



Business, Innovation and Skills Committee

Oral evidence: [Transatlantic Trade and Investment Partnership](#), HC 804–iii

Tuesday 20 January 2015

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Witnesses including written evidence where submitted:

At 9.30 am

- Allie Renison, Head of Europe and Trade Policy, Institute of Directors
- Elisabeth Roderburg, TTIP Adviser, British American Business
- Emanuel Adam, Policy and Public Affairs Manager, British American Business
- Dr Adam Marshall, Executive Director of Policy and External Affairs, [British Chambers of Commerce](#)

At 10.30 am

- Kate Ling, Senior European Policy Manager-NHS European Office, NHS Confederation

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Members present: Mr Adrian Bailey (Chair), Mr William Bain, Mr Brian Binley, Paul Blomfield, Mike Crockart, Rebecca Harris, Ann McKechin, Mr Robin Walker, Nadhim Zahawi

Questions 233-330

Witnesses: **Allie Renison**, Head of Europe and Trade Policy, Institute of Directors, **Elisabeth Roderburg**, TTIP Adviser, British American Business, **Emanuel Adam**, Policy and Public Affairs Manager, British American Business, and **Dr Adam Marshall**, Executive Director of Policy and External Affairs, British Chambers of Commerce, gave evidence.

Q233 Chair: Good morning and welcome. Thank you for agreeing to give evidence to our inquiry. We know who you are, but for voice transcription purposes, could you introduce yourselves, starting with a rather more hirsute Dr Marshall?

Dr Marshall: Thank you, Chairman. I thought I would join you in that trend. I am Adam Marshall; I am the Executive Director for Policy and External Affairs at the British Chambers of Commerce.

Allie Renison: I am Allie Renison. I lead on Europe and trade policy for the Institute of Directors.

Elisabeth Roderburg: I am Elisabeth Roderburg. I am a TTIP Adviser with British American Business.

Emanuel Adam: My name is Emanuel Adam. I am a Policy and Public Affairs Manager at British American Business in London.

Q234 Chair: Thanks very much. May I stress to start with that we have a lot of questions to ask in a very short time, so brief and pointed answers would be welcome? Some questions will be to everybody; others will be person-specific, and even for those that are addressed to everybody, do not feel you have to answer if the points that you would have made have been made by the previous speaker. The first question is to all. The financial benefit to Europe of TTIP has been estimated at £100 billion plus, £10 billion of which would accrue to the UK. First of all, do you agree that this is a reasonable assessment? Who would like to lead on that? Dr Marshall.

Dr Marshall: It is impossible to calculate the financial benefit of something that is still in a black box. Our position is that those who are cheerleading, whether they be in business—particularly multinationals—or the Commission itself, who have those very large numbers, and also those who are very much against this agreement, who warn of hellfire and damnation to come, are probably all in the wrong. It is impossible to put a financial benefit number on TTIP until we know what its content is.

Q235 Chair: So, basically, you would at least agree with organisations like the World Development Movement in so far as the financial benefits that would accrue to Europe and Britain are not really calculable.

Dr Marshall: I would agree with any organisation that is being cautious on the numbers.

Q236 Chair: Would any others say anything different from that?

Elisabeth Roderburg: British American Business, as you know, Mr Chairman, has been a very strong proponent of the Transatlantic Trade and Investment Partnership, and has been the pre-eminent transatlantic organisation putting an effort into TTIP.

Chair: Yes, I know. Could you just say whether you agree with this?

Elisabeth Roderburg: Yes, but that background is important. Through the roadshows that BAB has run across the country, in more than 12 cities in the UK, we have been speaking with local businesses and collecting evidence. Emanuel will get back to you on that. We have also had a role as the secretariat for the all-party parliamentary group on European Union-United States trade and investment, which you are familiar with, Mr Chairman. That group has had a series of meetings looking at individual sectors and the importance

of those sectors for the UK economy, and the potential impacts on those sectors, and I can get back to that. We have collected specific numbers.

In terms of the study, I think most economists will agree that any modelling is an indication of a trend. I believe that the CEPR study that you have referred to is underestimating the potential benefits of TTIP.

Q237 Chair: You have done these roadshows. You say you have talked to businesses. Arising from them, are you able to get a more accurate indication of the potential benefit to at least industries in particular sectors and regions?

Elisabeth Roderburg: The sectoral discussions we have had, bringing in trade associations and representatives from business, have given us an indication of the potential impact for, for example, the chemical industry, the pharmaceutical industry, the textile industry and the automotive industry. In terms of the roadshows, there is anecdotal evidence that has demonstrated what the potential gains are for small and medium-sized businesses around the country.

Q238 Chair: You can submit both research and anecdotal evidence to base that on.

Elisabeth Roderburg: Yes.

Q239 Chair: Are we in possession of that research yet?

Elisabeth Roderburg: The research is not a piece of research; it is studies presented by the trade associations and the businesses themselves, and yes, we are in possession of that.

Q240 Chair: More importantly, are we?

Elisabeth Roderburg: Yes, it has been distributed to MP members of the all-party parliamentary group and is available on British American Business's website.

Q241 Chair: May we have it? I was going to ask what evidence you have commissioned. I take it that is your contribution.

Elisabeth Roderburg: No. Could I add on that I do not disagree, Mr Chairman, that we would find it extremely useful to have more specific and tangible evidence? British American Business has been calling for that, and has even discussed with Government the usefulness of having that type of study, which the UK Government supported in the United States, which was made available.

Q242 Chair: Have the other organisations commissioned any particular research?

Allie Renison: We are in the middle of undertaking an SME case study report that is a bit similar to one that the Atlantic Council published which looked at what some of the barriers were anecdotally and what sorts of benefits SMEs would stand to gain from it. We are doing something quite similar and hoping to publish in the next month.

Could I come back to the question, though, on the expected economic and financial gains? It is really important on both sides for an honest debate to proceed on TTIP, to be able to make concessions. Let us bear in mind that the CEPR study, which was commissioned by the European Commission, is one of four studies. There was the initial one that pre-dated the start of the negotiations with the high-level working group between the EU and US. That had an even higher estimate, so it is worth noting that the CEPR study looks at different scenarios. You have a limited scenario where you are looking at perhaps a 50% to 75% reduction in tariffs, and then perhaps a 25% reduction in actionable. There are a whole slew of different technical non-tariff barriers, but there are only some that are looked at as being actionable, and the CEPR study, in a limited scenario, looks at a 25% reduction in those barriers.

You have to be honest in saying, “How can we guarantee that we are going to get to those numbers?” and that is a concession that perhaps those who are leading the case for TTIP need to make. We need to see a lot more negotiating texts published. The Commission has just published some of them very recently. You can understand why they were not published originally, because they are very not friendly to the layman. They are texts for negotiators, effectively. But we do think it is worth saying, from a business perspective, that you need to be a bit more honest about making concessions about what is feasible, particularly with a trade agreement where 80% of the expected gains are expected to come from non-tariff barriers. Those are a little bit more difficult to model. If you really want to get people grilled on the numbers, you have to try and get the econometricians in, because their numbers perhaps stand up to scrutiny the best.

Q243 Chair: Adam, did you want to add anything to that?

Dr Marshall: I have no intention of commissioning research among business communities up and down the country on what is still a moving target. If the target stops for a moment, we might do.

Q244 Chair: I will just come on to my second question, if you could answer it fairly briefly. What proportion of the £100 billion that was originally estimated do you think will come from tariff reductions or reductions in regulation—non-tariff barriers?

Allie Renison: The broad consensus has been, across all the studies, that 20% is expected to come from tariff reduction and 80% from non-tariff barriers, and that includes technical barriers such as trying to reduce duplication around testing procedures and licensing, even trade facilitation, customs procedures, red-tape reduction, and then reduction in what they call SPS issues—sanitary and phytosanitary standards—which deal with food safety issues.

Q245 Mr Walker: We have talked about the £100 billion figure, and there is widespread recognition that that is an estimate, and depending on the way the deal comes out, that could be a very different figure. We have also seen research from the Bertelsmann Foundation that measures the varying impact of TTIP on different European countries and shows that, in a maximalist scenario of removal of barriers and deregulation, the UK stands to gain more than any other country. It is about 9.7%,

I think, potentially on GDP. Do you recognise that element of it, given the UK's greater trade with the US, and do you know how that would change in different scenarios, depending on how far the deal was to go?

Dr Marshall: We do recognise that, in the Bertelsmann study and others, the UK could be a major beneficiary in the scenario of massive liberalisation. But what a lot of these studies do not ask are some UK-specific questions where we still have concerns and that could bring those numbers down. For example, would that maximalist liberalisation erode some of the UK's existing comparative advantage in trade with the US? Businesses perceive that we have that comparative advantage over some of our EU colleagues based on shared culture, shared language, easy-to-understand court systems, etc, and there are questions arising from businesses about whether that comparative advantage would vanish and, therefore, bring those numbers down. The same thing goes for the UK's role as a front door for a lot of US investment in Europe, a role we have played very successfully over time. Would that particular advantage be eroded in the event of a full liberalisation? I do not want these comments to sound negative: we are instinctively in favour of free trade, but we think that a lot of the research that has been done has not addressed some of these questions very specific to the UK but rather has been done in the wider European context. We think this Committee and others should take those questions on board.

