



Select Committee on the European Union

Uncorrected oral evidence: Progress of negotiations on the future UK-EU relationship

Wednesday 7 October 2020

2 pm

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Members present: The Earl of Kinnoull (The Chair); Baroness Brown of Cambridge; Lord Cavendish of Furness; Baroness Coultie; Baroness Donaghy; Lord Faulkner of Worcester; Lord Goldsmith; Baroness Hamwee; Lord Kerr of Kinlochard; Lord Lamont of Lerwick; Baroness Neville-Rolfe; Lord Oates; Baroness Primarolo; Lord Ricketts; Lord Sharkey; Lord Teverson; Lord Thomas of Cwmgiedd; Baroness Verma; Lord Wood of Anfield.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 20

Witnesses

I: Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster; Lord Frost, Chief Negotiator, Task Force Europe.

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Examination of witnesses

Michael Gove MP and Lord Frost.

Q1 The Chair: Welcome back, Lord Frost and Mr Gove, and thank you very much for coming this afternoon. Obviously, we all appreciate how busy you are. Welcome generally to the European Union Committee here in the virtual House of Lords.

I will briefly explain the format for the benefit of those watching. The Committee will ask questions in turn, and I will call each Member in turn. Each Member will have up to five minutes to ask their questions and then we will move to the next Member. As we only have an hour of your time this afternoon, I would appeal to both questioners and answerers to keep their answers crisp and to the point all round. Not all Members will be able to participate in normal time, and I hope that there might be a bit of extra time at the end for all Members who were not able to participate in normal time and who have indicated that they would have questions if there is extra time.

Before we get into the main bits of the session, congratulations to you, Lord Frost, first, for your elevation to the peerage—you are very much welcome to our ranks in the House, and I was there when you were inducted—and, secondly, on becoming the National Security Adviser.

My very first question is: could you explain how you are able to discharge that duty—or has that duty yet begun, given what is going on in the Brexit negotiations at the moment?

Lord Frost: Thank you for your kind words. The answer to your second question is that I am not discharging the second duty yet. That is the short version. I am focusing on the EU negotiations that we will be talking about. I expect to take up that role as soon as this process is substantively finished, and at the moment one of the deputy national security advisers is acting national security adviser for as long as this gap, which we hope will remain short, is in place.

Q2 The Chair: That is very helpful. Thank you very much. Moving then to the main bits, the Prime Minister, of course, had a discussion with President von der Leyen at the weekend. In the light of that and all the recent developments, could you tell us when you think the Brexit negotiations will finish?

Lord Frost: Yes. The first thing I would like to say is that we are working very hard to get an agreement. We would obviously very much prefer to have one—that is best for both sides—but if we cannot reach an agreement, we will be content to trade on Australian terms, as we say, and believe that we will prosper very much if we do so. But we are working very hard to try to get there.

As to the timescale, I would refer you to the Prime Minister's statement that he made on 7 September setting out some of the constraints in our minds about the process. I do not think there is much I could add at the moment to what he said on 7 September. It is obviously very important—

and I am sure we will talk about this—to bring certainty to our many stakeholders about what is going to happen at the end of the year and on what terms. My job is just to work as hard as we can over the next two weeks to see if we can get an agreement in place by the 15th.

The Chair: There is a saying that a week is a long time in politics; 7 September is a lifetime away in political terms. What he said then, out of interest and just to put it on the record, is that “there is no sense in thinking about timelines that go beyond” 15 October. You are telling us that that really is a hard deadline.

Lord Frost: The statement says what it says and the Prime Minister has made his position very clear in that. I think that both sides in the negotiation need to take that fully into account when they are planning the next two weeks. Obviously, as we approach the 15th, and it is very close already, I will have to advise the Prime Minister on whether the conditions in his statement have been met or not, and we will have to consider the situation at that point.

I would only add that he was also clear in his statement on 7 September that our door would never be closed. Even if there was no basis for a free trade agreement, there is a good deal that will be worth talking about before the end of the year. There are a lot of practical matters that we would need to cover. In any circumstances, I would expect that to be happening. There probably is not much more I can add to what the statement says.

Q3 **Lord Sharkey:** Welcome, Mr Gove and Lord Frost. Following up on Lord Kinnoull’s question, can you give us some idea of what needs to have happened by 15 October in order to pave the way for a deal? What are the next steps, assuming an agreement is reached?

Lord Frost: We have made quite good progress so far, in my view, and the statement I put out at the end of last week sets that out. This is a hugely wide-ranging agreement, and in many areas the landing zone and the nature of the agreement is pretty clear, if not exactly pinned down yet.

What needs to happen between now and then is that we need to make progress primarily in the areas where there are big gaps, notably fisheries but also some of the level playing field issues, and to some extent governance. We need to bring some clarity to the economic content of parts of the free trade agreement, because there are one or two bits of it that are not yet clear and where the terms of the EU’s offer are not yet certain. Those are the main things in terms of outcomes that need to happen.

Obviously, a huge amount of textual work needs to be done thanks to the position of the EU not to work on text for the last six weeks to two months. That will have to come after the 15th if we can get the outline agreement to that point. That is the reality of it now.

Lord Sharkey: What are the next steps after the 15th, assuming that

agreement is reached on that date?

Lord Frost: There will then have to be clarity on the precise text. Realistically we would get only an outline agreement on the main outstanding points. There is a good deal of textual work that would need to be done. Obviously, there are a lot of texts knocking around in the discussions, but we will need to settle them down. There are one or two areas that are substantively important, such as the exchange of offers on services, which we would need to do rather rapidly on the basis of precedent. Then, of course, from the EU's point of view it would need to translate and tidy up the texts and sign.

