HOUSE OF COMMONS

Committee on Exiting the European Union

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Wednesday 21 March 2018

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Watch the meeting

Members present: Hilary Benn (Chair); Peter Bone; Sir Christopher Chope; Richard Graham; Peter Grant; Wera Hobhouse; Stephen Kinnock; Jeremy Lefroy; Craig Mackinlay; Seema Malhotra; Mr Jacob Rees-Mogg; Emma Reynolds; Stephen Timms; John Whittingdale; Sammy Wilson.

Questions 1198 - 1284

Witnesses

I: David Campbell-Bannerman MEP.

II: Jessica Gladstone, Partner, Clifford Chance LLP; David Henig, UK Trade Policy Specialist.

Examination of witness

Witness: David Campbell-Bannerman.

Q1198 **Chair:** Mr Campbell-Bannerman, can I extend a warm welcome from the Committee to you for coming to give evidence to us today? Today has the final two sessions in connection with our inquiry into what the future relationship with the European Union might look like. We are keen to hear from you today about the report you published on how the agreement with Canada might be adapted to suit our needs. There are a lot of questions that Members want to put to you in the relatively short amount of time that we have available. As ever to colleagues, can we have succinct questions? As succinct answers as possible would assist us enormously.

Can I begin just on one point to do with Northern Ireland? Yesterday we were taking evidence from Mr Karlsson, who produced the "Smart Borders 2.0" report. I think I am right in saying that you made reference to that in a paper. I have a very specific question. You suggested it

could be supplemented by a three-tier system. This is a summary of what you said: most of the bulk traffic will be removed from the queues anyway by adopting that. Given the high bar set for maintaining an open border between Northern Ireland and the Republic, can you just explain what queues you were referring to?

David Campbell-Bannerman: Thank you, Chair, and thank you very much for inviting me. The volume of traffic is obviously relatively small in Northern Ireland. Whether you need checks or not is the issue. The AEO system that Mr Karlsson has referred to exists; it is an EU system. That means you can just go straight through with a disc. I am calling for a specialised AEO system as well, and then a customs clearance system on top of that for microbusinesses. As you say, there are three levels.

There are no queues now, obviously. It is an open border, and that is the way we want it. The checks I would recommend would be at Belfast docks or Dublin docks, well away from the border, or at airports, for example. I would do it that way. Any queuing would be well away from the border.

Q1199 **Chair:** That is very helpful. I have a second question—and we will explore this in more detail—about financial services. Clearly, that is hugely important to the British economy. Given your assessment of what the 27 have said—namely that passporting is definitely coming to an end—could you just say a little bit about how you think we could maintain access to the financial services market in the 27 member states and how that might be achieved as part of an agreement.

David Campbell-Bannerman: Financial services are listed under Chapter 21 of CETA, the Canadian deal. That obviously does not go nearly as far as we need it to go. However, it is a basis. The Canadian model—the SuperCanada model, as I call it—is a basis, based on CETA. You can use Chapter 21 and expand it. I am recommending the Mark Hoban report, and that is in SuperCanada.

On the issue of financial services, the Council has now agreed the principle of adding services in. They are already offering CETA-plus, I would suggest, from Donald Tusk's remarks. He is offering 100% tariff-free access and no quotas, which is better than CETA, because CETA is 99% and 92% in agriculture. You are now bolting on services. You can use the model of TTIP, to some extent. There is a 52-page paper that was intended to be in the US-EU FTA, TTIP. That is a good model, but we will want a lot more than that.

I have just drawn from that report, because they are the experts on financial services; I am not. In a way, I am looking at this conceptually as being about what you need to do in terms of taking CETA forward. CETA is very familiar to the EU, by the way. They are very proud of it. The Canada deal is the largest deal they have ever done. They only voted it through just over a year ago. It is a good model to base this on. You can bolt on financial services. In the debate last week in the

European Parliament they again mentioned services. It will be part of the package.

Q1200 **Chair:** Would I be right in thinking that you have argued that there is an inconsistency between what the EU was prepared to agree to under TTIP in respect of financial services and what it has been saying to the UK about what it cannot offer in the current negotiations?

David Campbell-Bannerman: Yes. I have had nine years in the Committee on International Trade of the European Parliament. I was sitting there when they were saying that freedom of movement must be part of a UK trade deal. I said, "Excuse me. We just signed CETA". They had just signed the Canada deal, which is 99% access to the EU single market with no freedom of movement and no access fees being paid like Switzerland, which arguably pays fees. There has been a lot of hypocrisy and confusion over this, but from the language used by the Council in particular, and Mr Juncker as well, I do think they are now on our page.

Chair: That is very helpful. Thank you very much.

Q1201 **Mr Rees-Mogg:** Thank you very much for coming in and giving us the benefit of your expertise. You have suggested that strategic partnerships agreements are uncontroversial "motherhood and apple pie" deals. Could you explain, please?

David Campbell-Bannerman: Yes, this is the non-trade side. Again, I am using the Canada model. Canada has CETA, which is the trade deal, and then it has a strategic partnership agreement—an SPA. The SPA for Canada has things like foreign affairs, defence, security, justice, i.e. all the non-trade aspects. This is very uncontroversial. It passed through the European Parliament without any real debate. New Zealand has a similar one, which is basically the same, called PARC. Again, it is on the same lines. Australia also has one.

You are getting a Commonwealth or Anglo-sphere type of arrangement with trade deals very like CETA. 80% of the New Zealand deal, which I am working on, is based on CETA. Australia is also using CETA, as is Japan to some extent. You are getting almost like an Anglo-sphere arrangement, with a grouping of nations.

Strategic partnership agreements are for all the other good stuff. I call them "motherhood and apple pie" agreements, because you are mostly on the same page; you mostly agree to co-operate on democracy and security.

Q1202 **Mr Rees-Mogg:** What I want to lead on to from that is how the competence issues become less clear the more details you have in any agreement. The SPA covers areas that move you to mixed competence and therefore different forms of ratification, whereas a straight trade deal is obviously Commission competence. I wondered what your thoughts were on how technically that will be approached, in terms of the EU doing

a deal with the UK.

David Campbell-Bannerman: It is a good point. The strategic partnership agreement for Canada is pretty light in many ways. It is a fairly thin document. It is headlines, I would say, rather than the nitty-gritty detail.

In all of these things, it is quite simple to say that an agreement is what you agree. You can have a very large strategic partnership agreement of hundreds of pages, rather than Canada's quite modest 30 or 40 pages. There can be a lot more detail in it, but it tends to be headlines; it tends to be commitments to good things, e.g. working together on defence or foreign affairs, rather than the nitty-gritty. Whether you want that kind of detail and how specific you need to make it are issues. Obviously, that is part of the debate.

Q1203 **Mr Rees-Mogg:** The question, then, is about how, when you are ratifying, you get it ratified in the simplest way. If you wrap things together, do you then risk having a Wallonia problem? Obviously, people are worried about that. They want to see the trade deal agreed smoothly, particularly because we will be making payments into the EU conditional on getting the trade deal. Therefore, if it can be delayed indefinitely by regional parliaments, that would be a problem.

If you separate out the individual elements, can you do most of the part of it that has an economic consequence under Commission competence and separate out everything else that has, by and large, less economic consequence?

David Campbell-Bannerman: The Wallonia problem was when they vetoed CETA, the Canada deal. Things have changed. This is quite a fundamental point, and it is not widely known yet. In every new free trade agreement the EU is doing—like Singapore, Japan, New Zealand and Australia—they want to take investment out of the agreement and treat it separately. That is the investor-state dispute settlement system, their ISDS. They want to take out portfolio investment. This is the ECJ Singapore judgment, but the significance is that everything else in the trade agreement can then be agreed by the EU only—the Parliament, the Commission and the Council—and you do not have to go to 36 regional parliaments like Wallonia. I will not comment on the democratic side of that, but that is the consequence of the ECJ Singapore decision.

It does mean that a UK deal could be agreed very quickly through the Parliament, for example. That is a major change. In theory, the Canada deal is now being provisionally applied, but at any point one of the regional parliaments could vote it down and it ceases to apply. You are actually avoiding that issue.

When it comes to the SPA, there have not been any issues, really. PARC, the New Zealand one, went through quite recently. Before the trade deal, the framework for the Australian deal has gone through first. There have not been any major issues for the EU. There was a problem in

Canada about the EU trying to interfere in the length of imprisonment without trial. It was quite extraordinary. There was a two-year delay because of human rights issues. The Canadians did not like their interference.

Australia and New Zealand have been held up through human rights issues as well, but I think that is all resolved. Actually, the SPA side is much more straightforward.

Q1204 **Mr Rees-Mogg:** If I have understood you correctly, because a lot of this has already been done and a lot of the issues we would likely to face have been solved with Australia, New Zealand and Canada, both sides of this deal, with the possible exception of investment, are almost ready to go and your colleagues in the European Parliament are now quite relaxed about this.

David Campbell-Bannerman: Yes, the language they are using is very much our language now. We will see what happens on Thursday and Friday at the Council. The way the EU works is exactly the same process. The Council sets the guidelines for trade deals, and then the Commission negotiates and then Parliament has a yes or no. That is as far as the Parliament gets; it is either yes or no to an agreement.

I do not see any major problems. In my evidence I have actually referred to the fact that, if you break down the 30 chapters of CETA, 12 of those you can just transfer straight over, 11 of those need tweaking, and then you have seven, like financial services, that require substantial revision. There is a framework there.

I would also stress that it is not just about the EU. These trade agreements from the EU are based on World Trade Organization guidelines and the wider global framework. If you look at technical barriers to trade, for example, there is an agreement at WTO level that is reflected in the CETA deal and all free trade agreements with the EU. It is the same with intellectual property and public procurement. You essentially have this grid or framework of WTO agreements anyway, which the FTAs are reflecting. A lot of it is there and done, and you can point to all sorts of successful free trade agreements all around the world. Of course, Australia did three trade agreements with their major partners in one year, so, in terms of the timing aspect, it can be delivered quickly.

Q1205 **Chair:** It was the Singapore judgment you were referring to with regard to ratification. Are you saying to us that, as a result of that, a different approach to ratification will apply henceforth? In future, will the system that is being used to ratify CETA only fall to the national and regional parliaments in respect of two bits, which are the investor-state dispute settlement system and one other thing? Is it your understanding that this is what is going to apply from now on? Is it a matter of choice for the Council or the Commission?

