



HOUSE OF LORDS

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Sub-Committee C (External Affairs)

Inquiry on

TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

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Questions 1 - 11

THURSDAY 26 FEBRUARY 2015

10.05 am

Witness: Mr Edward Barker

Members present

Lord Tugendhat (Chairman)
 Baroness Bonham-Carter of Yarnbury
 Baroness Coussins
 Lord Foulkes of Cumnock
 Baroness Henig
 Lord Jopling
 Lord Radice
 Earl of Sandwich
 Lord Trimble
 Baroness Young of Hornsey

Examination of Witness

Mr Edward Barker, Head of the Transatlantic and International Unit, Department for Business, Innovation and Skills

Q1 The Chairman: Mr Barker, thank you very much for coming before us this morning. As I think you understand, this is a follow-up meeting to the inquiry that we conducted before on which you were so helpful. We want to get an understanding of where the negotiations stand at the present time and where the difficulties are. I hope that something that will emerge from the questions will be a view from you as to whether a successful conclusion will be reached and, if so, on what sort of time schedule.

We have a variety of questions to ask you, but obviously if you want to deviate from the course, please do so. I hope that we can get through them in about an hour, but we will see how it goes. I will kick off with a question I have already asked. What is your latest estimate of the likely timetable for the US Administration to secure fast-track authority, and what might a realistic timetable be for political agreement to be reached, including ratification by the European Parliament, and then if the deal is a mixed agreement, which I guess it will be, by national Parliaments?

Mr Edward Barker: Thank you very much for inviting me back to this Committee. I am very happy to give you an update and to share my judgments with you on how this is going. To start with the timetable and your question on trade promotion authority, this is an area where there has been quite a lot of development since the last time we met. It has been rumbling around Congress for some time, and we can see quite tangible evidence that several proposals for a trade promotion authority Bill are being actively discussed. President Obama raised it in the State of the Union address, and there is good evidence that the White House and the US Administration are working actively to get TPA in place.

Certainly, following the trade reports and the accounts that we have from interactions our embassy has in Washington, it sounds as though the discussion on TPA is now about the details of what it will look like rather than whether it should happen. Our working assumption is that it could be in place in the first quarter of this year—late March/April. It could well slip from that, but it is in a very different place from where it was a year ago. That seems to be coming along quite well.

What does that mean for the TTIP negotiations as a whole? Of course, the Trans-Pacific Partnership Agreement, TPP, is ahead of us in the queue, so to speak, and far more advanced. It certainly is getting the majority of attention in Congress at the moment. That would be the next step in the US trade agenda, but the suggestion that I certainly read in the press that the first half of this year is possible for TPP seems credible to us. It fits with my understanding of the timescale which the Commission and the US are working to, which is that by July we should be in a position to have some fairly significant developments in the TTIP negotiation.

Just to back up for a moment, the UK Government's view, and certainly my Minister's view, is that if we do not aim to get this done in 2015,—we are guaranteeing that we will not. But that is not to say that we are naive about the challenges involved—while we will continue to maintain pressure for as much progress as the Commission can make as quickly as it can make, that obviously depends on an awful lot of things fitting into place.

The Trade Commissioner has suggested that it is still possible to have a political agreement in place by the end of 2015, although that is clearly very challenging.

To give a little more about the detail of how we get there, the next negotiating round is due to take place in April and the next in July. We do not have a timetable beyond that. The work of my team is to try to make as much progress as possible by the April round, rather than have everything come to a head in July. It will try to help unlock problems that are delaying progress within the negotiation. It is important that we maintain top-level political support. The Commission is feeling the pressure from all sides—from the member states, the US and

stakeholders. Unless it is confident that it continues to have high-level political support from across the EU, it will be harder for it to take the necessary steps to move the deal.

On the final part of your question about ratification and timescales after a political agreement, we are still hoping to get one this year and are working towards that.

Signature would require a decision in Council—assuming it is a mixed agreement, which, as you have said, is our working assumption—and would require parliamentary scrutiny on the way through to that decision. We think that political agreement to signature and then to provisional application would take about 18 months. The final conclusion beyond that, which requires rather more scrutiny and process in the EU, will take at least one year more. I would expect it to be more than one year beyond signature. Implementation could be spread over a number of years, certainly for some parts of the deal. So there is still some way to go.

Lord Foulkes of Cumnock: Can I just clarify one thing? You talked about your Minister. Is it right that Ian Livingston is the lead Minister on this?

Mr Edward Barker: Yes, with Vince Cable as the Secretary of State responsible.

Lord Foulkes of Cumnock: What is going to happen in April, because there is a general election on 7 May?

Mr Edward Barker: The usual rules for purdah will apply. I do not think that we have had the formal guidance from the Cabinet Office yet, but my experience has been that the business of government continues, so we would continue to pursue the policy as it is established.

Lord Foulkes of Cumnock: And you would be able to brief the opposition spokesperson on this so that he could take over after the election?

