



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 15 May 2019

Session 5



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FINANCE AND CONSTITUTION COMMITTEE

11th Meeting 2019, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Angela Constance (Almond Valley) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Emma Harper (South Scotland) (SNP)

*Patrick Harvie (Glasgow) (Green)

*James Kelly (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ivan McKee (Minister for Trade, Investment and Innovation)

Stephen Sadler (Scottish Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Wednesday 15 May 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning and welcome to the 11th meeting in 2019 of the Finance and Constitution Committee. Agenda item 1 is a decision on taking business in private. Does the committee to take in private item 3, which is consideration of our annual report?

Members indicated agreement.

Trade Negotiations

10:00

The Convener: Agenda item 2 is an evidence-taking session on trade negotiations with Ivan McKee, the Minister for Trade, Investment and Innovation, and Stephen Sadler, head of trade strategy, Scottish Government.

I welcome the minister on what I think is his first time before the committee. Minister, do you wish to make an opening statement?

The Minister for Trade, Investment and Innovation (Ivan McKee): Yes, indeed, convener. I just want to say a few words.

I am pleased to be here this morning to discuss developments since the publication of the committee's report on the Trade Bill legislative consent memorandum and the Scottish Government's response last November. The Trade Bill was originally described by the United Kingdom Government as legislation that would build a future UK trade policy after Brexit, although what was introduced in November 2017 was more limited in scope and fell some way short of that ambition.

The committee will be aware that, despite some changes that have been made to the bill since then, we still have concerns about it and the constraints that it puts on the powers of Scottish ministers in devolved areas. Mike Russell wrote to the committee on 11 March to confirm that, in the absence of any movement by the UK Government to address the Scottish Government's concerns in relation to the Trade Bill, the Scottish Government cannot seek formal legislative consent for it.

More generally, the bill neither provides for sufficient scrutiny of trade arrangements by either the Scottish or UK Parliaments nor establishes the role of devolved Administrations in the development of future UK trade arrangements. The paper that the committee has published ahead of this morning's meeting sets out the various strands of activity that are under way in that area. I will not rehearse what that paper says; suffice it to say that the committee's consideration of the role of devolved Administrations in the development of future trade arrangements is well timed.

When I spoke to the Culture, Tourism, Europe and External Affairs Committee last week, I said that one thing is clear: if the UK is to create an independent trade policy, there is a huge amount to do. It is therefore essential that the devolved Administrations and legislatures play a full part in that work and that the voice of Scotland's commercial and trade interests be heard.

The Scottish Government is serious about enhancing and securing Scotland's role in future trade arrangements, not just for its own sake but because we know the importance of trade to the success of our economy. A discussion paper that we published last year makes the case for a guaranteed role for the Scottish Government and the Parliament in all stages of the formulation, negotiation, agreement and implementation of future trading arrangements. We are continuing to press that case in discussions with the UK Government and colleagues from Wales and Northern Ireland to ensure that the economic and social needs of all parts of the UK are protected and promoted.

For its part, the UK Government has made some suggestions about how that can be achieved. The committee will not be surprised to hear that we do not think they go far enough yet, but we are still talking. At the same time, we are working across Government and beyond to identify what matters to the Scottish economy and, in particular, the key differences between Scotland and the UK that must be taken into account in developing and negotiating trade deals that benefit the whole of the UK.

The scope of modern trade deals is increasing, and typically they now deal with and merge a range of reserved and devolved policy areas. That is why it is so important that devolved Administrations and legislatures play a full part in developing them.

Convener, I know that you have written to all parliamentary committees to seek views on the matter, and that exercise will be invaluable. We have made it clear that the Parliament as well as the Scottish Government must have a role, and I look forward to discussing what that might mean in practice.

The Convener: I am interested in the area of state aid, which is an area that might impact on future trade deals, as our paper points out. Do you agree that state aid rules could have a significant impact on the ability of any Scottish Government to deliver in many areas of devolved competence, including regional investment, agriculture and fisheries? What discussions has the Scottish Government had with the UK Government on the matter, and how would you describe them? Where are the areas of agreement and disagreement?

Ivan McKee: There are two parts to that question, the first of which is whether state aid is a reserved or a devolved matter. There is a disagreement in that respect, which comes down to how the exemptions in the Scotland Act 1998 are read and what they do or do not cover. Our interpretation is that state aid is not reserved but devolved, and that discussion is on-going between ourselves and the UK Government.

Secondly, on the practical aspects, you are right to say that state aid can make a difference in or have an impact on certain sectors or policies in Scotland, but the UK Government has expressed the view that the state aid regime will not change, at least in the short term. We are comfortable with the practicalities of the matter, but, as I have said, the debate over whether the issue is reserved or devolved is on-going.

Clearly level-playing-field requirements will still play some part in any trade deal that is negotiated, be it with the European Union or somewhere farther afield, and the issue of countries requiring the scope to support their businesses to the exclusion of others will figure largely in those discussions. Although, technically speaking, current state aid rules would not apply if we were outside the EU, the rules that would apply to trade deals would most likely be very similar.

The Convener: You have mentioned an area where a discussion is going on but no agreement has been reached, but what are the areas of agreement with regard to the principle of state aid, should the UK leave the EU as a result of Brexit? How are those discussions going?

Ivan McKee: As far as the principle is concerned, the disagreement is over whether state aid is devolved or reserved, and the question of consent with regard to any proposed changes to or anything impacting on state aid. However, with regard to the practicalities, the UK Government's position is, as I understand it, that it will carry on with the state aid regime as it exists under EU rules, so there is no point of disagreement there. It will not change anything, so everything will just carry on as it is. When you go beyond that to negotiate deals, however, the other side will require a level playing field to be put in place. It depends on how things unfold, but at the moment nothing on the horizon suggests that the situation will change significantly.

Perhaps Stephen Sadler will add to that.

Stephen Sadler (Scottish Government): The issue is more about what could happen in the future and the importance of ensuring that the Scottish Government and Parliament have a role in any changes that might be made.

The Convener: So, the issue of competence aside, there are areas of agreement between the two Governments. Have I captured that correctly?

