PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TAXATION (CROSS-BORDER TRADE) BILL

Sixth Sitting

Tuesday 30 January 2018

(Afternoon)

CONTENTS

SCHEDULES 4 AND 5 agreed to.
CLAUSES 14 TO 20 agreed to.
SCHEDULE 6 agreed to.
CLAUSES 21 AND 22 agreed to.
Adjourned till Thursday 1 February 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 3 February 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

Public Bill Committee

Tuesday 30 January 2018

(Afternoon)

[Mrs Anne Main *in the Chair*]

Taxation (Cross-border Trade) Bill

Schedule 4

Dumping of goods or foreign subsidies causing injury to UK industry

Amendment moved (this day): 41, in schedule 4, page 66, line 1, leave out from "dumping" to "in" in line 2 *—(Peter Dowd.)*

This amendment removes the reference to the amount of the subsidy as an upper limit on the anti-dumping amount in the recommendation under paragraph 14.

2 pm

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 42, in schedule 4, page 66, line 6, leave out from "dumping" to end of line 7.

This amendment is consequential on Amendment 41.

Amendment 43, in schedule 4, page 66, line 7, at end insert—

"(3A) The provisions of sub-paragraph (3) are subject to the provisions of sub-paragraphs (3B) and (3C).

(3B) If the TRA finds that the dumping has been fully or partially caused by market distortions affecting the prices of raw materials or other industrial inputs paid by the exporting producers, the estimated anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (3)(a).

(3C) If the TRA finds that there is an inadequate level of social and environmental protection in the exporting country, the estimated anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (3)(a)."

This amendment provides for the anti-dumping amount to be the margin of dumping in certain specified circumstances.

Amendment 44, in schedule 4, page 66, line 8, leave out paragraph (4) and insert—

"(4) For the purposes of sub-paragraph (3)(b) the TRA shall, in determining the amount which it is satisfied would be adequate to remove the injury described in that provision, take account of all elements of the material injury being caused to the UK industry, including, but not limited to, the impact of reduced sales volumes, price suppression and curtailment of investment.

(4A) Regulations may make further provision for the purposes of sub-paragraph (4)."

This amendment makes provision on the face of the Bill for the main factors to be considered in determining the amount for the purposes of paragraph 14(3)(b).

Amendment 49, in schedule 4, page 69, line 18, leave out from "dumping" to "in" in line 19.

This amendment removes the reference to the amount of the subsidy as an upper limit on the anti-dumping amount in the recommendation under paragraph 18.

Amendment 50, in schedule 4, page 69, line 22, leave out from "dumping" to end of line 23.

This amendment is consequential on Amendment 49.

Amendment 51, in schedule 4, page 69, line 23, at end insert—

"(4A) The provisions of sub-paragraph (4) are subject to the provisions of sub-paragraphs (4B) and (4C).

(4B) If the TRA finds that the dumping has been fully or partially caused by market distortions affecting the prices of raw materials or other industrial inputs paid by the exporting producers, the anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (4)(a).

(4C) If the TRA finds that there is an inadequate level of social and environmental protection in the exporting country, the estimated anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (4)(a)."

This amendment provides for the anti-dumping amount to be the margin of dumping in certain specified circumstances.

Amendment 52, in schedule 4, page 69, line 24, leave out paragraph (5) and insert—

"(5) For the purposes of sub-paragraph (4)(b) the TRA shall, in determining the amount which it is satisfied would be adequate to remove the injury described in that provision, take account of all elements of the material injury being caused to the UK industry, including, but not limited to, the impact of reduced sales volumes, price suppression and curtailment of investment.

(5A) Regulations may make further provision for the purposes of sub-paragraph (5)."

This amendment makes provision on the face of the Bill for the main factors to be considered in determining the amount for the purposes of paragraph 18(4)(b).

Peter Dowd (Bootle) (Lab): I will continue not only to move amendment 41, but to look after the interests of parliamentary democracy and British industry. It is good to see you in the chair again, Mrs Main.

I started to talk about the creation of the mandatory lesser duty rule, which instead results in lower duties that in some cases may not reflect the actual injury. It is labour intensive for the investigating authority and it does not reflect the full level of market distortion. It is also worth pointing out that a small minority of World Trade Organisation members use a mandatory lesser duty rule. The EU is moving to a conditional application because it has seen weaknesses in having a mandatory lesser duty rule. If the UK adopts a mandatory lesser duty rule, our trade remedies will be, in effect, an outlier.

The incorporation of amendments 41, 42, 43, 44, 49 and 50, 51 and 52 into the Bill would ensure that UK trade remedies post-Brexit will closely mirror the evolving EU practice, whereby the lesser duty rule will not be applied in anti-subsidy cases, or in fact in anti-dumping cases, where state-distorted raw material markets have been a factor in enabling or aggravating dumping. Reflected in our amendments is the rule that is practised by the EU but not mandatory under the WTO, which states that

"duties should be calculated to remove either the amount of dumping/subsidy found, or the injury found, whichever is the lower."

The amendments lay out specific circumstances where the margin of dumping would be applied over a lesser duty rule. These circumstances include where the Trade Remedies Authority finds that the dumping of goods is directly linked to market distortions that affect the price of raw materials, for example in the case of Chinese steel,

which is heavily subsidised by the state, and where it finds inadequate levels of social and environmental protection in the exporting country. These specific circumstances mirror the current regulation that the EU follows when determining trade remedies. In a sense, the amendments try to be in the spirit of that.

The Government have offered no evidence of why a mandatory lesser duty rule would be beneficial in comparison with the flexibility to exercise a lesser duty rule on a case-by-case basis. We all know from the evidence session that a representative from the trade unions, and others who work in key sectors pointed out that they had seen no evidence that a mandatory lesser duty rule works, is desirable and that the UK needs it. The amendments go to the heart of trying to deal with that particular issue.

Currently, only nine of the 30 remaining anti-dumping users in the WTO have a mandatory lesser duty rule. They include: Australia, Brazil, India, Israel, New Zealand, Turkey and Thailand. Only three have both the public interest test and a mandatory lesser duty rule, which is what schedule 4 proposes. That includes the EU, Brazil and the Eurasian Customs Union. Detailed evidence given by Cliff Stevenson to the Department for Business, Energy and Industrial Strategy using the Eurostat update looked at four cases where the lesser duty rule was applied over the dumping rate. In the case of the dumping of cheap aluminium road wheels from China, to which I referred earlier in relation to TUC evidence, the EU adopted the lesser duty rule in 2010, with the injury margin of 22.3%. It is important to look at that in relation to the amendment.

The dumping margin permitted by the WTO was from 23.8% to 67.7%, meaning that the margin adopted was 1.5% less than the lowest estimation of the dumping margin. According to Stevenson's study, the EU's adoption of the lesser duty rule has had no impact on the volume of cheap aluminium road wheels imported into the EU from China. We have tabled the amendments because we do not believe that the framework—skeleton or otherwise—addresses the issue.

In the case of ceramics, the EU introduced trade remedies in late 2010 against the import of continuous filament glass fibre products from China. Again, it chose to adopt a lesser duty rule when investigating the injury level. The injury margin was set between 7.3% and 13.8%, while the dumping margin permitted by the WTO is between 9.6% and 29.7%. The rate adopted by the EU is therefore at least 2.3% below the dumping margin. Stevenson's research shows that the EU's trade remedies have had little impact on the importation of continuous filament glass fibre from China; since they were adopted, rates have largely remained consistent. Our amendments are a genuine attempt to deal with that problem.

Some have argued that the adoption of the lesser duty rule protects the consumer against being ripped off when the dumping margin is calculated and added to the price of the products imported. However, the claim that prices do not rise significantly because tariffs are imposed at too high a rate was dispelled clearly, compellingly and authoritatively by Gareth Stace, director of UK Steel, in his evidence to us last week:

"I have an example. In the hot rolled coil case recently—hot rolled flat is used for car bodies…the injury margin was 17.5% and the dumping margin was 29%."

The lesser duty rule was applied by the EU. Gareth Stace continued:

"That is a difference of 11%...If we think of a luxury car that cost €45,000…if the lesser duty rule was not applied in this case, it would increase the value of the €45,000 car by €16."—[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 71-72, Q109.]

Disapplying the mandatory lesser duty and giving the Trade Remedies Authority the flexibility to apply a higher dumping margin if necessary will not mean sudden runaway costs being handed on to the consumer—quite frankly, I consider that a myth that needs to be dispelled, preferably as soon as possible. Importantly, higher dumping margins will be considered only when dealing with heavily distorted economies.

The amendments would ensure that the United Kingdom has trade remedies that maintain free and liberalised trade, as well as providing a safety valve to UK producers and manufacturers. That, in turn, will have a positive impact on consumers. We seek not to introduce protectionist measures, but to ensure a level playing field for UK manufacturers. We want to protect the steel industry, for example; my hon. Friend the Member for Scunthorpe has made that point on many occasions and he is absolutely right, as I know his constituents recognise. Our amendments would provide a remedy to the unfair competition that arises when overseas manufacturers do not play by the same fair rules as UK manufacturers. Giving the Trade Remedies Authority the power to establish the correct level of injury is so important.

I exhort hon. Members to consider our amendments carefully, and the Minister to accept them in the spirit in which they are intended.

Nic Dakin (Scunthorpe) (Lab): It is a pleasure to see you in the Chair again, Mrs Main. In supporting the amendments tabled by my hon. Friend the Member for Bootle, I, too, draw on the evidence of Gareth Stace, director of UK Steel. He was compelling when he said:

"One of the aims of Brexit was to strip things away, make things more simple and have less people employed working on these things".

If Brexit is about taking the opportunity to get some sort of bounty that makes things better, herein lies an opportunity for us to do that.

Mr Stace went on to say 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."—[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 71-2, Q109-10.]

That is why the EU is going for a conditional application of the lesser duty rule, which is the right direction of travel. It makes it slicker and simpler, and still effective. There is an opportunity for the UK to do the same—or even better.

To look at comparators in terms of timeliness, speed and pace of decision making, systems in the US are put in place within 45 days—we all commend the US as a bastion of free trade, yet that is how it ensures its industry is not disadvantaged in particular ways—whereas until recently in Europe it had been after 9 months. There is an opportunity for the UK to get things slicker and faster than for the EU currently, with one such way

[Nic Dakin]

being to move towards conditional use of the lesser duty rule, as is implicit in the amendments. I hope that the Government are listening and willing to take this opportunity.

The Parliamentary Under-Secretary of State for International Trade (Graham Stuart): It is a pleasure to serve under your chairmanship, Mrs Main, and to be in this reassembled Committee, probing and holding the Government to account on this excellent framework Bill. The amendments in the group look to set the parameters around what the TRA can recommend by way of anti-dumping and anti-subsidy measures. I begin by reassuring the Committee that the UK trade remedies system will provide robust protections for UK industries where they are suffering injury because of dumped or subsidised imports, or because of unforeseen surges in imports.

Amendments 41 and 49, and their consequential amendments, would remove the requirement that provisional anti-subsidy measures recommended by the TRA must not exceed the subsidy margin. WTO rules clearly provide that anti-dumping measures cannot exceed the margin of dumping and anti-subsidy measures cannot exceed the amount of subsidy. That is a strict requirement, applying to both provisional and definitive measures, which is reflected in schedule 4. Let me clarify that our policy intention is simply to incorporate those WTO rules and not to provide that the amount of subsidy somehow offsets the dumping margin, or vice versa—I think there may have been some misunderstanding of the Bill's phrasing.

Schedule 4 relates to both anti-dumping and anti-subsidy investigations, which are largely identical. That is why the provisions refer to both the margin of dumping and the amount of subsidy. By removing the requirements around the maximum amount of anti-subsidy measures, the amendments would mean that the Bill would not be compatible with WTO rules. I am sure that was not the intention.

Amendments 43 and 51 would restrict the application of the lesser duty rule in cases of raw material distortions and when the exporting country does not respect adequate levels of social and environmental standards. The lesser duty rule achieves our objective of protecting UK industry by ensuring that it can operate on a fair playing field without causing unnecessary injury to UK consumers and downstream industry.

The evidence shows that trade remedy measures are effective and have a lasting impact even with a lesser duty rule in place. Anti-dumping duties on a range of important steel products determined under the lesser duty rule have been very effective in curtailing dumped imports from China. For example, in the year to August 2017, UK imports from China of rebar hot-rolled and cold-rolled flat products were down by more than 90% compared with the year leading up to their respective anti-dumping investigations. There is, therefore, no evidence of a need to remove the lesser duty rule in the case of raw material distortions. Measures are already clearly effective in addressing the injury caused by those practices.

2.15 pm

Social and environmental standards are not referred to in the WTO agreements. The EU does not consider that those criteria restrict the lesser duty rule.

Industry feedback has been clear: we should not introduce untested concepts into our trade legislation. The amendment would be exactly that—untested. In practice, any cost advantages enjoyed by an exporting country as a result of low labour or environmental standards or costs will be reflected in its export prices and hence will already be taken into account when calculating the injury margin.

The UK plays an active role in upholding labour and environmental standards around the world through our membership of the International Labour Organisation and by actively promoting human rights. We are exploring all options in the design of future plurilateral and bilateral trade and investment agreements, including with regards to human rights, environmental protections and labour protections. Trade remedies are not an appropriate vehicle for tackling those issues.

Amendments 44 and 52 seek to set out some of the factors that the TRA must take into account when calculating the level of injury that UK industry has suffered. Clearly, the TRA will need to take all relevant factors into account when calculating the injury margin. That is precisely the Government's policy intention.

As I have said, the Bill provides the framework for the UK's trade remedies system. It is normal for matters of technical detail to be set out in secondary legislation. The calculation of the injury margin is an example of one such technical detail. Each investigation is different, so the precise method by which the TRA will assess injury will differ on a case-by-case basis.

Given that the TRA will be an independent body, it should have the flexibility to use its expertise to determine the most appropriate methods. We also need to ensure sufficient flexibility to amend the methodology to reflect changes in best practice. We want the UK's framework to work for UK industry, and we will engage further with stakeholders on the detail of secondary legislation. Tying our hands with this amendment would prevent us from proceeding with those meaningful conversations and thus ensuring that the system is appropriate for our industry and that it is in the best position to protect it.

I will say a bit more about the impact of the lesser duty rule in practice, which was one of the points made by hon. Members. The evidence of the EU's use of that rule makes it clear that duties determined under it are often high and very effective. In new EU anti-dumping cases since 2011 where duties were based on the injury margin, the average duty imposed was more than 30%. In some cases, it was much higher: heavy plate steel duties were over 70%; stainless steel pipe duties averaged 60%; and in one case, duties exceeded 100%.

Trade remedies measures determined using the lesser duty rule have been effective. Anti-dumping duties on a range of imported steel products under the LDR have been very effective in curtailing dumped imports from China, even at the height of the steel crisis.

An independent evaluation by BKP consultants in 2012 of the use of the lesser duty rule in the EU found that over a 10-year period, EU duties imposed using it had boosted profits for protected companies and were more than enough to remedy the injury suffered. The evaluation recommended that the EU retain the lesser duty rule.

In terms of the broader economy—so it is not missed out—the aim of the lesser duty rule is to tackle the injury caused by dumping and subsidy in an effective

way without imposing unnecessary costs on downstream users and producers. It would be a dereliction of duty for the Government not to consider the impact of those actions on the broader economy—it would be bad for jobs and for growth. The reality is that many UK industries are deeply integrated into global supply chains and their competitiveness relies on access to imported materials and components. Removal of the lesser duty rule without any resulting increase in tariffs could put jobs at risk in a range of industries, and would also hit the pockets of consumers.

We heard about solar panels in the oral evidence sessions. The removal of the lesser duty rule could have cost the downstream UK solar sector around £500 million in one year. It would have had a devastating impact on an industry that at the time employed around 35,000 people. The automotive industry purchases many of the products subject to anti-dumping measures. During 2008 to 2010, for example, new duties were imposed on at least seven products bought by the car industry, including aluminium wheels, fibreglass yarns, seamless pipes and fasteners. Removing the lesser duty rule would have raised the cost of around 60 million pairs of shoes—roughly one pair for each person—bought in the UK each year, and cost the consumer around £700 million over the lifetime of the anti-dumping measures. Getting this right in a balanced way and ensuring that we compensate for the injury suffered by producers, but do no more, is the right thing to do, and is why I ask the Committee to reject the amendments.