David Campbell-Bannerman: Chair, this comes directly from the EU Singapore FTA judgment at the ECJ. The whole issue is whether free trade agreements could just be agreed by the EU and not have to go to all the other parliaments, like Westminster. The judgment was that you could if you take out those two aspects. This is what is happening with New Zealand, but it is not actually public knowledge yet. It has not been confirmed, but I know this is what is happening from the Chairman of the Committee on International Trade and the contacts I have and also the Ambassador to New Zealand and others.

From our point of view, it means a British deal could be done very quickly and just be authorised by the EU institutions, not 36 parliaments.

Q1206 **Chair:** To follow that up, might there not be a rumpus when national and regional parliaments discover that the EU is proposing to use that mechanism in future for ratification as opposed to the one they had understood would be used?

David Campbell-Bannerman: It is entirely possible. It has not announced as yet, or it has not been confirmed as yet. Let me put it that way. It is kind of in the system, but it has not been formally acknowledged.

Q1207 **Mr Whittingdale:** Can I press you a little bit on both of the aspects that have been discussed already? On this court verdict, it is at the moment an opinion. What reaction has the Commission given to it? Certainly, Mr Barnier seems to believe that we are continuing on the basis that this will require ratification across every member state.

David Campbell-Bannerman: As I say, what is happening at the moment is that it is sort of in the system but it has not been formally acknowledged. Certainly, the legal advice we have received on the Committee for International Trade is that this is what is happening now. As a result of the ECJ judgment, the legal experts have said this is what could happen if you take investment out of free trade agreements. You may decide not to, in which case you will need ratification, but should you take out portfolio investment and ISDS, I am told, that could be done separately as an investment agreement.

Of course, you are not talking about one agreement; you are talking about a host of agreements, at the end of the day. The customs agreement could potentially be separate as well as the investment agreement. There could also be an SPA.

The legal opinion is quite clear: if you do take these elements out—I guess that is a political decision—it is much more straightforward. As I say, there are democratic implications to that, as the Chair has touched on, and I would not like to comment on those. If we were still in the EU, I am sure we would not be happy with it. That is certainly the legal opinion at the moment that we have received formally in the Committee on International Trade.

Q1208 **Mr Whittingdale:** That suggests that a large part of any future agreement actually only requires ratification by the EU institutions. The Court and the Commission no doubt will continue to debate where the dividing line falls, but there could be this general principle that we should end up with perhaps an agreement in two parts, one part of which is the exclusive competence of the EU and the rest of which requires ratification. You see that as a viable way. We could sign, seal and deliver the first part while we are still talking about the second.

David Campbell-Bannerman: Yes. What takes time in negotiating trade deal? You have to ask that question. It is negotiating away the 19,753 tariffs, which the EU has. Of course, you have all your interest groups—farmers or whatever—who want to water that down or change the removal of tariffs. There is a problem with New Zealand and Australia on that, where the French farming industry is objecting to some of the tariffs being removed on agriculture. We are being offered a 100% tariff-free and quota-free deal.

Basically, we start with the same legal framework and the same laws. We are convergent. The CETA deal was delayed slightly by the upper house of Canada having to pass some legislation to fit. This often happens with trade agreements. We will not have that problem. In my view, though it may seem ambitious, I think we could do a trade deal by March next year. I know that sounds ambitious, but we are not negotiating away tariffs; we are not negotiating away quotas. There is a TRQ—tariff rate quota—issue at the WTO, which we are working with the EU on at the moment; that is true. Our laws are convergent, so it is the bolt-ons. It is services we have to really concentrate on, in my view.

In October 2013, Tony Abbott announced free trade agreements for three major markets for Australia: China, Korea and Japan. By April 2014 he had two, and then in November 2014 he had the other, China. It is possible to do. Obviously, you might have to come back for more. Of course, free trade agreements are always being added to. I get involved with that on the Committee on International Trade. There are always other bits that are added to later down the line. That goes on with every FTA.

You could do it very quickly—that is my main point—and that is not clear. We are in a remarkable position, because there are no tariffs to negotiate away. It is a very exceptional position.

Q1209 **Mr Whittingdale:** The present position of the Government is to retain the ambition of agreeing the substance of a trade deal by October of this year and then to finalise the agreement and have everything in place ultimately by the end of a transition period in December 2020. You would regard this timetable as perfectly achievable.

David Campbell-Bannerman: I do. I have learned something from free trade agreements. I cover India. Nothing much is happening with India, but I pointed out to the Commission that they had the same negotiator as

the United States and I asked whether they needed another one. The point is that you need resources. If we have the resources, the will and the commitment, then I do believe it is deliverable.

As I say, this is incredibly unusual because, as President Tusk has said, you have a free trade area now and you are just replicating that. You are not trying to break down tariffs and discuss cars, farming or whatever it is. It is a very different position. I do believe it is achievable. It is better for everyone that we are not negotiating in the implementation period, and that it is done by the time I lose my job in less than a year. Hopefully I will be there to vote on it.

Q1210 **Mr Whittingdale:** That was the last point I wanted to raise with you. As well as being somebody who has written and commented on this, you are a sitting member of the European Parliament. Whatever the institutional requirements, it looks as if the European Parliament is going to have a say on this. To what extent is there a risk that we spend a great deal of time thrashing out an agreement with the Commission and the Council, but the European Parliament then says, "We do not just want to be treated as a rubber stamp. We actually want to make comments and propose changes"? Could this be stalled in the European Parliament?

David Campbell-Bannerman: It is possible that the European Parliament could vote against it. I do not where Mr Verhofstadt will go on this.

What is important is that Mr Verhofstadt might be the negotiator for the Parliament as such, but every MEP—particularly German MEPs—has influences from their home parties and countries. Whatever the recommendation from Mr Verhofstadt is, I think they will do their own thing, to be honest, based on national interest.

It is worth saying that we will become the largest single market of the EU once we leave. We are the second largest importer of goods in the world after the United States. We have a net goods deficit of £75 billion. There is a huge incentive to get this trade deal through. Being an MEP, my observation is that people have moved from a state of shock and denial about Brexit to a position of, "We have to get the best deal possible".

I do not know what happens if the Parliament votes it down. CETA was quite close, by the way. The socialist group went in about three directions. There was some opposition to free trade as a concept. In the end it got through and was done. There is a real imperative here. As I say, we will be the largest single market. There are major traders represented, and German industry in particular is beginning to put the pressure on.

Q1211 **Sir Christopher Chope:** Yesterday or the day before, the draft guidelines for the next stage of the negotiations were published. There has been a bit of a surprise that the EU now wants to include financial services in the potential trade deal. I wondered whether you could

comment upon the nature of the constraints the EU are seeking to impose—for example, reliance still on equivalence rather than mutual recognition. Do you see this as a breakthrough? Mark Hoban is quoted in the papers today as saying that this is a recognition by others in the EU that financial services are important for the EU economy rather than just for the UK. I wondered whether you could comment on that.

David Campbell-Bannerman: I noted that. There is a battle over equivalence. I am recommending in SuperCanada, my proposal, the Mark Hoban report and the direction that takes. That includes a forum regarding mutual recognition and handling divergence, which would work well.

There has been a move here, and I have noticed it in the various debates I have been involved in and in tracking this. The EU is mentioning services more and more; they were not initially. They were talking about trying to charge us for access to financial services. What is happening is that they are recognising that Deutsche Bank, for example, needs access to the City of London; it borrows an awful lot of money in the City of London. There is more and more of a recognition that this is not a one-way street; it works both ways. EU industry and companies do need access to the City of London. That is being recognised.

There will be a battle over equivalence. They want to keep as tied in as possible in a whole number of areas, it seems to me. There is an outbreak of common sense going on, which is very welcome.

Q1212 **Sir Christopher Chope:** How will we resolve the differences about equivalence and mutual recognition?

David Campbell-Bannerman: That is going to be debated during the negotiations. We are going to have to consult our experts, such as Mark Hoban and his team, on what the best way forward is; we are going to have to argue the case for this. The EU has shifted its position quite a bit. As I say, services were not mentioned. Freedom of movement had to be part of the deal originally. There has been quite a shift towards our position.

This is done more at the technical level. It will be influence at the technical level rather than at the political level. I prefer mutual recognition. It has more flexibility than equivalence.

Q1213 **Sir Christopher Chope:** Are you able to detect any concessions the UK has made in order to be able to get this change of approach from the EU?

David Campbell-Bannerman: No, I am not aware of that, actually. I am not aware of that from what I know about the negotiations. A lot of the services side is really quite new. The Council representatives in the European Parliament only started mentioning this last week; President Tusk mentioned the idea of bolting on services on 7 March, this month.

I would say that services is a pretty undeveloped area in free trade agreements. CETA is the best the EU has done in terms of services, but it is not nearly as far as we need for the UK. You do not get services in a lot of free trade agreements. You get elements of them.

Through GATS, the General Agreement on Trade in Services, and TiSA, the Trade in Services Agreement, which is paused at the moment, the World Trade Organisation is pushing services at the global level. That is influencing the EU. Of course, we are taking our seat back at the global level, so we will be pushing for this at a higher level.

Services is a fairly undeveloped area, so a lot of what we will be discussing is quite new ground. Having said that, behind the scenes a lot was done with America on TTIP. For example, access to services at state level and being able to compete at state level was part of TTIP.

Q1214 **Sir Christopher Chope:** Obviously, the United States is a very large market for our financial services businesses. To what extent do you see the arrangements with the United States being better or worse than the future arrangements envisaged between us and the EU?

David Campbell-Bannerman: Obviously, we have a surplus with the US. We have a services surplus with the EU—it is about £12 billion or £13 billion—but there is a surplus with the United States, anyway. With a lot of our other trading partners, we have surpluses, mainly in services.

We obviously have the London-New York bonding. That is already well established, but a UK-US trade deal would expand on that and bring more benefits in that regard, yes.

Q1215 **Seema Malhotra:** Thank you for coming in and giving us evidence today. My questions follow on quite neatly from Mr Chope's questions. First, I wanted to get your view on mutual recognition and equivalence. What is your sense of how we can work on a deal for financial services? How concerned are you that there could be uncertainty with equivalence and that terms could be withdrawn at short notice in the future? That could make long-term planning impossible or at best difficult for the UK financial services industry.

David Campbell-Bannerman: That was mentioned to me as a concern, actually, in the City last night as a danger of withdrawing an agreement. As I say, I go back to the point that an agreement is what you agree. We are now in the process. As I said, I put forward SuperCanada as a basis for this. Chapters 13 and 21 of CETA are about financial services and the regulatory side. This is an area that very much can be expanded to address your concerns.

