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Public Bill Committee

TRADE (AUSTRALIA AND NEW ZEALAND) BILL

Third Sitting

Tuesday 18 October 2022

(Morning)

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Saturday 22 October 2022

The Committee consisted of the following Members:

Chairs: †Mark Pritchard, Derek Twigg

Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Britcliffe, Sara *(Hyndburn)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Duddridge, Sir James *(Minister of State, Department for International Trade)*
† Esterson, Bill *(Sefton Central)* (Lab)
† Fell, Simon *(Barrow and Furness)* (Con)
† Gibson, Peter *(Darlington)* (Con)
† Greenwood, Lilian *(Nottingham South)* (Lab)
† Griffith, Dame Nia *(Llanelli)* (Lab)
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Holden, Mr Richard *(North West Durham)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
Lloyd, Tony *(Rochdale)* (Lab)
† Mullan, Dr Kieran *(Crewe and Nantwich)* (Con)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Thomas, Gareth *(Harrow West)* (Lab/Co-op)
† Vickers, Martin *(Cleethorpes)* (Con)

Sarah Thatcher, Huw Yardley, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 18 October 2022

(Morning)

[Mark Pritchard *in the Chair*]

Trade (Australia and New Zealand) Bill

9.25 am

The Chair: Before we begin, may I make a few announcements? *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please make sure your phones and other electronic devices are switched to silent mode.

We will now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. Please note that decisions on amendments do not take place in the order they are debated, but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates.

Decisions on each amendment are taken when we come to the clause to which the amendment relates. A Member who has put their name to the leading amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments within that group. A Member may speak more than once in a single debate.

At the end of a debate on a group of amendments, I shall call the Member who moved the leading amendment again. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or to seek a decision on it. If a Member wishes to press any other amendment in a group to a vote, they need to let me know.

Clause 1

Power to implement government procurement Chapters

Gareth Thomas (Harrow West) (Lab/Co-op): I beg to move amendment 19, in clause 1, page 1, leave out subsections (2) and (3).

It is a pleasure to serve under your chairmanship, Mr Pritchard. I congratulate the Minister on being knighted. [Hon. Members: "Hear, hear!"] It is a pleasure to see him and, indeed, his fellow members of the anti-growth coalition in their places this morning.

Labour Members had hoped that the Bill would provide an opportunity for a much bigger debate on the entirety of the trade agreements with New Zealand and Australia. Sadly, however, the way in which the Bill has been drafted means that it is only the procurement chapters of those agreements that we will be able to debate. I shall illustrate why this is a restrictive approach. There are more than 2,500 pages in the Australia deal—a member of my staff has counted them—but only 30-odd of them are on Government procurement. The New Zealand trade deal has fewer pages, but there are more than 500 of them, with only 30-odd pages on Government procurement. Our opportunities to scrutinise are, therefore, far more restrictive than the House would have liked. None the less, we will raise one or two of the concerns that have been put to us about the Government procurement chapters of both deals.

I should stress at the outset that we welcome increased trade with Australia and New Zealand. They are key allies led by strong, progressive, effective leaders in Anthony Albanese and the incomparable Jacinda Ardern. Their legal systems and value systems are similar to ours, and it makes enormous sense to deepen the economic ties between us.

Our concerns about the procurement chapters arise from the fact that the now Prime Minister appeared to be in a bit of a rush when negotiating both deals. Perhaps one or two mistakes were made and a deal of insufficiently high quality was secured. Members will remember the context in which the Australia deal in particular was negotiated. The flaws in the deal that the now Prime Minster had negotiated with Europe were becoming very obvious, and Ministers were clearly desperate to divert attention from them by negotiating a deal with Australia.

Amendment 19 seeks to delete subsections (2) and (3) from clause 1. Those subsections allow Ministers to extend specific provisions that are included in the UK-Australia and UK-New Zealand agreements, and which go beyond provisions of the Government procurement agreement to all covered procurement. They also bring procurement within the scope of the GPA and other UK trade treaties. These GPA-plus provisions of the UK-Australia free trade agreement could be made part of domestic law and would apply to all suppliers, not just those from Australia. On the GPA-plus elements of FTA clauses relating to estimating values of contracts without a fixed term, the UK-Australia FTA requires that all contracts with unknown value are deemed as covered procurement. Other examples of the so-called GPA-plus provisions that this clause makes available to all suppliers include the advertisement of procurement opportunities and the termination of awarded contracts.

Our amendment seeks to prevent Ministers from quietly slipping into law measures that they have negotiated as part of the trade agreements with Australia and New Zealand, in particular the procurement chapters, that they suddenly think should apply generally. The specific concern that has been brought to our attention relates to contracts of unknown value and length.

Let me go into more detail, to help the Minister and the Committee to understand those concerns. Under current UK rules, contracts of an unknown duration or without a fixed term are advertised only if their estimated cost over 48 months exceeds the relevant value threshold. Under the free trade agreement with Australia, those contracts always have to be advertised. To give effect to the FTA, our domestic UK law will have to be reformed as a result of this Bill.

That surely raises two issues. First, more contracts will have to be advertised, and that will benefit not only Australian tenderers but all tenderers in countries that are members of the Government procurement agreement.

That is because the contract opportunity will be advertised online and will be in English. I will explain shortly why that raises concerns. Secondly, domestic legislation is being reformed as a result of free trade agreement, which gives rise to the question whether a trade discussion is the most appropriate way in which to address reforming UK contract law. It certainly gives rise to the question of how much consultation Ministers have had, not only across Government but with business, industry and others who might be affected.

Why does the Minister think it is a good idea to extend to very other member of the GPA the so-called GPA-plus provisions negotiated as part of the Australia trade deal? That gives rise to an obvious question: does it mean that every other member of the GPA will offer us the same arrangement?

I have been describing the concerns in technical detail, so let me give some specific examples to bring the concern to life. On contracts of unknown value, a contract for office printing—a pay-as-you-go service—would come under the scope of the concerns put to us. Let us imagine that a local authority did not want to buy or lease printers, but rather preferred an all-inclusive service comprising availability of equipment, maintenance, help-desk services and supply of paper and other consumables. The contractor would be remunerated on a per-printed-page basis—a pay-as-you-go price. Let us say that the contract was for five years and that the contracting authority—a council on its uppers, perhaps, one like Northamptonshire that had either gone bust or very nearly gone bust—had provided an estimate of the average number of pages printed over the last few years, so as to allow tenderers to price their offers up. However, the contracting authority would not know the total value of the contract at the time of advertising because future consumption could vary.

We have been given similar scenarios that could emerge from cloud computing services. In the cases that I have described, regulation 6(19)(b) of the Public Contracts Regulations 2015, which apply at the moment, requires the contracting authority to calculate a likely monthly value of the contract and multiply it by 48 months. If that estimate exceeded the relevant threshold, which is currently just over £213,000, the contract would have to be advertised. If the estimate was below that threshold, it would be possible that no advertisement was required. If the contract was estimated at below £25,000 in value for the next 48 months, there would be no obligation to advertise the contract opportunity at all. The contract could be directly awarded by the local contracting authority, perhaps following a request for tenders to two or three local small and medium-sized enterprises.

Conversely, under the requirements of the UK-Australia free trade agreement's procurement chapter—paragraph 9 of article 16.2—given that the total value of the contract over its entire duration is not known in the example I gave, there would be an obligation to advertise the contract. Surely that would reduce the chances of local small and medium-sized businesses getting the contract. There seems to be a clear negative potential effect for SMEs that seems at odds with the Government's declared policy of boosting SME access to public contracts. Paragraph 13 of the national procurement policy statement refers to that, and paragraph 10 notes as a strategic priority the need to improve

"supplier diversity, innovation and resilience".

It explicitly refers to the goal of creating a more diverse supply chain to deliver the contracts that will better support start-ups and small and medium-sized businesses in doing business on public sector contracts.

The Minister will remember the clear evidence we heard last Wednesday from Lucy Monks, the Federation of Small Businesses representative, who said:

"Small businesses have problems accessing public procurement in the UK as it stands, because they find it technically difficult. They obviously do not have the ability to take the same kind of risks as larger businesses. They might not have the technical departments, lawyers or whoever might support them through that process."

