PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TAXATION (CROSS-BORDER TRADE) BILL

Fifth Sitting

Tuesday 30 January 2018

(Morning)

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CLAUSE 13 agreed to.
SCHEDULE 4 under consideration.

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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

(Morning)

[Ms Karen Buck *in the Chair*]

Taxation (Cross-border Trade) Bill

Clause 13

Dumping of goods, foreign subsidies and increases in imports

9.25 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): I beg to move amendment 137, in clause 13, page 9, line 4, leave out "public notice" and insert "regulations".

This amendment, together with Amendments 138 and 139, makes the power to give effect to an accepted recommendation of the TRA exercisable by regulations rather than public notice.

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

Amendment 138, in clause 13, page 9, line 8, leave out "public notice" and insert "regulations".

See explanatory statement for amendment 137.

Amendment 139, in clause 13, page 9, line 17, leave out "public notice" and insert "regulations".

See explanatory statement for amendment 137.

Jonathan Reynolds: Good morning, Ms Buck. It is a pleasure to begin the second week of our Committee's consideration of the Bill.

The amendments, like many that the Opposition have tabled, concern the democratic deficit in the Bill. As we have covered in numerous evidence sessions and in our discussions so far, the Bill is far too reliant on secondary legislation. The scrutiny of Delegated Legislation Committees—especially those that consider instruments laid according to the negative procedure, as the majority will be—is insufficient for taxation matters of such potential magnitude. Parliament will have the option to raise objections to the instruments, but they will not be debated on the Floor of the House as a matter of course.

The amendments are important because the Bill introduces an even more troubling concept: that of making law by public notice. After Second Reading earlier this month, the House of Lords Delegated Powers and Regulatory Reform Committee published a report that probed the most worrying aspects in detail. The report emphasises that the concept of public notice, on which the Bill is heavily reliant, is effectively a modern form of rule by proclamation that removes the opportunity for parliamentary scrutiny. It states:

"For Ministers and others to make law by 'public notice', without any recourse to Parliament, is highly unusual and such provisions should attract strict surveillance by Parliament."

It also notes that

"the Treasury's Delegated Powers Memorandum says that such notices will only make provision that is purely technical or administrative in nature. Nonetheless, clause 32(9) of the Bill allows anything that can be done under public notice to be done by regulations, implicitly acknowledging the importance of things done by public notice."

It identifies the Bill as a throwback to the Statute of Proclamations 1539, which

"gave proclamations the force of statute law…it was repealed in 1547 after the death of Henry VIII".

We should all be grateful for the institutional memory of the House of Lords.

Equally problematic are the mechanics by which public notice takes place. As the Delegated Powers and Regulatory Reform Committee emphasises, under clause 37(5) the only qualification for public notice is that the person who issues it has selected a channel that they consider appropriate, but a definition of "appropriate" is absent from the Bill. Public notice could therefore mean anything from a full-page advert in the *Financial Times* to a small ad in a trade journal or perhaps even a tweet. Clause 24 permits Her Majesty's Revenue and Customs to establish a system for making rulings to determine the customs code and the place of origin of particular goods, both of which have an impact on the duty. Other rulings could affect the rights and liabilities of an individual.

The Delegated Powers and Regulatory Reform Committee recommends

"the creation of a generally applicable system for making determinations which are capable of affecting an individual's legal position should ordinarily be dealt with by legislation, subject to scrutiny by Parliament, rather than by public notice without any such scrutiny"—

checks and balances. The Opposition agree wholeheartedly —hence our amendments.

The Government's manoeuvres are deeply concerning. We would be failing in our duty of scrutiny if we did not step in to raise our anxieties about how powers of proclamation may be used. We are well aware of the volume of new legislation that needs to be produced to create and implement a new customs code, and of the temptation to create or take advantage of constitutional shortcuts to facilitate the process. However, protecting the rights of the individual must come first. Where matters of taxation are concerned, the parliamentary process is usually more rigorous with respect to the reasons for setting the duty.

As I have already said, the secondary legislation process is not optimal, and we believe that the balance between primary and secondary legislation in the Bill is unsound. However, using delegated legislation for these matters instead of creating regulations by public notice would surely be the least-worst option. It would allow for a bare minimum of parliamentary involvement and oversight of new tax and customs law. Even the negative procedure gives Parliament the option to reject a statutory instrument, although no formal debate takes place. Where possible, more significant matters should surely be considered via the affirmative procedure, so that at least there would be the basis for debate.

The Opposition believe that, without such debate, we will be at risk of setting a dangerous precedent that allows the ruling Executive to make regulation by public notice as it pleases, potentially even beyond the scope of the Bill. Therefore I call upon all members of the Committee to support the amendment, to ensure that

we can continue to perform our vital role providing checks and balances in the structure of taxation and customs law in the UK.

Kirsty Blackman (Aberdeen North) (SNP): Thank you for the opportunity to speak and for chairing the meeting, Ms Buck. I would like to speak briefly around the amendments. One of my earliest questions about the Bill was: what is a public notice and how does one justify that it has been made sufficiently public? The Opposition raised that case clearly. On the definition of public notice and the fact that the person making the public notice has to make that judgment call, particularly in relation to clause 13, which concerns the dumping of goods, foreign subsidies and increases in imports, and given that the UK has not had provision to make regulations and rules, it seems sensible to say that a public notice is not the best way. Parliament should have some say. We have raised concerns previously that, although Brexit is apparently about taking back control, it appears that control is being taken back to the Executive rather than to Parliament as a whole. I will therefore support amendments 137 to 139 if they are pushed to a vote.

The Parliamentary Under-Secretary of State for International Trade (Graham Stuart): It is a great pleasure to serve under your chairmanship again, Ms Buck, and to welcome back the hon. Member for Stalybridge and Hyde. This group of amendments would require trade remedies measures to be imposed and given legal effect by regulations. I appreciate the concerns in relation to the use of public notices, which were raised by both Her Majesty's Opposition and the Scottish nationalist party representative. I am grateful for the opportunity to set out why this is an entirely appropriate procedure for imposing trade remedies measures.

If you were cynical, Ms Buck, you might think that, because the Opposition have decided to make parliamentary scrutiny the central theme of their critique of the Bill, they are leveraging that into every single argument at every single stage. I am not a cynic, and take the concerns at face value, as the genuine ones that I am sure they are.

The imperative is to act quickly once the Trade Remedies Authority has identified the need to tackle injury to UK industry. I would have hoped that Members on both sides of the Committee would recognise that the imperative is to act quickly when injury to UK producers has been identified, and to move as swiftly as possible to put that right. Measures will be calculated and recommended by a fully expert and independent body, following an extensive investigation that is governed by strict World Trade Organisation rules. Our priority has to be to ensure that those recommended measures are imposed quickly, to provide relief to industries suffering injury.

The additional proposed process would delay our ability to apply measures precisely at a time when UK industry is suffering injury, and when it has been independently established that that is so. It would run counter to the calls we have heard from industry for a swift process. The use of public notices to implement trade remedies measures is consistent with the approach taken in comparable WTO countries such as New Zealand and Australia, and is therefore in line with international good practice.

Therefore I say to the hon. Member for Stalybridge and Hyde that, to suggest that this use of public notice is untoward and could lead to further government by proclamation, even outwith the Bill, is disproportionate. The reality is that this set of amendments, as with so many put forward by the Opposition, would in fact undermine the very principles that they say they are interested in: namely, to protect UK industry to ensure that we have a proportionate and speedy response to unfair dumping or use of subsidy and make sure that injury to British industry is put right. It is a shame that, collectively, the Opposition's amendments suggest that their priorities are somewhere else.

Jonathan Reynolds: The Minister's case is that this needs to be used for reasons of speed. Can he give us detailed information about how long it takes to prepare a statutory instrument to be brought before the House, given that that does not need parliamentary time in the Chamber—it cannot be that extensive? Exactly how much time will be saved by this proposed new form of parliamentary process?

Graham Stuart: The hon. Gentleman has been in the House for some time. I would have thought he would be familiar with the calendar of the parliamentary year, with long periods of recess when Parliament does not sit. Why on earth would Her Majesty's Opposition, so often accused, doubtlessly unfairly, of being in hock to the producer interest and blind to wider society and the interests of the consumer and the ordinary citizen—though I decry that attitude—because of their links to the trade union movement, wish to put delays in place?

The hon. Gentleman knows full well the delays that can come with secondary legislation. To have that at the end of that extensive, independent and exhaustive expert assessment that has established injury, why on earth would the Labour party, or indeed the Scottish nationalist party, want to get in the way of swift, effective and proper defence of British jobs, British workers and British business?

Kirsty Blackman: I am pleased that the Government are now concerned with ensuring that such things are put in place incredibly quickly if there is injury to UK industry. In that case, will the Government bring forward amendments to speed up other parts of the process, given that they will now be taking longer than the EU's similar processes?

Graham Stuart: I apologise for getting the name of the hon. Lady's party wrong—it is the Scottish National party. We have put forward a proportionate and swift system, and hope that we would be able to deliver a speedier, more proportionate and balanced response than that of the EU. That is certainly our aim. I note again that amendments tabled by the hon. Lady's party and Her Majesty's Opposition suggest that their priority is entirely different.

Jonathan Reynolds: I am grateful for the infusion of energy that the amendments have brought to the Committee. The Minister's bluster revealed a lot. I noticed that he did not actually answer my question. If the Government's concern is the wish to bring a trade remedy during

[Jonathan Reynolds]

recess, they have to invent a new constitutional procedure to do that. I am afraid that is a very thin case and the Minister did not provide a reason why the new process is required in the interests of brevity. He was not able to give us any clear information, so we will push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 5]

AYES

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

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.

Question proposed, That the clause stand part of the Bill.

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

Amendment 12, in clause 32, page 19, line 32, after "which" insert—

"section (Dumping of goods and related activities: enhanced parliamentary procedure, etc)(6) applies and".

This amendment is consequential on NC5.

New clause 5—*Dumping of goods and related activities: enhanced parliamentary procedure, etc—*

"(1) No regulations may be made by the Secretary of State in exercise of the power in section 13(5) except in accordance with the steps set out in subsections (2) to (5).