The hon. Member for Scunthorpe touched on raw materials distortion, so I will speak a little about that. In anti-dumping cases the proposed EU changes would only disapply the lesser duty rule where there are distortions in the raw materials for the products involved, but we do not believe that those changes are necessary. These sorts of distortions can and will be taken into account in the TRA's independent calculation of the injury to industry, and reflected in the measures that it recommends without the introduction of these changes, which I must add are not part of the EU framework that we are seeking, in most parts, to bring into UK law. Given that, the only effect of removing the lesser duty rule would be to increase the cost to users and downstream industries unnecessarily. We believe the evidence of the EU's current system shows that trade remedies measures are effective and have a lasting impact, even with the mandatory lesser duty rule in place. I have already given the example of steel, where we saw that 90% reduction.

With that, I will bring my remarks to a close. The hon. Gentleman mentioned the evidence of Gareth Stace from UK Steel. When Mr Stace was asked about this specifically—he was putting over a certain case on behalf of UK Steel, which we all respect—he said that

"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."—[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 71, Q109.]

Peter Dowd: I completely take those points in the spirit of co-operation and conciliation that we are trying to get in the Bill. This is not about one side attacking industry and the other side protecting consumers. It is about the balance. That is the question we have to ask ourselves today: does the Bill give the balance we need? With our amendments, we are trying to say that we believe it will give the balance between producers and consumers. The Minister talked about it being an untested concept, but this whole Bill is an untested concept. This whole experience and journey we are having in relation to Brexit, which we genuinely have to try to make the best of, is the father of untested concepts. This untested concept is just one of the many little ones compared with the totality. We are in a complicated, three-dimensional landscape. That is the nature of the beast and of where we are, and we have to try to make the best of it.

Our amendments are genuinely an attempt to listen to what the witnesses were saying to us. I know we can cherry-pick evidence here and there, but the tone that we got from the witnesses, from those who have subsequently put other evidence in and from our own backgrounds—our knowledge and context of these issues, and the discussions that we have all had outside this room—leads us to believe that the Government, in the round, are perhaps going a step too far. Our amendments are an attempt to bring the balance back. There does not appear to be any significant evidence from what I can see that the producer is in any significant way disadvantaged, because we were clearly told that it was a convoluted and complicated market. I understand where the Minister is coming from, but we have a different perspective.

My final point is that in their evidence many of the witnesses were concerned about the Government not listening to them. They were, in a sense, coming to Parliament as some sort of intermediary, to get Parliament to try to act on their behalf and to be a voice with the Government. That is why they were saying to us that they needed the parliamentary protections. That has been part of our push.

The amendments balance the needs of both producer and industry, and on that basis, while I acknowledge everything the Minister said, I do not think we are able to withdraw them. We have to make that point clearly and unambiguously.

Graham Stuart: We have not heard any evidence of the lesser duty rule not working in practice. I have been able to rebut any suggestions. The hon. Member for Scunthorpe said that the US imposes measures in 45 days. As everyone on this Committee who is not as busy as he is will know from reading their papers, that is simply not true. The WTO rules prevent the imposition of provisional anti-dumping and anti-subsidy measures before day 60 of the investigation. The US makes a preliminary injury determination in 45 days, but that does not mean the imposition of measures. That was completely incorrect, and I am sure the hon. Gentleman will want to correct the record. The average time that the US takes to impose provisional measures is just under five months, and in most steel cases it takes around six months.

Nic Dakin: The Minister is absolutely right that, after 45 days, an interim decision is made. That essentially gives confidence to the industry. The amendments are an opportunity for the Government to take measures quicker. At the height of the steel crisis, the lesser duty rule did not help. It took a long time for things to come in. The problem is time and space. The other thing is that the UK will be one of very few countries in the world that apply the lesser duty rule without exception if it goes ahead in this way—out of step and out of place. This is an opportunity to be in the right place.

Graham Stuart: The hon. Gentleman accepts that measures are not imposed in 45 days. He presented no evidence—I believe there is none—to suggest that the lesser duty rule in any way slows things down, so the slowness of the process in the EU responding to the steel crisis is an entirely separate element. I know he is scrupulously fair and always seeks to be, so he would recognise there is no linkage, although he may have wished there to be one to bolster an argument that has otherwise turned out to have no basis whatsoever. On that basis, I ask for the amendments to be withdrawn.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 13]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Amendment proposed: 43, page 66, line 7 [Schedule 4], at end insert—

"(3A) The provisions of sub-paragraph (3) are subject to the provisions of sub-paragraphs (3B) and (3C).

(3B) If the TRA finds that the dumping has been fully or partially caused by market distortions affecting the prices of raw materials or other industrial inputs paid by the exporting producers, the estimated anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (3)(a).

(3C) If the TRA finds that there is an inadequate level of social and environmental protection in the exporting country, the estimated anti-dumping amount shall be the margin of dumping as determined in accordance with sub-paragraph (3)(a)."—*(Peter Dowd.)*

This amendment provides for the anti-dumping amount to be the margin of dumping in certain specified circumstances.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 14]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Amendment proposed: 44, page 66, line 8 [Schedule 4], leave out paragraph (4) and insert—

"(4) For the purposes of sub-paragraph (3)(b) the TRA shall, in determining the amount which it is satisfied would be adequate to remove the injury described in that provision, take account of all elements of the material injury being caused to the UK industry, including, but not limited to, the impact of reduced sales volumes, price suppression and curtailment of investment.

(4A) Regulations may make further provision for the purposes of sub-paragraph (4)."—*(Peter Dowd.)*

This amendment makes provision on the face of the Bill for the main factors to be considered in determining the amount for the purposes of paragraph 14(3)(b).

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 15]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

2.30 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): I beg to move amendment 45, in schedule 4, page 66, line 24, after "must" insert "within two weeks".

This amendment prescribes a period within which the Secretary of State must decide whether to accept or reject a TRA recommendation.

The Chair: With this it will be convenient to discuss the following:

Amendment 47, in schedule 4, page 68, line 42, leave out from beginning to "to" and insert

"will normally be 5 years unless the TRA considers that a shorter period will suffice".

This amendment creates a presumption that the specified period will be 5 years.

Amendment 48, in schedule 4, page 69, line 7, leave out from "20(4)(c))" to end of line 8.

This amendment removes the provision for the TRA to recommend an earlier date than the day after the day of publication of the public notice.

Amendment 53, in schedule 4, page 69, line 30, leave out from "that" to end of line 34 and insert

"an anti-dumping amount or a countervailing amount should apply to goods from the day after the date of publication of the public notice under section 13 giving effect to the recommendation."

This amendment removes the provision for the TRA to recommend an earlier date than the day after the day of publication of the public notice.

Amendment 54, in schedule 4, page 70, line 9, after "must" insert "within two weeks".

This amendment prescribes a period within which the Secretary of State must decide whether to accept or reject a TRA recommendation.

Jonathan Reynolds: It is a pleasure to serve under your chairmanship, Mrs Main. I will speak to amendments 45, 47, 48, 53 and 54, relating to time periods. I draw the Committee's attention in particular to amendment 45, which prescribes a period within which the Secretary of State must decide whether to accept or reject the TRA recommendations—in this case the recommended period is two weeks—and amendment 47, which corrects the presumption that the specified period will be five years. That relates to the amount of time for which special measures regarding TRA recommendations will be enforced.

The general principle of the amendments we seek today is to provide greater clarity and certainty to UK industry about the terms of engagement with the new TRA. As I believe we have placed on the record, this is a framework Bill—it is a piece of legislation where many key details for the trading regime in future are unidentified. Therefore, we remain somewhat vague about what the modus operandi of the TRA will be. Too much is being left to the whims of that authority and the Secretary of State. We believe it is important to set out guidelines at this stage that give greater clarity to the role and scope of TRA activity.

One way to achieve certainty is to bring an easily-observed, enforceable time limit on the activities both of the TRA and the Secretary of State and their relationship with each other. These amendments have been brought forward in consultation with the Manufacturing Trade Remedies Alliance, which has significant insight into what UK industry needs from future trade defence policy.

Amendments 45 and 54 would mandate the Secretary of State to make a decision on TRA recommendations within two weeks. As the MTRA highlights, although there is provision in the Bill for a deadline to be brought on the TRA through secondary legislation at various points in an investigation, there are none specified for the Secretary of State. In theory, that would allow decisions to be delayed indefinitely. Let us imagine a situation in which the UK is led by such an indecisive Government that members of the Cabinet could not agree with each other on our future trading relationships—that would be a problem. The scenario is hard to envisage, but we should surely safeguard against it.

In today's globalised economy, markets and events can move much faster than we would ever have anticipated. In a short time, key UK markets could suffer serious injury if appropriate remedial action were not taken quickly. In fairness to Ministers, we have heard that speed of decision-making is something they are looking to achieve. This is surely the rationale behind the Government's decision to stipulate deadlines on TRA investigations, to prevent time lags occurring which could bring that about. In the Opposition's view, it seems ineffective to include these requirements but not mirror them for the Secretary of State in accepting the recommendations of TRA investigations. That raises a concern that there could be an option simply to kick the can down the road when a politically difficult decision presents itself. We believe that the MTRA recommendation of a two-week deadline in which the Secretary of State must reach a decision is reasonable and would protect against such abuses.

In a similar vein, the Bill specifies a maximum five-year period but no minimum with regard to the time considered necessary for duties to be imposed, where that forms part of the TRA's recommendations. It merely states that duties should be imposed for such a period as the TRA considers necessary. However, as the MTRA points out, it is considered normal practice globally for anti-dumping and anti-subsidy measures to last for a minimum of five years, including within key partner markets in the EU and the US. The alliance suggests, therefore, that the default duration of duties should be five years, starting from the date of definitive measures. The Opposition agree.

It is vital to add certainty where we can for UK industry and that we align with our global trading partners to gain consensus and be as consistent as possible on the universally accepted World Trade Organisation principles. I therefore call on the Committee to support the amendments.

Graham Stuart: Three groups of amendments need a response. I will start with amendments 45 and 54, which seek to impose a two-week time limit on the Secretary of State's decision to accept or reject the TRA recommendation. I will then turn to amendment 47, which seeks to create a presumption of five years as the normal, rather than the maximum, duration of definitive measures. Finally, I will address amendments 48 and 53, which seek to ensure that the duration of definitive measures is not affected by the length of any provisional measures that might have been applied against the same imports.

On amendments 45 and 54, on receipt of the TRA recommendation, it is the responsibility of the Secretary of State to respond in a timely manner, while ensuring that the public interest aspect of their role is given due weight. We fully recognise that a swift response is crucial to UK industry, as the hon. Gentleman said, so that the injury being caused by unfair trade practices can be halted. However, in some cases there will inevitably be difficult matters that the Secretary of State will need to reflect on. Although we expect that such matters will be rare, it is important that he has full opportunity thoroughly to consider the issues in making his decision. That might lengthen the process, but it is important to do the job well rather than quickly. To place an arbitrary two–week time limit on the Secretary of State is, therefore, not appropriate. Even though that duration might be sufficient in most cases, the legislation must provide flexibility for cases in which complex considerations must be made in the public interest.

As the hon. Gentleman is aware, once the investigation has been concluded and measures have been proposed by the TRA, the pressure on the Secretary of State quickly to come forward with the adoption of the measures to protect British industry will be great. I perhaps lack the hon. Gentleman's imagination, but I find it hard to imagine a situation in which the pressure on the Secretary of State to get on with it would not be much greater than a pressure to delay and put it into the long grass, as the hon. Gentleman said. I think we can be confident that any Secretary of State under any Government would wish to make the decision as quickly as reasonably possible.

For those reasons, I do not agree with an arbitrary two-week limit. I understand why the hon. Gentleman has tabled the amendment and I hope it is a probing one. I understand what lies behind it, but I hope I have reassured him.

[Graham Stuart]

On amendment 47, it is important to note that the WTO agreements set out that measures may remain in force for up to five years. They do not provide that five years is the default. In fact, they specifically set out that measures should remain in force only for as long as, and to the extent, necessary to counteract the dumping or subsidisation that is causing injury. The TRA analysis may suggest that a period shorter than five years will be sufficient to counteract injury, and in such cases the TRA should set an appropriate duration accordingly.

On request, the TRA will initiate an expiry review before the termination of any measures, provided that UK industry can demonstrate that injury would continue or recur if the measures were to expire. If the review finds that continued application of measures is required to maintain sufficient protection for UK industry, the measures will be continued. I assure the hon. Gentleman that industry is adequately protected without the need for the amendment and I ask him to consider withdrawing it.

Finally, on amendments 48 and 53, I understand the hon. Gentleman's concerns, but I have to reassure him that that which he fears is not the intention of the provisions. The WTO agreements allow in certain circumstances for trade remedies to be applied from a date prior to the date of the application of definitive measures. The purpose of the provisions is to allow us to reflect that in secondary legislation, not to shorten the duration of definitive measures. We are not seeking to shorten the duration of definitive measures, but are seeking to allow trade remedies to be applied from a date prior to the date of those measures.

The unintended consequence of the Opposition amendments would be to prevent the TRA from collecting duties for a period before the date of the section 13 notice, even though this is permissible under the WTO agreements in limited circumstances. I entirely understand why the hon. Gentleman tabled the amendment and what he was seeking to probe. I hope my explanation has been sufficient to make him see that that which he desires will not be delivered by the amendments.

We believe that this is a necessary provision. We have been clear that we want to incorporate all of the protections permitted under WTO rules into the UK's trade remedies framework. Removing the ability to do that could be detrimental to the protections available to UK industry. It is on that basis that I ask him to consider withdrawing the amendment.

Kirsty Blackman (Aberdeen North) (SNP): I express the Scottish National party's support for the Opposition amendments. It is sensible that we are asking the Secretary of State to make a decision within a relatively short time period because, as has been stated, we do not want that to be dragged out for any significant length of time. It is reasonable that, after a significant investigation has taken place—and the TRA's investigations will be significant—the Minister will quickly review the evidence presented and make a decision in the shortest possible time.

On amendment 47 and the five-year period, I have the Department for International Trade call for evidence on the current EU trade remedy measures. I can see possibly one that is in place for less than five years. In fact, many have been place for over a decade because they have been renewed. It is very unusual in that document, which lists all the trade remedy measures currently in place, for any of them to have a review date of less than five years. It is completely reasonable that the Opposition are asking for the starting period default to be five years, and for the TRA to decide on a lesser period in compelling circumstances. Given the number of these measures that have been extended and how few of them have fallen at the five year period, I suggest that five years is likely to be a reasonably short period for trade remedies to be in place, and that it is sensible for them to extended as a result.

We are talking about the trade remedies body doing substantive investigations and coming up with a huge amount of evidence. Asking it to do so on more than a five-yearly basis would probably be adding to their workload unnecessarily. The Opposition's suggestion is incredibly sensible in that regard. The presumption should be five years, and the TRA should make decisions for it to be less if it believes that that would be appropriate.

Jonathan Reynolds: I appreciate the Minister's response but it is our intention to move these amendments to the vote.

In respect of amendment 45, the Minister has already talked about the political pressure that has almost certainly been brought in the event of the TRA making a determination. However, it is also true that there are many examples we could go through of Governments resisting such political pressure. We should bear in mind that, in our discussions earlier, the Government effectively brought back a new constitutional procedure in order to stress the need for speed of announcements. Therefore, it does not seem consistent this afternoon to say that there is very little flexibility offered by the need for speedy resolution of cases.

Amendment 47 offers flexibility where five years would not be appropriate, but as the hon. Member for Aberdeen North just said, given the standard length of time these measures tend to be in place, this is—as industry has told us—a fairly modest measure, making it consistent with industry practice. We will press the amendment to a vote, Mrs Main.

2.45 pm

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 16]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Peter Dowd: I beg to move amendment 46, in schedule 4, page 67, line 6, at end insert—

'(6A) For the purposes of this Schedule, references to the "public interest" are to be construed as relating to the security of the United Kingdom and its citizens."

This amendment provides a definition of public interest for the purposes of Schedule 4.

The Chair: With this it will be convenient to discuss the following:

Amendment 60, in schedule 4, page 79, line 15, at end insert—

'(2A) References in this Schedule to the "public interest" are to be construed in accordance with paragraph 15(6A).".".

This amendment is consequential on Amendment 46.

Amendment 71, in schedule 5, page 85, line 39, at end insert—

'(5A) For the purposes of this Schedule, references to the "public interest" are to be construed as relating to the security of the United Kingdom and its citizens."