She went on to spell out, in even starker terms, that

"small and medium-sized enterprises are basically underserved in the UK procurement processes".—[*Official Report, Trade (Australia and New Zealand) Public Bill Committee,* 12 October 2022; c. 5.]

SME representatives are already expressing serious concerns that the people they represent are struggling to win sufficient UK Government contracts. It appears that under clause 1(2) and (3), Ministers are about to make the situation even more difficult for SMEs. That is particularly the case because it is not just Australian and New Zealand businesses that might want to try to win these contracts in future; every other member of the Government procurement agreement could also bid for these contracts.

Although it might seem unlikely that GPA members such as firms based in Hong Kong would want to bid for contracts of unknown value, a business based in the Republic of Ireland, which is part of the GPA, could conceivably think, "Well, now we've got an opportunity to bid for a contract in Northern Ireland, Scotland or Wales. It is within the realms of possibility that we could win that contract and offer it for our purposes." I gently emphasise to the Minister that he needs to explain not only to the Committee but to SMEs across the UK, which are at the moment able to secure contracts of unknown value and length, why he thinks it is in the interests of our country to make it more difficult for them to do so.

If the printing example has not helped the Committee enough, let me give another example from a different economic sector. The Minister will understand just how important procurement is as a means of supporting the UK's food and agricultural industries. To be fair to the Prime Minister, even she understood that role very clearly when she was in a previous role as the Secretary of State for Environment, Food and Rural Affairs. She published a plan for public procurement, which was designed to help SMEs to win contracts, especially SMEs from the food and agricultural sector.

Public procurement in this type of situation could sometimes involve the direct delivery of agricultural products, perhaps bought in bulk by local government, but that is less likely than the outsourced provision of meal services for schools or the NHS. With that in mind, tenders for meal services can and increasingly tend to include supply chain considerations that can support local agricultural industries through criteria in the contracts that schools and local NHS hospitals set. That involves shortening the supply chains, perhaps as a way of reducing carbon footprint. Again, that is something that one would have thought we all wanted to continue supporting.

[Gareth Thomas]

Contracts for meal services can be very difficult to price at a tender stage, especially if there is an element of price competition, which is the norm. It might be surprising that school meals are very difficult to price. However, my own offspring often change their minds over whether they want a school meal or a packed lunch, and I imagine that that scenario is mirrored in families across the country. That makes it difficult for those who are setting the tender terms for meal services to be able to guarantee a set amount of products.

The Minister of State, Department for International Trade (Sir James Duddridge): I followed the hon. Gentleman's printing example, in the main, but on school meals, is he just being illustrative? I cannot quite see how the meals that my children have at their school might be contracted out and delivered from Australia or New Zealand.

9.45 am

Gareth Thomas: Let me come on to the example. I am not saying that at all; absolutely, it is highly unlikely that an Australian firm will decide that it wants to rush over and provide schools in Southend or Harrow with meals. That is difficult to see. But it is not difficult to see that a business based in Ireland might think it could provide services in Northern Ireland. It is also not beyond the realms of possibility that it might think it could offer the same terms in Scotland and Wales, such is those countries' relative proximity.

The Minister is saying that, under the agreement that the Government have negotiated, the opportunity to advertise contracts of unknown value will be extended not only to Australia and New Zealand but, effectively, to every GPA country. Businesses based in the Republic of Ireland will be made aware of contracts across the UK, and more easily able to bid for them as a result, making it that little bit more difficult for small and medium-sized enterprises based in Northern Ireland, or in Scotland or Wales, to win those contracts.

The other concern that has been put to me in relation to these examples is that the activation of the FTA could generate significant legal uncertainty about the compatibility of supply chain considerations that prefer UK produce over Australian produce, especially where the Australian produce has been given extensive market access under other chapters of the FTA. The practical impact of the duty to advertise would be a risk of a reduction in the likelihood of UK-based SMEs, offering UK-grown produce, winning the contract. The Minister might think that is a good thing, but given the difficulties that SMEs have in winning contracts for Government procurement, why has he made the judgment that all contracts of unknown value should be advertised online and in English, and therefore available to all members of the Government procurement agreement to bid for? Why are we making it that little bit more difficult for British SMEs to win contracts?

I want to ask the Minister some other questions related to the clause, and in particular to the issue of contracts of unknown value and length having to be advertised online and in English. What consultation did his Department have with SMEs about the clause? Is it the case that we were rule takers, and the Australians insisted on its inclusion in the FTA? Given that the benefits will extend to every other GPA country, has he had any discussions with those countries about whether they might now offer the same terms to the UK? What assessment have the Government made of the impact of contracts of unknown value and length being advertised online and in English to all GPA members? What impact does he think that will have on the desire of all of us to see more buying of British produce, goods and services? We on the Labour Benches are strong enthusiasts for "buy British" campaigns, so it would be good to hear the Minister's assessment of the damage to that aspiration.

I briefly flagged the issue of legal uncertainty. The Minister will know about, and may be directly involved in, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership accession talks. Does the CPTPP procurement chapter include similar provisions? If we accede to the CPTPP, that will trump the Australia and New Zealand FTAs; businesses that have got used to operating in this new context might suddenly find there is a whole series of new rules they have to adjust to very quickly, and may not realise that the Australia and New Zealand FTA provisions that were negotiated under the procurement chapter have been jumped as a result of our accession to the CPTPP.

I am interested to hear the Minister's responses to the concerns that have been put to us about the extension beyond Australia and New Zealand of this series of provisions. No doubt they were negotiated with the best of intentions, to improve opportunities for Australian and New Zealand businesses here, and for UK businesses in Australia and New Zealand, but they might—inadvertently or otherwise—have a series of other consequences that could damage the ability of British SMEs to win procurement contracts here.

The Chair: If colleagues would like to remove their jackets, they can—it is rather warm in here. I remind colleagues to put their electronic devices on silent. I call Bill Esterson.

Bill Esterson (Sefton Central) (Lab): It is always a pleasure to see you in the Chair, Mr Pritchard. I was struck by a number of points that my hon. Friend the Member for Harrow West made about the fact that the Bill is about procurement alone, and about the way that it has been drawn up. He said at the start of his speech, in talking about the then Trade Secretary, who is now the Prime Minister, that a few mistakes were made in negotiating the trade agreements—that things were done in a rush. In listening to my hon. Friend make the case for the amendment, I wondered whether that is becoming something of a habit of this Government. It was not just the way the agreements were negotiated but the way that the Bill was brought forward—and just last night, of course, the Prime Minister apologised to the nation for the mistakes that she made as head of the Government in the recent mini-Budget and the disastrous effect that it had on the economy.

The clause gives Ministers the powers to put into operation what my hon. Friend and others have referred to as GPA-plus, with contracts of unknown value, and more contracts being advertised, to benefit not just companies from Australia and New Zealand but companies

across the world whose countries are GPA members. I found what my hon. Friend said about the—I assume—unintended consequences extraordinary. I hope we all agree that if they are intended consequences, that would be a very retrograde step, because it would be deliberately harmful to small and medium-sized businesses in the country. As we heard from the Federation of Small Businesses and the other business groups that gave evidence to the Committee last week, it is already very difficult for smaller firms to get contracts in this country. Like my hon. Friend, I hope that the Government genuinely mean it when they say that they are trying to improve the situation for smaller firms bidding for Government contracts.

Government procurement is one of the best ways to stimulate the economy and push funds through smaller firms, which are a source of growth, of much innovation and creativity, and of job creation across our country. That is an incredibly important part of what any Government should offer if they want success, and it is at the heart of the Labour party's offer in our industrial strategy and in our plans to make, buy and sell more in Britain. I hope that the Government's approach to the legislation has not undermined support for small firms.

As my hon. Friend set out, if that has not been considered because the Bill has been rushed, some countries—the example of the Republic of Ireland is a good one, but the same applies to other European Union countries—may see an opportunity to win contracts in the United Kingdom at the expense of UK firms, in particular smaller ones, purely by dint of the fact that they have gained a competitive advantage through very poorly drafted legislation. I fear that that risks making it harder, not easier, for domestic companies to benefit from Government spending.