Q246 Mr Walker: That is a very useful prompt in terms of being an area to explore, because just as it is logical that we might stand to gain more by starting from a higher trading point, we ought to make sure we are not losing a competitive advantage within the EU.

Allie Renison: A lot of that has to do with the extent of how ambitious this agreement is going to be. If you are exporting manufactured and processed goods, you probably stand to gain quite a bit. The steel industry is still quite protected in the United States. In agriculture, the dairy market is almost impenetrable for a lot of producers here. But for example, in financial services, you are probably aware that it is, for the time being, off the table, because the US does not want to budge on having regulatory co-operation as part of the discussions. The UK, the EU and in fact several trade bodies representing financial services both in the US and the EU very much want that to be part of the discussion. For now, that is off the table. If that remains off the table, that would probably underwhelm what the UK is going to get out of the deal.

Elisabeth Roderburg: The interesting thing with the Bertelsmann study is that it points to types of advantages that other models do not measure, and one of those, as has been referred to, is the common shared language or cultural heritage. It also focuses on the size of the trade and draws the conclusion that if the trading relationship is large, your chances of improving that trading relationship are stronger. Again, Mr Chairman, we should be looking at tangibles and specifics. If the auto industry, as they have, say that the non-tariff measures that are duplicate measures represent a 25% cost for them, I do not think anyone in this room does not recognise that that would be important to remove, and that that would be beneficial to trade from the UK auto industry. For the UK textile industry, which sees the US as an important market, you have a 19% tariff on a cashmere coat and a 16% tariff on a cashmere pair of slacks; if you remove that tariff, it will be important for the UK textile industry, especially as a growth market.

We keep hearing references to the level of ambition in the agreement. The level of ambition when it comes to tariffs is not in dispute. The level of ambition when it comes to tariffs is total removal of all tariffs. One problem with all of these studies, when it comes to assessing the value of removing tariffs, is that they cannot model potential growth in exports in areas where tariffs today are prohibitive and there is no trade, for example in the dairy sector. We see references all the time to the level of tariffs being extremely low. That is an aggregate average of 3%, but tariffs are up to 300% on some issues. I have the numbers from the WTO on tariffs on individual tariff lines that are prohibitive; there is no export, but that does not mean that the UK cannot move into those areas. So, yes, we can discuss these economic models back and forth, but it is more important to look at the practical and tangible and specific issues that businesses are identifying and focusing on, and what that could mean.

Q247 Chair: Did you want to add to that?

Emanuel Adam: I have just a quick comment from my side—from someone who is responsible for our collection of evidence. I think that the advantage for the UK to benefit from TTIP is reflected in what we have learnt from companies all over the country. We have met companies that are ready to export but sometimes face certain barriers. If those were to be removed—and we have examples—they would be exporting to the US.

Q248 Mr Binley: Tangibles and specifics: let's stay with those for a while.

Some pretty positive claims have been made specifically for the SME sector with regard to TTIP, and yet the SME sector has been remarkably difficult to encourage to export. What is the real truth behind those two, almost clashing, concerns?

Dr Marshall: If I can start with an anecdote, a company I know very well in Northamptonshire—

Mr Binley: You have done your homework.

Dr Marshall: —spent two years trying to break the US market. They are a company probably known to you, Brian.

Mr Binley: Come on: name them.

Dr Marshall: I am not going to do that. Of course, they were slowed down by state procurement laws and differences across state boundaries. It took them quite a long time to crack the market. They are a successful company. They are in there now. They are doing fine. It took them quite a long time. That is emblematic of what a lot of SMEs face. Now, SMEs start their journey to the United States thinking, “It will be easy because of what is shared between the two countries.” They finish that journey very often having learnt a very important and very expensive lesson in doing business overseas in a market that has a lot of unfamiliarities as well as familiarities.

So, when it comes to the claims being made for TTIP for SMEs, I try to screen my SME members from those and ask them practical questions about their own business journey, because what is more important to me is that they end up getting the support that they need from colleagues at BAB and their local branches in the States, for example, and from us here in the UK, and they get over their individual practical issues, rather than get dazzled into attempting to crack a market they may not be ready for.

Chair: May I bring in Ann now? You have touched on some of the issues she wishes to raise, but, Ann, you wish to be more specific.

Q249 Ann McKechin: If we could turn to non-tariff barriers, Dr Marshall, you have argued that the removal of these barriers is not straightforward, and that has come out already in the evidence this morning, and it is unlikely that all areas of regulatory divergence identified could be addressed. Could you give some indication to the Committee today of which areas are of most concern that are being discussed in the current negotiations? Allie referred to the issue around financial services, which obviously is a huge part of a potential agreement. What are the obstacles to removing those barriers politically, and also in terms of business?

Dr Marshall: I will let my colleagues come in on this, because I am not the greatest expert. I would simply say that one of the greatest concerns that we have is an attempt at regulatory convergence that is then undermined by informal practice in the US once that agreement is reached. We do see evidence from a lot of businesses saying, “Well, formally there are no requirements in this area, but informally things creep back in,” and that is something that both this Committee and committees in Parliaments across the EU are going to have to look out for, if we do ever reach an agreement.

Q250 Ann McKechin: Was that the experience under the NAFTA agreement by Canada and Mexico?

Dr Marshall: I am not familiar with that, but I can say that a number of companies report that they face not just very clear regulatory barriers but a range of informal barriers as well, and Allie perhaps can add some detail to that.

Allie Renison: It is not unlike, for example, the single market, where you were supposed to have full liberalisation in services, but national domestic regulation pops up that really should infringe what the single market is about. That is why you get a big push to try to complete the single market in services fully. Some of the position papers the Commission has published recently have been in chemicals and cosmetics. Cosmetics is an interesting one, because I would say 70% of a lot of the formulations in certain cosmetics have to be registered as over-the-counters in the US market. That is prohibitively expensive in terms of certification, licensing, and that puts a lot of companies off exporting. Trying to see if you can get to the standard where you are mutually recognising each other’s standards and inspections is one of the non-tariff barriers they are looking at in cosmetics, for example.

Q251 Ann McKechin: On the other hand, is it the case that the European Union tends to take a preventative approach?

Allie Renison: It is the precautionary principle.

Q252 Ann McKechin: In terms of antibiotics and animals, there is a very different viewpoint between the EU on one hand and the US on the other.

Allie Renison: It is interesting; if you go through the USTR website, they have some of their wish-list objectives, although not in the same great amount of detail as the Commission’s website. It seems, from looking at that, that the US is perhaps trying to get regulation undone, to some extent, whereas the EU’s approach is very much more, “We

want to talk about regulatory co-operation in the future, so we have in the future equivalence in regulatory outcomes,” and that is where the divergence is.

Elisabeth Roderburg: May I come in on this as well? SMEs have told us that the lack of information is the first hurdle when it comes to exporting to the US market.

Allie Renison: Which is under-appreciated—

Dr Marshall: Correct.

Elisabeth Roderburg: If you look at the recent text that the Commission has put out regarding what they are proposing in terms of negotiating text and what the roles are, one of the proposals is to have an online platform that will provide the information on what the requirements are in the specific product area. On the EU side, we do have that. That is just a concrete and very specific example.

Q253 Ann McKechin: This goes back to Dr Marshall’s point about the informal regulation in the US.

Elisabeth Roderburg: Yes. If you have a formal platform that details which requirements are there—

Q254 Ann McKechin: However, do you think it is realistic politically that that will be achieved, given the inbuilt reluctance in the American political system about regulation at state level?

Allie Renison: I think what Elisabeth might be talking about specifically is these proposals for having a small business chapter, and one of the main elements of that right now is having a small business portal bringing together information across sectors for SMEs. Europe has this “think small first” principle that the European Parliament passed some years ago, and it is trying to fuse that into any TTIP agreement. But it depends on the sector. So, SMEs are going to benefit from having access to information. I think people do not appreciate how important trying to figure out all the regulation is for SMEs when they are looking at exporting to the US market, especially as the regulations develop. Having in a small business portal access to information about regulations as they develop is much more important than people give it credit for.

Q255 Ann McKechin: I can assure you that our Committee has been spending a lot of time thinking about support for SMEs. What you are saying resonates with the evidence we have got here in the United Kingdom in terms of the portal.

To move you on slightly, a previous witness, Gabriel Brugge, argued that it was difficult to state that the £100 billion benefit—we have talked about this already—was in any way accurate. What do you think the UK Government or the EU can do to provide an informative and comprehensive analysis of this issue—the real difficulties in tackling non-tariff barriers?

Allie Renison: What they are doing right now, already, needs to be expanded. I mentioned the position papers. The sectoral analysis is really important. A lot of trade associations do

not have the resources to carry out huge sector-by-sector analyses; we rely on the really anecdotal evidence, but the Commission have already published what they call position papers. They are not the actual negotiating texts but they are objectives. They have done it, to my knowledge, in chemicals, pharmaceuticals, and process machinery, I think. We need more of those. A lot of SMEs look at TTIP and do not really understand what is meant by a non-tariff barrier.

Ann McKechin: Where they fit within it—yes.

Allie Renison: For them, it is just an expected but added cost to doing business. They do not know that those are some of the areas that are being looked at by the negotiators.