This goes on all the time. Canada did a bit of it with CETA, but anyone in the financial sector will want to seek reassurances within a free trade agreement. The more flexibility we have—again, as I say, this is the Mark Hoban line—means a safer position for us than equivalence. The

more we allow the EU to be able to dictate terms and be able to pull the rug from under us, the more insecure it becomes.

All of this is negotiable and debateable within this wider framework. My point is that if you are not talking about tariffs and quotas, you can be talking about this, the services aspect. You can be focusing on exactly these kinds of issues. I would say that that is what the negotiations will actually be focusing on, if we agree that none of the others really applies.

Q1216 **Seema Malhotra:** You do include a substantial section on financial services, as you say, in your SuperCanada paper. I also just want to understand a bit more about how you see a deal, going forward, also mitigating the loss of passporting with the concerns that have been raised. Obviously, 5,500 financial services firms in the UK currently have those EU passporting rights. There are different estimates about how many jobs could be at risk or indeed moved from the UK if we do in the end lose passporting rights. Would you have a view about how we could make sure that risk is mitigated?

David Campbell-Bannerman: I am not an expert on the impact of EU passporting, but what I am told—for example, from an HSBC director last night—is that big banks such as HSBC or big institutions already have a lot of subsidiaries in the EU that they can work through, so it becomes less of a problem; they have EU passporting rights. It is more of an issue for middle-ranking companies that may not have subsidiaries. I am told that the smaller finance companies or whatever tend to be more UK-based anyway. There is an issue, but the experts tell me that the City is more about wholesale than retail, and passporting seems to be more about the retail side.

As I say, I am not an expert on this and I defer to the experts. I am looking at this in terms of the wider framework and the concept within which a lot of the detail can work. Obviously, when it comes to trade negotiations you often have hundreds of negotiators who are crunching through a lot of this detail. The concept is there. You can work within this framework; you can sort these kinds of issues out.

Q1217 **Seema Malhotra:** Could I ask you just one final question as well? Depending on what sort of deal we get with the EU, there might be implications for other agreements. If the EU offers a more generous deal to another party in a bilateral trade negotiation, the most-favoured-nation clause in CETA ensures that that benefit must automatically be extended to Canada. Similar clauses are included in the agreements with South Korea and Singapore. What would your thoughts be on that issue?

David Campbell-Bannerman: I touch on future MFN clauses in SuperCanada. It is relevant, because, as you rightly say, Canada, South Korea and Singapore have that protection. They can say, "If you give Britain more financial access or better terms, we can require those too". My view on that is that if we open up markets some more, that is a good thing, is it not? The Canadian financial services industry is a big player;

Korea is obviously more limited, but Singapore is a big player. It is relevant to them, but it is all about market-opening.

It really depends on whether you are in favour of market access and free trade generally. I do not see it as a problem. Of course, we could have the same. If they did a deal with the US—the talks should restart, I hear—then we would have a future MFN clause in our agreement, so we may get better terms later.

Chair: Jacob, you wanted to make a declaration.

Mr Rees-Mogg: As we have come on to financial services, I just would highlight my chairmanship of Somerset Capital Management and draw attention to my declaration in the Register of Members' Financial Interests.

Q1218 **Wera Hobhouse:** Thank you for coming to answer our questions. We understand that one of the big prizes the Government tell us this country is going to have is that we can negotiate our own free trade agreements with other countries. When we took evidence from the EFTA countries, twice I asked the question, "What different deals are you negotiating with the EU?" The answer is always, "We just follow what the EU gives to third countries. We want to get as good a deal as the EU gives to third countries". What do you believe our advantage is? What can we negotiate more than what we already have? What exactly would that be?

David Campbell-Bannerman: It is a valid point. Obviously, if you have 28 nations represented, which you do with EU FTAs, you represent their interests. For example, I was in Peru and Colombia recently on a trade mission. We do not produce bananas or orange juice, but Spain does. Therefore, within the EU FTA, Spain wants to keep 20% tariffs on bananas and orange juice. Doing a UK FTA, we can say, "We do not produce this. We are not protecting anything. Therefore, we can actually put it to zero tariff".

Q1219 **Wera Hobhouse:** Yes, but I am not talking about bananas and oranges; I am talking about financial services.

David Campbell-Bannerman: You mean financial services particularly. Our Embassy in Peru was saying that within 24 hours of Brexit they were on the phone saying, "We want a trade deal with you". This is in Peru. The Embassy has identified that financial services is one of the areas. In Lima, I am told you have 60,000 students every year learning English. The top 19 schools are English-type schools. There is a great thirst for British services and produce.

It is what you make of it. You are opening up the market. The EU has its own interests, and German industry is obviously very paramount in the EU. It wants open markets in that sense, but we have financial services as—

Q1220 **Wera Hobhouse:** Can we stick to the advantages? What are the bigger

and better deals we can get on financial services with countries like Peru, for example?

David Campbell-Bannerman: For example, if you take the TTIP analogy, you could open up more local government in Peru, because a lot of it is quite closed. This is true of Colombia as well. Colombia has 45 million people. It is fortunately getting over the peace process. It is a developing market. You can sell in insurance and all the financial products and services. It is more to do with the focus. A British trade deal will be more focused on financial services, because our economy is driven by that, whereas you have many EU nations with different priorities. That is my point. There are some genuinely wonderful opportunities.

By the way, on this note, I understand that the intention now is that we get the EU to roll on the existing EU free trade agreements during the transition period until they can be cut and pasted into UK free trade agreements. At the moment, the intention is that we do not lose the benefits of what we have, but we can build on it with our own deals.

It is about priorities. Each nation has a different priority in terms of an FTA.

Q1221 **Peter Grant:** David, if I heard you right, a minute ago in reply to one of Wera's questions, you said that if you took the TTIP analogy you could open up local government more in Peru. If we have a deal with Peru similar to the TTIP deal, you are suggesting that it would give UK companies direct access to tender for local government services. Does that mean TTIP automatically gives American companies the right to compete for public service contracts across the United Kingdom?

David Campbell-Bannerman: It depends what you agree, of course. It may well do. There is always going to be a bit of trade-off in access both ways. TTIP was certainly looking at opening up state government in the United States, which is obviously very valuable. The CETA deal is opening up provincial government in Canada to British services more. One of the benefits of free trade agreements is opening up these markets. In the EU, we take it for granted that tenders are open to everyone. That is not the case in many of these countries.

Yes, of course trade agreements work both ways. CETA has mutual recognition of professional qualifications, for example, which is important in terms of recognising that Canadian doctors are very much the same as ours.

Q1222 **Peter Grant:** But if you are talking about opening up provincial government contracts in America and Canada, does that mean there is then the equivalent opening-up of local government and health board contracts in the United Kingdom to competition from America.

David Campbell-Bannerman: Yes, it does, if that is what you agree. In a way, we are very open now. Under EU-based procurement rules, we

are very open to that now. I am not sure whether there will be a major change in that area. It is quite one-sided at the moment, because it is quite difficult for British companies to get in, particularly below federal level into state level. That is something that TTIP really pushed for, and it was making some progress. It is quite hard to break into a lot of this and get British companies being recognised at the state level.

Q1223 **Sammy Wilson:** Thank you very much for your evidence so far. For those who wish to keep us in the EU, in the single market and the customs union, the border between Northern Ireland and the Irish Republic has become almost like the trump card in their arguments: you cannot have the UK leaving the single market and the EU without a hard border with the Irish Republic, with inspections and lorries being stopped, et cetera. In one of your papers, you quote that the Irish have the lowest level of inspections for goods coming from outside the customs union into the customs union—1%.

David Campbell-Bannerman: That is correct.

Q1224 **Sammy Wilson:** Is there any reason why, once the UK leaves the single market and the customs union, that 1% should increase?

David Campbell-Bannerman: No. Thank you, Sammy. I have Felixstowe, for example, in my constituency. The UK level of inspections is about 4%, according to the World Bank. You are not inspecting very much, really. It tends to be intelligence-driven: if they get a tip off or there is a problem. There is also the trusted trader scheme, which is very relevant to Northern Ireland. Basically you check out companies and ask whether you trust them. If it is Kerrygold, and milk is going one way and butter the other all year round, you trust them; you trust them to be professional. If it seems a little bit more questionable, you will check.

On Ireland, yes, it is staggering. Our research showed that in Ireland only 1% is checked; it is the lowest in the world apart from the Gambia. In my view, the whole border issue has been dramatically exaggerated. You had Mr Karlsson, who is 85% or 90% of the way there. It seems to me that it is all solvable.

What I learned from Felixstowe and other ports, such as Tilbury, Belfast docks and Dublin, is that borders are in computers now. For Felixstowe, most of the paperwork, if it exists, is through computers in Liverpool before the containers ever arrive at Felixstowe.

This is about technology. In its customs code, the EU itself is insisting on 100% electronic customs operations. This is the world of customs. It is far more electronic. You avoid the political issues as long as you have checks and CCTV away from the border. I would suggest they take place at airports and ports, which is what you do for immigration on the island of Ireland under the common travel area. That is all done at ports and airports anyway.

Q1225 **Sammy Wilson:** According to Irish tax and customs, every day there are 63,000 heavy-goods-vehicle and light-goods-vehicle movements across the border between Northern Ireland and the Republic. If only 1% of those are being inspected, that is 63 vehicles a day.

David Campbell-Bannerman: Yes, it is tiny.

Sammy Wilson: Could you perhaps outline to us how those 63 vehicles could be handled? That is a far cry from mile-long checks at the border where terrorists could attack checkpoints, et cetera. Could they be handled away from the border so that even that low level of checking could be done unobtrusively?

David Campbell-Bannerman: Yes. As I say, if you do have to do checks, they should be done well away from the border at, for example, Belfast docks or Dublin docks. I have seen all the trucks coming from Holyhead at Dublin docks, a lot of which then go on the M1 up to Northern Ireland. They have all the systems there at the docks and airports often. I was special adviser to Sir Patrick Mayhew in 1996 and 1997 for the peace process in Northern Ireland. I had the honour to serve him. The Good Friday Agreement means a lot to me, but, as long as you keep intrusive checks away from the border area, it is not such a major problem. Most checks of companies and individuals are done in advance, and it is backed up by intelligence, as I say.

It is only where you have a problem, such as a company acting strangely, that they are actually interested in checking them anyway, whether that is in Felixstowe or on the island of Ireland.