My hon. Friend was also right to mention the carbon footprint aspect. It cannot make sense for us to move away from the idea that, where it is sensible, domestic firms should win contracts from public bodies and, in building a more resilient, local supply chain and delivering British jobs, should have the best possible advantage. I will add one thing to my hon. Friend's excellent point about the carbon footprint: in the light of the international situation—we all know that we face serious times because of Putin's invasion of Ukraine—building greater domestic resilience in our supply chains must be a fundamental part of public policy. Moving away from that, which would weaken supply chains and make it harder for small firms in this country to win contracts from our own Government, sounds to me like the opposite of improving resilience and supporting the economy around the country.

I share my hon. Friend's concern that the consequence of subsections (2) and (3) would be to weaken potential support for UK businesses and the jobs of the people who work in them. For those reasons, I agree with him that we should support amendment 19 and remove those subsections from the Bill.

The Chair: It gives me great pleasure to call the Minister, Sir James Duddridge.

Sir James Duddridge: Thank you very much, Mr Pritchard. I thank the Members of His Majesty's official Opposition for their kind words.

The debate on amendment 19 has been useful and wide ranging. I am working on the assumption that we will not have a clause stand part debate, so with your permission, Mr Pritchard, I will speak widely and address all the points made by the shadow Minister—the hon. Member for Harrow West—and the hon. Member for Sefton Central. I will address the shadow Minister's points more generally before moving into the detail of amendment 19.

The Federation of Small Businesses said that it had been consulted widely and was happy with what the Government have done on this process. The FSB is also part of various strategic advisory groups and trade advisory groups, so, structurally, it is wedded in with the Department on all issues, including procurement.

10 am

Taking a step back, it is in the British national interest to widely advertise procurement to get the best deal for the United Kingdom. At the end of the day, the Government, or governmental agencies at sub-state level, are purchasing these things, and these procurement procedures drive best value for the United Kingdom.

Both Opposition Members touched on the interaction between "buy British" and free trade. I would encourage both, but they are sometimes slightly contradictory. We should have free trade to have the choice to buy a cheaper good, but we may choose to buy a slightly more expensive good for reasons of climate change, carbon miles and so forth, as the hon. Member for Harrow West mentioned. It is important we have that choice, and free trade has had great benefits for the United Kingdom more generally over hundreds of years.

I think some of the examples that the hon. Gentleman used were better than others. The one about printing was good, but I am not sure about the school meals point. However, they did illustrate and start teasing out some of the issues. On contract value, looking at things such as construction, where there is an unknown value, may be more appropriate than where the deal was being focused.

Gareth Thomas: Don't worry—I will come to construction.

Sir James Duddridge: I look forward to that.

There were some wide-ranging comments about the Bill. This is a very focused Bill, and I will focus on the procurement element. The Government did not produce a focused Bill by design; we focused the Bill on what there was a legislative need to change. Everything else is done through statutory instrument and there has been wide consultation on the deal overall.

There was talk of GPA-plus. It is in the British interest to have many people tendering, beyond Australia and New Zealand, and to have transparent information. There was also a question about CPTPP, on which I think there is a bit of misunderstanding.

Gareth Thomas: I intend to come to some of the tensions between competition and "buy British" in our next group of amendments, but let me give the Minister the example of Essex County Council. He seems to be saying that it is fine for SMEs in Essex to face greater competition if they want to win contracts of unknown value and length as a result of the council's having to advertise such contracts online and in English, even

[Gareth Thomas]

though we have not secured similar pledges from other GPA countries. Those small and medium-sized businesses that might hope to bid for a contract in, say, France or Ireland do not have the same advantages, as Ministers have not achieved that. Why give that bit of negotiating leverage away at this stage?

Sir James Duddridge: I think Essex County Council, which is Conservative-run, would think competition is good. The more people applying, whether they are from Essex, Kent or New Zealand, the better. If that provides better services procured with our money—taxpayers' money—that is fundamentally good. Clearly, local businesses and SMEs have a competitive advantage because there is less transport and a closer understanding of the marketplace; there is a plethora of reasons why that would work. Competition is also good for driving change. If an SME or an organisation in the UK is not competitive or does not have exactly the right product, by not getting that one contract it will try to develop and improve. That is how we grow as a society—but I am straying slightly from the provisions of the Bill.

Let me return to CPTPP. There are some fundamental points here. The Australia and New Zealand trade deals do not die once CPTPP starts, for two reasons. First, they will remain in place because they will be the way we judge what has happened before; deals done in the period before CPTPP will be judged on the Bill. Secondly, the deals will sit alongside CPTPP, in that some of the provisions in the Australia and New Zealand trade deals will be better than those in the deal with the 11 nations in CPTPP, and we would not want to remove those benefits that we have given to our Antipodean colleagues.

Gareth Thomas: The Minister is describing an interesting context—the idea of the CPTPP sitting alongside the Australia and New Zealand free trade deals. Specifically on the issue of contracts of unknown value and length, is that provision contained within the CPTPP as well? We will be a rules-taker. That is the evidence that has been put, certainly to me, in terms of the procurement chapter of the CPTPP. Is it the same provision? I gently suggest that if it is going to be in the CPTPP, with largely the same wording, procurement experts have put it to us that we risk having some legal confusion between the procurement chapter of the CPTPP and the procurement chapters of the Australia and New Zealand FTAs.

Sir James Duddridge: The wording is in line with the CPTPP. Australia, New Zealand and ourselves are conscious that while this deal is in all three nations' interests, it is also a potential stepping stone to a bigger deal. Throughout the negotiations we, on all sides, thought very carefully about what will be replicated in the new trade deal—what goes through—and also what we wish to retain in our special relationship with those two nations. As the hon. Gentleman knows, trade is always evolving. These deals contain some new and exciting provisions. I will focus my comments on amendment 19 specifically and pick up on thematic issues later, if the hon. Gentleman probes me on them.

I reassure the Committee that the scope of these powers is only to make regulatory changes that are absolutely necessary to implement the procurement chapters. Subsections (2) and (3) of clause 1 are there to ensure that the regulatory changes can be made. Some suppliers do benefit from a separate set of regulations to suppliers from other nations, including the UK. These provisions simply ensure that any supplier participating in a tender that is covered by the agreements do so under the same rules and processes. The amendment would fundamentally undermine the bringing forward of the deal that has been done with Australia and New Zealand in relation to procurement. I hope I have provided some reassurance to the Committee.

Gareth Thomas: Will the Minister explain how the provisions in the procurement chapter of the Australia and New Zealand FTAs sit with the Procurement Bill, which is going through Parliament at the moment, and whether this requirement to advertise contracts of unknown value and length is also touched on in that Bill? If so, there is a risk of confusion, not just as we accede to the CPTPP, but also from our own domestically introduced procurement legislation.

Sir James Duddridge: The Opposition Front-Bench spokesman is tempting me to speak to two Bills under one. When the Procurement Bill goes through, this Bill will not be needed. The trajectory the Government are taking is consistent across the board, but it would be wrong for me to debate a future Bill. We should focus today on what is before us, rather than on what might happen. It is still an active debate. That Bill is not even starting in this House; it is starting in the other place. Therefore, I hope the reassurance I have provided are satisfactory. I ask the shadow Minister to withdraw the amendment.

Gareth Thomas: I am grateful to the Minister for his reply. Although I am not 100% convinced by the argument that he advanced, this is a probing amendment and we will reflect on what he said.

We cannot find any evidence that there was a consultation with the FSB or anyone else on the impact of extending contracts of unknown value and length and on the requirement to advertise them online and in English to every other country with which we have a trade agreement, notwithstanding the Minister's argument and the evidence we heard in Committee that there have been consultations between the Department for International Trade and the representatives of small and medium-sized businesses. I wonder, therefore, whether this so-called GPA-plus provision has had quite the attention it merits.

Bill Esterson: Did my hon. Friend notice that the Minister did not actually address one of the central points that he and I raised, which is that the opportunity would be widened to all countries that are signed up to the GPA? That causes great concern about the loss of contracts to businesses in this country.