Dr Marshall: I think we are focusing quite a lot on ex ante analysis, and we have just talked a little bit about access to information once a deal is done. I have a concern I want to put on the table regarding some form of policing mechanism around these non-tariff barriers. I do not think we have heard enough about how that will be policed over time once an agreement of whatever shape is reached. For the SMEs, in particular, that we are talking about, that face the greatest difficulty perhaps in overcoming some of those non-tariff barriers, enforcement and policing is going to be very important indeed. Otherwise, the level of confidence in the agreement and what potential benefit it could bring to SMEs could fall, and that is when we would see us not achieving some of those great numbers that we do want to see in terms of liberalised trade.

Q256 Ann McKechin: There will be other questions very shortly about ISDS, as you would expect, but are you saying that we are overemphasising ISDS and we should be looking more at, as you say, policing? Would that relate to SMEs, which are not likely to use the ISDS platform?

Dr Marshall: Yes.

Allie Renison: We can come on to the ISDS in a minute, but according to the OECD 22% of cases brought under ISDS are SMEs, so it is not that it is totally inapplicable to smaller businesses.

Dr Marshall: Yes, but when SMEs are 98% to 99% of the business population, we still have a long way to go before they have access to some of the mechanisms that they would require.

Elisabeth Roderburg: Again, I would like to give a very specific and tangible example of what reducing a non-tariff barrier is. I understand from your question that you have some sort of wariness as to whether it would be feasible to achieve some of these reductions. For example, in the pharmaceutical sector, in many areas the EU and US have procedures for approving specific drugs. A drug producer has to apply to the EU and to the US in order to get approval for the same product. The application forms are different. Basically, they are controlling the same substances; they may have a difference in emphasis on one part of the substance or the procedure, but they are controlling the same drug. The pharmaceutical industry say, “Why can’t we have the same application paper process for both procedures?” The EU still makes its own separate decision. The US makes its own separate decision, but the cost that can be saved by just having the same application process is enormous for a company.

Q257 Chair: Could I just intervene? Couldn't that be done outside the TTIP?
Elisabeth Roderburg: It can be done outside the TTIP.

Q258 Chair: Why hasn't it been done?
Elisabeth Roderburg: It has been done for some areas, but the TTIP provides a format—a frame—to make these very specific and tangible efforts as part of a bigger process, and it spreads. If you start in one area and see the benefits, the stimulation or the incentive to move on to others when you see the gain is enormous. Mr Chairman, it is important to recognise that, for example, in the auto industry, you have the US auto industry and the European auto industry that we may normally see as competitors; they have joined forces, arguing for the removal of duplicate testing and certification of windshield wipers.

Allie Renison: Vulnerability testing.

Chair: I think we understand the point you are making.

Q259 Mr Binley: I want to talk about ISDS, but first I am going to ask a general question about non-tariff barriers. We are dealing with the United States, and we know that the states are exactly that: a collection of almost national countries, in some respects, particularly with regard to protection of their own industries, whereas in Europe—or in the EU, certainly—we have been moving towards a non-tariff situation for a very long time. There is an imbalance there, isn't there? How difficult and important is that imbalance? Can you give us some idea of that? Whilst it does not directly impact upon our questioning, it is a very important factor.
Dr Marshall: It is certainly of significant concern to all of the businesses I speak with that do business in the US. It often affects manufacturers or transport and logistics businesses more than it would, say, some services businesses, but all of them do get caught up in the trap at some point or another. It is funny; your description of the US states sounds quite a lot like the EU: a collection of national countries trying to protect their own industries.

Mr Binley: Not so much with trade barriers.

Dr Marshall: However, the issue we face here is this: if TTIP's scope cannot include at least an attempt to reduce those differences for inbound trade into the United States, it will be seen as a deal that only gets halfway there for a lot of businesses here. Now, one could say the same thing about the EU single market, whether the single market in goods, which exists and is imperfect, or the single market in services, which exists on sheaves of paper like this but does not exist in reality. So, perhaps the complaint that we might have going that way will be shared by them coming this way, so perhaps it will all even out in the end.

Allie Renison: Liability is also a big issue. We have quite a few member business directors coming to the IoD and saying, "We have subsidiaries in different states", and we had one business that said liability for a product that was packaged wrongly came back on him, because in Texas the liability obligations are different from Massachusetts. It is quite difficult to assess the extent to which those are going to be tackled as part of TTIP, because the US is perhaps a little bit less willing to be as transparent as the European Union is in disclosing what the negotiations with the states are. We know that Buy

American is not just a federal statute; it is sewn into municipal and state-level law. We are assured by US counterparts that they are talking to the states, but there is no guarantee of how that is going to factor into negotiations, because they are not in the negotiating room. They are talking to regulators back in the US.

Elisabeth Roderburg: Could I add one thing on this? I agree with Adam on this—that companies see the same sorts of issues in the European Union, even though we do have the single market. I have been to a round-table discussion with businesses on government procurement that was supposed to identify which sorts of problems they saw in the US market but ended up being a basic criticism of all the differences internally in the EU. My comment on this would be that if we look at TTIP, one of the goals is to turn it into what we call a living agreement. You cannot envisage solving all of these issues, as Allie and Adam have mentioned, in one go, but you get in place a process and a mechanism that improves transparency and dialogue, and that makes a foundation for making these sorts of improvements in the longer run,

Allie Renison: It is very important, because under TTIP it has been proposed to set up, at least by the European Union—and I think the US is broadly on side—what is called a regulatory co-operation council. I know that has stoked some fears in certain civil society and NGO groups. It is a matter of understanding that this is not about regulation taking place in these sorts of co-operation councils, and one is also going to be established as a forum under the Canadian-EU trade agreement. When you have legislation that is being discussed, you want to have as many stakeholders as possible feeding into it—not directly into the actual co-operation council, but what happens is that as global standards are being transposed between the US and the EU, you want to try to have some kind of regulatory equivalence in outcomes. It is trying to keep people informed about extraterritorial impacts of US legislation on EU firms and vice versa. It is not about regulating; it is about trying to make sure that, as regulations are being discussed, there is a forum for people to feed in, so that you know about the widest range of impact beyond national borders.

Q260 Mr Binley: According to the World Development Movement, under ISDS “the state has to pay the costs of the case even if it wins”. Is that correct under what seems to be emerging under the ISDS proposal, or do we need to ask a lawyer?

Elisabeth Roderburg: I do not think anything is emerging.

Allie Renison: The Commission only just published its consultation response, as you probably know, last week, and what emerged from that is basically that they decided to go away and consult again on four areas of reform, and that is one of the areas that they are looking at. So, there is no actual emerging consensus on how it is going to be tackled. They have had the consultation period about whether it should be in or not, and now they are going away to consult on perhaps what kind of reform options there are.

Q261 Mr Walker: Does that mean they have concluded that it definitely will be in?

Elisabeth Roderburg: No.

Allie Renison: No.

Q262 Mr Walker: Or does that mean that the consultation that they are now carrying out is still leaving that question open?

Allie Renison: The Commission wants to come back to the Council with a different sort of mandate on ISDS, possibly at the conclusion of the consultations. But it is possible that we will not know until the actual conclusion of negotiations whether ISDS is included or not.

Q263 Chair: Britain already has ISDS agreements—I think somewhere in the region of 92. In the event of Britain being taken to court over them and, shall we say, winning the case, would Britain, under the existing ISDS arrangements, have to pay those costs? Do you know?

Elisabeth Roderburg: I think that varies with what the arbitration panel decides, but I am not an expert on this.

Q264 Chair: Britain, I believe, has been taken to court twice on this, and won on both occasions. I am just wondering if you know what the outcome is.

Emanuel Adam: It is true that in many agreements the language on this particular issue is very unclear, and it is up to the tribunal to decide whether this is the case or not.

Q265 Chair: So, it is still an issue that needs to be resolved.

Allie Renison: There is a big transparency issue as well, obviously, which is one of the areas that they are looking at. I would say that up to half of these cases, when they are tried, do not necessarily depend on the wishes of the investor and the state. The details of it may not be put up for public consumption, so it is quite hard to know the specifics of each case.

Dr Marshall: If I may, Mr Chairman, the issue with ISDS, fundamentally, is a first-principle one. There is one question that has not been answered, which is why the domestic legal systems of a group of very advanced industrialised democratic countries are not sufficient as forums to settle disputes. That question has not been answered. It is good, I think, as Allie has mentioned, that the Commission has been a bit more forthright in terms of publishing its information and in talking more to business and to the European public about the mandate that it has to look into this particular issue, because that fundamental first-principle question has not been answered. When I go to chambers around the country, that is a question I get asked: why is our legal system not good enough?

Q266 Chair: The interesting thing is you have to ask the business community that, given the fact that the business community are enthusiasts for an ISDS element.

Dr Marshall: Parts of the business community are enthusiasts for ISDS.

Allie Renison: It depends by size and nature of firm. A huge amount of the business industry has no idea what ISDS is, quite frankly. When it is explained to them, broadly speaking our research of our members has shown that they are in favour of it, but the broader majority do not know what it is, so there is quite an education lesson there.

I will just come back on Adam's point quickly: a lot of domestic courts do not particularly like dealing with arbitration cases, because it is quite a specialist strand of the legal system. I think there are four or five actual international arbitration centres around the world, and that is where a lot of them are fed through.