We will then need to have a process at our end. Our assumption is that there will have to be primary legislation for at least some elements of an agreement as wide-ranging as this. Of course, the EU will have to take it through the Council and through the European Parliament, so there really is quite a lot to do, even after the 15th, to get everything in place and the agreement in force by the end of the year.

Lord Sharkey: I notice that the Commission has extended the equivalence for our CCPs until mid-2022, I think. Can you give some idea of when decisions on the other financial services equivalences may be reached and published? I mean ours and theirs, not just theirs.

Lord Frost: We are both going through the process, and at this point there is not much more I can say on the timing on either side. Obviously, we would want to bring clarity to that as soon as we possibly can, but I would defer to the Chancellor on that subject. We await decisions from the EU on most of the other areas, so we are in their hands. I think the political declaration said that this should have been sorted out by the end of June, so it is a pity.

Lord Sharkey: Have we already arrived at our own assessments?

Lord Frost: There is not much more I can say. Certainly, the Treasury has been paying a huge amount of attention to this and has been in fairly close dialogue with the EU over the whole subject. When the Chancellor is ready to make an announcement, I am sure he will do so.

Lord Sharkey: I am sure he will. Thank you very much.

Q4 **Lord Thomas of Cwmgiedd:** Can I ask you about the consequences of Part 5 of the UK Internal Market Bill and the reaction of the EU by commencing proceedings. It has been said that the EU has acted in breach of its obligations, particularly the obligations of good faith. Was that the position and is it currently the position?

Michael Gove MP: The provisions there are intended to be a safety net. They are intended to ensure that if there are areas that require to be addressed, as there are, first the Joint Committee should address them. Then, if no agreement can be reached in the Joint Committee, an arbitral process, of course, kicks in. We reserve the right, and the legislation is

there, to ensure that the integrity of the United Kingdom is protected if no agreement has been reached.

In addition, the EU made it clear that it would be launching its own legal proceedings, and we received the letter, of course, from President von der Leyen last week in which she signalled her intent to do so. We entirely understand the reasons why the EU feels that this is an appropriate course of action for it, but without prejudice to that letter we believe that progress can be made through the Joint Committee.

More broadly on the question of good faith, while negotiations are proceeding and, as Lord Frost has pointed out, proceeding in a way that gives us cause for steady optimism, I would not want to pronounce definitively on that question.

Lord Thomas of Cwmgiedd: If you are to take so serious a step as to say that people are in very serious breach of an agreement that entitled the British Government to put forward Part 5, surely it is only right that the evidence be put into the public domain. Otherwise people think there is no evidence.

Michael Gove MP: Again, there are two parallel processes here, and I would not want to prejudice the likely success of any conversation in the Joint Committee or the success of negotiations with respect to the future relationship. Previously, in the House of Commons, I outlined some of the reasons why a fair-minded third party might consider that the EU had not been negotiating in quite the way we would have wanted, but I am hopeful, and indeed there have been clear signs, that since the approval of the Bill in the House of Commons the talks have been proceeding in a constructive way. So I do not think it would be helpful in relation to the negotiations to say much more.

Lord Thomas of Cwmgiedd: Before taking a step that many think has had very serious adverse consequences for the UK's reputation, surely it must be right to be prepared to say precisely why you are doing it and why the other side has behaved so badly or, if not, go to the dispute resolution mechanism rather than breach the agreement yourself. It is very difficult to understand the Government's position.

Michael Gove MP: I would argue that we have not breached the agreement but, of course, the EU takes a different view. What we have done is prepare the necessary safety net in the event that we were not to reach an agreement. As a general principle, maintaining the integrity of the United Kingdom is a responsibility that all Governments have to take seriously, and this Government certainly do. It is in that spirit and to deal with that eventuality that the legislation has been agreed by the House of Commons.

Lord Thomas of Cwmgiedd: But integrity has a double meaning. There is the territorial integrity, but there is also the question of the integrity of someone who stands by his agreement. What I find very difficult to follow is why the evidence or the material basis on which you say it is in breach

of these obligations cannot be put into the public domain so that the integrity of the UK as a Government who believe in the rule of law can be vindicated.

Michael Gove MP: We absolutely do believe in the rule of law, and I think that the law officers' advice on this matter makes that clear, but I would also say, as I said in the House of Commons and as others have said, that people will look at the negotiations and at the positions that both sides have taken and will be able to form a judgment about good faith. Given the sensitive timing of these negotiations at the moment I would not want to reprise those criticisms, because I am hopeful and confident that progress can be made.

Q5 **Lord Kerr of Kinlochard:** Can I ask the Chancellor of the Duchy to be a little more precise on at least one of the allegations? The Prime Minister said in the House that the EU was holding out the possibility of blockading food and agricultural transport in our own country. When and how did you detect that? What exactly was the evidence that came to your attention? Did you spot the Commission building a navy? What exactly did you do about it when it came to your attention? Presumably, you immediately contacted the Joint Committee co-chairman, Mr Šefčovič?

Michael Gove MP: I think it is a matter of public record that at the time the Prime Minister made the point that the UK had not yet received third-country listing for the export of products of animal origin. Third-country listing, of course, exists for countries that include Mongolia and other nations which the EU—

Lord Kerr of Kinlochard: Mr Gove, I can understand that, but the allegation was that it was proposing a blockade inside the United Kingdom. What was the evidence for that?

Michael Gove MP: If the UK is not or will not be granted third-country listing, that means that one could not export any food or products of animal origin at all to the European Union. It is not that there would be checks; there would be no opportunity for us to export. That would mean that because the rules of the Union customs code apply in Northern Ireland, the UK would in those circumstances not be allowed—

Lord Kerr of Kinlochard: But—

Michael Gove MP: —I am just answering the question, Lord Kerr—to send food under the law, and we take the law seriously, to Northern Ireland.