This amendment provides a definition of public interest for the purposes of Schedule 5.

Amendment 77, in schedule 5, page 97, line 38, at end insert—

'(2A) References in this Schedule to the "public interest" are to be construed in accordance with paragraph 13(6A).".".

This amendment is consequential on Amendment 71.

Peter Dowd: The amendment is about the public interest and I think the public have a particular interest here. The amendments to schedules 4 and 5 would define the public interest as referring strictly to the national security of the United Kingdom and its citizens. As drafted, the measures in schedules 4 and 5 would create a public interest test that would allow the Secretary of State to veto any recommendations on the adoption of trade remedies from the Trade Remedies Authority on public interest grounds.

To be clear, the WTO does not require the UK to adopt a public interest test. In fact this would put the UK in an extreme minority, as only other multi-national members of the WTO, such as the EU, and Brazil currently operate a public interest test. If we consider countries operating both a public interest test and a mandatory lesser duty rule, that puts the UK in an even smaller and pretty selective group. All the countries that currently have a form of public interest also clearly define what the public interest actually is. We do not appear to do that.

Several witnesses who gave evidence last Tuesday pointed out that the establishment of a public interest test as outlined in schedules 4 and 5 is overkill at best, and overreach at worst. The representatives of the UK ceramics, steel and chemicals industries were divided on the number of tests the Government have set out in schedules 4 and 5 and which have to be met before trade remedies can be issued. The director of UK Steel counted as many as six in the current provisions, with five economic tests and one public interest test. That is why we want to narrow the focus, as the Government do not appear to have done so, although they might say that they will.

Although there is clearly a case for assessing the economic impact of trade remedies on key sectors of the economy and certain exports, the establishment of an undefined public interest test is more worrying. Currently, schedules 4 and 5 would give the Secretary of State for Trade carte blanche to define what is and is not in the public interest. The lack of a definition means that the public interest is largely subjective. It puts the Secretary of State in a similar position to his opposite number in Australia, where the Trade Minister, according to a report from the Department for International Trade, has "unfettered discretion" to choose not to impose measures. Using those vague new powers, could not the Secretary of State argue that flooding UK markets with cheap chlorinated chicken from the US is in the public interest, or that cheap aluminium wheels from China would lower the cost of cars and therefore also be in the public interest?

It is not only the Opposition who are concerned about the Government's lack of clarity about what might be considered to be in the public interest. In her evidence to the Committee, Dr Cohen, chief executive of the British Ceramic Confederation, expressed her alarm at the prospect that the test could be used to justify a future free trade agreement with China based on levels of potential inward investment. It appears that an undefined test could lead quickly to a scenario in which the public interest is not only conflated with the interests of consumers, but wholly dependent on the personal perceptions and considerations of whoever holds office in the Department for International Trade. Our amendment therefore tries to define public interest more tightly.

The EU's anti-dumping regulation defines the public interest as being

"based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers".

We think that definition is too broad and open to interpretation. Amendment 46 and the consequential amendments would instead require the Government to adopt a definition of public interest for the purposes of schedules 4 and 5 that relates specifically to national security. Under such a definition, the Secretary of State's power to veto TRA trade remedy recommendations using a public interest test would be constrained to situations involving harm to national security.

The Opposition consider that in an extreme case, such as the United Kingdom going to war, national security considerations would supersede and far outweigh the arguments for trade remedies. Any discussion of national security would have to involve other Cabinet members, including the Defence Secretary, the Home Secretary, the Foreign Secretary and the Prime Minister. A more consensual approach would have to be reached, either by the Cabinet or by a Cabinet Sub-Committee, to establish whether the suggested remedies would harm national security interests.

Closely restricting the public interest test to issues of national security arguably leaves a broad definition, which some argue the Government could seize on and push to the very limit—for example, the Secretary of State could reject trade remedies on Chinese steel under the guise of national security by claiming that cheap steel from China is needed for energy security and the next generation of nuclear power plants—but I believe that the tight definition outlined in our amendments would limit that ability. Furthermore, I suspect that few Cabinet colleagues would support such a crude interpretation of national security, as it could interfere with their briefs and would only raise further questions.

[Peter Dowd]

An undefined public interest test would give the Secretary of State vast powers that could easily lead to abuse. Our amendments therefore seek to define "public interest" sensibly to constrain those powers, to open a wider discussion between the Secretary of State and other Cabinet members, and to limit use of the public interest veto to times of national emergency. However, we are not just pushing on regardless. If the Minister wishes to elaborate on what "public interest" could mean—the extent of it, who decides whether to invoke it, the process and steps for arriving at such a decision, and the checks and balances in place—we will be more than happy to listen.

Graham Stuart: As the hon. Member for Bootle has explained so fluently, his amendments would make it clear that the Secretary of State could use public interest grounds to reject the TRA's recommendations for the imposition of duties only in limited circumstances, namely those in which national security was deemed to be at risk.

It may help hon. Members if I briefly run through the interaction of checks and balances in the trade remedies system. As we have discussed, the TRA is required to conduct an economic interest test when deciding whether to recommend the imposition of measures. There is a presumption in favour of the imposition of duties in respect of anti-dumping and anti-subsidy measures. However, it is not for the TRA to take into account wider public interest considerations such as matters of national security, as the hon. Gentleman mentioned, nor to determine whether the imposition of duties would run counter to wider Government policy.

When the Secretary of State receives the TRA's recommendations, he will satisfy himself that the TRA has properly weighted the individual elements of the EIT and that imposing duties is in the public interest. Only where there is a strong argument against following the TRA's recommendations will the Secretary of State reject putting measures in place. In the exceptional case where he does, he will be required to explain his decision to Parliament.

The hon. Gentleman mentioned Gareth Stace of UK Steel and his evidence. It is worth putting on the record that when discussing a public interest test, he said

"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."—[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 73, Q111.]

So in fact, UK Steel gave evidence supporting public interest tests.

Other Governments, including those of the United States, Canada, Australia and New Zealand, and the EU take public interest into account when deciding whether to impose measures, so we are not acting out of step with other countries. I dispute what the hon. Gentleman said.

Peter Dowd: Does the Minister at least acknowledge that, notwithstanding what he has said, those countries have a more clearly defined test? Whether he agrees with it or not, their public interest test is a bit tighter and clearer. Ours appears to be rather loose, to say the least.

Graham Stuart: It is not really a test. It is a final common-sense check that the measures will not run against our national security interests or wider Government policy, as the hon. Gentleman set out—all the pressures that we discussed in a previous debate. The pressure will be on the Secretary of State. Industry will call for the inquiry and participate in the TRA's investigation, then the TRA will come out and say that the economic interest test and the market share threshold have been passed and that it has decided that we need to impose these measures. After that, the Secretary of State will give it a sense check, and in extraordinary circumstances might say no.

In his recent article for *UK Trade Forum*, George Peretz QC said that such decisions are

"best made by politicians who can, and will have to, defend those decisions in the political arena."

It is right that there is a role for Ministers to take those public interest considerations into account and intervene if imposing measures is not in the UK's wider interest. It is also right that they are accountable to Parliament if they do so. The system that we have proposed, whereby an independent body carries out the investigation and makes recommendations, but Ministers ultimately have responsibility for acting in the country's best interest, is the right one. I hope hon. Members agree and that the hon. Gentleman will agree to withdraw the amendment.

3 pm

Peter Dowd: As I said earlier, when we are talking about very important matters, we are prepared not to push amendments to a vote in the spirit of co-operation and conciliation. This is one of those occasions, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 47, in schedule 4, page 68, line 42, leave out from beginning to "to" and insert

"will normally be 5 years unless the TRA considers that a shorter period will suffice".—*(Jonathan Reynolds.)*

This amendment creates a presumption that the specified period will be 5 years.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 17]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Amendment proposed: 48, in schedule 4, page 69, line 7, leave out from "20(4)(c))" to end of line 8.—(*Jonathan Reynolds*.)

This amendment removes the provision for the TRA to recommend an earlier date than the day after the day of publication of the public notice.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 18]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Anneliese Dodds (Oxford East) (Lab/Co-op): I beg to move amendment 55, in schedule 4, page 70, line 39, at end insert—

"(2A) Reviews under this paragraph shall only be initiated after a period of at least 12 months has elapsed since the measures subject to that review were implemented in accordance with paragraph 20(4), except that a review requested by a new supplier to the United Kingdom of the level of duties applicable to that new supplier may be initiated earlier."

This amendment provides for a general minimum period of 12 months prior to initiation of a review except in prescribed circumstances.

The Chair: With this it will be convenient to discuss amendment 56, in schedule 4, page 71, line 33, at end insert—

"(4A) All measures implemented in accordance with paragraph 20(4) will continue to be applied during the conduct of any review under this paragraph into those measures."

This amendment provides for measures to remain in place while a review is conducted of them.

Anneliese Dodds: It is a pleasure to serve with you in the Chair once again, Mrs Main.

Like many of the Opposition's amendments, amendments 55 and 56 try to improve the legal certainty in the Bill. They would ensure that reviews could not normally be opened into measures that were less than one year old, in line with EU practice, and that duties remained in place while reviews were conducted. With no restriction on the time period before which reviews can be initiated, the UK again appears to be ploughing its own furrow and going against the international direction of travel. I note from much of the previous debate and the comments from the hon. Member for Aberdeen North, who rightly indicated that the average cycle for this kind of remedy is five years, that it is a long-term cycle, and without the expectation of review before the remedy having been in place for one year.

Since reviews can be initiated after an interested party asks for one, WTO rules require a reasonable time to have elapsed since the imposition of definitive measures, and that has almost always, from what I can see, been interpreted as being at least one year. The only exception seems to be the US, where the standard review period is one year, but that is apparently unusual. In the EU, at least a year must have passed.

The problem with earlier reviews is that they could be administratively costly, after having put a remedy into action, and that they would reduce the predictability of the trade remedies regime. The latter is surely essential for the long-term health of British manufacturing, which needs to know that the business environment will not change radically in the very short term. With uncertainty appearing to be one of the factors underlying the current low levels of private sector investment in the UK, we surely must ensure that trade remedies are proportionate and do not make our British firms less secure than if they were based in other industrialised countries.

Kirsty Blackman: The hon. Lady makes a compelling case and I want to reassure her that Scottish National party Members will support the Labour party in the incredibly sensible move it looks to make, particularly with amendment 55.

Anneliese Dodds: I am grateful to the hon. Lady for the SNP's support. The amendments focus on trying to provide the certainty that the Bill lacks but which is present in other trade remedies systems. Will the Minister indicate whether the Government have considered inserting such a provision in the Bill, in line with international practice? If not, will he say why not, given that no other country seems routinely to allow a review before a year has passed?

Graham Stuart: Amendment 55 seeks to provide a timeline in relation to reviews of continuing application of an anti-dumping amount or countervailing duty amount. Amendment 56 asks that definitive anti-dumping and countervailing duties will continue to be applied during the investigation process of any review.

On amendment 55, let me start by explaining that there are a number of different types of reviews of definitive anti-dumping and countervailing duties, which apply in different circumstances—for example, to reflect the appearance of a new exporter, to address evidence that measures are being circumvented, or to review measures that are due to expire, to determine whether it is necessary to extend them. Reviews ensure that measures can be changed where and when appropriate. I recognise the desire for clarity regarding timelines in the review's framework, but as demonstrated by the WTO agreements and EU rules, there is no uniform timeline that is appropriate for all review types.

The amendment is unnecessary, as it appears to apply to all review types, irrespective of the lack of uniform timelines currently applicable under the EU system. For example, it would not be beneficial to UK industry if it is required to wait 12 months before a circumvention review may be carried out. On amendment 56, paragraph 21(4)(b) already allows us to provide in secondary legislation that measures may be extended beyond five years where a review is being undertaken. However, an extension is not appropriate in every type of review—for example, the WTO specifically sets out that duties may not be applied during a new exporter review. Therefore it is more appropriate for this to be provided for in secondary legislation. The development of the review's framework is still ongoing. It is intended that there will be targeted

[Graham Stuart]

stakeholder engagement across the UK industry to discuss this issue in more detail, prior to setting out the details of the various review processes in secondary legislation. It is a complicated area, as my explanation of the unintended impact of these amendments shows. I therefore ask the hon. Member to withdraw these amendments.

Anneliese Dodds: I am grateful to the Minister for that explanation. My concern is that the fact that that period is not set within the Bill could lead to a situation where there is no certainty for producers about the length of time during which a remedy would remain in place. I take on board the Minister's comments. I hoped that they would reduce some of those concerns at least, and I hope that he will accept the concerns we have been suggesting, given that, for certain types of review, other regimes have at least a year's threshold before decisions can be reconsidered. I am sure the Minister understands that, without having such a set period, we have these concerns. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anneliese Dodds: I beg to move amendment 57, in schedule 4, page 74, line 1, leave out "request" and insert "consider a request for".

This amendment provides for the TRA to seek to apply price undertakings in response to a request to do so.

This is a tidying-up amendment. It provides for the TRA to seek to apply price undertakings in response to a request to do so. Our amendment seeks to clarify the precise role of the TRA within the process of application of undertakings. I should mention that this process can be complex and some stakeholders have understandably drawn attention to the problems of ensuring compliance with price undertakings. However, that is not exactly the focus of the amendment. Rather, we are concerned that the Bill seems to suggest that the TRA would be proffering different alternative undertakings.

International practice indicates that authorities arbitrate the different options for undertakings that are presented not by the authorities themselves, but by exporters. That is in line with WTO practice. Article VI of the general agreement on tariffs and trade 1994 and the agreement on the implementation of article VI—the "anti-dumping agreement" that we have referred to in Committee—explicitly authorise the imposition of anti-dumping measures by WTO members, as we know. Article 8 of the anti-dumping agreement includes the set of rules governing undertakings. It refers to the offering and acceptance of undertakings from any exporter—not by authorities themselves—to revise their prices or cease exports at dumped prices. The action is from the exporter, not from the authority.

However, the language in schedule 4 gives the active role to the TRA, referring to regulations giving the authority the ability to request an undertaking. From what I can see, this contradicts the language earlier in part 5 of the schedule that rightly refers to overseas exporters and relevant foreign Governments rather than the TRA offering undertakings. Our amendment would offer a helpful clarification about the role of the TRA, and help to prevent confusion. I hope the Minister will take this in the constructive way in which it is intended.

Graham Stuart: The amendment would mean that the use of undertakings would rely solely on an undertaking being offered by an exporter or a foreign authority, and would deny the TRA the ability to prompt the offering of an undertaking, as the hon. Lady set out in her speech. Our aim is to provide the TRA with the full suite of tools available under the WTO agreements. We must ensure that the TRA is equipped to deal with every possible future scenario.

The Government understand industry's concern that it is more common practice—the hon. Lady rightly laid this out and is right to probe—for a foreign authority or an exporter to offer an undertaking than to be prompted into giving one by request. None the less, this power to request undertakings is not unusual, as it is set out in a WTO agreement, and adopted in EU regulations. This power is required to cater for certain situations that may arise. For example, the TRA may need to request an undertaking following a review where the level of undertaking needs to be varied, or where the UK is committed to seeking constructive remedies with a trading partner as part of a trade agreement. Therefore, removing this power would serve to undermine the TRA and the discharge of its functions, which I know is the exact opposite of what the hon. Lady would wish.

We would expect that the TRA will exercise this power only where necessary, which we envisage to be rarely. The secondary legislation under this power will outline these circumstances, and we will engage with stakeholders as we develop proposals going further. I hope that, by doing so, we will be able to answer any remaining concerns the hon. Lady has.

It is also worth stating that, as per the WTO agreements, following a request from the TRA, there will be no obligation for an exporter or a foreign authority to enter into such an undertaking that will further limit the power. Once a request has been made, and if an undertaking is subsequently offered, the TRA will still need to conduct an assessment of the undertaking and its terms and conditions to decide whether accepting it would be appropriate and whether it would be in the UK's economic interest. The fact that the TRA requested the undertaking in the first place will not predetermine this assessment in any way. For these reasons, I ask the hon. Lady to consider withdrawing the amendment.

Anneliese Dodds: I beg to ask leave that the amendment be withdrawn.

Amendment, by leave, withdrawn.

Question proposed, That the schedule be the Fourth schedule to the Bill.