(2) The first step is that a Minister of the Crown must lay before the House of Commons 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), the amount of import duty proposed to be applicable to any goods that are or are proposed to be subject to a quota.

(4) The third step is that the House of Commons passes a resolution arising from the motion made in the form specified in subsection (4) (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 (4), give effect to the terms of the resolution referred to in subsection (5).

(6) No regulations may be made under the following provisions unless a draft has been laid before and approved by a resolution of the House of Commons—

(a) paragraph 1(3) of Schedule 4 (definitions and determinations in relation to goods being "dumped");

(b) paragraph 5 of Schedule 4 (determination of certain matters relating to "injury" to a UK industry);

(c) paragraph 26(1) of Schedule 4 (provision for suspension of anti-dumping or anti-subsidy remedies);

(d) paragraph (1)(2)(c) of Schedule 5 (defining a "significant" increase)

(e) paragraph 2 of Schedule 5 (definitions relating to "serious injury" to a UK industry);

(f) paragraph 22(1) of Schedule 5 (provision for suspension of safeguarding remedies)."

This new clause establishes a system of enhanced parliamentary procedure for regulations setting quotas under Clause 13 to give effect to recommendations of the TRA, with a requirement for the House of Commons to pass an amendable resolution authorising the quota provisions of the proposed regulations, and also requires that certain regulations under Schedules 4 and 5 are subject to the affirmative procedure.

Graham Stuart: The Bill ensures that the UK customs regime is ready for EU exit. A key part of our readiness for exit day is our ability to operate our own trade remedies system. Trade is good for the UK. It can lead to higher wages, stimulate business efficiency and productivity and improve consumer choice. Analysis by the OECD suggests that a 10% increase in openness is associated with a 4% increase in income per head.

Nic Dakin (Scunthorpe) (Lab): Will the Minister clarify whether the Government have done a comparative impact assessment of the processes involved with the EU and the processes they are trying to put in place in terms of speed and timeliness, which we are all concerned about?

Graham Stuart: I am grateful to the hon. Gentleman for that question. I will seek at some point in the debate to address his point.

Free trade does not and should not mean trade without rules. Trade remedies are an important safety net. They can help enforce the rules that make free trade work by addressing injury to a domestic industry caused by unfair trading practices or unforeseen surges in imports. That is why all major WTO members have a trade remedies regime, and why we are taking forward the measures in the Bill. The European Commission currently carries out trade remedies investigations and imposes measures on our behalf. Once we leave the EU, we will need to be able to do that for ourselves. Clause 13, together with schedules 4 and 5, sets up the UK framework to allow us to do just that.

These proposals fall under the international framework set by the WTO. We are legislating for the full suite of powers permitted under that framework, which will enable us to impose additional duties on imports that cause injury to UK industry. The message is clear: free trade and the benefits it brings are welcome, but the UK will act decisively to address trade that causes injury to our domestic industries.

We cannot forget the wider ecosystem of our economy. Tackling injury is the priority, and the Bill makes clear that there is a presumption in favour of imposing additional duties when UK industry suffers injury as a result of unfairly dumped or subsidised imports. In recent years, trade remedy measures have protected UK industry and its employees, particularly in the steel and ceramics sectors but also in the chemicals, biofuels and glass industries. Considering that manufacturing contributes around 10% of UK gross value added and 8% of employment, the need for the UK to have a trade remedies system once we leave the EU is apparent.

Without the ability operate our own trade remedies regime, the UK would be exposed to unfair trading practices and unforeseen surges in imports, with potentially damaging consequences for UK industry and the economy more widely. However, there must also be a mechanism for ensuring that imposing such duties is not contrary to the best interests of the UK as a whole. Duties on imports can increase costs for downstream industries that use those imports to create their products. They can also hit the purses of consumers. That is why the Bill ensures that any duties are set at the level needed to address injury to UK industry and no higher. That levels the playing field without causing unnecessary harm to downstream users and consumers.

We are also building in a safety valve to ensure that measures are not imposed where they are not in the overall interests of the UK. The economic interest test will consider whether duties would have a disproportionate impact on a particular area of the UK or on particular groups in the UK. The test will also consider issues such as the impact on the longer-term competitive environment in the UK.

Businesses can have full confidence that that test, and investigations as a whole, will be objective and impartial. The new Trade Remedies Authority, which will be established through the Trade Bill, will have the independence and technical expertise to determine complex matters of fact. When the authority concludes that measures are justified, it will make independent recommendations to Ministers, who will then reach a final decision. Ministers will be able to reject recommendations to impose duties where they consider they are not in the public interest. Where Ministers do so, they will do so transparently, and they will have to make a statement to Parliament setting out their reasons.

As Monckton Chambers noted in its response to the trade White Paper, that structure ensures that

"the complex judgments made in such cases are, and are seen to be, made independently".

It strikes a delicate balance between ensuring that the investigation and the calculation of proportionate duties is carried out by impartial experts, and ensuring that there is an opportunity for Ministers to intervene if duties are not in the public or wider economic interest. We believe that these provisions are therefore fundamental to establish a robust but proportionate trade remedies system for the UK.

9.45 am

New clause 5 and amendment 12 seek to put in place a further parliamentary process for imposing trade remedies measures and to change the parliamentary processes for some of the regulation-making powers in schedules 4 and 5. As I have explained, the use of public notices to implement measures is entirely appropriate and I am pleased that the Committee came to that conclusion too. It enables independently recommended duties to be implemented quickly and effectively and is in line with international good practice.

In relation to the regulation-making powers for indirect tax matters, it is common to have framework primary legislation supplemented by detailed and technical secondary legislation. The trade remedies framework contains a great deal of such technical detail. The secondary legislation made under the Bill will comply with WTO rules. That is why we propose that the regulations are subject to the negative procedure.

The additional processes proposed could both delay our readiness for operating an independent trade remedies framework at the point of EU exit and affect the responsiveness of our framework to subsequent developments, such as best practice and WTO case law. Taken together the amendments would hamper the UK's ability to act swiftly to provide an important but proportionate safety net to domestic producers. I commend the clause to the Committee and urge Members to withdraw the amendments.

Peter Dowd (Bootle) (Lab): It is lovely to serve under your chairmanship again today, Ms Buck. The Minister has clearly had three or four Weetabix today, given his assertions. I say to him: legislate in haste and repent in court at leisure—for these are the sort of things that will be challenged in the courts. Unless the judges in those courts are going to be enemies of the people, we are best to get it right first-hand. Lord Judge made that very point today, and he was formerly Lord Chief Justice; so we cannot ignore parliamentary scrutiny on this particular issue.

New clause 5 establishes a system of enhanced parliamentary regulations for setting quotas under clause 13 to give effect to recommendations of the TRA, with a requirement for the House to pass an amendable resolution authorising the quota provisions of the proposed regulations. It also requires that certain regulations under schedules 4 and 5 be subject to the affirmative procedure.

I have made this point in the past and make it again. The new clause seeks to introduce a scrutiny role for Parliament in this crucial area of taxation and trade policy. The current provision in clause 13 gives the Secretary of State powers through regulation to introduce a tariff rate quota to determine the amount of import duty applicable to certain imported goods, after he has accepted a recommendation from the Trade Remedies Authority. It also gives the Secretary of State the power to revoke or suspend the tariff rate quota.

New clause 5 would instead ensure a democratic and open process, by making sure that Parliament has that power—not just the Secretary of State. The enhanced parliamentary procedure also ensures that there is a failsafe in the event that the Trade Remedies Authority makes a recommendation for the suspension of a quota and the Secretary of State refuses. In that instance Parliament has the ability to overrule the Secretary of State and side with the expert recommendation of the Trade Remedies Authority if it so decides.

I am sure that hon. Members of the Committee are hearing echoes from last week in relation to the issue of parliamentary scrutiny. We have heard about it today, and that is our job on this side of the Committee. I am not sure whether the Minister thinks we should not do that, but we will continue to do it. We are concerned that if we do not have parliamentary scrutiny and oversight and the expertise that comes with that, we will end up in the courts. The Minister's wish that things do not get delayed will be thrown out of the window by the approach that the Government seem to be taking.

Suffice to say that, if the Government are arguing that this is a money Bill, which it is, and it goes to the House of Lords— who will probably have to watch it go past as though it was a bus—they are tacitly accepting

[Peter Dowd]

that the measures contained here are essentially fiscal. It is therefore appropriate that statements made to the House of any regulatory changes in relation to fiscal matters are Parliament's responsibility and duty, as they have been for centuries, and we believe that there should be a vote if appropriate. The system outlined would provide a very robust means of doing that. I know that virtually every Minister, not just this Minister, would not want to have that level of scrutiny, but it comes with the job; scrutiny has to be there. Of course, an annual fiscal statement, such as that expected in the spring, with subsequent parliamentary authority could also prove a mechanism for us to test it out.

I hope that Conservative Members will not take a blasé approach and brush aside the issue of parliamentary democracy on the grounds that the Opposition somehow want to drag the matter out in the future. We do not; we want to make sure that this works properly. We all accept that we have to have a process in place, but let us get it right and hold Ministers to account.

Kirsty Blackman: The Government have asked for an awful lot of trust. They are asking us to trust them to make the right decision. Given that they do not have a track record of making such decisions over a very long number of years, it is very difficult for us to trust the Government on that. There is also the fact that the Government said that they would table amendments to clause 11 of the European Union (Withdrawal) Bill, and then they did not.

I do not think that the Conservative Government have quite recognised what they are doing with all their decisions to hold power in the Executive over any number of things. When the Conservatives are inevitably no longer in government there will be another Government in place, and they will be in opposition saying, "Why are so many decisions being made by the Executive without parliamentary scrutiny?"

The UK is at a point where we are choosing how our future looks in relation to Brexit. We are choosing how things will go in this Parliament, and into the future. We are choosing how much say we will have over trade policy, so it is vital how we decide to go about this. The way that the Government are setting this up is absolutely wrong. There should be parliamentary scrutiny of such things, and democratically elected Members should have the opportunity to look at them, to have an input and not just have them done by public notice.