Mr Edward Barker: I believe that conventions are being applied about discussions with other parties.

Lord Foulkes of Cumnock: Good.

The Chairman: Lord Radice is next to cover some of the questions.

Q2 Lord Radice: Maybe I ought to concentrate on the US position on opening up government procurement and on financial services. Has its position evolved? When we went to the United States, I remember in particular a view, certainly from the Treasury, that financial services were just not on the table. Where are we now on those two issues?

Mr Edward Barker: Perhaps I may frame that within a slightly more general update on the state of the negotiation. The last, eighth, negotiation round took place at the beginning of February. It was very much framed in the language of refresh. It was the first time the new Commissioner had sat down with the US team formally post the mid-term elections. There was definitely a will on both sides to inject a bit more pace into the negotiation. There was certainly some good-will around the table. Some good-will has been generated by the new EU Trade Commissioner.

Within the negotiation, we have seen signs of some quite good progress on the regulatory side, which is probably the biggest and certainly the most complex part of it both horizontally and sectorally. Automotive, I understand, is one of the most promising areas on the sectoral side. There was quite a lot of discussion around issues such as sustainable development, labour, environment, technical barriers to trade and issues like that. There is no substantive progress at this stage.

I think there was the potential for some progress on the tariff offer and the services offer. If you wish, I can go into more detail on that. It did not happen in February, but it could happen

in the not too distant future. Procurement continues to be an issue which the UK wants to see, and for other EU member states I think that it is in some cases quite totemic. Frankly, we continue to see no real or substantive progress there. To some extent, when we last met, the EU went into the negotiation with a very ambitious ask on procurement, probably knowing full well that it would not get everything. The US gave a fairly direct answer to that, as you might have heard. There is scope to close that gap. I do not think that there was any progress on that in February.

On financial services, we are certainly far from dropping this as a priority for the UK, and we are not alone in the EU in wanting it. The Commission has been pursuing this quite energetically on our and the EU's behalf. There has been some progress in that the US now seems to accept that it needs to have a conversation with us about regulatory co-operation in this area. It accepts that not everything is perfect as it stands. That is some way from the outcome that we want, but I do think that is progress. So I hope that if you were to return to Washington now, you might get a slightly more mixed set of comments, but I suspect that you would still get a predominantly negative response from those interlocutors.

Lord Jopling: I will just make a comment before I come to genetic modification. You were talking about financial services. I was in Brussels 10 days ago with a number of Members of the House of Representatives from Washington, and I asked the question about financial services and said that we as a Committee had been shocked by the really rather rude and very arrogant approach by the US Treasury on this. The people who were involved in the negotiation by the Commission said, "Oh, I think there was a misunderstanding in the States of what you were asking for. We think there is a better understanding now in Washington about what you are looking for". That read to me between the lines that we had reduced our demand and had stepped back. Would that be accurate?

Mr Edward Barker: I do not think that is accurate. I think the suggestion that it was unclear to the US what the EU was asking for is a little difficult to believe, although I suppose it is quite possible that individuals might have received mixed messages from other interlocutors. I think the EU has been quite clear from the outset what we are and are not seeking in this area. From the outset we have wanted to see some credible means of improving co-operation between financial services regulators. That has not changed. I think we went into this knowing that there were a number of ways in which that could be achieved. At the outset I do not think there was much willingness on the US side even to engage with that discussion. I think we are now having more of that discussion. I do not think we have reduced our demands. I do think that there is more willingness on the part of the US at least to talk about this, but to be clear I think we are still a long way from the result that we want.

Q3 Lord Jopling: I will move on to the question that was allotted to me. It regards the new situation in Europe with both the Commission and the Parliament saying that the use of genetically modified crops is a matter of national competence. I should point out that I am a farmer and am in receipt of funds from the CAP. To what extent does this new situation in Europe mean that there will be no difficulty in the TTIP negotiation? If some countries in the European community continue to be intransigent about this and continue with a luddite approach, which has been at the back of this, of ignoring the science, to what extent could the intransigence of a number of European states over GM arrangements make an agreement impossible?

Mr Edward Barker: To start with the recent development you referred to, as I understand it the US's main interest on GMOs relates to the ability to export GM commodity crops to the EU for food and feed use, rather than GM seeds for cultivation. My understanding is that this recent development relates to the national discretion on cultivation. Our assessment at the

moment, and I have discussed this with my colleagues in Defra, is that this particular development will make no direct difference to the TTIP negotiation because it is not what the US is asking for.