Gareth Thomas: To be fair to the Minister, he sort of touched on the issue in very loose terms. Perhaps my hon. Friend may be reassured that amendment 5, which we are inching towards, would require much more consultation down the line. Perhaps that is a way to try to improve things for SMEs across the UK.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Is not the big problem—my hon. Friend rightly pointed this out earlier, but the Minister did not really reflect on

it—that we are giving away negotiating elements for future deals? Opening this up to all GPA countries means that no GPA country will need to put it on the table. We have opened up our markets for them, and they have not opened up their markets—fantastic. We have cut off the nose to spite the face of all our small and medium-sized businesses, but other countries have not acted similarly. If we do this repeatedly with all areas of trade, in the end we will have unilaterally opened up all our borders but received no benefits for our small businesses. That is the basis of the Conservative negotiating strategy, and it is a disaster, is it not?

Gareth Thomas: I appreciate that Conservative Members will be focusing on other mistakes that the Prime Minister has made, but my hon. Friend is absolutely right. One wonders whether, in the rush to get a deal with Australia, Ministers essentially decided just to give up their negotiating leverage on these issues and hoped to push it through quietly without too much attention. None the less, we have aired these issues. We will reflect on what the Minister says, and we may well come back to this matter on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ms Anum Qaisar (Airdrie and Shotts) (SNP): I beg to move amendment 1, in clause 1, page 1, line 15, at end insert—

> "(3A) Regulations under subsection (1) will not come into force before the date on which the procurement Chapters come into force."

The amendment is pretty self-explanatory. It is about the timing of entry into force. As my hon. Friend the Member for Inverness, Nairn, Badenoch and Strathspey and I have mentioned, the Scottish Government have consented to the intent of the Procurement Bill. The UK Government's procurement provisions in the Procurement Bill will supersede this Bill's procurement provisions when it receives Royal Assent.

The draft Bill was not cleared with the Scottish Government in advance of its introduction, while the drafting of key elements of clauses relating to cross-border procurement—which directly engage the legislative consent process—were not cleared with the Scottish Government until the day before the Bill's introduction. There has therefore been no meaningful opportunity for the Scottish Government to engage on the specific drafting of provisions before their introduction. It is key that we pass legislation that is thorough. That is why such amendments as this are so important. I encourage colleagues to consider the amendment.

10.15 am

Sir James Duddridge: It is good to see the hon. Lady in her place. I think it is the first time we have served in Committee together—no doubt, not the last time—and I welcome her to her place.

I also welcome her probing amendment—I assume it is probing, forgive me—but it is unnecessary. Australian and New Zealand suppliers will not gain the benefit of the procurement chapters until the agreements have entered into force, in accordance with the existing framework for domestic legislation.

By way of example, the text of the Australian FTA states that the default date of entry into force of the FTA is 30 days after the date on which notifications confirm completion of domestic procedures on all sides, although both parties may agree otherwise. If for whatever reason we made it 31 days or 29 days, and that was acceptable to both parties, the change could be made to allow for all eventualities.

I argue that the amendment is not necessary and that, were we to pass it, it would remove the flexibility of that small change. I welcome the amendment, but ask the hon. Lady to withdraw it.

Gareth Thomas: The hon. Member for Airdrie and Shotts rightly raises an important issue about the linkages between the Procurement Bill and the measures in this Bill. One wonders why Ministers could not get their act together and get that Bill through both Houses of Parliament first. That would have been the sensible thing to do, rather than introducing specific and narrow legislation to implement the procurement chapters of these two free trade agreements, even though they will be completely usurped by the Procurement Bill coming down the line. Does the Minister have any insight into why there has been such a delay in getting the Procurement Bill through both Houses? Is it the chaos in the Conservative party? Is it that there was a need for more consultation with business about the Bill? Why has there been such a delay in the progress of the Procurement Bill?

Sir James Duddridge: The Procurement Bill is in the House of Lords. It has still not reached us. I do not wish to be disparaging about the House of Lords, but had the Bill started here and were the hon. Gentleman, the hon. Member for Airdrie and Shotts and I on the case, no doubt we would have sorted it earlier. I ask the hon. Lady to reflect and to withdraw her amendment.

Ms Qaisar: It will come as no surprise to the Minister that the SNP will disagree with what he is saying. However, we are content to reconsider the amendment and will perhaps bring it back at a later stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ms Anum Qaisar: I beg to move amendment 3, in clause 1, page 1, line 15, at end insert—

> "(3A) Where the appropriate authority is a Minister of the Crown, regulations under subsection (1) may not be made until the appropriate authority has consulted the relevant Scottish Ministers in relation to any matters affecting Scotland."

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

Amendment 4, in clause 1, page 1, line 15, at end insert—

> "(3A) Where the appropriate authority is a Minister of the Crown, regulations under subsection (1) may not be made until the appropriate authority has consulted the relevant Scottish Ministers in relation to any matters affecting farming in Scotland."

Amendment 5, in clause 1, page 1, line 15, at end insert—

> "(3A) Regulations under subsection (1) may not be made before completion of such public consultation as the appropriate authority considers appropriate with the relevant—

(a) Scottish ministers,

(b) Welsh ministers,

(c) department of the Northern Ireland Executive, and

(d) representatives of the English Regions."

Amendment 7, in clause 1, page 1, line 15, at end insert—

"(3A) Regulations under subsection (1) may not be made before completion of a review by the Trade and Agriculture Commission of the potential impact of the procurement Chapters on industry in the United Kingdom."

Amendment 20, in clause 1, page 1, line 15, at end insert—

"(3A) Regulations under subsection (1) may not be made before publication of an impact assessment setting out the potential impact of the procurement Chapters on—

(a) employment rights and human rights in the United Kingdom, and

(b) climate change."

Amendment 22, in clause 1, page 1, line 15, at end insert—

"(3A) Regulations under subsection (1) may not be made before publication of an impact assessment setting out the potential impact of the procurement Chapters on—

(a) Scotland,

(b) Wales,

(c) Northern Ireland and

(d) English Regions."

Ms Qaisar: I should say, Mr Pritchard, that it is a pleasure to serve under your chairmanship.

Amendments 3 and 4, which I tabled with my hon. Friend the Member for Inverness, Nairn, Badenoch and Strathspey, can be summed up as standing up for Scotland and Scottish farmers on procurement. The Bill fails to ensure that Scottish Ministers have the ability to scrutinise matters of procurement that impact on Scotland. The powers in the Bill are drafted too broadly. They confer too many powers on UK Government Ministers without securing consent from the Scottish Government. That does not appear to be democracy in action.

Scottish farmers are already struggling with energy costs, crops rotting in fields for a lack of pickers, rising fuel costs, the loss of EU farming subsidies, and fertiliser prices spiralling. Experts have spoken about the deal. We heard from the president of the National Farmers Union Scotland, who said that it appears to be very one-sided, with little to no advantage for Scottish farmers. That is heightened by so little having been done to ensure the continuity and expansion of Scottish and British agrifood exports to new and existing EU markets. Scottish interests and Scottish farmers are not expendable.

Gareth Thomas: I entirely understand and agree with the hon. Lady's concerns about how Scottish farmers have been treated. They must rightly be very angry with the Government. Does she accept that the concerns of Scottish farmers are replicated among Welsh farmers and many farmers across England, for similar reasons? There is a sense that there has been a huge giveaway to Australia and New Zealand by the Government, perhaps because they were desperate to do a deal. The anger is only made worse by, as she rightly alludes to, the cost of living crisis facing many farming communities. Is she also sympathetic to amendment 5, which references not only the concerns that she articulates in respect of Scotland but those of the people of Wales, England and Northern Ireland?

Ms Qaisar: I thank my colleague for his intervention. He is correct that the challenges that Scottish farmers face are the same as those faced by Welsh farmers and farmers from across the four nations. A key point that he failed to mention, however, is that in Scotland over 60% of people voted to remain in the EU, and there is still a lot of anger from Scottish farmers in that regard.

Last week, we also heard from Jonnie Hall from NFU Scotland. He said something that struck me:

"There are clear potential impacts for particular sectors that are already really quite vulnerable in large parts of the United Kingdom, not least in Scotland. I am thinking particularly of the red meat sector and how important that is to the rural economy of Scotland and, indeed, the whole economy. Scotch beef and Scotch lamb are iconic products, but we are not in a situation whereby we can stack it high and sell it low, as it were. Anything that comes along and undermines our position in that respect is clearly going to be a considerable threat—I use that word advisedly—to the viability of agricultural businesses here in Scotland."—[*Official Report, Trade (Australia and New Zealand) Public Bill Committee,* 12 October 2022; c. 32, Q40.]