Ivan McKee: There is agreement in so far as nothing will change. However, if the UK Government decides that it wants to change things, the question whether the issue is devolved or reserved will kick in. At that point, it could be an issue, depending on the trade deals that the UK Government wanted to strike, the countries that it wanted to have a deal with, their requirements

with regard to state aid and what the UK Government might or might not want to do. That is why it is important to have a foundation that clarifies whether the matter is reserved or devolved.

The Convener: That is what I wanted to ask about next. In all of these situations, there is potential for consensus to break down. If that happens, how will disagreements over competence and other such matters be resolved? What is the mechanism in that respect?

Ivan McKee: We will come on to talk about the wider context, in which it is clear what is reserved and what is devolved, and the debate is about the process for discussing devolved areas. The issue of state aid is different, however, because there is as yet no agreement about whether it is reserved or devolved. Because of that specific issue with state aid, we have to go one step back.

If we got to a point post-Brexit where the UK Government wanted to do trade deals and wanted to change state aid rules that are applied within the UK, the discussion about whether state aid is reserved or devolved would come to the fore. How that would be resolved is not clear, and neither is what the UK Government may want to do to change state aid provisions, because that is not on the table.

There is a general discussion about the involvement of devolved Administrations and legislatures in the process of putting together trade deals, and there is a specific issue about state aid, because we cannot even agree on whether it is reserved or devolved.

The Convener: I have a comment on that—I do not expect you to say anything about this, minister. It strikes me that, as well as the potential for dispute in the issues that we are dealing with, that potential also exists in a fairly significant number of areas that I am watching across the Parliament, which are all being dealt with on an ad hoc basis. I wonder whether, at some stage, there will have to be an overview across Government and from both perspectives of where all this is going, where all the disputes are and how we can get a sensible resolution and a process on which we all agree.

Ivan McKee: That speaks to the situation that we are in. We do not know whether we will have Brexit, whether we will have a customs union, whether there will be rollover or whether there will be trade deals. There is hypothetical upon hypothetical upon hypothetical, before we even get to the point of starting to talk about the mechanisms for resolving the issues. The situation is extremely unclear and it is probably becoming less clear by the day.

Patrick Harvie (Glasgow) (Green): I have a follow-up question on that. I am still a little unclear

about the Scottish Government's policy preference on state aid. Some argue that state aid restricts the ability of public policy to meet public objectives and that the absence of state aid restrictions would be one of the very few upsides of being taken out of the European Union. Are you saying that the Scottish Government's position is to reluctantly accept that the state aid regime will be what the UK Government has in mind, or are you saying that the Scottish Government's policy preference on what state aid regime should apply is the same as the UK Government's preference?

Ivan McKee: It is about the reality of trade negotiations. If we—I mean that in the broadest sense, whoever is doing the negotiations—can negotiate with another country a provision whereby we can do what we like to support our businesses, but it cannot unfairly support its businesses, we would of course sign up to that, as anybody would, but that is not the reality. The reality is that it comes down to the trade negotiations, and whoever we are negotiating with will in all likelihood expect level-playing-field provisions to be in place.

Patrick Harvie: In such negotiations, is the Scottish Government's preference for a more restrictive state aid regime, a less restrictive one or something broadly as it stands at the moment? What do you want?

Ivan McKee: As I say, if the approach is asymmetrical, we would of course want something that was less restrictive for us and more restrictive for the other country. That would be part of any negotiation. If it was symmetrical, I think that the starting point would be where we are at the moment, because that is what the EU has in place and it is what will be in place in many of the third-party trade deals. Shifting the dial on that would require negotiation with the EU in the broader context of a trade deal with the EU.

Patrick Harvie: Clearly, the starting point is where we are at the moment, but where do you want to get to?

Ivan McKee: As I say, that would come down to the negotiation, which would involve give and take. In all these things, if we are going to have a negotiation, we will take offensive and defensive positions on specific aspects that we may want to negotiate away. The approach will vary across sectors. If we are in a position to export something, we would want a less restrictive regime and, where we are defensive and we have sectors to protect, we would want to protect them. It comes down to the detail of the specific situation.

Stephen Sadler: The very general and simplistic view is that we would want to remain

closely aligned with the European state aid regime as it currently is.

The Convener: Let us move on. Adam Tomkins is next.

10:15

Adam Tomkins (Glasgow) (Con): Thank you, convener.

As you said, minister, the conversation has involved hypothetical piled upon hypothetical. I want to bring us back from the future into the present.

Ivan McKee: Please.

Adam Tomkins: I like that reaction; let us see whether we can sustain it.

I want to focus on what I understand to be the Scottish Government's continuing objections to the Trade Bill, as set out in the minister's opening remarks. The bill has been substantially amended in the House of Lords since the committee reported on it, and since the Scottish Government published its legislative consent memorandum. The amendments have significantly enhanced parliamentary scrutiny of trade policy and trade deals and formalised a role for the devolved Administrations, so why is the Scottish National Party continuing to resist the bill?

Ivan McKee: We are only at half time in this particular event. The UK Government introduced the bill. The bill went to the Lords. The Lords agreed to some amendments, to which the UK Government objected, and the bill is now going back to the Commons where, in all likelihood, the UK Government will take the amendments out and put us back to square one. At the moment, there is no clarity on where we are, and if the Commons take out the amendments that the Lords agreed to, our objections will be back where they started.

Our objections are effectively to the UK Government's position. If the UK Government accepts the amendments, we will be in a different place. We will see how that plays out, but that is not where we expect to be.

Adam Tomkins: Is it not the case that the UK Government has accepted the thrust of the amendments? In the command paper published in February, on the process for future trade agreements on page 8—there are no paragraph numbers—the UK Government says that it recognises that

"international treaties are a reserved matter but that the devolved governments have a strong and legitimate interest where they intersect with areas of devolved competence."

Would you not want to welcome the recognition that, notwithstanding the fact that international

trade treaties are formally reserved under the Scotland Act 1998, their impact on devolved competence is likely to be significant, so there needs to be a formal role for devolved Administrations, as provided for in clause 7 and schedule 1 to the bill? The UK ministers have listened to objections to the bill and have accepted amendments in the House of Lords. Why do SNP ministers not welcome that and try to work with it, rather than continuing to resist it?