The Chair: With this we will consider:

New clause 15—*Review of transitional measures*—

"(1) Within three months of the passing of this Act, the Secretary of State shall undertake a review of the advantages and disadvantages of making provision under section 51(1) to secure that transitional measures are applicable on the same day that the tariff provided for in section 8 first has effect.

(2) For the purposes of this section, "transitional measures" are those anti-dumping duties, or anti-subsidy duties, or undertakings, as the case may be, that were applicable in the European Union on the day preceding the day referred to in sub-paragraph (1) to which subsection (3) does not apply.

(3) This subsection applies to any goods in respect of which the TRA has made a recommendation, prior to the date referred to in subsection (2), that injury to a UK industry in the goods

would not be likely to occur if a transitional measure were not applied.

(4) The Secretary of State shall, as soon as reasonably practicable after the completion of the review under this section, lay a report of the review before the House of Commons."

This new clause provides for a review of the case for the continued effect of EU trade remedies after introduction of the new standard import tariff and pending full implementation of the new arrangements under Schedule 4.

Graham Stuart: We have had a useful and interesting discussion about many of the elements in schedule 4. As I have said, the trade remedy system that we operate when we leave the EU will be fully compliant with our WTO obligations. The WTO agreements on anti-dumping, subsidy and countervailing measures set out the requirements that all members must meet to be able to impose either anti-dumping or countervailing measures. This schedule enshrines the key principles of both agreements into UK law. Further detail will be set out in secondary legislation.

I have already explained that this will be technical in nature. Indeed, amendment 25 is a good indication of the level, and amount of detail, that will need to be included, and it would not be appropriate for this to be in the Bill.

Schedule 4, therefore, provides power to the Secretary of State to set out in secondary legislation detailed provisions regarding how to establish dumping, subsidisation, injury and how to calculate those. The schedule includes technical provisions regarding the thresholds that must be met before the TRA may initiate an investigation, including the WTO criteria of what constitutes negligible and minimal. The Secretary of State can also set out detailed provisions about the conduct of investigations, including the information that is required, and of oral hearings; about the different types of reviews the TRA may undertake and their conduct and potential outcomes; about undertakings; about the suspension of measures where market conditions have temporarily changed; and about when and how particular measures may be reviewed and appealed. They are technical, as I said.

It is necessary to set all that out in secondary legislation so that the system is flexible enough to adapt should WTO case law or international best practice move on. I reassure hon. Members that the system will be fully WTO compliant. We will continue to engage with stakeholders as it is developed.

3.15 pm

The Government are committed to ensuring continuity for UK industry when we leave the EU, which includes ensuring that UK industry is not exposed to injury from known unfair trade practices. That is why, when the UK begins to operate its independent trade remedies framework, we will effectively maintain the existing trade remedies measures that matter to UK industry and terminate only those that are not relevant.

New clause 15 seeks a review of transitioning existing EU measures. It is unclear whether the clause asks for the Trade Remedies Authority to review each transition measure, or whether it seeks to review the Government's policy approach. If the aim is for the Trade Remedies Authority to determine which measures should be maintained and to review the maintained measures, we intend those decisions to be determined through the call for evidence launched on 28 November 2017. That call for evidence seeks to capture information from UK producers who benefit from existing EU trade remedies measures.

Nic Dakin: Am I right that the Minister is essentially saying that current trade remedies will stay in place unless there is a very strong reason for them not to?

Graham Stuart: The hon. Gentleman is precisely right. As ever, he represents the steel interests in his constituency with assiduity, hard work and focus. He is right to say that we must ensure that measures in place to protect British industry continue smoothly after we depart the EU. That is exactly what the Government intend.

The Trade Remedies Authority will have the important role of reviewing the maintained measures so that they reflect the UK domestic market. The precise timing of reviews being carried out will depend on the terms of any agreement with the European Commission about an implementation period and on the outcome of the call for evidence, which will confirm the number and type of measures that will be maintained.

If the aim is to look again at the general policy to transition the existing EU measures that matter to the UK, that does not need to be revisited. If we take no action to maintain those measures when we leave the EU, they will no longer apply to products arriving into the UK with immediate effect. That would leave important UK industries, including the steel, ceramics and chemicals sectors, vulnerable to dumped and subsidised imports. A review of the policy approach would create uncertainty for UK industry as to whether measures will be maintained. Stakeholders have been clear that it is vital to transition existing measures to maintain protection against injury from dumping.

To return to schedule 4, having an effective trade remedies system in place is crucial to protect our industries from unfair trading practices that cause injury. It is vital to the UK's interests that the system is transparent, balanced, impartial, efficient and works for the UK as a whole. The system proposed by this schedule and the secondary legislation that will be made under it achieves that, and is the best way to protect UK industries when we are outside the EU. I will respond to new clause 15 when I have heard the arguments made for it by hon. Members.

Peter Dowd: I started to listen to the Minister out of a morbid sense of curiosity, but he became far more plausible as time went on. Do I smell a rat? No, I do not at the moment, but there is some concern. The new clause provides for a review of the case for the continued effect on the UK of EU trade remedies after the introduction of the new standard import tariff, and pending full implementation of the new arrangements under schedule 4. It seeks a review of the case for continued use of EU trade remedies between the UK's exit from the EU and its negotiation of a new relationship.

I am conscious of the statements made yesterday by Michel Barnier. I do not want to poke into that issue—I think hon. Members will be grateful for that olive branch—but there are wider concerns about which EU regulations and rules the UK will follow in the transition

[Peter Dowd]

period. Will we continue to be a member of the EU in all but name, or will Ministers seek to pick and choose? I will have to look at *Hansard*, but I got the impression from the reply given to my hon. Friend the Member for Scunthorpe that, unless there are egregious breaches, we will remain for all intents and purposes virtually as we are, which is quite helpful.

Naturally, the outstanding questions about transitional measures are causing great confusion and concern among UK manufacturers currently protected by EU trade remedies. I take some comfort from the Minister's reassurances, but in evidence to the Committee last week, UK Steel, the British Ceramic Confederation and the Chemical Industries Association were all less than convinced about the Government's intentions. They all made the case that the trade remedies outlined in schedules 4 and 5 are not only weaker than those currently in place in the EU, but in some instances worse than those used by other WTO countries. It will be important to tease that out a little more in due course.

New clause 15 would require the Government to undertake a review of the advantages and disadvantages of the new trade remedies outlined in schedules 4 and 5. The reality is that such a review may relate to issues of policy or of practice. I am quite flexible about that, as I am sure the Government are—let us have a look at both, if need be, on a case-by-case basis.

Outlining the potential benefits to UK manufacturers of continuing to use EU trade remedies throughout the transition is also crucial. The new clause should not be too controversial, because if the new trade remedies are as robust and thorough as the Minister suggests, a review will show that. However, if the review showed the new trade remedies to be inferior to the current EU measures, that would not be good news. It would clearly show that the Government were content with laxer trade remedies and were not on the side of UK manufacturers, which are some of the largest employers in the country.

I have a number of questions for the Minister about transitional measures. Can he offer assurances to UK manufacturers that the Government will honour the trade remedies currently in place for the UK? He appears to have indicated that—I think that is what he said—but I do not want to put words in his mouth, so I would like to tease that out a little more. Will the Government consider extending the current trade remedies where necessary?

Does the Minister accept that the trade remedies framework outlined in the Bill may not be up and running by the time Britain leaves the European Union? How confident is he that UK manufacturing will be sufficiently protected from state-sponsored dumping throughout the transition period? Have the Government set a date for members of the Trade Remedies Authority to be selected and a date for the TRA to be fully functional? I think the Bill implies that UK trade remedies will apply during the transition period, but how does that fit with the tone of the statement made by Mr Barnier?

It is clear that the Government have huge questions to answer about the effectiveness of the trade remedies in the Bill, and about how they will work throughout the transition period. The devil is in the detail, so I hope that the Government have listened carefully and will try to answer our concerns and those of many people out there.

Question put and agreed to.

Schedule 4 accordingly agreed to.

Schedule 5

Increase in imports causing serious injury to UK producers

Jonathan Reynolds: I beg to move amendment 65, in schedule 5, page 81, line 31, leave out from "application" to end of line 32

This amendment removes the requirement for a preliminary adjustment plan.

The Chair: With this it will be convenient to discuss the following:

Amendment 66, in schedule 5, page 81, line 44, leave out sub-paragraph (3)

This amendment is consequential on Amendment 65.

Amendment 67, in schedule 5, page 82, line 14, leave out paragraph (e)

This amendment is consequential on Amendment 65.

Amendment 68, in schedule 5, page 82, line 21, leave out "(d)" and insert "(c)"

This amendment is consequential on Amendment 65.

Amendment 69, in schedule 5, page 82, line 26, leave out "(d)" and insert "(c)"

This amendment is consequential on Amendment 65.

Amendment 72, in schedule 5, page 86, line 29, leave out from "21)" to end of line 34

This amendment removes the requirement for an adjustment plan to be in place prior to TRA making a recommendation under paragraph 14.

Amendment 73, in schedule 5, page 91, line 8, leave out paragraph (d)

This amendment is consequential upon the removal of reference to an adjustment plan in Amendment 72.

Jonathan Reynolds: Amendments 65 to 69 and amendments 72 and 73 have been grouped together as they all refer to the removal of the preliminary requirement for adjustment plans. It states in the Bill that the Trade Remedies Authority may only make a recommendation if it is satisfied that there is an adjustment plan in place setting out how the UK producers of the relevant goods intend to adjust to the increased importation of goods affecting their industry. In addition, it stipulates that the TRA may only initiate a safeguarding investigation in relation to goods where the application for it is accompanied by a preliminary adjustment plan. As is explained in the Bill's explanatory notes, this is to ensure that producers have a plan to improve their competitiveness alongside any measures which may be imposed, so that measures are not only a temporary solution.

The amendments tabled by the Opposition would remove the need for such adjustment requirements. The reasons behind this are numerous. It seems counter-intuitive to make it incumbent on industries to draw up their own adjustment plans. Surely if an application is being made to the TRA then this is already a measure of last

resort for an industry. It may also provide an easy exit for the TRA to avoid opening an investigation if it is perhaps resource-constrained, by pointing instead to the measures that the producer has drawn up as an alternative to remedies being imposed. Equally, given that time is of the essence—that seems to be a point of agreement between both sides of the House—mandating producers to include adjustment plans before a recommendation can be made risks adding a delay to a process that is already time-sensitive.

Kathleen Walker-Shaw of the GMB, who gave evidence to the Committee on 23 January, said that she was

"extremely alarmed by how weak the remedies were in terms of anti-dumping cases."

She pointed out specifically that they

"are very data, document and resource-heavy cases to bring forward."

It therefore makes little sense for us to add to that burden by putting another barrier in place for UK industry to jump over right at the outset by drafting an adjustment plan.

This is not simply the view of the Opposition. Representatives of industry have also argued that these requirements are likely to be problematic. The Manufacturing Trade Remedies Alliance has explained that there is absolutely no requirement in the WTO agreement for an adjustment plan at any of these early stages, either prior to an investigation being opened or when measures are being considered for extension. As the MTRA highlights, the only stipulation from the WTO is that there must be evidence of the industry adjusting if the relief is to be extended beyond four years, and they point out that the EU follows the same approach.

The Manufacturing Trade Remedies Alliance also believes that the requirements as laid out in the Bill are disproportionate, and conflict with the provision allowing safeguarding measures to be entered into in the case of a threat of serious injury. It also highlights the risk that these measures could reduce the Government's options for tackling aggressive trade protectionism by foreign countries. It notes that the EU has in the past introduced safeguard measures to temporarily protect the steel industry from the side effects of WTO-incompatible tariffs imposed by the US pending resolution of the dispute.

It is surprising that—for a Bill which is so light on detail—this is the one area in which the Government have decided to provide some certainty that flies in the face of expert advice to the contrary. Given the historical context and the anxieties of UK industry, these concerns are understandable. All members of the Committee will be familiar with the implications of what will happen if we do not get this right, as was illustrated catastrophically by the impact of cheap Chinese steel imports.

It is important that the Government give confidence to the UK industry at this stage that they are not anti-protection in principle. This amendment would demonstrate that the Trade Remedies Authority is supportive of this notion, and would streamline the process towards remedies where they are necessary. It would not preclude the development of an adjustment plan on a longer term basis by the industry or producer in question, but would simply prevent a more restrictive process being in place that is out of step with the one being followed by our global partners.

I conclude by returning to Kathleen Walker-Shaw's testimony of 23 January on those anti-dumping rules. She said,

"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."—[*Official Report*, 23 January 2018; Vol. 635, c. 36, Q43.]

This Committee is now in its third day of investigating ways to try and do this, and can get us closer to that outcome.

Graham Stuart: The hon. Gentleman keeps referring to and giving evidence of anti-dumping. These amendments affect adjustment plans that apply to safeguards—so not anti-dumping.

3.30 pm

Jonathan Reynolds: I said in my introduction that this is about the hoops that have to be jumped through before the Trade Remedies Authority can take action. As I was just coming to my conclusion, I now appeal to the Minister for greater certainty for industry and greater authority so that they can plan for going forward, by adding more clarity at this stage and not introducing things that are not replicated in our closest trading partners.

Graham Stuart: The amendment would provide that in safeguard investigations UK complainant producers are not required to provide adjustment plans outlining the steps they intend to take to adjust to increased imports in their market. That would be out of step with our objective to create a balanced and proportionate trade remedies system for the UK. It is noticeable that the only detail given in the hon. Gentleman's presentation was not do with safeguards, but with anti-dumping. It was not clear from his response whether that was due to confusion or because there simply was not enough information to back up what he was saying about safeguards.

There are many benefits to requiring adjustment plans and the need to promote adjustment is implicit in the WTO agreement. Adjustment plans serve to reinforce the rationale for applying safeguard measures and ensure that measures are used fairly. Unlike anti-dumping and countervailing measures, safeguards relate to perfectly fair trade and apply globally. Therefore it is especially important that those measures balance the interests of producers and downstream consumer industries. Having listened to the speech just given, one would be forgiven for thinking that those issues were not true.

Having a plan for adjustment helps to ensure that measures protect producers from injury, while giving them time to adjust to increased imports. It provides precisely the certainty which, in his peroration, the hon. Gentleman called for. However, though we have put that on the face of the Bill, because of the nature of safeguards —which have got nothing to do with dumping—we have a peroration that asks why we do not provide certainty. It is exactly the certainty that we need to provide. We have spelt it out; we have taken the principle implicit in WTO agreements and put it in the Bill, so that we can improve on existing operations—stick conceptually to the existing rules but do so in a better way, which gives exactly the certainty that the hon. Gentleman talked about wanting to provide.

[Graham Stuart]

As so often in our debates in this Committee—which has been a stimulating and fantastic experience so far—amendments tabled by the Opposition have exactly the opposite effect to the ones that they claim. They say they want to do one thing, but when one bothers to read their amendment, look at the Bill and put the two together, one sees that the effect is the exact opposite. It is fascinating to see how, in almost all cases, the Scottish National party supports the Opposition, even when it is clear that the amendments are technically flawed—they do not do what the Opposition think they are doing, let alone achieve the end policy result. Perhaps that is a sad reflection on the state of the Opposition today.

Our intention is not to create additional burdens on business but to ensure a light touch approach which means that industry is able to compete without the need for protection as measures are rolled back. As such, it is undoubtedly in the interests of UK producers to use these plans and to be thinking about adjustment as early as the initiation stage of an investigation. Furthermore, the steps outlined in an adjustment plan provide a useful tool for determining the suitable pace of liberalisation, tailoring measures where appropriate. In drafting our secondary legislation, the Government intend also to build in flexibility to account for scenarios where different levels of detail would be appropriate in the plans.

In terms of whether they would be overly burdensome on business, we will ensure that the process is both flexible and proportionate, in order to serve the needs of business in the most appropriate way possible. It is for those reasons—although I can provide others—that I ask the hon. Gentleman to withdraw the amendment.

Jonathan Reynolds: In my experience as an admirer of the Minister, whenever he gets somewhat tetchy it is perhaps to disguise from the House his own shortcomings. I am not satisfied with his response and nor, I believe, is British industry. Therefore I wish to press the amendment to the vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 19]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Anneliese Dodds: I beg to move amendment 74, in schedule 5, page 91, line 9, at end insert—

'(3A) The TRA shall only recommend extending a safeguarding remedy, whether in the form of a safeguarding amount or a tariff rate quota, beyond the 4 year period referred to in paragraph 15(2)(b) if it is satisfied that there is evidence that the UK producers are adjusting to the importation of the goods in increased quantities.