On your larger question about the potential for GM to break the deal, I suppose, just as you met delegates from Congress recently I also met some congressional staffers the other week. We talked about US priorities, and GM certainly came across clearly as one of the priorities for their Members of Congress. But—I think this has been the case throughout, actually—people have tended to overstate what the US is looking to see in TTIP on GM. I have not yet seen any evidence that they are asking for a dramatic change in the system in the EU. They are asking for the system, as it is set up, to work properly—something which the UK Government would certainly support. That is quite different from some of the rather dramatic claims people make about what the US is pursuing in GM now. If the US does in fact ask only for that, it seems possible, in fact likely, that member states that would otherwise have concerns about GM being extended would have a hard time defending the position, “No, we are going to refuse to let the system work”. I think there is less risk here than is sometimes presented. Unfortunately, I do not think that the recent decision helps, though. It certainly remains a risk. At the very least it remains a risk in so far as people believe that there is a dramatic change on GM that might result from TTIP and that might stimulate them to have wider concerns about TTIP. There is certainly a wider public engagement issue there.

Lord Jopling: I think you said that the United States is more concerned about exports for food than seeds. I am not sure that Monsanto would not get very excited if it thought that was the situation.

Mr Edward Barker: I suppose there is a difference between Monsanto and the US Government—I believe there is. I should also say that one of the challenges is trying to identify exactly what the US is asking for. Based on the information that we have, I do not think they are pursuing that.

Q4 Lord Trimble: Can we turn to energy, which is quite topical this morning? I see on the front page of this newspaper that Mr Putin is threatening to terminate supply unless Kiev and so on prepay. That might just be sabre rattling or it might actually be serious, one can never quite know, but it underlines the importance of energy. What do you think the state of play is on that, and what might realistically be achieved to open up or increase US energy exports?

Mr Edward Barker: As you say, the question is very topical. It has been clear for some time that the EU’s strong political push to have energy included explicitly in this agreement in part goes to the issue of wider security of supply issues in the current climate.

The first thing to say is that the US is still to be persuaded that an energy chapter is necessary. You could read this as a technical issue about the structure of the agreement and the like, but from our perspective it is important to have an energy chapter, partly because it sends signals but also because we are going to want to set a framework for future FTAs with a range of countries, and we would like energy to be incorporated in them. There is still some work to do on the energy chapter issue, but regardless of whether there is an energy chapter or not, we would still hope and expect that as part of the deal—and I have no reason to believe that this is not a credible or realistic ambition—there will be an increase in the availability of US liquified natural gas on the world market. I am not an energy economist, but it is one thing to increase the supply from the US. As I am sure you understand, no doubt better than I do, that does not necessarily directly impact on prices in Europe or the UK, but it would certainly contribute to security of supply and resilience and so would be something that we would want to achieve as part of the complete deal.

The other thing to mention in passing is that although gas is probably the main goal here, we would also hope as part of TTIP to be able to do things to improve the supply of green and energy-efficient goods and products, which in another way might help to improve resilience and security of supply.

Q5 Baroness Coussins: I want to ask about the ISDS situation and whether you could update us on what is happening. I am aware that the negotiations on that issue have been frozen while public consultation has been going on, but that does not seem to have stopped the Commission in the meantime making what look like quite positive proposals about increasing transparency and public access. Could you fill us in on the status of those Commission proposals and the findings from the public consultation, and say whether it looks as though that evidence has changed the public debate, particularly in the member states where there has been most concern on this issue, which is the UK, Germany and the Netherlands?

Mr Edward Barker: And Austria, perhaps.

Baroness Coussins: And Austria. Could you update us generally on that issue and say when the negotiations will resume?

Mr Edward Barker: As you say, the Commission conducted a consultation and got around 150,000 responses, which I think was rather more than it had initially expected. A lot of those responses were very similar. There were form responses from campaigns registering people's concern either about ISDS or about TTIP as a whole, but there were also a good number of responses that went into the detailed questions and provided the Commission with some specific challenges or issues to think about. We should not forget that that consultation was based on the Commission putting out a text drawn from the CETA (Canada) negotiation, which might have evolved a little since the consultation, but it already represents quite a significant development on the investment treaties of five or 10 years ago.

We would say that CETA already addresses concerns about the definition of terms, transparency and the like but, as I think we have said previously to this Committee and certainly have said to other Committees of this House and the other place, the UK believes that there are ways in which we can improve the ISDS provisions to make them more transparent and more predictable, and to make sure that they do not provide an easy route for people to bring frivolous cases. That is just to say that quite a lot went into preparing the consultation. The Commission analysed the responses and has essentially come back saying that there are four areas in which it believes further work needs to be done to further refine the proposals on investor protection. One is around the creation of an appellate mechanism, should there be the opportunity to appeal decisions by these tribunals and how that should work.

Secondly, there is a continued demand for further protections of the Government's right to regulate, and for them to make sure that a balance is struck around the ability to protect investors and to regulate to make sure that that is adequately specified in the provisions. Thirdly, there is an issue, or at least a question, about the constitution of the arbitration panels. Quite a lot of allegations are made about the people who constitute these tribunals and whether they are appropriate and sufficiently qualified.

Fourthly, there is a question about the relationship between the ISDS route and the domestic route. In many cases, when companies bring cases under ISDS, they have also been taking them through domestic courts. Should there be at the very least an ordering of those, or should you force companies to choose one route or the other? Those are the four main areas.