The Convener: Adam, just so that other members are clear, can you reference the document that you are quoting?

Adam Tomkins: I did. I quoted from page 8 of the UK Government's command paper, "Processes for making free trade agreements after the United Kingdom has left the European Union", which was published in February 2019 and which seems to me to contradict what the minister has just said about the UK Government's intentions.

Ivan McKee: There are two parts to the question. There is the point about where the bill will end up, and as I said, we fully expect the amendments made by the Lords to be taken out again. We will see where that goes and reflect again on where it ends up.

Secondly, although the statements of intent by the UK Government recognise that there is an issue, they do not go far enough towards providing a process for resolution of those issues.

Adam Tomkins: Can you be specific about that? Why do they not go far enough? What more do they need to say in addition to what is already in clause 7(5) and paragraph 1 of schedule 1?

Ivan McKee: We are looking at what is in the discussion paper—

The Convener: Minister, could you also explain what that document is?

Ivan McKee: It is "Scotland's Role in the Development of Future UK Trade Arrangements", which is the discussion paper that we published in August 2018. It lays out that the devolved Administrations, along with their legislatures, should be engaged in the process right from the start, beginning with which countries we should be talking to about trade negotiations, how we prioritise them, what the negotiating mandate is, offensive and defensive positions, through the negotiating process to ratification. We have set out a process for how the devolved Administrations should be involved in all aspects of those trade deals.

Adam Tomkins: I understand that. I have read the paper and we have talked about it in this committee and in the chamber. For the committee's benefit, will you specify exactly where the UK Government's command paper of February

2019, and the bill as amended in the House of Lords, as it is at the moment—I am not interested in speculation about what might or might not happen to the bill in future—do not go far enough to satisfy your demands that, as you have just put it, the devolved Administrations be formally involved in setting trade policy and in negotiating, scrutinising and passing trade deals? That is all provided for in the bill as it exists today and on page 8 of the UK Government's command paper. If that does not go far enough, I need to know how specifically it does not go far enough and what you specifically want in addition to what is already there.

Ivan McKee: I will let Stephen Sadler deal with the detail of that.

Adam Tomkins: It is a political question.

Ivan McKee: I have given the Scottish Government's position. I have said that there are nice words about a recognition that there should be some involvement, but the devil is in the detail of the mechanics of how that would operate. The experience that we and officials have had of engagement with the UK Government is that it will very often say that it needs to involve us more, to talk about things, to have a concordat and to move forward and engage us in the processes, but the reality is that we are told at the last minute—or not at all—that something is happening and there is largely a box-ticking exercise. That is the reality of the engagement that we have experienced and that is why it is important that there must be recognition of a more formal role. As I said, the devil is the detail, and it is important to nail down the mechanics of what would be changed to make a more formal role happen. It is clear that that is our position.

Stephen Sadler: The amendments that were made to the Trade Bill in the House of Lords were designed specifically to pick up what some members of the House of Lords saw as deficiencies in the UK Government's proposals, particularly during the scoping and negotiation phases. The bill as amended still gives a role to the devolved Administrations, but perhaps not one that goes as far as we would like it to go.

Adam Tomkins's first question was why we still have an opposition to the bill. We do so because there are certain clauses in it that are still the same and which seek to constrain the Scottish ministers' powers in devolved areas. That is a Brexit-wide difficulty that is not specific to the Trade Bill. We have discussed that position in this committee, you have discussed it with colleagues of ours in this committee and members have discussed that in the chamber. That is a general Government view on the restrictions on the Scottish ministers' powers to legislate in devolved areas.

Ivan McKee: It is also worth referencing the trade remedies authority. The UK Government has resisted the devolved Administrations having any role in that process, whereas we think that a role is necessary in order to protect Scottish interests.

Adam Tomkins: I remain distinctly unenlightened about what you are objecting to in clause 7(5) and paragraph 1 of schedule 1 and on page 8 of the Department for International Trade's paper that was published in February. In all three instances—two are in the bill and one is in a Government command paper—the UK Government provides exactly what Scottish National Party ministers demanded: that is, a formal role for the devolved Administrations in the making and setting of trade policy and the scrutiny of trade deals. You are telling me that that does not go far enough, but you are failing to tell me how or why it does not go far enough, or what specific amendments you need to see to clause 7(5) or to paragraph 1 of schedule 1, that would enable you to recommend that the Scottish Parliament gives its consent.

Ivan McKee: As I have said, there are two issues. The constraint of powers has been referred to. That is a wider issue that relates to Brexit policy.

Adam Tomkins: That is a different issue.

Ivan McKee: There is also the trade remedies authority issue, which I have also referred to.

The Convener: Angela Constance has a supplementary question.

Angela Constance (Almond Valley) (SNP): Notwithstanding the fact that the bill still has to go back to the House of Commons and none of us knows what the outcome of that will be, I have been looking at the UK Parliament's role, because it will have some role in approving trade agreements. There is an obligation on the secretary of state to consult the devolved Administrations on two occasions—on the content of the draft negotiation mandate and before the text of the proposed agreement is approved. The UK committee, whatever committee that would be, then has to take into account the views and circumstances of the devolved Administrations.

Given that the UK Government does not need our consent, that we have no veto and that, as was touched on earlier, ministerial powers and roles have been constrained by the read-over between the Trade Bill and the European Union (Withdrawal) Act 2018, I would be interested to know what assurances the minister has received that consultation will be meaningful, because there is consultation and then there is consultation.

Ivan McKee: As I said, we can go only on our experience and what we have seen, which has

been difficult processes that have often involved us not being informed of things, not being consulted, and being told about what is happening late in the process rather than being brought in earlier. It is almost as if our involvement has been an afterthought and a box-ticking exercise, rather than the specifics of the Scottish Government's and the Scottish economy's requirements being taken on board at an early stage.

It is fair to say that we have not had responses to things. For example, we put in a substantial piece of work on the four free-trade deals that the UK Government has identified as being its first priorities, but we have not had a response to that.