Concerns have also been raised by the Scottish Cabinet Secretary for Finance and the Economy, Kate Forbes, and the Minister for Business, Trade, Tourism and Enterprise, Ivan McKee. They recommended that the Scottish Government do not give consent for the Bill in its current form. We need to be really careful. The UK Government must not continue on the path of creating delegated powers to implement the Bill.

Amendments 3 and 4 seek to ensure that there are high levels of dialogue and discussion between Scottish and UK Government Ministers. That dialogue would ensure that matters of procurement in Scotland are at the heart of this legislation, crucially protecting the interests of Scottish farmers. In order to support Scottish interests and farmers, I ask Members to please support the amendments.

Dame Nia Griffith (Llanelli) (Lab): I rise to speak in particular to amendments 5, 20 and 22. I am sure that the Committee will be pleased to hear that in talking about amendment 5 and consultation, which is vital, I will also refer to amendment 22 and the issue of impact assessments, so as not to repeat myself. To avoid excessive repetition, I will give examples based on the Welsh Government, but that will certainly apply to Scottish Ministers, to the Northern Ireland Administration and to regions across England. The issue for us is that here we have a clause that will implement part of a trade agreement in which we would have liked to have seen better consultation and a more nation-specific impact assessment. What we can do here is try to put in appropriate consultation before the legislation that clause 1 will allow is finalised.

It is essential that there should be consultation specific to the nations and regions of the UK for a number of reasons. In the case of Scotland, Wales and Northern Ireland, devolution means that within areas of devolved competence, such as agriculture and economic development, there is increasing divergence in the way that things are done. Indeed, public procurement policies are different, and it is important to see the impact of the implementation of the Bill on each nation.

There may be very different economic profiles for the different nations and regions. In the case of the Bill, what is of particular significance is the relatively greater importance that the production of beef, sheep meat and dairy products has in certain nations compared with the UK as a whole. The same may be said for specific regions of England, for example, the relative importance in Cumbria of the beef and sheep meat sectors. Equally, there can be concerns for a particular region because of its reliance on fishing or a specific industry. To give an example, 70% of agricultural output in Wales is beef, sheep meat or dairy, and 70% of the farmland in Cumbria is for beef and sheep livestock farming, with a further 16% for dairy. The importance of livestock farming in Scotland has just been mentioned by the hon. Member for Airdrie and Shotts.

It is no secret that the farming and food processing sectors are most concerned about the treaties; those are the sectors for which ongoing consultation on the implementation of the treaties and their impact on public procurement is absolutely vital. The Government's impact assessment singled out agriculture, food and fishing, and food processing, as the sectors that lose out in both the Australian deal and the New Zealand deal, with gross value added down in the Australia deal by £94 million, and in the New Zealand deal by £48 million. Food processing is down in the Australia deal by £225 million, and in the New Zealand deal by £97 million. Obviously, there is real worry about what will happen to our farming industry because that has a massive impact on the guardianship of the local rural community, the family farms, and affects our culture—the Welsh and Gaelic languages.

Regarding the markets, let us take the example that 85% of the beef produced in Wales is consumed in the UK, as is 60% to 65% of sheep meat. There is a question about the impact that the huge and rapidly increasing tariff-free quotas of meat from Australia and New Zealand will have on our own farmer's ability to sell into the UK markets. While we have mentioned the issue of school meals, it is not necessarily in the public procurement of the finished product, but in the supply chains of ingredients, where we will potentially see Australian and New Zealand products—cheese or meat—displacing UK produce. That is in conflict with some of the devolved nations' procurement policies, where there is a wish to support the local and circular economy.

Further concerns have been raised. In the New Zealand deal the weights allowed in under the tariff rate quotas refer to the carcase weight equivalent, whereas in the Australia deal the volumes are shipped product weight, which means that they could be used disproportionately for the Australians to send their most expensive cuts, thus challenging the most lucrative part of the market for our farmers. We saw something similar to this during covid: when restaurants were not allowed to open, there was a drop in demand for steaks and higher end meat products, while supermarkets continued to demand the lower value products, and that had repercussions for our farmers and food processing industry.

10.30 am

We have heard evidence from the farming unions, and the estimated losses vary considerably, but according to the Farmers' Union of Wales we are talking about a £29 million loss of gross output for Wales's beef and sheep sectors. The other worrying point that has been mentioned several times is the precedent for future trade deals and the implications of the sections of the Bill that open the doors for anybody and everybody. Another point made by the FUW is about the reduction in food security. In the light of recent events, I cannot imagine why anybody would want to reduce our food security; in fact, there is a good case for doing the exact opposite.

Bill Esterson: My hon. Friend is making the case very well about the need to involve the farming and agriculture industry in trade agreement scrutiny. Was she struck, like I was, by the comments from Jonnie Hall of NFU Scotland about "retrospective scrutiny" and the fact that this weakened the role of the Trade and Agriculture Commission? Does she share my view that the evidence we heard is exactly why we need the kind of analysis referred to in amendment 7 before the regulations are implemented?

Dame Nia Griffith: I absolutely agree with my hon. Friend. The whole point is that there should have been much better consultation, either directly with the farming unions or by their representatives in the Scottish and Welsh Governments who have raised these points and have very good, close relations with the stakeholder groups in their respective nations. As my hon. Friend rightly says, a number of concerns were raised by the NFU. The whole point of having consultation and impact assessments is that those concerns can be properly documented and we do not rush into the legislation produced by clause 1 and leave people in a more difficult predicament.

Gareth Thomas: Does my hon. Friend agree that one reason why the Minister ought to be tempted by amendment 5 and amendment 22 is that they would give Essex County Council—which is currently Conservative-run but probably not for much longer, given the mess the Conservative party is leaving our country in—the chance to consult directly with small and medium-sized businesses about the procurement chapter deals that have been done in the UK-Australia and UK-New Zealand free trade agreements? As a representative of the people of Essex, he would surely think that that sort of consultation is a good thing that might remedy some of the mistakes that his predecessors have made in this area.

Dame Nia Griffith: I absolutely agree with my hon. Friend. The point is that locally based devolved authorities have much closer contact with the people they represent, so the consultation on how this is working out, what we are going to do next and what the next part of the implementation is must be able to take account of the feelings of those stakeholders on the ground who perhaps feel that they have not had a voice until now.

I pay tribute to officials in the Department for International Trade and the Welsh Government for their very positive and professional engagement. Indeed, the Welsh Minister for the Economy, Vaughan Gething, notes that there has been some improvement between the Australia deal and the later New Zealand deal, and I hope that the experience has been similar for colleagues

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in Scotland and Northern Ireland, and indeed for representatives of local government across the regions of England.

On procurement, the Welsh Government go as far as to say that there may be scope for businesses in Wales to take advantage of the provisions included in the UK Government procurement agreement, and that some Welsh interests in procurement were protected during the engagement with the Department for International Trade. However, Vaughan Gething says:

"I hope we continue to see improvements in the engagement we have with the UK government, and that future deals provide opportunities and benefits for producers and consumers in Wales."

It should not be a matter of hoping or relying on good will, which is why the concept of consultation should be enshrined in the wording of the Bill and a meaningful consultation should take place before the clause allows for the implementation of the procurement chapters of the FTAs. Of course, there are certain powers that the Welsh Government have already. Under section 62 of the Government of Wales Act 2006, they have the power to make representations about any matter affecting Wales, but we still feel that this needs to be stated explicitly in relation to the Bill.

One of the issues that relates to procurement is the gradual elimination of tariffs on beef and lamb. Under the New Zealand treaty, for example, the UK or New Zealand can unilaterally accelerate the elimination of tariffs. This is clearly of huge importance to Welsh farmers, so the Welsh Government want to know that they will be fully consulted by the UK Government on any possible acceleration of the elimination of tariffs on goods from New Zealand well before any decisions are made, because secondary legislation could emanate from the clause to put that into action. Clearly, we need that consultation beforehand. Why? Because if we had had better parliamentary scrutiny of the trade deal, we might not be in this position in the first place.