Q1226 **Sammy Wilson:** With his "Smart Borders 2.0" report, Lars Karlsson has given a number of pointers as to how the frictionless border could be constructed. Last August, the Government published a paper that outlined a number of ways in which a frictionless again could be attained. Are there any additional measures that are not included in either of those two proposals that you believe could overcome the remaining concerns that anyone would have? Leaving aside trusted traders, pre-notification, and inspections and CCTV away from the border, in your experience are there any other measures that could be imposed to enhance those proposals to ensure a truly frictionless border?

David Campbell-Bannerman: The thrust of the others seems to be along the lines of the Authorised Economic Operator and trusted-trader schemes, which are up and running. The AEO is an EU scheme. My proposal is to add a special all-Ireland AEO scheme—SpAEO—for intermediate or smaller companies. Again, a lot of this is pre-registration and checking people out in advance. You do not want a lot of paperwork or trouble. Once it is set up it is a bit like the congestion charge, dare I say it. The third element is pre-arrival customs clearance. Essentially, if you want to drive into the congestion charge area, you can pay in certain ways. You can pay ahead; you can pay afterwards for 24 hours. Technology provides a lot of solutions. The key thing is to let technology

do it but to keep the border open and to keep any sort of sign of CCTV, et cetera, away from the border, for political reasons.

Q1227 **Sammy Wilson:** The EU has said it wants a frictionless border as well. From your knowledge of EU trade facilitation, trade agreements, et cetera, can you seen any reasons why the EU may well insist on the Irish imposing more border checks and inspections after we leave the EU than what they are expecting the Irish to do at present?

David Campbell-Bannerman: No, I do not see any reason for that. I am afraid this has been exaggerated for political reasons to keep the UK as close as possible to the EU, whether to keep us in the customs union or single market or to tighten up and manage divergence or whatever it is. I do not see any particular issue there. The EU will insist on some kind of reasonable system for customs-checking, to meet its criteria for a border. When it comes down to it, the Prime Minister has been clear that we do not want a hard border and we are not prepared to impose one. It will be down to the EU to impose one, should they wish. There is not much appetite to do that.

We need to get back to solving the problem. As you say, the number is a lot smaller. Mr Varadkar went to the Canada-US border, which has an AEO system called FAST, where trucks hardly slow down, I understand. When you are talking about the US and Canada, that is 370 million people. The whole island of Ireland is 6.5 million. The whole scale of this is much smaller and more manageable, I would suggest.

Sammy Wilson: You imagine that the inspection of 63 vehicles a day could be handled.

David Campbell-Bannerman: Yes, it could be handled.

Q1228 **Chair:** You have referred twice to doing the checks at ports and airports. Just so I am clear, for manufacturers in Northern Ireland and manufacturers in the Republic who are producing goods that then need to cross the border, they are not going to go anywhere near an airport or a set of docks. How is it going to work for them?

David Campbell-Bannerman: As I said, I am suggesting a range of checking centres away from the border.

Q1229 **Chair:** There would be other centres they would have to go to en route, just for clarification.

David Campbell-Bannerman: Yes, absolutely. The key thing politically is to keep it well away from the border. You can use CCTV on the M1 going up to Northern Ireland, for example, and automatic number-plate recognition.

Q1230 **Sammy Wilson:** But those checks are going to be done anyway through the Authorised Economic Operator scheme.

David Campbell-Bannerman: Yes, the AEO has already done that.

Q1231 **Wera Hobhouse:** I believe there is some sort of confusion about what container ports do and what is done between Dover and Calais. There is the system of cabotage, I understand, where you have the opening of lorries, putting on loads and unloading again. For container ports, of course a pre-checking system is very simple. If you have a container, you check it, you clear it and you send it the other way, and it never gets opened. The question is, of course, how you deal with multiple unloading? That has not been explained by what you have been saying.

David Campbell-Bannerman: You are right to say that. Felixstowe is mainly a WTO port, so it is non-EU containers coming from China or the Far East into the UK. Actually, as I say, the border is electronic. The paperwork is basically done when the ship is at sea. There is more of a headache when it comes to trucks in the context of Dover or the Irish issue. I do accept that. The principle of pre-registering and actually having a system where you sort out any issues before you even get near the border is practical when it comes to Northern Ireland. Again, with the congestion charge you do not need much notice to actually cross the line. That works for the customs clearance level, the very small or micro level.

Rather than dismissing technology, technology does have most of the answers. It maybe has 90% of the answers. If Ireland is only checking 1% now, then the scale of actual checking or the need to check is pretty minor.

Q1232 **Craig Mackinlay:** It is good to see you again, Mr Campbell-Bannerman. I would just go back to the Canada deal, which is a framework that Michel Barnier seems to refer to as a possibility for the UK. It is obviously tariff-free. The problems of rules of origins have been overcome. It does not go as far as you would think common sense would allow in terms of mutual recognition.

I will just focus on one thing, the REACH proposal. A Canadian gypsum manufacturer can obviously export to the EU tariff-free, but that gypsum will have to be tested to the REACH standard, approved by the Finnish authority where it resides. There is a blockage to that sort of freedom. The EU seems to have a fundamental problem with mutual recognition of standards in advanced countries. When we have been in the room with Barnier and his officials, there is talk about regulatory dumping, tax dumping and social dumping. That does not apply in the CETA deal; they seem to have overcome those issues.

On financial services there was a very clear message that they were too concerned about financial stability to allow the mutual recognition of a good banking system in the UK. They seem to have a problem with mutual recognition. Until they can overcome that, the EU is showing itself to be one of the big blockages in international trade. Why do they have this concept? How can they overcome it for themselves, really?

David Campbell-Bannerman: Yes, that kind of argument has been used before. The same argument was used during the TTIP negotiations about instability to the economic system. The EU is certainly more

protectionist than the UK is. There is an element of resistance in certain areas. This is part of it. When it comes to REACH, though, obviously the Prime Minister has said that chemicals is one area where we will remain very close to the EU. In my view, the REACH Directive is very costly, and of course the full costs are not yet known, because SMEs have various derogations and exemptions. That concerns me, but the UK chemicals industry does want to remain very close in terms of REACH. I am told by experts that REACH is being rolled out around the world, or things similar to REACH.

Yes, mutual recognition is in Canada. Again, they can be very hypocritical. You say, "Hang on. You have just agreed this in the Canadian deal. Did you not read it?" I often find myself having to point that out. Obviously, if we are exporting to the EU, we will have to follow its standards. The key point is that only 12% of the UK economy is actually exports to the EU. That is 12% of the whole UK economy. We are exporting more to the rest of the world than the EU, and the trend is for that to continue. Exports to the EU will probably fall to about a third or 35% of our exports over the next 10 years. 90% of growth is outside the EU. We should be more concerned about what is happening outside the EU. We do have to follow REACH while exporting to it.

Q1233 **Craig Mackinlay:** We are often told that these rules of origin are so infinitely complicated that only a customs union will solve them. Let us take the South Korean deal. Perhaps I am being a bit one-dimensional, but South Korea makes a lot of electronic products. You can assume that quite a lot of those components will potentially have come from China. Does the EU just tend to accept what Samsung and South Korea say is in their Samsung Galaxy mobile phones, which are coming to the EU by the millions? Does the EU tend to accept that, yes, it is 50% a South Korean product, which is tariff-free, and 50%, or whatever they are told, a Chinese product, for which there is a tariff due? Is this just accepted because it is a trusted nation? We almost seem to be told that the UK cannot be trusted to do that assessment for itself. How does it actually work in practice under the South Korean free trade agreement?

David Campbell-Bannerman: Again, rules of origin are an issue in every free trade agreement. There are various ways of sorting it. There is a protocol attached to CETA on rules of origin.

It is not rocket science, is it? Others countries do it. Canada is doing it as we speak. China exports more to the EU than we do. There are rules of origin there. You need to agree these procedures, but, again, if you are looking for a model, Canada is a good model because it is doing it now anyway, and of course it has exactly the same issues, because it will export parts from China and the Far East.

In NAFTA, with the United States, there will be issues there about rules of origin as well. It is not a new issue. You have to agree a protocol or a way of handling it that gets around the problem. You just apply that, really. It seems to work in every other free trade agreement.

Q1234 **Craig Mackinlay:** There are some odd borders around the external parts of the EU. I am thinking about Poland, which has some very unusual borders. It has Belarus and Ukraine. It obviously has to deal with the rules of origin for something coming in from Belarus. How reliably is that done? Is it done reliably? We are told it is done reliably, but are we really confident about that, in real terms?

David Campbell-Bannerman: I do not know the specifics of the Polish border, to be honest.

Craig Mackinlay: Poland has some odd borders; it really does.

David Campbell-Bannerman: Yes. I look at the customs union. The EU customs union is like a fortress or a castle, with these walls. You have these entry points, which are your border. By rights, they should all be the same. There is a common commercial policy, et cetera. I doubt that is the case. I am sure there is some rule-breaking going on, presumably. We do not have much evidence of it, obviously, but that is one of the issues. It keeps coming back to this. If you trust certain suppliers, which are the more regular suppliers, to be honourable, the system works. Again, through intelligence or whatever, you go after those who do not comply.

Q1235 **Craig Mackinlay:** This comes back to the Irish border. There was acceptance in the Government's paper last year of a little bit of local leakage. There is local leakage now in terms of VAT differences, drink rates, excise duties or currency. There are all sorts of differences that are managed. The Government paper said, "We will allow a little bit of local leakage. That is fine." There seems to be a reluctance that Britain as an advance nation would actually somehow be telling lies across that border. This just seems to be fantasyland to me.

David Campbell-Bannerman: What is the point of a customs border? That is what we are talking about in Ireland. The point is to collect duties and to enforce quotas, and maybe there are some animal and SPS-type checks and things. We have the same standards at the moment anyway on veterinary, et cetera. If you have an FTA that is 100% tariff-free with no quotas, what is the issue? I struggle to see what the actual practical issue is. There is a lot of smokescreen around this issue, which is unhelpful.

Q1236 **Emma Reynolds:** I have a quick question of clarification. It is nice to see you, David. Thank you for coming here. Earlier, you talked about speeding up the process of negotiation of the free trade agreement by taking investor protection out, because that was something that slowed things down and made it a mixed agreement. There are other areas of shared competence, are there not? I have Article 4 of the treaty in front of me. For example, agriculture and fisheries are a shared competence; environment and consumer protection are also shared competences. Obviously, there is going to be quite intense negotiations about both agriculture and fisheries. If those were part of a free trade agreement,

would that not make it a mixed agreement and therefore require the ratification of national parliaments and some, not all, regional parliaments?