Another example that we might want to discuss concerns the rollover deals. There are different priorities for Scottish businesses in some sectors—an example is access to north African markets related to seed potatoes—but the UK Government has not prioritised those things in its rollover deals. Our paper goes into quite a bit of detail on the different approach that is required for Scottish interests in both offensive and defensive sectors in the four trade deals that the UK is negotiating at present with the US, Australia, New Zealand and the trans-Pacific partnership.

The UK Government has said that it wants to do more, but in all those examples and in a range of contacts at ministerial and official level, the engagement has been lacking in substance, and it has often been quite a long way into the process before we are talked to.

Angela Constance: Given that it was one of Westminster's committees—the Public Administration and Constitutional Affairs Committee—that raised concerns that, 20 years into devolution, there is still a lack of understanding and appreciation of the devolved settlement, and given that past behaviour is the best predictor of future behaviour, have you seen anything that gives you any confidence that, in any consultation process, there will be a willingness to compromise and to negotiate over the detail? Do you have any examples of where your counterparts have come and gone a bit with you? Other than the trade remedies authority, which you mentioned, what else could be put in place, in terms of process, that would help?

Ivan McKee: We have often had recognition of the issue. Baroness Fairhead commented that the UK Government could do better and, when we have talked about this, George Hollingbery has said, "We need to do better; we recognise that it has not been good." We might find that official contact steps up its game for a short time, but then it reverts to where it was.

I think that there are issues in the system, either because there is not enough capacity—we might

talk about that—or because there is such a focus on the current uncertainty and people are just trying to deal with the things that are hitting them in the wider environment to do with where we go from here. People's instinct is always to deal with what they have on a day-to-day basis—it is almost crisis management—without reflecting things back, and often they do not bring us into the process until it is too late.

Among some individuals, there will be an understanding that involving us is a requirement, but in the reality of how that is embedded and how it works day to day as an on-going mechanism, it is difficult to see that anything has substantially changed.

Angela Constance: Is it about culture as well as process?

Ivan McKee: Yes—absolutely. Another example is the concordat that is supposed to set out all the requirements and be something that we can all work on together. That process has been faltering. It has now been stalled for a period of time and it is not making any progress. That document is supposed to outline how we will do the work together, but even the process of pulling it together has stalled. That gives an indication of where we are at.

10:30

Murdo Fraser (Mid Scotland and Fife) (Con): In that same area, the new clause 7 that has been inserted into the bill puts significant obligations on the secretary of state to consult with devolved Administrations, both before a draft negotiating mandate is laid and before the text of any proposed agreement is laid. I hear what the minister says about that being in the House of Lords and that it may be amended in the House of Commons, which is a fair point, but the committee's adviser said that the UK Government seems to have accepted the position as set out in clause 7 as it stands.

If the bill ends up with clause 7 as it currently is, will the Scottish Government accept that position, or are you looking for more? If you are looking for more, are you, in fact, seeking a right of veto for the devolved Administrations over trade agreements?

Ivan McKee: We understand that there will not be a veto. In our paper, "Scotland's Role in the Development of UK Trade Arrangements", we identify international examples that work well. There are examples of devolved or sub-national jurisdictions being brought into the process at a very early stage and working right through it, including being present in the room when the negotiations are taking place. There are specific international examples in which there is not a veto,

but there is very strong engagement throughout the process.

We will see how the amended bill goes. Our understanding is different; it is that the UK Government will look to remove the amendments. There are also the other points that I referred to earlier: the constraint of the powers of the Scottish ministers in devolved areas and the trade remedies authority. Those are on-going concerns, notwithstanding anything else that may or may not be changed in the bill.

Murdo Fraser: That is very helpful. Thank you for clarifying that you are not seeking a veto. If that is the case, and given that serious obligations are put on the secretary of state in clause 7 as it stands, will the Scottish Government seek further amendments to clause 7 and, if so, what would they be?

Ivan McKee: Our position is to wait and see how things go when the bill comes to the Commons and where it ends up. As I say, there are other concerns over the Trade Bill in the wider context of the European Union (Withdrawal) Act 2018. It is problematic because of the constraint of power, which also applies to the Trade Bill and the TRA. We have raised those concerns repeatedly.

Murdo Fraser: Can you not tell me today whether you are happy with clause 7 as it stands?

Ivan McKee: There are other concerns about the Trade Bill, so we have concerns about it in general.

Murdo Fraser: I am talking about clause 7. Are you happy with clause 7?

Ivan McKee: I do not have clause 7 to hand, but our requirement is that we should be involved from the start in decisions about who we will negotiate trade deals with and right through the process of developing the negotiating mandate, carrying out the negotiations, ratifying the agreement and, subsequently, in its implementation.

Murdo Fraser: Perhaps Mr Sadler can help.

Stephen Sadler: The point about the effectiveness of consultation is very important. From the practical evidence of the past year or 18 months, we would have concerns about that, unless there was more specification about how and when that consultation would take place. We would be concerned that something that just says, "We will consult devolved Administrations" may not go far enough.

We have mentioned the UK Government's document—I do not have it in front of me, but it is the one that Professor Tomkins mentioned—that was published in February. It talks about establishing a ministerial forum, a senior officials' group and policy round tables. A ministerial forum

has not been established yet, so we can only talk about how effective we think the round tables are on a working level. As the minister mentioned, we had discussions on the concordat for several months around the turn of the year, based on our document and the UK Government's proposals, but those have now stalled and we have not heard anything from them since February. In that context, there is a degree of concern about how consultation would work out in practice.

The Convener: I will come to Patrick Harvie in a moment, but I am bit frustrated because things are a wee bit cloudy here. Can I cut through some of it and make sure that I understand what the Scottish Government is saying? It is saying that, yes, there are more promises on consultation and engagement; new forums and senior policy groups have been suggested in the command paper; and there is clause 7.

However, at the end of the day, the fundamental issue for the Scottish Government is that although there might be progress—and it might be slow progress—there is no movement from the UK Government on mechanisms to seek agreement and for consent to be found. If that is where you are, can you make sure that we get that on the record?

Ivan McKee: That is a fair summation. There are words in clause 7 in relation to intent but the reality is that we have not seen that intent carried through in the day-to-day interaction. We have not seen a willingness to engage and consult through the process.

