yet it is in the Bill, which would not provide adequate protection against dumping. There is also an economic interest test and a public interest test in the Bill. Those would allow the Secretary of State to veto recommendations by the trade remedies authority that trade remedies should be applied. We regard that as an overreach of the Secretary of State's power that will not lead to an effective trade remedies mechanism being established.

Also, building on what Ben from Unite was saying, we are seeing a whole area of trade remedies in the Bill left to secondary legislation. China, a non-market economy, has clearly been one of the worst offenders in the last few years and has affected steel and other sectors in which we have significant numbers of members. There has been a real negative impact on jobs, and there is nothing in the primary legislation about how they will be dealt with. Again, for that we would need to see there being an effective trade remedies mechanism post-Brexit.

Q44 Peter Dowd: Let us stick with that theme. What assessment have you made, or are there any assessments that you might be aware of, regarding industries that are most vulnerable to losses caused by dumping, for example? You referred to steel. Could we just tease that out?

Ben Richards: One of the things that we have been doing, as Unite, with the GMB, the TUC and our sister union, Community, is working very closely with employer organisations from a number of key sectors, in forming the Manufacturing Trade Remedies Alliance. That is in industries such as paper, steel, chemicals, tyres and in a number of other industries as well.

What is clear in our experience, certainly from Unite members, is that we have just gone through the steel crisis, which immediately threw up a crucial or fundamental issue for the UK's manufacturing industries, but it feeds into many other areas. Our members in the paper industry are particularly concerned. There are also the rubber tyre and ceramics industries as well as many others, which are represented not only by Unite but by the GMB, Community and many other TUC unions.

Q45 Kirsty Blackman (Aberdeen North) (SNP): The first question is about Border Force. Do you think that Border Force will be able to cope with the increased customs volume that it will need to deal with, and if not how do you think the Government can fix that?

Alan Runswick: My specific area of expertise is Her Majesty's Revenue and Customs, but I do know a little about Border Force, which has suffered cutbacks in staffing over the period. I am also aware that Border Force is the first line, as it were; if you go through a port or airport, you will see Border Force there. I used to work for HM Customs and Excise, actually, but transferred into that. Certainly there are now huge areas of the coastline that do not have any protection, effectively, by the civil service.

The other major concern for us is that Border Force is the first line of defence but its powers are limited; for many things, it then has to contact HMRC staff, which it calls in to take the next step, as it were. The clock is already ticking under the Police and Criminal Evidence Act 1984, once Border Force has made some sort of intervention.

One of the major issues that we are facing now is that HMRC is already under quite considerable pressure because of the staff cuts over the last decade. However, just as Brexit is happening, the Department is planning to shrink back from its current estate into just 13 regional centres and five specialist sites, leaving the majority of the ports and airports very large distances indeed from the nearest HMRC office. The time that it would take to travel—if you are called out, any time of day or night—to assist Border Force in dealing with smuggling, interventions and that kind of thing will clearly be a major issue for delivery of working between HMRC and Border Force.

For example, there will be no HMRC office north of Glasgow and Edinburgh—nothing in Scotland except Glasgow and Edinburgh. There will be no HMRC office in the south-west other than in Bristol, which in fact is hardly the south-west; if any of you know the south-west, you will realise that. There will be no HMRC office along the south coast dealing with this kind of intervention. So HMRC is closing offices in places such as Southampton and so on—indeed it is closing this work on the east coast around the ports of Felixstowe and Harwich, with the closure of the Ipswich office.

So we think that there will be a real struggle to deliver the work that HMRC does with Border Force in that situation. My union believes that HMRC should pause the office closure programme until it is clear what the Government will need HMRC to do in a post-Brexit situation.

Q46 Kirsty Blackman: Clause 31 allows for the UK to enter into a customs union with another territory. Do your members feel that a customs union with the EU would be positive or negative for jobs?

Alan Runswick: First, I need to say that my union does not have a position in principle on whether the country should leave or remain and specifically does not have a position on whether we should remain in the single market or the customs union. We are neutral on those questions. In terms of the impact on jobs, we are concerned about the uncertainty of the position and what the future might hold. Are you talking specifically about jobs in the civil service, or jobs in general across the economy?

Kirsty Blackman: In general.

Alan Runswick: As far as the economy is concerned, I would defer to my colleagues here on that position. The position in the civil service is clearly going to be massively impacted depending on whether Britain remains in the customs union or joins a customs union, or what the terms might be if there is no customs union. That is a huge period of uncertainty as far as we are concerned. The jobs and delivery impact of that from my union's point of view is that it is impossible to say what would be needed.

At the moment, HMRC are actually making people redundant. As offices close, staff are being laid over and years of experience are being lost, at a time when our chief executive is forecasting that we might need to recruit 3,000 to 5,000 extra people. It is complete madness as far as we are concerned to make experienced staff redundant because they are not in the "right area", when we might need to recruit people. So there is a jobs impact within HMRC. In terms of the wider economy, I defer to my colleagues from the other trade unions.

Kathleen Walker Shaw: A major concern of a lot of unions involved in manufacturing, as well as the concerns about properly protecting and supporting industries in terms of remedies, is that so many of our industries that export or import components or elements of their production are reliant on just-in-time processes. With many products, the margins are so tight that even the slightest delay or friction in terms of the movement of goods will put us out of competition.

As Alan rightly pointed out, we do not know what the Government's objectives are in terms of future customs relationships with the EU or beyond. In our conversations with other unions that work on borders or in shipping, we are trying to get a picture of where the lock points are. In terms of policy, we are pushing to guarantee smooth administration and as little friction as we can in terms of the movement of the goods, to preserve the just-in-time production processes that so many industries rely on. That is not just about being competitive—in the food sector for instance, it is about getting food there in a state in which it can be sold. We cannot give fixed numbers because we are dealing with the unknown, but it is important not to underestimate the multi-chain effect of things going wrong and policy not being the right one in terms of border administration.

Some of you may have already seen that some groupings of German and French federations have done assessments of what various types of Brexit might cost. Some of the figures from the German employers federations in terms of the added costs of a not positive Brexit agreement are eye-watering. We wish that we had a little bit more of that investigation going on at Government level as well. We have to know what we are facing. At the moment we are living with the fear of what we know through working at hands-on level with the production structures across a number of industries.

Rosa Crawford: Can I just add a perspective from across the union movement, because obviously the TUC represents a majority of trade unions in the UK? Our position is that any future deal with the EU must protect jobs and must protect rights. We have said that the Government were acting recklessly to take a customs union and single market membership off the table at this early stage in the negotiations. We know that it is

important to protect rights and to ensure that UK workers do not fall behind those in the EU. We should have single market membership as an option on the table, because that provides an assurance of rights backed by the European Court of Justice.

Ensuring barrier-free, frictionless trade is a very important part of our position and our statement of intent for any post-Brexit deal. Customs union membership is one way of achieving that, but what we see in the legislation is only the possibility under clause 31 of joining a customs union. The terms are not clear and we would need to see the detail. While we are clear that there are risks in not having a relationship that ensures tariff-free, barrier-free, frictionless trade and great costs associated with adding customs checks, which my colleagues have talked about, we have not seen any detail of what the Government are offering. We need to see that detail to protect jobs and our members' livelihoods going forward.

The Chair: I am going to call Emma Hardy. I ask witnesses to make their answers a little shorter, because several Members wish to ask questions.

Q47 Emma Hardy (Kingston upon Hull West and Hessle) (Lab): Thank you, and welcome. If the Bill is passed in its current form, do you think it will prevent excessive delays when importing freight?

Ben Richards: We represent members in the transport industry. In its current form, it is very hard to know whether the Bill will prevent excessive delays in importing freight, simply because we see so much of the detail being pushed to secondary legislation. That is where we would want to have these sorts of conversations to give evidence and have the discussion. One of our major concerns is that the real crux of the detail of our future system is being left to secondary legislation, where we and you will not have the opportunity to engage in detailed debates about exactly those issues.

Q48 Emma Hardy: Is there anything specific that you would want to see to prevent delays?

Ben Richards: It goes back to what Rosa was just talking about with the need to have a frictionless aspect to trade. That may be through a type of customs union arrangement, but in the Bill as it stands it is simply not clear. It is very hard to say whether this is the right or wrong way, but we know that with the automotive industry, in which we have tens of thousands of members, on average each part in a car built in the UK crosses a European border and our border anywhere from five to six times. Even a delay of five or 10 minutes added into the just-in-time production systems could create significant problems for such industries.

Alan Runswick: Briefly, on processing, my union is unable to say whether the new Customs Declarations System will be able to cope with the vast increase in the volume of declarations that would come under one of the scenarios we have, because we do not know that it will be that scenario. Similarly, some scenarios will require a big increase in staffing, as has already been mentioned, and those people have to be trained as well. Nobody knows yet what the rules will be. There is a great uncertainty about that position, and that means we have to be very concerned about whether HMRC could cope with the new situation to assist with frictionless trade.

Q49 Mark Menzies (Fylde) (Con): This is specifically for Rosa. You mentioned that you had concerns over the lesser duty rule. I wonder whether you could give us some specific examples of where you feel the lesser duty rule currently is not working.

Rosa Crawford: This is something that the trade remedies alliance, which Ben from Unite mentioned, has been working on with manufacturers associations. We have produced evidence on that and we could supply it to the Committee.

I know there has been specific research on the use of the lesser duty rule in the case of solar panels. We have been in discussion with officials on that. There is an argument that the lesser duty rule applied to the import of solar panels allowed a balance with affordable solar panels. The specific discussion was on social housing and allowing those panels to be provided to social housing, but there was also a measure of action taken against unfair trade practice. Talking to colleagues working in the glass associations and other manufacturer associations, they saw those solar panels as being of a lower quality. I am not speaking from a technical point of view, but they had enough information to judge that those solar panels were of a lower quality.

When we think about the importance of using high-quality materials in social housing—obviously in the shadow of the Grenfell disaster—with solar panels just one aspect of that, that judgment always needs to be made about the low price and the quality of the product. Obviously, there is an implication for support for British industry and what you do to the British industry that could have made a higher-quality panel, and for investment around skills and training to bring in those panels.

Q50 Mark Menzies: Do you have any other examples of the lesser duty rule that we should be aware of?

Rosa Crawford: There will be other examples that I can supply to the Committee. The trade remedies alliance will be happy to provide those.

Ben Richards: On specific cases, that is why we are working collectively with the employers organisations. The trade unions and employers are working together because our interests are combined here. Particularly in relation to the lesser duty rule, it is very interesting that very few other World Trade Organisation members use such a rule as this. Indeed, the European Union in its trade remedies regime is moving towards making the use of the lesser duty rule much more conditional, because it has seen weaknesses in having a mandatory lesser duty rule. In the changes that are taking place at the moment in the EU trade remedies regime, there are some important developments in relation to the lesser duty rule over there.

Kathleen Walker Shaw: May I add a supplementary point on the concern for the lesser duty rule? The problem with that particular form of remedy, because you are creating a sort of cap on the level of remedy, is that it is based on the assessment of injury, which is a difficult thing to do accurately. The difficulty that we have, as I say, particularly with industries that are working on moderate profit margins, is that those industries could be put out of business by the fact of the injury being assessed at a perhaps inaccurate level.

A lot of these fledgling industries that we are looking at, such as clean energy—solar panels is a good example—are new forms of industry that we want to see develop

in the UK, and the Government have on more than one occasion identified them as being great growth industries. However, China also likes the look of that market, as does Vietnam. If we are not prepared to protect British industry to grow those new industries, then by overuse of the lesser duty rule we are cutting them up before the roots have started to take in the ground. It is a consideration for us more widely to look at the lesser duty rule in terms of our economic ambitions for UK manufacturing industry into the future, because we are in a position of "cake and eat it" there on a lot of young industries.

The Chair: I think the Minister would like to ask a question at this point.

Q51 The Financial Secretary to the Treasury (Mel Stride): Thank you very much for your contribution so far. In the previous sitting, we had a witness representing consumers—from Which?—and she made the point that she would be concerned if there were no lesser duty rule. She was concerned that consumers would be unduly damaged by any trade remedies that we might undertake under those circumstances. Do you recognise, as a panel, that there are risks to consumers in solely relying on remedial action, which takes a view on the dumping margin, which may be very significant but is equally in excess of those changes required to remedy the injury being incurred by producers? Or do you think that consumers are always going to be safe under an arrangement without a lesser duty rule?