Graham Stuart: The Opposition parties protest too much. As we all know, the point of a trade remedies system is to be balanced, proportionate and move swiftly to protect British industry. That is why we are setting up, through the Trade Bill, the specialist body to do that: the Trade Remedies Authority. We are talking about the implementation of the Trade Remedies Authority's recommendations. Why on earth, after that exhaustive effort, with the appropriate, balanced tests in place, would anyone want to create burdensome, parliamentary oversight? It does not make any sense.

The TRA makes the decision. If the Secretary of State disagrees with it, they will have to come to Parliament and make a statement, so there will be the opportunity to deal with that. When the TRA has made an assessment and wants to help British industry, why on earth would the Opposition parties want to make a wider political point about lack of scrutiny, just for the sake of it, when it is totally inappropriate for this measure? I leave outsiders to judge whether that is for political interests or for the interests of either British consumers or producers.

Kirsty Blackman: If the Trade Remedies Authority will be so good at making decisions, why will the Government simply have to make a written statement to the House if they disagree with it, rather than go through some kind of regulation procedure? If the Trade Remedies Authority is set up in such a great way that it will always make the best decisions, why will the Minister be allowed to disagree with it simply by written statement, and not by any sort of parliamentary procedure?

Graham Stuart: The legislation makes it clear that the Secretary of State should look at it, and various people who have commented on the structure have said that it is right that, although the main body of work should be conducted by experts, ultimately it should be a politician accountable to Parliament, part of a democratic process, who should make that decision. Were they in any way to disagree, they would have to come to Parliament to make a statement. That is appropriate and proportionate, and why on earth the Opposition parties would want to go to such lengths to try to stop us bringing in effective remedy to protect British producers, I cannot imagine.

Jonathan Reynolds: Very briefly, why can the Minister not give us any detail about the methodology by which injury will be calculated, or any of the basic details that the US and the EU have already put in primary legislation? He cannot tell us how that will be because it is not in the Bill. Surely, we need some parliamentary safeguards about what the decisions will be, because the Minister cannot tell us the process that will be followed.

Graham Stuart: Our purpose here is to be probed, so even when that probing is redundant or tiresome, one should deal with it in as fair a way as one possibly can. As we know, this is a framework Bill; the secondary legislation, which will have parliamentary scrutiny, will bring in the details as it does in most other jurisdictions. We will follow a balanced, proportionate and effective basis to ensure that we assess that injury in the right way, and we will do so under the aegis of the WTO. Efforts to cut and paste aspects of the WTO system on to the face of our legislation when we are subject to WTO rules anyway are unhelpful and unnecessary.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Schedule 4

Dumping of goods or foreign subsidies causing injury to UK industry

Peter Dowd: I beg to move amendment 23, in schedule 4, page 58, line 2, after "consumption", insert "by independent customers".

This amendment requires the comparable price for the purposes of determining the normal value to be assessed with respect to consumption by independent customers.

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

Amendment 24, in schedule 4, page 58, line 4, at end insert "sub-paragraphs (2A) to (2L) and with".

This amendment paves the way for Amendment 25.

Amendment 25, in schedule 4, page 58, line 6, at end insert—

"(2A) For the purposes of sub-paragraph (2) the following shall apply.

(2B) Where the exporter in the exporting country does not produce or does not sell the like goods, the normal value may be established on the basis of prices of other sellers or producers.

(2C) Prices between parties which appear to be associated or to have a compensatory arrangement with each other shall not be considered to be in the ordinary course of trade and shall not be used to establish the normal value unless it is determined that they are unaffected by the relationship.

(2D) Sales of the like goods intended for consumption in the exporting foreign country or territory shall normally be used to determine the normal value if such sales volume constitutes 5% or more of the sales volume exported to the United Kingdom, but a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

(2E) When there are no or insufficient sales of the like goods in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value shall be calculated on the basis of—

(a) the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or

(b) the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

(2F) Sales of the like goods in the domestic market of the exporting foreign country or territory, or export sales to a third country, at prices below unit production costs plus selling, general and administrative costs shall be treated as not being in the ordinary course of trade by reason of price, and disregarded in determining the normal value, if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

(2G) The amounts for selling, for general and administrative costs and for profits shall be based whenever possible on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporter or producer under investigation.

(2H) When it is not possible to determine such amounts on the basis prescribed in sub-paragraph (2G), the amounts may be determined on the basis of—

(a) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin,

(b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin,

(c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

(2I) If the TRA determines that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions, the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, subject to the following provisions.

(2J) "Significant distortions" for this purpose means distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention.

(2K) The TRA shall use the corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country, provided the relevant data are readily available; and, where there is more than one such country, preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection;

(2L) If such data are not available, the TRA may use any other evidence it deems appropriate for establishing a fair normal value, including undistorted international prices, costs, or benchmarks; or costs in the exporting country to the extent that they are positively established not to be distorted."

This amendment makes further provision on the face of the Bill about how the normal value and the comparable price are to be determined in certain circumstances.

Amendment 26, in schedule 4, page 58, line 6, at end insert—

"(2M) A fair comparison shall be made between the export price and the normal value.

(2N) The comparison for the purposes of sub-paragraph (2M) shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability.

(2O) Where the normal value and the export price as established are not on such a comparable basis, due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability."

This amendment provides for fair comparison between the export price and the normal value.

Amendment 27, in schedule 4, page 58, leave out lines 8 to 15 and insert—

"(a) to provide guidance with respect to the application of sub-paragraphs (2) to (2O)."

This amendment replaces the provision for definitions of key terms and the determination of related matters in individual cases with guidance about the application of the existing provisions and those contained in Amendments 25 and 26.

Amendment 62, in schedule 5, page 80, line 5, at end insert—

"and shall be determined in accordance with Article 4 of the WTO Agreement on Safeguards."

This amendment provides that the meaning of serious injury for the purposes of Schedule 5 shall reflect the relevant provisions of WTO Agreement on Safeguards.

Amendment 63, in schedule 5, page 80, line 6, after "make" insert "further".

This amendment is consequential on Amendment 62.

Amendment 64, in schedule 5, page 80, line 9, after "make" insert "further".

This amendment is consequential on Amendment 62.

Peter Dowd: Clearly, being tiresome is my role in life, as far as the Minister is concerned.

Graham Stuart: You do it well.

Peter Dowd: I do it very well. I will make sure I have five Weetabix on Thursday.

I am glad to turn to some of the very substantial amendments that we seek to demonstrate to the Committee are essential for the proper operation of our customs regime and to provide a level playing field for vital British industries. We want to ensure that British industries do well. We wish them the best and we want to set the

[Peter Dowd]

framework for them to do well. I say gently to the Minister that the only political points being made are from him. We all want British industry to do well; we all have industry and businesses in our constituencies—I have a huge port in my constituency. Frankly, the idea that Labour wants businesses to do well simply because of parliamentary democracy is nonsensical.

The amendments clarify a number of important points about constructing a functional trade remedy mechanism that will not be open to challenge in the courts and will not slow the process down. The Government seem to have completely missed that. The amendments will establish a level playing field for the purpose of promoting and encouraging free trade across UK borders, ensuring that British producers are not unfairly disadvantaged.

It is important at this stage to remind ourselves of the comments made at the Bill's evidence session on this particular point, to briefly set the context for the amendments. Dr Cohen from the British Ceramic Confederation pointed out last week that a remedy is not a matter of protectionism, but is simply a means of addressing "unfair competition" when overseas manufacturers are not playing by the internationally agreed rules. Dr Cohen made it clear, by using the example of the ceramics industry in the Minister's constituency, that it is not the case that our producers have skimped on investment or have failed to seek out productivity enhancing measures, because they take every opportunity to compete. Indeed they have made very heavy investment in

"state-of-the-art, energy-efficient manufacturing with digital printing technology."

Given a level playing field, this industry can, in Dr Cohen's words,

"take on the world. All we want is a level playing field" —[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 67, Q104.]

and trade remedies that allow us to ensure the greatest level of trade.

10 am

Amendment 23 seeks to add a few additional words to the definition of the "normal value" of goods. That is to ensure that the comparable price for the purposes of determining normal value of a good would be assessed with respect to independent consumers, rather than consumption by anyone in the exporting country or territory. That is a point of clarification, to provide legal certainty as to the definition of normal value. It would give producers peace of mind that they will not be unfairly disadvantaged by comparison with supposedly normal prices, that are in fact subject to subsidy. I would hope that this amendment would cause little concern to members of the Committee and that it will be supported, and I am sure that the Minister will comment on that in due course.

Amendment 24 is consequential to amendment 25, the latter being a substantive amendment seeking to introduce proper detail to the procedure for determining the value of goods, and therefore to the understanding of comparable prices for the purposes of assessing market distortions. Again, that goes to the heart of what we want to do: we want to give a certain amount of certainty and clarity, and we have not had that. There is nothing wrong with us wanting that, and there is nothing wrong with us wanting to scrutinise that in future. This detail should already be on the face of the Bill rather than kicked into regulations. The Manufacturing Trade Remedies Association has been clear with us that the lack of detail is the cause of a great deal of uncertainty for their members. That can be fatal to businesses—not just delay, but uncertainty. They will be left in the dark until the Government come forward with the numerous outstanding regulations.

As they stand, the three related Brexit Bills will entail vast quantities of expected secondary legislation: without which it will not be possible to begin to adapt to a new system for creating a level playing field for our own producers, and for the benefit of consumers as well, which are interchangeable as we heard from representative witnesses last week. Amendment 25 would therefore put in place several safeguards to ensure that such a playing field would be achieved. It would do so by explicitly excluding prices where compensatory arrangements are in place in an exporting country from determining the normal value of a good. It would ensure that the normal value represented the value of the majority of similar goods exported to the UK, not a minority. It would make provision for situations in which a normal value was more difficult to determine because of insufficient sales of like goods. Amendment 25 would also give powers to the TRA to make a judgement call on whether value had been distorted when it was making its assessments, or use evidence from an appropriately representative country with similar levels of economic development and adherence to social and environmental factors and protections.