It is not yet clear what will happen to that amendment when it goes through the further stages of the bill process. As I have also said, the issues with the constraint of the powers of the Scottish ministers in devolved areas and the issue with the trade remedies authority mean that we are not in a position to give consent to the Trade Bill.

The Convener: Patrick Harvie was going to come in a bit later, but, given that we are now on the area of consent, I will bring him in at this stage.

Patrick Harvie: I want to follow up on the points that have been raised. The language from the UK Government around consultation is vague and ill defined, and I am quite disturbed by how vague and ill defined the Scottish Government's position is on some of this. Surely, we should be seeking to achieve democratic accountability for decisions that will impact on all our lives? From the work that we do to the food that we eat and the air that we breathe, pretty much every aspect of how we live—including huge swathes of devolved responsibility—can be impacted by these decisions.

Given those areas of devolved responsibility, we need to have that democratic accountability here as well as at Westminster. Why, then, is anything less than the same parliamentary lock in the devolved settings as clause 7 proposes for Westminster tolerable?

Ivan McKee: You are absolutely right. The Scottish Government and the Scottish Parliament will have their say because that is, by definition, the default. That is absolutely clear. With the trade negotiations, there are a lot of other aspects to that, and, as you recognise, all parts of the UK will have an input. Of course, there will be areas where discussion needs to take place on where to put in common frameworks, how those will work in the whole context, and so on.

Patrick Harvie: You are still talking about input and discussions. Are you talking about votes taking place here, at Holyrood, and in the National Assembly for Wales when trade negotiating mandates or final texts impact on devolved competencies? Are you seeking a change to clause 7 to ensure that parliamentary approval is required for those steps here as it is required at Westminster?

Ivan McKee: Where it is a devolved area, of course, the Scottish Government and the Scottish Parliament will have a say.

Patrick Harvie: A say?

Ivan McKee: They have the authority to pass legislation.

Patrick Harvie: Okay. I will move on to your position on withholding consent. Some people think that the UK Government's position is fine—they will note the commitment to not normally act in areas of devolved competence without consent—but I think that that commitment has been shown to be utterly meaningless and that we should not take it seriously at all. The idea of consultation is pretty meaningless as well.

Assuming that it is not the Government's position to give consent, we now need to do something much more proactive than merely indicate that we might not give consent. Surely, we should be indicating to the UK Government—and to any of its potential negotiating partners around the world—that the Scottish Government will use every possible legal challenge against a trade agreement that impacts on devolved matters without consent? Surely, we should be indicating that we will do everything possible to frustrate and undermine any such agreement, because it would be a fundamental blow against the authority of the devolved Parliament and Government.

Ivan McKee: When you say "everything possible", what do you envisage?

Patrick Harvie: The Scottish Government should be indicating that it would do everything within its power, legally, to challenge, undermine and frustrate the operation of a trade agreement that would impact on devolved areas but that has not been agreed by this Parliament.

Ivan McKee: I am not sure that we have the legal authority to do what you might be describing, depending on what that is. Clearly, the position is that, if the UK Government was negotiating trade deals, Scottish interests would be involved—the maintenance of standards and so on in devolved areas or commercial interests, whether they be offensive or defensive—and the Scottish Government would input into those negotiations. Of course we would.

I am not sure what you mean by "any means possible" or whatever form of words you used.

Patrick Harvie: Minister, we know what this process is about, from the UK Government's perspective. There are people in the UK Government—potentially the next leaders of the UK Government—who want to strip away the social and environmental protections that have been built up within the EU. They have made that clear on numerous occasions. I am asking that the Scottish Government's posture to that be explicitly hostile.

Ivan McKee: You are adding together a lot of different things. There are issues around offensive and defensive sectoral interests on trade deals, which are important—

Patrick Harvie: No, I am asking about principles.

Ivan McKee: Let me finish. There are issues around things that might impact on devolved areas, on which we might or might not be able to agree a position with the UK Government. Further, you are talking about other issues, which involve stripping away rights, protections and so on. If that was what was on the table, we would wholeheartedly object to it and make our position very clear.

There are a range of issues here, and you are jumping into the issues whereby there might be a direct challenge to established rights, protections or standards. In those devolved areas, the Scottish Government would have a strong view and would resist any stripping away in that regard. However, there are other areas where we could perhaps agree with the UK Government, depending on what the issues are. Further, there are other commercial aspects that are hugely important and that involve sectoral interests. We would take a different, Scottish, position on those, which would be based on the differences in our economy, and we would seek to have input on those aspects.

In some areas, we would seek to influence the UK Government's negotiating positions, because that is important, and in other areas—some of which you have alluded to, including measures that the UK Government might put in place to strip away standards, protections and rights—we would have a hostile response.

The Convener: You have had three cracks at the issue, Patrick, and you also want to ask about principles around trade. You can ask those questions later. At this point, I will let other members come in, because I want to get back to the issue of scrutiny of the legislative process.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I am interested in the wider issue of scrutiny. Consultation is not scrutiny—you are right to be cautious about what is meant by the consultative side of this, including clause 7 of the Trade Bill. Previously—including when you were a member of this committee—we have been interested in and concerned about the ability of the Parliament, its committees and its members to hold UK ministers to account and to scrutinise the deals and proposals that come forward. Do you think that you are anywhere near having the ability to take part in close scrutiny at that level? I think that everyone on this committee has said that we want that.

Ivan McKee: No, I think that we are a long way from that. I mentioned the four trade deals that are on the table just now. The Scottish Government published a response to them in November, but we have not had any discussion with the UK Government or any response to that. We have had meetings since then, but our response has not been discussed in detail at them.

We can talk about the mechanics of the process and where we are with the concordat, and we can talk about the rollover deals, a number of which have been flagged up. For example, the rollover deal with Norway has been done but with changes, because parts of it have not been rolled over. However, the Scottish Government has not been at all involved in the process around the changes to those rollover deals. Similarly, there was no consultation with the Scottish Government about the UK Government's no-deal tariffs for day 1 after a no-deal Brexit. We heard about those in the same way as everyone else did, when they were published.