Kathleen Walker Shaw: My union is of a school that believes that, in terms of remedies, we should be looking to a much broader assessment of what is taken into consideration, so we have welcomed the recent movement at the European level on trade defence measures and consideration of environmental and social issues. That is a bit of progress. We would have liked more of that progress. What we do not want to see is a narrowing of trade defence instruments that cut out the scope for that. Guaranteeing consumers good prices is one thing, but keeping the quality of good manufacturing in the UK is something very close to home for our members—obviously not just of our union, but all colleagues here. It is an issue of getting that balance.

The EU trade defence mechanisms and its anti-dumping rules are still within the WTO rules. For us to be going bargain basement on WTO is perhaps not the safest bet for dealing with a post-Brexit economy. We would like to see robust trade remedies that protect our industries from unfair competition, rather than working on the margins of the risk of putting good, competitive industries in the UK out of business.

Q52 Mel Stride: I totally accept the argument that if a lesser duty rule is not fit for purpose, it is not fit for purpose—if it is not operating as you would want it to, that is a problem. However, setting that to one side, if you have a lesser duty rule that does what it is meant to do and the injury that producers have suffered has been remedied as a consequence of the lesser duty rule changes, I cannot understand why those producers should be concerned and why you would want to remove that—and, in certain circumstances, have additional remedial punitive tariffs or duties apply over and above those that would meet the injury suffered by the producer. That would be simply at the expense of the consumer, and indeed other companies that were relying on the use of those imports in their production processes. That is the bit I do not quite get.

Kathleen Walker Shaw: It goes back to the point that it is very difficult to assess that accurately.

Q53 Mel Stride: If we could assess it accurately and make it fit for purpose in that sense, you would not object to the lesser duty rule? Your objection is to do with how it is framed rather than the principle? Would that be right?

Kathleen Walker Shaw: Our great concern with the Bill in its current form is that the provisions are not there to guarantee that. As our colleagues have said, the resources in terms of Government trade experts are not there to guide us through. For the best part of more than 15 years, we have not dealt with trade. You will need the resources to get those injury claims accurately assessed, and we have no confidence that the provisions are there in the Bill to guarantee that.

Rosa Crawford: I think this links with the issue of who is making the assessment. We have a concern about the parallel Bill to the one we are considering here: the Trade Bill, which sets out the provisions to create the Trade Remedies Authority. There is nothing in that Bill that indicates who will be on that authority. For trade unions, it is important that we have equal representation of trade unions and employer representatives, because we are directly involved in those sectors and we believe that trade remedies should be assessed using the insights of those directly affected in those sectors. It is unfortunate that from the Trade Bill we do not have confidence that we will have that representation, but we hope that we will see it developing in the legislation.

If trade unions were asked honestly to assess the lesser duty rule—if we had that discussion and we were genuinely taken into the process—that would be a very different conversation. At the moment, through this Bill we are being given a compulsory lesser duty rule without having seen any evidence that suggests that we need it and it is desirable. I would flip it round and say, why do we need the lesser duty rule and how are trade unions involved in the assessment of its effectiveness? Consumers are also workers who are employed in some of these industries, and they will not benefit from having unfair trade practice disadvantage them and the quality of their goods. That is something we must bear in mind.

Q54 Mel Stride: A final question to Rosa, which goes back to Mr Menzies's question. What is the specific trade case you can cite where the application of the lesser duty rule has failed?

Rosa Crawford: I refer to the specific case about solar panels, and I am happy to provide more information. The trade remedies alliance has done additional research that we can supply to the Committee, so there is evidence that we can supply that it has not been effective.

Q55 Nic Dakin (Scunthorpe) (Lab): On the lesser duty rule, as a result of things such as the steel crisis, the EU is moving to be exception-based, in line with Canada, Australia and others. Is there a lesser duty rule anywhere else in the world that will operate like this one?

Ben Richards: Not that I am aware of, and I think that what happened with that steel crisis is one of the reasons our members do not have confidence in what is

in the Bill at the moment. Even with the reservations that we have about the way EU trade remedies worked, as Kathleen spoke about, the EU was trying to deal with that situation. Unfortunately, our members felt that it was their own Government who were holding back the process of imposing sufficient remedies at a European level to deal with the situation of Chinese steel dumping.

Q56 Nic Dakin: Can I come to Kathleen? The lady from Which? did not actually refer to the lesser duty rule with respect to the Minister. She did refer to the economic test. Of course, everybody recognises that there should be an economic test, but there are a number of tests—public interest tests, and tests by various people. I noted that you, Kathleen, said that you were alarmed by the state of the current proposals. What needs to change in them to remove your alarm?

Kathleen Walker Shaw: The introduction of the economic interest test in itself, and then a further public interest test that the Secretary of State would then make a final decision on, is a confusion. First of all, the economic interest test is not defined clearly enough in our view, in terms of what it is assessing. The public interest test is just not defined at all. We have to assume that that would be an issue of national security, but a concern that we have about the economic interest test in terms of the procedure as laid out—it is still very vague in some of these areas—is that it would come before interim measures. If you are an industry that is suffering from anti-dumping, you do not want to be waiting for the conduction of an economic interest test—we still do not know the nuts and bolts of how that will happen—while somebody is roasting your fingers in an anti-dumping case. By the time you get to the interim measures, said British company may not be there any more. Having that where it is in the process is very flawed. Having it at all has a serious question mark over it, in terms of its broadness and definition. It is something that you cannot pin down.

Another concern that I have is the—

The Chair: Can I just ask that you keep it short? We have three more Members to get some questions in.

Kathleen Walker Shaw: Sorry. The lack of scrutiny, in terms of parliamentary process, over the economic and public interest elements of it is a huge worry to us regarding the Bill.

The Chair: I have Anneliese Dodds, Jonathan Reynolds and Peter Dowd, and we must finish by 2.45 pm.

Q57 Anneliese Dodds (Oxford East) (Lab/Co-op): Thank you, Mrs Main, for chairing the session. I share concerns that there is very little in the Bill on the issue of distorted economies. It would be helpful if you could indicate what provisions you think might be necessary to remedy that current deficiency.

Rosa Crawford: A step forward would be to use as a baseline the new rules that the EU has adopted, whereby non-market economies are not regarded as reliable in having a price indication for the goods that they export. Rather, an analogue country of a similar level of development would be used to judge whether an unfair pricing practice was used. We hope that that will allow the EU to take stronger measures against countries—not just China, but Vietnam and other countries that are using undue levels of Government influence to set prices at a low level.

In the current UK legislation, we do not see any approach like that. Indeed, we know that the UK Government have been holding back EU attempts to take stronger measures against China and other non-market economies. I think we can be forgiven for not quite believing it when we are told that in the secondary legislation we will have adequate measures to deal with non-market economies. We do not have an indication that the Government are likely to introduce secondary legislation on that.

Ben Richards: A key new development within the European Union is that, when they are assessing an analogue country, where there is more than one, they can now also take social and environmental factors into account. That is obviously absolutely crucial, because if a country is abusing labour rights or environmental regulations, that is also trade distortion, and should be taken into account in our trade remedies regime.

Kathleen Walker Shaw: There are two more points that are vital in terms of dealing with the distortions in the UK within the Bill framework, the first of which is the timing of it. To expedite these procedures at a time when they can actually help the companies while they remain competitive and able to see off the challenge was a problem that we had in the steel crisis, as some of you will be aware. Even the EU timetables at that time were dragging on too long and exacerbating some of the problems that we had across the steel industry, so the speed with which we can move the procedures is vital. The placing of the economic interest test in there makes me doubt that we will be able to do that.

Again, setting the tariffs at a level at which they will have the effect of adding the effective protection that we need was something that we struggled with agreement on at European level. The European Commission was going to set the levels on certain types of steel much higher than the UK Government. In the end, it became a political process rather than an economic process of what was required to protect and maintain the competitiveness of British industries and other European industries in that case.

Q58 Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): During the steel crisis, I sat in this very room as a member of the Business, Innovation and Skills Committee taking quite a lot of evidence from some of you as well. It is clear that if this bit on trade remedies is got wrong, the consequences will be severe.

My worry on the public and economic tests is that, even in something like the steel crisis, there were people arguing for the benefits of very cheap steel coming into UK for construction and so forth. If those tests are not drafted correctly, frankly, we do not have any trade remedies at all. If we are going to have them in the Bill, how can we draft them to ensure that they are robust and fair? Who should be involved in the Trade Remedies Authority to ensure that that is the case?

Ben Richards: We need an opportunity to have that debate, which we will not have at all with the Bill as it is currently drafted. It will simply be written into secondary legislation—we will not have that ability. We have four

or five minutes left to have a discussion about how it should be drawn up. It would take us another couple of hours. That is what we want, as a trade union movement: an involvement in these discussions and debates.

We have huge concerns about the way in which the appointments are being made to the Trade Remedies Authority. In effect, in the way that the Bill is currently written, we are not seeing one economic interest test but three. To give you a one-sentence answer about how it should be is very difficult: we want to engage in that debate. We want to have a role in that process in the future to ensure that our members are confident that those decisions are being taken with their interests in mind.

Kathleen Walker Shaw: On the Trade Remedies Authority, its structure is very important. We would like to see it set up in line with the Health and Safety Commission, where we have three employers, three trade unions and three other interests. I am a bit concerned that we are limiting that to nine, because I have a strong concern that devolved Administrations need to be involved in that process as well.

I would also like to see the Bill developed to give a role for parliamentary scrutiny—for the TRA to be liaising with structures within wider parliamentary scrutiny—on the European economic area IT, and on the decisions of the TRA, and to remove the power of the Secretary of State to veto a decision of the collective scrutiny of Parliament and the TRA on remedies. In that way, we might be some way to getting to the bottom of a justified and effective remedy.

Q59 Peter Dowd: Everybody in the Committee shares concerns about democratic oversight, industry protection, consumer protection, worker protection, the whole question of resources for HMRC, and sunset clauses or the lack of them. Taken together, it is of concern—not just at an individual level. In relation to your role in all this, I do not get the sense that you have had any substantive or significant consultation with the Government as a legitimate group of organisations. Is that a fair assessment of the situation?

Kathleen Walker Shaw: You are picking at a wound there. I was the poor person that drafted our response to the trade White Paper. I spent a lot of evenings doing that and I was more than a little concerned when I submitted that paper—less than eight hours later, the Bills were published. For people who take policy and their engagement with Government and Parliament very seriously, it was difficult not to feel the contempt with which that response that I spent hours sweating over to place before Parliament was received.

Consultation over the trade and customs Bills is vital because the Government have to get this right. There is no margin for getting this wrong. The future of Brexit hangs on these two bills: trade and the taxation cross-border. That is what our success or failure post-Brexit will hang on. I am very nervous about it, but I am more nervous about the fact that the Government are pretending that they are consulting us and they are not. We are very serious people and we want to be taken seriously. We want to help you to get the trade Bill and the cross-border trade Bill right, but we can do that only if we are a serious part of the process.

We have been engaging, but we have not been listened to. It is not enough for the Government to say, "We have consulted", because if you miss off, "But we haven't listened to a word you've said", the quality and the integrity of that consultation is brought into severe question. It will not stop us from being delighted at being invited to come and have these conversations with you—we are not making this up, particularly Alan, who works for HMRC.

Alan Runswick: On delivery, my union wrote to Jon Thompson, the chief executive of HMRC, immediately after the referendum result to say that it was a game changer, that he needed to pause the office closure programme, stop making people redundant and evaluate this new situation. We have not even mentioned, and we will not get to, the issue of import VAT for business and for delivery. As well as customs duties, there will be a big increase in import VAT transactions. They will need to be processed, and staff will need to run a compliance regime under the new situation, to counter evasion and avoidance.

We also feel that we have not been properly consulted. We have been trying to engage the Department in serious talks about delivery, how staff can be recruited and trained and how we can retain the existing skills. We most definitely feel that we have not had those serious discussions about how HMRC can be made fit for purpose in the new Brexit position.

The Chair: There are no further questions from Members, so I thank the witnesses for their evidence this afternoon.

Examination of Witness

Joel Blackwell gave evidence.

2.43 pm

The Chair: Good afternoon. We will now hear oral evidence from the Hansard Society until 3.15 pm. Mr Blackwell, would you like to introduce yourself and tell us a little about yourself?

Joel Blackwell: It is a pleasure to be in front of the Committee. I am a senior researcher at the Hansard Society. We are a non-partisan, independent research charity that seeks to promote representative democracy in the UK and across the world. In particular, we do a lot of work on parliamentary procedure and the legislative process.