David Campbell-Bannerman: That is a good question, but the legal advice is that it would not. The ECJ has decided that it is only investment that is the problem. This is about taking out investor-state dispute settlement and portfolio investment. It is exactly the same as is happening to the New Zealand trade deal to speed it up.

It is relevant. Fisheries is obviously quite an interesting issues at the moment. I accept that, but of course Canada has a large fishing industry and there was a big row in 2005, if you remember, because Canada arrested a Spanish fishing boat in their waters. You have all the same issues. This is what you have to concentrate on if you want to deliver SuperCanada, CETA-plus-plus-plus or whatever you want to call it. It is all manageable. When you look at free trade agreements all around the world—in Peru-Japan, Thailand-Chile or New Zealand-China—there are all these issues there that get managed. It is a valid point, but you have to manage it within the actual negotiation process.

Q1237 **Emma Reynolds:** But do you accept that it is slightly different because in some of those agreements you can simply leave things out if you do not want to deal with them? Because we have been a member for over 40 years and many of our policies and our trade is so integrated, whatever deal we have actually has to cover all of these various issues, whereas with Canada, New Zealand and Australia you can simply leave some of these things out.

David Campbell-Bannerman: There are very standard clauses in these FTAs all around the world. CETA has one on sustainable development. It is about TSD—trade and sustainable development. There are issues there. There are issues about the EU actually trying to enforce environmental standards on us. They are trying it with New Zealand and Australia. There is pressure to have sanctions and withdraw trade benefits if you do not follow certain climate change rules or whatever. That is part and parcel of the negotiations of all the current FTAs, but it is addressed. If you look at the chapters of CETA, environment is addressed. It touches on fisheries lightly as well.

All I am saying is that this is a good framework to work from and to negotiate around, because it is so familiar to the EU. They have only just passed it and they are very proud of CETA as well. It is a very good model to work from. We as the UK understand it as a free trade agreement. It is a good basis.

Q1238 **Jeremy Lefroy:** Good morning, Mr Campbell-Bannerman. I just have two questions on really quite different subjects. First, in December last year the Governor of the Bank of England announced that EU banks would be free to continue to operate pretty much as now within the UK after we leave the EU. Clearly, that was a very welcome, practical and

pragmatic step. Have you noticed that this has slightly changed the dialogue over financial services? The UK is basically saying, "We want you here. Actually, that benefits your citizens and our citizens. We pretty much expect you to do the same". Perhaps you could comment on that.

David Campbell-Bannerman: Yes, it is valid. The whole tone has changed. From what non-British MEPs tell me, including the former head of the German BDI, the CBI equivalent, the EU has been slow to recognise that we are its largest single market and they need access to the City to finance industry and business. That recognition is now sinking in, and there is a lot more domestic pressure to say, "For heaven's sake, get a good deal".

By the way, in terms of trade statistics there are about eight EU nations that are responsible for 90% of all EU trade with the UK. Germany has almost a quarter of all of that, and we arguably employ about 1.5 million Germans. What has been going on behind the scenes—I am very aware of this now—is that there is a lot more pressure. The Council, which meets this week, really represents more and more that domestic pressure from corporations, particularly in Germany and elsewhere. They are saying, "For heaven's sake, we do need a deal". Yes, there has been a change as a result of that.

Q1239 **Jeremy Lefroy:** My second question is more on manufacturing. Clearly, in the West Midlands, which my constituency sits within, we actually have a manufacturing trade surplus. We are one of the few parts of the UK that does, as far as I know. That relies on very smooth, very efficient supply chains for just-in-time manufacturing. There is a real concern among the businesses that rely on those in my constituency that this has to continue for them to be efficient, because the margins are small. You cannot afford an extra 2%, 3% or 4% on costs. I wondered how you thought that could be overcome. As I say, it is a major concern to manufacturers.

David Campbell-Bannerman: I recognise that. I personally think a customs agreement—it might be separate or it might be bound in—is probably more important than the trade agreement in terms of just-in-time, hold-ups or whatever. A smooth customs relationship is essential. Obviously, we are importing more than we are exporting, so the queues will be longer on the continent than in the UK in that regard, but I take it very seriously. The customs side is very important. It is important to have a smooth just-in-time operation, as you say.

I would say, though, that obviously we are importing a lot from outside the EU as part of the logistics chain. A lot of the components for cars and manufacturing, et cetera, come from the Far East with tariffs on them into the customs union, for example. There are opportunities there. It is a global system, and, as long as you have a good trade deal and a customs agreement, I do not really foresee a problem arising.

Q1240 **Jeremy Lefroy:** Finally, on that, what is your perception of how discussions over a very full customs arrangement are going at the moment?

David Campbell-Bannerman: Customs is more of a challenge. It is worth saying that the EU is upgrading its whole customs operation to make it more electronic. The customs code is being improved. The transport-by-goods document has a target of one hour before arrival.

The customs side is more of a challenge. At Felixstowe, I was listening to how the CHIEF system is being replaced by the new customs declaration system—CDS—this year. That is due this year, but obviously it would have to be upgraded quite a bit, because it is mainly used for WTO and non-EU goods at the moment.

There are a lot of opportunities. Again, technology can solve a lot of this, and borders are in computers. The scale of it will be greater if we are not in the customs union, but it is all manageable. 56% of our exports go to the rest of the world, and we manage it that way. For imports, it is about the same proportion.

Chair: Mr Campbell-Bannerman, on behalf of the Committee can I thank you very much for coming and giving your evidence today? It has been extremely helpful.

Examination of witnesses

Witnesses: Jessica Gladstone and David Henig.

Q1241 **Chair:** Can I welcome David Henig, who is a UK trade policy specialist who was very recently working at the Department for International Trade, and Jessica Gladstone, a partner at Clifford Chance? Can I thank you both very much indeed for giving up your valuable time to be with us this morning?

I wanted to begin, Ms Gladstone, with the question of rules of origin. As I understand it, Clifford Chance produced a paper for the CBI that looked at the practicalities and the cost to some businesses of acquiring certificates for rules of origin. I noted with interest that some studies have found that the cost of providing the origin of a product could be between 4% and 8% of the value of the goods. That is an extraordinarily high figure. In some cases, that indeed would be much higher than any tariff, and it does not look like we are going to end up with tariffs. Could you just say a bit more about how widespread that potential cost might apply and what the implications of it would be?

Jessica Gladstone: Yes, thank you. The costs of non-tariff barriers are often more expensive and more costly to business than the tariffs. Let us take the EU and WTO tariffs, for example. This scenario is one of the

examples we are looking at as a baseline measure for the sorts of costs that might be incurred. If you look at that and you compare it to the non-tariff barriers, non-tariff barriers are indeed often more expensive because a lot of tariffs—it depends on the product; they are very wide-ranging—are below 3%.

Non-tariff barriers are very wide-ranging in their nature. The cost is a cost that a business would need to asses on a case-by-case basis. That is because it depends on exactly what the business is trying to do, how it is trying to do it, how heavily regulated its sector is and how those costs break down. This includes the costs of dual certification. If there are two regulations you need to meet, you need double-testing and double certificates to show compliance. It also includes the cost of delays getting across a border. Again, that is something that is hard to factor in until we know how streamlined the future arrangements can be.

Depending on the nature of the business, those delays can be extremely costly indeed. Particularly where you have just-in-time requirements or perishable goods, you cannot afford to have delays at the border. That is where the number comes from. It is from that analysis of those hidden non-tariff barriers.

Q1242 **Chair:** Certainly in previous evidence to us, businesses say they are concerns about those. Can I ask you about testing? At the moment, as I understand the situation, a business can carry out a test on a product to prove to all member states of the EU that it meets the required standards. There is some debate about whether testing that continued to be carried out in the UK after we have left the European Union would be so recognised. If it was not, presumably the testing would have to move to an EU country, even for a product that was originating in the United Kingdom. Is that understanding correct? Is that a risk?

Jessica Gladstone: Yes. The solution would be to have mutual recognition of conformity-assessment bodies. That is something we see in CETA. I heard the discussion earlier where you were talking about the mutual recognition that has been done in CETA. CETA does mutual recognition in some areas of conformity-assessment bodies. That takes you one step towards solving the problem you have described.

Q1243 **Chair:** Fine. Mr Henig, do you want to comment on the question about rules of origin, as well as the cost of other non-tariff barriers?

David Henig: I was actually keen to come in first on the question of conformity assessment. I spent a number of months in effect as an intermediary between the European Union and the US in TTIP talks on that very question. It is correct that, as things stand, there are many products in the EU that require testing, and the only place that testing can be done is within the geography of the EU.

The Canada agreement provides a framework within which individual agreements can be reached for individual products, but—and this is the

important point about EU regulations—these regulations differ product by product. It is very difficult to get an overall framework that says, "Where the EU requires testing, it is all allowed to be carried out within the UK".

The EU has not done that for any other country, so we would have to go through a process of doing this EU regulation by EU regulation. As you can appreciate, there are an awful lot of those EU regulations.

Q1244 **Chair:** Would they or would they not? If you were forced to decide whether they were likely to accept testing that is carried out currently—

David Henig: They will in theory accept that we should be allowed to do this, but we will then need to negotiate on a regulation-by-regulation basis for each regulation in turn. This will be a major ongoing challenge for Government.

Q1245 **Chair:** Is that something that would have to be undertaken and then completed before a final trade deal could be signed? Could you do that after you had signed the trade deal?

David Henig: No, you can do that after. I would imagine that, like CETA, you would have the provision within the trade agreement and then you would have to carry on the negotiations individually. In effect—this is the case with a lot of the detail—you sign a framework trade agreement and then for many of the details you then carry on the implementation.

Q1246 **Chair:** There have been proposals made about—it is a new concept to me—the accumulation of rules of origin or, in the case of the Committee on International Trade, a diagonal accumulation. There is a very helpful chart in our briefing papers that tells us how that would work. Is that a runner? Is it one, Ms Gladstone, the EU might agree to?

Jessica Gladstone: It is very important to preserve supply chains that exist currently. Without that, there will be a lot of shifts in supply-chain reorganisation. As has been mentioned earlier, over time businesses have evolved to rely on the status quo, of course. They do have very highly integrated supply chains. Diagonal accumulation would be a very critical point to include in the trade agreements to make sure those supply chains can be protected where businesses want to continue them.

Q1247 **Chair:** In the absence of that, the choice facing businesses would be either to have more of their supply chain in the United Kingdom—i.e. move stuff away from Europe into the UK—or, conversely, to take it out of the United Kingdom and move it to Europe. Presumably, that would depend on where the balance of the contribution those different suppliers made rested. It would be a company-by-company decision. Would that be correct?