The granting of third-country listing is an autonomous process. As Lord Frost said earlier, autonomous processes are meant to be concluded without prejudice to the success of the negotiations. We would have thought that third-country listing would have been granted by June this year, given that we maintain the same standards as before. It struck, I think, several fair-minded observers as curious that the EU would not grant that and that a courtesy that it would extend to Mongolia it would not extend to its partner, the United Kingdom, at that point. Again, fair-

minded people might have concluded that this was perhaps not the most constructive approach.

Nevertheless, Michel Barnier has subsequently indicated that there will not be a problem with third-country listing, something for which we are grateful.

Lord Kerr of Kinlochard: If you thought that the EU was not acting in good faith, why did you not invoke Article 5 and the formal arbitration and dispute resolution provisions in Articles 168 to 178 and possibly the safeguard mechanism in Article 16 of the protocol? How do you think it would work? You say it is a safety net that you are taking in the Internal Market Bill, and you also said in mid-September that if we were to use the provisions in the Internal Market Bill we would also invoke the safeguard dispute resolution procedures in the treaty. How would these things work in parallel? Why did you not invoke the formal procedures in the treaty that we ratified? How would you be able to invoke them if in practice you were operating the override that the Internal Market Bill is designed to give you?

Michael Gove MP: We have taken the approach that we have because we are patient, reasonable and constructive. Rather than going to the mattresses, as it were, by invoking those processes, we thought that it was important to try to maintain, through constructive dialogue in the negotiations on the future relationship and in the discussion in the Joint Committee, as constructive an approach as possible.

As outlined earlier, we hope to reach agreement in the Joint Committee. Should it become impossible to reach agreement at the Joint Committee for any reason, of course there are dispute resolution approaches that we can take, but we need to be certain that if those dispute resolution mechanisms have not resulted in the resolution of that dispute by 31 December, we are in a position to use this safety net.

The Chair: Thank you very much for that intervention, Lord Kerr. Could I ask Lord Lamont to take up the running from here?

Q6 **Lord Lamont of Lerwick:** Good afternoon. What are the remaining substantive gaps between the UK and the EU on the protocol's provisions on goods at risk in particular, exit summary declarations, and state aid?

Michael Gove MP: We have made our position clear both in the command paper that was published earlier and subsequently. I cannot go into the detail of discussions in the Joint Committee. They are governed by confidentiality, as the withdrawal agreement makes clear. We are making progress in those discussions in a constructive way. Our position is well understood by the EU, but, again, when it comes to the EU's own reasoning, all of us in commenting on that have to rely on public statements.

I think it is fair to say that the EU recognises that when it comes to exit summary declarations, as indeed Hilary Benn has pointed out, these requirements are not strictly necessary for the safety and integrity of the

single market. When it comes to goods at risk, the very idea that goods at risk should be remitted to the Joint Committee for discussion is an acknowledgment on the EU's part that for the protocol to apply in a way that gives support to the principle of unfettered access there needs to be a resolution that means that the people and businesses of Northern Ireland have their lives disturbed as little as possible.

Lord Lamont of Lerwick: Why would it not be acceptable to define goods at risk on the basis of the differential between the EU and the UK tariff on a product in order to determine the likelihood of cross-border smuggling? After all, if there is a big differential, and in many areas the EU tariff would be considerably higher, that constitutes a risk. One can see the logic of the EU's position, and it is at risk with that.

Michael Gove MP: That is a very fair point, but it is also important that goods that are manifestly destined for consumption in Northern Ireland should not be subject to this additional process.

Lord Lamont of Lerwick: If by that you mean big companies like Tesco or Marks & Spencer, which might have authorised trader status and which are supplying goods, it is obvious that they can verify where the smallest sausage has actually gone and where it is destined. But if you are not doing it on the basis of the tariff, surely the market will assert itself and other people will come along who will take advantage of the tariff differential and seek to avoid it unless you operate on the basis of the differentials between the tariffs.

Michael Gove MP: I entirely agree with your first point about authorised economic operators and major businesses, supermarkets in particular. Again, without prejudice to the conversations that are going on in the Joint Committee, it is well understood by the EU. We want to absolutely minimise it. One of the things that we would want to stress is that the nature of trade between Great Britain and Northern Ireland is of far greater volume and value than any trade between Northern Ireland and the Republic. We are alive, of course, as everyone is, to the smuggling risk, but our view is that you should not be in the position of paying tariffs of any kind for goods that remain in circulation within the United Kingdom.

Lord Lamont of Lerwick: Yes, but they would be rebated. You say that the trade that goes through Northern Ireland is very small, but surely if you have an incentive, in time the market will develop, entrepreneurs will develop, and they will take advantage of that situation.

Michael Gove MP: Yes, but there are other ways in which you can make sure that if people are operating in a way that is designed to circumvent the law, there are means of interdicting them and preventing them from doing so.

Lord Wood of Anfield: Good afternoon to you both. I would like to go back to Part 5 of the Internal Market Bill briefly. You say that Part 5 is put in there as a safety net, a contingency plan. Presumably that means that

if your concerns over implementation of the protocol are met, you will put forward amendments to remove Part 5 from that Bill. Is that correct?

Michael Gove MP: We will wait and see.

Lord Wood of Anfield: If you do not mind, what are you waiting and seeing for? If it is for a contingency that is then no longer a contingency or a possibility, presumably you would not need that part at all, would you?

Michael Gove MP: I think we will just have to wait and see what happens in the negotiations.

Q7 **Lord Wood of Anfield:** Okay, thank you. Let me move on to measures on tariffs. Is it still the Government's intention to bring forward measures relating to tariffs on Great Britain-Northern Ireland movements in the forthcoming Finance Bill? With the cancellation of the Autumn Budget, it is not clear when that will be. Is there an alternative legislative vehicle provided for now?