Chair: I know that Paul has some questions on this. We encroached on his territory. I am going to come back to you, Brian, at this point.

Q267 Mr Binley: Another curveball, to use an American term: are ISDS clauses included in any existing trade agreements between the US and any individual European countries?

Elisabeth Roderburg: Yes.

Q268 Mr Binley: Can you tell us which ones?

Elisabeth Roderburg: The US has about 40 bilateral investment treaties. It has nine bilateral investment treaties with European Union member countries.

Allie Renison: Quite a few of them are in Eastern Europe. It is quite interesting, because there has been a statement put about that, effectively, because certain Eastern European countries are being sued a lot, it follows they must not be in favour of having ISDS, when in fact there was a letter signed by, I think, 14 member states of the EU calling on the Commission to make sure ISDS was not dropped from negotiations. Several of those were the countries that have been named: Slovakia, Poland, the Czech Republic, etc.

Q269 Mr Binley: In order to help the Chairman, could I ask you to drop us a line? You do seem to have some pretty in-depth information that would be helpful.

Elisabeth Roderburg: On those nine countries?

Mr Binley: On the answer to the general question that you have given. That would help, when it comes back to us.

Emanuel Adam: Just returning to Allie's point, a new ISDS mechanism in TTIP would replace all of the existing agreements that we have between the EU member states and the US, and I can imagine that because we are currently working also on improvements to the ISDS mechanism, this would also be helpful to those countries.

Elisabeth Roderburg: Mr Chairman, if I may, that is an issue that is not being discussed a lot. When you have criticism and questions being raised about ISDS, the debate tends to overlook, "Well, what do we do with the 92 or 94 UK bilateral agreements? What do we do with the 1,400 EU agreements?" People are not aware that the UK Parliament ratified the last bilateral investment treaty in July of 2014 with Colombia. It has an ISDS mechanism, and it has an old-fashioned old-style ISDS mechanism, which is basically the reason that you have a lot of criticism. The Commission's goal, as they have said, is to improve upon this, and it is a conundrum. British American Business are in favour of strong investor protection, and we have made a submission to the Commission consultation on that, but there are legitimate questions and conundrums here that are not being discussed.

Q270 Mr Bain: Isn't the fundamental difference with this proposed treaty and these negotiations that they are not involving one single member state but 28 member states of the European Union and the United States? The countries that Allie mentioned are now member states of the European Union and are subject to the legal system of the European Union. We heard evidence from other witnesses that indicated that adopting ISDS clauses could undermine the applicability of EU law and the role of the European Court of Justice in being the final arbiter in these very important matters. Isn't that a major consideration that we ought to be looking at before putting an ISDS clause in a treaty that would bind the European Union itself?

Allie Renison: There is a question about that, particularly around investment. FDI is a new exclusive competence of the Commission, and I do not think they have put huge amounts of effort and work into examining how that relationship would work per se. But, for example, what happens to portfolio investment? Is that included in the scope of ISDS? Right now there is a disagreement between the Commission and the member states about whether capital portfolio investment should be part of FDI and, therefore, should be subject to ISDS. There are some teething problems that are unravelling as we speak, and the Commission has apparently gone to the ECJ, certainly to clarify its competence over trade, and there are some questions about whether it is going to do the same thing around investment.

Dr Marshall: We need to be careful to disaggregate what may be hyperbole from what may be the case in point here. Organisations that are saying that this could fundamentally undermine EU law know just as little as the rest of us about what is in this negotiation at the moment.

Q271 Mr Bain: I have to say, Adam, the evidence we had was from a former British judge who was on the European Court of Justice.

Dr Marshall: Fine, but the point I am making here is that we should try to get some greater clarity from the Commission and, as a member state, try to get greater clarity from the Commission as to what its next negotiating position is going to be on this, and then evaluate the very question that you have put forward, which is whether it is in fact compatible with European law. I have made my position fairly clear from the beginning of this discussion. We are agnostic and asking very big questions about ISDS. We are not instinctively in favour of it, even though, of course, we like investor protection and we would like certainty for investors. We need to know a lot more about what a proposal may be before we can start to evaluate the impact on the European level.

Q272 Paul Blomfield: On the same theme of ISDS, Chair, but returning to your point about business attitudes, I would like to start by asking Allie a question. As I understand it, the IoD conducted a survey of its members last autumn, and in terms of the benefits that they saw in relation to TTIP, only 25% saw any benefit from ISDS provisions.

Allie Renison: I have seen that characterisation of our survey, and I think it can be slightly misinterpreted. We asked what businesses think the most important priorities are, and only a quarter said that ISDS was that important. I think that is not the same thing.

Q273 Paul Blomfield: I think that is what I am saying, Allie, to be fair. I have seen the table that has all the results from your survey, and you absolutely asked what the benefits were of TTIP, how they saw them, and what was important to them, and only 25% of your members said that ISDS provisions were important. In that context, why are you hanging on to the argument around ISDS?

Allie Renison: It is not so much hanging on to it. Is it important? We think it is. From our members' perspective it is not the most important aim of TTIP. The question becomes, then, if the US is positioning ISDS as the make-or-break clause of TTIP, does that mean that our members want to see it included? Yes, they do.

Q274 Paul Blomfield: Let me ask you the question in a different way. If a trade and investment agreement could be concluded without ISDS, would there not be benefits from that?

Allie Renison: We are looking, for example, at China. The EU is doing a separate investment agreement with China. Ideally, we would have liked to have seen them separated, yes, but we are where we are. It is hard to say now, "We need to separate trade from investment within TTIP."

Q275 Paul Blomfield: That was not my question. My question was: if an agreement with the scope of TTIP can be concluded without ISDS provisions, do you not see some benefit from that?

Allie Renison: We are agnostic on whether it is included or not. I think we would be just as happy having it in as not having it in.

Paul Blomfield: That is very helpful.

Q276 Chair: Would you support TTIP without it?

Allie Renison: Yes.

Q277 Paul Blomfield: If I can open it up to other members of the panel on this theme, and really take up Adam's question and apply it across to everybody else, Elisabeth, you mentioned Colombia. Now, an agreement with Colombia is a very different kettle of fish from an agreement between the United States and the European Union. Given that in both the US and the EU we have got developed legal systems, why do we need the ISDS provisions? Why can we not use domestic courts to resolve disputes in the way that Adam was describing?

Elisabeth Roderburg: One certainly can use domestic courts to resolve disputes. The major difference between using a domestic court and using an international tribunal would be that if a company takes a case to a domestic court, that domestic court could conclude that the measure taken by Government that is discriminatory or an expropriation is unlawful and the policy needs to be changed, whereas in an international tribunal, that type of decision cannot be made. An international tribunal cannot require that a Government change its policy; it can only award compensation for an action that has been taken.

There are suggestions and discussions going on. A paper came out recently advocating perhaps introducing a commitment in the ISDS provisions under discussion in TTIP to

utilise the domestic courts first before moving on to an international tribunal. So, there are elements that are out there that are being suggested and discussed by academics, but as we have all referred to, the negotiations are ongoing on this. We do not know exactly where this will go, whether that is an option—and certainly it is an option. In terms of why businesses are arguing for it in TTIP, one of the reasons business has argued for it, even if they do not necessarily see it as necessary in a US-EU context, is the question of precedence, as Allie has referred to, with China and other countries.

Allie Renison: India does not want ISDS in its free trade agreement.

Elisabeth Roderburg: Brazil does not want ISDS in its free trade agreements. We have heard that Australia does not want ISDS in its free trade agreements, but it has just recently concluded an investment agreement with China that includes ISDS.

Allie Renison: It is also worth noting that non-discrimination in the US is not guaranteed unless you have an actual international arrangement that foreign investors can refer to. On the point about comparative legal and judicial systems, it is worth noting that in the case of BP—granted, that was a multinational company—the UK Government has made a submission to the Louisiana courts, which was where the Deepwater Horizon case was adjudicated, basically alleging discrimination. I can send on that submission. I would not say that the US is an absolute guarantee that everything can be handled fairly and in a non-discriminatory manner in domestic courts.

Q278 Paul Blomfield: May I just come back to Elisabeth? Then I will give Emanuel an opportunity to come in. You talked about this proposal being floated about first use of domestic courts. Do you support that?

Elisabeth Roderburg: I do not think BAB has taken a stand on it. It is fairly recent. I do not think it has been discussed with members yet.

Emanuel Adam: This is only a comment in addition to Elisabeth and Allie. First, we heard that companies are free to go and use domestic courts. Secondly, an EU Commission paper said that some domestic courts are not able to cope with arbitration cases, which is an issue. Thirdly, we have also talked to our members, and there are indeed indications that some of them feel that some of the courts on both sides of the Atlantic cannot guarantee depoliticised and fair treatment.

Elisabeth Roderburg: Emanuel makes a good point on that. If you look at the background, ISDS has, in my view, been given way too much attention in terms of the TTIP discussion. As I hope to have conveyed, there are crucially important things for business in the negotiations. ISDS is used in 3% of all international investment agreements. It is a mechanism for resolving a dispute; that is basically what we are discussing. Yes, there is ground to raise questions about the mechanism and to discuss ways of improving it, but we have been giving it way too much attention. But if you look back on why it came to be in the first place, it was to depoliticise an investment dispute. If you have a company from the UK that feels that it is being discriminated against in the US market and its only recourse to deal with that is to get the UK Government to raise an issue with the US Government, it becomes a diplomatic question.