(3B) The total duration of a safeguarding remedy after any such extension shall not exceed 8 years."

This amendment makes provision on the face of the Bill about the extension of a safeguarding remedy.

The Chair: With this, we will consider the question that schedule 5 be the Fifth schedule to the Bill.

Anneliese Dodds: I will not speak on this for long. We have much else to get through this afternoon, and maybe I am about to be surprised, but I anticipate that we may have a similar result to one we just had, particularly given that many of the same issues come up in relation to this amendment as to that just moved by my hon. Friend. It would be interesting if we had a plurality of views; maybe that day will come eventually.

As with many of our other amendments, this amendment clearly aims to increase the predictability for British business in the Bill. In particular, we think it is important to make provision in the Bill about exactly how a safeguarding remedy could be extended, to expand the considerations taken on board in that process.

With this amendment, the TRA would only recommend extending a safeguarding remedy beyond four years if the authority were satisfied that there was evidence that UK producers were adjusting to the importation of the goods in increased quantities—so not a plan, actual evidence of that adjustment would be necessary. The total duration of any such extended remedy would be only be another four years, so eight years in total. As with many other elements of the Bill, more clarity is needed here and our amendment would deal with that deficiency.

Graham Stuart: Schedule 5 sets out the provisions that will apply in cases where UK industry finds itself being harmed by unforeseen surges in imports. The WTO agreement on safeguards set outs the requirements that must be met for the UK, as for other members, to be able to impose safeguard measures. Through this schedule, we are adopting the key principles into UK law and setting out the broad elements of the safeguard process that will be operated by the TRA.

As we have already discussed, there will be a need for more detail. This will, rightly, be set out in secondary legislation. The schedule also provides the necessary powers for the Secretary of State to make regulations to do this, including, for example, to define what is meant by "increased quantities", "UK producers" and "like goods". Paragraph 19 of schedule 5 provides that regulations can be made to set out the process for reviewing safeguard measures. The regulations will set out, among other things, the circumstances in which measures can be continued.

Amendment 74 seeks to require UK producers to provide evidence that they are adjusting to increased imports before a safeguard measure can be extended beyond four years. It also aims to add into primary legislation that safeguard remedies may only be in place for a maximum of eight years. As I explained earlier, once we leave the EU, the UK clearly needs to be able to take action where our industry is being harmed by unfair trade from other countries, whether that is by dumped or subsidised goods, or as a result of fairly

traded but unforeseen surges in imports. The safeguard provisions set out in schedule 5 achieve this. Unlike anti-dumping and countervailing measures, safeguards relate to fair trade and apply globally. Therefore, it is especially important that these measures balance the interests of producers and downstream consumer industries by facilitating adjustment.

We have already discussed adjustment plans when considering the previous group of amendments. As I said, these are a vital tool in ensuring that safeguard measures not only provide protection, but allow those affected the opportunity to make necessary adjustments. It is not appropriate to introduce a requirement for producers to provide evidence of adjustment when seeking to extend measures beyond four years.

I ask the Committee to consider for a moment that we have measures in place—a safeguard—because of a massive surge on imports. The TRA has done its work. In an entirely novel process—I am aware of no parallel anywhere—Her Majesty's Opposition, doubtless supported by their allies in the Scottish National party, want to impose a bureaucratic and burdensome measure—*[Interruption.]* I notice that the SNP Members are shaking their heads. For once, perhaps, they will strike out and not support something that is so clearly damaging to the interests of Scottish producers. Why on earth would the producers have to provide evidence of their adjustment when the main issue should be other aspects and criteria? It is a strange innovation that the Labour party has put forward.

Introducing a requirement for producers to provide evidence of adjustment when seeking to extend beyond four years would undermine the need for flexibility in our approach, which recognises—this is worth reflecting on—that adjustment is not always dependent on a producer's own efforts. Yet, under the amendment, protection measures would cease if producers were not able to provide evidence that they were adjusting. Adjustment plans are a more suitable way of building in that flexibility and ensuring that there is a commitment to adjustment from as early as the initiation stage. Finally, with regard to the eight-year rule, the Government intend to be WTO-compliant by setting that out in secondary legislation.

Kirsty Blackman: I would appreciate it if the Minister let us know where it says that UK producers are supposed to produce that evidence. My reading is that the TRA has to find the evidence rather than the producers submitting it.

Graham Stuart: The hon. Lady will find that the evidence of adjustment by UK producers is unlikely to be provided by anyone other than UK producers. It is a rather strange innovation to insert that into legislation for the continuation of measures that are put in place because of the injury caused and the massive surge on imports. It is an entirely novel concept. I am not aware of its being anywhere in WTO schedules although, admittedly, after so little time in the job I cannot claim to know them inside out. If any Member of the Opposition, who after all came up with the extraordinary innovation, has evidence of a basis in WTO law or anywhere else, I would be fascinated to hear it. Perhaps the hon. Lady will support the amendment anyway, even though there is no evidence for it, legally or otherwise but I hope that she, like me, will oppose the amendment if it is pressed to a vote.

Anneliese Dodds: I am pleased to hear the Minister accept our call to ensure that the total duration of any such extended remedy shall be for another four years—eight years in total. He seemed to suggest that that would be forthcoming in secondary legislation. We are pleased to hear that, although it is unfortunate that it is not clear in the Bill.

On the evidence, much of our concern behind the amendment is motivated by the burden on the affected industry. That was set out clearly in remarks on a previous Opposition amendment. I hope, Mrs Main, that you will not see this as facetious: talking about novelty, we learned this morning that the market share threshold before an investigation can be initiated appears to be novel in the world, and the Minister said it was a wonderful innovation on the part of the British Government, so perhaps he can also sometimes see innovation when it comes from the Opposition.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 20|

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Schedule 5 agreed to.

Clause 14

INCREASES IN IMPORTS OR CHANGES IN PRICE OF AGRICULTURAL GOODS

3.45 pm

Kirsty Blackman: I beg to move amendment 110, in clause 14, page 9, line 45, at end insert

"following consultation with relevant stakeholders including consumer representatives and agricultural producers."

This amendment requires consultation before the making of regulations to increase the customs tariff for agricultural goods.

The Chair: With this it will be convenient to discuss the following:

Clause 14 stand part.

New clause 6—*Additional import duty on agricultural goods: enhanced parliamentary procedure—*

"(1) No regulations may be made by the Treasury in exercise of the power in section 14(1) except in accordance with the steps set out in this section.

(2) The first step is that a Minister of the Crown must lay before the House of Commons—

(a) a statement of the reasons for proposing to make the regulations; and

(b) a draft of the regulations that it is proposed be made.

(3) The second step is that a Minister of the Crown must make a motion for a resolution in the House of Commons setting out, in respect of proposed regulations of which a draft has been laid in accordance with subsection (2)(b)—

(a) the proposed additional amount of import duty; and

(b) the proposed period for the purposes of section 14(1)(a);

(c) the proposed trigger price for the purposes of section 14(1)(b).

(4) The third step is that the House of Commons passes a resolution arising from the motion made in the form specified in subsection (3) (whether in the form of that motion or as amended).

(5) The fourth step is that the regulations that may then be made must, in respect of any matters specified in subsection (3), give effect to the terms of the resolution referred to in subsection (4)."

This new clause establishes a system of enhanced parliamentary procedure for regulations setting additional import duty on agricultural goods, with a requirement for the House of Commons to pass an amendable resolution authorising the rate of import duty on particular goods and the relevant conditions.

Kirsty Blackman: I rise to move amendment 110, but I will mention now that if new clause 6 is moved at the appropriate stage, we will support it, because an enhanced parliamentary procedure seems sensible.

Clause 14 is headed "Increases in imports or changes in price of agricultural goods" and deals specifically with special agricultural safeguards and what can be put in place in relation to them. Our amendment is a very short one, but it is designed to require that the Secretary of State consult with consumer representatives and agricultural producers when making any decisions relating to special agricultural safeguards.

The Minister, when he spoke earlier about safeguarding, said that the decisions taken are about balancing the needs of producers with those of downstream consumers. This is exactly the kind of thing we are trying to do: we are trying to ensure that the Secretary of State, when making the recommendation to the Treasury to exercise the regulations, is doing so after consulting both consumer groups and agricultural producers. That is the only sensible thing to do in this case. The Minister has previously been clear that the Government like consulting with people and tend to try to do so wherever they can, but it would be sensible if it were stated in the Bill that they were required to do so in advance of putting in place, via a relatively unusual process, relatively unusual measures that would have an impact on our agricultural producers and consumers.

That is important because Brexit is looming on the horizon and our farmers do not know how they will be supported financially after 2020. I think Ministers have given undertakings to safeguard the money that comes from the EU until that point, and farmers have no certainty beyond that period of time. The UK Government are looking to make their own trade deals, which may change the agricultural landscape in the UK or result in our taking imports we have not previously because because of the trade deals as part of the EU—we have previously discussed things such as chlorinated chicken. Given all the changes on the horizon, both for agricultural producers and for consumers, who are already finding, for example, that the price of butter is going through the roof because of the increase in sterling, it is difficult for the Government to foresee what may happen in the future. If the Government are going to put in any measures related to increasing imports or the price of agricultural goods, particularly through the safeguarding measures, it would be sensible to consult both agricultural producers and consumers in advance of putting those in place.

Peter Dowd: The Minister was getting a little bit tetchy and prickly there. There is a quote from "Henry VIII" which, given that we are talking about Henry VIII powers, seems appropriate today:

"Be advised:

Heat not a furnace for your foe so hot

That it do singe yourself."

The new clause would establish an enhanced parliamentary procedure in relation to import duties on agricultural goods. During our sittings, the Committee has heard serious concerns expressed by multiple witnesses about the democratic shortcomings of the Bill. The Bill is, first, strikingly light on detail, notwithstanding the Minister's assurances that things will be put into place and more detail will come in due course. The Government are pushing that detail on to secondary legislation, but the delegated legislation process was designed to make administrative changes to laws—in effect, a rubber-stamping process—not for items that will form the material basis of our trade defence policies and so require proper scrutiny and debate. More worrying are the items to be channelled directly through the Executive in an unacceptable concentration of power, which ought to be subject to scrutiny, with Parliament given a say in holding the Government to account. The amendment is one of several in which the Opposition are calling on the Government to put critical decisions on tariffs, quotas and preferential rates in front of Parliament.

The measures in the Bill are at odds with the greater democratic control persistently promised to voters. Bringing back control, as we have said a million and one times, is about bringing back control to Parliament, not to a cadre of Ministers sitting in their offices in Whitehall. The new clause sets out four steps to enhance parliamentary scrutiny: first, a Minister must come to Parliament to explain the intentions of the draft regulations; secondly, a Minister must tell Parliament the import duty amount, as well as the period and trigger price under the relevant section; thirdly, the House must pass a resolution arising from the Minister's motion; and, fourthly, regulations must be made to give effect to that resolution—all in the cold light of parliamentary scrutiny and sight. It is not for the Government to make decisions single-handedly behind closed doors, nor for the Secretary of State to steer the process unilaterally. Rather, such decisions must be subject to proper democratic accountability, with the essential checks and balances enshrined in law.

As I have said before, the Opposition recognise that the Government must make necessary preparations to create the UK customs and tariff regime post-Brexit, but they cannot have carte blanche. We should not allow, or be considering, a carte blanche process allowing the Government to concentrate all those new powers in the Executive. The Opposition's view is that in this instance the interpretation of taking back control—moving it from Brussels to the Executive—is not acceptable. That is not only true of the provision before us today,

but evident in the European Union (Withdrawal) Bill and the Trade Bill. The Government are attempting to sidestep parliamentary scrutiny, and that is not acceptable.

In our view, tariffs should undergo the same parliamentary process as taxation, with similar levels of parliamentary scrutiny. We will oppose the Government's attempts to give the Treasury delegated powers to set future customs duties and tariffs away from the public and parliamentary eye. That is not the way we do things in Britain. New clause 6 outlines an enhanced parliamentary procedure for setting additional import duty on agricultural goods, among others, to bring scrutiny to our customs policy.

Our agricultural sector faces an uncertain future with Brexit ahead. It is distinct from other UK industries in possessing a more interwoven relationship with the European Union, given the existence of the common agricultural policy, which provides subsidies to UK farmers that the Government have indicated they will continue. The common agricultural policy provides critical support to UK farming—for example, the Department for Environment, Food and Rural Affairs estimated in 2014 that such payments represented 55% of farm income. As I said, the Government have promised to maintain those subsidies at the existing level until 2022, which I am sure is a huge comfort to the agricultural sector, but there are no guarantees yet on what will occur after a transitional period. Our step-by-step proposed parliamentary process will hold the Government to account for their policies and import duty proposals on agricultural goods.

Given the reliance in some quarters on subsidies and the fact that our EU counterparts will continue to be in receipt of subsidies across the continent, there will be a number of factors to consider when the UK comes to setting tariffs on agricultural imports. It is worth noting that the value of UK agricultural production at market prices was £25.8 billion in 2014, according to official Government statistics, and the farming sector provides 400,000 jobs in the UK. I accept that not many of them are in the constituency of Bootle, but there we are.

As the National Farmers Union has highlighted, the UK trade balance is negative to the tune of £22.4 billion, which makes the UK a net importer of food. Although there is an ambition for that figure to improve as the UK becomes more self-sufficient in food production, it shows that the UK is quite heavily exposed in terms of import dependency. As the NFU also highlights, the UK will be duty-bound to establish its own set of schedules with the World Trade Organisation, once we leave the EU. Although we know the Government have announced their intention to replicate the existing trade regime as far as possible in those new schedules aligned with existing arrangements, we have no guarantees on that front, and that must also be agreed by the other members of the WTO. Given the broad range of potential outcomes here and the importance of the agricultural sector to the UK economy, it is vital that any decisions made on import tariffs are subject to proper scrutiny and debate.

The amendment proposes that the relevant Minister must lay before the House of Commons full statements and drafts of regulations so that they can be properly scrutinised by Members from around the country who can represent the diverse interests of the agricultural community—the producers—and British consumers. It is almost a binary position.

Julian Sturdy (York Outer) (Con): I draw the Committee's attention to my entry in the Register of Members' Financial Interests. I wonder whether the hon. Gentleman should also touch on the impact of standards. He talked about animal welfare standards, as well as genetically modified products that we do not have in the European Union and a number of pesticides that are not now used in Europe but are used around the world. Those issues will all have an impact on future trade deals on food and agriculture, and will affect the consumer.

Peter Dowd: I thank the hon. Gentleman for raising that point, which is very important. I know one of my colleagues will be moving an amendment on those issues, and I hope that at that point the hon. Gentleman will be able to join the debate in a little more detail and give his knowledge and expertise on the matter.

I call on members of the Committee to lend their support to the amendment to ensure that democratic safeguards are in place surrounding the future of the UK's agricultural industry.

The Financial Secretary to the Treasury (Mel Stride): It is a pleasure to serve under your chairmanship, Mrs Main. I begin by thanking the Under-Secretary of State for International Trade, my hon. Friend the Member for Beverley and Holderness, for his spirited Henry VIII-style performance. We are now back to Mr Nice. *[Laughter.]* I feel bound to inform Members opposite that, although I may take a more gentle route, I will probably arrive at the same destination as my colleague would lead us to.

Clause 14 sets out the necessary provisions required to establish the UK's independent agricultural safeguards regime. It enables the UK to mirror existing EU arrangements for agricultural standards post-EU exit. In addition to the range of tariff and quota regimes that currently govern imports into the UK, some agricultural imports are governed by special agricultural safeguards. Agricultural safeguards are contingency restrictions on agricultural imports. They permit additional duty to be applied on certain agricultural imports in special circumstances—for instance, if there is a surge in the volume of imports or a sharp fall in import prices that could have an adverse impact on the UK market. The use of agricultural safeguards is permitted under the WTO agreement on agriculture. They can be applied only to goods in the scope of this agreement, but they are specifically designated in a WTO member's schedule of commitments.

4 pm

Agricultural safeguards cannot be used on imports within tariff quotas. The EU currently has 685 goods designated in its schedule of commitments. In practice, the EU has safeguard measures only for a small number of fruit and vegetables and poultry products. There are specific formulas laid out in the WTO agreement on agriculture to determine how trigger levels should be set when a safeguard action is authorised, and how much additional import duty should be applied. The UK is also involved in a process of technical rectification at the WTO to establish the bound at WTO schedules and other WTO commitments. As part of that process, we intend to replicate our existing rights to use agricultural safeguards.