Jessica Gladstone: Yes, it would be. It would depend on many things, including availability of supply. Sometimes there are fewer options available, and that might determine your decision-making. It might also

be affected by the network of trade agreements you are otherwise relying on. If you want to be exporting from the EU to rely on the EU FTAs, that would encourage you to move more. That would be another swing factor to base yourself more in the EU.

I do not want to say "replicated", but if there are equivalent FTAs to the EU FTAs in place, and/or more, for the UK, that would equally change your mind the other way.

Q1248 **Chair:** In the earlier session, we focused in part on financial services. 80% of the British economy is services, and financial services are a very important part of that. I want to ask you both about other services and what you see as the obstacles to getting a good deal so those services can continue to be sold. Are there any services you would particularly like to highlight in terms of the approach we should be seeking?

David Henig: The EU's offer on services—these are their standard schedules, as they are known in trade agreements—are fairly standard. They are pretty similar for all trading partners in free trade agreements. That is what we can expect for the UK.

Where does that leave you? We have to understand how much we lose as a result of that. For example, there are thousands of these reservations that stop companies from doing business. If you want to conduct mining operations in Slovakia, you cannot under the terms of a free trade agreement with the EU. Does that matter to our companies? I am not sure; I have not carried out that work. We would need to look through those schedules in some detail to understand what it was that we particularly would need to negotiate. For some of these, it probably does not matter. If we follow this, there will clearly be more restrictions on UK business activity compared to the single market, but I have not done the individual line-by-line study on what impact that will have.

Q1249 **Chair:** If you take something like broadcasting, for example, that is very important. That may well be not included, in which case there is a bit of a problem. As I understand it at the moment, as long as you have a license from one regulator in one European Union country, you can broadcast to all, but that may not be the case after we leave.

Jessica Gladstone: For services—obviously, broadcasting is an important one—the difficulty that is faced is the fact there are not great precedents in FTAs for services. This is what David is saying. It means you have more of an uphill battle in order to shift the goalposts, in a way, so you have a new mindset that allows you to increase the liberalisation on services and start from a different starting point, in a way.

If you do not get a broad, sweeping commitment for services in the round, there is a challenge. If you start breaking it down and you start getting restrictions added and the commitments being less wide-ranging, you have the challenge of trying to identify which non-tariff barriers will in practice hinder the delivery of those services. You have to identify

what licences will not be issued or will be difficult to be awarded. You have to identify what regulations it will be more difficult or more costly to comply with from outside than it is when they are the only set of regulations you have to comply with.

When you compound it together, that is the challenge of it. You need to break it down to make sure you know what those obstacles are, you know how to write those into the legal text, and you know how in practice that is going to work for the businesses who export their services.

Q1250 **Stephen Timms:** Clifford Chance produced a report about UK access to financial services in an EU-UK free trade agreement. Are your proposals along similar lines to those of the International Regulatory Strategy Group? Can I ask you that, first of all?

Jessica Gladstone: They are very similar, yes. We spent quite a lot of time looking at how that mutual recognition model might work in practice. They are based on similar principles.

Q1251 **Stephen Timms:** At this stage, can you tell us how hopeful you are about a satisfactory agreement on financial services being achieved in the negotiations over the next few months?

Jessica Gladstone: What we tried to do with our model was set out a proposal that could in principle be agreed, if there is the political will to do so. We have used tools that are familiar in the trade world. Mutual recognition is not a new concept. We have used it to build from that principle up to something that would work as a structure to allow financial services to continue to operate, to a large degree, in the way they have been used to. We at least want to allow the significant movement of capital, the liquidity bridge from the UK to Europe and back. We want to allow that to work as smoothly and uninterruptedly as possible.

David Henig: If I may add to that on the reality of getting this negotiated, in a negotiation we will have a number of offensive and defensive interests. Financial services looks like it will be one of our offensive interests. We will have to consider the balance of all of those interests in the negotiation. We only saw yesterday how fishing is a big issue. There are a number of these issues. The question will be about what extent financial services is a significant UK priority in these talks. If it is, I am sure we can make progress on it, but then what will the cost be, if you like, in other areas?

Q1252 **Stephen Timms:** We have had some indications over the last day or so that the EU is open to some sort of arrangement for financial services based on equivalence rather than on mutual recognition. Is there a satisfactory solution based on equivalence, or is mutual recognition really where we have to arrive at?

Jessica Gladstone: Mutual recognition allows more flexibility in terms of future divergence. It allows you to reach the same sort of outcomes without necessarily following exactly the same rules. With equivalence,

you would be more tightly tied to the exact regulations the EU has introduced. In a world where that is politically satisfactory, you could work very well with equivalence. If you need a bit more flexibility, mutual recognition is the way to go. That is why we propose that in our paper: to allow for that dynamic.

Q1253 **Stephen Timms:** Could the City live with an equivalence-based setup?

Jessica Gladstone: I am sure that depends on who exactly you ask. In terms of being able to do business, equivalence gets you there.

Q1254 **Stephen Timms:** Who would be the least happy about an equivalence-based system? Which parts of the City would be most unhappy?

Jessica Gladstone: The drawback with equivalence is the fact that you are no longer outside the EU; you are no longer helping to write those rules. Your influence in creating those rules is not there anymore, so there is therefore the risk that those rules are not written in a way that works best for you. There is a danger with that, but if you have that system in place, then trade itself would be liberalised. It would achieve that goal. As I say, however, it is the rule-taker issue.

Q1255 **Stephen Timms:** I just have two other points on this. First of all, if your proposals based on mutual recognition were secured, how effectively would that deal with the loss of passporting, which we expect to be a result of leaving the EU? Secondly, how would you envisage regulatory divergence between the UK and the EU being monitored and managed in the future under your proposals?

Jessica Gladstone: Our proposal is different from passporting. Everything is different from passporting. It is definitely a step away from that. However, it is based on several limbs. One is mutual recognition at the regulatory level, and that would cover the institutions that are so fundamental: the large institutions that would be able, based on mutual recognition of their regulators that allow them to contract that sort of business, to have mutual recognition of that. You might need mutual recognition on a more individual regulatory rule basis for some of the professionals.

We have divided into categories of who is using the financial services that are being provided, and therefore how much care needs to be taken of them, so there is a grading of that. The more sophisticated the users, the more you can rely on the home-based regulation and the regulators there to authorise that. Going down to the smaller consumer end of the spectrum, on that spectrum you can calibrate what you recognise mutually. You can calibrate how closely aligned you need to see the systems to be. There is an inbuilt function for negotiation in the model. The model allows you a way to have those negotiations, and then the outcome of the negotiation could be as close or as far from passporting as it agreeable to the parties.

Q1256 **Emma Reynolds:** As I understand it, in CETA the most-favoured-nation clause, which covers financial services and cross-border provision of services, means that if the EU were to offer a more generous deal to a third party such as the UK, because we will become a third party in a year's time, then that would automatically be extended to Canada, and it is also contained particularly in the South Korea-Singapore FTA. Do you think that would have an impact on the likelihood of the EU agreeing a comprehensive deal in financial services, in that they would have to extend it to these other countries?

David Henig: In my judgment, unquestionably. The EU will definitely be thinking about this. There is an exception to it for a particularly close deal, but if we are not in that space, and that would be either a customs union or single market deal, then it will definitely be in the EU negotiators' minds that they will not want to go too much further. There are ways to do this. One could again set up the framework that could be on offer to all negotiating partners and then the way you implement that framework can be different for different partners, I would suspect.

Jessica Gladstone: Mutual recognition is one of those ways. If you did have a mutual recognition basis for your offer to financial services, what you can say is, "We will open up the opportunity for others to be mutually recognised as well", but underlying that is a requirement that their regulators are performing in a way that can be mutually recognised by the EU, the UK and those systems. There would be few at the moment that would be so readily able to do that. It does not mean they could not have that opportunity in the future, but that is what it would be. It would be the opportunity to show that you are able to be mutually recognised.

Q1257 **Emma Reynolds:** Your proposal of mutual recognition would require so many other obligations on these other third countries that it may be unlikely that they would take this up.

Jessica Gladstone: It would require them to meet certain standards and require them to have a separate negotiation. It would not just be an automatic extension of the same benefit directly.

Q1258 **Emma Reynolds:** That is really helpful. I want to ask you about something a little bit different. In your paper, Jessica, to the CBI you asked the question, "Can the UK keep the trade relationships it currently has with third parties as part of the EU?" I wanted to ask you that question. Legally, the Government has submitted, as I understand it, something to the EU suggesting that, for the transition, the UK is still considered legally to be a member state of the EU for the purposes of not only FTAs but other bilateral agreements. Is that going to require any sort of negotiation with those third countries that the EU has those agreements with?

Jessica Gladstone: Yes, it would. I saw that in the draft agreement on withdrawal there is also a footnote about this: that the EU will notify other states to treat the UK as if it were still part of the EU for the

purpose of the FTAs that it has. That is fine as far as it goes, but that does not bind those third states to treat the UK that way. Effectively, you need their agreement to do so.

Q1259 **Emma Reynolds:** We need to get their agreement before exit day, so that during the transition those free trade agreements and other agreements would continue to apply to the UK.

Jessica Gladstone: I would say that is the only way to be confident that everybody is on the same page, yes.

Q1260 **Emma Reynolds:** That is very interesting, because obviously that is going to take some time. After the transition, people talk about grandfathering or rolling over the various free trade agreements that we have. What would we have to do to try to roll over some of these agreements?

Jessica Gladstone: It will depend what we are trying to achieve exactly. If you are looking for an agreement in the quickest way possible, then the easiest way to do that would be to take the existing FTA and seek agreement trilaterally, between the EU, the third country and the UK, that the terms of that FTA will continue to apply with the EU and the UK on one side of the promises and the third country on the other. We talked about diagonal accumulation. It would also require that to be built in and for it to be specified there that that is how that would work. You would also need to deal with issues like tariff quotas potentially, so the third country knows, to the extent there are tariff rate quotas in the agreement, whether there is a specific number that can go into the UK versus the EU and how that is allocated across.

Q1261 **Emma Reynolds:** Can I just ask why that is trilateral, if we have left and we are beyond the transition? Some people have suggested we could just cut and paste CETA, for example. We could cut and paste CETA and just put "the UK" instead of "the EU", and have that discussion with Canada; if Canada were so-minded—it might not be and it might want a different deal—we could somehow roll these things over with Canada and with other countries where FTAs have been done. Could you just explain why it is not a bilateral negotiation and why it is a trilateral negotiation, with the EU included?