The Commission is deliberating on that and we are also deliberating on it. I think we are expecting the Commission in the spring, April/May, to come back to member states with further proposals in those areas. We expect to be prepared well before that with our own thoughts on what more, if anything, we would like the Commission to do on those aspects. That is where we are on the detail of the consultation.

Perhaps in a minute I can come on to the wider public debate across Europe, but I will focus initially on ISDS in the UK. The British Government has tried quite hard to take the time to listen to the concerns that have been raised, and there have been a lot of them. We saw some of the responses sent to the Commission, but we received a lot of direct representations, including from Members of Parliament. We have also done quite a lot of internal analysis on what a good investment protection treaty, including good ISDS provisions, should look like. This is not just for TTIP; it is an ongoing set of expectations for other agreements.

There continues to be a high level of interest. My impression—it is dangerous to say things like this, I suppose, it invites a response—is that I do not think we are getting a lot of new issues on ISDS. It feels to me as though the debate, here at least, is plateauing at a high level, whereas a few months ago it was continuing to escalate. The Commission's very open consultation has helped a bit, as well as the fact that it has come back and recognised that there is more to do. I certainly do not underestimate it as a challenge. That is my impression at the moment.

Baroness Coussins: So you would expect this issue to be back on the negotiating table in the July round.

Mr Edward Barker: I would hope so. To be clear, it has not been discussed in the negotiation for a while, but all sorts of elements of the negotiation come and go. It is possible to overstate the significance of the pause, as it is referred to.

Q6 Earl of Sandwich: We are going to come back to public debate in a minute. Specifically on investment protection, when Lord Green came he seemed to be much more open-minded about the inclusion of provisions. You imply that things have moved on since then, but is it still an option that the whole thing could be taken right out of TTIP?

Mr Edward Barker: If I may, I will begin by quoting Lord Livingston's recent comments on this to the BIS Select Committee. In answer to a very similar question, he said, "We want to create the right standard for future ISDS agreements. We think it is important, given that we are a major investor in the US and the US is a major investor here, to deal with investment issues in this agreement. It is very difficult to see a comprehensive agreement that does not include ISDS. However, at the end of the day, we—the EU more widely—and the US will have to look at the totality of the agreement". I think all of that is true: we would rather have the ISDS in the agreement but we recognise that there is still work to do in getting the terms of it correct.

It is certainly true that if we did not have ISDS in the agreement there would be a price to pay in negotiation. It would also make the EU's job harder on investment issues in the future. I am not going to be any more definitive than Lord Livingston was about saying, "Yes, it absolutely must be in there". We have to look at the deal at the end of the day.

Earl of Sandwich: In that sense you would be yielding to public debate if that was to happen.

Mr Edward Barker: I think it would come down to a judgment on the overall package and whether there was sufficient value for the UK.

Q7 Baroness Young of Hornsey: My question relates to public debate and the extent to which that landscape has changed. It seems to me that when we were doing the report, particularly in relation to what was happening here, there seemed to be very little public discussion of TTIP. Now I get leafleted mainly about ISDS, but also about cultural issues because there is still anxiety about that. The EU has taken some steps to engage a broader public and stakeholders. I wonder what your assessment is of the extent to which public viewpoint here and across the EU is changing to move towards some sort of acceptance. You said earlier that you thought that opinion on ISDS had plateaued. Do you think across the piece that that is true?

Mr Edward Barker: Thank you for that question. One reflection I have is that since the time of your report a lot more of my team's time has been spent on public communication and engagement. You are absolutely right: the level of the debate has increased significantly here. I also agree that the EU has stepped up its engagement, as have we. We have also been tracking quite closely some aspects of public debate and I can take you through a little bit of that.

One of the distinctive things about the TTIP public debate is the extent to which it is being conducted on social media, which is not something we have experienced in the past on trade agreements. We are very happy to learn a lot more about it and slowly become more adept at dealing with it. We track the nature of that debate month to month and a few things are quite clear. First, the vast majority, about 99%, is on Twitter. The NHS is fairly consistently the number one issue, although ISDS is also a big one. To be honest, since we started tracking, the vast majority of the comments on Twitter are negative. But the extent of that negativity varies over time. It is quite interesting in that we have looked at different things such as the event that the CBI hosted with European leaders around the December European Council on TTIP, which generated quite a positive spike in positive sentiment on Twitter. Similarly around negotiating rounds we see a whole range of things happening.

I think the long-term trend is slightly positive, but that does not change the fact that it is overall still predominantly negative. Certainly a few months ago, quite a lot of attention was given to a YouGov 38 Degrees poll, which I think was conducted in August 2014. It was primarily about the NHS but included questions about TTIP as well.