Gareth Thomas: Given the comments that my hon. Friend has just made, perhaps the Minister will take advantage of this debate and reflect on whether his ministerial colleague, the right hon. Member for Chelsea and Fulham, was wrong to reject amendments to the Trade Act 2021 that would have increased scrutiny. As many suggested at the time, perhaps we should have a debate on each free trade deal as the negotiations are just beginning to get under way, so that interested bodies can set out their concerns and Ministers can properly understand the depth of concerns that particular sectors might have—especially on procurement, given that that is what we are debating at the moment, but more generally as well. We are only having to oppose the amendment because Ministers will not do the sensible thing and have proper parliamentary scrutiny much earlier and at the end of things.

Dame Nia Griffith: Indeed. As I said, there are a number of unanswered questions. For example, it would have been nice to have had some analysis from the UK Government to understand why such huge increases were agreed in the quotas of tariff-free beef and sheep meat. Indeed, the Welsh Government requested that but have not had an answer. During the negotiations, the Welsh Government also made calls for market access offers that recognise the risks that large increases in imports could pose to Welsh producers, who have to meet high animal welfare standards. All of this points to why consultation is so important from the very outset and all the way through to the stage we are at now and beyond.

This is not just about the things that have been done by the Bill; it is also about areas where the free trade agreements could have been made better. Let me take the example of antimicrobial resistance. It is okay to stay where we are at the moment, but it would have been useful to work towards a better situation and to use procurement to do that. We do not want just to say, "Well, we don't want any more use of antibiotics." Actually, we want to look to reduce their use, although we seem to have missed that opportunity in the trade deals.

We welcome the commitment in the free trade deal to regulate our own standards, as well as the commitment to non-derogation with respect to welfare standards, but the point is that we need the consultation. We want the statutory basis for consultation to extend much further to the point of having some form of concordat with the Welsh Government, the Scottish Government and the Northern Ireland Administration that set out exactly what the consultation would be throughout the process. Indeed, we have a similar concordat on justice between the Welsh Government and the UK Government.

The point is to try to give some shape to the framework, and some certainty, and such a concordat would have so much to contribute. I made a point earlier about the fact that the devolved Administrations are in many ways much more able to engage with stakeholders to represent their views. Going forward, we need to think about issues that might cause problems, such as rules of origin and the fact that small and medium-sized enterprises might struggle and need support in that respect—consultation, impact assessment and feedback are so important to getting this right.

Gareth Thomas: Surely one of the other benefits of consultation is that it might start the Welsh Government and the Department for International Trade thinking about how, together, they might help businesses in Wales to capitalise on a free trade agreement. My hon. Friend will remember that a previous trade Minister criticised the Department for not doing enough to support businesses trying to export. Early consultation with the Welsh Government presumably might help to address some of those failings and enable businesses, together with the Welsh Government and the Department, to begin to think more quickly about how they might take advantage of the benefits of an FTA.

Dame Nia Griffith: Indeed. Not only might there be a benefit, but the high penalties that can be incurred by the respective parties if, for example, they do not understand rules such as the rules of origin might be avoided. Such fears could be fed back through proper consultation and support put in place to ensure that we were able to take advantage of the free trade deals.

Another pertinent issue is the fact that we are debating legislation that overlaps with areas of devolved competence —for example, procurement policy, agriculture and

economic development. We do not want the situation that arose with respect to the United Kingdom Internal Market Act 2020 whereby instead of a proper negotiation on where we should end up and what we wanted and required, we were frightened by the thought of being driven to the lowest possible common denominator on standards by the over-powerful influence of a UK Government purporting to represent the whole UK, but in fact listening only to themselves and not taking into account the views of the devolved Governments.

It is important that we recognise the powers that we have, and that the way forward is through consultation and negotiation, rather than riding roughshod over the issues. For example, the Welsh Government have devolved responsibility for setting domestic sanitary and phytosanitary strategy and policy. Clearly, that is of direct relevance to procurement and the way the FTAs were drawn up.

10.45 am

We also have different policy on procurement. In Wales, for example, the incredibly important Well-being of Future Generations (Wales) Act 2015 has an impact on all our public policy. In our procurement policy, we are very much committed to maximising the long-term sustainable and economic value outcomes for public spend, supporting the foundation of a circular economy, tackling climate change and having a fair work strategy. Likewise, the Scottish Government have a fair work first policy.

We can also look to some of the big procurement authorities, such as Manchester, where concerns about employment rights are very much at the top of the agenda. In Northern Ireland, they too have declared their desire to ensure that their procurement strategy helps to create a fair and cohesive society, emphasising social value. In fact, they are giving 10% of the total award criteria to social value, with that figure rising to 20% next year.

Gareth Thomas: In referencing Manchester, my hon. Friend has stimulated a thought in my head that, if I am lucky enough to catch Mr Pritchard's eye, I hope to return to: the issue of levelling up. If levelling up is going to take place—I appreciate that it appears Conservative Members have now given up on that ambition—something we will have to sort out is the Government procurement market. It is quite clearly skewed away from regions such as the north-east and north-west, and nothing seems to have been done about it for the past 12 years. Perhaps a little consultation on how the procurement chapters of these two trade agreements will be introduced might give Government Ministers and Members some ideas as to how we can use Government procurement to facilitate levelling up.

The Chair: I reassure the shadow Minister that he will always catch my eye as long as his comments are—as they are always are—in the scope of the Bill.

Dame Nia Griffith: My hon. Friend raises the importance of consultation, working together and wanting to make things better by negotiation, rather than by imposing a view by one central Government Department on areas that are actually within the devolved competence of other Governments.

I will move on to speak more specifically about the issue of impact assessment. There are various reasons for wanting a proper impact assessment of the effects on Scotland, Wales and Northern Ireland and on regions of England. Clearly, there is the levelling-up agenda. There is the fact that different sectors are of different importance to different areas. There is also the fact that the Government's impact assessment in respect of the FTAs is literally just a table. This is the sop we have to anything to do with the individual nations or regions. We do not have a real study of the impacts of the FTAs on those areas.

As we go forward with the Bill and clause 1, with the powers it provides, it is absolutely essential that it should include a clause for proper impact assessment. The Welsh Affairs Committee was very critical of the lack of detail in that respect. The Committee referenced the Japan comprehensive economic partnership agreement, which includes a better attempt at regional impact assessment—of Wales, for example—but that again did not go far enough. There is a real need for proper impact assessment.

We have mentioned already the impact on agricultural producers and, as I have mentioned, the wellbeing of future generations. The importance of that is of course that FTAs have obligations that bind future generations. They are not things that we can go back on. That is why it would have been nicer to have had impact assessments earlier. If we had them now we could at least prevent mistakes going forward and not have negative impacts on our agricultural sector in the surrounding communities. Given that we already start with negative figures, there is clearly some work that needs to be done. The risk has been exposed. That has been detailed, yet the impact of what that means for farming families and our communities has not been thoroughly explored.

Gareth Thomas: The beauty of having a consultation before regulations are introduced as well as an impact assessment once regulations are about to be brought forward is that we can try to prevent mistakes and understand what might happen as a result of procurement regulations. An impact assessment can highlight to the Welsh Government and other Government agencies what ameliorative support might be needed to help businesses adjust to the impact of new procurement regulations as a result of the procurement chapters. That is an advantage of two of our four amendments as well.

Dame Nia Griffith: Indeed. In respect of support for businesses, there is a real concern about the cumulative impact. That, again, refers to the first amendment we debated today—the issue of what other FTAs with other countries might be included in the legislation. Also, we need to see what the situation would be if the agreement has a negative impact—for example, unfair subsidies made by New Zealand or Australia to help their businesses, or if there is a particularly high volume of imported goods. It is important that Welsh businesses can report and escalate any concerns to the relevant trade bodies and authorities. Again, the proper relationship with devolved Governments can facilitate that.

To sum up on the issue of impact assessments, the impact on sectors is very important. That dovetails with the question of the different regions in England and the

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different nations of the UK because different sectors can be affected by trade agreements in very different ways, particularly regarding the output and the employment in the different areas. What is the GVA in those areas? Those are all reasons why we want an absolute commitment from the UK Government to a proper consultation procedure and a proper impact assessment before the implementation of clause 1.