Amendment 26 follows from the detail added in amendment 25, and would ensure that once a proper procedure for determining normal value had been conducted in the manner I outlined, the value would be compared with the export price in a fair manner. Amendment 27 is consequential to the two before it, and would ensure that regulations made thereafter could add further guidance to the application of the provisions contained in the previous amendment, offering the Secretary of State some flexibility should additional changes be necessary. We accept that flexibility is needed in situations.

Amendments 62 to 64 would ensure that the definition of the term "serious injury" corresponded to the agreed terminology of the World Trade Organisation. Broadly, all the amendments would do little more than establish Trade Remedy Authority compliance with World Trade Organisation standards in calculating dumping margins and subsidies, and in assessing injury. In some sections, the language is derived directly from existing EU regulations: that would give the added advantage of maintaining alignment during the transition period, and potentially thereafter if desirable. Given that they are already in use throughout the globe, it is obvious that these are not unreasonable procedures to apply here in primary legislation. One would hope that the Government would bring forward similar proposals if the unfortunate outcome arises whereby they are left to regulations. The fact that these amendments constitute such normal procedures simply begs the question of why such large gaps have been left in the Bill, and highlight the uncertainty they cause.

We are still not getting answers from the Government on the fundamental issue. This is a mañana Bill: we will leave it till tomorrow. Why not simply add the necessary

procedures to the primary legislation, as the amendment would do? That would give peace of mind to our fine and fantastic producers that they will be able to play on a level playing field, whatever happens. Certainty, certainty, certainty—that is what we want.

Will the Minister outline how he envisages the procedure for assessing normal value being different from the one I have set out? Will he detail which particular provisions of our amendment the Government do not wish to include and set out the reasons why? That would be helpful. Will he give specific examples of where the Secretary of State might wish to use the vast untrammelled powers he or she will be handed to alter the arrangement or take a different approach?

In short, can the Minister give the Committee any reason—just one would be helpful—why the Government should not include the standard procedure in the Bill to allow Parliament its proper role of scrutiny? I hope he will be kind enough to respond to each of these questions, as the many great producers in the United Kingdom will no doubt be listening carefully and avidly, hanging on every word he says, hoping he might ease their concerns.

Nic Dakin: It is a pleasure as always to serve under your chairmanship, Ms Buck. As my hon. Friend has pointed out, the amendment is about certainty for business and industry. At some point, the Government need to bring detail forward. The longer detail is left, the more problematic it will be for business confidence, particularly in an industry such as steel, which is freely traded. It is a free trade industry, so it needs to ensure fair trade. That is why it is not surprising that steel has such a significant number of trade defence instruments in the European Union. That ensures a level playing field under WTO rules against other parts of the world where people want to trade unfreely.

At some point the Government need to bring forward the detail. The problem with this part of the Bill is that it is just a framework with nothing more to it. I therefore very much welcome the amendments tabled by my hon. Friends, because they would bring some certainty and sense into the area. At some point the Government will have to do that. They may say the amendments are not appropriate now—they are drawn very much from what is already there in the European Union and have been written across—so my challenge to them is to ask why they are not appropriate. When will we have the appropriate provisions in place?

We need to have certainty and confidence. These major foundation industries, such as steel, ceramics, oil and gas, that rely on strong trade defence instruments to ensure that they can trade not only freely but fairly need significant capital investment to stay at the cutting edge of development. To make that capital investment now, they need confidence about the framework of the future. That is why the Government should not dilly-dally. The sooner they can bring things forward the better.

The Opposition are doing their job in trying to be helpful to Government by bringing forward something that is compliant with WTO rules and would give the necessary confidence. We would know more about how investigations would be conducted, how calculations would be made and how remedies would be applied—the sort of detail that industry needs.

In a sense, the challenge to the Government is that we all agree. I welcome the Minister's robust approach this morning—it is the approach we always enjoy from him—but there has been a clear commitment to speedy, timely and effective protection and relief for businesses that are unfairly competed against by the threat of dumping from abroad. However, we need appropriate mechanisms in place to deliver on that rhetoric. The longer it takes to get that detail in place, the more the hesitation, concern and lack of trust in the Government will grow. It is in no one's interest that the Government should not be trusted in such a crucial area. Therefore, the Government, by taking steps sooner rather than later, and embracing the Opposition proposals, would be moving briskly in the direction of the Minister's rhetoric.

Graham Stuart: I thank the hon. Members for Bootle and for Scunthorpe for excellent contributions to the debate. I entirely agreed with many of the issues that they highlighted.

The amendments would set out a great deal of the technical detail about the determination and calculation of dumping on the face of the Bill, rather than in secondary legislation, and would require the Government to define the meaning of

"serious injury to UK producers"

affected by unforeseen surges in imports, in accordance with article 4 of the WTO Agreement on Safeguards.

Of course, we accept that it will be necessary to set out further details in legislation. As I and my right hon. Friend the Financial Secretary have said from the beginning, the Bill is a framework Bill. It is intended to provide the framework for the UK's trade remedy system but, as is normal where there is a great deal of technical detail to be legislated for, that will be set out in secondary legislation.

Industry has contributed its thinking to the detailed technical areas, and we shall engage with all stakeholders with detailed proposals in a series of meetings starting next month. I entirely agree with those who have spoken so far about the need for speed; but they would also agree about the need to get things right. Our aim and the purpose of introducing the Bill is to make sure we have a suitable framework for the long term. That is why we are going to get it right, as well as getting it in place in the appropriate time.

Nic Dakin: I very much welcome the Minister's commitment to engage in a timely way with stakeholders. Can he give us a timescale by which the engagement will be concluded and proposals will come out of it, to give some detail and confidence?

Graham Stuart: I shall do so in due course. The detail of the secondary legislation will be constrained by and compliant with the WTO rules, but the rules that we set will be appropriate for the UK. Because they will be set out in secondary legislation there will be the necessary flexibility to allow changes to be made quickly, reflecting developments in best practice and WTO case law. I am sure that the Committee will agree that that is important, and that is why we do not think it is appropriate to include those matters in the Bill.

[Graham Stuart]

As to market distortions I reassure the hon. Member for Bootle that the legislation will enable the UK trade remedy system to account for particular market situations in anti-dumping cases. All major economies have a trade remedies framework that allows alternative methodologies to be used in investigations when the normal value of a good cannot be properly determined based on information from exporting countries. The UK will be no different. We have already discussed this with industry and will continue to do so, to get it right.

I recognise the underlying intent of amendment 62, to increase legal certainty for UK industry by including the requirement to act in accordance with the WTO Agreement on Safeguards. However, it is unnecessary. As members of the WTO we will be required to adhere to the provisions of WTO agreements, and we have been clear about the fact that we are committed to developing the detail of the UK's trade remedy system in a way that is fully compliant with the obligations. By way of further reassurance, clause 28 of the Bill requires the Secretary of State and the TRA to have regard to their international obligations. On that basis I hope that the hon. Gentlemen can see that their concerns will be met by the approach that we shall continue to take, and that the amendment will be withdrawn.

10.15 am

Peter Dowd: I thank the Minister in good faith for his explanation. None the less, the Opposition take the view that there is a cumulative effect to the proposals. It is okay for the Minister to say that this is a framework and that we will add all the detail later, but there is a difference between a framework and a skeleton. This is not a framework but a skeleton. We must add meat to the bones of the skeleton, but we have not got that here today.

While I accept what the Minister is saying in good faith, we need to press this issue. We must make the point that we need more detail and more certainty. Of course, he might not be the Minister in the not-too-distant future—we do not know who the Minister might be. Therefore, while I have every faith in him, I am not sure whether I can say that about the future Minister.

Graham Stuart: It is a framework Bill—skeletal or otherwise—and the detail will come in secondary legislation, as is entirely normal for issues such as this. In response to the question from the hon. Member for Scunthorpe on when we will be ready to bring secondary legislation forward, we will do so as soon as possible. Evidently, that will need to be in time to ensure that the UK system is ready for when we exit the EU. That is the time constraint. We are working on this. We will engage in detail with industry, starting next month. We are bringing this forward as quickly as we can.

If the Opposition decide to press the amendment, that is fine, but cutting and pasting WTO agreements with which we will comply is not the same as having an appropriate system in place for the UK. This is not the right moment or place for these proposals, because this is framework legislation.

On why we should have secondary legislation, we need flexibility to adapt to developments in WTO case law and, if the Committee were to support the Opposition's amendments, that flexibility would be removed. Changes in WTO case law are frequent: for instance, only last week there was a panel decision on article 2 of the WTO anti-dumping agreement. It is therefore important that we have the flexibility that only secondary legislation provides, so I ask the Opposition to think again.

Nic Dakin: Will the Minister confirm once more that the Government intend not to make things any more difficult for producers in terms of trade defence instruments and that, as the detail comes forward, people producing stuff in the UK will not be any worse off in future than under the current EU rules? I think that is what he is saying.

Graham Stuart: I would go further than that. By having a system that is entirely aligned with and attuned to the interests only of UK producers, we hope to have a better system than the one we have now. I cannot give firm timelines, because the TRA is not set up yet, but hopefully it will be speedier, more proportionate and balanced, absolutely scrupulous in observing WTO case law, flexible enough to implement it, better attuned to the needs of UK producers, and more effective at averting injury to them.

Grahame Morris (Easington) (Lab): I thank the Minister for giving way and hope he will bear with me. Given the emphasis he is placing on the importance of secondary legislation, and the fact that, as he said a moment ago, the TRA has not been set up yet, has he had a chance to reconsider putting trade union representatives on the TRA?

Graham Stuart: It took the hon. Gentleman's contribution finally to silence the hon. Member for Scunthorpe, who normally heckles throughout everyone's address—*[Interruption.]*. As has rightly been said, that is harsh but fair.

I thank the hon. Gentleman for his question. The aim is that this should be an expert body, that the normal, rigorous civil service appointments process should be observed in its appointment and that we should have an organisation that has impartiality and effectiveness as its primary concerns, rather than being driven by political or indeed representative considerations. That is what we are planning to do.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 6]

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: 24, in schedule 4, page 58, line 4, at end insert

"sub-paragraphs (2A) to (2L) and with"—*(Peter Dowd.)*

This amendment paves the way for Amendment 25.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 7]

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: 26, in schedule 4, page 58, line 6, at end insert—

"(2M) A fair comparison shall be made between the export price and the normal value.