Clause 14 enables the UK to invoke agricultural safeguards on certain agricultural imports post EU exit. It sets out the necessary provisions required to establish the UK's independent agricultural safeguards regime. That will ensure that the UK has the tools to counteract any adverse impact on the UK market from a sudden drop in price or rise in the volume of imports of agricultural goods. It enables the UK to mirror existing EU arrangements on agricultural safeguards post-EU exit as the UK shapes its future trading relationship with the EU, including any transitional arrangements. Ultimately, the UK will be able to use its discretion about whether and how we choose to apply these measures.

Amendment 110 seeks to require increased stakeholder consultation for imposing additional import duty on specified agricultural goods, which is also referred to as agricultural safeguards. Agricultural safeguards can be used to counter sudden surges in the import volume of agricultural goods. The regulations relating to agricultural safeguards could be subject to regular amendment. For example, the regulations will need to be updated throughout the year to reflect the previous three years of import data for those agricultural goods. Changes to regulations regarding agricultural safeguards can therefore occur multiple times throughout the year. It may be necessary to lay regulations swiftly.

The proposed amendment would significantly add to the lead-in times required to set or amend agricultural regulations related to safeguards. That would not allow the Government to respond quickly to changes in circumstances or to update the measures in line with the latest import data in a timely fashion. Moreover, most changes to regulations related to agricultural safeguards will be of a technical nature, such as recalculating import volume triggers for goods subject to agricultural safeguards when the latest import data is available. Increased stakeholder consultation would not be relevant for all technical changes and updates made to these regulations. Where possible, as the hon. Member for Aberdeen North reflected, the Government will consult on changes to import duty, including changes to increase import duty for agricultural goods. However, given the regularity and technical nature of the changes, the Government do not consider it practical to consult stakeholders every time regulations change.

New clause 6 seeks to put in place a further parliamentary process for imposing additional import duty on specified cultural goods.

Julian Sturdy: For my clarification, is the Minister saying the UK Government can act much quicker if there is a disease outbreak in a country from which we import food or meat products that would ultimately affect UK agriculture and the UK consumer?

Mel Stride: My hon. Friend is probably raising an issue that would be outside the context of the agricultural safeguarding regime. The regime relates to sudden drops in the price of goods, and indeed certain increases in the volume of goods that are being imported, as opposed to the kind of issues he raises. Phytosanitary issues are outside the context of the Bill but will be subject to the kind of negotiations and measures that we bring into effect in that particular regard.

The Bill introduces a comprehensive framework for a new stand-alone customs regime, which will be underpinned by detailed and technical secondary legislation. The Bill ensures that the scrutiny procedures that apply to the exercise of each power are appropriate and proportionate, taking into account the technical detail of the regulations and how quickly they need to be changed.

As I set out in addressing amendment 110, the effectiveness of the agricultural safeguards regime relies on its responsiveness. The proposed additional procedure would give rise to unacceptable delays, which would not allow the Government to respond quickly to changes in circumstances or to update the measures in a timely manner. The power in the clause is subject to the negative procedure. Given the technical nature and frequency of changes, the Government consider that appropriate and proportionate. I hope the Committee will agree that the clause should stand part of the Bill.

Kirsty Blackman: The Minister made a relatively good point in relation to how many technical changes there may be. I will look into the frequency at which changes are likely to occur. If they will be frequent, I will not bring this matter back on Report, but if they will be infrequent, I will consider tabling an amendment. At this stage, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 14 ordered to stand part of the Bill.

Clause 15

International disputes etc

Kirsty Blackman: I beg to move amendment 111, in clause 15, page 10, line 18, at end insert—

'(3) Within three months of the passing of this Act, the Secretary of State must make regulations defining "international law" for the purposes of this section.'.

This amendment requires the Government to define international law for the purposes of Clause 15.

The Chair: With this it will be convenient to discuss the following:

Amendment 112, in clause 15, page 10, line 18, at end insert—

'(3) In this section, "international law" means—

(a) World Trade Organisation treaties,

(b) rules of international public law explicitly referred to in World Treaty Organisation treaty provisions,

and shall be interpreted in accordance with the customary rules of interpretation of international public law.'.

This amendment defines international law for the purposes of Clause 15.

Amendment 113, in clause 15, page 10, line 18, at end insert—

'(3) Within three months of the passing of this Act, the Secretary of State must lay before the House of Commons a report on—

(a) the relevant international law authorising the exercise of the powers, and

(b) the circumstances in which the Government considers it appropriate to deal with a dispute by varying the amount of import duty payable.'.

This amendment requires the Government to report prior to implementation on its interpretation of relevant international law and its expectations about the circumstances of a trade dispute or issue giving rise to a variation in tariffs.

Amendment 114, in clause 15, page 10, line 18, at end insert—

'(3) The Secretary of State must lay before the House of Commons an annual report on the exercise of the powers under this section including information on—

(a) the relevant international law authorising the exercise of the powers in each case, and

(b) the matters in dispute or issues arising in each case.'.

This amendment requires the Government to report on the circumstances of, and international law basis for, each variation of tariffs as a result of a trade dispute.

Clause stand part.

New clause 7—*Variation of import duty in consequence of international dispute: enhanced parliamentary procedure*—

'(1) No regulations may be made by the Secretary of State in exercise of the power in section 15(1) except in accordance with the steps set out in this section.

(2) The first step is that the Secretary of State must lay before the House of Commons—

(a) a statement of the dispute or other issue that has arisen;

(b) an account of the reasons why the Secretary of State considers that the condition in section 15(1)(b) has been met; and

(c) a draft of the regulations that it is proposed be made.

(3) The second step is that a Minister of the Crown must make a motion for a resolution in the House of Commons setting out, in respect of proposed regulations of which a draft has been laid in accordance with subsection (2)(c) the proposed variation of import duty.

(4) The third step is that the House of Commons passes a resolution arising from the motion made in the form specified in subsection (3) (whether in the form of that motion or as amended).

(5) The fourth step is that the regulations that may then be made must, in respect of any matters specified in subsection (3), give effect to the terms of the resolution referred to in subsection (4).'.

This new clause establishes a system of enhanced parliamentary procedure for regulations varying import duty as a result of an international dispute, with a requirement for the House of Commons to pass an amendable resolution authorising the variation in the rate of import duty.

Kirsty Blackman: I rise to speak to amendments 111 to 114 in my name and that of my hon. Friend the Member for Dunfermline and West Fife. I am aware this is a framework Bill, but the clause is particularly short and skeletal. It would have benefited from being a bit longer and fleshed out just slightly, because then the Government could have explained more adequately what they are talking about.

Amendment 111 deals with an issue raised with us by the Law Society of Scotland, which said:

"Clause 15(1)(b) makes reference to international law but it is not clear what is meant by this. It would be helpful were the Minister to explain precisely the circumstances in which the Government would need to deal with a dispute by varying the import duty."

If would be useful if the Minister, either in summing up or at a later point, could provide a bit of clarity. Amendment 111 would ask the Secretary of State to come back with regulations defining what "international law" is for the purposes of the clause. As has been stated, if the Law Society of Scotland does not think that is clear, perhaps it needs a bit more fleshing out.

Amendment 112 suggests to the Minister what he might mean by "international law." We tabled the amendment to see if that is what the Government mean. If they do, perhaps they will accept it.

Amendment 113 attempts to do something similar, but we are giving the Government a little more time in which to define what they mean by "international law" in the clause. We ask them to come back within three months of the passing of the Bill, making clear what the relevant international law authorising the exercise of powers would be and the circumstances in which they consider it appropriate to deal with a dispute by varying the amount of import duty. It may be that the Government intend to return to that later anyway but, if they were to accept any of the amendments, they will make their intentions clear at this point.

Amendment 114 has a slightly different purpose: to increase the accountability of Government. The Government have the power on international disputes and the Secretary of State will make regulations in relation to that through the clause, but there does not seem to be any accountability to Parliament about regulations or changes, or ways in which they will deal with international disputes. There seems to be no feedback mechanism to allow Parliament to ensure that the Minister makes the correct decisions or to scrutinise those decisions adequately.

In amendment 114, we have asked the Secretary of State to lay before the House of Commons an annual report on the exercise of these powers, making clear the circumstances in which they have used them, which matters were in dispute and which was the relevant international law in deciding the changes.

Now may not be the time to say this, but I will just make my intentions clear. Depending on what the Minister says about his intentions, it may be that we do not need to press amendments 111 to 113. I would very much like to press amendment 114 when we come to that stage, but on the other three I will wait to see what the Minister says.

Graham Stuart: I will endeavour to follow the good example set by the ever-affable hon. Member for Bootle, who gave not only good content, but brilliant quotes that entirely encapsulated the moment and which we all enjoyed.

Clause 15 enables the Secretary of State to vary the rate of import duty when a dispute or other issue has arisen between the UK Government and the Government of another country, and the UK is authorised to do so under international law. The clause replaces equivalent existing powers available to the European Commission. Under the WTO dispute system, WTO members that have been found to be in breach of their obligations must bring their measures into compliance with WTO law. If they do not do so within a reasonable period, the parties can attempt to agree on compensation. Compensation may take the form of a reduction in the import duty on specified goods from the complaining country, although in practice any such reduction would have to be applied equally to all other WTO members in accordance with the most favoured nation rule.

If the parties fail to agree compensation, the complaining member or members may impose retaliatory measures against the member found to be in breach. Such measures typically involve raising the rate of import duty on specified goods from that country to incentivise it to

bring itself into compliance. Free trade agreements with third countries also frequently contain dispute settlement mechanisms, many of which follow similar procedures to those of the WTO. In particular, free trade agreement dispute settlement mechanisms often result in a signatory being required to bring itself into compliance with the terms of the FTA, and often allow retaliatory trade measures to be taken against the offending party if it does not do so, and cannot agree appropriate compensation. Authorisation to implement compensation or retaliation measures may also arise in a number of other specific contexts. For example, a WTO member that imposes a temporary safeguard measure to protect its industry, or that modifies its WTO schedules, must seek to compensate any affected countries, failing which retaliatory measures may be imposed against it.

The ability to vary the rate of import duty in response to disputes and other contentious situations is vital to ensure that the UK can operate an independent trade policy after leaving the EU. In particular, the threat of imposing retaliatory duties following a trade dispute can be an effective means of incentivising other countries to comply with their obligations under international law, and can therefore help to preserve and open up trading opportunities for UK firms.

The European Commission is currently responsible for conducting trade disputes and applying enforcement measures on behalf of the UK. Once we leave the EU, the UK will bring and defend trade disputes in its own right. When such disputes are decided, we will require the powers to be able to take action to enforce and respond to their rulings including, where necessary, varying the rate of import duty. The power in the clause ensures that the UK can do just that.

Amendments 111 and 112 seek to provide a legislative definition of international law in the Bill or in regulations to be made by the Secretary of State, as the hon. Lady set out. Amendments 113 and 114 seek to impose a statutory duty on the Secretary of State to report to the House of Commons on that power, either within three months of the passing of the Bill or annually, providing details of the international legal basis for justifying the use of the power.

As I have explained, there are a number of situations under international law in which countries may be authorised to vary their rate of import duty for the purposes of retaliation or compensation, including in disputes under different types of international agreements and, just to make it even more complicated, in other contentious situations that do not involve a formal dispute. Given the different context in which clause 15 would apply, it is sensible to refer broadly to authorisation under international law. Adopting a narrower approach would risk constraining future action in situations that are not currently foreseeable.

4.15 pm

Further, it is anticipated that when the power is exercised, the Government will identify, in explanatory notes or otherwise, the legal basis in international law for any proposed variation of import duty. It would be extraordinary to imagine any Government doing other than that. If Parliament were not satisfied that a proposed variation was authorised under international law, it would have the opportunity to pass a motion to annul the Government's instrument. That is a more appropriate procedure for parliamentary oversight.

New clause 7 would establish an enhanced parliamentary process for regulations varying import duty as a result of an international dispute or other issue under clause 15. As I set out previously, for indirect tax matters it is common to have framework primary legislation supplemented by secondary legislation. The Bill introduces a comprehensive framework for a new stand-alone customs regime and ensures that the scrutiny procedures that apply to the exercise of each power are appropriate and proportionate, taking into account the technicality of the regulations, the frequency with which they are likely to be made and how quickly the law might need to be changed.

The power in clause 15 is subject to the negative procedure, which is both appropriate and proportionate. The proposed scrutiny procedure would give rise to unacceptable delays that would hamper the UK Government's efforts to enforce international dispute rulings and to induce other countries to comply with their international obligations. The negative procedure represents a more appropriate balance between the need for parliamentary oversight and the need to act quickly.

Kirsty Blackman: I rise to query something the Minister said and to ensure that I heard him correctly. Is it the Government's intention, at the negative procedure stage, to explain in the explanatory notes the basis in international law and the reason for the measure being introduced?

Graham Stuart: It is our intention that the Government, when they seek to make such a change, and they are doing so under international law, would provide evidence of the law upon which they were relying. If the hon. Lady is happy with that, I will leave it there.

In conclusion, after leaving the EU, the United Kingdom will require the ability to vary the rate of import duty to respond to international dispute rulings and other contentious situations. That will ensure that the Government can continue to protect the UK's economic interests by putting in place, when necessary, effective retaliatory and compensatory measures against other countries. I commend the clause to the Committee and hope that the amendment is withdrawn or rejected.

Anneliese Dodds: I am grateful to the Minister for his clarifications. I know he will regret hearing this, but the Opposition feel that the procedures are, sadly, not appropriate and proportionate. The new clause argues for an enhanced parliamentary procedure if import duties must be varied as a consequence of an international dispute. I will not go through the more rigorous procedure we suggest; it is similar to that described by my hon. Friend the Member for Bootle.

It would help if the Minister answered this initial question: what is the anticipated frequency of this kind of dispute? My view of what has occurred at EU level is that such disputes are not so frequent that appropriate scrutiny would not be possible. Some of us are concerned that a dispute might come sooner rather than later. I understand that experts took different positions in the International Trade Committee on whether the UK's continuing to apply EU anti-dumping duties would be legal after it had left the EU. That is one of many reasons why it would be helpful to have more explicit mention in the Bill of existing measures being automatically rolled over. But, anyway, that is a caveat.

There are many other reasons why an enhanced procedure is necessary. The first is that the decisions taken in the context of such a dispute would be adopted by the Secretary of State himself, albeit with the advice of the TRA, and they could have a significant impact on UK industry. We have talked about how, in many cases, the supply chains are complex, and we need to talk about a variety of different consumers and business-to-business activity. It is therefore important that Parliament is able to examine a statement of the dispute and what exactly the Government propose should be done in relation to the dispute, such that the House can vote on that matter if necessary. These disputes do not affect just economic policy; they can have a significant impact on other areas of public policy as well. Therefore, it is important that colleagues are able to express a view on them and to consider the Government's position on them.

The second reason it is important to have an enhanced procedure is that there is a lot of public concern at the moment about international economic disputes and how they tend to be resolved. I served as a Member of the European Parliament for three years, and I received tens of thousands of communications—about 38,000 at the last count—from concerned citizens about the Transatlantic Trade and Investment Partnership deal between the US and the EU. Most of those emails included criticism of the impact of investor-state dispute settlement, predominantly because that method of resolving disputes is not transparent and many people feel it privileges the voice of companies over Governments. We surely should not be putting ourselves in a position where Parliament's voice would be not just ignored but not even heard when it comes to our Government's actions in relation to trade disputes. For that reason, I hope the Government will support our amendment.

I hope that I will be permitted one last question, as this matter came up in the Minister's opening remarks on the clause. Will he tell us where the Government have explicitly given themselves the power to create WTO schedules? I do not know where that is. He mentioned the necessity of producing those schedules, so can we have some clarification on that point?

Graham Stuart: I will deal with the questions as best I can and in order.

The EU has four retaliatory duties in place. It is not really possible to predict how frequently this power will be used. In some ways the question is not really the frequency but whether, when it does happen, we have a procedure in place to allow us quickly and effectively to take action to ensure that we put the matter right. That, rather than the frequency, might be the bigger issue.

