

Policy Response

Evidence to the Westminster Committee on the Brexit Trade Bill

Bill 122



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Gordon MacIntyre-Kemp

Director

Executive Summary

- Brexit does not have to mean leaving the single market or losing full access.
- The purpose of this Bill is to write into United Kingdom (UK) law the terms of trade agreements already agreed via the European Union (EU). This, however, does not mean that those nations who have 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.
- The USA is a key UK trade partner and is the top priority 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.
- A TTIP style deal would reduce tariffs with the US. However, 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 National Health Service (NHS).
- 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.
- 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 they do protect those devolved powers, then we will have a post-Brexit trade crisis.

Introduction

Brexit does not have to mean leaving the single market or losing full access. For instance, Norway, Switzerland and other European Free Trade Agreement (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. Besides this, 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 the 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 United Kingdom (UK) law the terms of trade agreements already agreed via the European Union (EU). This, however, does not mean that those nations who have 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. They may decide to 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 Northern Ireland 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.

This 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, which is damaging to business and to the economy.

It also 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 undermine the devolution agreements of the smaller nations in these islands.

Our research over the last few years on free trade agreements such as the Transatlantic Trade and Investment Partnership (TTIP), the Comprehensive Economic and Trade Agreement (CETA) and the single market, has led us to one inexorable conclusion. Brexit is incompatible with devolution.

It seems inconceivable that the UK Government and its advisors do not know this. So, we would expect them to make preparations 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 directly 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 negotiations 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

The USA is a key UK trade partner and is the top priority 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.

A TTIP style deal would reduce tariffs with the US. However, 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 National Health Service (NHS).

Theresa May has been asked to rule out privatisation of the NHS involving American healthcare companies as part of a trade deal. Yet she 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 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 a 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 CETA 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 CETA deal mainly over EU fears on chlorine-washed chicken imports. 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 does not have to comply with stricter hygiene and animal husbandry rules in rearing, slaughtering and processing, which add extra costs to the product. This could also restrict future trade deals with countries with stricter food safety laws 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. This is because of the Most Favoured Nation rule, as explained below. Food safety is an area of legislation devolved to Scotland.

The Most Favoured Nation rule is a World Trade Organisation order 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 or a single nation, is a means to alter tariffs with those nations. But these will take years to put in place. However, the EU also has agreements with Canada (CETA) 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:

- The EU would not be able to give the UK better deals than it has given other third countries such as Canada.
- ^a If we unilaterally eradicated all our tariffs for the EU 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 – as such, this would be highly threatening for manufacturers in the UK.

3. Business opinion

In July 2017, we surveyed 758 businesses and directors across Scotland to map out the business community's opinion on the ongoing Brexit negotiations. This research 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. Approximately 11,000 of these were EU nationals. 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

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
- 45% of all respondents had direct commercial dealings with either customers or suppliers within the EU
- 77% stated that calling a halt to Brexit would be positive for the economy
- 84% voted Remain and 88% would vote Remain in second referendum
- 11% voted Leave and 12% 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
- 79% believe there should be a second EU referendum after Brexit terms are clear
- Whilst 46% believe the UK Government will fail to secure a deal of any kind only 19% thought the UK would be able to secure a trade deal at all
- Additionally, when asked if they believed negotiations would be more productive with direct involvement of the devolved administrations – 78% said yes.

VAT

Another area of concern for exporting businesses is Value Added Tax (VAT).

Whilst we are within the single market the way VAT is handled is another benefit for exporters. When trading within the EU, goods and services do not attract VAT at the point of entry as the common agreement states that VAT paid from one business to another can be claimed back, recovered or 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

We have 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 they do protect those devolved powers, then we will have a post-Brexit trade crisis.