(2N) The comparison for the purposes of sub-paragraph (2M) shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability.

(2O) Where the normal value and the export price as established are not on such a comparable basis, due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability."—*(Peter Dowd.)*

This amendment provides for fair comparison between the export price and the normal value.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 8]

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.

Jonathan Reynolds: I beg to move amendment 28, in schedule 4, page 58, line 33, after "contribution", insert

"within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures".

This amendment provides a definition of financial contribution by reference to the WTO Agreement on Subsidies and Countervailing Measures.

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

Amendment 29, in schedule 4, page 59, line 24, at end insert—

"and shall be determined in accordance with Article 3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994."

This amendment provides that the meaning of injury for the purposes of Schedule 4 shall reflect the provisions of the relevant article of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Amendment 30,in schedule 4, page 59, line 25, after "make" insert "further".

This amendment is consequential on Amendment 29.

Amendment 31, in schedule 4, page 59, line 31, after "make" insert "further".

This amendment is consequential on Amendment 29.

Amendment 33, in schedule 4, page 61, line 20, at beginning insert

"having regard to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsidies and Countervailing Measures".

This amendment requires regulations determining what constitutes "negligible" and "minimal" to have regard to relevant WTO provisions.

Jonathan Reynolds: This is the second group of amendments on today's amendment paper relating to schedule 4, on injury caused by dumping. Amendment 28 provides a definition of financial contribution by reference to the WTO agreement on subsidies and countervailing measures. Amendment 29 provides that the meaning of injury for the purposes of schedule 4 shall reflect the provisions of the relevant article of the agreement on implementation of article VI of the general agreement on tariffs and trade 1994. Amendment 30 is consequential on amendment 29, as is amendment 31. Finally, amendment 33 requires regulations determining what constitutes "negligible" and "minimal" to have regard to relevant WTO provisions.

I recognise that in the previous debate the Minister moved a little toward us in acknowledging some of the shortcomings of the Bill and the areas where there will eventually have to be clarity. These amendments concern one of the central issues regarding how we construct our future trade defence policy. In last week's evidence session, it was made clear by representatives of UK industries that Brexit represents a potential opportunity for the UK to expedite its remedial processes when it comes to dumping and calculating injury—something that has already been referenced by all sides in the discussion today and by the Minister.

Industry also emphasised that, while assessing dumping margins can be relatively easy and straightforward, calculating injury margin needs much more involvement from industry and Government, and the results are not always so obvious. My hon. Friend the Member for Scunthorpe has again mentioned the steel crisis, and I would direct Members to read the Business, Energy and Industrial Strategy Committee's transcripts from the previous Parliament on the crisis, which articulate very clearly the issues involved. It is of great concern to the Opposition that manufacturers and British industry are telling us that the Bill is seriously lacking in the detail they need to plan effectively for the future.

Members of this Committee, as well as its witnesses last week, have spoken at some length on the shortcomings of the proposed approach, not least that UK industry will be in the dark until all the statutory instruments

[Jonathan Reynolds]

that are required have been promulgated. As industry and those in many parts of the parliamentary process have repeatedly emphasised—in contrast to the Minister's comments—it is highly unusual that secondary legislation is considered the appropriate means through which to establish the central tenets of our future trade defence policy. Indeed, it is considered normal practice by most of our major trading partners for these issues to be dealt with in primary legislation. Equally, because of the way in which the statutory instruments will be considered, this forum might well be the only opportunity to debate these measures and give them the proper scrutiny they demand.

The point of the amendments is to bring some of the detail and certainty that UK industry is seeking. Understandably, members of UK industries feel anxious voyaging into the unknown with only vague reassurances from Government. As my hon. Friend the Member for Bootle has said, there is no certainty about this Government's future or that of the individual Ministers concerned. As the Manufacturing Trade Remedies Alliance has made clear—

The Chair: Order. Can I encourage the hon. Gentleman to be specific in relation to his amendments, as far as possible?

Jonathan Reynolds: I will be, Ms Buck.

The package of amendments offers a relatively straightforward solution to these issues by using a pre-existing, widely accepted set of terms to define injury. As referred to in amendment 29, the agreement on implementation of article VI of the general agreement on tariffs and trade 1994 is a set of World Trade Organisation rules, which already provides a blueprint to many major global economies. That will form a solid basis, which UK industry can use to start planning how it will adapt to the new post-Brexit landscape.

Complying with the requirements in the amendments will help to provide consistency following our exit from the European Union, and align us with existing trading standards in economies we seek to trade with globally. It makes little sense to delegate this decision to secondary legislation when we are already in a position to opt for a widely accepted and road-tested definition that would keep us aligned with potential trading partners. That would also have the major advantage of offering certainty to UK industries today—not years from now—on how the trading landscape will look post-Brexit, and allow them to plan accordingly.

I urge the Ministers to support this amendment. It is a relatively small commitment, which would help to bring consensus and certainty to the British economy.

Graham Stuart: These amendments seek to include specific reference to the relevant WTO agreements in the Bill. As I said in our earlier discussion, the Government have carefully considered the right balance between primary and secondary legislation. Where there are very technical provisions in a regime, those are usually set out in secondary legislation because they are very detailed. That is the case here, so we have taken powers to make the necessary regulations.

As a member of the World Trade Organisation, the UK will be required to abide by the WTO agreements. We intend fully to comply with these obligations, and the regulations will therefore reflect the detail of the WTO agreements. However, as I have said, clause 28 does require the Secretary of State, and the TRA, to have regard to international obligations, which should provide any reassurance needed.

It has been suggested that the injury margin is more complicated and harder to define than the dumping margin. We do not believe that that is the case. Both calculations are based on industry data and export data and involve a number of variables where the TRA would be afforded discretion to use its expertise in determining the appropriate approach.

Nic Dakin: Does the Minister recognise that the EU is moving away from that calculation and that, according to the evidence that was presented to us, that calculation involves greater bureaucracy but does not make a great deal of difference in the end, in terms of impact on prices?

Graham Stuart: I do not agree with the hon. Gentleman. From a technical point of view, I do not believe that the EU is moving away from its approach to injury. As I say, we are subject to the WTO. The Secretary of State has to have regard to international obligations, and the detail needs to go into secondary legislation. I therefore ask hon. Members to withdraw their amendment.

10.30 am

Jonathan Reynolds: I am grateful for the Minister's response, which gave us some degree of detail that we have not had to date, but I think that there is a difference of opinion on some of the evidence we heard last week. In my notes, the Manufacturing Trade Remedies Alliance made it clear that the methodology of the assessment on how to decide appropriate trade remedies was, in its words, a key detail that it is missing. It said that that was relevant in particular to the application of the lesser duty rule and that it would welcome further clarity and legal certainty. With that in mind, I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 9]

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 32, in schedule 4, page 61, line 20, leave out from 'minimal' to end of line 33.

This amendment removes the need for a market share requirement to be met before the TRA may initiate a dumping or subsidisation investigation.

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

Amendment 34, in schedule 4, page 61, line 45, leave out paragraphs (g) and (h).

This amendment is consequential on Amendment 32.

Amendment 35, in schedule 4, page 62, line 1, leave out '(d)' and insert '(c)'.

This amendment is consequential on Amendment 32.

Amendment 36, in schedule 4, page 62, line 6, leave out '(d)' and insert '(c)'.

This amendment is consequential on Amendment 32.

Amendment 37, in schedule 4, page 62, line 16, leave out '(d)' and insert '(c)'.

This amendment is consequential on Amendment 32.

Amendment 38, in schedule 4, page 62, line 37, leave out '(d)' and insert '(c)'.

This amendment is consequential on Amendment 32.

Anneliese Dodds: We tabled the amendments because the proposed market share requirements will not only put us out of step with comparable nations but stop action being taken to prevent uncompetitive disruption of infant industries. According to the Government's proposals, applications to the TRA for an investigation will be subject to a UK market share threshold. As with so much in the Bill—as we have been discussing—we do not know how the threshold will be determined nor what its range is likely to be, let alone the actual value for different industrial sectors. The Government have given as their explanation for the measure the filtering out of cases with little chance of success. Yet, as already discussed in Committee, the Government have already set out a range of tests that must be passed before any action can be taken—tests that are already more stringent than is the case under EU legislation, and considerably stronger than those that the EU is moving towards.

I normally agree fully with every word that is uttered by my hon. Friend the Member for Scunthorpe, but I did not completely agree when he said that he was pleased to hear the Government saying, or hinting at least, that we would have a system at least as favourable to British industry as the existing one. With the different tests to do with economic interest or public interest, whether those applied by the TRA or the Secretary of State, that regime is far more stringent than that applied by the EU.

In addition, I am concerned that the measure proposed in the Bill could cause a lot of ambiguity and be problematic for the TRA. We are informed that the TRA must accept an application that meets the UK market share threshold, although of course both it and the Secretary of State can then decide not to proceed as a result of their overly stringent tests once they get into the investigation—but let us leave that aside. If an application does not meet the UK threshold but does meet WTO thresholds, the TRA may use its discretion as to whether to accept it. However, we can legitimately ask why the TRA should be put in a potentially difficult position, especially when legal action could be levelled against it by the company that is deemed to have engaged in dumping precisely because the TRA has used that discretion.

In addition, I do not understand why the UK has decided to adopt an apparently higher threshold of market share before applications may be accepted when, according to the stakeholders I have talked to, no other country seems to have adopted that approach. This is not about criteria within the investigation: it is about the criteria necessary before an investigation is allowed at all. As with the unique electoral system that led to the hanging chad problem in the US, there is a clear reason why this approach is so unique: it is not workable. The Minister rightly referred to learning from best practice, so it would be helpful for us to know which countries have that test in place before an investigation can be started and why it was believed that this is best practice. I have so far not been able to find any countries that operate such a system. If there are some, it would be wonderful to hear about them.