Although we will be seeking, and will be prepared to use, the WTO dispute settlement mechanism as a way of ensuring that there is a level playing field for UK business to compete on, and we will have the tools available for us to participate fully in international trade disputes where necessary, we have no particular appetite to be more litigious than is required to protect the UK's interests.

I will write to the hon. Lady and the Committee on the WTO schedules and the process attached to that.

Kirsty Blackman: I would appreciate it if the Minister also wrote to me, because I brought that up last week. I am pleased that the hon. Member for Oxford East is pursuing the issue. It is important that the Government have the power to lodge schedules with the WTO and the power to make the technical rectifications that the Minister mentioned—those may or may not end up being technical rectifications to things like quotas, given that some of the countries in the WTO are challenging whether they would be technical rectifications or would constitute modifications.

On our amendments, the Minister has provided some information around how Parliament will be provided with evidence for each of the things that comes up. Therefore, I do not intend to press amendment 111 or amendments 112 and 113, but I do intend to press amendment 114 because I am not yet convinced that the Government will provide enough feedback about how this mechanism is working, and it would be appropriate for them to do so.

Amendment, by leave, withdrawn.

Amendment proposed: 114, in clause 15, page 10, line 18, at end insert—

"(3) The Secretary of State must lay before the House of Commons an annual report on the exercise of the powers under this section including information on—

(a) the relevant international law authorising the exercise of the powers in each case, and

(b) the matters in dispute or issues arising in each case."

This amendment requires the Government to report on the circumstances of, and international law basis for, each variation of tariffs as a result of a trade dispute.—(Kirsty Blackman.)

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 21]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Clause 15 ordered to stand part of the Bill.

Clauses 16 to 18 ordered to stand part of the Bill.

Clause 19

RELIEFS

Peter Dowd: I beg to move amendment 126, in clause 19, page 13, line 5, at end insert—

"(6A) No regulations may be made under this section unless a draft has been laid before, and approved by a resolution of, the House of Commons."

This amendment requires regulations under Clause 19 to be subject to the affirmative procedure.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Amendment 127, in clause 32, page 19, line 32, after "regulations" insert "under section 19 and".

This amendment is consequential on Amendment 126.

Peter Dowd: We tabled amendment 126, and the consequential amendment 127, to ensure that regulations made under clause 19 are subject to the affirmative procedure.

Clause 19 allows the Treasury to make regulations for full or partial relief from a liability to import duty. The clause sets out a number of factors determining whether a relief can be applied, including the nature or origin of the goods, the purposes for which the goods are imported, the person by whom they are imported and the circumstances under which they are imported. The amendment seeks to provide some parliamentary scrutiny over providing reliefs, which is of course an issue of taxation and would therefore normally be subject to some form of parliamentary oversight.

I have said a great deal about the Bill's centralisation of powers to the Executive and away from Parliament, and this is yet another example. The Government want their cake and they want to eat it as well. They want to impose taxes with no parliamentary scrutiny, and they want the Bill to be considered a money Bill, thereby avoiding parliamentary scrutiny from the House of Lords. In this particular case, extensive powers are being handed to the Treasury to adjust fiscal policy without reference to Parliament at all. As I have said, that is pretty worrying, and it is a pretty worrying precedent to set as Brexit legislation passes through this place. The Government know what they are doing; otherwise, as I have said, they would not have designated this as a money Bill.

Graham Stuart: The hon. Gentleman has referred to this before, so it is worth correcting it for the record. The Government do not designate Bills as money Bills or otherwise; that is done by Mr Speaker. The hon. Gentleman may blame us for many things, but he cannot blame us for that.

Peter Dowd: On another occasion—perhaps not here—I am more than happy to debate that issue and have that conversation with the Minister. Indeed, if he wants to have that discussion in the Committee, we are more than happy to do so when we debate another amendment. I am sure that he would be delighted with that.

4.30 pm

We tabled amendment 126 following the report by the Lords Delegated Powers and Regulatory Reform Committee on the Bill. I am sure that everyone has read that report, which is really interesting. The Committee analysed the powers created by the Bill and decided that it

"involves a massive transfer of power from the House of Commons to Ministers of the Crown."

The report specifically states that clause 19 should be subject to an affirmative procedure:

"Clause 19 allows the Treasury to make regulations providing for full or partial relief from a liability to pay import duty. Given the importance of this matter and the scope of the regulations (relief can be given in the regulations by reference to 'any factor'), we consider that these regulations should be subject to an affirmative procedure."

Amendment 126 responds specifically to that suggestion by a cross-party group of experts in the Lords. I hope that, on that basis alone, the Minister considers taking up the amendment ahead of Report stage.

Mel Stride: Clause 19, as the hon. Member for Bootle pointed out, allows for a full and partial relief from import duty. The EU customs regime provides for a relief from import duty on the basis of various factors, including the nature of the goods, their quantity and their value. Those reliefs support trade and address unintended outcomes. They can also be used to address situations in which a change to import duty would have negative consequences, whether for a specific entity or for UK interests as a whole. A relief may relate to a temporary movement, such as a visiting exhibition, or a permanent movement, such as the return of UK materials that were previously exported.

The circumstances in which goods will be eligible for a relief from import duty are carefully defined in EU law. They rely on conditions that ensure that they apply only to achieve the intended outcome. Examples include: where items are imported for scientific, educational or cultural purposes or research; where items are samples, whether for testing or to encourage future trade; where goods are donated or inherited; and where private individuals import goods upon transfer of residence to the United Kingdom due to marriage or for a period of study. The clause also covers goods imported for a specific authorised use that are placed on the home market—aircraft parts, for example, and goods that are temporarily imported, such as those for an art exhibition. Those are dealt with in more detail in the special procedures section.

Reliefs may apply to specific bodies or types of body. For example, reliefs support the operation of organisations such as charities, museums and galleries, as well as private individuals not trading. The changes made by clause 19 will allow the UK to provide full or partial relief from import duty.

Amendments 126 and 127 seek to apply the draft affirmative procedure to regulations made under clause 19. As I have set out and the Committee has had occasion to debate, the Bill ensures that the scrutiny procedures that apply to the exercise of each power are appropriate and proportionate. For the powers under clause 19, the negative procedure is both appropriate and proportionate, given the technicality of the regulations and the frequency and speed with which they may need to be made.

The hon. Member for Bootle raised the House of Lords report. The Government are looking at this issue not just in terms of the scope of the matters at hand and the power that is appropriate on that basis, but from a trading and customs point of view. We are considering the frequency with which we are likely to have to make changes and, accordingly, the ways in which the Treasury and Her Majesty's Revenue and Customs will have to work.

Kirsty Blackman: Clause 19, in effect, gives the Government power to create loopholes—tax reliefs—in the legislation. Given that this is a tax Bill, does the

Minister not feel that it would be better for the tax reliefs it creates to be subject to more scrutiny, not less, so that they do not have unintended consequences?

Mel Stride: I would not describe the clause as creating loopholes. It simply allows us, by regulation, to ensure the kind of importations to which I referred earlier. The authorised use importation, for example, relates to goods coming into the country for a specific process before typically being exported out of the United Kingdom. Levying an import duty on such goods would clearly not be appropriate, since they get exported shortly thereafter.

The measures facilitate those particular circumstances, or indeed the loan of an artwork. We are told that the French President is suggesting that the Bayeux tapestry might come over here; that particular gesture would be another example where no import duty would be appropriate, and that particular item should be able to come in and out of the country without being bothered by Customs and Excise. I would argue that the measures are important facilitations rather than loopholes.

Each relief provided for under this power will be for a particular purpose and set out the detailed requirements—for example, in relation to the origin of goods or the purposes for which they are imported. The power will be necessary in the first instance to replicate existing reliefs within the EU, to give certainty to traders directly following our exit from the European Union. However, as circumstances change it may be necessary to adapt our system of reliefs to give UK businesses and individuals the support they need to flourish, and to do so in a timely and flexible manner. For any future reliefs, the Treasury would follow established processes, consulting on draft legislation.

Peter Dowd: The hon. Member for Aberdeen North made some valid points. The reality is that this, to all intents and purposes, is a tax relief. It can be dressed up in whatever way the Minister would like, but it is de facto a tax relief. We already have something like 1,400 tax reliefs, which ordinarily would come to Parliament for their ratification. This seems to be a potential slew of tax reliefs—I will not comment on whether they are good, bad or indifferent—that will be given the imprimatur of a Minister or the Treasury without Parliament having any say whatsoever in that tax raising. That is not a power that Parliament should give away lightly, so I am afraid we cannot accept the Minister's explanation that these are somehow technicalities and nothing to do with tax and raising money, which is the prerogative of Parliament.

Kirsty Blackman: I am concerned that this is a tax relief, and about the unintended consequences that might flow from it. The Minister almost seemed to say that the Government will make decisions on a case-by-case basis, but that should not be their intention. They should lay out the circumstances in which each kind of widget falls into each category. They are not deciding whether the Bayeux tapestry should be exempt from this duty, but whether artworks should be exempt. Those are pretty significant and major decisions, and I do not think they will be made with the frequency that the Minister suggests.

It might be that in 10 years' time the world will have changed dramatically and we will be quite a different country, importing things that will need relief in a different way. That is fair enough, but the situation will not require regular change. Given that the measure seeks to encourage industry to flourish and to allow artworks to come to this country to be displayed, it will have a real impact on the UK's future, so it is completely reasonable to ask the Government to allow more scrutiny. Such instances will not be that frequent, and the measure will have a big impact.

Mel Stride: I point the hon. Member for Aberdeen North to my earlier remarks. We believe that the measure is proportionate, particularly taking into account the frequency of the relevant changes. She is absolutely right about the Bayeux tapestry and the import of artworks; the measure sets the regulations by which those kinds of items will come in and go out of the country. There is no doubt that, in this arena of imports and these kinds of facilitations, changes are certain to occur through time, often of a highly technical nature and on a fairly frequent basis. On that basis, in terms of proportionality, there is a strong argument that we should stick with what is in the Bill.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 22]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Clause 19 ordered to stand part of the Bill.

Clause 20 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clause 21

Customs agents

Kirsty Blackman: I beg to move amendment 115, in clause 21, page 14, line 15, at end insert—

"(9) Within three months of the passing of this Act, the Chancellor of the Exchequer must lay before the House of Commons a report on the proposed exercise of the power of the HMRC Commissioners to make regulations under subsection (7), including in particular—

(a) the proposed criteria for appointment of Customs agents, and

(b) the proposed standards which persons must meet to be approved for appointment."

This amendment requires the Government to report on the proposed use of regulations to prescribe standards for Customs agents.

The Chair: With this it will be convenient to discuss clause 21 stand part.

Kirsty Blackman: This is another amendment to try to get the Government to provide more information on the framework of the Bill. As I have said, I understand that it is a framework Bill, but more information could have been provided, particularly in the context of companies already having to contend with the move from CHIEF to CDS and the massive changes in customs that will be introduced. It would be good for companies to have an understanding—sooner rather than later—of customs agents and the hoops that those agents will need to jump through to be approved.

The amendment asks for the Government to produce a report in relation to

"the proposed criteria for appointment of Customs agents, and…the proposed standards which persons must meet to be approved for appointment"

within three months of the passing of the Bill. That will provide a level of certainty to companies about what criteria customs agents will be expected to meet in future. It is an incredibly uncertain time for businesses that export; they do not know what will happen next. This would give them a bit more understanding about the landscape that they will face.

Mel Stride: Clause 21 allows importers to appoint an agent to act on their behalf in respect of their import obligations. Currently, there is widespread use of customs agents who act on behalf of importers and exporters of goods, including by submitting customs declarations on their behalf. They provide a valuable service to importers and exporters.

There are two types of agent—direct and indirect, which are treated differently to represent the different relationships between them and those who appoint them. Direct agents make declarations on behalf of the importer, whereas indirect agents make declarations in their own name. Direct agents make their declaration using the importer's identifier and they more often represent a domestic importer against whom any debt can be enforced. Indirect agents often represent overseas importers against whom any debt cannot easily be enforced. The changes made by clause 21 will allow the two classes of agent to be appointed.

The clause allows HMRC to make regulations about how the appointment is notified as well as withdrawn, which may be as little as confirming the appointment on the declaration. It also sets out the circumstances in which the agent is jointly liable for import duty.

Amendment 115 seeks to commit the Chancellor of the Exchequer to produce a report for the House of Commons regarding the introduction and regulation of customs agents under clause 21(7) within three months of the Bill's enactment.

Clause 21(7) seeks to allow HMRC to introduce formal regulation regarding customs agents over and above the current requirement for them to adhere to customs procedures. The UK has authority to further regulate customs agents under the existing customs regime. There are currently no plans to introduce such additional regulation on customs agents, so requiring a report to be produced is unnecessary and will impose an administrative burden at a time when the UK is focusing on its future relationship with the EU. I would hope that the hon. Lady might reflect on my comments about no plans for change and withdraw the amendment.

4.45 pm

Kirsty Blackman: I appreciate the Minister's clarification and I hope to be able to share that with businesses and organisations that are concerned about the possible change. In that spirit, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 21 ordered to stand part of the Bill.

Clause 22

Authorised economic operators

Peter Dowd: I beg to move amendment 128, in clause 22, page 14, line 17, leave out "HMRC Commissioners" and insert "The Treasury".

This amendment provides for the power to make regulations under Clause 22 to be exercisable by Treasury Ministers rather than HMRC.

The Chair: With this it will be convenient to discuss the following:

Amendment 116, in clause 22, page 14, line 36, at end insert—

"(4) Within three months of the passing of this Act, the Chancellor of the Exchequer must lay before the House of Commons a report on the proposed exercise of the power of the HMRC Commissioners to make regulations under subsection (1), including in particular—

(a) the proposed criteria to be applied in determining whether or not any person should be an authorised economic operator,

(b) an assessment of the structure of the authorised economic operator system in Germany, Austria and such other countries as the Chancellor of the Exchequer considers relevant,

(c) the proposed differences between the structure that is proposed to be established by the first exercise of the power to make regulations under subsection (1) and each of those structures described in accordance with paragraph (b),

(d) the level of proposed resources to be allocated by the HMRC Commissioners for the authorisation of new authorised economic operators, and

(e) the target timetable for the authorisation of—

(i) new authorised economic operators in each class, and

(ii) authorised economic operator certification renewals in each class.".

This amendment requires the Government to report on the proposed operation of the powers of the HMRC under Clause 22, including comparative information.

Amendment 129, in clause 22, page 14, line 36, at end insert—

"(4) No regulations may be made under this section unless a draft has been laid before, and approved by a resolution of, the House of Commons.".

This amendment requires regulations under Clause 22 to be subject to the affirmative procedure.

Clause stand part.

Amendment 130, in clause 32, page 19, line 32, after "regulations" insert "under section 22 and".

This amendment is consequential on Amendment 129.

Peter Dowd: Amendment 128 would confer powers on the Treasury to act as authorised economic operators instead of HMRC commissioners, for whom the clause currently creates powers.

Clause 22 allows the setting up of an authorised economic operator scheme, which is an internationally recognised quality mark indicating that an operator has met recognised standards of compliance. The status could give special access to some customs procedures and the right, in some cases, to fast-track shipments through customs. Clause 22 gives HMRC the powers to make regulations to not apply sections of part 1 of the Bill to those with such a status, or to ensure that the status is recognised procedurally in other ways.

Once again, this is a very wide power given to HMRC commissioners to ignore large sections of the Bill in relation to certain operators. Under the amendment, we hope to shift the powers from HMRC commissioners to Treasury Ministers. There is a simple reason for that: Treasury Ministers are democratic agents, accountable to the general public. We cannot allow a situation where unelected officials can disapply large sections of parliamentary legislation with no democratic recourse or public oversight. The clause would effectively give HMRC power to refuse to apply all of part 1 of the Bill, from clause 1 all the way to clause 38. Surely this sweeping power, if it has to be created, should be held by a Minister of the Crown—ideally with additional parliamentary scrutiny, as we have tried to ensure throughout other parts of the Bill.

The clause highlights yet another case where democracy is being brushed aside for the purpose of expediency. Our amendment seeks to restore accountability. I hope that members of the Committee will support it today.

Amendment 129 and consequential amendment 130 seek to amend clause 22 and clause 32 respectively. In both cases, the amendments would add a requirement for the Government to introduce affirmative regulations to make further policy. Under clause 22, that is for the purposes of setting up an authorised economic operator scheme.