Michael Gove MP: If necessary, we will bring forward such provisions in our Finance Bill, yes.

Lord Wood of Anfield: On state aid, does the Northern Ireland protocol's potential reach-back enmeshment into Great Britain state aid policy complicate the prospects of a wider agreement on state aid? Is that proving a problem that you are wrestling with?

Michael Gove MP: I do not believe so, but let me defer to Lord Frost on this aspect of the negotiations.

Lord Frost: Not really, is the answer. It is obviously part of the background to the discussion, and with such a significant issue unresolved in the Joint Committee it is inevitably colouring the negotiations. Having said that, after a long period in which we had been making little progress on subsidy policy, we are having somewhat more constructive discussions on that subject, although unfortunately the gap between us is still pretty wide and a lot of work has to be done.

Lord Wood of Anfield: I have one last question, very briefly, going back to Lord Lamont's umbrella question at the beginning. Stephen Barclay told us a year ago that exit summary declarations would be needed. He initially said that they would not be needed, and then he said they would be needed for Northern Ireland-Great Britain movement of goods. At various points in the last year, different Ministers have said different things. Is the position now that they will be required or they will not be required?

Michael Gove MP: These are exit summary declarations going from Northern Ireland to Great Britain.

Lord Wood of Anfield: That is right, yes.

Michael Gove MP: Our position is as outlined in the command paper: that they are not necessary for the effective functioning of the single market.

Lord Wood of Anfield: But that is not yet agreed with the EU in your negotiations.

Michael Gove MP: Again, we are making progress.

Q8 **Baroness Donaghy:** Good afternoon to both of you. In the light of the compromise document that the UK has submitted, which apparently lays out a series of principles on controlling domestic subsidies, could you say what those principles are and how they should underpin any UK-EU agreement on state aid?

Lord Frost: I can say a little bit, although obviously the confidentiality of the negotiations limits the amount of detail.

Taking one step back, normally in a free trade agreement there are no or very limited specific provisions on subsidy policy or on state aid. The purpose of the free trade agreement is to regulate the relationship between the two systems by way of transparency on both sides, with a way of settling disputes and so on. They do not typically contain much actual content that defines each side's subsidy arrangement, and that is the position we started this discussion from.

We have heard what the EU has been saying about needing a degree of reassurance, and we respect the fact that the EU has dropped its original proposal that we should simply adopt the EU state aid system and dynamically align with it, tout court. That is now not part of this discussion, which is good.

We are only just beginning a discussion about whether it is possible to go further than you normally do in a free trade agreement and agree some provisions that, as it were, shape and condition the subsidy policy on both sides. We already know what the EU state aid policy is. Whatever is agreed has to be compatible with that.

As you say, we put in a text last week with some provisions on that. Without going into too much detail, we are looking at high-level principles. I do not think we are thinking in terms of extensive text setting out the detail of how we design our system. That will be for the consultation that will come later this year or early next and the legislative process, if there is one after that.

I will give examples of the sorts of things that we are thinking of. If subsidies are granted, for example, there must be clear statements that they must contribute to and be justified on public policy or market failure grounds. They must be proportionate. There must be openness and transparency about what they are. They must be aimed at bringing about a degree of change in behaviour. They must be the right instrument for the purpose, and you should not in general subsidise if there are negative effects on trade and investment.

Those are all commitments that we are willing to make and that we think are important parts of a good subsidy system, given the traditions that we have in this country of how a subsidy system works. Obviously, we must maintain freedom within those principles to design a system that works for the UK once we have ended the transition period.

Baroness Donaghy: Thank you. That was extremely useful. Talking about the traditions of this country, while we were in the EU we were the good guys. We set the standards and virtually created the framework, yet we did not even utilise the flexibility that was built in, unlike the French and Germans. So I am interested in why this has become a particular point.

Michel Barnier has said that they fully respect the regulatory autonomy and the sovereignty of both parties, but he talked about something that needed to be “operational and credible”. You yourself, Lord Frost, have said: “we continue to seek an agreement that ensures our ability to set our own laws in the UK without constraints that go beyond those appropriate to a free trade agreement”. I think, as a former chair of ACAS, that that is beginning to look like a deal, but I wonder what other obstacles there are.

Lord Frost: I feel that we are some way from a deal at the moment, if I am honest, but we are at least having a decent discussion of this and what is possible and what is not possible. You are right to point out that historically the French and the Germans have subsidised very much more than we have; the French twice as much, roughly, and the Germans three times as much.

In a way, I still find it a bit strange that this issue has loomed quite so large compared to some of the others, given the track records on both sides, but there we are. We are in a new situation at the end of the transition period and the EU must come to its conclusions as to what it wishes to see. Whether we can satisfy that I do not know yet. I think it is quite difficult to agree the level of detail that it might wish to see, but we will see what we can do.

Baroness Donaghy: What about the provisions of the UK-Japan trade deal? Is that a basis on which an agreement could be reached?

Lord Frost: The UK-Japan deal essentially copies over what was agreed in the EU-Japan trade deal in this area and it does include some very minimal prohibitions on subsidies, which are not unlike the principles that we have already put forward. Obviously, we can discuss that, but the discussion that we need to have is about the level of principles that shape the future arrangements that we have and not explicit determination essentially depriving us of discretion here about how it is done.

Q9 **Baroness Brown of Cambridge:** Can I pick up on Baroness Donaghy’s comment about what the stumbling blocks are in the discussion of these principles the UK has put forward and ask whether one of the stumbling blocks is the fact that the EU does not think we have appropriate

governance and dispute resolution safeguards? Can you comment on what governance and dispute resolution safeguards the EU is seeking in relation to state aid, and on the Government's response to those?