In 2014, I co-authored the first comprehensive study of delegated legislation in more than 80 years, called "The Devil in the Detail: Parliament and Delegated Legislation". I am here in the capacity of having a keen interest in research in the delegated legislation processes, particularly Parliament's role in the scrutiny of statutory instruments.

The Chair: Thank you.

Q60 Mr William Wragg (Hazel Grove) (Con): It is good to see you. You were on the panel that came before the Procedure Committee, of which I am a member, when we were drawing up the amendments that were accepted by the Government on the European Union (Withdrawal) Bill about a sifting committee for secondary legislation. It appears that secondary legislation is talked about more than ever at the moment. Is it a problem of the system or just an excuse for ineffectual parliamentarians?

Joel Blackwell: That is a good question. In 2014, with our "The Devil is in the Detail" report, we wanted to tell the story of delegated legislation. The research that we did, as far back as the Statute of Proclamations, but particularly in the 20th century, showed that many reports had been published that raised big concerns with the way that the House of Commons in particular scrutinises statutory instruments. In 1933, the Donoughmore Committee reported on the inadequate procedures in place and the inadequate scrutiny of SIs by Parliament. We wanted to raise the point that the issues raised by that Committee in 1933 had not been resolved.

There has been a problem in the past, particularly in the House of Commons, with engagement with the scrutiny of delegated legislation. Part of that could be because it is very technical and can be, dare I say it, quite boring at times.

Q61 Mr Wragg: Would you not think that given all the interest expressed in it, whether it is boring is neither here nor there? People are able to do it.

Joel Blackwell: Exactly. We think that the lack of engagement has been primarily because of the inadequate procedures in the House of Commons—particularly two things. The first is the way that MPs, if they want to debate a negative instrument, have to use the early-day motion procedure. Secondly, we think the Delegated Legislation Committees for debating under the affirmative procedure are inadequate. We think that has been the issue with engagement thus far.

Q62 Mr Wragg: Do you think it is perhaps not the system but rather the ignorance of parliamentarians?

Joel Blackwell: It is a very complex, convoluted process. During our research, which started in 2011 and culminated in the report in 2014, that was a big issue for parliamentarians and, more importantly, for individuals and businesses that are supposed to adhere to the rules and regulations that are being brought forward in Parliament. Complexity is a problem, but I think it is more to do with the processes, particularly in the House of Commons.

Q63 Mr Wragg: Forgive me—just one more question, Mrs Main. I was playing devil's advocate there. You mention that this goes back as far as a report in 1933. So it really is not the case that somehow our Brexit legislation and this legislation brings forward new questions about secondary legislation.

Joel Blackwell: It is bringing forward old questions that are yet to be addressed, despite numerous parliamentary Committees trying to, and then putting them on the "hard to do" pile. Knowing that the Brexit Bills are going to have to be framework Bills—based on the fact that the legislation for Brexit is going to need some speed and flexibility—the Hansard Society thinks that this is a perfect opportunity to highlight the problems and for parliamentarians to get to grips with them, when challenged and faced with one of the most complex legislative tasks that Parliament has seen.

The Chair: Thank you. There are five Committee members who wish to pose a question. I would ask that you keep your answers as concise as possible, so that everyone gets a chance to touch on the point that matters to them.

Q64 Anneliese Dodds: Thank you, Mrs Main. In response to the points already made, surely it is not just about the preparedness of parliamentarians, but also the preparedness of the Government and Ministers to answer questions that are asked about the detail of the legislation that they are meant in theory to be ready to defend.

The question that I wanted to ask was, do you think there might be a role for sunset clauses in relation to some pieces of delegated legislation?

Joel Blackwell: I warmly welcome the House of Lords Delegated Powers and Regulatory Reform Committee report, which took the unusual step of publishing its report on this Bill while it was still in the Commons, as it did with the European Union (Withdrawal) Bill. Usually it waits until its introduction in the Lords. The report raised the issue of sunset clauses, which are very important in terms of the links between making changes to EU law in the European Union (Withdrawal) Bill and doing that through clauses 42, 45, 47 and 51. It makes valid comments on the potential of those powers. The powers are not required to be used in perpetuity, and sunset clauses, such as the ones inserted for clauses 7, 8 and 9, would bring some consistency, and that makes perfect sense. We would support the view of the Delegated Powers Committee on that point.

Q65 Kirsty Blackman: On the different procedures for delegated powers—the negative procedure, the made affirmative, the draft affirmative and the super-affirmative procedures—in this Bill specifically, do you feel the balance is right? Or do you feel, for example, that there are too many negative procedures, which are quite difficult for parliamentarians to get involved with?

Joel Blackwell: The negative procedure is the default procedure for scrutiny of delegated legislation, and in this Bill that represents that fact; the majority are subject to the negative procedure. Again, referring to the Delegated Powers Committee report, we would agree with the clauses they highlight that they think are negative and should be affirmative, particularly the ones that are what we call Henry VIII powers amending primary legislation. That Committee has always said that there needs to be a compelling reason why a negative procedure would be adequate for Henry VIII powers. Reading the delegated powers note, I cannot see a compelling reason; I think they should be made affirmative.

Q66 Emma Hardy: Welcome. Could you discuss in more detail the proposals you have for sift and scrutiny committees to deal with the delegated legislation?

Joel Blackwell: Of course. At the moment, the Chair of the Procedure Committee, Charles Walker, has tabled amendments that would introduce a sifting mechanism for clauses 7, 8 and 9 of the European Union (Withdrawal) Bill, which means that for those SIs laden with those powers that are subject to the negative power, a new European statutory instruments Committee—in the House of Commons only at the moment—would have the ability to recommend an upgrade if it thinks it more appropriate that the negative should be subject to the affirmative procedure.

At the moment that is only a recommendation; the Government is not obliged to follow that recommendation, and we have concerns about that. We proposed in September our variation of a sifting committee, which

would combine the sifting mechanism with Committee scrutiny. That is in keeping with what we call the strengthened scrutiny procedure, but many others call the super-affirmative procedure: if you see a power in a Bill that you think is extremely wide—particularly if it involves numerous policy areas and Government Departments—you would say, "The affirmative is probably not rigorous enough; we would like a more rigorous procedure than the affirmative."

You would create what we call a strengthened scrutiny procedure, which is in essence Committee scrutiny work. It is not just sifting; sifting is one element of that super-affirmative, but it potentially involves the ability to table conditional amendments as a Committee, and the Government being obliged to listen to those recommendations. That was the Committee we wanted to see—a Committee with teeth. At the moment, we do not think the amendments tabled by the Chair of the Procedure Committee go very far, and we would like to see more amendments tabled to the Bill, particularly in the Lords, that would give that Committee more bite, in keeping with strengthened scrutiny procedures.

Q67 Nic Dakin: What is your view on the Henry VIII powers in this Bill and their impact on this area of legislation?

Joel Blackwell: It is a good question. Referring back to Ms Blackman's question, I think all Henry VIII powers should be subject to the affirmative procedure unless the Government give a compelling reason, and we do not think that that has happened in the Delegated Powers Committee note. The six Henry VIII powers contained in this Bill are not as wide as clauses 7, 8 and 9 of the European Union (Withdrawal) Bill or the clauses we have seen in the Legislative and Regulatory Reform Act 2006 and the Public Bodies Act 2011. They are constrained merely by the fact that this Bill is focusing particularly on taxation, border trade, customs arrangements and what-have-you. So I think, in keeping with the views of the Delegated Powers Committee, that the affirmative procedure would be sufficient in this context.

However, parliamentarians, particularly in the House of Commons, have made it clear over the last few months that there are issues with the scrutiny of delegated legislation—more so than they have since we have been doing our research. In particular, there seems to be a view that they would like to have more meaningful and effective oversight over Brexit SIs. The sifting committee was intended to be part of that, but at the moment the sifting committee will only look at clauses 7,8 and 9 of the European Union (Withdrawal) Bill and will not touch the other Brexit-related Bills. If it is still the view of the House of Commons that they would like to look at all Brexit-related SIs then you could, for example, insert into Standing Orders that the new European statutory instruments Committee looks at clauses 42, 45, 47 and 51 of this Bill if it so wishes.

Q68 Mel Stride: Thank you for your evidence. The negative SIs, on balance, given that they do not necessarily get "called in", for want of a better expression, are on average scrutinised less than affirmative SIs, but is there anything that would in any circumstances stop an Opposition party calling one in? Is there any reason why they would be out of the reach of scrutiny, should the Opposition decide that more scrutiny was appropriate?

Joel Blackwell: A Member of either House who wants to pray against or seek to annul a negative instrument has to do so within a 40-day period. That is one of the restrictions: you have to do it within 40 days, otherwise you have the situation that arose with the personal independence payment regulations and the student fees regulations. The Opposition wanted to debate those regulations but the 40-day period had ended, so they used Opposition day debates in another Session. They had to hold the debates on "revoke" motions, and there was the issue of whether those would be statutorily binding if the Government were defeated. It turned out that the Government did not vote at that point. So there is that limit.

We think the negative procedure is fundamentally flawed, because in order to debate a negative SI, an MP has to use an early-day motion, for which no fixed time is allocated. That means that whether a negative instrument is debated is purely in the hands of the Government. We would like to see that changed. In "Taking Back Control", we proposed that a new sift and scrutiny committee should be created, and that that power should be given to that committee. You would have to tweak Standing Orders to ensure that the debate was heard, but that is our view.

Q69 Mel Stride: Given where we are with secondary legislation and Brexit, which means there is rather a lot of it, can I clarify that your position is not that we should not have negative-procedure SIs, but just that some of them should perhaps be affirmative?

Joel Blackwell: Yes, absolutely. The negative procedure plays an important role. There is legislation that is extremely technical and almost administrative in nature, for which the negative procedure is appropriate. In our view, the scrutiny procedures in the Commons—not in the Lords—are inadequate. Our position is not that the negative procedure should not exist, but that something needs to be done to improve MPs' ability to debate those SIs.

Q70 Peter Dowd: This is one of the biggest political and constitutional shifts that most people in this room can remember. The House of Lords Delegated Powers and Regulatory Reform Committee, to which you referred, said it is a massive transfer of powers from the House of Commons to the Crown. There is also the general issue of all the delegated powers that go with the withdrawal Bill, this Bill and the Trade Bill. In those circumstances, do you agree that this is more like a new constitutional precedent for a land grab by the Government from Parliament, and it has nothing whatsoever to do with the aptitude or the adroitness of Members of Parliament? It is about a constitutional and parliamentary stitch-up.

Joel Blackwell: I do not think I would agree in those terms. There are serious constitutional issues raised by the withdrawal Bill and the related Brexit Bills. This is not the first time that the Government have used Henry VIII powers. This is not the first time, nor will it be the last time, that we see framework legislation, or skeleton legislation. In all honesty, the use of delegated legislation is unavoidable in legislating for Brexit. Framework legislation is probably unavoidable for Bills that deal with issues such as welfare and indirect tax law, particularly if they are subject to change and involve highly complex and technical detail. The key is parliamentary oversight of that.

There are numerous ways that you can constrain powers in Bills. We have seen some attempts to do that in the House of Commons, and no doubt we will see that happen in the House of Lords with the European Union (Withdrawal) Bill. Fundamentally, though, although you can try to tightly define powers or to insert a list of actions that you are not able to use SIs for, you are ultimately going to have to confront the inadequate procedures for scrutinising negative and affirmative instruments in the House of Commons; otherwise, it will not matter. If you really want to take back control and have meaningful and effective oversight of delegated legislation, you have to focus on improving the negative and affirmative procedures in the House of Commons.

Q71 Peter Dowd: Given what you have just told us, do you acknowledge at the very least that the concerns in the House of Lords and all the delegation around the Trade Bill, the withdrawal Bill, this Bill and other Bills to come, show a significant constitutional shift in the balance of power between the Executive and the legislature for whatever reason? I am not making a judgment. Do you think that is a fair assessment?

Joel Blackwell: I am not sure it is a significant shift; the problem has always been that the balance between Parliament and the Executive in the control of delegated legislation has always been on the side of the Executive. We have always argued, and have argued in this report, that you need to redress that balance, and part of that would be to improve the scrutiny procedures that I have mentioned. I would not say that there has been a fundamental shift from this Bill onwards. There has always been an issue regarding the balance of power in the use and scrutiny of delegated legislation.

Q72 Peter Dowd: Just so I am clear—

The Chair: Very quickly, because two people want to come in.