What is different from arbitration in trading goods under the WTO system, which is a state-to-state system, is if the UK decides to stop all imports of cars, there will be reactions to that taken to the WTO because it affects all exporters of cars. If you have a dispute with one single investor that has been expropriated or discriminated against, it is not a group of investors. It is one investor, and then the question is whether the Government will be willing to take on that case vis-à-vis another country's Government. That is a political trade-off that a Government will make, and that is why you made the case for international tribunals. Does that make sense?

Q279 Paul Blomfield: It makes sense. I think you are almost making the case against ISDS by saying so, because many of those who are concerned about ISDS are saying, aren't they, that it interferes with the democratic process? What you are saying is that the benefit of ISDS is that it interferes with the democratic process. Is that right?

Elisabeth Roderburg: No, that is not what I intended to say. I hope not.

Paul Blomfield: That is how it seemed. I will leave it there.

Q280 Chair: Earlier, you made the comment, or someone did—and I think I have got this right—that if it went to international arbitration, that is, ISDS, that could impose fines, effectively, but could not change Government policy. Now, the argument that is being put against ISDS is that it would, in effect, give investors the ability to change Government policy. There would be potentially a policy freeze and so on. What you have just said seems to contradict that, and indeed I think you said that if it went to domestic courts, the domestic court could force the Government to change policy. That seems contradictory to the line of argument that is being placed against the use of ISDS.

Elisabeth Roderburg: I am aware of that, Mr Chairman.

Q281 Chair: Do you agree that that is a reasonable interpretation of ISDS?

Elisabeth Roderburg: Regarding the interpretation that campaigners against ISDS use, in terms of changing Government policy, I do not think anyone among experts or trade negotiators believes that an ISDS case can change Government policy.

Allie Renison: There is no evidence. It is hard to quantify non-action and non-decision on the basis of ISDS as well.

Q282 Mr Walker: It can effectively put an extra cost on Government policy.

Elisabeth Roderburg: Yes.

Q283 Mr Walker: It cannot force the Government to change its position on something, but it can increase the cost of a particular decision or a particular approach.

Elisabeth Roderburg: Right, and that is what they call the regulatory freeze or chill—that Government will hesitate to do something, knowing that it may be taken to court on something.

Q284 Chair: I could see that a Government might well wish to either, as you say, freeze or change its policy if it anticipated it was going to take big hits in terms of international arbitration. But in terms of the debate earlier on, the existing system could change Government policy as well. I have just a very quick question; you can really give me a one-word answer. Do you support the state always paying in these cases? I will start with you, Adam.

Dr Marshall: No.

Allie Renison: No.

Elisabeth Roderburg: I did not understand the question.

Chair: I thought it was fairly clear.

Elisabeth Roderburg: No, I did not hear it.

Q285 Chair: Do you support the state always having to pay—that is, what the WDM is saying about the ISDS system?

Elisabeth Roderburg: The state always having to pay?

Chair: Even if it wins a case, it pays the cost.

Elisabeth Roderburg: I do not think BAB has concluded on that.

Allie Renison: That is one area that they are looking at under the areas they have identified for reform of ISDS, certainly.

Q286 Mr Walker: I realise you feel we are spending too much time on ISDS, but I wanted to ask you a specific question about BAB's submission. You said that exclusions of certain types of investment are best avoided as a general principle. What were you referring to when you said "exclusions of certain types of investment"? Was that a particular concern?

Elisabeth Roderburg: Mr Chairman, on the specific questions on the submission, I would ask that we could respond in writing.

Mr Walker: I think that would be useful to understand.

Elisabeth Roderburg: I beg your forgiveness, but I was not involved in the drafting or crafting of that submission, so I am not going to enter into that.

Q287 Mr Walker: That is fine. The other thing is that, whilst being broadly in favour of ISDS, you have also argued for transparency. Does that mean that you would want to have cases held in public wherever possible?

Elisabeth Roderburg: I think BAB supports transparency across the board and sees that as a fundamental principle in all trade matters, and I would assume so, yes, but again, I would ask that we could get back to you in writing on that.

Q288 Mr Walker: We have heard, in our previous evidence and from our expert witness we heard from last week about ISDS cases in general, that they are a mix depending on the type of treaty and the commercial situations for public and private cases.

Allie Renison: If they involve trade secrets, I can see investors not being particularly keen on having those in public court.

Q289 Mr Walker: Absolutely, but do you think there ought to be a presumption in favour of holding the case in public, except in cases where it might involve trade secrets?

Allie Renison: Without wishing to prejudge the outcome of the Commission consultation, I think that is what people are looking at, certainly.

Q290 Mr Walker: Adam, do you have the same broad view?

Dr Marshall: Yes.

Q291 Mr Bain: If we look at the EU treaty, we can see that there are provisions there that prevent frivolous claims coming before the European Court of Justice. If we look at US federal law and the statutes that govern the federal courts, we can see, again, that there are rules there that prevent frivolous claims being brought before the courts there. Do you think, therefore, that it should be the case that within TTIP there should be a provision that prevents frivolous claims coming before tribunals or courts as well?

Allie Renison: We have not focused exhaustively on ISDS, and that is probably something you would want to ask one of the lawyers who is involved in looking at the scope of reform areas, but broadly speaking, yes.

Emanuel Adam: In our submission, which we made on behalf of British American Business, we were cautious about having provisions on frivolous claims in TTIP, mainly because the wording that we think may be suggested could also be open to abuse by the state in using it in order not to have cases in ISDS.

Q292 Mr Bain: Is the objection that states could use these provisions to in some ways subvert the process and, if so, are there not sanctions under US federal law and under EU law that would prevent any state from doing that in any case?

Emanuel Adam: I am not aware of that, but I am very happy to look that up.

Q293 Mr Bain: I think the fundamental objection that a lot of people have got to this—and we have heard this in other sessions of this Commission—is that, in a sense, what is being proposed with ISDS undermines the rule of law, which is that

law is done in the same way, before the same kinds of courts, and there is no special treatment in secret courts that are not open to other litigants. The other complication, I think, is about the EU, because one of the fundamental principles of the EU—indeed, it governs the single market—is that EU law should apply in the same way across all the member states and all the companies that are within and operating within those member states. That is the concern that a lot of people have about ISDS, in a treaty that would apply on trade to the EU as a whole. Would you have any comments about that?

Allie Renison: The matter of those concerns seems to be something that the EU Commission would have a particular view on. I do not know. It would perhaps be more appropriate taking it up with them, because I am sure if they thought it was going to contravene EU law, they would not be proposing it. We have two free trade agreements—one in force with South Korea, and the second with Canada—that include ISDS.

Elisabeth Roderburg: Singapore just concluded as well. Could I just make a general comment on this? A lot of the criticism that has been raised on ISDS in general relates to the system of ISDS as we know it today; I think we should agree on that. If you look at the ISDS provisions in, for example, UK BITs—bilateral investment treaties—they are not very extensively formulated. That is one of the issues that has led to the Commission wanting to do something EU-wide on this. The US had a revision of its model, looking at how you define things to prescribe closely who can have standing as an investor: who can raise a case? What sort of factors play in? But the existing ISDS treaties that EU member states have do not have that same level of clarity, I think experts agree—and this brings me back to the conundrum of what you do with those 94. We also know that those treaties can be used by investors in that country to raise a case against another country. I will give the example that everyone uses: the Philip Morris case in Australia was raised from Hong Kong, not from Switzerland or the United States. The fact that you have a number of these treaties that also do not closely prescribe which parties have standing to raise a case presents a problem and is an issue.

Q294 Chair: Just before we move on, can I just put it to you that, on this issue of frivolous claims, the wording that you used was that you are cautious about them? Your evidence was far more specific. You said there should be no provision for frivolous claims. Why have you changed your position?

Elisabeth Roderburg: Mr Chairman, as I said, I would prefer that we get back to you in writing on any specific questions on that contribution to the consultation.

Chair: Okay. I will await your response with interest.

Q295 Rebecca Harris: Of course, much of the public debate and concern about ISDS has been around healthcare and the NHS. Dr Marshall, you have argued that “the public procurement market offers huge potential for EU companies”. Is it fair to say that includes the health sector, and the flipside of that is that there is probably quite a similar level of potential for US companies to come into the EU and UK markets?

Dr Marshall: Under any comprehensive free trade agreement, obviously liberalisation applies to both sides. The thing that gives many in this country some assurance is the

Commission's position that individual member states will be able to prescribe certain services that they do not wish to see within the scope of TTIP. When I think about public procurement opportunities in the States from the vantage point of my membership, I see successful companies delivering contracts to local authorities here that would like to do the same in municipalities in the US at scale. I see companies here that would like to get into the supply chain of a local or a state government, or indeed in supplying goods or services to the US Federal Government. So, they are looking at it in those terms, rather than in terms of the political debate, which is very much on whether certain sectors should be included or excluded. In addition to its consideration of those highly politicised topics, I would urge the Committee to look at it from the business perspective in terms of opportunities and potential challenges, because there will be some US companies coming here, and my members will get outcompeted by them. We need to think about this from the business perspective a little more. We are only focusing on the NHS when we talk about this public procurement issue. There is a lot more to it than that.