Jessica Gladstone: It could be a bilateral negotiation. This is why I said it depends what you are trying to achieve, because for the most seamless transition across, to have in effect the same economic bargain that you had before, the trilateral is the answer to that. With a bilateral, a lot will be reopened because the economics of the deal are very different.

The rules of origin would need to be looked at afresh unless you have the diagonal accumulation, even with the EU outside the agreement altogether, which is obviously much more unusual as well—to have reference to a third party. You would need to address all of this. There would be a lot more elements up for negotiation again in a bilateral scenario than in the trilateral, although that is not to suggest the third

country would not necessarily want to reopen issues for discussion in the trilateral also.

David Henig: I would personally be surprised if the EU would want to go along with a trilateral renegotiation, because I cannot see that it is in their interests to do that. We are more likely to be in a bilateral position where, as Jessica says, the other country may well want to reopen something. Certainly, if I was negotiating on the other side, I would.

Q1262 **Emma Reynolds:** Can you suggest how that would work? Would South Korea, for example, want more market access in certain areas in return for something that we would give them? How do you see that?

David Henig: The best example is with South Africa; they have long had a complaint about a certain kind of citrus fruit that is not allowed into the EU, and that is an obvious ask on their part if they were rolling over an agreement with the UK alone. For South Korea, it might be a little trickier because, for example, one of the things that the South Korea-EU agreement gave us was access to their legal services market. That has been a little bit controversial in South Korea, as I understand it. They may want to say, "Can we restrict that a little bit?" It is a negotiation, at the end of the day; we cannot say what will actually happen as a result of that.

There may also be things in there that we would be happy to lose because they were EU-specific things that do not really affect the UK. I would not want to predict how the negotiation would go, but I can predict that there should be a negotiation where most countries would have at least some things that they would ask for.

Q1263 **Wera Hobhouse:** Just to follow on, apart from that, I would say we will end up with a lot of citrus fruit, because we have talked about citrus fruit before.

Joking apart, I understand that third countries will wait when rolling over the free trade agreements to the UK that we currently have as part of the European Union, because they want to wait until they see what our agreement is going to be with the EU before they sign up to anything. Would you say that is the correct information?

David Henig: Some will certainly act like that. Some will think that maybe they get a better deal if they go quickly. I do not think you can make a generalisation about how other countries would respond. They can play their cards in different ways.

Q1264 **Wera Hobhouse:** We are just talking about the rolling over of the agreements. They would not get any better deal. They are getting what they have with the EU and that will continue, so we are not talking about getting a better deal; we are talking about exactly the same thing, but they will still wait to agree to that because they want to see what agreement we have with the EU.

Jessica Gladstone: It makes sense. I have heard this as well, and it makes sense as an approach; this is likely to be what most countries would want to do. Until it is clear what relationship the UK has with the EU, the UK cannot even really say what it is able to give in any concrete terms. Everything will be theoretical until the relationship with the EU can be defined. It could be that, if we are very separate from the EU at the end of all the negotiations, then perhaps the agreement could have been done earlier and it would not have had so much bearing, but until third countries are able to see the direction of travel, it would be a little bit premature to start trying to pen an agreement.

Q1265 **Richard Graham:** Welcome to you both. Jessica, just on the question of mutual recognition, which is clearly going to be an important element to the phase two negotiations, it is encouraging to hear you say that while there are advantages for us, there may also be advantages for the EU in mutual recognition. One thing that is slightly on my mind is what happens now, immediately, for many of our financial and professional companies in the City. Those that have contingency plans—and most of you have—may not want to wait until the withdrawal agreement has been decided before implementing them. Therefore, what do you think the regulators could do now to give reassurance, once we have got through this weekend and the formality of the agreement between the UK and the EU on the implementation phase, that that should be a "taken as read", which would therefore allow those companies not to implement their contingency plans, which normally otherwise would have to be implemented well ahead.

Jessica Gladstone: It is a difficult problem. The implementation of contingency plans is driven by the uncertainty that remains. Even after this weekend, for many there is not enough to build a business plan on until there is a legally binding agreement. Contingency plans may therefore have to continue, because businesses are answerable to their shareholders and to their customers, to be able to continue to provide the services that they do. They will have to take certain steps but, in general, the steps are being taken in a very phased form, so that only what is perceived as necessary to happen now is happening now. Because of the timeline involved, particularly in financial services, that is why you are seeing contingency plans implemented at what may seem an early stage of the political process.

Q1266 **Richard Graham:** You do not think that statements by regulators on both sides of the Channel would help reassure people that what has been agreed can be assumed to have the validity of a legal agreement.

Jessica Gladstone: My understanding, and what I have taken from the discussions that I have heard, is that, because there are so many other elements to the agreement actually going through—because it is contingent on there being a future trade agreement, because it is contingent on a Northern Ireland solution, and because nothing is agreed until everything is agreed—all of that compounded leaves businesses

having to plan with what they know to be the case today, to be able to take measured steps that they can be accountable and responsible for.

David Henig: I doubt in practice a regulator would want to go on the record in the way that you say without having 100% proof. But certainly, when I look at it from a political negotiation point of view, there is no doubt in my mind there will be an agreement.

Richard Graham: David, in terms of the talks that have already started between us and third parties to EU free trade agreements and other agreements with the EU, such as our dialogue partner status with ASEAN, you are quite right to say that there will be those who see that as an opportunity to renegotiate. Of course, that works both ways, because in general the EU FTAs tend to be very protectionist on, for example, agricultural issues, particularly where there are not just various citrus fruits but other products where we do not actually produce these things but southern Europe does. On the other hand, they tend not to have the same focus on services that we would probably hope to have in order to expand our exports. Some of those countries will be less sensitive to that, because it is not necessarily competing with their own offer.

The concept that there may be some renegotiations involved is not necessarily a negative one. How do you see the balance playing out, given that the ultimate risk, if another country does not wish to accept the status quo rolled over, is simply that there is no free trade agreement?

David Henig: Indeed, and I am aware of your expertise within the ASEAN markets and your frequent visits there on behalf of the UK Government. What I would say about this is that part of this is a capacity constraint. How many negotiations can we realistically be carrying out at any one point in time? You are asking a lot if we are going to have full negotiations with all of these different partners. Another thing comes back to what I mentioned earlier: do we know what our interests are? In the services area, it is too big for us to say, "We want more in services". Which services? What is it that would make a difference to our companies? That is the sort of question we need to be asking a lot more.

We talk about these opportunities. Can we actually put some numbers on them? Can we put some specifics around them, such that we know with all of these negotiations what it is exactly that we are asking for? Similarly, in terms of the defensive interests around agriculture, are we sure that we are not going to kick up a fuss among some of our own communities about what we are potentially changing? There is a lot of work to be done in that, and that is why trade negotiations are typically not quick.

Q1267 **Richard Graham:** Indeed, but that would argue for precisely why the approach of, "There may be areas that you want to change; there may be areas that we want to change. Let us have that discussion, but let us roll this over during the implementation phase and come back to it", is surely

the most simple, pragmatic solution, would it not?

David Henig: Indeed, although I would add that for some countries that is more difficult. The countries that are very closely linked to the EU—Norway, Switzerland and Turkey—possibly do not get enough attention in terms of rolling over existing arrangements, because they are more complicated in the way that one would potentially roll them over. How do you roll over those existing arrangements? You could maybe do it in the implementation period but, beyond that, Turkey does not have a free trade agreement with the EU; it has a customs union.

Q1268 **Craig Mackinlay:** It is good to have your expertise with us this morning. Mr Henig, you said earlier on that testing of things—goods—has to be done within the geography of the EU. I am just looking around the room: the LED lights here, no doubt this pen—wherever we look—possibly what we are wearing, t-shirts that are sold in Primark from Bangladesh. Are you saying that every one of these products has to be tested in the EU before it can be sold? I am sure that is not what you are saying.

David Henig: Fortunately not. Fortunately, the EU, for a large number of products, has something called the supplier declaration of conformity, which allows the supplier to assert that something meets all known regulations and standards. This is an argument for staying within the European standards community, because one of the ways you demonstrate that conformity is to say, "This was done according to this EU standard".

Q1269 **Craig Mackinlay:** What does the EU do to test that? Take this pen, doubtless made in China.

David Henig: There is probably an EU standard on pen manufacture in terms of what you need to do to be safe. I remember checking, because this is the exciting life you sometimes have to lead, whether there is a standard for pen lids. There is: they have to have a little hole in them, just in case they become a choking risk. Almost certainly, unless someone is going to prove otherwise to me, that is self-declared.

Q1270 **Craig Mackinlay:** So the pen has not had to come to the EU to be tested within the geography.

David Henig: It has not been tested. It is more complex products that will be tested: chemicals, for example, and a lot of the agricultural products; they will actually have to be tested. This will be regulation by regulation, as to whether each product requires testing by a third party or it can be supplier-asserted that it is a safe product.

Q1271 **Craig Mackinlay:** So it is not quite as complicated as we might have first thought. I often apply the iPhone test. There are going to be all sorts of bits and pieces in an iPhone. You are going to have a battery made heaven knows where. You are going to have the processor—maybe an ARM one—made here, perhaps. It is going to have a huge variety of bits and bobs. How has that been tested to EU standards, with that variety of

bits and pieces in an iPhone? Are we actually moving, in many of these things, to an internationally accepted standard on complicated products?

David Henig: For telecoms, computer products and aviation, it is my understanding that generally it is more international. For most other products, it remains at an EU level.

Q1272 **Craig Mackinlay:** I do not know where the television on the wall was made. How would that be tested?

David Henig: Even for rules of origin now, because what is inside all the little products is so complicated, there is the Information Technology Agreement that covers that and says, "Let us actually not worry about this. It is all tariff-free. Let us not worry about how we are evaluating the different origins". The testing for some products is according to international regulations. I am afraid I am not an expert on every single product, and I do not think anybody is.

Q1273 **Craig Mackinlay:** I am just trying to get a real life example, away from your opening statement. It is not actually everything that is tested.

David Henig: It is not every product, but you do have to go through all the regulations to see if you need testing on that particular product and how that affects us. There is just lots of hard work to do on all of these individual products. What is the way that the UK needs to be affected by all of these regulations?

Q1274 **Craig Mackinlay:** I know for a fact a 747 is the same 747, no matter where it is flown in the world.