Peter Dowd: Are you saying, therefore, that this is neither a quantitative nor a qualitative shift of power from Parliament to—

The Chair: I think that question has been posed in three different ways, so unless Mr Blackwell has anything else to say, I am not sure he can add to it.

Joel Blackwell: No.

Q73 The Parliamentary Under-Secretary of State for International Trade (Graham Stuart): I was going to follow on in pretty much the same area. Despite that desperate effort to lead you, you were quite clear that there was no fundamental shift, that we need framework legislation, that this is an appropriate vehicle for such framework legislation and that, despite the shortcomings as you see it in the scrutiny of delegated legislation within this House, there is nothing untoward about the way that the Bill is set up or uses secondary legislation.

Joel Blackwell: It is important that Members take note of the delegated powers Committee's concerns on particular issues that it has highlighted. I do think that there is an issue with the use of the made affirmative procedure for cases that do not seem to me to be urgent; that procedure is used for reasons of urgency and should be confined to that. I have never been entirely clear or comfortable with the use of the first instance affirmative procedure. If it has been viewed that a provision should be subject to the affirmative procedure for the first time, it should be subject to the affirmative procedure all the time. The two Henry VIII powers are subject to the negative procedure as well. So there are issues with the Bill.

In terms of saying that the Bill is fine, yes, you have to use framework legislation for issues like this. What concerns the Hansard Society is when framework Bills are laid before Parliament and contain no detail whatsoever on the powers that they wish to confer on Ministers. The lack of an opportunity for the Government to provide draft regulations alongside scrutiny of this Bill, for example, will be a matter of concern, and is something we raised about the Welfare Reform Act 2012. So there are issues with framework Bills.

If there is a huge lack of detail on what the Government intend to do with delegated powers, what usually happens is that you get situations that we would like to avoid where you have clause 7 of the European Union (Withdrawal) Bill that is so wide that there are issues regarding the balance of power between Parliament and the Executive.

Q74 Jonathan Reynolds: Are there any specific areas of the Bill that currently put significant powers in the hands of the Secretary of State but that make you think we should consider the arguments for an enhanced degree of parliamentary oversight?

Joel Blackwell: That is a question I have been posing to myself for the last few days. Honestly, no. We have to be careful, knowing that the procedures for the scrutiny of delegated legislation in the Commons are inadequate, that we do not just fall back on using a strengthened, enhanced or super-affirmative procedure for everything when the affirmative procedure would be appropriate. We need to play the ball rather than the man, to use a football analogy. You have to look at the powers that are brought in front of you and decide there and then whether the scrutiny period is appropriate.

The problem with this Bill, and with other supply Bills, is that the vehicle to highlight inappropriateness in the degree of scrutiny and the appropriateness of delegated powers is the House of Lords Delegated Powers and Regulatory Reform Committee, and there is no counterpart in the House of Commons. The Bill just highlights the lack of that counterpart. But no, looking at the powers, I do not think that the strengthened scrutiny procedure would be useful in this case.

Q75 Mr Wragg: What are the constitutional similarities between this Bill and the European Union (Withdrawal) Bill?

Joel Blackwell: Having said that I do not think the strengthened scrutiny procedure would be appropriate for any of the powers, they are wide powers. If we look at clause 51 in particular, the wording is very similar to that used for clause 7, so I think there are similarities. What has been highlighted is that people would like, potentially, to use a Committee to look at all Brexit statutory instruments and at the moment that will not happen. You could insert a change into the Standing Orders that would allow you to do that, which is something to consider.

Q76 Mr Wragg: But do you recognise the fundamental difference between this Bill and the European Union (Withdrawal) Bill, on which the Government accepted five of the amendments that concerned enhanced scrutiny? Do you recognise that distinction?

Joel Blackwell: Yes.

Q77 Kirsty Blackman: With all the issues that have been raised, especially about the negative procedure and the ways in which the House of Commons can scrutinise this, given it is not going to the Lords particularly, do you think this is a good way to do things or would there be a better way?

Joel Blackwell: I think that the Hansard Society would like to see an equivalent Delegated Powers and Regulatory Reform Committee, first off, in the lower House—or some MP in the composition of a Joint Committee or what have you. That would be a good opportunity.

I think that delegated powers notes are extremely useful documents. This one is 174 pages long. There are well over 150 delegated powers in the Bill. Some of the justifications I am struggling with, particularly as regards the use of urgency and non-urgency. I think time is an issue here, particularly if you do not have the backstop of further scrutiny by a Chamber—the second House—that is usually very good at looking at delegated legislation and has taking the lead on it in the past.

When we were doing a similar Bill, which became the Welfare Reform Act 2012, a call by many MPs on the Public Bill Committee at the time was that it would be really useful if they had draft regulations alongside the scrutiny of the Bill. You could do things like that to improve scrutiny of delegated powers but, fundamentally, the lack of representation, the fact that you would have to wait for the Bill to get to the House of Lords for a report to be published, is an issue.

Perhaps one way around that is that the House of Lords Delegated Powers Committee does what it has done for this Bill and the European Union (Withdrawal) Bill, and publishes, as usual practice, the Bill as soon as it enters the House of Commons.

Q78 Anneliese Dodds: I have two quick questions. One is to ask you to comment on the use of not just secondary but tertiary legislation in this Bill on public notice law. That would be helpful for us. Secondly, in our previous discussion we talked a lot about the new Trade Remedies Authority, and some of the witnesses suggested that the Secretary of State will be able to overrule its suggestions, without, it appears, any parliamentary process underlying that. I wonder whether the Hansard Society has any comments on that.

Joel Blackwell: On the first point, with regards to sub-delegation or tertiary legislation and this use of public notice, the fact that they will not be subject to any parliamentary scrutiny is concerning. We basically reiterate the points made in the Delegated Powers and Regulatory Reform Committee: that if public notices can do the same as regulations they should be subject to parliamentary scrutiny, just as regulations would be. Sub-delegation is an issue for us because there is a lack of parliamentary scrutiny. In some cases it might not be appropriate, but it should still be considered as usual practice, and at the moment it appears not to be.

With regard to the Trade Remedies Authority, the Hansard Society has not really considered that yet. My colleague Brigid has probably, as I speak, just finished on the Trade Bill, so I am happy to write to the Committee about our points on that.

Q79 Peter Dowd: On the point about tertiary, are you saying that you have fundamental issues with tertiary legislation?

Joel Blackwell: The fact that it is usually not subject to any parliamentary scrutiny is of concern to us.

Q80 Mel Stride: On that specific point: if, for example, HMRC was to produce a small amount of guidance on a small part of the customs process, why would it make sense to make that subject to potentially being a regulation, rather than having it as a public notice? Why would you want to clog Parliament up with all these additional items, which may be very insignificant in some senses—in a grander sense?

Joel Blackwell: It is a good point. Specifically on this Bill, it is the fact that it says it can do what regulations could do and that would be an issue. In terms of guidance codes of practice, they are laid before Parliament and that is not the case for this Bill. You would not necessarily have to clog up the system with things that are extremely administrative in nature, but there is the fact that Parliament is delegating a legislative power to the Government and if you can do what is done in regulations, it would make sense that they should be subject to the same level of parliamentary scrutiny as those regulations.

The Chair: Kirsty Blackman, this will probably have to be the last question, depending on how lengthy the answer is.

Q81 Kirsty Blackman: Is there a difference in how strong something is in law, depending on whether it is in primary or secondary legislation? Is it easier for lawyers, for example, to use primary legislation, rather than secondary legislation that was made further down the line, in making their cases?

Joel Blackwell: I am afraid I am not a lawyer, so I am not particularly comfortable answering that question, but there is an issue with regards to the hierarchy of primary and delegated legislation. As much certainty as possible is a big thing for lawyers.

The Chair: Are there any further questions from the Committee? No. Thank you for your time and services this afternoon, Mr Blackwell.

Examination of Witnesses

Tim Reardon, Robert Windsor and Richard Ballantyne gave evidence.

3.12 pm

The Chair: For the record, could you gentlemen please briefly introduce yourselves to the Committee?

Robert Windsor: I am the director of the British International Freight Association and my primary responsibility is to do with policy and compliance.

Tim Reardon: Good afternoon. I am from the UK Chamber of Shipping, which is the trade association for shipping companies based in the UK, carrying goods and passengers into and out of the country. My role there is as policy director looking after, among other things, the industry's relations with Customs and Excise.

Richard Ballantyne: Good afternoon. I am the chief executive of the British Ports Association. My role and association covers all areas of ports policy. I have to apologise: I am not a technical or customs expert, but I am here in the spirit of co-operation and to help you where I can.

The Chair: Thank you very much. Who would like to start on the Committee? Mr Mike Hill.

Q82 Mike Hill (Hartlepool) (Lab): Brexit with no deal is likely to massively increase the number of customs declarations required for transporting goods through ports. What impact do you think that will have on your members?

Tim Reardon: Our members are carriers of goods. The obligation to submit a customs declaration falls on the importer—it does not necessarily fall on the carrier, although the carrier can do it as part of the service that he offers to his customer. Our concern is that unless the process for submitting and processing those declarations does not interrupt the physical movement of the goods, then the movement of the goods off our ships, through the terminal and into the domestic market will be interrupted. Similarly, leaving the country we would want to be able to ensure that those vehicles, particularly in a ferry context, are able to drive straight through the docking gate, through the terminal and on to the ships in the same seamless way as they do now.

Richard Ballantyne: Following Tim's points, it is probably fair to say that the majority of UK port authorities are relatively calm about Brexit, but we have the operational interest. Tim alluded to the ro-ro ferry terminals, such as Dover, Holyhead, Portsmouth and many others, which provide and facilitate around 10,000 lorry movements a day between the UK and the EU. It is a substantial part of trade. The operational impact—how those customs processes will be facilitated at the border—is a big concern for a large portion of my membership.

The Chair: The witnesses are free to answer if you would like to add something, but do not feel obliged to.

Robert Windsor: My members are heavily involved in the provision of customs entries. I am sure that you have seen the figures of what the new numbers could be—they are substantial. It would depend largely on the type of customs entry—whether it was a simplified or non-simplified entry that had to be submitted at the frontier—and on how that will impact on trade.

Back in 1992, we had 125 members in the Dover area alone doing customs entries. We now have 24 members and they take care of all aspects of it. My members are quite categorically saying that we cannot go back to 1992: that would gum up the thing completely, and the impact on my members would be more staff, facilities, time taken for training, and how all that will work. There is the big impact of the re-imposition of VAT on goods coming in to the country, because if you have a duty deferment with customs, you have to fund it. The point is that you fund two months' deferment, not one. Those elements are definitely concerning my members.

Q83 Kirstene Hair (Angus) (Con): As a follow-on from that point, how feasible would it be to ensure that smaller ports, such as Montrose port in my constituency, have dedicated customs officers? Would there be a detrimental impact for these smaller ports, whether in Scotland or in any other part of the United Kingdom, if customs support was not provided on site?

Richard Ballantyne: It is a concern. You can imagine that a lot of the Government's attention is on the Dover corridor, and probably rightly so—that is where the main challenge is.

Going back to my opening statements, if we remove ro-ro for one minute, for a lot of bulk shipments—Robert may correct me if I am wrong—where there is one commodity on a shipment, there is a bit more time, and the environment is one where shipping agents are usually helping out, submitting information that then is facilitated to HMRC. We hope that either those agents or inventory linking as part of the Union customs code, which is coming forward, would mean that smaller ports such as Montrose are not disadvantaged.

There are concerns that there could be certain delays at the border—we would not want to see that, but perhaps the sensitivity at a bulk handling port or a port with break bulk is less than at a ro-ro terminal, where lorries basically want to get out as soon as possible. If they are stuck in a terminal, backlogs and queues start and the operational challenges associated with that.

Q84 Anneliese Dodds: My first question relates to the point just made by Kirstene Hair, about the staffing at different ports and the availability of HMRC staff. We have seen quite significant ongoing changes and consolidation of staff into regional and specialist centres. We have heard that the Border Force relies on those HMRC staff on certain occasions. I wonder whether any of your members are raising problems with you that might be arising due to that change in the availability of HMRC staff.

Robert Windsor: My members are very concerned about that. The Dover straits corridor is causing particular concern because it is a 24/7 activity—those lorries are coming in all the time. There have been issues with staffing at those areas. You have to differentiate between Border Force activity, which tends to be frontier, and the work done at the national clearance hub based in Salford. They provide 24/7 cover but, in air and sea, you could basically say that from about 6 o'clock or 7 o'clock in the evening there is a noticeable decline in the workload. If you put ro-ro coming in through Dover with a customs declaration, there will be less of a decline in the work being undertaken there.