Allie Renison: On public procurement, it is important to focus on the supply chain element as well. People assume that if you look at something like the Buy American provisions, they only apply to people who are exporting finished goods. When you talk about the supply chain, if you look at component parts, Buy American does not just apply to end services and products; it goes further back into what the component parts used to supply Federal Government contracts are. That is where the SMEs get hurt in particular.

Q296 Rebecca Harris: Thank you very much for that. I might ask British American Business, which has argued that the right to invest, I understand, should take precedence over the right to regulate. Can you explain what you mean? Do you mean that a company's right to invest in a sector should override the Government's right to regulate it?

Emanuel Adam: I can answer that. No, we do not think this is the case. The state has, of course, a natural right to regulate. The right to invest was a counter-image that we proposed, basically just to show that we want investments to be taken under certain protections, and the right to regulate includes certain carve-outs and exemptions. We just want to make sure that those are in line with the protections that an investor needs to invest in a country abroad.

Q297 Rebecca Harris: This is the big concern for a lot of the people who are writing in to us. They are asking this Committee: what impact would it have on public services such as the NHS?

Emanuel Adam: I know that the Committee will also hear the NHS later today, but we can say so far that the NHS has produced quite a good briefing on the topic, and said that right now they have not seen any wording but also do not see right now any concern that there will be an impact on the NHS, because there is the opportunity for member states to carve out public services, in particular health, from such an agreement.

Q298 Chair: Before we move on on this, specifically to British American Business, I can see no other reasonable interpretation of your evidence on this—that the right to invest should take precedence over the right to regulate—than that the

rights of investors, whether domestic or overseas, should have pre-eminence over the rights of Government and people who are elected to set regulations within a country. If that is not the interpretation, what exactly do you mean?

Elisabeth Roderburg: As I said, Mr Chairman, I would prefer that our managing director, Jeffries Briginshaw, gets back to you in writing on this point.

Q299 Chair: With respect, you have submitted evidence to the European Commission. You have made assertions, and I would reasonably expect you to be able to defend those assertions in front of the Committee now. I do find it quite incredible that you seem to have differed in your responses to our questions here from evidence that you have submitted to us, and I think we are entitled to an explanation.

Mr Binley: Mr Chairman, before the explanation comes, shouldn't we, then, if answers cannot be given comprehensibly and sensibly, be inviting the managing director instead of Ms Roderburg?

Chair: I would assume that British American Business sent the person who would best qualified to put their case

Mr Binley: Clearly not.

Chair: That does not seem to be the case.

Elisabeth Roderburg: I believe that the managing director was invited to testify, but he is currently travelling, and I was asked to step in in his place. I apologise.

Mr Binley: That is unfair to you, then, if I may say so.

Q300 Chair: Are the views that you have expressed your views or those of the managing director?

Elisabeth Roderburg: The views that I have expressed so far in this discussion in my testimony, Mr Chairman, are, to the best of my knowledge, the views of British American Business. On issues where I have been unable to respond, I have indicated that, and I have said that British American Business would be happy to come back in writing.

Mr Binley: But we cannot cross-examine that person. That is the important bit about this.

Chair: It is difficult to cross-examine by letter, but we may well make a comment on that in our Report. But I do think that it would be helpful to have a very detailed and well-reasoned submission explaining why the evidence that you have given here contradicts that you have submitted in writing. May I come on to Mike now?

Q301 Mike Crockart: I turn to wider engagement, particularly looking at roadshows, and direct my questions, first of all, to Adam and Allie; I will turn to British American Business in a moment. There have been a significant number of roadshows to promote and explain TTIP, as much as it can be explained with the conditions that you have outlined, where it is unclear exactly what is included within it. How many have you been involved with, and who were they targeting? Were they principally targeting business or civil society more widely?

Dr Marshall: I have not convened any specific roadshows on TTIP. Instead, I go and speak to businesses in a more generalised context and bring up the question of transatlantic free trade. The points of view I am putting across today, whether they are

anecdotal in nature or points of principle, are ones that have been gleaned from that engagement over time. As I said at the beginning of my testimony, I have not conducted survey research or very specific workshops on this issue, because I feel like the day that I held said workshop or conducted said survey, it would already be out of date, because of the black box process that is the negotiation on this thing. I prefer to keep my engagement with businesses to the more general questions around the business challenges they face in trading with the United States, and solutions that we might be able to offer in that respect, and whether they favour the notion of more liberalised trade with the United States.

Allie Renison: We have participated in one of the roadshows with British American Business. To the best of my knowledge, that was widely open. The events that we have conducted at the Institute of Directors have been all open to members and non-members alike, so it has certainly not been restricted to the business community. In fact, for one of the events that we held, we had someone come in who is a Minister from another country, because we think it is really important for civil society and businesses to be engaged with the people who are making the case at the state level as well.

Q302 Mike Crockart: Adam, once more formed proposals come out from the process, will it be your intention then to conduct research with your members and more widely as to the view of what has come out of the process?

Dr Marshall: It would indeed, and one of the benefits of having 52 accredited chambers of commerce in business communities across the country is that we can then conduct that kind of inquiry in local business communities everywhere in order to get a consensus view.

Q303 Mike Crockart: Allie has mentioned that the IoD had taken part in roadshows held by British American Business. Were those organised just principally by you or in association with the BIS Department?

Emanuel Adam: I am happy to answer that. When we thought about the roadshow process 18 months ago, we sat together, among others, with BIS and asked whether they could support us, and they have kindly sent over, on almost all occasions, a qualified person, usually from the transatlantic unit within BIS.

Elisabeth Roderburg: But they were organised by British American Business.

Emanuel Adam: That is correct.

Q304 Mike Crockart: Do you feel there is enough detail out there about the proposals within TTIP to hold roadshows, given Adam's worries about a constantly moving target? Do you worry about what has come out of those roadshows and whether it has any real worth?

Emanuel Adam: I do think it has been quite a success. I admit it was also sometimes difficult, but it is not very easy to organise such a comprehensive series of events across the entire country. When we sat down last year and looked at what we have learnt from this experience, we were quite surprised ourselves, because we have talked about the lack of evidence and the lack of clarity about certain numbers, but we have learnt what I could probably summarise in three main messages. The first message is that we do successfully

trade with the US, and many companies are already winning in that field, and do export and see the US as a very important—often the most important—trading partner.

The second thing we learnt is that there are also many companies that face all kinds of different barriers, and sometimes those companies are not even aware of these barriers; they just see the added cost to the trade with the US. Those barriers could be all kinds. I do not want to go into too much detail, but those companies were sometimes super-small: one, two or three people—maybe a little more—who said, “Well, this is difficult for us and it delays the process or adds a certain cost.”

One thing I would like to add—and this may be the most important message I took from this experience—is that there were companies that told us that they have postponed their expansion to the US because they did not know whether the efforts needed to maybe resolve a certain issue were beneficial to them, and this is something we should keep in mind.

Q305 Mike Crockart: You have talked a lot about views there that you receive from companies. Was that the primary focus of your roadshows, or were they more widely aimed to include members of civil society and the public more generally?

Emanuel Adam: In the founding document for this series, and in our invitations and marketing material, it says that these roadshows are aimed to inform and explore with businesses, in particular small and medium-sized businesses, the benefits of a potential trade agreement between the EU and the US.

Q306 Mike Crockart: So, your primary focus was on business.

Emanuel Adam: The primary focus was on business, but it was not exclusive to business.

Q307 Mike Crockart: In supplementary evidence that was submitted to us from 38 Degrees, they pointed particularly to the Sheffield roadshow, to which one of their members who was originally attending had an invitation withdrawn. Can you explain why you did that?

Emanuel Adam: Yes. First of all, I would like to mention that we have conducted the roadshow series in a quite open manner, and we have regularly invited trade union representatives, local councillors and others to attend these events. There was one unfortunate occasion, as you mentioned, in Sheffield where we had to restrict our list of participants, mainly because the organisation you mentioned, 38 Degrees, was organising protests in front of the venue with a good amount of people.

Q308 Mike Crockart: The protest was handing out leaflets outside the roadshow, was it not?

Mr Binley: On a point of order, Mr Chairman. This is not our business. It should not be a matter for our discussion. It should be a matter between the two organisations involved, and in no way would I want this particular issue to colour any evidence being given, and I would like that recorded.

Chair: I am not sure that is a point of order, but it is a legitimate opinion. I think the point of the question is to bring out the fact that your roadshows were not as inclusive as they might have been, and perhaps, in view of the political sensitivity of the issue, should have been.

Allie Renison: The new Commissioner has made a real push. In what has been published by the Commission in the last week or two, when it comes to certain negotiating texts for the position papers, she has given assurances that this is not going to be the end of it. So I think that 2015 is the real year to try to make the push to explain this to people, now that we have more concrete information about what some of the aims of TTIP are. We look forward to doing more roadshows, more events, more consultations with members this year in particular, and expanding that out to stakeholders beyond business as well.

Q309 Mr Walker: Following up on that specific point, you say 2015 is the year for engagement on this. Realistically, when do you think some kind of TTIP deal could be delivered?