In a number of areas, although there has been talk about our being more involved, the reality is that that has not happened.

10:45

Willie Coffey: The UK Minister of State for Trade Policy, George Hollingbery, wrote to the committee, describing his intention to set up a

“new intergovernmental Ministerial Forum to provide a formal mechanism for Devolved ... Ministers to discuss and provide input”.

However, scrutiny is not mentioned. The letter says:

“It will be a matter for the Scottish Parliament to determine how it will scrutinise ... the Scottish Government”.

The committee had the impression that we would be able to reach out and invite UK ministers to our meetings so that we could scrutinise their proposals. That is what I understand by “scrutiny”, and I hope that you share that view.

Ivan McKee: That is absolutely true. We hope and expect that that would happen, but we have a long way to go before we see evidence of it. The concordat, the work on which has stalled, would lay out some of the scrutiny processes, but, at the moment, we cannot even define what those processes will be.

Willie Coffey: Mr Sadler, did you say that the ministerial forum to which the UK minister referred has not been established?

Stephen Sadler: Yes.

Willie Coffey: Is there any indication of when it might be established?

Ivan McKee: No. I do not know whether my officials have any further information.

Stephen Sadler: No. That issue is part of the discussions that we have had at official level to develop a concordat on international trade. The aim was to develop a degree of understanding and agreement at official level before we put anything to the respective ministers, including the Welsh ministers, but we have not heard back from the UK Government since February, so it has not been possible for the ministerial forum and other things to be set up.

Alexander Burnett (Aberdeenshire West) (Con): A lot of work on process is going on behind the scenes, but the committee would like to be able to scrutinise it. Will the minister give a detailed account of the work that is being done by the senior officials group?

Ivan McKee: It is an officials group. Is anything happening with that? There is interaction, but it is patchy. I have been to meetings at which officials have been talking, but officials stop talking when the UK Government is too busy because it is doing something else. Discussions are on and off, and the sharing of information has not been to the level that we would hope for and expect.

Although there have been discussions, they go through cycles—things are better for a while and then they tail off and nothing happens for a period of time. Interaction is patchy and irregular, and the

amount of information that comes from that process is not to the standard that we would expect.

Stephen Sadler: That sums up the situation perfectly. The process has been restricted because of the fact that there has been no progress on developing a concordat. When UK, Scottish, Welsh and Northern Irish officials get together, they are constrained in how far they can go in their discussions because there is no concordat to outline what the UK Government is able or willing to share with the devolved Administrations.

Alexander Burnett: Are you on the officials group?

Stephen Sadler: My boss is on the group, and I go along with him.

Alexander Burnett: Has it been meeting regularly? Do you have any indication of timings?

Stephen Sadler: It meets about every six weeks.

Alexander Burnett: Those meetings are still going on.

Stephen Sadler: Yes, they are taking place.

Alexander Burnett: When is the next meeting?

Stephen Sadler: The date has not been set yet, but I think that it will be sometime in June.

James Kelly (Glasgow) (Lab): The minister will be aware that the committee has been looking at common frameworks. What are the main issues that need to be addressed in such frameworks to facilitate future trade deals and agreements?

Ivan McKee: As with many of these issues, we are at a very early stage in the process and will need to look at what needs to happen across a range of devolved areas. There is a list of 24 areas in which common frameworks might be required. The discussions about what the frameworks will cover need to happen first, before we look at the detail of how things will run in each of the 24 areas and at whether there will be agreement or disagreement. As I said, because of everything else that is going on, we are at a fairly early stage in understanding what the common frameworks will look like.

James Kelly: The issue of procurement has come up in the committee's evidence sessions. Procurement is a big area for trade deals and agreements, and the Scottish Government would have an interest in any trade deals that would affect Scotland. What are the main issues?

Ivan McKee: You are right: it is a devolved area, so the Scottish Government, the Scottish

Parliament and the other devolved Administrations and Parliaments need to have their views heard.

It depends on what happens. Even if we end up dropping into World Trade Organization rules in a no-deal scenario, there are still the Government Procurement Agreement rules on what we can and cannot do in procurement. Procurement is constrained at many levels, regardless of the trade deals that we go into. Notwithstanding that, it is important that the Scottish Government has an input, because it is a devolved area. The mechanics of the frameworks are still to be resolved.

James Kelly: What does the Scottish Government need to see in those common frameworks or agreements to ensure that the agreements are consistent with Scottish Government and Scottish Parliament policy on, for example, procurement?

Ivan McKee: There are two different things. First, there is the need to address how the frameworks are structured and how the mechanics will work, and that discussion is still to take place. Then, once we have the frameworks, there needs to be detailed discussion about the issues and how to resolve them. We are some way from getting into specific details, but we can identify potential areas of disagreement such as procurement. We will have to go through the process of deciding how the frameworks are to be set up, identifying what the areas of disagreement are for each of them and working out how to resolve them.

The Convener: If I understand it correctly, the common framework for procurement will not be considered through a legislative process. If I have got it right, in those circumstances, agreement will be required between the UK and Scottish Governments before that common framework can progress. Is that correct? Perhaps I am wrong.

Stephen Sadler: A procurement concordat is being developed in parallel with the main international trade concordat. You are right, convener, that a degree of consultation, involvement and engagement on that is envisaged. However, again, progress on that has stopped for a couple of months.

Tom Arthur (Renfrewshire South) (SNP): Following on from James Kelly's point, I will pick up some of the points that were raised earlier by Murdo Fraser and Adam Tomkins.

One of the Trade Bill amendments in the name of Lord Stevenson of Balmacara, which was ultimately withdrawn, sought to introduce a requirement for the consent of the Scottish ministers to the use of powers under clause 1(1) or clause 2(1), which refer to the implementation of the Government Procurement Agreement and

international trade agreements. When Viscount Younger responded on behalf of the UK Government, he said that the UK Government would seek to respect the Sewel convention as it applies to primary legislation but that it should not be extended to secondary legislation.

As I understand it—if I have misunderstood, perhaps you can clarify the situation—the UK Government has left the door open to implementing common frameworks via secondary legislation, which, ergo, would not be subject to the Sewel convention. If the Sewel convention will not apply to subordinate legislation, could subordinate legislation be used to implement common frameworks? Is that a get-out-of-Sewel-free card that the UK Government could play in the implementation of common frameworks, or have I misunderstood the UK Government's position?