It is not just Border Force that we have to consider. A lot of foodstuffs potentially could do with some sort of inspection. Even if there is a risk-based system, a certain proportion of that may still require inspection. Multiple Government agencies at a national level and a local level will face this impact. It will have an impact on my members because you will require more people to work in what is regarded as an out-of-hours situation. That will have a considerable impact on costs.

Q85 Kirsty Blackman: Anneliese has stolen my thunder slightly. Clause 31 opens up the possibility of the UK going into a customs union with other territories—let's say it hypothetically goes into a customs union with the EU. Would that be a better outcome and increase the likelihood of frictionless transport?

Tim Reardon: From our perspective, it would depend on what the nature of the customs union was—whether it provided for goods to move freely between the UK and the EU without any form of declaration, or whether it related only to customs fiscal controls. For example, if the agreement did not also cover animal and plant health standards, you would end up with a significant chunk of the traffic still being controlled. Only stuff that did not contain foods or anything like that would be within the scope of that customs union agreement.

Clearly, if the effect of any agreed union was to replicate the existing arrangements, we would expect no disruption to the movement of goods, but to achieve that it would need to be a very broadly drawn union agreement that extended beyond purely customs fiscal issues.

Richard Ballantyne: I run an association. We are not a political organisation, so we took no side in the referendum. Statements such as, "We think the UK should or should not be in the customs union" are difficult for me to make. What I would say, which is a bit of a cop-out, is that we are looking for a deal that might be able to secure as many of the current benefits that we have through customs union membership as possible. That is a basic, raw point for us. It is all about trade facilitation, so any kind of arrangement that continues the frictionless transport of goods between the EU and the UK is essential. That is felt most at the roll-on, roll-off ferry terminals that we have mentioned.

Robert Windsor: BIFA's position is always that we should maintain something as close to the present arrangements as possible. That would be a customs union that is as close as we can possibly get.

That is important for two reasons. People tend to focus on import work, but we venture that exports are actually more important. If we can have an agreement that the EU27, as they will be, find acceptable, we feel that that is important. That gets particularly important when you put a truck into France. If you have an accepted agreement, it can pass through other member states. That is one of the things we are concerned about. If you have a shipment going from here to Poland, for instance, it may have to transit two or three member states. We think it is very important to have something that would permit that. My colleagues are absolutely right that it is not just the fiscal stuff; it is all the agreements that are not in it about access to the market, truck regulations and all those sorts of things.

Q86 Kirsty Blackman: You have all mentioned Dover, but nobody has so far mentioned the ports in Wales, for example, where there is an awful lot of movement between Wales and Ireland. Is that also a concern?

Tim Reardon: It is very much a concern. Dover has by far the biggest number of vehicle units entering and leaving the UK. It is the biggest gateway to the UK—2.6 million trucks passed across that terminal last year. That compares with, for example, 750,000 between Dublin and Holyhead and Liverpool collectively, or 750,000 across the north channel between Northern Ireland and Great Britain. There are big flows out of the Humber and the Thames, but we tend to use Dover as a shorthand because it is where the problem is. It is the UK's biggest gateway for roll-on, roll-off freight.

Q87 Chris Davies (Brecon and Radnorshire) (Con): As it happens, the Welsh Affairs Committee is visiting both Dublin and Holyhead in two weeks' time, so I shall look forward to chatting to your members about those concerns. For those of us who are slightly uninitiated with the ports' authorities and the way that the ports work, would one of you give a very brief overview of the differences between accepting a ship coming into this country from the EU and one coming from outside the EU at present, and how long it would take, differentially, time-wise, for a ship from outside the EU and one from inside the EU to dock and go through the procedures?

Tim Reardon: Certainly. There is not a straightforward comparison because, by and large, the types of ships that come from our near neighbours are different from those that come from further afield, but in principle a vessel arriving from one of our European neighbours needs nobody's permission to come here because its movement is free. The port to which it goes does not need to have approval from anybody to handle it, because it falls within the scope of free movement within the European Union. In theory, the ship could pole up anywhere around the coast and do what it wanted to do. In practice, of course, it goes to a place that has facilities to handle it. Just as the ship is free to come and go as it pleases, so the goods and vehicles on board are not subject to control and can drive straight off the ships ramp, through the terminal and out through the dock gate, unless one of the control agencies has intelligence that leads it to want to make an exceptional intervention in that movement.

By contrast, a vessel coming into the UK from outside the European Union can arrive only at a port that has been approved by Her Majesty's Revenue and Customs to receive traffic from outside the European Union. It is required to tell Revenue and Customs that it is unloading cargo on to the quay, and to tell it what that cargo is. That cargo is then not permitted to leave the confines of the port until Revenue and Customs has given permission for it to go. You have a contrast between essentially a completely free arrangement, as you would have for any domestic traffic—a ferry between Hampshire and the Isle of Wight, for example. Traffic goes, the ship goes, and there is no intervention on it anywhere unless the police have a reason to stop it. Compare that with an international arrival from outside the European Union where every single stage requires somebody's permission.

Q88 Chris Davies: Subject to HM Revenue and Customs being efficient, it should not take that much extra time to get a ship unloaded?

Tim Reardon: The process of unloading—

Q89 Chris Davies: Going through the system basically, not just unloading.

Tim Reardon: Our real concern—I will take Holyhead as an example—is that the ability to discharge the ship depends on a flow of traffic through the terminal. There typically is not space in any ferry terminal to discharge a complete ship, park its traffic there and reload it. The terminal's ability to handle the traffic is

predicated on the traffic flowing continually through it. As soon as that flow is interrupted, you end up with the backlog that Richard mentioned a moment ago, and the whole process is slowed.

Q90 Chris Davies: If and when we set up free trade agreements with the rest of the world, will the ships come in and receive the same treatment as if one was coming from Europe at the moment?

Tim Reardon: It would depend on what the agreement said, but on the experience of ones that exist elsewhere, that is extremely unlikely. The effect of a free trade agreement tends to be to reduce, perhaps to zero, the customs duty that an importer has to pay. It tends not to make a material difference to the administrative process of getting that unit across the quay.

Richard Ballantyne: My members would be relatively calm about free trade agreements, actually. I thought when we had the vote, and in the time after, that a lot of ports would be getting concerned about potential tariffs on a lot of commodities. There are one or two high-profile exceptions where there are relatively high tariffs, such as the automobile trade—new cars and trade cars—but a lot of the trade and the ports are reporting that tariffs are relatively low. As, operationally, they are collected away from the border—they are not a condition of entry—they are not seen as a direct issue for port authorities. Obviously, if they have an impact on trade, ports will be interested.

Just to bring up a very general point, you may find it useful to know that roughly 500 million tonnes of freight is handled at UK ports. That is 95% of UK international trade. About 20% of that is roll-on, roll-off ferry traffic, which by definition and by its nature is overwhelmingly—99.5%, I think—with other EU ports. Then you have the container sector, which accounts for about 10% or 11% of tonnage and is probably about 70% from third-country sources—countries outside the EU. The other big area is bulk commodities—liquid bulks and dry bulks—which, from memory, account for about 40%.

Q91 Nic Dakin: When the Home Office had its e-border thing, it appeared to fail through lack of engagement with key partners. How much engagement have you had with HMRC on the new CDS system? Are you confident that it is getting to the right place?

Robert Windsor: I will take the lead on that, because the freight borders are heavily engaged in this. CDS has been an ongoing project for about three and a half years. Customs did quite a lot of research with industry on what its requirements were. They have been doing a development stage, which, I have to be honest, is highly technical and way beyond anything that I can understand, although software suppliers and the community service providers have been part of the technical workshops on it. They are now starting to talk directly to us and, as a trade association, we are receiving quarterly updates on the project. I really do not want to comment on whether we think it is going to succeed or be delivered on time, because at the moment it is still under development. Part of the problem that they have, which is not of the team's making, is that some of the data elements are still to be defined within the Union customs code, such as the format of a unique consignment reference. That matter still needs to be resolved.

Richard Ballantyne: This is a technical area, and Robert and his colleagues will be concentrating on that, but all three of us sit on the Joint Customs Consultative Committee, which is HMRC's main stakeholder committee, and there are opportunities to get briefings on CDS. I feel personally that if we want the information, it is there.

Tim Reardon: What I would say on CDS is that it is an importers and exporters system. As carriers, we have very little interface with it, but our engagement with Revenue and Customs has been constant and continual since the referendum result, when it became apparent that there was a significant new element of uncertainty about whether the 40% of the UK's international trade that arrives and leaves in trucks on ferries was going to be able to continue doing as it did.

Richard Ballantyne: Yes, at a very general level, ports touch many Government Departments in terms of policy regulation, and of all the Departments, HMRC has been the most forthcoming since the referendum. The amount of engagement has been quite unprecedented. That is not necessarily to speak negatively about the other Departments, but HMRC has really taken the lead.

Q92 Peter Dowd: I want to talk about the Joint Customs Consultative Committee. I understand that you are all members. How often has it been convened in the past year, for example? Are there any plans to increase the regularity of its meetings in the run-up to Brexit? What sorts of things have you been discussing at those meetings—maybe the last two or three, for example?

Robert Windsor: The Joint Customs Consultative Committee meets three times a year, and it covers areas of strategy that are impacting on importers, exporters, freight forwarders, shipping lines, whatever. Since Brexit, the JCCC has established sub-committees specifically dealing with Brexit as an issue and that group, if I remember correctly, meets about four times a year.

The Chair: Before we go too far down a route that is not to do with this Bill, I hope that you can get your remarks back on track. I know you are answering Mr Dowd's question, but the discussion seems to be somewhat off the message.

Richard Ballantyne: This Bill, this legislation, will be considered by that group.

Q93 Peter Dowd: I am trying to get to the heart of this. It is absolutely important to the Bill, to be frank, Mrs Main, because it is about the consultation on the Bill via that particular body. That goes directly to the heart of the ability to tease out those discussions that are taking place and how they have informed the Bill. I am trying to tease out from our witnesses the extent to which they can engage with the Bill and help to form it. I will come on to a question or two to tease that out a bit further.

Robert Windsor: There was consultation about the White Paper but there has been no consultation about the actual Bill as it has come out.

Tim Reardon: The clauses of the Bill were not exposed to consultation at all before the Bill was published, as far as I am aware, and certainly not through the forum of the JCCC.

Richard Ballantyne: No—we are all on circulation lists so we get the information directly but, as you both say, it has not been formally considered, although part of that is because this has been quite a quick process. When we had the proposals to update CEMA—the Customs and Excise Management Act 1979—which I think was four or five years ago, there was time and consideration at the JCCC, so perhaps we had a better experience last time .

Q94 Peter Dowd: May I follow through? Mr Reardon, you say in your views on the Bill—there is a bit of a preamble, but it is important to get this in:

"The Government's White Paper…outlined an intention to apply a requirement for the goods in such vehicles to be declared prior to shipment so that, on arrival in the port, they can pass straight through in all but exceptional circumstances".

You go on:

"Schedule 7, paragraph 28, appears to create powers for such an arrangement but is expressed in notably vague terms: their practicability will depend absolutely on detail that is absent."

How significant is that at this stage, given that we are 15 months away from Brexit? When do you think that you will actually need the detail, especially in light of the fact that you have not been consulted on the Bill in the first place?

Tim Reardon: We would have liked it about four years ago, to be honest. The Bill—that particular paragraph in the schedule—provides for the concept that nothing may be shipped unless the vehicle operator has checked that a declaration has been put in. As a concept, that is unobjectionable, and it has the potential to work, but the devil is entirely in the detail.

Who will the vehicle operator be deemed to be, for example? The Bill widens the definition of a vehicle beyond what anyone in this room I would imagine understands a vehicle to be, so it is no longer simply a thing on wheels but a ship maybe, a train or an aircraft—all of those fall within the scope of "vehicle". The vehicle operator is any one of those parties in the chain. What is the process by which that business will be required to establish that something has happened? All of those things are critical details to work out whether the thing can work or not.

The issue for us is that it is impossible to tell purely from the powers in the Bill that we will end up with a system that works. We might, and I have absolutely no doubt that everyone's intention is to create a system that works, but it is impossible to say on the basis of something that is as vaguely drawn as the Bill that it will work. If this is the sole stage of the process where any scrutiny is applied, then clearly one has to take a great deal on trust and faith.