The Minister suggested in his previous remarks that, much of the time, all the Government are doing is simply transposing WTO requirements. However, the terms of the general agreement on tariffs and trade enable countries to take action, particularly to prevent uncompetitive disruption to infant industries. That could be prevented by this kind of test before an investigation can even be started. That process of uncompetitive disruption to infant industries is known as material retardation, which is quite a well-known concept when it comes to trade disputes and is interpreted quite broadly.

Rules within the Mercosur agreement—the South American trade agreement—state that countries can take measures, first, to ensure that infant industries can be established, but also that there can be, without uncompetitive disruption, the establishment of a new branch of production in an existing industry, the substantial transformation of an existing industry or the substantial expansion of an existing industry supplying a relatively small proportion of domestic demand. That is a very wide reading of what measures against material retardation can enable, and a broad reading of the concept of an infant industry as well. Those rules are already in action in the Mercosur agreement, so I hope the Minister will clearly explain why the UK should deny itself those kind of powers that other countries seem keen to avail themselves of.

I hope he will also indicate how he envisages that market share restriction working, which will be used even before investigations start. I read the "Trade Remedies Research" paper, produced by Van Bael & Bellis and Copenhagen Economics, which I am sure other Members have looked at as well. They looked in great detail at some of the methodological issues relating to the use of trade remedies and they indicated in detail the variety of considerations relevant to calculating market share that the EU has used once an investigation has opened—not as part of a test to determine the opening of an investigation but as part of determining the harm caused by dumping.

They indicated the potential drawbacks of, for example, setting a quantitative measure on the evolution of import volumes in relative terms—in comparison with domestic consumption—in order to determine how the market

[Anneliese Dodds]

share of foreign exporters against UK industry has changed over time following dumped imports. That is because our market in the UK is small, and so domestic consumption can vary dramatically from year to year because the number of industry operators tends to be more concentrated.

There are some very difficult methodological issues here when it comes to calculations that might be involved in an investigation. We are talking about the TRA having to carry out calculations potentially with a similar level of methodological difficulty, even before an investigation is opened. Will the Minister indicate what kind of methodology he proposes to avoid those problems? Above all, will he please let us know why our country seems to be adopting this approach, which, as I say, I cannot find any analogue for in comparable nations?

Kirsty Blackman: I will say just a few things to follow on from the shadow Front Benchers on this. It is strange that market share is being used in this regard as something that will be taken into account. It is almost as if the TRA cannot be bothered to investigate a company if it does not have a certain market share. For that industry, and for manufacturers in particular, it does not matter what their percentage of market share is; what matters is the injury that is being done to them by dumping. Market share is not relevant, and I do not understand why it is included in the Bill. It may be relevant to the Treasury because it affects the tax take it gets from the industry, but it is not relevant to the protection we should be affording to the industry.

This proposal has geographical implications, given that these new goods will be made in the industrial north of the country. Those products may not meet the market share threshold, but they may be incredibly innovative and may improve productivity and make this country a better place to be. Those things will not be taken into account.

I have argued previously that if the fishing industry is decimated as a result of Brexit, that is a geographical issue for the affected communities. It does not have a massive implication for the Treasury's tax take, but it does for those communities. I fear that this market share test is not only unnecessary, but has implications for the choices that communities make.

Nic Dakin: The communities that are the most vulnerable to that disadvantage are often those that voted most strongly to leave because of their fear that they are not getting a fair deal at the moment.

Kirsty Blackman: Absolutely, and conversely they are the ones that have been getting the most European funding, so the choice they thought they had to make because of the inequality and uneven economic growth in the United Kingdom will make them lose out in more than one way.

On the issue of new good and fledgling industries, we cannot predict what the world will look like in 20 years' time. Who could have predicted the rise in the need for electric vehicle charging points, for example? If something suddenly becomes a thing, the effects cannot be predicted. For example, companies making paper straws in the UK are probably seeing their shares going through the roof. We cannot predict the market share of those companies and how quickly it will grow as a result of changes in the culture of the country. I do not think the market share test is appropriate. It is strange to have it in the Bill, and the Government need to rethink it.

Graham Stuart: I thank hon. Members for their contributions. I hope I can reassure them about the issues they raised. Perhaps there has been some misunderstanding, which I can clear up.

Amendment 32 and its consequential amendments 34 to 38 seek to eliminate a market share threshold that we have designed to make sure businesses have a transparent benchmark for judging whether their complaint is likely to be successful. On the question of why we have the threshold, an independent evaluation of the EU system suggested that the system should focus on producers' market share as a way of informing inquiries.

I was also asked which other countries have the threshold. We understand that other countries consider whether cases are likely to result in measures at the point of applications, but they tend to use rather opaque systems. The market share threshold is intended to give industry greater certainty in a more transparent way about how the system will operate in this country. We are learning from experiences in other countries and are seeking to improve on them to the betterment of our system.

The provisions for the market share threshold fit with the industry's calls for the TRA to focus on the cases that matter most. For instance, the British Ceramic Confederation said in its response to our White Paper that the TRA

"should not spend its time investigating vexatious complaints and needs to focus on cases where there is a real UK manufacturing interest."

The market share threshold will be part of providing that.

10.45 am

Hon. Members asked about the methodology behind the market share threshold. We are working closely with industry and producers as we develop our secondary legislation, including on methodology. Let me explain the value of the market share threshold, which amendment 32 and its consequential amendments propose deleting. It will enable UK industries, and the Trade Remedies Authority, to avoid spending time and resources on a lengthy investigation process unlikely to result in measures being imposed. For example, a company could be the only producer of widgets in the UK and therefore meet the WTO requirements to bring a case, but if that company has a de minimis share of the UK market as a whole, putting duties in place would have a disproportionate effect on the rest of the market. I am pleased to clarify, however, that the Government recognise that there are some cases in which such an approach would be inappropriate, so the Bill provides that the TRA may waive the market share threshold.

Hon. Members also raised infant industries. The hon. Member for Oxford East suggested that the market share threshold might prevent emerging industries from seeking trade remedies. That is not what the market share threshold is designed to do, so to prevent such a

situation, the Bill allows the TRA to choose to waive the market share threshold in special cases. That will help in cases such as those she describes, in which an emerging UK industry struggles to establish itself in the face of dumped or subsidised imports.

Anneliese Dodds: I am grateful for the Minister's comments. The additional information that he provides is useful, but he still has not made it clear whether any other countries operate such a restriction. I appreciate what he says about the potential opacity of other regimes, but we have not had a clear answer to that question. It may well be that some independent actors have written an evaluation of the EU system that says that such an approach should be implemented. However, as I understand it, the EU has not committed to moving towards such a system. It seems to be just the UK that is explicitly adopting it as a policy commitment, unlike any other country.

The Chair: Order. The hon. Lady is straying from an intervention into a full speech.

Graham Stuart: I thank the hon. Lady for that comprehensive intervention. As I said in reply to the hon. Member for Bootle, our aim is to make improvements. We want a better system that provides greater certainty for UK industry, and one that makes the TRA focus, as the industry has requested, on the cases of greatest import, not an opaque system as in other countries. The TRA may quickly respond to someone with a de minimis market share who comes forward with no real case and tell them that they have no chance, but what we are doing is creating a system that is much easier to understand and more transparent.

I hope the secondary legislation we implement will include other world firsts, too. So long as what we do is based on a proportionate, balanced approach that is fully compliant with the WTO and better tailored to the needs of British industry, I shall be proud to see us innovate. I am not afraid to innovate if it is in the interests of British industry and a better system. We should aspire to doing that.

Kirsty Blackman: The Minister argues that, in the case of a producer with a small market share in the UK, there may be a disproportionate effect on UK consumers. Given that an economic interest test takes into account the impact on consumers, is the market share test necessary?

Graham Stuart: For the reasons I have set out, I think the market share test is an eminently sensible part of our regime. I hope the Committee will agree.

Anneliese Dodds: I am grateful to the Minister for letting us intervene—he has been very generous in that respect. I say gently that I would have hoped for a little more impact assessment before we signed up to a system that is, to adopt the kind of language he used, unique in the world and a world-beating innovation, if we are indeed doing that.

The hon. Member for Aberdeen North made clear that vexatious complaints will be screened out by the economic and public interest tests, which are more stringent than those in the EU regime that we will take on board under the TRA.

The Minister referred to this process being an indication to firms of whether they have any hope of success, but it is not. We are not talking about a guideline. We are talking about a threshold that is a block. Yes, that block can be disregarded by the TRA, but it cannot be overruled by the complainant. That is the whole point. It is not just an indication. It is stronger than a guideline or a set of theoretical considerations. It is potentially a block on firms trying to seek redress through the TRA, which is unique in the world. I had hoped that we might have more explanation of that, despite the Minister's valiant attempts.

Graham Stuart: Let me try to come back again. The share test comes at the beginning. We have to think about the order. The point is to provide transparency at the beginning of the process and to ensure, exactly as industry has asked, that we do not waste time on complaints, vexatious or otherwise, that have no chance of resulting in measures. That is the whole point of the test. It will be quickly applied and—the Opposition do not seem to have understood this—will have exemptions for infant industries. The system will provide a more transparent form of that which is routinely applied in other countries.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 10]

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.

Jonathan Reynolds: I beg to move amendment 39, in schedule 4, page 64, line 21, at end insert—

"PART 2A

RECOMMENDATIONS: GENERAL PROVISIONS

12A (1) The provisions of this paragraph apply to all recommendations made by the TRA under this Schedule.

(2) In any case where the TRA makes a recommendation to the Secretary of State, the TRA must, at the same time as making that recommendation, provide any relevant select committee of the House of Commons with—

(a) a copy of that recommendation, and

(b) an account of the evidence on which the TRA has based that recommendation."

This amendment requires recommendations made by the TRA under Schedule 4 to be made available to relevant select committees of the House of Commons, along with an account of the evidence basis for the recommendation.

The Chair: With this it will be convenient to discuss amendment 70, in schedule 5, page 83, line 44, at end insert—

"PART 2A

RECOMMENDATIONS: GENERAL PROVISIONS

11A (1) The provisions of this paragraph apply to all recommendations made by the TRA under this Schedule.