One of the striking findings was that 39% of people felt that TTIP would be bad for the UK and a lower proportion felt that it would be good for the UK. That got quite a lot of air time. I think there has been some change since then. As I have said, we have seen this a little bit on social media and we detected it a bit through our public interactions, for example in the correspondence we get and in media coverage. There continues to be a well established series of campaigns on quite well defined issues now. They continue to be very audible and we feel that we understand them quite well.

The rate of increase in support for these campaigns has not stopped, but it has slowed. There are times when it accelerates again, but overall it has slowed a bit. Looking at some of the other surveys, the Eurobarometer study from November looked across the EU. It was not talking about the NHS but about TTIP. The question was fairly straightforward: do you think TTIP is going to be good for you and your country? The results on that are a lot more encouraging from my perspective.

In the UK, 65% of people think that TTIP will be a good thing, against 19% who are against TTIP, so there is a substantial majority. People talk a lot about Germany, which is obviously a very important part of this. I think that the debate continues to rage there. It is interesting to look at some of the fairly strong pro-TTIP positions that leading members of the German Government have recently taken. I would be happy to send examples of that if you have not

seen them. I think that the German Government are making the case on this as well as other parties in Germany. The figures are quite different from the UK: 39% for TTIP and 41% against, so it is evenly split, with a significant 20% who do not know at the moment. So it is a bit more balanced in Germany than you might think from some of the press coverage.

In France there is more support—50% for and 32% against—and for the EU as a whole there is 58% for and 25% against. I think that Austria is at the most negative end of the spectrum, and there are some other countries where there is a more negative sentiment.

The main takeaway from that is that across the EU, reflected in the UK, there is quite broad support. Many people have specific issues that they want to see addressed. There was coverage of an FOI publication put out recently on stakeholders we had spoken to about TTIP. Quite a lot of people raised specific issues, but that does not detract from the fact that overall there is quite a lot of support so long as we can address these issues. The overall trend is a slowly improving one.

Baroness Young of Hornsey: Perhaps not for now, but I would be interested, if you have access, to a breakdown of the many different publics there are, because obviously, as you say, there are campaigning groups, business interests, the general public and doubtless other stakeholders with an interest in the subject as well. I just wondered whether there was any kind of breakdown as to which of those publics was at which particular stage on this graph, as it were. But, as I say, that is perhaps not for now.

Mr Edward Barker: I would be very interested in that too.

Q8 Baroness Henig: First, I declare a personal interest, which I declared at the time of the TTIP inquiry, as this is a public inquiry.

I will continue this theme of publicity. I do not want to be too critical, but I found some of that a bit rarefied. I am sure I am not alone in having been deluged with emails from concerned friends, pressure groups, campaign groups, with the headline “The NHS is in danger”. This drove me to look at the situation a bit. My understanding, having looked at it all, is that the healthcare companies in the United States will have no greater access to the NHS than they do at present and that nothing is going to change. If that is the case, why on earth have we not been able to get that message across? It is not difficult to say to people, “You’ve got this completely wrong. Nothing is going to change”. I am sorry, but in the spheres in which I operate, that message has not got across. About three weeks ago, I got a long newsletter about the NHS in an email from north Lancashire, which is not exactly a hotbed of political activity. The last six pages of it were all about the investor state mechanism and the danger to the health service. It went on and on. It seems to me at any rate that the battle is not being won, and I do not know why.

Lord Trimble: There are none so deaf as those who will not hear.

The Chairman: I have never heard you so voluble.

Mr Edward Barker: This is one of the hardest questions that we are dealing with. As you say, and it probably bears repeating, we are very clear that TTIP will not change the way in which the NHS decides who should provide NHS services. TTIP cannot force European countries to privatise public services and cannot stop them from changing the way existing contracted-out services might be contracted in the future. There are a whole range of safeguards that typically go into free trade agreements for publicly funded and supported services, including health services, and in different ways—maybe that is part of the problem—we have been saying that for some time. The Trade Commissioner has also become increasingly categorical

about this and wrote a letter recently, which if you have not seen I would be happy to share with you. After a fairly long discussion of the different ways in which the NHS is not going to be affected, she concludes, “There is no reason to fear either for the NHS as it stands today or for changes to the NHS in future, as a result of TTIP or indeed EU trade policy more generally”. There are also more independent commentators, such as the chief executive of the Nuffield Trust, who say things like, “Concern about the overall impact of TTIP seems to have been rather overstated”.

There is a lot of material out there. There is a bit of me that wonders whether that is part of the problem. The explanation is quite technical, and perhaps we made the mistake of trying to respond to it in a fairly legal way at the outset, laying out the ways in which EU trade policy works, the reservations and how they provide protection, which to most people is not immediately intelligible. Indeed, even for those of us who work on it, it takes several readings to understand it properly. There is certainly a challenge. It is possible to make the case. Just the other week I was in Edinburgh, giving evidence with Lord Livingston to a Scottish parliamentary committee, which asked exactly these questions about the NHS. A number of committee members said that by the end of the hearing they felt reassured. They asked exactly the question you asked, “How do we get this message across?”. I think it is quite deep seated, so it is undoubtedly very difficult to do that. Now, because we have put out quite a lot of technical explanation, I do think that we can simplify the message and refer people back to the details if they do not believe it. At the beginning, we felt that we needed to explain our working quite fully. Perhaps we can now speak more directly, and I think we have started to do that. I think that will help. The more we can reassure trusted communicators in this area—who are not the Government—and address their concerns so that they can also speak to this, that will help.