Q95 Peter Dowd: You said, partly jokily, that you would have liked it four years ago, but in practical terms when do you think it will be? I must ask the question again. Given that there are 15 months to go before the button is pressed so to speak, when would you reasonably expect to be consulted on the detail, basically? At what point do you think it would be reasonable for you to be consulted within the next 15 months in practicable terms?

Tim Reardon: To be honest, the answer depends on how different where we end up is from where we are now, because what takes time is changing of business processes, construction and reprogramming of IT systems and—worst-case scenario—civil works in terminal infrastructure development. All those things have lead times. How long the lead time needs to be depends entirely on what it is you are trying to do and how much you are trying to change from the current practical reality. Until we can define how different the end state is from where we are now, then—to be honest—it is impossible to put a timeframe on how long it will take to get there.

Richard Ballantyne: To follow on from that, all three of us were at a meeting this morning on border processes and so on, and one of the things we were talking about is the fact that the operators—the port operators, the carriers, the customs providers and other specialists—will not want to make any investments until they know exactly what the detail of the deal is and when that is firmed up.

The Chair: I call Kirsty Blackman. I am aware the Minister responding to the debate in the Chamber is on his feet, so we may well be interrupted for a vote; it will be up to the Committee to decide whether it wishes to resume with this panel after the vote.

Q96 Kirsty Blackman: Are there ports that have space for lorries to be stacked up, if you like, after they come off the boats, or is that a utopian land that we do not yet see?

Richard Ballantyne: Not easily, but some will have slightly more space than others, and they may have facilities down the road that could be turned into use. We hope it does not come to that. We are working with Government to push forward some kind of arrangement that is not conditional on checks that cause such delays. That is not good for freight, or for prices of goods and products, and things that manufacturers use, and things that end up in shops.

Q97 Kirsty Blackman: We heard earlier that some suppliers are leaving their supply chains, for example, in order not to have to go through a border process, particularly for things that come in and then go out again from the UK. Are you seeing that from people and organisations that you are in touch with, or is that just an "out there" thing that is not really happening very much?

Tim Reardon: We hear a lot of talk about it, but I think on every route that has published its traffic stats for last year the freight volumes have risen from what they were in 2016. First, of course, that is a national success story; it is an indication of economic health. It is great for all the businesses that we all represent, which handle that traffic, but of course it means that the system overall is increasingly full. There is not a great deal of spare capacity cumulatively across the UK.

The issue is more than just space on the terminal. The road network serves two or three main gateway points into and out of the UK. There needs to be a really good-quality landside connection from the terminal, to enable it to flourish; it needs more than just space on the berth. It would be very, very difficult to flick a switch and say, "Actually, the traffic will go somewhere else".

Richard Ballantyne: Towards the end of last year, there was a new direct service from Zeebrugge to Dublin for roll-on roll-off traffic, and there was a lot of noise about, "Look! That's a consequence of Brexit", but

when you actually looked into that investment, it was probably made before the referendum. There may be people looking at further direct calls from the Republic of Ireland to continental Europe, but as of yet we have not seen them.

Robert Windsor: Many of my members are multinationals —European-based forwarders. I know that there are discussions about this issue, which is inevitable given the situation, but we have not seen anything move yet, as such. What we are receiving is a lot of inquiries from European-based freight forwarders with no UK base who are inquiring whether they can establish in the UK because they obviously see an opportunity the other way round.

Richard Ballantyne: The warehousing industry is looking at potential new sites because they see that there could be further interruptions to trade flows, where they would need more storage.

Q98 Anneliese Dodds: I have a question related to what happened back in 2015 with the first major Operation Stack problems in Kent. They were not caused initially by developments on the British side; it was due to problems on the French side. The capacity issues on the French side were very relevant. To what extent are you aware of activity happening in our partner ports to prepare for a no-deal scenario? Are you discovering that talking to your colleagues in other countries? Are you aware of the UK Government doing anything to promote that preparedness?

Richard Ballantyne: The British Ports Association is part of the European Sea Ports Organisation, which has a meeting tomorrow on Brexit that I am going to. It includes some of the main UK-facing ports, such as Dublin, Zeebrugge, Calais and beyond. It has been quite difficult. Some of those ports are state-owned, and it is quite difficult for the UK Government to talk with them, although there have been a number of information-type visits looking at customs arrangements as they are and what the operational situation will look like post-Brexit. We have good conversations.

In terms of what is going on with the customs authorities in those countries, it is varied. There is a French customs taskforce—that is an internal taskforce—that I think the ports there are plugged into. I went to see the French ports association to talk about Brexit, and it seemed on top of things, but it is a difficult one. There is a lot of mystery there. Just as the UK Government cannot divulge all the discussions they are having, the ports cannot divulge everything to us. They have to remember that negotiations are being led through the European Commission, so that is the correct avenue.

Q99 Peter Dowd: On the point of infrastructure, which you raised before—interestingly, you raised a point about state-owned ports—our ports are fully privatised. That makes it more difficult in a sense for the Government to control their development, which is understandable. Have you got any evidence that the Government have taken proactive action to improve the infrastructure around the ports in the light of the potential challenges you are facing? I say that as a Member of Parliament who has a pretty big port in his constituency.

Richard Ballantyne: As you know, the ports industry in the UK is market-led and market-driven. We have three types of port: local authority-owned ports, which operate on a commercial basis in competition with private ports; full private sector ports, or equity ports; and the trust ports, which are Dover, Aberdeen, London and so on, and they are still run on a private basis and pay corporation tax on any profits they make. Significantly, all of them are financially and strategically independent of Government decisions. That has worked. Effectively, the Government have delegated the authority to run the ports because they understand that you need technical experts to manage such things as safety and the commercial arrangements.

In terms of what is going on at the moment, the Government do influence the connections to ports. Ports have publicly owned road and rail connections. Following a lot of lobbying from my association and others, the Department for Transport is undertaking a port connectivity study, which is not about spending any money on connections but about assessing the state of the road and rail connectivity of the UK ports industry, and how we get ports more on the radar when big investment decisions like the road investment strategy and rail strategies are made and Treasury spending budgets are allocated. It is about us, perhaps, rising up. There has been a lot of big-ticket passenger-focused spend, such as HS2, Heathrow and Crossrail. Freight has felt a bit of a poor relation. We are working to improve that, but unfortunately freight does not vote, so it is a challenge for us.

Q100 Emma Hardy: I am so delighted that you said that. I am completely biased, coming from Hull where there are major problems with port connectivity. Is that something you have already given recommendations to Government on, or is it something you are working on now?

Richard Ballantyne: The Department is considering a lot of feedback from the ports. I know Sir John Randall, a former Member of this House, oversaw that as an independent chair. The officials are now working on the final detail. I hope it will make a number of recommendations, and it should be out within the next month. As I say, I think Sir John went to visit Hull.

Emma Hardy: He probably got stuck on the way there. That is good news, thank you.

Q101 Peter Dowd: I want to ask a question, Chair, but I am conscious of the interruption that may come. This question is specifically to Mr Windsor, on the information you provided to us. In that document you said,

"It has been commented that the Bill is not as precise as Members would have hoped for"—

I suspect you were a diplomat in a different life—

"in terms of either the areas covered by the legislation or in certain cases the powers vested in the authorities. Also from our understanding this document will have to be read with other documents such as CEMA and secondary legislation which still has to be written which has the potential to cause confusion and thus perhaps hinder compliance from Trades perspective."

To what extent will compliance be hindered? How extensive, how comprehensive, how problematic will that compliance be?

Robert Windsor: It is always more difficult where you have more than one source to draw the compliance requirements from. One of the things that my members have been used to are the codified laws and regulations

that have come from Europe, in particular customs codes and things like that. They got more complex as time went on. Basically, there was a single point of reference, so people would go to that and at that point they would pretty much know what was written, how it could be interpreted in different member states—*[Interruption.]*

The Chair: Order. We will have to have 15 minutes' suspension and return after the vote.

3.52 pm

Sitting suspended for a Division in the House.

4.9 pm

On resuming—

Examination of Witnesses

Gareth Stace, Ian Cranshaw and Dr Laura Cohen gave evidence.

The Chair: Order. We are quorate. As has been explained, Mr Stace is giving evidence at another Committee and will be joining us somewhat later. We will now hear oral evidence from UK Steel, the Chemical Industries Association and the British Ceramic Confederation. This sitting will finish at 5 o'clock. Can I ask the witnesses who are here to introduce yourselves for the record?

Dr Laura Cohen: I am Laura Cohen, chief executive of the British Ceramic Confederation. I also chair the Manufacturing Trade Remedies Alliance, a group of seven manufacturing associations, three trade unions and the TUC with an interest in trade remedies.

Ian Cranshaw: Good afternoon. I am Ian Cranshaw, from the Chemical Industries Association. I am the head of international trade and the head of business development.

Q102 Peter Dowd: For the benefit of the Committee, can you briefly explain the current trade remedies in place and managed by the European Union?

Dr Laura Cohen: The EU has a number of trade remedies in place, the transition of which is being considered by the Department for International Trade at the moment. In the ceramics sector, which I am probably best placed to talk about, we have two measures in place, in tableware and in tiles. These are EU anti-dumping tariffs against Chinese-manufactured products. In tableware, until 2004, Chinese imports had been fairly steady, at around £20 million a year. They then rocketed to £160 million a year. The anti-dumping tariff was introduced in 2013. The Chinese imports have held steady, but even that has allowed our members to stabilise and invest, and employment has increased by 20% to 5,000 UK jobs since 2013.

On tiles, there were about £2 million to £4 million of imports in 2004, and that increased pretty rapidly to £30 million. Anti-dumping duties started in 2011, and they have now fallen back to about half that. Please note, we have just had a renewal in Europe of the measures, on 22 November 2018, following an expiry review. The dumping margin had increased during that period. UK manufacturing employment has increased by 40% to 1,000-plus UK jobs since 2011, so that is good news for UK jobs, but both measures really benefited the UK supply chain, not least the kaolin and ball clay industry in Devon and Cornwall, which employs about 1,500 people. That is part of the 2,500 jobs in the materials supply section of our membership.

Just to bring this example to life, the Minister, Mel Stride, met British Ceramic Tile in his constituency, which has about 400 manufacturing jobs, last week, and it reinforced the message. The Minister also has two Imerys clay quarries at Newbridge and Ringslade in his constituency, which supply the sector.

I just wanted to point out something about the renewal. The Chinese spare capacity increased between 2011 and 2016 by more than four times the entire European Union consumption. The European Commission was very concerned by this development. The extra capacity is propped up by state distortion. I do not say that lightly, because the evidence is quite clear. In December 2017, the European Commission produced a report on the Chinese economy which found gross subsidies and state interference in the manufacturing industry. I quote from the report. The first parts show:

"The overall picture that emerges concerning the framework in which economic activity takes place in China is one where the State continues to exert a decisive influence on the allocation of resources and on their prices."

The second part of the almost 500-page report says:

"The analysis shows that the allocation and pricing of the various factors of production is influenced by the State in a very significant manner. The third part…examines a number of sectors. These include steel, aluminium, chemicals and ceramics. The sectors have been selected because they are the ones that have featured most in the EU's anti-dumping investigations since the conclusion of the Uruguay Round. Taking the perspective of individual sectors allows a closer look at the specific rules and dynamics in that sector, but this examination also echoes the findings in the preceding two parts, i.e. the significant distortions resulting from the specific features of the Chinese economy and those found in relation to the various factors of production."

The report noted that the State Council in China combines the implementation of the belt and road strategy, to actively conquer markets such as Europe. Therefore, anti-dumping remedies are there when competitors do not play by the rules.

The Chair: That was a very comprehensive answer. I hope we can condense further answers slightly.

Q103 Peter Dowd: It sets the scene and gives really good context to my next question. Can you explain the importance of strong trade remedies and the difference between having those strong trade remedies and what some might call "protectionist measures"? Can you give the Committee a feel for that? It has been touched on today that, somehow, if you have remedies it is protectionist.

Ian Cranshaw: I may not go into the same detail that Laura did—I am sure I will receive some encouraging signs.

Just looking at some of the bigger numbers so that we all know how many trade remedies we are talking about, I think the EU has something like 130: 50-plus in steel alone; 27 in chemicals; and I think Laura mentioned a couple in ceramics. Again, you need to drill down and understand what the UK's standing is in those 27 in chemicals across Europe. I believe there is just one where we have gone out, and I know there is a call for

evidence by the Department for International Trade of all UK standing in all of the wider remedies in place. That puts it into context.