Ivan McKee: That is a potential concern. There are discussions at the moment to deal with that matter and to close the loophole.

The Convener: If I understood it correctly, the UK Government's paper on common frameworks made it explicit—perhaps the word “explicit” is a bit strong; it certainly suggested—that common frameworks could potentially be introduced using secondary legislation, as Tom Arthur has outlined. In those circumstances, the consent of the Scottish Parliament and the Scottish Government would not be required. Is the Scottish Government taking that issue seriously? If so, what are you doing about it?

Ivan McKee: We have raised that issue, which is potentially problematic. As you say, there is the potential for that process to be used to bypass the Sewel convention on specific aspects. We are aware of that, and we are concerned about it.

The Convener: Is the Cabinet Secretary for Government Business and Constitutional Relations, Mike Russell, prosecuting that, or is it in your bag?

Ivan McKee: Mike Russell is taking that forward.

Emma Harper (South Scotland) (SNP): I am interested in some of the devil in the detail in relation to sectoral interests and, specifically, food and drink, particularly beef and sheep. According to my notes, the food and drink industry is a major contributor to Scotland's economy that is worth about £14 billion each year and accounts for one in five manufacturing jobs. We have about 66,000 workers in agriculture in Scotland. My concern is the risk of constraints in trade deals, particularly with the US. The National Cattlemen's Beef Association has stated:

“U.S. beef sales to the E.U. have been flat over the past few years, and we cannot continue to justify the continued application of non-science-based standards on U.S. beef, especially in the U.K. once they leave the E.U.”

I have been looking at issues to do with the US Department of Agriculture. It logged 97 meat recalls for serious health hazards in 2018. In one case, 12 million pounds of raw beef was withdrawn after 250 people became ill from salmonella, and there was a withdrawal of 174,000 chicken wraps because of possible listeria. That concerns me. There are also issues to do with antibiotic-resistant salmonella in beef products in the US. As a nurse and in my role on the Health and Sport Committee, I have concerns about antibiotic resistance.

What specific concerns do you have about starting trade negotiations with America and Trump? Are we looking at bargain-basement, cheap Trump trade deals?

Ivan McKee: I would hope not, but you are absolutely right to raise those concerns. You started by talking about the importance to the economy of the agriculture sector. As I said, when we come to negotiate the deals, it will be about the offensive and defensive positions that we can take, what the tariff regime will be and so on. Clearly, we are at the start of a process, and it depends on how those trade deals work out.

You also raised food standards, as did Mr Harvie. We are very concerned about that issue. We see a potential risk in that regard from entering a trade deal with the US in particular. We have raised and highlighted that in the information that we have sent to the UK Government on the four trade deals that it has started to consider, of which the trade deal with the US is one. To our mind, it is hugely important to maintain those standards, and we will argue strongly for that.

Emma Harper: Part of the issue is the protected geographical indication status of our beef and lamb. There is also an issue to do with whisky, which alone was worth £5 billion to the UK economy last year. I have been battering on about PGI for a while now, because we need to think about how we protect our brands, such as our beef and lamb, from inferior imitation products that might come in. I know that there have been ruminations about the definition of Scotch whisky changing so that a three-year-old brand could be called Scotch although it would be made in a completely different way from how whisky is made in this country.

11:00

Ivan McKee: Those are all concerns. Whisky has a separate set of protections but, with foodstuffs, geographical indications are critical to

many producing sectors in Scotland. At the moment, the GIs are protected through the processes and through the EU. If we open that up and have trade negotiations, there is a risk that they would not be protected as well as they are now. There is a concept that we will go out in the big wide world and negotiate all these trade deals ourselves, but doing so puts our sectoral interests, geographical indications and other things that we would not want to give away on the table for negotiation. We are opening ourselves up to that risk because the UK is independently looking to negotiate trade deals from a position of some weakness. It is in those negotiating stances that we end up having problems.

The Scottish Government is very aware of that issue. We talk about it constantly. To raise its profile, we put it on the table with the UK Government in our opposition to any diminution of standards or any failure to protect the GIs. In the environment that we are potentially heading into, it is a risk that those things get put on the table.

Emma Harper: Are the UK ministers listening to the concerns in Scotland? When George Hollingbery appeared before the committee, he said that Scotch whisky was “very important”. That is good for Scotch whisky, but are UK ministers listening to the concerns from NFU Scotland and Scottish ministers?

Ivan McKee: We should look at the broader context of the process. We could have discussions now in which people say that this or that is important, but these trade deals run for years and go through many iterations and involve the trading of different aspects—offensive and defensive, backwards and forwards, on the basis of which sector is important, what tariff we want to impose and what standards we want; there is a lot in the mix. As we get towards the end of the negotiations, if we want to get a deal done, we have to give things up to get things that we want. It is not just a question of saying that things are important—everything is important, but that is not the point. The point is which thing is the most important and which things are our red lines in the negotiation. We intend to have different red lines from those that the UK Government might have. The food and drink sector is Scotland’s most important, or second most important, export sector, but it does not figure as largely for the UK Government, so if it was looking at what sectors to protect in trade deals, the UK Government might not regard food and drink as being as important as the Scottish Government would.

We have had a lot of discussion about scrutiny and consent and people listening and talking to each other but, when it gets down to the detail, that is where it impacts. Scotland has important sectors that are worth a lot to our economy but

which are not worth as much to the rest of the UK. PGIs, tariff regimes and standards could get thrown under the bus as part of the final stages of a tense, fraught negotiation.

Emma Harper: The word “expendable” comes to mind from previous negotiations.

Ivan McKee: It does.

Emma Harper: Thank you.

The Convener: Patrick, do you still want to go into the principles issue, or did you exhaust that earlier?

Patrick Harvie: It is still worth exploring.