David Henig: Yes, and that is subject to international regulations and international checking.

Q1275 **Craig Mackinlay:** Okay, so the reality is not perhaps quite as complicated for all items as we might have first thought.

For you, Ms Gladstone, we talked about equivalence, which is the first basket of what the Prime Minister was talking about a while ago. You have then got mutual recognition, perhaps, as the second basket. The third basket was where we may want to diverge completely away from EU rules.

Just giving one example that the EU has been banging on about for many years—the financial transaction tax or the Tobin tax—it seems to be very keen on it; it all depends what part of the political spectrum the EU Commission seems to inhabit at the time. If we say that we want equivalence so that we can supply to EU consumers, but at the same time for our domestic market we want to go a third-basket route, with something different from our own markets. If the EU, in its wisdom, over the next few years says, "We are going to go for a Tobin tax, an FTT, for financial services", which the UK has always been opposed to, because it is a form of a taxation that we would just say is not for us, could we say, "We will still do the trade with the German pension fund in the City. We

will collect the FTT for you and give it to you, but for our domestic market we are going to not collect an FTT because it is not what we want to do"?

Could we say, in different types of financial services, "Yes, we will comply with exactly what you want for some—raise tax that you want to collect on an EU-wide basis—but for us, for our domestic market, we are going to choose to do something entirely different, and that suits us"? Would that be possible? I think for FTT it really would, but for others it may be more complex.

Jessica Gladstone: In practice, it will depend on what you are asking for—what you are wanting to do domestically that is different.

Craig Mackinlay: My worry is if we just said, "Yes, we will go for equivalence". We would not want an FTT.

Jessica Gladstone: If you say equivalence across the board, then that would require you to align with the regulations, so you would not have that option. If you want to carve out for domestic activities, then that is likely to have to be something that is negotiated as part of the deal. It is a complicated question, so it will depend on what exactly you are trying to do and how separate it really is.

Q1276 **Craig Mackinlay:** There is not an FTA with China, but they tick the box for their manufacture of a pen to say that they do it the right way. They can then manufacture a pen to do whatever they want to do in China. That is their freedom. In the Canadian deal, does it say, "If you sell into the EU market, it has to be here. If you want to do whatever you want to do domestically, it can be there"? It may be on GM crops, the use of pesticides or all sorts of things. I would have thought there are carve-outs where we can do something different for ourselves, but if we want to deal with the EU or elsewhere, or with the US, we have to comply with those standards.

Jessica Gladstone: In principle, that is exactly right. It is for the trade that crosses the border that the requirement of equivalence would kick in. However, the reason I am hesitating with financial services is because of the nature of the products and the complexity. To underpin a viable working proposition going forward, you will need a lot of regulatory co-operation and supervisory co-operation, to allow that to run smoothly. That will be a major underpinning for the whole thing. If that is in place and is working well, and there are elements that can be carved out and are seen to be able to be carved out that have no impact on the rest of the financial infrastructure, then it should be possible.

Whether it is possible in practice to be able give the confidence that the financial ecosystem will not be infiltrated with different regulations for the domestic setting on the side is another question. It would depend. In principle, I hear what you are saying and agree, because it is the border-crossing access to the markets that is being regulated. However, as a word of caution, financial services are very complicated and would need

to be looked at really carefully in terms of how you are trying to divide that up and whether that is possible in practice.

Q1277 **Chair:** Mr Henig, can I put to you the question I put to Mr Campbell-Bannerman earlier? Do you think there is any difference or incompatibility between the approach that the EU took in respect of services in the TTIP deal, which I know you did a lot of work on, and the approach they are currently taking to the UK in respect of services? I would be very interested to hear your view on that.

David Henig: There are two things perhaps being slightly mixed up there. One is the services as in the market access; the other one is in the regulatory coherence elements. In terms of the market access to services, it is entirely consistent; what the EU is doing with the UK is what they did with the US and with Canada, saying, "Here is our standard schedule. This is what our starting point will be if you want to go down the free trade agreement route".

The regulatory coherence part of TTIP was obviously something quite ground-breaking. It was intended to be ground-breaking for the EU and the US. There was going to be a huge degree of dialogue, of potentially moving towards shared regulatory solutions, with two regulatory superpowers coming together to discuss this. First of all, that dialogue was never completed. It was not because of that. It was making some progress; I do not think we would have had one regulatory superpower but we were making progress on the dialogue, but other parts of TTIP really did not happen. That would be number one.

Number two, in my mind, is that one of the reasons why we were making good progress was that the UK were one of the main parties pushing for this to happen. To do new things like that in the Commission, you need some member states to really push for things to happen. We were doing that and we were making some progress. If we are not now on the inside, trying to push for this to happen, will the EU go back towards a more comfortable position with Canada?

I have had some mixed signals. I had somebody tell me in the last few days that some of the things we put forward for TTIP are now being thought of for the implementation of Canada, so there is some prospect that we can have a greater regulatory dialogue than the EU traditionally has. They will very much go on precedent, and the precedent is with Canada and will be with Japan, so that is where they will start. There is not that much inconsistency with what happened in TTIP.

Q1278 **Chair:** That is very helpful. Can I ask you both whether briefly you would like to comment on the ratification point that we were discussing, and this judgment? What would be defined and a mixed agreement and therefore require ratification by national and regional parliaments, as opposed to not? We could be interested in your view.

Jessica Gladstone: The ECJ Singapore judgment has cast the portfolio investment and the ISDS—investor state dispute settlement—as elements that make it a mixed agreement and that therefore require, as you heard, ratification by individual member states by their own processes, which can include subsets of the states as well.

We heard earlier how this might lead the EU to take a different approach, so that it is able to fast-track trade deals without having to worry with the investment side of things. That could be the direction of travel, if they need a signature, and if that is the case with the UK—that they are trying to do the deal as quickly as possible; of course there are time pressures here—then I can see that there could be a situation where the UK-EU agreement excludes those elements that require ratification on all levels. I would recommend that it would probably be revisited later, because they are still important aspects of a trade agreement. Given the closeness of the relationship that we would be striving for, for the UK and the EU, they should not be left out altogether forever. It is very important for investors that that dispute settlement mechanism is available to them.

David Henig: Just on the regulatory elements as well, the more we want to put in, the more likely we are to move into areas of mixed competence within the EU. The Singapore judgment suggested that a fairly standard FTA could be done under EU confidence, but I am hearing that we want to go for a more ambitious FTA, which therefore may then be mixed. It is up to us again.

Chair: If you brought in elements like defence, foreign policy, security co-operation, because there is a whole range of things that are covered by the partnership, then the answer might well be different.

Q1279 **Emma Reynolds:** That was my question as well. Can you just explain what makes a trade agreement mixed? For example, under Article 4 agriculture, fisheries and consumer protection are all shared competences. I thought that if those things were included, which they will have to be, that would make it a mixed agreement. Is that so?

David Henig: I am fairly sure that if it is exercised shared competence that has already been exercised by the EU, they can be included.

Jessica Gladstone: That is my understanding too.

David Henig: There are also unexercised shared competences or member-state competences. Defence and foreign policy are very much member-state competences. We had an example where we were possibly going to head into forestry within one of the chapters of TTIP. That, oddly enough, is a member-state competence as well, or may be unexercised shared competence, at which point that is then a mixed agreement.

Q1280 **Emma Reynolds:** Just to be clear, shared competence would not breach the threshold to be mixed, but exclusive member-state competence does

breach the threshold.

David Henig: As long as it is has been exercised. It is to do with the difference between exercised shared competence, where the EU has done something with it or has already got regulations in place, and unexercised, I think. I fear I am getting away from my full area of expertise here.

Jessica Gladstone: My understanding from the Singapore judgment is it is about areas where member states have all delegated that power for the Commission to deal with the trade negotiations and the trade agreements on their behalf; that is why the trade agreements can be signed at that level, without needing to go back for ratification, in the round, in terms of the general trade elements of it, except for the few that the Singapore judgment identified, with those few elements being carved out as things that do require ratification at every level.

Q1281 **Stephen Timms:** It is not clear to me how helpful this would be in practice, because if one can take bits out of the agreement in order to fast-track it, you have still got to reach an agreement on those bits eventually. In the end, if they all end up going to Wallonia et al, do you not have the same problems, ultimately, that you would have if they were all in the one agreement? Is there a benefit for splitting some of these things out?

Jessica Gladstone: The benefit of splitting it out would be if you could sign a complete agreement that was recognisably a comprehensive trade agreement. Therefore, in the exceptions to the MFN provisions under the WTO, you have your free trade agreement that is comprehensive, and you have that signed and all of that is binding and in effect already, even if it takes longer to agree annexes to that trade agreement that deal with investor state protection and dispute settlement, which require the separate ratification. It would really just be a timing thing, so that you could still have the bulk of your agreement in force in advance, with the other elements to follow.

Q1282 **Chair:** Can I just ask a couple of other things? Is your assumption that data and recognition of our data standards will be included in such an agreement? From the evidence we have had before, we would certainly need that. Is that your assumption?

Jessica Gladstone: We would really need it. It is pretty crucial that it is.

David Henig: My assumption is it will be extremely painful.

Q1283 **Chair:** Why do you say it will be painful?

David Henig: Because the EU is really not comfortable with sharing data. It is increasingly putting more conditions on it. I have not gone into this in detail. They have not actually published what they are going to be moving towards in trade agreements, but, for example, the plurilateral

Trade in Services Agreement is essentially held up over differences in allowing data to flow between the EU and the US. It is something that we will need to do some work on, to make sure that we are in a good place on it.

Q1284 **Chair:** My second question was whether it is your understanding that data can be included in an agreement. When we first encountered the concept of the data adequacy decision, on a visit to see tech industries in east London, it became apparent that that is a regulatory decision taken by the Commission in respect of third countries. Can that be overridden by an agreement, where the deal says, "Yes, the EU will recognise the way in which data is handled in the UK"? In other words, take it out of the hands of the Commission, as a normal regulatory decision in respect of a third country, and make it part of the deal. Is there anything that leads you to think that we could not seek to get it in the agreement? That is my question.

David Henig: I would be surprised if you could do it in that way. It would be more a conditional inclusion, such that data is allowed under the terms, and the regulator will determine whether that actually happens. It is the notion of the free trade agreement as a framework within which other things are then conditional on a finding that we are adequate in the way that we handle EU data.

Chair: Thank you very much indeed. On behalf of the Committee, can I say to you, Mr Henig and Ms Gladstone, that we are very grateful to you for coming? Your evidence has been really helpful and illuminating.