Again, I would hold my hand up and say that we are all on quite new ground in this area, apart from UK Steel, which has been incredibly active over the past couple of years. I held a roundtable with some member companies a year ago and got all of the major players in the UK chemical industry. That is interesting, because more than 70% of UK production is by companies headquartered overseas—so that was not necessarily UK companies.

It was very interesting that, when I talked to one of the German companies about trade remedies and trade defence instruments—I will not mention the name, but you will probably work it out—its perspective was, "Well, we have no trade remedy experience or personnel in the UK at all." Nor did the trade association. We have happily contributed to EU development of policy, but actually, in leading on this, we had no expertise.

The German company pondered for a moment and said, "Actually, if in the future we had to raise a trade issue with the EU—us accusing it or it accusing us of dumping or subsidy—the UK transplant would have to ask our headquarter operation for advice and policy in the expertise in which to raise a concern or complaint to the WTO." That was quite interesting. I am not sure if I answered the question, but that was a specific example.

Q104 Peter Dowd: Okay. Let us try to tease that out, because that touches on something Dr Cohen alluded to. Let us try to get the difference between what you consider to be a remedy and protectionism. They are becoming interchangeable in some people's minds.

Dr Laura Cohen: A remedy is addressing unfair competition when overseas manufacturers are not playing by the rules. The ceramics industry and the tiles industry, such as in the Minister's constituency, has invested very heavily in state-of-the-art, energy-efficient manufacturing with digital printing technology. Given a level playing field, it can take on the world. All we want is a level playing field, and trade remedies allow us to ensure we can get that free trade.

The Chair: Before we go any further, I would like to welcome Mr Gareth Stace, director of UK Steel. I know that you have been very busy on another Committee, so I am glad you have joined us. Do you want to come in on this? You got the drift of the question.

Gareth Stace: Yes. Apologies for arriving late, and thank you.

I would like to look at it from a different angle in terms of using what is the trade remedy and what are protections. The steel sector thrives on free, liberalised trade. A third of all steel produced in the world is traded across borders. We actually have zero tariffs—that is, zero customs tariffs—for steel between developed countries. What does that do? It enables us to be even more liberalised in our free trade. Trade remedies is a safety valve to enable that free trade to take place. I would say that, without trade remedies, we will actually see a rise in protectionism—it is not that with trade remedies we will see a rise in protectionism. Trade remedies allow for free trade to take place; it is not the other way round.

Ian Cranshaw: Within the Manufacturing Trade Remedies Alliance, which we are a member of, we actually do not use the phrase "protection". There is a global rule-kit of trade, and all we are asking for is that people play by those rules and, if they do not, remedies come in. I was here listening to some of the earlier evidence and there was a balance of the consumer or the producer. Our view has always been that it is in the interests of all parties that inappropriate trade practices are removed—just play by the rules.

Q105 Peter Dowd: What assessment have you made of any trade remedies outlined in the Bill, or that you might be aware are going into the Bill, and their effectiveness to combat the dumping of goods from countries with heavily distorted economies?

Dr Laura Cohen: We have three major concerns with the Bill that we think, taken together, will give much lower duties than the EU, and that will attract dumped products from around the world. Those three main concerns at a high level are: first, the measurement of the dumping margin—the calculations and the methodology—particularly where there are distorted economies, and the absence of a methodology in the Bill; secondly, the combinations of various economic interests tests and public interests tests, and I will go into more detail on those; and thirdly, this lesser duty rule, and that is very much an alliance position. Overall, the effectiveness of trade remedies depends so much on the detail of the legislation that is completely absent in the Bill.

Much detail may be in secondary legislation eventually, as we heard from the Hansard Society, but that may be without much parliamentary input: it is likely to be a negative procedure. Even worse, much may be in guidance written by officials with hardly any parliamentary scrutiny at all. Important changes going through the European Parliament and the EU in trade remedies legislation have had extensive scrutiny, and important amendments have been made by MEPs and ex-MEPs, often working across parties. We need a similar level of political oversight in the UK system, but to do that the Bill needs alterations in those three areas. We are concerned because businesses, jobs and investment are at stake. I can go into more detail on those, or my colleagues can.

The Chair: We have quite a few questions, so maybe somebody can come back to you on that point if they need to. Mr Stace, did you wish to come in at this point?

Gareth Stace: There is a lost opportunity in the Bill in terms of looking at what is happening in the EU, which Laura has highlighted, particularly on changes that are taking place at EU-level on how it tackles the lesser duty rule—the UK Government have firmly said, "No, we are not going to follow that; we are going to do something different"—and how it treats non-market economies or economies that subsidise their industries. The Government are saying, "Yeah, we will follow that," but because the detail is not really there, as Laura said, are they going to follow it to the letter, which would be great, or just broadly in principle? That is that whole thing of everything—I am sure you had already heard that before I arrived.

The problem with this Bill, and also with the Trade Bill, is that the proof will always be in the pudding. The Government can promise anything they like, but more than a third of all tariffs in place affect the steel sector and it hits us hard, therefore, if this system, when it

comes out, is not appropriate for what it is trying to do. That is why we, in this primary legislation stage, are putting that in so much detail. Why are we doing that? Because we just do not know whether it will be in the secondary legislation or the guidance. That is not our fault; we have to set out our case in full now, at this stage. If the Government said to us, "Honestly, trust us completely and utterly. It will be in secondary or it will be in guidance, to the letter of what you are asking for," then great, but at the moment we are sitting here very much in the dark. When we talk about day one from when we leave the EU, is that day one next year or day one in 2021? We do not know. If it is next year, we should be planning right now for doing something very different very soon.

Ian Cranshaw: One of the issues is the fact that these things cannot be rushed. We know that they are very complicated. The trade defence instruments modernisation programme in Europe took more than four years, and that is just in modernising a regime that has been in place for 40 years. One of the important concessions we got out of the EU somehow in the chemical sector, which we refer to as an enabling industry or a foundation industry, was about the importance of raw materials. On raw materials, the EU said, "Okay, if the raw material cost is 17% of the overall product cost, we will take in the raw material cost because we are aware of distortions that take place across many markets."

We have one UK producer, which is specific in the UK, for which the energy cost is 40% of the total costs of the individual company, so it is hugely important. Its remedy is against Russia and gas coming out of Russia. Russia not only subsidises that industry, but does not observe the same environmental standards as we do. It has had every opportunity to do so, but it does not. There is a wider responsibility at play and that goes back to the comment earlier about it being in everyone's interest to get this right.

Q106 Kirsty Blackman: I have two questions. On the first, I am quite happy with a one-word answer if that is how you feel. Do you feel that the balance between primary and secondary legislation is right in this Bill?

Gareth Stace: No.

Dr Laura Cohen: No.

Ian Cranshaw: No.

Q107 Kirsty Blackman: The other one is about the trade remedies that are in place. On the trade remedies that we have by virtue of being a member of the EU, is it your view that they will definitely roll over and continue to be applicable, or is it your view that they might be challenged when the UK leaves the EU and is no longer part of that kind of conglomerate which has put those remedies in place? I have heard conflicting evidence and information about that.

Gareth Stace: Those remedies might well be challenged, in the sense that anyone can challenge anything, but that does not mean that they should not be rolled over. It is our firm view that the UK Government can roll over all the remedies that are applicable to the UK within World Trade Organisation rules, and we have set that out very clearly to the UK Government.

We have heard lawyers. I gave evidence to the International Trade Committee, and there was a lawyer saying that it could not happen, but when we explained it to her she thought, "Ah yes, actually it could happen." We need to remember that if they could not roll over from the EU to the UK because the calculations were wrong, because it is just the UK and not the EU, they would also all be invalid in the EU, because they are based on 28 member states and there would be only 27. I think they can easily roll over and will then be reviewed when those cases expire after five years.

Dr Laura Cohen: In our association, we appreciate the way in which the Department for International Trade is going about the consultation at the moment, just checking UK interest. Certainly, we are gathering evidence from our members on tiles and tableware, but the consultation is also forcing us to check the three or four other sectors where we think there could be some UK manufacturing interest. That is particularly in the technical ceramics and refractory areas, which are quite diverse and complex, and we need to take enough time to explore those properly.

Q108 Nic Dakin: How does the UK's proposed system of public and economic interest tests compare with elsewhere, and are you happy about the proposals as they currently are?

Dr Laura Cohen: I want to explain that the EU uses a Union interest test as a sanity check, to balance the possible conflicting interests of member states. The wording of the rules around that test are crucial. For example, in the tiles renewal that I just talked about, the *Official Journal* text says:

> "In weighing and balancing the competing interests, the Commission gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition."

It is essential, if the UK is doing that sort of test, that such clarity of purpose is in the Bill that you are considering. It is not at present.

I would argue, as my colleagues said earlier, that addressing dumping is always in the long-term consumer interest because it restores a competitive market. We would expect the Competition and Markets Authority to take strong action if UK companies were not playing by the rules. In the absence of international competition laws, strong trade remedies are the best we have. The EU is only one of five countries or areas out of 32 main anti-dumping users in using that type of test. In Brazil and Canada, it is a conditional test used in certain circumstances only.

What is the UK proposing? First, I want to state that the WTO does not require a public interest test. It appears in the Bill as if the UK is proposing something very new to replace the Union test. That seems to run counter to the principle that global free trade cannot mean trade without rules. As some of the previous witnesses said, three opportunities are provided to stop remedies against rule breakers. The text in the Bill suggests the three stages, the first of which is an economic interest test by the TRA. The research commissioned by the Department for International Trade strongly hints that that may contain a cost-benefit analysis and/or an economic model. No other country uses that approach. The USA tried it and stopped. The Union interest test is just a sanity check. Secondly, if the Secretary of State does not like the result by the TRA, he or she may overrule it with their own economic interest test. Finally, that may be overruled again by the Secretary of State's

public interest test. A recent article in *The Telegraph*—we can provide a link if the Committee wishes—alluded to the implications of a potential UK-China free trade agreement and inward investment being weighed up in such a test. If true, that would be highly alarming.

Those second and third tests are not carried out in the EU. They add a lot of uncertainty to the process, particularly with a very unclear presumption at present in favour of adoption of duties in the Bill text. No wonder some UK manufacturers are scared witless by this. I think you heard similar emotion from the unions. Manufacturers have enough uncertainty around Brexit to cope with, without the fear that if they bring a case, despite dumping and injury being found there will be three chances for that ruling not to be implemented, and they might have all sorts of legal challenge. We heard this morning that the Bill is not even clear if we can do that.

Q109 Mel Stride: Thank you very much. It is very good to see you again—I know we had a very recent meeting, Laura. Just for clarity, because I do not know whether this suggestion was being made or not, from the Government's point of view we do not equate sensible, proportionate trade remedies with protectionism at all. We see the value of those, just as everybody else on the Committee, and indeed yourselves, does.

Can I just go into the area of the lesser duty rule in a little more detail? To the extent that the lesser duty rule functions as proposed, and it does provide remedy for injury caused through dumping to those producers who have been affected, why would you want to go further than that in terms of a potential remedy? Why would you want to go beyond that particular threshold? The argument from consumer groups is that that will then start disproportionately to damage consumers and those businesses that use those imports within their own production processes.

Dr Laura Cohen: I am going to let Gareth answer first. Then I will come back and refer to what the unions were talking about; I have some evidence from the alliance.

Gareth Stace: It seems that we are constraining ourselves in the UK when we do not need to. One of the aims of Brexit was to strip things away, make things more simple and have fewer people employed working on these things; much of what we have seen in both Bills seems to add layer upon layer that is probably not needed. The lesser duty rule is used quite a lot in various different regimes, but it is not used in the US at all. We want to create strong links with the US in terms of trade, so that seems a bit odd.

We could say yes, but I could not tell you that if we did not have the lesser duty rule, we would have seen less dumping in recent years. The lesser duty rule has not meant that new cases did not stop dumping. The point I would like to make is this: we are always told that the lesser duty rule ensures that the consumer is not ripped off—that prices do not rise significantly because tariffs are imposed at too high a rate.

I have an example. In the hot rolled coil case recently—hot rolled flat is used for car bodies and washing bodies, but I am using the example of the car—the injury margin was 17.5% and the dumping margin was 29%. That is a difference of 11%. So the 17.5% was applied, not the 29%. If we think of a luxury car that cost €45,000, because this is a European example, if the lesser duty rule was not applied in this case, it would increase the value of the €45,000 car by €16. We are not suddenly going to see runaway costs and the poor old consumer having to pay lots and lots more. We are going to have a robust system that ensures that we have free liberalised trade continuing as a safety valve. In that case, it increases the cost by €16 on €45,000.