Lord Frost: I do not want to go into too much detail on this, because it is the subject of a live negotiation and the question of dispute settlement goes beyond purely state aid subsidy policy into the whole breadth of the negotiation. You are right to identify it as an issue that needs to be resolved.

The difficulty with dispute settlement arrangements is that they need to balance both parties' requirements for certainty and clarity against the reality that some of these areas are important measures of national policy, and a degree of discretion needs to be retained within them. The right dispute settlement arrangement varies from area to area. It is fair to say that both sides, both us and the EU, in our initial text back in March did suggest that some areas of particular interest to both sides should not be covered by dispute settlement, and that just reflects that reality.

Dispute settlement and how it works is definitely an issue for the whole of the level playing field arrangements, not just subsidy policy, and it is a question of finding the right balance that reflects the needs on both sides.

Baroness Brown of Cambridge: But are we not as concerned about governance and dispute resolution in relation to things that the EU might do in the future? They are our closest partner, so they could do things that would be very destructive to our industries as well as potentially vice versa.

Lord Frost: You are absolutely right. Whatever dispute settlement is agreed in this area, and that is a genuinely open question, I can quite see us being ready to use them just as much as the EU in future. As I was saying, other EU countries quite often subsidise more than we do and that could definitely have impacts upon us. Yes, they are open to both sides.

Baroness Brown of Cambridge: Do we not have a common interest in them being tough and that we both agree that we are going to obey the rules?

Lord Frost: We have a common interest in a dispute settlement arrangement in this area and in others that works but balances the needs on both sides. It is true that in certain areas of particular sensitivity, which is not just level playing field, the need for certainty is also balanced by the need for discretion and national policy. We have to find the right balance between those two things.

Q10 **Baroness Brown of Cambridge:** Can I move on to what remains to be resolved in relation to non-regression from social, environmental, labour and climate standards? I find it extraordinarily surprising that on climate standards, for example, here we are as president of the COP, having passed our net zero legislation, and we are struggling to convince the EU

that we will meet its climate standards. Those seem to be areas in which we have had all sorts of assurances in the UK that we have no intention of reducing our standards. Is that really still a challenge in negotiations?

Lord Frost: I think it is one area where the EU might be being a bit overambitious in what it seeks to get us to commit to in the treaty, but there is no real argument about the underlying commitment. We committed in the political declaration to not weakening our standards in the areas of environment, climate and labour, as prevailing at the end of the transition period, in order to encourage trade and investment, and we have made an offer to that effect. Our original text was clear on that point back in March, and we stand by it.

The remaining negotiation is really about whether that baseline could move in future, which we are a little bit sceptical about because it is not in the political declaration as a commitment, and some of the other processes around it. I think the EU may be being a bit overambitious in the detail of the way it wishes the treaty to work, but we have been clear that this is a country of high standards in those areas and we stand by the commitments we made.

Michael Gove MP: It is also important to recognise that some people view the EU as though the Commission were Plato's guardians, disinterested upholders of virtue, and that whatever it decrees is right and that other countries and states are potential rogues who need to be brought back into line. If one looks at the EU's record on climate change matters and compares it with the UK's, I think the UK compares very favourably to the European Union.

If you look at how the EU has operated in the past, it will sometimes, under a high-sounding claim to advance virtue, seek to fetter the discretion both of member states and of neighbours, because its aim is not necessarily to achieve that virtuous goal but to exercise control. It is important when we look at what the EU says to distinguish between the noble motives that it sometimes professes and the rather less noble behaviour that it often exhibits.

Q11 **Baroness Neville-Rolfe:** I so appreciate both of you coming. I wanted to ask the Chancellor about some of the preparation work he has been doing for D-day, as it were.

Will the necessary checks and processes—and infrastructure, more importantly—for the movement of goods both to and from the EU, at Dover for example, and to and from Northern Ireland be ready for 1 January 2021? Indeed, how aware are people and businesses of the new order?

Michael Gove MP: The second part of the question is very important. We are putting the systems in place now and we are working with business in order to make sure that they understand what is required of them and that we understand what they require of us.

It is the case that there is some concern about the level of preparedness overall among business. That is why we have had the publicity campaign that we have had. It is also why in the House of Commons a fortnight ago I published our reasonable worst-case scenario about what might happen in Kent, not because it was a prediction but just because it was an opportunity for me to share with others the steps that we have taken to be ready, and the consequences if we did not work together in order to be ready.

Evidence suggests that, for example, a third of businesses think that the transition period will be extended. I can completely understand why they might have thought that in the past, because Parliament set various deadlines and then moved them, but Parliament has been very clear that is the legal position—the position shared by the Leader of the Opposition now—that the transition period should not be extended, so time is running out.

Baroness Neville-Rolfe: Do you think the checks and processes are actually ready? When will the Smart Freight system and the GVMS, for example, be fully operational? Are there contingency measures in place to manage any delays relating to the rollout? Has there been a dummy run? You know I come from business, so forgive me for asking these questions.

Michael Gove MP: No, they are spot on. We are working with the hauliers and others in order to make sure that the Smart Freight system is ready, which will enable people to know if an HGV is ready to cross the border, and we are working with business to refine the GVMS system as well. The important thing to bear in mind about the Smart Freight system is that it is there specifically to provide business with reassurance. If people did not engage with the system—if an HGV, for example, were to seek to head towards Dover without having engaged with that system—that would be a risk for that business. It is in all our interests to make sure that the system works collectively, and that work is going on at the moment.

Baroness Neville-Rolfe: And Northern Ireland?