I am interested in the Scottish Government’s general approach to trade policy—either in the longer term, if the Scottish Government has a bigger role, or in this process. We are living at a time when there is a rise of economic nationalism: a chaotic US Administration, led by someone who does not appear to understand how tariffs work, is waging a trade war and hard-right ideologues and free-market obsessives are running the Brexit process. Other than seeking to get some narrow sectoral advantage whenever it has the chance, I am unclear on the Scottish Government’s position. Does the Scottish Government believe that free markets are inherently a good thing?

Ivan McKee: Well, you would need to define your terms.

We believe that trade is important and that the Scottish economy needs to internationalise more, and we take great efforts to do that. However, the devil is in the detail. We recognise that there are interests that we need to protect and opportunities that we need to secure. It all comes down to what we want to push in any given trade situation. We think that market access issues for Scottish food and drink products are important, and we seek to identify barriers to such access and to do what we can to support the removal of those where that makes sense. At the same time, as we have discussed, there are areas where it is important to protect Scottish sectors because of their importance to the economy or because of the standards issues that we have talked about, which are important to defend. We cannot adopt a blanket approach of being all in favour of this or all in favour of that; unfortunately, the world is slightly greyer than that.

Patrick Harvie: You used the word “protect”. Does the Scottish Government believe that there is a legitimate role for protectionism?

Ivan McKee: When it comes to standards, we do, and I think that you do, too.

Patrick Harvie: I do indeed, but I am unclear why there is no political substance in “Scotland’s Role in the Development of Future UK Trade

Arrangements”, which you mentioned earlier. That paper is all about how important trade is, but it does not seem to set out a clear, principled position. For example, it states that the Scottish Government wants to have a role in the development of trade policy

“to help industries, protect devolved public services and ensure the highest standards of environmental and consumer protection”.

Do you recognise that there is a tension and, sometimes, a contradiction between protecting industries, and protecting public services and environmental and consumer protections?

Ivan McKee: When it comes to the trade negotiation process, the clue is in the name—it is a negotiation in which there are two sides with different interests and those need to be balanced. Such negotiations are complex and take years for a reason; it is not just a case of making blanket statements, to the effect that we are 100 per cent in favour of this or 100 per cent against that. There are standards that we think are hugely important and will take every step to protect, and there are areas in which there will be negotiations about different sectoral interests that are important to—

Patrick Harvie: So there will be times when it will not be possible to help an industry and to protect a public service. I give the example of the private healthcare industry. It is not possible to be on the side of the private healthcare industry and on the side of public health provision at the same time.

Ivan McKee: We have made it clear that we would not want there to be any privatisation of the national health service. We have also made it clear that we see the different direction that the NHS south of the border is taking as a risk. We are completely opposed to the health service in Scotland being opened up to privatisation as part of a trade deal. That is clear, and what we have said on food, environmental and other standards is clear, too. There is no doubt about our position on that.

Taking a step back and looking at our position on trade policy, which you asked about, I note that our position is that we should stay in the customs union and the single market, because that is the best way to deliver a trade policy for Scotland.

Patrick Harvie: Yes, but the customs union and the single market are entities that act on a trade policy. Your trade policy seems to be that trade is good and that you would like to do more of it. You do not seem to have a clear, principled position. When the convener asked about state aid, you seemed to say that you want some sectoral advantages, but you did not articulate a clear stance on when the state has a legitimate role in intervening in markets in the public interest.

Ivan McKee: It is necessary to recognise the reality of where we are. We start from the position that trade is good—of course it is. As I have said, we want to further internationalise Scotland’s economy. The export plan is about how we do that; it is about identifying opportunities to increase trade internationally, to further strengthen Scotland’s economy and to use our technological and other advantages to deliver products and services around the world. We are very clear on that direction.

However, of course, it is not a simple, black and white issue. The situation is complex. With regard to the protection from privatisation of the NHS or other public services, food safety standards, environmental standards, workers’ rights and a range of other issues, our perspective is that those are hugely important and we have red lines on them. We see a difference between our view on them and the view of the UK Government. That is one of the substantive reasons why we believe that it is important that the Scottish Government and the Scottish Parliament have an input into these trade negotiations right through the process.

Patrick Harvie: We are clearly not going to resolve all of this—

Ivan McKee: I do not understand what you are—

Patrick Harvie: I will just end by encouraging you to ensure that, the next time you publish something like “Scotland’s Role in the Development of Future UK Trade Arrangements”, you include some kind of attempt at defining a clear, principled stance on what trade policy should look like, rather than just how we can get a bit more advantage in the short term.

Ivan McKee: The whole point of trade policy is to get a bit more advantage—

Patrick Harvie: Oh dear.

Ivan McKee: —bearing in mind what our red lines are on the issues that I have mentioned, such as the protection of public services from privatisation, food standards, other safety standards and environmental standards. A trade policy marks out those red lines and, after that, it is about building the economy and international trade for the good of the economy.

Patrick Harvie: How perfectly centrist.

The Convener: You have said enough now, Patrick.

Angela Constance: We have been around the houses a few times this morning. However, the heart of the matter is surely the fact that the EU currently has a large web of preferential trade agreements—I think 70, at the last count—

spanning five continents. Is there anything on the table that will match that?

Ivan McKee: No. As you have correctly identified, the EU is one of the three largest trading entities in the world, along with the US and China. Because of its scale and scope, it is able to do deals that other entities are not. It has more than 40 trade deals, plus other deals on top of that. Conversely, after the best part of three years, the UK Government is struggling to transition more than a handful of those and, even in those cases, those processes are not complete. Some countries, such as Canada and South Africa, have said that they have no interest in talking to the UK about the rollover of deals, because the UK has had to give away so much on the no-deal tariff arrangements that those countries have pretty much got what they want from that process, and there is no benefit to them from giving anything away by rolling over the existing trade deals that they have with the EU.

The UK is starting off from a much weaker position. It faces time constraints, because deals of this nature take years to complete, and the Brexit process puts us in a position where we do not have the luxury of that time. When the clock is ticking on your side and not on the other side, you are not in a good position. For all those reasons, the UK is in a weak place to be negotiating from.

The Convener: I thank our witnesses for their time and contributions this morning. At the start of the meeting, we agreed to take the next item in private, so I now close the public part of this meeting.

11:13

Meeting continued in private until 11:18.

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