I want to sum up with the question of rights and the rights that we are concerned about. The Joint Committee on Human Rights did not give exactly give the ETAs a clean bill of health as they went through. We have had concerns from the trade unions. The Joint Committee on Human Rights raised the fact that in the Australia deal there is no language about the protection of human rights. I note that in the response to the International Trade Committee, the Minister at the time, the right hon. Member for Berwick-upon-Tweed (Anne-Marie Trevelyan), rather brushed that off as "Oh, there are other ways we can deal with that." However, as we know, it has become more common for trade deals to have a wider focus.

Whereas historically trade deals would just have focused on the economic benefits of trading relationships, they have now expanded to address a wider set of cross-cutting areas, such as small and medium-sized businesses and gender, labour and environmental policy, including climate change. Those wider considerations are particularly relevant to public procurement implementation because of the role of procurement policies in protecting the environment and fair work.

The Joint Committee on Human Rights was not exactly happy—*[Interruption.]* It was pleased to see provisions on forced labour, modern slavery and human trafficking, but noted the limitations on enforcement and supply chains, limitations that the trade unions also raised. The trade unions also pointed out that they were not part of the stakeholder consultation and did not have their rightful place at the table. Again, consultation through the devolved Governments could give them a better voice, because there tends to be a better relationship, but trade unions should be at the table, full stop.

I will not go into more detail on climate change, apart from to say that at the time of the negotiation of the Australia deal, Australia had a terrible reputation on climate change, ranking very low in the world, with a terrible record on emissions. This might have been an opportunity, perhaps, to do rather more.

Gareth Thomas: It was a Conservative Government.

Dame Nia Griffith: It was indeed. I hope that the new Government in Australia may do something of their own accord, but we should not be leaving it to them to act of their own accord, and hoping. That is the point of the amendment. It is not enough to leave things just to happen, because they do not. Unless we put positive steps in to make something happen, it does not happen.

Gareth Thomas: My hon. Friend is making a very good point about climate. Is that not one of the differences between the New Zealand FTA and the Australian FTA? Negotiating with a conservative Administration in Australia led to a deal that does not reference climate. Negotiating with a Labour Administration in New Zealand led to substantial provisions on climate—*[Interruption.]* Would it not be good to hear the Minister explain how he has been talking to the new Labor Administration in Australia about how they might perhaps insert some more climate provisions into the trade relationship between the UK and Australia as a result of some of the joint committees that have been set up under the FTA?

Dame Nia Griffith: Indeed, absolutely. One rather suspects that it was not thanks to the UK Government, but thanks to the New Zealand Government that the climate provisions found their way into the trade agreement; they somehow got completely lost in the Australian FTA.

All these points are reasons why we have tabled the amendments. These issues are too important to be left to chance. They should be fundamental to any form of procurement policy, which should be based on a full impact assessment, full consultation and full respect for human rights and employment rights, and our goal of getting to net zero. Those are all very important points.

The Chair: After that big bang, I am very tempted to call the ghost of Christmas past, but instead I call the very living and very present, Lloyd Russell Moyle.

Lloyd Russell-Moyle: I will take that in the good manner that it was meant. Thank you, Mr Pritchard.

I speak to amendments 5, 7, 20 and 22 for three main reasons: first, because we heard evidence of great concern from businesses and other organisations about the consultation that this Government will do when bringing forward regulations and the trade deals themselves. The Government have established the Trade and Agriculture Commission, but it is able to produce reports only after the trade deal is signed, defeating one of the main points of its existence—it produces a long report but we go and ratify the trade deal anyway, after the horse has bolted. That is same with the International Trade Committee.

11 am

Other countries do not do it like that; in most others, their Parliaments and trade commissions are involved at the beginning of the trade negotiations. In France, they have the social pact of trade unions, businesses and NGOs all sitting around the table together through the creation of any form of international agreement. That is replicated in the European Union, where France and other European countries negotiate trade deals. The Government have refused to implement that, so ensuring that under the regulations they have, first, to consult with the TAC is an important amendment, because we cannot trust that they will do it on their good word alone.

Bill Esterson: My hon. Friend makes good points about the way that France and European Union scrutinise trade agreements. In the context of agriculture, the other really good example is the United States. Recently, the United States trade unions had access to negotiating texts during the negotiation period and were able to insist on improvements to employment rights in the

recent United States-Mexico-Canada agreement, which, crucially, protects workers in Mexico who face draconian approaches and attacks on trade unionists. Does my hon. Friend agree that we should have a similar process in this country? In the absence of that process, the amendments are a desperately needed back-up.

Lloyd Russell-Moyle: I totally agree. The US is a much better example than us of scrutiny and engagement. It engages its elected representatives early on. We see a Democrat Government there—one of our sister parties—putting trade unions and small businesses front and centre in their ongoing prosperity, rather than trying to run roughshod and have corrupt practices, which the previous party of Government in the US was all in favour of.

There is a better way of doing this. The amendments are not the ideal. I am, desperately unfortunately, missing my Select Committee inquiry this morning on international trade agreements and how we how we process them. I am sure I will read the transcript of the evidence hearing with fascination this evening. The Public Administration and Constitutional Affairs Committee's inquiry makes it clear that the current ways that we produce trade deals and scrutinise their implementation—what these amendments are about—are inadequate. They are inadequate because they were created in an age when most of it was farmed off to the European Union and we had strong scrutiny processes of secondary legislation that came via the European Union—Committees that looked at that and debates in Parliament.

All that was swept aside—I will not get into the rights and wrongs of leaving the European Union. We have then just relied on a CRaG process and no other proper form of ongoing scrutiny process, which we would have accepted under the European Union, or which every other country has now developed, because trade deals are dynamic.

Gone are the days when trade deals were fixed in one piece of writing; they are ongoing, living, breathing documents. That is quite right, because trade deals really are multilateral deals on numerous issues: on not just direct trade but intellectual property and procurement, as we are discussing today. They affect the domestic implementation of issues, affecting how councils and public bodies are able to go about their day-to-day business, and the ability to consult.

Gareth Thomas: I apologise to my hon. Friend for missing his opening remarks. However, as he was reflecting on the weaknesses of the CRaG process, does he not think that perhaps part of the reason why Government Members genuflected towards the CRaG process so much, despite all its weaknesses, is that it was initiated by a Labour Secretary of State, Arthur Ponsonby, albeit 100 years ago? Perhaps that is what gives them some comfort. However, I absolutely agree with my hon. Friend that it is time to uprate and modernise it.

Lloyd Russell-Moyle: I do not think that even the most foresighted Labour politician would expect the rules that they designed 100 years ago to still be in operation today. Even if I managed to get one amendment through in my career here, I would not expect it to last 100 years.

The CRaG process, I am afraid, is not fit for purpose in the modern world. Although I do not want to prejudge what my other Committee will say, I suspect that is the conclusion that all sides are coming to—that it needs to be updated. These amendments allow a sticking plaster so that secondary legislation and regulations that are made must go through that process. That is what we heard businesses wanted.

The amendments would also ensure that all regions and nations of our country are properly consulted. The other part of my constitutional affairs hat is that we visit the devolved Administrations every year and speak to them about how they feel their relationships with the Union are going. I can tell Conservative Members that they think it is going very badly. That is not just the SNP in Scotland but Labour in Wales and the Democratic Unionist party in Northern Ireland. They think that the way this Government consult and work with them is arrogant and dismissive. That is what every single one of them said, and what Conservative colleagues in the devolved Administrations said to us too.

Sir James Duddridge: I thank the hon. Gentleman for his constructive criticism. In the 25 meetings between the chief negotiator and the devolved Administrations, what, specifically, did the DAs raise on procurement issues that they were unhappy with?

Lloyd Russell-Moyle: Well, I can go and look at my notes and see if they said that procurement was a particular problem. Their concern was that they were presented with a faits accomplis time and time again. They were presented with, "This is the way that you can have it; accept it or leave it." That was in a wide range of areas, but trade was one of their many concerns.

The amendments are not to say that the Government are not meeting with the devolved Administrations or are not in communication with them, but to say that the Government must consult and work with the devolved Administrations and the English regions before the regulations are laid, in a co-operative, rather than dictatorial, way. It is therefore important that they are agreed to, because they would provide the reassurance that is needed to rebuild the way that regulations are laid that affect the whole UK. We have seen how, when legislative consent motions have not been provided, they are still run roughshod over.