Michael Gove MP: Again, we are investing in expanding the SPS checks that will be required, so investment is going on in the port of Belfast and in Larne. As the Committee knows, Larne is the port where live animals enter the island of Ireland at the moment, so there is a facility for checks on live animals there. We are expanding the facilities, particularly in Belfast port, which is the major port for the transport of products of animal origin from Great Britain into Northern Ireland. Work has been done by DAERA, the Northern Ireland Executive's equivalent of Defra, in order to ensure that those facilities are in place.

Baroness Neville-Rolfe: Thank you. It will be amazing if that is all ready.

Q12 **Baroness Couttie:** Good afternoon. I join everybody else in thanking

you both very much for agreeing to talk to us this afternoon. Building on what Baroness Neville-Rolfe was saying, how will the issuing process for the Kent access permit work? How would it link with Smart Freight and how will the permit be enforced?

Michael Gove MP: The three go together, as you quite rightly point out. Were I a haulier, I would go on to the Smart Freight portal and fill out the information, explaining whether or not I had the correct documentation, transit accompanying document or whatever it might be, and then I would be told that I am green to go—great—or not.

Were I then to take my goods into Kent, having been on the portal and not having been given a green code, I could be picked up and turned back or be subject to a fine as I approached Dover. Of course, there would be exemptions specifically for local hauliers operating within Kent and manifestly taking something from, say, Deal to Ramsgate or vice versa.

The purpose, as most people have accepted, is to ensure that those who are not in a position to clear the border at Calais do not make a journey that will only impede those who are then smoothly entering the single market.

Baroness Couttie: I always find my heart sinking when I go on to a website and am told that I need to provide documentation. What sort of documentation will be required when businesses go online? Is it the sort of thing that will be easily and readily available, or will it be quite arduous to get these passes?

Michael Gove MP: No, if businesses have done their preparation beforehand, it will be easy. I completely sympathise with you on the difficulties of websites sometimes, but once one fills in one's name, address, billing code and Amex number for the first occasion, subsequent visits to the website are easy. If businesses have a clear understanding of what they require, the Smart Freight portal should be a relatively straightforward and easy thing to access, and, as a result, hauliers will be able to whiz through.

Q13 **Baroness Couttie:** In the event that no agreement is reached, how and when will the Government intensify the contingency preparations for the end of the transition period? We are running out of time, really.

Michael Gove MP: Those preparations are intensifying even as we speak. Whether or not we end up with a negotiated deal, a Canada-style free trade agreement, or we do not have a negotiated outcome and we exit on what have been widely understood as Australian terms, in both cases much of what business is required to do will be exactly the same. In either case, we will be outside the customs union, outside the single market, and appropriate declarations will be required.

We are intensifying our efforts at preparation, because while we are obviously keen to get a deal we will not do a deal at any price. The principles that Lord Frost and the Prime Minister have outlined are clear.

If the EU insists on an intransigent approach in the weeks ahead, then very well, we will be ready for that eventuality. It is emphatically not our preference, but one of the reasons why the work is going on is to be clear that we can accept that if we conclude that no good deal is on offer. The existence of Kent access permits, the work that is being done in Ashford, the steps that we have taken to have a safety net through the UK Internal Market Bill are all steps to ensure that this country is not held hostage in a negotiation process but that we honour the vote that the British people made in 2016 and again in 2019 to ensure that we can be properly independent. No one will be happier than me if we conclude an agreement, but we have an absolute obligation to ensure that the country is ready in the event that we do not.

Baroness Couttie: Do you think that businesses are aware that there is not much different that they are going to have to do? I get the impression from businesses that they are concerned that they do not know what they have to do in a no deal.

Michael Gove MP: That is a fair point. One of the things that does concern me, funnily enough, is that if we do secure an agreement, which obviously would be the best outcome, some will think, "Oh, that's great, I do not need to make many changes, if any". This Committee is another opportunity for me to stress that whether or not we secure a negotiated outcome and an FTA or we do not, businesses need to be ready. As Baroness Neville-Rolfe pointed out earlier, it will be a new world on 1 January.

The Chair: Thank you very much. Before we come to the last question in normal time, I wondered whether you both would be able to stay on for a short period of extra time. Five members of our Committee did not get allocated a question in normal time, and each has indicated that they would like to ask a question. The concept is that they would each have three minutes in which to ask a question, and that would lead to us finishing at about 3.15 pm. Would your diaries permit that?

Michael Gove MP: I am afraid that Lord Frost has to leave at 3 pm, but I can stay for an additional period thereafter.

The Chair: We quite understand that and that is very kind of you to stay on. Perhaps we can press on then with a question from Lord Ricketts.

Q14 **Lord Ricketts:** Perhaps I will make use of Lord Frost's remaining few minutes. I wanted to raise the issue of security and justice co-operation, which does not get as much public attention as the other issues we have been talking about and yet is vital for the security of everyone in the UK and the EU.

My ears pricked up when I heard Michel Barnier say after the last negotiating round on 2 October that there had been "positive new developments" on "the respect of fundamental rights and ... freedoms", which are a "precondition" for our future "police and judicial co-operation". Lord Frost, you also said that you had been encouraged that progress had been possible on law enforcement agreement.

How likely do you think an agreement now is, and how close will it come to the current levels of access we have to the crucial EU databases?

Lord Frost: We have made some good progress here in the last two to three weeks of negotiations. Of course, it is an area where logically we are not competing. One of the problems has been that in the past the EU has brought the mentality of competition from the economic bits of the treaty to this, where it clearly makes no sense. We seem to have moved on from that a little bit in the last few weeks and we are moving forward reasonably well. It is a little bit fragile, there is a bit of stabilisation of it to do, and we are not quite there yet, but I am encouraged.