Allie Renison: Originally, the aim was to get it done by the end of 2014. I think most people did not think that was, in all actuality, realistic. Keep in mind that the Canada free trade agreement took, from start to finish, five years to negotiate. Technically, the negotiations began in 2013, so we are kind of where we are supposed to be. The concern is that in 2016 there are presidential elections, so 2015 is the year in which we want to see as much substantive negotiation as possible.

Dr Marshall: Unfortunately with these agreements, the negotiations begin with great fanfare, and businesses get extraordinarily excited about the prospects that they might hold, and then they fall into this black box that I have described on numerous occasions previously. Allie referred correctly to the amount of negotiating time that the EU-Canada free trade agreement took. That agreement, of course, has been pending ratification for some time now, and then, of course, there is an implementation period that would need to follow before businesses can see any of the benefit. I think in communicating about these things we need a lot more realism about when and how they will impact business and civil society at large.

Q310 Mr Walker: In terms of that realism, what would be your assessment of when and how this might impact business?

Dr Marshall: I would be very surprised to see this concluded before the US presidential election.

Elisabeth Roderburg: I am by nature an optimist, so I am hoping that, given the increased dedication of EU member states to conclude this by 2015, that will be possible. There was the good news yesterday, as the members of the Committee probably saw, that there is a push in the United States now from the White House to get the Trade Promotion Authority in place. It is expected that that might be concluded by the end of March, which will open the way for a smooth approval process in the US Congress.

I want to differ a little bit from Adam; I think that the launching of this negotiation has already had an impact. It has had an impact on businesses seeing the potential—the expectation that things are going to happen. You see it on the regulatory side, with regulators being more open to discussing with each other. I do not think it is on or off, and

then something is on; it is more of a continuum, and I see you are nodding your head. I take it you agree with me that there are positive impacts already taking place from this, but the totality of the benefits will not fall in or emerge until years after an agreement has been in place.

Chair: Thank you for your evidence. That is very helpful. You have, on a number of issues, said that you would contribute further written evidence and explain your position on something rather more fully or on the various contradictions we have had. But can I thank you? That is very helpful, and of course we will be publishing our report in due course.

Examination of Witness

Witness: **Kate Ling**, Senior European Policy Manager, NHS European Office, NHS Confederation, gave evidence.

Q311 Chair: Good morning, Kate, and thank you for agreeing to contribute to our session this morning. We know who you are, but if you would just like to introduce yourself for voice transcription purposes, that would be helpful.

Kate Ling: My name is Kate Ling, and I am representing the NHS European Office, which is part of the NHS Confederation. It might be helpful if I just explain very briefly what the NHS Confederation is and who we represent.

Chair: If you could do it within one minute, that would be helpful.

Kate Ling: I will do my best. We are an umbrella organisation that speaks on behalf of the NHS. We are a membership organisation consisting of NHS trusts and NHS bodies generally. We are not an agency of the Department of Health or an arm's length body, so we are not part of UK Government. We feel, therefore, that we are in a very good position to represent, in an unbiased way, the views and the interests of the NHS. The reason we have an office in Brussels—the NHS European Office—is to protect and promote the interests of the NHS, particularly in relation to the European institutions.

Mr Binley: Might I declare an interest, because Binley's Directories had a relationship with the Confederation that you may know of, and I think it is right and proper to declare that interest.

Q312 Chair: You partly anticipated the question. I was going to ask you what engagement you had with the European Commission and the UK Government and business in relation to TTIP and its impact on the NHS.

Kate Ling: We have a lot of dealings with UK Government. We have, obviously, spoken to people in BIS, the Department of Health and the MHRA about the implications of TTIP for the health service. We also relate very much to the European Commission, and we have had meetings with DG Trade to talk about the agreement. We also talk to and relate to a lot of other organisations. So, for example, we are members of an organisation called CEEP, which represents public services employers generally across Europe, and another organisation called HOSPEEM that represents healthcare employers specifically across

Europe. I have also spoken to and had discussions, mostly informal, with organisations such as the European Public Health Alliance and the European Policy Centre. Obviously, I have read, researched and looked at a lot of the information that has been produced by various civil society organisations. Obviously, this is a massively contentious issue that has attracted a great deal of interest. I think it is fair to say that we have cast our net very widely and taken a very wide range of views and opinions in trying to reach a view as to the likely implications for the National Health Service.

Q313 Chair: The TTIP negotiations and the publicity surrounding them have focused on the potential dangers to the NHS. Do you see any benefits to the NHS from TTIP?

Kate Ling: Yes. I imagine you will have seen the brief that we produced, which was referred to by the last witnesses. We have not said that we want every aspect of healthcare to be excluded from TTIP, because we can see there could be some benefits. For example, in the areas of pharmaceuticals and medical devices that people were referring to earlier, there are obviously benefits to British companies and businesses. Britain is a world leader when it comes to life sciences and various medical technologies, so clearly there are economic benefits, but we think there could also be benefits for patients, because that is what we are mainly interested in. For example, if there is more regulatory convergence, or there is no need for the duplication of inspections of manufacturing premises for pharmaceuticals on either side of the Atlantic, it is possible that patients could have quicker and easier access to drugs. There is also the possibility that standards could be raised with regard, for example, to medical devices. That is why we have not called for a blanket exclusion for all aspects of healthcare from TTIP. We do think there are some benefits.

Q314 Rebecca Harris: A previous witness to the Committee argued the effects of TTIP would be “goodbye NHS, hello permanent privatisation”, and “Imagine a world where the profits of healthcare companies decide how we help the sick and the elderly”. Is this your view of the impact of TTIP on the NHS?

Kate Ling: We are cautious in our analysis, as I think you will have gathered from the document that we have submitted. I do not think you can be complacent. We cannot say that there are absolutely no dangers to the NHS as a result of the trade agreement. As previous witnesses have said, it really does depend on the detail of what is in the agreement. All of these discussions are speculative, because we are talking about something the text of which we have not seen, so it really depends on the final wording of what is agreed. Now, as you know, there have been a lot of reassurances from the European Commission and from the UK Government as to the negotiators’ intentions—and the Government’s intentions, for that matter—as to what is in the negotiating mandate and what they want to see in the final agreement. I think we would say that if those commitments translate into the final wording of the agreement, we are reasonably confident that publicly funded health services should be protected under a TTIP agreement.

However, it is worth saying that, obviously, this is a negotiation, and in any negotiation there is give and take. You cannot guarantee that the intentions of the parties as set out in the negotiating mandate translate into the final text of the agreement, which was why I

said I do not think we can be complacent and assume that everything is okay until it is a done deal. There is the issue of how robust the negotiating mandate is. There is also the issue of exactly what kinds of services will be protected and reserved for member states to regulate, and again that is very much a matter of detail: the exact wording of the agreement and basically what will be listed in Annex 2 under the negative approach. So, for example, I think there are some grey areas. It is reasonably clear that services that are publicly funded would be protected under that kind of wording, but what about, for example, services that may be currently provided privately if a future Government wanted to provide them publicly? There are those sorts of grey areas where we are not quite sure what would happen.

The third area is to do with the investor-state dispute settlement procedures. I have just been listening to the last discussion, obviously, about policy freeze, and whether that would affect the intentions of Governments.

Q315 Rebecca Harris: Would you say, broadly speaking, there is no risk here that we are going to be forced into permanent privatisation or that profits will decide healthcare? Would you say that is an exaggeration?

Kate Ling: It is certainly not the intention of the negotiators for that to happen. That is quite clear. It is also fair to say that competition has been an element in the National Health Service in England for quite some time now. It has been the policy of successive Governments to open NHS services to competition, and I do not think there is anything in the TTIP agreement that will enforce further privatisation, provided they stick to the negotiating mandate.

Q316 Rebecca Harris: The European Commission recently wrote to the Chair of the Health Committee, seeking to reassure her about the impact of TTIP on the NHS. Does that response go further than the John Healey correspondence, and if so, does it leave open any other concerns for you?

Kate Ling: It is a reassuring letter. I would repeat what I have just said. It does go further than the John Healey letter. I think it makes it quite clear that, as I said, publicly funded health services should be reserved, so that is helpful and reassuring. I think, also, the Commission's recent efforts at greater transparency with regard to negotiations are helpful, though they could perhaps still go a bit further, and their recent response to the public consultation on ISDS. There is an awful lot to play for there, and it is still, obviously, very unclear whether or not ISDS will form part of the final TTIP agreement, and if it does, what sort of ISDS provisions they will be. The clear implication of the Commission's latest document is that if there are ISDS provisions, they will, hopefully, be very different ISDS provisions from the ones that have been seen in previous trade agreements.

Q317 Paul Blomfield: Continuing the theme and following the earlier discussion we had on ISDS, you will know that there are similar provisions in other agreements. Are you aware of any similar clauses that have impacted on the NHS or any other public services in the UK?

Kate Ling: No, I am not aware of them. Obviously, I am not an expert on trade agreements; I am an expert on the National Health Service, so I have been looking at this specifically from the point of view of the impact of TTIP on the NHS.

Paul Blomfield: I just wondered if, in the course of doing that, you had looked at the ISDS provisions in other agreements in relation to the NHS.

Kate Ling: Not specifically, no, although obviously I have looked at, and various previous witnesses have referred to, ISDS cases that have involved other countries, and in some cases have involved healthcare, but no, I have not specifically.