On some level, we are not going to be able to deal with this entirely. We just have to accept that until the agreement is completed and people can read it for themselves and see for themselves that just as the experience of the past 20 years and the GATS agreement has not led to restrictions on the way in which the UK runs the NHS, TTIP does not change it either. That is something that you can demonstrate only over time and with experience. Some of those people will not be persuaded for a long time.

More generally on communications, we need to be as clear and non-technical as we can be. At the Scottish parliamentary hearing—I suspect I may be about to get a question related to that—Lord Livingston came back to the same point many times over. I suppose that is a good principle generally in communication, but we need to be consistent and keep repeating our message.

As our Ministers have said they want to be, I think we are showing that we are increasingly becoming transparent in this negotiation, both encouraging the Commission to be more transparent and being more transparent ourselves to help to address perhaps a lack of trust. People who want the details can dig as deep as they want to.

We need to address the bigger story on trade. One thing that has become apparent to us is that some of the concerns about TTIP are actually arguments about trade more generally, and we need to address that, as well as making sure that we are a bit more imaginative perhaps in some of our communications. I refer back to the December Council, where we started using infographics—visual ways of communicating some information about TTIP—which I think might have helped to reach people who are not going to wade through the text and may not listen to the spoken messages. But I accept that there is still a lot to do.

Q9 Lord Foulkes of Cumnock: I wonder if I can follow that up. As you know, you have not convinced the Scottish Government yet. I asked the question on the floor of the House and got an answer, which was similar to what you have just said. It was meant to reassure me and it did at the time. I think there is a basic misunderstanding, and you have continued it today. You have said that the UK Government will still be able to run the NHS as they have always done and that it will not be forced to privatise. No one is suggesting that it will be forced to privatise. The suggestion is that if the present Government are contracting out services, American companies come in and win the contract for various services, and then there is a change in government and a new Government come in and say, “We don’t want these services privatised. We’re going to bring them back into public ownership”, they will be able to use TTIP to sue the Government if they try to bring the services back into public ownership. That is the specific point. It is not about the services being free at the point of need or anything like that. It is about contracted-out services. Ian Murray, the Labour spokesperson on this, has asked the Government specifically to get the EU to add the NHS to the list of exclusions. Why can that not be done?

Mr Edward Barker: There are two questions. First, I said that the Government could continue to run the NHS in the way they have always run it. I also went on to say that TTIP would not prevent a future Government undoing contracting-out or privatisation. I should not have said that they can continue to run the NHS in the way they have always run it; I should have said that they could continue to run the NHS in the way they choose to.

Lord Foulkes of Cumnock: But they could be sued by the contractors under the ISDS provisions TTIP, could they not?

Mr Edward Barker: We have tried to be quite clear about this, but I ought to go back and look at the answer that was given to you in the House to see whether we can expand on it. The basic point is that ISDS and TTIP should not change the Government’s obligations. If the Government already have a contractual relationship with a private provider of an NHS service and a future Government decided to end that relationship, they will have contractual obligations already, and ISDS should not provide any additional protection beyond that and the usual protections that we already offer under the European Convention on Human Rights, property law and the like.

Lord Foulkes of Cumnock: My colleague on my left has pointed out to me that Glenn Campbell has a story today on BBC Scotland of a leaked document on the EU’s next round of negotiations on TTIP, and the draft appears not to have provisions that would protect the NHS in the way the Scottish Government, the opposition Labour spokesman and a number of pressure groups are asking. All that was needed was the United Kingdom Government saying to the European Union and to Commissioner Malmström that we want a specific exclusion for the NHS from ISDS and TTIP so that we would not be open to be sued if we were to change the policy.

Lord Trimble: As a matter of interest, are they seeking a similar exclusion from being sued in the ordinary courts here or from legal action occurring in Brussels? It has very little to do with ISDS.

Lord Foulkes of Cumnock: I do not think I am giving evidence to the Committee, with respect to Lord Trimble.

Mr Edward Barker: There are two distinct issues here. You started talking about the ISDS provisions. The obligations that the Government would have are the obligations that they have anyway if they have entered into contracts. We are not looking at ISDS extending those

protections. ISDS protects against discrimination against companies on the basis that they are foreign companies. We think that is an important principle.