As you know, there are some 10 to 12 specific capabilities that we would want to retain access to or involvement in. I am reasonably optimistic that we will get many of those agreed between us. I do not think we will get them all for various reasons, but we will, I hope, get many.

The other issue that has been bedevilling this is the question of how exactly we refer to the ECHR and particularly to our domestic implementation of the ECHR, which the EU began by asking for some right of oversight of. We are beginning to untangle the various threads that that discussion tangled up earlier, and I think I can see a way forward on that that satisfies all sides' needs. We are not there yet, but I think I can see it, and I think that is what Michel Barnier was referring to when he made his comments last week.

So we are not there yet. There is still quite a lot to do. It could still not work, but I am reasonably positive that it will.

Q15 **Lord Ricketts:** Another crucial cross-cutting issue in this whole area and more widely is, of course, data and the need to have a data adequacy ruling from the Commission. What are the prospects for that now looking like? Does the fact that the European Court of Justice has struck down the EU-US data sharing agreement complicate the issue for the EU-UK agreement, given that some of the same concerns about the treatment of data for security purposes may be in play? If we do not get a data adequacy agreement, does that mean that all the UK information and the requests and the things that we have fed into EU systems will be deleted on 1 January?

Lord Frost: This is an autonomous process and not part of the negotiations as such, so obviously the decision on data adequacy plays into quite a few areas of the negotiations. This is being led by DCMS with the Commission, and there are some pretty intensive discussions going on. Obviously, it was slightly complicated by the Schrems ruling in July, which had to be digested, and there was the Privacy International ruling yesterday, which again has to be digested by both sides before we can move forward. So it has gone a bit more slowly than we thought.

Our view is that we will be operating the same data rules as the EU at the end of the transition period, so there is no reason at all why we should not be considered to be adequate, and I hope that is the conclusion that the EU comes to at the end of this process. It seems like a logical one.

Forgive me, we can perhaps follow up separately in writing on the detailed points you raised as I am not leading this bit of the negotiation myself.

Lord Ricketts: Okay. Thank you very much indeed.

Q16 **Lord Teverson:** It is good to see the Chancellor here today. One of the things that does not always get a lot of coverage is rules of origin. I remember very soon after the referendum being approached by Honda at Swindon, who were very concerned for the motor industry on this particular issue and it has not been covered very much.

Where are we at the moment? We heard from the motor industry that it was pretty unhappy at the fact that rules of origin were going to apply. Is there still any flexibility there? What sort of percentage is it likely to be? Where have those negotiations gone? Just before the meeting, I looked at the guidance for rules of origin for the CETA agreement between Canada and the EU, and I noticed that that was 52 pages long. What industries, other than the motor industry, do the Government think this will be vital for?

Michael Gove MP: You raise an incredibly important point. The principle of rules of origin and the principle of diagonal cumulation—the Committee well understands diagonal cumulation and the idea that a finished good can be considered to originate from the UK even though there are some components that may come from elsewhere—is an important part of any trade negotiation. But at the risk of frustrating the Committee, this is an area that is part of the negotiations that Lord Frost is engaged in. We are very clear about the importance of ROO and cumulation not just to the automotive sector but to other parts of manufacturing, but I cannot say more at this point about the success or otherwise of the UK achieving its goals in those negotiations.

Lord Teverson: In the letter which the Society of Motor Manufacturers and Traders quoted, it sounded, to put it rather colloquially, as though we had run up the white flag on rules of origin. Is that the case?

Michael Gove MP: Again, I cannot provide detailed commentary on what has been going on within the negotiations. I think it is fair to say that one needs to wait until the end to see in which areas people might consider that the UK has secured negotiating wins and in which areas it has settled for less than a perfect outcome. I am sorry to be a source of frustration for the Committee again, but I cannot say more at the moment.

Lord Teverson: My own Committee, the EU Environment Sub-Committee, had a meeting with the chemicals industry about REACH this morning. We had an industry in front of us that was very concerned about the extra cost to it of a parallel UK REACH while still having to comply with EU REACH in order to export. Can I ask you to note that? I am sure you are aware of it, Chancellor, but it is something that industry—our second-largest manufacturing industry—is really concerned about still.

Michael Gove MP: I understand. Again, it is a consequence of not being within the jurisdiction of the ECJ as well as other factors, but I appreciate the concerns the chemicals industry has outlined. You very fairly represent them, absolutely.

Q17 **Baroness Hamwee:** Chancellor, good afternoon. Can I take you back to Lord Wood's question about the need for a Finance Bill in relation to tariffs on GB-Northern Ireland movements? You said that there would be a Finance Bill. The question is when. I appreciate that government always avoids talking about future legislation, but this is in a very particular category.

Michael Gove MP: Yes, it is, but I am afraid I cannot give you an answer.

Baroness Hamwee: Is it something that you will try to get through both Houses by the end of December?

Michael Gove MP: Yes.

Q18 **Lord Faulkner of Worcester:** Thank you, Chancellor, for staying with us this afternoon and, indeed, for coming to see us again.

Can I take us back to the movement of goods both to and from the EU, which was the subject of Baroness Neville-Rolfe's and Baroness Coultie's questions earlier? You spoke about Belfast and Larne as being the Northern Ireland ports, and we are obviously familiar with the preparations for Dover and the consequences in Kent of that.

What preparations are being made by other English Channel ports that are used by cross-Channel freight traffic companies and what arrangements will be in place in places like Newhaven, Portsmouth and Southampton? Are they going to experience long delays as well or will there be a streamlined process for them?