Q318 Ann McKechin: You have mentioned European Union countries wanting to change their public policy and how they would be affected by TTIP. We are aware that there are major private American health firms that are clearly eyeing the European market for possible expansion. One area is social care and nursing homes. The others are, obviously, in terms of pharmaceuticals and drugs, and provision of clinical services. If I were to give you an example, the NHS across the United Kingdom completely dominates the health service. The qualification of which drugs are used within the NHS is obviously a key factor for any pharmaceutical company. So, we have NICE here, which applies for England. Scotland has its own drug advisory board for NHS Scotland. If you had a situation where, for example, the Scottish group decided to authorise the use of one particular drug but down here in England NICE decided not to, given the amounts of money we are talking about and the scale of the advantage, can you not see a situation occurring where a large American corporation may decide to just test the process and see if it can force the issue without necessarily getting to the point of going to an arbitration, by taking a challenge and seeing whether Governments will move, or bodies that decide drugs usage will actually be affected by it?

Kate Ling: I do not quite understand the question, if it is a question about ISDS.

Q319 Ann McKechin: Corporations may start to throw their weight around and say, “Well, we are going to start to challenge this.” Will that have a freezing effect on what people will or will not do?

Kate Ling: The ISDS is an investor-state dispute settlement procedure, so you have to have some interests that you think are being damaged in order to take a case. But if it is simply that you want to get into that area, I do not really see how ISDS could apply. I can see the argument about the regulatory freeze—about Governments thinking twice about whether or not to institute such-and-such a policy, because of the possibility of challenges from companies—but I cannot really see how that would work in the instance that you are giving.

Q320 Ann McKechin: What about social care then, currently much of which is in the private sector?

Kate Ling: I cannot really talk about social care, because it is not part of the NHS.

Ann McKechin: Or clinical services—yes.

Kate Ling: Yes. It is not part of my remit, but clearly that is a completely different ballgame. The whole point about the NHS is that we are reasonably confident, as I said, subject to all these caveats about the exact wording in the final agreement, the NHS would come under the definition of publicly funded services for the purposes of TTIP. Now, that might not be the case, for example, with regard to social care. As you say, a lot of, for example, nursing and residential care homes are already provided privately, but I really could not stray into that area, because I would be going beyond my competence to talk about that.

Q321 Mike Crockart: There is a lot of debate around TTIP about the concepts of right to invest versus right to regulate, and some business organisations have argued that the right to invest should take precedence over the right to regulate. What is your view on what effect that would have, potentially, on the NHS? More generally, can the two co-exist?

Kate Ling: Obviously, I was listening with interest to the last discussion. I think our view is pretty clear, which is that we would always want to support the right of Governments to regulate, particularly in a field as important as healthcare. Obviously, in certain ways healthcare is a commodity, but it is a public good and a public service, and it is not a commercial thing. It is not purely a business. The NHS exists to provide services to patients; it does not exist to make a profit. Obviously, from our point of view, we would always say that was the priority. We are not saying that it is not important that British business should flourish and should provide jobs, and there are important economic benefits from medical technology and the healthcare sector, but that is not our priority.

Q322 Mike Crockart: In the realm of the NHS particularly, but public services more generally, the right to regulate, in your opinion, is more important than the right to invest.

Kate Ling: Absolutely.

Mike Crockart: That is a straightforward answer. I will leave it there, thank you.

Q323 Mr Binley: The EU's negotiating positions are, on the whole, confidential. To what extent has this undermined public confidence in the trade negotiations?

Kate Ling: I think, unfortunately, it has undermined them quite a lot. The view of the NHS European Office is that we welcome maximum transparency, consistent with getting the best deal for the NHS. The problem with this is that, of course, it is a negotiation and that you cannot have absolutely everything out in the open. You have to keep something up your sleeve. Having said that, I think the new Commission has made a good start by showing that they are prepared to be more open. They have, as you know, released documents that were previously confidential. They have committed to greater transparency in future, and Commissioner Malmström has shown a willingness in this respect.

Q324 Chair: Before we move on, the criticism has been levelled at the European Commission, but it is the member states that signed up to this particular process, and the European Commission is essentially bound by the decision of the

member state. Have you any view on whether our Government should be lobbying on this to promote a more transparent process?

Kate Ling: As I said, greater transparency would be a good thing. The Commission has made moves. I think they could probably do a bit more. You could argue about the extent to which details, for example, of the offers from both sides or of the text that is reached at the end of each negotiating round should be made public. I think it would do no harm at all for the British Government to lobby for greater transparency, but as I said, I am not representing the Government.

Chair: No, I do understand that, but in terms of the Committee's relationship with the Government, it is useful to have your view on it. I do know—and I am the most unlikely ally of Sir William Cash—that he has, from the European Scrutiny Committee, complained about the unwillingness of Government to actually allow the European Scrutiny Committee to carry out what he, I think legitimately, considers its role in scrutinising this. That explains the thrust of my question. I do not know if there is anything you want to add to your previous answer. I come back to Brian.

Q325 Mr Binley: A surprised Brian, Mr Chairman. Can I ask, secondly, how easy is it for you to accurately assess the impacts of TTIP on public services without having more information, and without seeing, for instance, a draft text? How easy is it for you to do your job?

Kate Ling: It is more common, for example, in my job for me to be dealing with European legislation, where at least you have the advantage of having the text in front of you. You can see the Commission's draft proposal; you see the amendments that are put by MEPs; you follow it through the various stages, not all of which are absolutely public, but it is certainly easier when you are following legislation. Obviously, one of the main points that we made in our briefing was that it is pretty hard to be specific and give hard and fast answers for a text that you have not seen. We are having to go on two or three things. We are going on obviously what we have seen—the documents that have been released, officially or unofficially. We look at previous agreements and what we think the impact of those may be. As I said, we talk to a lot of people; we do a lot of research and we try to estimate what we think the impact will be on public services based on what we know.

Q326 Mr Binley: But your input could be positive and helpful, couldn't it? It seems to me that they are denying that opportunity to help themselves. Am I being overgenerous to you?

Kate Ling: It seems to you that who is denying themselves the opportunity?

Mr Binley: The negotiators, the EU, and those people involved in the negotiations. You are working in the dark, aren't you, on many issues?

Kate Ling: Not totally in the dark, no.

Q327 Mr Binley: I understand that. You have the ability to use a sensible construct from the information you do have, but you could have much more information that seems to me to be useful to the very people that you are dealing with in this respect.

Kate Ling: Yes. It is for the member state Governments to discuss with the Commission and to agree on their negotiating mandate, obviously, and ultimately it is for them to decide how far they are prepared to go with transparency.

Q328 Mr Binley: Yes, I understand that, but we are in a position to say, “For God’s sake, be a bit more open,” and I would have thought that would have been helpful.

Kate Ling: Yes. I can give a straight answer to that. Yes.

Mr Binley: Good. I have the answer I wanted. Thank you.

Kate Ling: Obviously, the more information we have, the better able we are to make an assessment of the impact. Yes, that seems clear.

Q329 Mr Bain: The Commission has now said it is going to consult member states on ISDS. What do you think the UK Government need to say in public as part of that consultation to address existing concerns that people across the country and before this Committee have expressed to us?

Kate Ling: I obviously have to be careful because, as I said, I am not part of the UK Government and I cannot tell them what to say. It is quite clear from the Commission’s response to the consultation on ISDS that they have identified certain areas where there could be significant improvements. If they are serious about wanting ISDS to be part of the TTIP deal, I guess that they will need to try to make those improvements. Certainly, I would have thought that the UK Government would want to support the protection of the right of member states to regulate on, for example, issues like public health or the environment. That is something that came out very clearly from the ISDS consultation, and goes back to your question about the primacy of regulation over investment.

But there are also other issues that were identified. There was the whole issue about the establishment and the functioning of the tribunals: how they are composed; who gets to sit on them; and how open their deliberations are—all of those procedural issues. There was the issue about the relationship between the domestic courts and ISDS: should you have to exhaust one set of procedures before you can try the other, etc? There was the issue of appeals: should the ISDS decision be final? Should there be an appeal mechanism? As I say, I cannot speak on behalf of the Government, but I would have thought that it would be reasonable to press for those sorts of improvements to any ISDS provisions that are going to be included—if they are included—in the final TTIP agreement.

Q330 Mr Bain: The Commission is saying that there is nothing in EU law at the moment that prevents member states from running their own health services in the way they want. I think the concern that some people have is that some of the things they heard early on in the TTIP negotiations could go against that right. Do you think, in terms of what the Government are saying on ISDS, it has to be much clearer that, whatever is agreed, it is not going to prevent the NHS being run in accordance with the way that the British people want?

Kate Ling: Yes, absolutely. It is for the member states to push the EU negotiators about what they want to be reserved in the TTIP agreement, and it is very important that that

wording is as watertight as possible. That is one of the key points in our briefing: that in order to see the maximum safeguards to the NHS—I cannot speak for other public services—it needs to be very clear that NHS clinical services are included in that reservation.

Chair: That concludes our questions. Thank you very much, Kate. We will be reporting in due course and your comments will be an important part of the evidence base that will inform our decisions. Thank you very much indeed.

Kate Ling: Thank you very much.