Evidence to Westminster Committee on Trade Bill

Bill 122

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Introduction

Business for Scotland was founded in 1996 as business campaign to support devolution and the foundation of a Scottish Parliament. We now have more than 4,000 members, we deliver business networking and policy discussion events across Scotland and publish research across a range of business and economic areas.

BfS states that; Brexit does not have to mean leaving the Single Market or losing full access. For instance, Norway, Switzerland, EFTA members have differing levels of access. Likewise, we have the option to stay in the Customs Union. There is a type of Brexit that is less damaging to the economy and practical for businesses.

We have several areas of concern over this Bill and its wording. However, we would like to emphasise three key areas of concern:

1) Firstly, that studying this Bill leads directly to the conclusion that Brexit is ***incompatible*** with the current ***devolution*** settlement.

2) Secondly, to highlight what may be ***unintended consequences*** of the Trade Bill.

3) Finally, to feed in and explain the ***opinion of Scottish businesses*** uncovered in a detailed survey of Scottish business on Brexit and future trade prospects.

1) Devolution

The purpose of this Bill is to write into UK law the terms of trade agreements already agreed via the EU. This, however, does not mean that those nations with trade deals with the EU (namely South Korea and Canada) will be willing to accept that the UK can seamlessly agree terms that were negotiated with the EU, a far more powerful trade negotiating block than the UK can ever be on its own, and those third countries may seek to alter the terms of their trade agreements with the UK. An example of how this may lead to unintended consequences will be highlighted in section two.

The Bill also lacks a clear statement confirming that the devolved administrations / parliaments will have the right to offer or withhold consent to the Trade Bill. Consent for the Bill from devolved administrations is a must, as many of the devolved powers cover areas where there is significant overlap with the powers required to complete trade deals.

The EU Withdrawal Bill centralises as many as 111 European influenced powers in Whitehall after Brexit, even though they involve many policy areas devolved to the Scottish Parliament and to NI and Wales. The deadline to amend Clause 11 was missed by the Scottish Office and now can only be changed in the Lords reading of the Bill. Thus Scotland's elected representatives have been sidelined and they were almost unanimously in favour of protecting the current devolution settlement.

- At best this looks incompetent and means that there remains a great deal of confusion over how trade negotiations will be handled where they overlap with the powers of devolved parliaments. That's damaging to business and damaging to the economy.

- At worst it looks like a deliberate attempt to delay the transfer of EU held powers to the devolved parliaments until after the UK Government has had free reign to agree trade deals that run roughshod over the devolution agreements of the smaller nations in these islands.

All of our research over the last few years into trade and the Single Market TTIP / CITA etc. has led BfS to one inexorable conclusion and that is that Brexit is incompatible with Devolution.

It seems inconceivable that the UK Government and its advisors do not know this and so we would expect them to make preparations to allow them to deny the devolved administrations the powers that would effectively give the devolved administrations a veto over trade deals. There is evidence of such preparations, namely that: the Scottish Office has been steadily and significantly increasing its staffing, especially in its media and policy functions, which seems excessive given its current limited role.

It is therefore a viable scenario that the UK Government is preparing the Scottish Office to receive the returning EU powers that crossover with currently devolved powers. This would mean that the UK Government would be able to claim that the powers have been transferred back to Scotland whilst actually denying those powers to the Scottish Parliament.

The devolved administrations currently have the power to veto any trade bill that involves having to offer access to contracts to run the NHS and other public services. Any attempt to pull back such powers from the devolved administrations for the period of trade negations post Brexit, added to the potential to retain returning EU powers out with the control of the Scottish Government, would create a constitutional crisis right across the UK but in Scotland and Northern Ireland in particular

2) Unintended consequences

USA is a key UK trade partner and must be first on the wish list for a post-Brexit trade deal. For speed it would be most practical to revisit the TTIP deal on which the USA and EU failed to reach agreement, but that a former UK Prime Minister suggested was his idea and he wanted to light a rocket under it and get it signed.

A TTIP style deal would reduce tariffs with the US but one of the key reasons the US and EU failed to reach agreement on TTIP was that EU officials wanted to include wording designed to keep governments free to run services like the NHS.

The UK Prime Minister Theresa May has been asked to rule out privatisation of the NHS involving American healthcare companies as part of a trade deal and has only commented that she is *“committed to a health service that is free at the point of delivery”* but made no indication as to whether the NHS would be off the table in any future trade talks.

Negotiation lesson number one is to always make sure the person you are negotiating with has the power to say ‘yes’ to your proposal. If the devolved assemblies and parliaments have the power to say ‘no’ to areas within legislative competencies, such as in healthcare or in the case of EU held powers such as food safety, farming and especially fisheries which Scottish voters were told would smoothly be returned to Scotland from Brussels following Brexit, then the UK negotiators will not have the power to close deals with the US. In other words, future trade deals will involve negotiations on areas such as the NHS, which are devolved, and so the devolved administrations effectively have veto. This means that those powers must also be removed from the devolved governments in order for such a deal to be negotiated.

It can be pointed out that this trade bill does not specifically cover deals with third nations such as the USA, but in fact it does, due to the interconnectedness of trade rules that they will have to follow.