On the NHS exclusion, I have seen the article. I am not going to comment on leaked documents, but I think it was a document that was thought to have been leaked sometime last year. It is not a new leak, as I understand it. It has been out there for some time. It sets out the layers of reservation that the EU typically takes in free trade agreements. As I said before, there are several ways in which the NHS is already protected. This is from coverage of the market access aspects of the deal in particular. It is protected as a publicly funded and supported public service. It is also protected as a publicly funded health service. There is no explicit reference in there to the NHS. Our assessment, which is partly based on the experience, as I say, of these protections being in place for the past 20 years under GATS and our not yet having had a problem with them, is that it is not necessary, and if we start wanting to identify issues such as the NHS that we want to carve out of this, that will invite lots of other people to pull lots of other things out of the deal. It is not necessary, and there is a cost attached.

Lord Foulkes of Cumnock: What Lord Trimble implies in his helpful intervention is that TTIP does not alter the position; it does not make it easier to sue. But you have not convinced the critics of that yet, have you?

Mr Edward Barker: No, I do not think that we have convinced the critics.

Lord Foulkes of Cumnock: This goes back to the point Baroness Henig made: something more needs to be done.

The Chairman: Lord Trimble and Earl Sandwich both want to come in on this issue.

Lord Trimble: I just wonder whether you could confirm this. The document that we are quoting from, from the BBC, says, "The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or State support in any form". Does that not clearly cover the point that has been raised?

Mr Edward Barker: I think so, and you can see it in the CETA text if you do not want to look at leaked documents.

Lord Foulkes of Cumnock: That is not the point I am trying to make. The point I am trying to make is that we are talking about the public perception of it now, not necessarily the reality. The Scottish Government, Unite, the opposition spokesman and a lot of other people have not yet been convinced, and unless we can convince them this campaign will continue, and some of the positive advantages of TTIP will not be understood.

Mr Edward Barker: I accept that. As I tried to explain in my answer to Lady Henig, there are a number of ways in which we are trying or will continue to try to get on top of that campaign. I entirely accept that we have not won that argument with everyone who needs to be persuaded.

Q10 Earl of Sandwich: You have been very tactful about the US side and its intentions. I have to say that there is plenty of anti-American feeling in this country. I think we go back to the 1960s in France where the American challenge in investment was considerable. The French have had that feeling for a long time. Have you, first, looked at the situation in France in terms of how you deal with public debate? Secondly, do you have anything on the American side that will provide reassurance? Is that possible?

Mr Edward Barker: To clarify, to provide reassurance on what on the American side?

Earl of Sandwich: On American investment, whether it is for health services or contracted-out services.

Mr Edward Barker: You would like me to reassure people on US intentions?

Earl of Sandwich: Do we know it has been ruled out permanently?

Mr Edward Barker: As regards the public debate in France, as I referred to before, people typically expect France to be one of the more complicated countries on trade agreements. That is the case sometimes, but on this there has certainly been support from the French Government for the negotiation from the outset. The Eurobarometer survey in November suggests that the wider public in France is more for it than against, but clearly there is some work to do in building on that.

I would be tempted to say that some of the issues likely to be the most challenging in France, especially around agriculture, have not yet come to the fore of the negotiation. We are probably waiting for further more vocal debates there. There already are some: we in London and our embassy in France are quite active in engaging stakeholders in France. In general, the UK Government are trying to work closely with other EU member states on this deal to make sure that we are sending the right messages to the Commission and to share experiences of dealing with some of these public debates. The UK has had a lot of experience on, for example, ISDS, which we have been able to share with other countries that are only starting to enter into that debate. So there is some scope for us there.

In terms of reassuring people on the intentions of the US, I have certainly heard people describe a fear of rapacious US companies, very litigious US companies, taking advantage of the agreement. Lord Livingston certainly thinks that there is most certainly a degree of anti-Americanism in that, which is not founded in any evidence or experience. To some extent, this is a case for the US Government to make. I think our job is to make sure that we are confident that the agreement gives us what we want and does not give us things we do not want, regardless of the intentions of others, and that it is robust to that. We work with the US embassy in London, especially around communications, and we have talked about ways in which it perhaps can help.

Earl of Sandwich: But you are saying that they have not actually provided any reassurance.

Mr Edward Barker: It is quite hard to provide defensive reassurance. It is also quite hard for the US Government to promise that no American company will try to take advantage of an ISDS provision in TTIP, which is why we need to make sure that we are happy with it, regardless of the intentions. The US embassy in London has been quite active and continues to be quite active. I know that the US ambassador is going to schools and elsewhere and is engaging quite directly with people on these issues.

Q11 Lord Jopling: Mr Barker, you have said that in your view the National Health Service is protected already from the sort of challenge which Lord Foulkes has been referring to you. In his last intervention, it sounded to me as though Lord Foulkes understood that, but his complaint, which I hope I have got right, is that this is not understood by a lot of people outside.

You are being televised at this minute. We are broadcasting. Why do you not look at that camera and repeat in general terms that you believe that the National Health Service is protected under the arrangements that exist? We can then invite our clerk to draw your statement to the attention of those people who publicise the work of the House of Lords. Hopefully, your reassurances will appear in tomorrow's newspapers.