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): The Minister has just informed the Committee that the chief negotiator met the DAs 25 times in the run-up to this trade Bill being put down. Will the hon. Member for Brighton, Kemptown inform the House, if he knows the answer to this, how many times the chief negotiators from the EU consulted the devolved authorities in the UK and, indeed, the UK Government and Members of this House when trade deals were being negotiated, given that he seems such a fan of the way the EU conducts itself in trade negotiations?

The Chair: Order. I am sure the hon. Member for Brighton, Kemptown would give a very full and articulate answer to that, but we are slightly straying out of scope. The points about devolution have been well made and can continue, but only in relation to the United Kingdom. Thank you.

Lloyd Russell-Moyle: I am sure that my Committee's report will include a fantastic comparison and I will ensure personally that the hon. Member for West Aberdeenshire and Kincardine gets a copy of it when it is out. I can tell him, though, that when we were in the European Union, the devolved Administrations met the different sections of the European Union weekly, because the devolved Administrations had representatives in Brussels who would meet weekly on trade issues, and they would meet daily with the European Union officials. Anyway, we will move that to one side.

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): It may help to underline the hon. Gentleman's point to quote Ivan McKee, the Scottish Government's Trade Minister, who said:

"Once again we were not consulted by the UK Government before the introduction of proposed legislation that as currently drafted, bypasses the Scottish Parliament and undermines Scotland's powers. That is…disappointing, but sadly no longer surprising."

Lloyd Russell-Moyle: I think that is the case here.

These amendments, particularly amendments 2, 20 and 22, which relate to the devolved Administrations, provide a failsafe for the devolved Administrations and English regions to know that they will be consulted. They provide a failsafe for the businesses, including small businesses, that we heard in evidence to know that they will be consulted beforehand. Of course, with all consultation, the Government can still go away and say, "We have listened to you. We have heard you. We have put forward our suggestions. You don't agree with them, but we are still going to push forward, because we think that is necessary." That is democracy; of course that has to be allowed, but what we cannot have is people being bumped into things at the last moment or presented with things as faits accomplis, and that is the situation at the moment.

I rose to support the amendments. I think that they are vital; more importantly, they are vital in preserving our Union. I know that some colleagues have a different view, and it is people's own right whether they want to leave or not—it is not my choice—but I would like to see the Union preserved. I think that those on the Government Benches would like to see the Union preserved as well. I am afraid that if we do not start treating the devolved regions and nations of this great country with more respect and more humility, people will be out the door and it probably will be understandable.

Gareth Thomas: I rise to support amendments 5, 7, 20 and 22, which were tabled in my name and which my hon. Friend the Member for Llanelli spoke to. In so doing, I want to indicate, as I hope my interventions on the hon. Member for Airdrie and Shotts indicated, my strong sympathy with her two amendments as well. I hope that amendments 5 and 22, in that they are more wide-reaching because they cover Northern Ireland, Wales and the English regions as well as Scotland, might be sufficient to encourage her support for them.

Amendment 5, as we have indicated, seeks to lock in the opportunity for more consultation with the whole UK about particular regulations that might emerge around the procurement chapters. As I said in my opening remarks, the Australia free trade agreement is more than 2,500 pages long, and it is quite easy for the bits on procurement to be largely missed. The opportunity to lock in a bit of consultation at this point—before implementing regs have to be made—would help to ensure that there is specific focus on the procurement chapters in both deals.

11.15 am

Amendment 7 would build on the work of the Trade and Agriculture Commission by giving it the additional responsibility of thinking about the procurement chapters of these two free trade agreements. I think most Members would agree that it has been helpful to have that commission focus on the agricultural bits of both agreements. There is wide acceptance of those who have been appointed to the commission, which, with a little fine tuning of the membership, could quite easily be asked to look at procurement in future.

On amendment 20, my hon. Friend the Member for Llanelli stressed the need for an impact assessment to look at employment, human rights and climate change in the UK. Given that the Australia FTA is the first completely new agreement that has been negotiated since we left the European Union, the precedent that it sets by not referencing climate change, and by not going into much detail on employment and human rights, is a matter of concern. The Opposition think that it would be helpful for an impact assessment to look at those issues in more detail.

Amendment 22 simply spells out the need for a more detailed assessment to be published on the impact of the procurement chapters on Scotland, Wales, Northern Ireland and the English regions. We are particularly tempted to push amendments 5 and 22 to a vote, so we are interested in hearing what the Minister has to say in response to our arguments on them. Amendments 7 and 20 have been tabled properly as well.

Before we end our opening sitting, I will address the case for the four amendments in more detail. The only parts of the Australia and New Zealand trade deals that require new primary legislation are the procurement chapters. It is worth stressing that it is not just the text of the procurement chapters that matters, but the schedules in the annexes setting out their scope. Those schedules lay down which parts of procurement are covered. We will come to construction, which I know the Minister is particularly keen for me to speak about. Only some goods and services, and only some construction services, are covered, but they reach every part of the UK, hence the need for consultation.

Clause 1 is necessary because, as we have left the European Union, our procurement rules are no longer covered by European legislation. We have touched on concerns about the need to introduce specific legislation in this area because of Ministers' inability to bring forward the Procurement Bill, and the Minister was absolutely right to say that we cannot assume that that Bill will come into force, so we have to get the requirements in this legislation absolutely spot on. That is one reason why we think that we need to insert an enabling provision to allow consultation with Scottish Ministers, Welsh Ministers, Departments of the Northern Ireland Executive and representatives of the English regions before new regulations are made.

That would provide the opportunity for a few more conversations between Ministers and those who would be directly affected by the regulations. It provides scope

for just that little bit more scrutiny and thought about what the regulations under the procurement chapters will bring in. It would allow or even encourage Ministers here in Westminster or those in the devolved authorities to consider the full effects and the potential unintended consequences, and whether there is a need for remedial or ameliorative action before regulations are introduced and come into force. These are the first two big trade agreements to be negotiated from scratch since we left the European Union and, to some extent, they set precedents for future negotiations, not least on the CPTPP, which we have touched on already and which we will come back to. It therefore makes even more sense for there to be further full and frank conversations between Ministers here in their ivory towers in Westminster, on the one hand, and those in the devolved Administrations and across the English regions.

It is worth considering, as part of the discussions that amendment 5 would allow, just how many public bodies across the United Kingdom will now be covered by this legislation. That is, just how many procurement specialists in local authorities, NHS trusts and quangos up and down the UK will have to consider the regulations that are likely to come into force and bring in the detail of the two procurement chapters before they can issue contracts for work for their organisations. All the more reason to have Ministers here talking a little more directly to them before regulations are introduced to make sure they have properly understood what those regulations will mean for them and their organisations.

The former Trade Minister, the right hon. Member for Bournemouth West (Conor Burns), in his barbed criticism of the Prime Minister at the Conservative party conference, talked about the need to move away from a time when trade policy seemed to be as much about Instagram photos as anything else. I strongly agree with that. Once an agreement has been negotiated, we need to get into the details of what has been agreed and think through properly the different impacts of each of the procurement chapters. A little more consultation might help achieve that.

Bill Esterson: My hon. Friend is talking about consultation and amendment 5 refers to the representatives of the English regions. Earlier, the Minister was talking about Essex County Council. He did not mention Southend-on-Sea City Council, where he is a Member of Parliament. I could not help but notice that the procurement objectives of Southend are:

"Maximising the opportunities for Social Value, Economic Sustainability, and benefits for the local community".

Does my hon. Friend agree that the Minister, in accepting the amendment, would do well to engage with the objectives of his own local authority to ensure that procurement policy is put into practice in a proper way?

Gareth Thomas: My hon. Friend makes a very good point in suggesting that the Minister look to his own backyard in the troubled times that he and his party are in at the moment. In the context of the free trade agreements' procurement chapters, it would be particularly helpful for the Minister to seek the views of Labour-run Southend-on-Sea City Council and see whether it agrees with the stance that he is likely to be advancing, which I suspect will be against the idea of more consultation—

11.25 am

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

Adjourned till this day at Two o'clock.