Michael Gove MP: Thank you very much; it is a very important point that you raise. While we accept that the overwhelming majority of roll-on roll-off traffic goes across the short strait between Dover and Calais, other ports are important. Some ports, of course, are primarily container rather than roll-on roll-off ports. To take Newhaven as an example, a small but still vitally important port, additional investment there will make sure that there is a border control post for SPS checks. All the Members of Parliament and I think all the local authorities affected have been written to by either Lord Agnew or Julia Lopez in my department to explain what additional infrastructure may be required, and obviously we work with the local resilience fora to look at any traffic management plans.

Again, I come back to the point that you, Baroness Coultie and Baroness Neville-Rolfe made, which is that, of course, government has the lead responsibility here, but if we can work with business to make sure that business is ready, or as ready as possible, we can minimise disruption for all.

Lord Faulkner of Worcester: You will be aware, of course, that in the evidence we have been taking from businesses in Northern Ireland they say that they are very unhappy, they are not ready, and they do not feel the Government are listening to them.

Michael Gove MP: It is certainly fair to say that, for the reasons we have outlined and the decisions that still need to be taken in the Joint Committee on the operation of the Northern Ireland protocol, Northern Ireland businesses know proportionately less about what might be required in the future than other businesses. Through the business engagement forum that we have set up and the provision of the trader support service that will relieve Northern Ireland businesses of additional costs and so on, the Government are doing everything they can to help Northern Ireland businesses to prepare. Yes, there are still one or two details that need to be resolved through the Joint Committee before we can give Northern Ireland businesses the certainty that they deserve.

Q19 **Lord Oates:** Thank you, Mr Gove, and I echo the thanks to for you staying on. I appreciate that. Lord Frost said at the beginning of the discussions if the UK and the EU were not able to conclude an agreement: "we'll be content to trade on Australian terms". I think you repeated something similar yourself in the evidence you have given.

Putting aside the obvious differences between Australia and the UK in our proximity to the EU and the deeply integrated supply chains, when the Government say, "We'll be content to trade" on these terms, whom does that "we" refer to? Is it, for example, the view of the business community, the farmers, the NFU or the service industry? Who does it refer to?

Michael Gove MP: The Government.

Lord Oates: Given that you will accept, I am sure, that the business and farming communities and all other significant sectors of our economy will not be content to trade on those terms, can you give us a sense of your recognition of that in trying to ensure that we have a deal and your understanding of the impacts that decisions, such as to put the UK Internal Market Bill before us, will have on the possibility of getting that deal?

Michael Gove MP: There are three very important points there. First, as I mentioned earlier, it is our preference to have a deal. Of course, in the absence of a free trade agreement we know that particular sectors of the economy will be affected more than others, and you quite rightly pick up on two. In the absence of a free trade agreement, the nature of the tariffs that the EU would insist upon would have an impact on the farming sector, particularly the red meat sector and sheep meat exporters, and it would have an impact on EU agri-food exporters into the UK. You are quite right to draw attention to that. We are aware of that and have contingencies as a result.

Similarly, as we heard earlier, the automotive sector, again because of the tariffs that might apply, will be a sector that, in the event of a failure

to secure a free trade agreement, will require additional focus on the part of government to support it. We do understand that. I do not think that we are blind or blasé about that. We are absolutely focused on securing a free trade agreement if we can.

Secondly, of course, the election result was clear; the country voted for a Government who had stated clearly that, come what may, we would be out of the single market and the customs union at the end of this year. That was the basis on which the election was fought and won.

Thirdly, the UK Internal Market Bill was brought forward for at least two reasons. Whatever view one takes of the wisdom, attractiveness or otherwise of leaving the European Union, there are certain provisions that we need to put in place, because over the last 40 years some of the rules of our own internal market have been the rules of the EU single market. Of course, Part 5 of the Bill has attracted questions in this Committee and, indeed, outside. We put that in as a safety net, not because we sought to influence the negotiations through it. It is important to draw that distinction.

To be fair to the EU and others, whatever their views about the Bill it is clear that they also would like an agreement. One reason why we do not have an agreement yet is that both sides recognise that there cannot be an agreement on any terms and that both sides have their sovereignty and interests which they need to uphold.

The Chair: Thank you very much. We come to our very last question, from Lord Cavendish.

Q20 **Lord Cavendish of Furness:** Thank you, Mr Gove, for answering our questions. This question from me seeks to look beyond the immediate negotiations and to whether consideration has been given to enhancing diplomatic capacity following our departure from the EU with a view to normalising and then sustaining relationships with the EU and individual member states.

Michael Gove MP: I think that our relationship both with the European Union and with individual member states matters. It is a hackneyed phrase but a true one: we would like to have a special relationship with the European Union after 31 December. There are so many reasons why we would wish to co-operate as sovereign equals. We have a community of shared interests, which is important. We also have strong relationships—bilateral, multilateral and plurilateral—with all the member states. We need to make sure that we have a strong diplomatic panel.

We are extraordinarily lucky that at the moment we have outstanding ambassadors in the European capitals—the head of UKMis, Sir Tim Barrow; our man in Paris, Ed Llewellyn; Sebastian Wood in Berlin, and others—who do a fantastic job for us. We are very lucky to have such a strong diplomatic corp. Of course, we need to make sure that those friendships are kept in good repair and that we augment the work of our diplomats in every way possible.

Lord Cavendish of Furness: Thank you. That answers my question, I think.

The Chair: Chancellor, thank you again for being so generous with your time today and for the frankness with which both you and Lord Frost have answered the questions.

We look forward to seeing you again, but I am afraid that will be quite soon, because having only had an hour this afternoon, which was very understandable because of your diary commitments, we had to crop both the breadth and the depth of our questions. There will, of course, be important, and we hope positive, developments in the next 10 days or so, so we look forward to seeing you in the very near future again. We wish you every success in the forthcoming negotiations.

With that, I declare the evidence session over and thank you again.

Michael Gove MP: Thank you.