Q110 Mel Stride: Specifically, what is the justification for going beyond in your trade remedy measure that which puts right the injury to the producer? What is the argument as to why you should go even further still?

Gareth Stace: One of the things that we were talking about right from the beginning of this process was that calculating the dumping margin is a really easy process. It can be done fairly quickly. It does not need a lot of people to do it and does not need a lot of work from industry and the Government. Calculating the injury margin does. It is a bit of a black box—you do not know what is going to come out of it—whereas the dumping margin is very transparent.

We said right from the beginning that if you have a clean sheet of paper, why not just go for the easiest and quickest system, so that you could get provisional measures in place very quickly? In the US, they get them in in 45 days, whereas in Europe until very recently, it has been after nine months. There is a really good opportunity to do that. I am not sitting here saying that we have to have 29%, not 17.5%—the point is that it is not a huge difference.

If the Trade Remedies Authority did the dumping calculation and then said, "Well, actually, it is 29%; we think it could probably be effective at perhaps a bit less," it has the flexibility to do that—you would have the economic interest test and the public interest test to weigh that up—rather than having a fixed system that says, "I do not care what the dumping margin is; we are going to ignore it and are only going to go for the injury margin."

Mel Stride: May I be allowed one final question?

The Chair: Mr Cranshaw wants to come in at this point. I have five or six other people who want to ask questions. I ask Committee members to make their questions as condensed as possible, but still factual. I call Mr Cranshaw.

Ian Cranshaw: The chemicals sector exports a massive proportion of our product. We are an import-export business, so free trade is something that we have always encouraged. We are free traders: 60% of our product goes to the EU, 75% of raw materials come in—it is products that cross borders multiple times, and integrated supply chains. We do want that. Sorry, I had not actually got to my point. Can I come back on that?

Dr Laura Cohen: I want to support what Gareth said. These are subjective and time-consuming calculations. As we heard from the unions, these will require stipulating what profits industries should make. They can only underestimate injury because they do not cover, for example, whether there is a general subsidy in the country that is doing the dumping.

It is not compulsory in the WTO: only nine out of 32 main anti-dumping—AD—users have them. Australia and, imminently, the EU will have conditional use. The UK has no such provision and is not even thinking

about pasting it into the Bill. Out of 32 main AD users, only three—the EU, the Eurasian Economic Commission and Brazil—have both a public interest test and a lesser duty rule. The EU is moving to a conditional lesser duty rule, and Brazil has a conditional public interest test. Why does the UK want to be such an outlier?

Q111 Mel Stride: On the public interest test, are you saying that there are no circumstances whatever under which the Secretary of State might legitimately be concerned about the remedies being taken—for example, on the grounds of national security where particular components might need to come into the country but would otherwise be choked off as a result of recommended measures?

Gareth Stace: Picking up on Laura's earlier points about the economic interest test and public interest test, at the moment there are six tests. Six! You only need two: an economic interest test that a TRA does, which the Secretary of State looks at and takes note of; and, I agree, you need a public interest test at the end, because there may be those extraordinary circumstances where it is or is not in the public interest to apply or not apply tariffs. But we only need two, not six—not five economic interest tests and one public interest test. That would speed up the process.

The Chair: I am going to Anneliese Dodds next. We must finish at 5 o'clock and I am conscious that there are several people wanting to get in.

Q112 Anneliese Dodds: I will be brief. That has been enormously helpful for clarifying some of the situation. One of the issues that came up in the previous panel was around the lack of measures in the Bill generally relating to the distorted economies. Obviously, they would be covered by some of the measures that we have been talking about to a lesser or greater degree, but I wondered whether you had any suggestions about whether there should be more explicit recognition of the problem of distorted economies within the Bill or any measures taken beyond those that we have just been talking about.

Dr Laura Cohen: Particularly on the methodology, I will suggest two provisions that are not mutually exclusive; the UK needs to alter the Bill to include them both. The first provision is how the dumping margin will be calculated in highly distorted economies such as China. The UK should be stating clearly that there should be a special methodology for non-market economies. That would allow the UK to keep that option open for China until the WTO jurisprudence is clear. Indeed, that needs to be in place anyway for countries such as Tajikistan and Vietnam.

The second provision is a methodology that constructs what is called a normal value wherever price distortions occur. That is the EU's new approach, which takes into account a number of price distortions, including several non-market economy indicators and an absence of labour or environmental standards. That can be used against a country, including former non-market economies such as Russia, which I know has been a problem in the chemicals sector. Indeed, the pasting in of EU legislation is an important principle of Brexit, as is being done in the EU (Withdrawal) Bill, and this part should be done as a default.

Gareth Stace: In the EU, that became law on 20 December. The UK Government are saying that they will broadly follow it. It would be the easiest thing to say, "That is what happens in the EU on those sorts of economies, and we will do the same"—done! They do not need to invent anything else.

Ian Cranshaw: It is a theoretical debate that we have been having with the DIT about where the risk is. Is the risk in following the new methodology that the EU is introducing or in the approach that the DIT are now taking in going with something that we have been delivering for x number of years, so that they believe they are following something we already have? The EU is moving in a different direction. From our industry the concern was that many of our companies here are EU-based or EU-headquartered, so they want something consistent. Then you have the political debate that we are leaving the EU because we want more flexibility. That is more of a political decision.

Q113 Emma Hardy: This is more of a clarification question, so forgive me if you have answered it in other ways and I have not taken in all the information you have just given me. You are talking about the economic test and the public interest test. How would you propose improving those systems of tests as is set out in the legislation at the moment?

Dr Laura Cohen: First, do you need them at all? It is not compulsory under the World Trade Organisation. Secondly, we should definitely have the text that is in the EU: weighing and balancing the competing interests, and special consideration to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition. That would help.

Emma Hardy: To put that into the Bill.

Dr Laura Cohen: Into the Bill. Can I give an example on the tiles review? This goes back some of the evidence given this morning. The European Commission contacted more than 1,000 known importers and users of tiles. Only 11 companies replied to the sampling form. No user or user association came forward. After the review was published, the Tile Association, which includes UK retailers and tilers as well as overseas manufacturers, published in its magazine an article saying that when they had surveyed their members a year ago,

> "A sizeable majority of respondents were in favour of the tariffs continuing and also believed that the level of tariff was about right."

The EU—an example similar to Gareth's—as part of its calculation had said that this would add about €1 to a square metre of tiles. It is not a large amount.

Gareth Stace: We do not have any detail of what that economic interest test is going to be. It could be there on the face of the Bill in primary legislation; it could be wishful thinking that it might be elsewhere. It cannot be that the Government do not know what that might be. We set out in July in a paper here exactly what we felt the economic interest test should be and the weighting it should apply to producers, users and importers and so on. We set it out in firm detail there, so there is no reason why it could not have been in the primary legislation.

Q114 Graham Stuart: Laura, thank you for your evidence; it has been helpful. You said definitively that we will have much lower duties than the EU.

Dr Laura Cohen: We could have much lower duties.

Graham Stuart: So we may not.

Dr Laura Cohen: Given that the lesser duty rule in the EU is becoming conditional, that is one strand of it and may give rise to lower duties. We have no clarity about the methodology for working out the dumping margin, particularly where there are distortive economies, and the EU has that clarity. The triple test—the economic interest test by the TRA followed by the economic interest test by the Secretary of State, followed by the public interest test, actually may result in no duties. It is very unlikely that the duties are going to be higher than the EU and quite likely, given what is in the Bill at the moment, that they will be lower.

Q115 Graham Stuart: You are suggesting that we could end up in a situation where we have had an investigation, it has been found objectively to require imposition of duty, but because of the number of tests they are not going to happen. Are you seriously suggesting that that is because there are these tests in place? Are you not rather exaggerating and doing a disservice to your members by suggesting that?

Dr Laura Cohen: We do not know what the economic interest test is going to be, but there are two further opportunities over and above what is currently in the EU for overruling it. We have had some concerns, which we shared with Government, about the economic research published by the Department for International Trade on Friday 5 January, which could help determine how that is carried out. We can share that with the Committee after this meeting if that would be helpful.

Q116 Graham Stuart: I am not clear: what tests do you think would be appropriate? Earlier, Gareth was clear that it was entirely appropriate that there should be a public interest test. Laura, you sound as if you do not want any.

Dr Laura Cohen: We do not need one under the WTO, but if we do, it is about keeping it really simple, with a presumption in favour of eliminating the trade-distorting effects of injurious dumping, and restoring effective competition.

Q117 Graham Stuart: The TRA has that presumption in favour of imposing those duties. Do you welcome that in the Bill?

Dr Laura Cohen: All three tests should have that presumption.

Ian Cranshaw: The specific issue is the language: there is not that specific phrase. There is a presumption in favour of duties written into the Bill, and we would like to see that specifically written much clearer than it currently is. That would reassure many of our companies.

Q118 Nic Dakin: On timescale, is the current Bill likely to mean that things will take longer to get done than currently with the European regime, or will it make things quicker? I am sure that we want everything to be slicker and easier when we come out of the European Union.

Gareth Stace: The timescales are not set out clearly enough. I do not want to go over old ground, but the hoops to go through at all the different stages will only lengthen that process. I am sure that will happen, calculating injury and dumping, but if was just dumping, that would happen very quickly.

I might have said already that in the US, provisional measures come in after 45 days and in the EU they come after nine months, which is coming down to seven. The UK has the opportunity to say that we will do it at six months, and we always—unless there are circumstances where it is not appropriate—apply retrospective duties of three months. So you get provisional duties coming after three months, which sends a very strong message to the market: do not dump your illegally traded goods here in the UK.

Ian Cranshaw: I think we would all be disappointed if we could not expedite the EU system, when it has to canvass views across 28 member states. We would have to canvass views in just the UK, so if we cannot bring that nine months—soon to be seven months—down further, an opportunity will have been missed.

Dr Laura Cohen: There is a tremendous opportunity here for Brexit. If an industry is suffering injury and dumping, it is really important that it gets sorted out quickly.

Q119 Peter Dowd: What involvement have you had in your respective sectors with the Department for International Trade on the creation of any potential trade remedies in the Bill? We are expecting a Division shortly, so a short answer would be helpful.

Gareth Stace: From my point of view of steel, this time last year we had written five very detailed papers that DIT officials have been very pleased to receive. We have had very good engagement with them, so I could not actually fault that. We probably have had some difference of opinion, so although I heard, "We agree with 95% of what you are putting out," I said, "That's fine, but it's the 5% that is crucial." Like everything with Brexit, the issue is around that 5% and we do not understand the detail around that.

We continue to engage with DIT, but we have provided all the information we can; there is nothing more we can provide. That is why we are disappointed: in the face of this Bill in primary legislation, we have not seen the detail that the Government had the opportunity to put in.

Dr Laura Cohen: From our sectors, I echo what Gareth has said. As an association, we have had really good engagement with DIT officials. BCC has had four meetings as an association with Ministers or Secretaries of State in the past year. That is really appreciated. However, we have made our case very clearly and I do not know what else we can say. We need to ensure that businesses, investment and jobs get the best possible deal from Brexit.

Ian Cranshaw: As a group, we met Greg Hands. The Minister gave us a considerable amount of time. He had been briefed well and he understood our issues, but he just did not accept them—he had a different view. That is fine; we have to go away and refine our position and give the evidence that was required. Some of the evidence that he called on we would call less than proven.

We know that there was a discussion earlier about the make-up of the TRA and who helped formulate the Government view. They say that for the review on trade remedies they went to a very liberal think-tank and asked what the view is on this, so of course they got a very predictable response. We would have questioned whether they had taken in some of the advice and evidence from business, as they might have got a rounder view of what was required.

Gareth Stace: It was not a liberal think-tank, but a company that represents the Chinese steel sector against the EU. They could have chosen many; why did they choose that company?

The Chair: That is not for me to answer. There are no further questions from Members, so I thank the witnesses for their very comprehensive evidence this afternoon.

Ordered, That further consideration be now adjourned. *—(David Rutley.)*

4.56 pm

Adjourned till Thursday 25 January at half-past Eleven o'clock.

Written evidence to be reported to the House

TCTB01 Chartered Institute of Taxation (CIOT)
TCTB02 British International Freight Association (BIFA)
TCTB03 Fairtrade Foundation
TCTB04 Traidcraft
TCTB05 PCS
TCTB06 British Retail Consortium