The use of the negative procedure in that case was commented on in the Lords Delegated Powers and Regulatory Reform Committee report, which addressed the matter of regulations made under the negative procedure under clause 22 as follows:

"Clause 22 allows HMRC Commissioners to make regulations 'disapplying or simplifying' any of the law relating to import duty made by or under Part 1 of the Bill (clauses 1 to 38) in relation to "authorised economic operators", a term that will be amplified in regulations and which essentially covers operators who meet internationally recognised standards of compliance. Bearing in mind that clause 22 covers the other 31 regulation-making powers found in Part 1 of the Bill, its scope is very wide. Given the width of this power enabling HMRC to waive compliance with the law, we consider that these regulations should be subject to an affirmative procedure."

Again, the Lords are bringing home the point about democratic accountability.

Amendment 129 seeks to amend the Bill, following the advice of that cross-party Committee, because of another example of the Government sidestepping parliamentary scrutiny. We want—we will say this time and again—to reintroduce some measure of scrutiny into the process. Similarly, amendment 130 brings the notes under clause 32 into line with the changes made in clause 22, as I described earlier. It is therefore a consequential amendment in ensuring that the Bill properly reflects the comments made by the Delegated Powers and Regulatory Reform Committee. As I am sure everyone will agree, the proposals are all about parliamentary scrutiny in the important area of customs policy.

Kirsty Blackman: It is most unusual to hear the Lords held up as champions of democratic accountability, but the work of the Delegated Powers and Regulatory Reform Committee on the Bill has been incredibly useful, and it has allowed us to have a more knowledgeable debate on the subject. It was quite reasonable of the Opposition to have brought forward their amendments.

I will speak to amendment 116, which I intend to press to a vote. It is about authorised economic operators, which is what the clause covers, because I have real concerns about the system. I am not the only person to have concerns—they have been expressed previously—about how the UK manages the AEO scheme within the UK. The UK scheme is managed dramatically differently from schemes in other countries, which is a real concern for businesses.

The Government's customs White Paper mentioned that people could be authorised economic operators, and basically suggested that that would solve all their woes. Given how difficult it is for companies to become authorised economic operators, and given HMRC's shortcomings in overseeing the process and ensuring that it is as smooth and quick as possible, I have real concerns that the system cannot be used effectively by many businesses as a way to ensure—slacker customs procedures is not the right term—slightly different customs procedures that would allow things to move a bit more smoothly.

In the amendment in my name and that of the hon. Member for Dunfermline and West Fife, we are looking for the Government to provide more information. Part of that is about giving businesses certainty further in advance, and part is about ensuring that the Government think about how the authorised economic operators scheme will go forward.

Among the various things we are asking for in the amendment is

"the proposed criteria to be applied in determining whether or not any person should be an authorised economic operator".

Part of that is to do with the issue that the UK Government and HMRC have had with requiring companies to have someone with three years of customs experience in order to be approved as an authorised economic operator. That is how things have been applied and work now, but if we suddenly include the, I think, 130,000 new companies that have not previously had to do customs checks, we will need a different system, because those companies will not have someone who has been working for three years in a customs-related role. The Government will have to agree that some sort of external company can take on the role of that person, or that the companies can have a differentiated system until they have had that three years of experience in exporting. It is reasonable to expect the Government to be a bit more flexible.

Our proposed new paragraph (b) asks for

"an assessment of the structure of the authorised economic operator system in Germany, Austria and such other countries as the Chancellor of the Exchequer considers relevant".

Although the scheme is internationally recognised, the way in which it is implemented and the way in which the equivalents of HMRC oversee it varies wildly by country. In some places, the system is much quicker, and it is much easier to get through the process. Companies receive more assistance and guidance to get them through the process, and the officials make a determination about applications more quickly.

It is important for the Government to look at other countries. The British Chambers of Commerce said that Austria and Germany do this in a much smoother way; that is why those countries are included in the amendment, but it would be completely reasonable for the Government to include any other countries that they think are relevant.

Paragraph (c)—

"the proposed differences between the structure that is proposed to be established by the first exercise of the power to make regulations under subsection (1) and each of those structures described in accordance with paragraph (b)"—

would again require the Government to provide us with more information in advance. Paragraph (d), on

"the level of proposed resources to be allocated by the HMRC Commissioners for the authorisation of new authorised economic operators",

is pretty critical. Given that I assume the Government expect to see a dramatic increase in the number of applicants for authorised economic operator status because of the number of companies that will be exporting for the first time, it is reasonable that they should report on how they intend to ensure that sufficient resources are allocated to seeing the process of authorised economic operators through.

Paragraph (e) is about

"the target timetable for the authorisation of…new authorised economic operators in each class, and…authorised economic operator certification renewals in each class."

We have heard concerns that the renewal process for an authorised economic operator can take 12 months. If that is so—that may be an outlier—that is a ridiculous length of time for a renewal. The Government may decide that they want a first application to take that long, but I would contend that even that is pretty excessive. It would be incredibly useful for the Government to set out what the targets are, so that companies know, when they are going into the system, how long the Government intend to take in making a decision. When a company is considering, for example, exporting to a new market or changing the way it does it exporting, it should be able to look at the Government's timeline and plan on the basis of how long it will take them to process the authorised economic operator approval or renewal.

It would be sensible for the Government to come back with all those answers. Businesses would be very happy if the Government gave them more certainty about all those matters. This is a pretty comprehensive amendment, and it relates to a number of aspects of the authorised economic operator scheme that I have concerns about. I hope the Minister will provide a degree of certainty about all of them. If he cannot, I will be keen to press this amendment to a vote.

Mel Stride: Clause 22 provides the framework under which the UK can set up its version of an authorised economic operator. AEO schemes give compliant traders who meet certain criteria access to simplified customs arrangements. The AEO concept is well known in international trade. A total of 41 customs territories, including the 28 EU member states, have introduced a version of an AEO scheme. Providing authorised traders with simplified customs arrangements is encouraged under the World Trade Organisation trade facilitation agreement.

AEO status operates as a quality mark. It indicates that a business's role in the international supply chain is secure, and that its internal systems are compliant with HMRC customs controls. AEO status is not mandatory. However, in general AEO schemes enable traders to access customs facilitations and simplifications and undertake customs activities with only light-touch oversight from customs authorities. They allow customs authorities to distinguish between lower and higher-risk movements of goods, avoid unnecessary targeting of resources, and provide customs simplifications and facilitation of legitimate trade.

Clause 22 allows HMRC to set out what customs requirements or procedures can be simplified for AEOs, sets out where HMRC must take account of AEO status when administering the customs system, and gives the criteria or conditions that a business must meet before AEO status is granted. The clause also provides for the creation of different classes of AEO status, which enables the Government to develop simplification schemes appropriate to different types of business, and to match them with robust but achievable criteria and application procedures, thus avoiding a one-size-fits-all approach.

Amendment 128 seeks to ensure that the Treasury, rather than HMRC commissioners, exercises the power to make all regulations under the clause.

5 pm

The clause allows the UK to continue the authorised economic operator scheme. HMRC is responsible for customs administrative processes, including the system relating to AEOs. HMRC should therefore be responsible for making the regulations relating to the scheme. Regulations will make clear what authorisation criteria and administrative processes HMRC will use to ensure that businesses meet the required standards before it grants them AEO status. The regulations may also set out where and when HMRC must take account of AEO status when administrating the customs system.

The power in clause 22 could not be used to alter the tax base. The AEO scheme provides administrative benefits only, and AEOs will be required to pay any tax and duty due, just as other traders will. It is therefore appropriate that HMRC commissioners, rather than the Treasury, exercise the power in clause 22.

The hon. Member for Aberdeen North raised an important point about our preparedness and the speed with which we are able to accommodate and process applications for AEO status. She mentioned the process taking 12 months. I think it is fair to say that our view is that that is too long. I believe that case is an outlier. I think the maximum, subject to there being no errors in the application, is in the order of six months, but I think that we and HMRC recognise that we need to speed up and simplify that process still further as we go forward. Certainly, as a Minister, I have had a number of engagements with HMRC to look at how to achieve that.

The hon. Lady also mentioned the three-year track record period, and she alluded to those 100,000-plus businesses that currently only trade within the European Union that will now potentially be able to benefit from AEO status. First, the three-year requirement is actually an EU requirement. As we move out of the EU, that could be an area that we look at, and we may decide that changes are appropriate.

Secondly, HMRC often has a considerable amount of information on those who export, which will be useful in making the kind of assessments we are looking at. There are already many AEOs in existence that benefit from AEO status in exporting to and importing from outside the European Union. Thirdly, HMRC is firmly committed to continuing to consult industry, businesses, importers and exporters to make sure that we fully take on board their legitimate requirements for us to make the system as quick and as simple as we can.

Amendment 116 would require the Chancellor of the Exchequer, within three months of the passage of the Bill, to undertake a review of the AEO scheme that HMRC proposes to implement. That review would include the criteria HMRC will use to determine whether a trader qualifies for AEO status, comparison with the way other countries set up and run their AEO system, and HMRC's plans to process applications for AEO status.

Kirsty Blackman: The amendment does not call for a review at all; it calls for a report to be provided. It is not about concerns being raised about the current operation of the scheme, but about how HMRC will look at the scheme going forward.

Mel Stride: I thank the hon. Lady for that clarification. She is right: I said "review". However, my comments are equally relevant to a report on how it is going and thoughts on how we move forward.

The inclusion of clause 22 reflects the feedback from businesses enjoying the benefits of the current AEO regime. In responding to calls for continuity in that regime, it will help to minimise any potential disruption. What is more, HMRC has already committed to improving the authorisation process for traders and has been meeting with businesses, as I outlined, since last autumn to consider practical improvements to the process. The process is ongoing and includes drawing on the best practice of other countries.

On the amendments, the draft regulations will make clear what the authorisation criteria for AEO status will be. It will largely be the same as the current EU criteria. Those regulations will also set out the details of AEO status, which will largely be the same as the current system.

Kirsty Blackman: It would be very useful to know whether the Minister has any idea when the regulations will come forward. Part of my concern was the lack of advance notice for businesses.

Mel Stride: That will be determined to a large degree by the negotiation that is in play with the European Union and by whether we have an implementation period. We are hopeful that such a period will be seen to be in our interest and that of the European Union. The measures will be brought in at the appropriate time, as and when we require our own stand-alone system, so that we are ready on day one and have the regulations that will allow us quickly and effectively to introduce AEO status. It is not about having a one-size-fits-all model. It is about having different classes so that we are able to be helpful in particular to the small and medium-sized enterprises that we recognise may benefit from a different approach from that for larger businesses.

Amendments 129 and 130 would apply the draft affirmative procedure to all regulations made under clause 22. The Bill ensures that the scrutiny procedures that apply to the exercise of each power are appropriate and proportionate considering the nature, length and technicality of the regulations and the frequency with which they are likely to be made. The Government believe that using the negative procedure under clause 22 provides a sufficient level of parliamentary scrutiny, while having regard to the technical nature of the regulations. The regulations may, for example, be used to specify the criteria and processes that HMRC uses when determining whether a business can be authorised as an AEO. Regulations may also set out where and when HMRC must take account of AEO status when administering the customs system. Adopting the draft affirmative procedure for these types of regulations will affect the expediency and efficient administration of the customs regime. For those reasons, I urge the hon. Lady to withdraw the amendment.

Anneliese Dodds: I do not want to try the patience of the Committee—I know we have been here for three hours—but I hope it is acceptable to push a little on one element of amendment 116 that the Minister did not address explicitly. The amendment, which was tabled by the SNP, demands that there should be a report on

"the level of proposed resources to be allocated by the HMRC Commissioners for the authorisation of new authorised economic operators".

The Committee still lacks clarity on how many of the new processes will be delivered in taxes.

I was grateful to the Minister for responding to a parliamentary question that I laid just before Christmas on the comparative strength of the UK in customs officers as compared to other nations. His response suggested that it was not possible to have a comparative analysis. He said that the European Commission collated figures, but they were not directly compared and would not be comparable.

I have since looked at the World Customs Organisation's annual report for 2016-17, which compiles information given to it directly by customs organisations. What came out of that is concerning. It suggests that we have about 5,000 customs officers, and there is a commitment from the Government that we might have an additional 3,000 to 5,000, although it is unclear when that will be decided. Those customs officers currently process 77 million declarations for import and export—that number could go up substantially if we shift out of the EU customs union—so each customs officer has to process about 15,400 declarations per annum. According to the report, that is 10 times as many as every US or Canadian customs officer. It is 15 times as many as German customs officers, more than 30 times as many as Australian customs officers and about three times as many as customs officers in Hong Kong, Norway and Switzerland. There may be issues with comparability with some of those data sources, but they must be pretty big issues if that large gap can be accounted for just through different reporting processes. The SNP is absolutely right to call for more clarity on how exactly the new procedures will be resourced adequately.

Mel Stride: I thank the hon. Lady for her intervention, which was characteristically acute and well informed. I hope I can reassure her that we take the resourcing of Her Majesty's Revenue and Customs in this context extremely seriously. It is one of the critical elements that HMRC is looking at. On a number of occasions when I have met with Jon Thompson, the head of HMRC, it is very high up on our agenda as a very important issue that we are tracking on a regular basis. HMRC carried out a detailed review of resources required to manage an upturn in authorised economic operator applications, including a review of lead times and dealing with an increase in applications as we approach March 2019.

Initially, the UK may wish to follow the current Union customs code approach to the AEO programme, depending on the outcome and the progress of the negotiations. If that were the case, it would simplify matters quite considerably, at least in the near term. In the longer term, HMRC has carried out extensive discussion with stakeholders, as I mentioned earlier, to identify ways in which the application process might be streamlined. That will inform the development of future schemes.

On the general points that the hon. Lady understandably made about staffing levels and the large number of additional declarations that will potentially come our way on day one, depending on the outcome of the negotiations, she is right that HMRC has indicated that 3,000 to 5,000 would be about the range of additional staff that we will be looking at. The Chancellor made it clear in his recent Budget that £3 billion will be made available—£1.5 billion per year—across all Departments, including HMRC, to make sure that appropriate requests are met. We are not only very close to the requirements, but very much engaged in ensuring that they are appropriately resourced.

In terms of increasing the volume of declarations that we will be handling, we are working on the IT side and on the custom declarations service system. Our commitment in that area is important.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 23]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Amendment proposed: 116, in clause 22, page 14, line 36, at end insert—

"(4) Within three months of the passing of this Act, the Chancellor of the Exchequer must lay before the House of Commons a report on the proposed exercise of the power of the HMRC Commissioners to make regulations under subsection (1), including in particular—

(a) the proposed criteria to be applied in determining whether or not any person should be an authorised economic operator,

(b) an assessment of the structure of the authorised economic operator system in Germany, Austria and such other countries as the Chancellor of the Exchequer considers relevant,

(c) the proposed differences between the structure that is proposed to be established by the first exercise of the power to make regulations under subsection (1) and each of those structures described in accordance with paragraph (b),

(d) the level of proposed resources to be allocated by the HMRC Commissioners for the authorisation of new authorised economic operators, and

(e) the target timetable for the authorisation of—

(i) new authorised economic operators in each class, and

(ii) authorised economic operator certification renewals in each class."—*(Kirsty Blackman.)*

This amendment requires the Government to report on the proposed operation of the powers of the HMRC under Clause 22, including comparative information.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 24]

AYES

Blackman, Kirsty	Hardy, Emma
Chapman, Douglas	Hill, Mike
Dakin, Nic	Morris, Grahame
Dodds, Anneliese	Reynolds, Jonathan
Dowd, Peter	

NOES

Davies, Chris	Rutley, David
Hair, Kirstene	Stride, rh Mel
Kwarteng, Kwasi	Stuart, Graham
Menzies, Mark	Sturdy, Julian
Rowley, Lee	Wragg, Mr William

Question accordingly negatived.

Clause 22 ordered to stand part of the Bill.

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

5.15 pm

Adjourned till Thursday 1 February at half-past 11 o'clock.

Written evidence reported to the House

TCTB08 British Ceramic Confederation (supplementary to oral evidence)

TCTB09 British International Freight Association (BIFA) - further submission

TCTB10 TUC (supplementary to oral evidence)

TCBT11 BIA and ABPI

TCBT12 British Sugar

TCTB13 Tim Reardon, UK Chamber of Shipping (supplementary to oral evidence)

TCTB14 Which? (Supplementary to oral evidence)