(2) In any case where the TRA makes a recommendation to the Secretary of State, the TRA must, at the same time as making that recommendation, provide any relevant select committee of the House of Commons with—

(a) a copy of that recommendation, and

(b) an account of the evidence on which the TRA has based that recommendation."

This amendment requires recommendations made by the TRA under Schedule 5 to be made available to relevant select committees of the House of Commons, along with an account of the evidence basis for the recommendation.

Jonathan Reynolds: These amendments have been grouped because they both refer to making recommendations by the new Trade Remedies Authority, and the evidential basis for those recommendations, available to the relevant Select Committees of the House.

Clearly, how the TRA operates is essential to our future trade policy. We know some things from the Bill about how it will operate—schedule 5 refers to the procedure that will be followed where an increase in imports of goods causes serious injury to UK producers, so there is more detail than we had previously—but the intention is for further detail about the interpretation of what constitutes a significant increase to be set out in secondary legislation. The TRA will also have considerable discretion in many areas of its operation.

Given the stage we are at with the Bill, we are being given a fairly limited set of options in terms of addressing the lack of accountability in key parts of how the framework will operate. These amendments would introduce an additional layer of scrutiny and consultation, which is needed to ensure that the interests of UK industry are properly represented. Select Committees provide vital checks and balances, and given their policy specialisms and ability to call relevant witnesses, they are best placed to scrutinise decisions by the TRA.

These amendments would not only allow us to address the democratic deficit, but provide a platform for engaging with the wide range of inputs needed fully to understand the implications of TRA decisions on different parts of our economy and different segments of UK industry. That might include the Transport Committee, the Treasury Committee, the International Trade Committee and, of course, the Exiting the European Union Committee. The amendments would provide an important democratic backstop to the new process that avoids concentrating too much power in the hands of the Secretary of State or the TRA. In the absence of greater detail in the Bill, I urge members of the Committee to support the amendments to bring some much-needed future accountability to the TRA and to our trade defence policy.

Graham Stuart: New paragraphs 12A and 11A, introduced by amendments 39 and 70, would require the recommendations made by the TRA under schedule 4 to be made available to relevant Select Committees of the House of Commons, along with an account for the evidence base of those recommendations. Let me begin by stating that transparency is one of the four design principles set out by the Government for the trade remedies framework. The inherent assumption of a lack of scrutiny implied by the amendments is simply untrue.

To protect the TRA's status as an independent public body, its recommendations to the Secretary of State should not be subject to political influence before a decision to accept or reject them has even been taken. Those recommendations will be made on the basis of the framework set out in this legislation and underpinned by technical and procedural details to be set out in secondary legislation. Giving the Select Committee a role in that process will undermine the impartiality of the process—an impartiality which is supported by industry. Publishing the recommendation in advance of the decision by the Secretary of State could also further undermine impartiality by increasing lobbying of Ministers by the affected parties, and could also lead to unnecessary disruption of the markets affected.

The Bill provides for public scrutiny of both the TRA and the Secretary of State's decisions. Whether the Secretary of State accepts or rejects the recommendation, the evidence base for the TRA's recommendation will be made available to the public, as is required under the terms of the WTO agreements. Furthermore, if the Secretary of State rejects the TRA's recommendation to apply measures, he or she must lay a statement before Parliament setting out the reasons for that decision. Parliament will then be able to hold the Secretary of State to account if it considers the reasons to be unsound.

Kirsty Blackman: It would be lovely if the Minister could explain how parliamentarians can hold Ministers to account if they make a written statement.

Graham Stuart: The hon. Lady has been a Member of this House for some time and will know that there is a series of means by which that can be pursued. Making a statement to the House provides the initial spur to start that scrutiny, if that is what the Select Committee or others decide. There are urgent questions, Adjournment debates, Backbench Business Committee debates—I will not list them all, as the hon. Lady is probably rather better on parliamentary process than I am. She will know that there is a huge number and they can all be used. Her Majesty's Opposition or the SNP and their spokesmen have other means by which to raise the issue.

On that basis, I ask the hon. Gentleman to withdraw the amendment.

Jonathan Reynolds: I have two observations to make, the first of which is on impartiality. I would strongly refute that scrutiny by Select Committee would increase the partisanship or the partiality of the transparency of the process. The House's Select Committees are to me the best example of cross-party working and cross-party accountability in the entire parliamentary process, and we should not shy away from using them when they can improve the process.

Secondly, there was reference to technical and political considerations. The decisions are not just technical. Of course they will draw on technical expertise and criteria, but they are inherently political. We saw that in the steel

crisis, where frankly even with very clear technical evidence of dumping, there was a political point of view—not one I share—that the benefits to the UK of dumped steel outweighed the benefits of protecting the UK steel industry. That was not held by all parts of the Government, but certainly by some.

A transparent process that allows decisions to be analysed in that context would certainly add to the process, especially when we consider the lack of detail we have so far. I therefore press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 11]

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.

11 am

Peter Dowd: I beg to move amendment 40, in schedule 4, page 65, line 2, leave out from "goods" to end of line 3.

This amendment removes the requirement for the TRA to be satisfied that requiring a guarantee meets the economic interest test.

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

Amendment 58, in schedule 4, page 75, line 23, leave out from first "the" to end of line 24 and insert—

"economic benefits of the remedy to the United Kingdom industry within the meaning of paragraph 6 are significantly outweighed by the economic costs to the importers, users or consumers of the goods in the United Kingdom."

This amendment provides greater specificity to the operation of the economic interest test.

Amendment 59, in schedule 4, page 75, line 29, leave out sub-paragraph (i).

This amendment removes the requirement to take account of the economic significance of affected industries and consumers in the United Kingdom.

Amendment 75, in schedule 5, page 93, line 22, leave out from first "the" to end of line 23 and insert—

"the economic benefits of the remedy to the United Kingdom industry within the meaning of paragraph 3 are significantly outweighed by the economic costs to the importers, users or consumers of the goods in the United Kingdom."

This amendment provides greater specificity to the operation of the economic interest test.

Amendment 76, in schedule 5, page 93, line 28, leave out sub-paragraph (i).

This amendment removes the requirement to take account of the economic significance of affected industries and consumers in the United Kingdom.

Peter Dowd: This group of amendments relates to the economic interest test in the Bill. It requires the Trade Remedies Authority or Secretary of State to consider an economic interest test before recommending an anti-dumping remedy. That means that the TRA or Secretary of State must take account of a number of additional factors when considering whether to apply an anti-dumping remedy, to determine whether the remedy will be in the United Kingdom's wider economic interest.

This is a highly unusual measure. The Manufacturing Trade Remedies Alliance describes the application of an economic interest test as "unique" among WTO users of trade remedies. There are few precedents for a functioning economic interest test, as only a handful of Governments conduct them. This provision is not in the WTO agreement or in EU regulation. Furthermore, the economic interest test in the Bill is very widely drawn, allowing the TRA or Secretary of State to introduce a wide range of additional macroeconomic considerations into the determination of a trade remedy.

It has been only two years since the former Chancellor of the Exchequer stood on a platform of building a Britain

"carried aloft by the march of the makers",

yet now we are being carried off in a different direction, hence our amendment. Hon. Members on both sides of the Committee will note that, despite that, we have not taken the step of seeking to remove the economic interest test entirely, to bring the UK into line with well worn national agreements and regulations. Instead, in the spirit of conciliation, we have tabled a number of amendments that would clarify the exact uses of an economic interest test and ensure that the Secretary of State could not overwrite the democratic process entirely.

Amendment 40 would remove the economic interest test from the consideration of the Trade Remedies Authority at the preliminary stage of determination. Part 2 of schedule 4 gives the TRA powers to make an initial, provisional recommendation to the Secretary of State that dumping may have occurred and that therefore all importers of the goods in question should be required to give a guarantee in respect of any additional amount of import duty that would have been applicable, or may be applicable, subject to further investigation. The Bill requires the TRA to have considered first whether that requirement to guarantee is necessary to prevent injury and, secondly, whether it would meet the economic interest test.

As amendment 40 makes clear, we do not believe that it is appropriate for the economic interest test to be inserted at this early stage, when provisional remedies are being required ahead of a later full and final determination. The addition of an economic interest test at this point in the process places a large additional burden on the TRA when only provisional guarantees are being requested. It is impractical for the TRA to be expected to carry out a full economic interest test at this stage. It could also bear down on the speed at which all necessary provisional remedies are applied. That relates to the points about speed and pushing things on, as the Minister would like. Slowing the process will allow injury to producers to continue unchecked, reducing the efficiency of the system as a whole.

Furthermore, the application of the economic interest test at this stage in the remedy process goes well beyond WTO rules, which require only a consideration of injury.

[Peter Dowd]

This would leave the UK with a higher bureaucratic threshold to rectify injury than most nations we hope to trade with. Surely the Minister must agree that a central ambition of any Trade Remedies Authority is responsiveness and agility, but this measure flies in the face of what he told us earlier. Our amendment removes the burden of the economic interest test being placed on the TRA at this early stage in proceedings to allow it to take swift provisional measures pending further investigation, and so that we can act quickly as and when necessary to protect our industries.

Amendment 58 addresses part 6 of schedule 4, which sets out the economic interest test in more detail. We hope to address the balance of priorities that the economic interest test attempts to juggle to give proper due to the interests of producers and, subsequently, consumers, workers and so on. The point was made in the evidence session that producers are also consumers, who will no longer be able buy anything if they lose their jobs due to dumping injury.

This amendment clarifies the exact circumstances in which the economic interest test is considered not to have been met. There is little detail in the Bill regarding what those circumstances might be. Instead, sweeping powers are given to the Secretary of State to make up his or her mind as he or she sees fit. That is in keeping with the Government's wider approach to the Bill.

This amendment clarifies that the economic interest test will be assumed to have been met so that a remedy can be applied, unless the

"economic benefits of the remedy to the United Kingdom industry… are significantly outweighed by the economic costs to the importers, users or consumers of the goods in the United Kingdom."