Canada, for example, does not have to simply accept that terms of its deal are cut and pasted into one with the UK. Canada could seek to use Brexit to renegotiate the areas of its CITA trade deal with the EU and the UK would be in a weaker position to resist terms originally sought by Canada but ruled out by the EU.

For example, poultry was excluded from the CITA deal mainly over EU fears on chlorine washed chicken imports. Were Canada to press for poultry exports to be renegotiated then the UK would have to accept the same terms in future deals with nations such as the USA. This is because of the Most Favoured Nation rule explained below.

The Most Favoured Nation rule is a World Trade Organisation rule aimed at avoiding discrimination in tariff arrangements outside of free trade agreements. It means that if a nation wants to have tariffs or blocks on an import from one country, then you have to have them at the same level for every other nation.

A formal free trade agreement with EU / EFTA / a single nation, is a means to alter tariffs with those nations but these will take years to put in place. However, as stated before the EU also has agreements with Canada (CITA) and South Korea and those may have to be renegotiated post Brexit.

With a no deal Brexit, the Most Favoured Nation rule means two things:

Operating under WTO rules for many years until sufficient FTA can be agreed:

1) The EU would not be able to give the UK better deals than it has given other third countries such as Canada.

2) If the UK unilaterally eradicated all its tariffs for the EU (as has been suggested) we would have to do that with every other nation on earth; India has 79p per hour average manufacturing wage while the UK is approaching £8.00 – that's not constructing a trade policy, that's constructing a funeral pyre for manufacturing in the UK.

Chlorine washed poultry is not in itself dangerous as some have claimed, but if chlorine washing is allowed at the end of the process that means the manufacturer doesn't have to comply with stricter hygiene and animal husbandry rules in rearing slaughtering and processing, which add extra costs to the product. Ipso facto renegotiations with Canada, for example, would restrict future trade deals and although the UK may be able to resist pressure from Canada it is less likely to be able to say no to the USA and would then be pressed to make the same offer to Canada.

Food safety is currently an area of legislation devolved to Scotland.

3) Business opinion

Business for Scotland has surveyed 758 businesses and directors across Scotland to map out the business community's opinion on the ongoing Brexit negotiations. This, our latest EU research report, highlights numerous concerns, particularly from those employing EU nationals and those who either import from or export directly to the EU.

The combined number of employees of the firms the respondents represent was 199,000. EU nationals employed by the respondents were approximately 11,000; 41% of all respondents had at least one non-UK born EU national on their staff and 100% of companies employing more than 50 employees stated they had at least one non-UK born EU member of staff.

The survey results

Summary: Only 8% of Scottish business owners trust the UK Government to secure the best Brexit deal for Scotland, and 79% want to see a second EU referendum after the terms for leaving the EU are clear.

Of those surveyed:

- 90% did not trust the UK Government to secure the best deal for Scotland
- 44.57% of all respondents had direct commercial dealings with either customers or suppliers within the EU
- 76.81% stated that calling a halt to Brexit would be positive for the economy, and within that 41.37% 'extremely positive'
- 84.37% voted Remain and 87.52% would vote Remain in second referendum
- 11.26% voted Leave and 11.55% would vote leave in a second referendum – this shows that attitudes are hardening, but that the vast majority of past non-voters would now vote remain
- 78.73% believe there should be a second EU referendum after Brexit terms are clear
- Whilst 45.77% believe the UK Government will fail to secure a deal of any kind only 19.18% thought the UK would be able to secure a trade deal at all

Additionally, the respondents were asked if they believed negotiations would be more productive with direct involvement and representation of the devolved administrations – 77.98% said yes.

A director of FTSE 100 company commented:

"When the virtually inevitable car crash happens the Scottish end of the business will most probably be moved to Europe which is a crying shame as the expertise at home is unsurpassed in our market segment. However with no likelihood of stability it will be a logical step to move."

A director of an NYSE listed company with a base in Scotland said:

"Stop now and ask the people, do they want to continue with this process, knowing what they know now?"

A director of a UK bank simply said:

"Absolute bloody shambles."

A senior manger of a global organisation with hundreds of employees in Scotland and 80,000 worldwide said:

"Appalling incompetence and condescending to the devolved administrations."

VAT

Another area of concern for exporting businesses is VAT.

Whilst the UK is within the Single Market the way VAT is handled is another benefit for exporters. When trading within the EU, goods and services don't attract VAT at the point of entry as the Common Agreement on VAT states that VAT paid from one business to another can be claimed back / recovered / offset.

Effectively this makes EU trade VAT free.

If a trade deal is not reached with the EU, or one that does not maintain the VAT area agreement, then the proposal to pay VAT upfront to HMRC will generate significant cash flow issues and administration for smaller exporters.

Conclusion

- Business for Scotland has reached the conclusion that devolution and Brexit are legislatively incompatible.
- If the House of Lords does not cast in stone protections over devolved powers then we will have a constitutional crisis.
- If the House of Lords do protect those devolved powers, then we will have a post-Brexit trade crisis.
- Any form of retaining returning EU powers at the Scottish Office level thus denying them to the Scottish Parliment. And any attempt to (even temporarily) transfer powers currently devolved to the Scottish Office for the purpose of agreeing trade deals circumnavigating Scottish Parliment consent will lead to both post-Brexit trade and constitutional crisis.