Mr Edward Barker: You flatter me Lord Jopling. I think this is what one might describe as being put on the spot.

Lord Jopling: I am just asking you to repeat in two or three sentences what you have said already.

Mr Edward Barker: To be entirely clear, I do believe that the NHS is entirely protected within TTIP, and I believe that people can have confidence in that.

The Chairman: Obviously a lot of unease about the position of the NHS has been expressed around the table. I understand the difficulty that you are in. Could I suggest, if my colleagues agree, that you give us a paper as soon as you can in which you set out on behalf of your department how and why the NHS is fully protected, taking into account the points raised by Lady Henig, Lord Foulkes, Lord Sandwich and Lord Jopling? It would be good if you could give us that really quite quickly. Obviously this Committee will pack up when Parliament packs up, but we have two more meetings, and when we have your paper I can then consult my colleagues, and if they feel that this paper reassures them—it might not reassure the country at large or anybody else—that would be one situation. But if they felt that this really did fall short of what was needed to provide a basis for reassuring the country at large, we could call you back once more on this specific point.

Mr Edward Barker: I would be very happy to do that.

Lord Foulkes of Cumnock: We could even involve Lord Livingston.

The Chairman: We might try to call Lord Livingston. We will leave that open.

Lord Radice: With great respect to the Chairman, you are assuming that we are going to be dissatisfied by what everybody says.

The Chairman: No, I said if.

Lord Radice: I do not think we are dissatisfied, but we want to have it in black and white, that is all.

Mr Edward Barker: I would be very happy—

The Chairman: No, I said if. The paper that we get might well provide us with reassurances. Even if it does provide us with reassurances, Lord Foulkes, Lady Henig and Lord Jopling could suggest some improvements if it is to carry weight in the country. But let us see what you have to say, and then we can either invite Lord Livingston back, as he will not be on the campaign trail, or you.

Lord Jopling: Mr Barker, it seemed to me that you were on the point of doing exactly what I asked you to do when the Chairman made this new suggestion. Let us follow the Chairman's suggestion, but why not now complete what you were saying to that camera over there? There is nothing like striking when this is hot news, and it clearly is: Lord Trimble and Lord Foulkes referred to current comment. I just think that you could kill the thing stone dead now if you made a statement to me.

The Chairman: Do you want to speak to camera?

Mr Edward Barker: As I have said, I am happy to reiterate that in my view—and it is not only my view; it is also based on reassurances from the European Commission and it is the assessment of my Ministers—that the NHS will be safe under TTIP. I think, though, that with the greatest respect my personal reassurance is less likely to have the desired effect than something that will perhaps be more widely persuasive. I am very happy to provide the paper. We could also look at other ways in which we could raise the public communication on this.

Indeed, at this moment Lord Livingston is giving evidence to the Commons EU scrutiny committee, and he may be doing precisely this as we speak. My basic point is that we agree that the issue is in communicating this and reassuring people. I certainly have no doubts about the facts of the issue, and we would very much like to work with you in doing that.

Lord Jopling: Thank you. You have been very helpful. I appreciate that.

The Chairman: I think it would probably be best if Lord Livingston sent the letter.

Lord Foulkes of Cumnock: Chairman, could I endorse exactly what you said? That is the best way forward, because, with no disrespect, general assurances from officials, or even Ministers, that the NHS “would be safe” are not being accepted. You have suggested that we get the explanation in black and white, so that we can look at it and check it. I know that Unite’s legal officers have provided it with a different opinion. We can get other people to look at it, and we would then be doing a real service by examining it and making sure that what David Trimble suggests is right: that there is no extension of the power to sue under this provision. I think it is a really good suggestion, but the credit for discovering the story on the website, by the way, should go to Baroness Young.

The Chairman: Baroness Young, you wanted to say something.

Baroness Young of Hornsey: I was going to use that phrase again, “with the greatest respect”. What we have heard from Mr Barker is that actually a lot of this is being fought and won on the internet via Twitter and other forms of social media, so some of us can still read it in black and white and be affected by that. But surely this is a much bigger point than simply you saying something here and us issuing a press release or the Minister giving evidence. It is about face-to-face discussion in an open, frank and safe environment. It is about harnessing and using the social media that other people are using in order to have that debate and about being much more imaginative and creative about it.

Lord Trimble: None the less, we have to accept that there are none so deaf as those who have a political reason for not hearing.

Lord Foulkes of Cumnock: Those are wise words from Northern Ireland.

The Chairman: Mr Barker, as you were in the early days of our investigation, you have been extremely helpful, and what Lord Jopling said he said, I think, on behalf of all of us. There is a particular point of concern here, and it would be very helpful to have Lord Livingston put it in black and white, as Lady Young says. Then, depending on that, we may see you and perhaps Lord Livingston before the end of March.

Mr Edward Barker: I would be very happy to.

The Chairman: Thank you very much.