It attempts to clarify the balance of forces that should weigh up any judgment in that regard. That is a completely reasonable addition to the Bill, which merely adds necessary detail where it is lacking, and gives all parties concerned clarity about how different interests will be considered. I hope the Minister will accept this amendment, which will clearly improve the Bill without cutting across the established roles of different actors in the process being developed.

Amendment 59 looks a few lines further down the list of factors that the TRA or Secretary of State should take into account when

"considering whether the application of an anti-dumping remedy or anti-subsidy remedy is not in the economic interest of the United Kingdom".

Our amendment seeks to remove the first provision that states that the TRA or Secretary of State should consider the economic relevance of

"affected industries and consumers in the United Kingdom".

As it stands, schedule 4 gives preference to large enterprises over small and to established sectors over new. Without our amendment, the Secretary of State could stamp out a small, growing sector or extinguish an embryonic area of British entrepreneurship because they deemed it not of "economic significance" to the UK. That would be a travesty. It seems to be an incredibly short-sighted approach to the UK economy and, if I may say so, strangely interventionist from a party that claims not to believe in the state picking winners. By extension, it cannot justify allowing the state to forcibly create losers.

It is highly unusual and inappropriate to allow the Secretary of State to write off an infant industry or area of consumption based on a crystal ball prediction of its future significance. Amendment 59 removes this dangerous sub-paragraph from the Bill to ensure that Secretaries of State keep their minds on likely impacts across the different interests at play, rather than gambling with the UK economy. Again, this is not a radical step, but a sensible reduction in the scope of the powers being handed to the Secretary of State, tabled in the name of democracy and, for the Minister, good economic management, of which the Government are losing sight.

Amendment 75 addresses one of the strangest lines in the Bill: sub-paragraph 2 of schedule 5 part 5, on page 93. For a Bill with very little detail, it is incredible that the Government managed to include a sentence of such baffling circularity. It bears repeating, so the Minister may hear it read aloud. It is reminiscent of Danny Kaye in the film "The Court Jester" saying:

"The pellet with the poison's in the vessel with the pestle; the chalice from the palace has the brew that is true."

It is well worth watching, and this pales into insignificance—I am sure Danny Kaye would do a better reading of it than I. It says:

"The economic interest test is met in relation to the application of a safeguarding remedy if the application of the remedy is in the economic interest of the United Kingdom."

It is remarkable—I think it is wonderful—that somebody produced that phrase. Perhaps the Minister would like to elaborate on it, while using the words "economic interest", "application" and "remedy" just once each. I eagerly await his explanation of the useful addition that the clause makes to an otherwise rather slim Bill.

Nevertheless, amendment 75 may help the Minister by adding the wording that I tried to add to schedule 4 of the Bill through amendment 58. Amendment 75 is therefore effectively a consequential amendment, in that it adds much-needed clarity to the balance of interests that the Secretary of State should weigh up when assessing the economic test in schedule 5, to match the amendment that we have set out in schedule 4 already.

Similarly, amendment 76 removes the requirement that the Trade Remedies Authority or the Secretary of State consider

"the economic significance of affected industries and consumers in the United Kingdom".

Again, we seek with the amendment to adjust schedule 5 of the Bill to align it with the changes that I outlined in my comments on schedule 4, this time to reduce the scope of the Secretary of State to predict the future success or otherwise of sectors of the British economy, or to preference large-scale industries over emergent or otherwise vital forces that might just end up giving our ailing, low-productivity economy a much-needed boost.

In summary, as hon. Members on both sides can see, we are engaging with this vital section of the Bill fully and constructively, to ensure that the right balance of interests is properly considered when trade remedies are investigated, and to construct a properly efficient process for doing so. I look forward to the Minister engaging with all the amendments on similarly constructive terms, and I hope that Committee members will carefully consider supporting them to ensure the best level playing field for UK industry, fair regard to producers and consumers alike, and an agile and efficient means of remedying any disputes that might arise.

Graham Stuart: Let me start by explaining that the objective of the economic interest test is to ensure that measures are in the best interests of the UK. It ensures that measures are not imposed where they might have disproportionate impacts on wider groups such as downstream industries or, as the hon. Gentleman rightly said, consumers. Let me take the amendments in turn and set out why they would undermine our objective of a balanced and proportionate trade remedies framework.

With amendment 40, the Opposition seek to remove the application of the economic interest test before the imposition of provisional anti-dumping and anti-subsidy measures. It would mean that the test is considered only at the final stage of imposing definitive measures. Given that provisional measures can have profound wider economic impacts, we believe that the test should be met before they can be imposed, just as before definitive measures. That ensures consistency between the two stages of the investigation, and operates in the same way as the existing Union interest test in the EU's regime, thus providing continuity for UK businesses.

I understand the concerns of UK industry that the inclusion of the test at the provisional stage could delay the application of measures. However, that will not necessarily be the case. In practice, the TRA will have the ability to gather evidence on the economic impacts of applying or not applying measures in parallel, rather than sequentially, to other aspects of the investigation.

11.15 am

Turning to amendments 58 and 75, the Government are clear that the economic interest test operates on a starting presumption in favour of anti-dumping and anti-subsidy measures. This is because the test is applied only once the TRA has found that dumped or subsidised imports have injured UK industry and that measures would be needed to correct that injury. This presumption can be rebutted only where the wider economic impacts of applying measures are disproportionate or outweigh that need to correct material injury to UK industry. This is reversed for safeguarding measures, which tackle unforeseen import surges that may be injuring UK industry but reflect fair trading practice. Safeguarding measures are not targeted and can be imposed on all imports of a particular product, so can have a much more wide-ranging impact on the country's economy. Accordingly, the burden of proof on the TRA in rebutting the presumption is reversed. The presumptions and the way in which they operate are already reflected in the Bill.

Finally, amendments 59 and 76 seek to remove the first economic factor that must be considered under the economic interest test. In order to consider the wider economic impact of measures, it is only logical to build a factual picture of who could be affected by measures, and of their size and significance to the UK economy. This will not be limited to direct impacts. The integrated nature of our markets means that many businesses are deeply integrated into supply chains, and may be relied on by a significant upstream or indeed downstream market. This first factor of the economic interest test ensures that those wider interests are properly identified in a comprehensive way, which then forms an important context for the other elements of the test. In my view it would be a mistake to delete it.

Any determination under the test must be based on relevant considerations under all the economic factors taken as a whole. I hope this clarifies that the test clearly operates on a presumption in favour of anti-dumping and anti-subsidy measures, and is not intended to deny protection for markets or businesses based on their size.

On whether the economic interest test is unusual or unique, I would say it is not. We have sought to learn from and improve the Union interest test, which industry is already familiar with through the EU. The EU Union interest test is based on

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

Nic Dakin: Can the Minister clarify whether we will have more tests, fewer tests or the same number of tests at the end of the process?

Graham Stuart: What I can confirm is that our system will be much more transparent. It will allow those who apply to it, or might be affected by it, to be clearer about how the system will work. That form of transparency is one of the fundamental principles on which we have built this structure.

Peter Dowd: That was a valiant attempt to show why the Government are taking a hammer to crack a nut.

Nic Dakin: I would appreciate my hon. Friend's view on whether there are more tests, fewer tests or the same number of tests, transparent or otherwise. The Minister did not answer that question.

Peter Dowd: I am not privy to the details, but I believe there will most probably be more tests. I think those tests will be more bureaucratic and will lead to inflexibility. By the time we get around to designing them, they will be more complicated than they need to be. The Government's position, as I have indicated, is to take a hammer to crack a nut. They are not fleet of foot enough on this issue. I have tried to lay out where we think the Government should give careful consideration. Though I hear what the Minister says, and his concern about transparency, this is so transparent that we can see through the Bill. That is the problem: there is nothing there. Though the Minister has tried to reassure us, I think he has missed the point. The Government are going into potentially dangerous territory and poking their fingers into all sorts of places that they do not necessarily need to poke into. We will therefore push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 12]

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 41, in schedule 4, page 66, line 1, leave out from "dumping" to "in" in line 2.

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.

The Chair: With this it will be convenient to discuss 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: I thank the organisations that sent in further written evidence today; that was very helpful. The TUC, among others, gave us information that helps with the amendments. Amendments 41 to 44 and 49 to 52 concern the removal of a mandatory lesser duty rule for estimating the injury of state-sponsored dumping. This is a potentially contentious area, and we have to get the balance right. Schedule 4 rightly defines dumping as imported goods priced below their normal value, where "normal value" means the domestic price, or another value if that is appropriate. I touched on this earlier. This definition recognises that the injury margin of domestic prices here does not always reflect the actual injury to UK manufacturers when dealing with goods from distorted economies such as Russia or China.

UK manufacturers are rightly concerned about leaving the methodology for these specified cases to regulation created by the Treasury and/or the Secretary of State, with little parliamentary input. The Opposition's amendments on the trade remedies and Trade Remedies Authority seek to address this concern and ensure that the methodology by which the TRA calculates the injury caused to manufacturers by dumping sufficiently protects UK manufacturing and industry. I refer hon. Members to the TUC document, which gives the examples of aluminium foil, aluminium road wheels, coated fire paper and continuous filament glass fibre production. One of the biggest concerns that UK manufacturers have with the trade remedies Bill is outlined in schedule 4—that is, the introduction of a mandatory lesser duty rule. That requires the calculation, in dumping investigations, of the level of injury to domestic industry, in addition to the level of dumping. The duties correspond to the lesser of the two indicators, which means that they might not necessarily properly reflect the damage to British industry. That is important in a whole range of areas. My hon. friend the Member for Scunthorpe referred to this in relation to steel; and we heard about ceramics. It is important that we get this right. In other words, it is relatively straightforward to calculate the cost of dumping, but less easy in relation to injury, with a full investigation, which may be an appropriate action. I think that Dr Cohen was pretty clear about that in her evidence.

As witnesses from key industries, including steel, ceramics and chemicals, pointed out last week, the best estimate of the distortion to trade is the dumping and subsidy margin. The creation of a mandatory lesser duty will result in lower duties that in some cases may not reflect the actual injury. It is labour-intensive for the investigating authority and does not reflect the full—

11.25 am

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

Adjourned till this day at Two o'clock.